



*Town of Plaistow*  
**ZONING BOARD OF ADJUSTMENT**  
145 Main Street - Plaistow, NH 03865

**ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
April 29, 2021**

The meeting was called to order at 6:30 pm

The Plaistow Zoning Board of Adjustment, due to the COVID-19/Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, is authorized to meet electronically, and these reasons shall be reflected in the minutes. Notice of this electronic meeting was sent to all abutters of the subject properties and published in the Eagle Tribune Newspaper.

The Plaistow Zoning Board of Adjustment is utilizing the Zoom platform for this electronic meeting. All members of the Board have the ability to communicate contemporaneously during the meeting through the Zoom program, and the public has access to contemporaneously listen and, if necessary, participate in this meeting. The link to access this meeting was provided on the Town's website.

There is a "raise your hand" feature of the program that will allow attendees to participate in the discussion. There is also a Q&A box for the public to type questions during the meeting. The Public can also send emails with questions or concerns prior to the meeting to [dvoss@plaistow.com](mailto:dvoss@plaistow.com). All emails received by 3:00 PM on the day of the meeting will be read into the record at the meeting. Please note: all questions and concerns typed into the Q & A box or sent via email will be read aloud to become part of the public record. The meeting will also be live on Plaistow Access Cable - Channel 17 and will be livestreaming on the Town's website.

**Roll Call:** Peter Bealo, *Chair – attending remotely, no others present*  
Dan Lloyd, *Vice Chair - attending remotely, no others present*  
John Blinn - *attending remotely, no others present*  
Jonathan Gifford – *attending remotely, no others present*  
Gary Ingham – *attending remotely, no others present*  
Jim Unger, *Alternate – attending remotely, no others present*

**Also attending remotely:** Dee Voss, *Administrative Assistant, no others present*

★ *J. Unger was appointed as a voting member for this meeting.*

**Review and Approval of Minutes from March 25, 2021 Meeting**

★ *P. Bealo moved, second by D. Lloyd to approve the minutes of the March 25, 2021 meeting. There was no discussion on the motion.*

**Roll Call Vote:** *P. Bealo – yes; D. Lloyd – yes; J. Blinn – yes; J. Gifford – yes; G. Ingham – abstained. The vote was 4-0-1.*

## **RE-ORGANIZATION – ELECTION OF OFFICERS**

P. Bealo asked for nominations for ZBA Chair.

**★ D. Lloyd, second by J. Gifford, nominated P. Bealo as chair of the ZBA for the coming year. There were no additional nominations.**

**Roll Call Vote: D. Lloyd – yes; J. Blinn – yes; J. Gifford – yes; G. Ingham – yes; P. Bealo - abstained. The vote was 4-0-1.**

P. Bealo asked for nominations for ZBA Vice Chair.

**★ J. Blinn, second by J. Gifford, nominated D. Lloyd as vice chair of the ZBA for the coming year. There were no additional nominations.**

**Roll Call Vote: J. Blinn – yes; J. Gifford – yes; G. Ingham – yes; P. Bealo – yes; D. Lloyd – abstained. The vote was 4-0-1.**

## **PUBLIC HEARINGS:**

**#21-05: A request from DC Development & Construction, LLC for a variance from Article VI, §220-48.G.3, to permit reduced setbacks from foundation to foundation from the minimum of 50' to no closer than 30'. The property is referred to as Sweet Hill Road Rear, Tax Map 41, Lot 83, in the MDR zoning district, and is accessed by an extension of Stephen C. Savage Way. The property owner of record is John Alden Palmer, Jr. Revocable Trust of 2006, Janice Palmer, Successor TR.**

A request for a continuance was read from Charlie Zilch, SEC and Associates, agent for the applicant.

P. Bealo stated that the public hearing was continued to May 27, 2021.

D. Voss noted that this was the official notice of the continuance and no other notice would be mailed.

**#21-06: A request from John W. Doherty for a variance from Article V, Section 220-32I, to permit the construction of a 24' X 28' garage, 10' feet from the side property line, where 15' is the minimum required. The property is located at 97 Main Street, Tax Map 39, Lot 77, in the VC zoning district. The property owner of record is Doherty Family Rev Trust, John W. and Deirdre Doherty, TR.**

John and Deirdre Doherty, applicant and property owners were present remotely.

**★ J. Gifford offered that he had a conflict with this application and recused himself. J. Unger was appointed as a voting member for the remainder of the meeting.**

J. Doherty explained that he would like to build a 20' X 24' two-car garage on is property. The new garage would replace the existing one-car 10' X 20' garage and two (2) 10' X 12' sheds. The proposed garage would be placed ten (10) feet from the side property line, where the existing garage/sheds are only 3.5 feet currently. Once the new garage is constructed a fence would be installed along the property line. He noted there was another structure shown on the plan that he received from his surveyor, but that structure was only his dog kennel and shouldn't be on the plan.

P. Bealo noted that there was a concern over the lot coverage of the parcel.

J. Doherty offered that he would be cutting out the concrete patio and landscaping the area. He also noted that he had installed a new leach field in 2017, but it was washing through the chain link fence to the rear of the property, so he would like to use the concrete from the patio as a barrier.

J. Doherty explained the many improvements he had made to the curb appeal of the property with many plantings and rock features.

P. Bealo noted that the application also speaks to extending the driveway. He added that the existing driveway would be grandfathered, but anything new would have to meet the setbacks or would need a variance.

There was discussion about the driveway and how it would curve to meet the new garage. Mr. Doherty noted that he would like to gravel the area where the sheds currently are for an area to park his business truck so it would not be a noticeable from the road. It was noted that this would be considered as part of the driveway and would need to meet the setbacks.

P. Bealo asked for a reading of the ordinance that was applicable to residential driveway setbacks (§220-9.1). It was noted that the ordinance does not distinguish between a driveway being paved, gravel or dirt, it still needs to meet setbacks.

There was a review of the lot plan that was submitted prior to the meeting. It was noted that the plan showed an existing conditions lot coverage of 35%, and a post garage lot coverage of 32%. This was taking into account the removal of the existing garage, two (2) sheds and the concrete patio. This still exceeds the maximum allowable of 30% lot coverage in the Village Center (VC) zoning district.

J. Unger suggested that the 30% lot coverage be applied to the 40,000 sf minimum lot sizing of the VC minimum requirements table (220-32.D.C(3)).

P. Bealo offered that wasn't the correct way to calculate it. If that were the method then a property of this size, located in the Low Density Residential (LDR) zoning district where the minimum is 2.5A could be allowed 100% lot coverage.

There was discussion of potential ways to avoid a variance for the driveway, but since the existing driveway is already in the set back there is no way to extend it without being in the setback. It was acknowledged and commended Mr. Doherty for trying to improve the current situation.

J. Doherty expressed frustration that he was not made aware of the issue with the driveway and the lot coverage when he made his application. He made note of other building that was going on and that he was only trying to improve his property.

P. Bealo offered that no one was implying that there was any wrongdoing, but when other issues are noted, the Board is obligated to address them. He reminded that the Board had noted that Mr. Doherty maintained his property very nicely. But it was a matter of making things legal.

Mr. Doherty was reminded that the plan that was being shown at this meeting was not available to the Building Inspector and only became available to the Board this day.

There was discussion regarding the options available to Mr. Doherty. It was noted that if the Board were to grant this variance there would likely be conditions that would involve the need for other variances. It was suggested that he could request a continuance and put all the applications in at the same time. J. Doherty opted to move forward with this application.

P. Bealo read the applicant's responses to the variance criteria, as the applicant did not have a copy readily available.

- The proposed variance will not be contrary to the Public Interest because the existing garage and two (2) sheds will be removed, and new garage set back 35' further than the existing buildings
- The Spirit and Intent of the Ordinance is preserved because the existing garage and shed currently sit three (3) feet from the sideline and the new garage will be ten (10) feet
- There is Substantial Justice in the granting of the variance because - no response from applicant
- The Values of the Surrounding Properties will not be Diminished because the new garage will increase the value of both the applicant's and the neighbors' properties. The new structure will be set on the property more proportionally
- Literal enforcement of the provisions of the ordinance will result in Unnecessary Hardship because allowing the construction of the garage will allow the applicant and his wife the ability to park their vehicles in the garage. It will also allow for the parking of the business truck to be further back in the driveway and behind a fence

J. Doherty noted that when he first moved to town and got his home office for his business, the size of his truck was an issue.

J. Blinn questioned what the Board would be considering when voting, the garage and the driveway or just the garage.

P. Bealo noted that the application was only for the garage, therefore that was all the Board could consider at this time.

P. Bealo asked if the Board had any additional questions. There were none. He asked if there was anyone speaking in favor of, or in opposition to the application. It was confirmed that there were no “raised hands” among the attendees, and no emails had been received. The public hearing was closed.

#### DELIBERATIONS:

**★P. Bealo moved, second by J. Blinn to grant the request for a variance from Article V Table 220-32I to allow a residential garage to be built within ten (10) feet of the property line at 97 Main Street, Tax Map 39, Lot 77 with the following condition(s):**

- ***The variance is granted for the garage only, any extension of the driveway will require its own variance to be in compliance with §220-9.1***
- ***The property owner must either reduce the lot coverage, as defined in Article II, to a maximum of 30% or less, to be in compliance with Article V, Table 220-32D.C(3) or must obtain a variance for greater than 30% lot coverage.***
- ***The property owner must provide certification to the Department of Building Safety that the location of the new garage is no closer to the side property line than 10’***
- ***Certifications of the location(s) of structure(s) and lot coverage must be by a NH Licensed Land Surveyor***

#### Discussion:

There was discussion regarding whether or not the truck parking area would have to comply if it was just left as dirt. It was noted would be up to the Building Inspector to decide and was not before the Board as part of this application.

J. Blinn noted that the lot was very small and that relocating the garage would improve the situation.

J. Unger added that the applicant can still go for the variances for the driveway setback and lot coverage.

It was agreed that the proposed changes would only improve the lot. It was also noted that the applicant takes meticulous care of his property.

The Board reviewed the criteria for the granting of a variance with the following findings:

- The variance is not contrary to the Public Interest because the size of the two-car garage isn't contrary to a residential lot.
- The Spirit and Intent of the ordinance is preserved because the structure will be placed to the rear of the lot away from abutters. The location of the septic makes it difficult to place it anywhere else.
- There is Substantial Justice in granting the variance in that there will not be any gain to the general public in the denial of the variance.
- The values of surrounding properties will not be diminished; the value of this property will increase.
- A two-car garage is a reasonable request for a residential lot. The unique condition of the parcel, being that it is small, would result in a hardship if the variance is denied.

There was no additional discussion on the motion.

***Roll Call Vote: G. Ingham – yes; J. Unger – yes; P. Bealo - yes. D. Lloyd – yes; J. Blinn - yes. The vote was 5-0-0 U/A.***

**#21-07: A request from Eldar Baror for a variance from Article III, §220-6, to permit a salvage yard, which is a non-conforming use and not permitted in any zoning district. The property is located at 233 Main St, Tax Map 31, Lot 21 in the MDR zoning district. The property owners of record is the Lori E. Thomas Rev Trust, Lori E. Thomas TR (1/2 interest) and Stephen R. Thomas and Judith R. Thomas Rev Trust, Stephen R. Thomas and Judith R. Thomas, TR (1/2 interest).**

Attorney Gerald Prunier, Prunier and Prolman, P.A. 20 Trafalgar Sq., Nashua, NH, and Eldar Baror, applicant, were present for the application.

G. Prunier explained that his client would like to reopen a salvage yard at 233 Main Street, which until recently had always been a salvage yard.

- The +/- 10A property would be fitting for his client's use without any major changes to the site
- There are businesses located on either side of this property and the proposed business use would not alter the essential character of the neighborhood, the current aesthetics, or impact the health, safety and welfare of the neighborhood
- A letter from Doug Martin, realtor, has been submitted (all Board members acknowledged receipt of Mr. Martin's letter)
- This is a unique property given the surrounding commercial properties
- The area is zoned residential, but the property is sandwiched between two commercial businesses and there are other businesses in the area
- The current zoning interferes with the reasonable use of the property considering its surroundings. It would be different if it were surrounded by residential.

P. Bealo questioned when this property was zoned residential.

D. Voss replied that it's been residential as far back as 1956.

P. Bealo noted that the licensing had been renewed until 2017, but not since then, which meant the grandfathering protection of the non-conforming use would have expired in 2018. He also noted that there was a residential use, right next door, as well as across the street.

There was a discussion about the residential properties in the area of the subject property. There was a Pictometry picture shared for reference. It was noted that there were also wetlands in the area as well.

J. Blinn offered that it was a very oddly shaped lot.

P. Bealo asked how many acres the property was.

G. Prunier replied it was 10+ acres.

E. Baror responded that the parcel was 8.8 acres.

P. Bealo explained that the Board's legal counsel (Charles Cleary) had advise the Board that this application was made under the wrong section of the ordinances. Attorney Cleary offered through staff, that the proper application should have been for a variance from Table 220-32F, the MDR permitted uses table, not from §220-6. To request a variance from §220-6 would be requesting the Board issue a determination that the salvage yard use is a conforming use, which is not the question. P. Bealo added that in reading the Building Inspector's letter, he could understand how this application was made, but the application is not correct.

G. Prunier offered that he would like to request a continuance of the matter so that he may take the advice of the Board's counsel and apply for relief from the proper ordinance.

P. Bealo asked if anyone had any comment before he continued the public hearing.

Tim Lewis, 4 Kelley Road, offered that the zoning is Medium Density Residential (MDR) and if the Board wanted to make it commercial again then he would request that his property be rezoned to commercial as well so that he could sell it, as this commercial use would take away from the value of his property.

It was explained that the applicant has requested a continuance, so the matter will not be decided at this meeting. There was a discussion about the process, noting that there would be no additional mailings sent about this matter, unless there is a change in the application.

P. Bealo stated that this matter was continued to May 27, 2021.

There was a brief discussion about how the definition of Lot Coverage is worded, and it was suggested that the Planning Board be asked to take another look at the specific language for clarity.

There was no additional business before the Board and the meeting was adjourned at 7:52 p.m.

Respectfully Submitted:

Dee Voss  
Administrative Assistant