



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

**ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
May 27, 2021**

The meeting was called to order at 6:30 pm

Roll Call: Peter Bealo, *Chair*
Dan Lloyd, *Vice Chair*
John Blinn
Jonathan Gifford, *Excused*
Gary Ingham
Jim Unger, *Alternate*

Also attending: Dee Voss, *Administrative Assistant*

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

Review and Approval of Minutes from April 29, 2021, Meeting

★ *D. Lloyd moved, second by P. Bealo to approve the minutes of the April 29, 2021, meeting. There was no discussion on the motion.*

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

PUBLIC HEARINGS:

Continued from April 29, 2021

#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.

The applicant's agent, Charlie Zilch, SEC & Associates, submitted a letter requesting to withdraw the application without prejudice. The letter was read into the record.

#21-07: A request from John W. Doherty for a variance from Article V, Section 220-3D.C.(3), to permit lot coverage of 35.6%, which exceeds the 30% permitted in the VC zoning district. 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.

#21-08: A request from John W. Doherty for a variance from Article III, Section 220-9.1, to permit an extension of the existing driveway, to be 3.3 feet from the side property line at its closest point, which is less than the minimum requirement of 15 feet. 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 Doherty, applicant, and property owner was present for the application.

J. Doherty explained his request for the two (2) variances, noting the following:

- His lot is very small, and it was discovered when he came in for a setback variance for his garage that there was also an issue with the lot coverage and driveway setback.
- The two (2) 10' x 12' sheds, the 10' x 20' garage and the canvas garage will be removed as well as a concrete patio.
- The existing driveway follows the property line, and he will be cutting it back to 3 feet off the property line.

P. Bealo asked what the frontage was for the property.

J. Doherty replied that it was eighty (80) feet.

P. Bealo offered that there was no way to put a driveway on either side of the property without needed some kinds of zoning relief.

D. Lloyd questioned if the concrete patio was being removed just to get closer to compliance.

J. Doherty responded that it looks like an airway strip, and he was removing it to allow for better landscaping with the new location of the garage.

J. Doherty responded to the criteria for the granting of a variance noting the following:

- Granting the variance is in the Public Interest because the lot coverage will be less than or equal to the existing lot coverage
- The Spirit and Intent of the ordinance is preserved the actual lot coverage will be more directed towards the back of the property
- There will be Substantial Justice in granting the variance because there is no gain to the public by denying the variance, only a loss to the property owner
- The Values of Surrounding Properties will not be Diminished as the improvements are more likely to increase the property's value
- Literal enforcement of the provisions of the ordinance would result in Unnecessary Hardship because it would prohibit construction of the planned garage

P. Bealo asked if the answers to the variance criteria were essentially the same for the second request. Mr. Doherty confirmed that they were.

J. Doherty noted that is existing garage was mouse infested and in a state of disrepair beyond what was worth fixing.

P. Bealo asked if the Board had any additional questions. There were none. He asked if there was anyone speaking in favor of the application. Deirdre Doherty, property owner, raised her hand to indicate she was in favor. The remote access was checked and there were no raised hands either in favor or opposition to the applications. It was confirmed that no emails were received either. The Public Hearings were closed.

Deliberations:

★ G. Ingham moved, second by P. Bealo to grant the request for a variance from Article V, Table 220-32D.C(3) to allow 35.6% lot for the property located at 97 Main Street, Tax Map 39, Lot 77 with the following condition(s):

- ***The property owner shall provide the Department of Building Safety with certification by a licensed land surveyor as the final percentage of lot coverage***

Discussion:

P. Bealo noted it to be a tiny lot and there was little way to reasonable use of it with the coverage restriction.

J. Blinn offered that the property owner was making things better.

D. Lloyd added with the other buildings gone and the garage centered in the back things will be less congested.

P. Bealo noted that there were no abutters with concerns.

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

- Granting the variance will not be contrary to the Public Interest because the lot coverage will be no worse than it currently is and there is a minimal amount of square footage for the property owner to work with
- The Spirit and Intent of the ordinance is preserved because the lot coverage will now be towards the back of the property where it will have less visible impact
- There is Substantial Justice in the granting of the variance because there is no gain to the public in it being denied, only a loss to the applicant

- The surrounding Property Values will not be Diminished because the aesthetics of the property are being improved and that should increase property values
- Literal enforcement of the provisions of the ordinance would result in Unnecessary Hardship because the applicant would not be able to build his garage and things might be left outside to rust

There was no additional discussion.

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

★ G. Ingham moved, second by P. Bealo to grant the request for a variance from Article III. §220-9.1 to allow a residential driveway extension to be no closer than 3.3 of the side property line at 97 Main Street, Tax Map 39, Lot 77 with the following condition(s):

- ***The property owner shall provide the Department of Building Safety with certification by a licensed land surveyor as to the proper location of the driveway***

Discussion:

P. Bealo noted that answers for this application were similar to those of the first. The applicant is proposing to cut back his driveway a little and extend it to meet with his new garage.

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

- Granting the variance will not be contrary to the Public Interest because the applicant will be narrowing the driveway and pulling it away from the property line.
- The Spirit and Intent of the ordinance is preserved because the driveway will be longer and narrower than it currently is
- There is Substantial Justice in the granting of the variance because there is no gain to the public in it being denied, only a loss to the applicant
- The surrounding Property Values will not be Diminished because removing the existing sheds and narrowing the driveway is an improve, so there should not be any negative impact to the property values
- Literal enforcement of the provisions of the ordinance would result in Unnecessary Hardship because the applicant would not prohibit the construction of the more attractive garage. It was noted that this was a small property, with a modestly sized house, not a McMansion, and there were limited options

There was no additional discussion.

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

Continued from April 29, 2021 – WITHDRAWN BY APPLICATION

#21-06: 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 are 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).

The applicant's attorney, Gerald Prunier, Prunier and Prolman, P.A., submitted a request to withdraw the application. The letter was read into the record.

#21-09: A request from Eldar Baror for a variance from Article III, §220-32E.B, to permit a salvage yard, in the MDR zoning district, where it is not a permitted use. The property is located at 233 Main St, Tax Map 31, Lot 21 in the MDR zoning district. The property owners of record are 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 Bar-Or, 27 Birch Brook Road, Lynn, MA, the applicant, were present for the application.

G. Prunier provided the Board with the following information:

- The property is the location of the former Anchor Auto Salvage Yard
- The parcel is uniquely shaped, with many nooks and crags, not the conventional square or rectangular shape
- There are two major businesses on either side of the property
- The property is in an industrial area
- The property has never been used for any other purpose other than a salvage yard
- The property has some problems with glass and metal in the land

P. Bealo asked if the Pictometry picture (on screen in meeting) was a fair representation of the existing conditions on the site, in that there were currently little to no cars on the property.

E. Bar-Or responded that there were not cars on the property currently. He added that there were a few buildings in need of repairs.

J. Blinn asked what kind of yard he was looking to operate, and whether or not there would be cars loaded end-to-end.

E. Bar-Or explained that he does not deal with any loose or scrap metals or appliances. He added that he only deals in complete autos for parts and for export. He noted that all the work on the cars would be inside the building. Mr. Bar-Or further explained that he has another lot in Middleton, Massachusetts and this lot would be mostly for storage. He added that they would be making extensive improvements to the property so that it will not have the appearance of what most people think of as a junkyard.

D. Lloyd asked if customers would be pulling their own parts.

E. Bar-Or replied that he doesn't apply "pick and pull" mainly for liability and to prevent damage. He added that everything he does is within code.

J. Unger asked if the fluids were drained prior to storage.

E. Bar-Or responded that they were, and that everything is done inside the building.

P. Bealo noted the number of residential abutters to this property, citing residences on Main St, next door and across the street from the site, as well as on Kelly Road. He added that this was not an Industrial district as Mr. Prunier is suggesting. He added that it would be nice to have better building but added that it could still end up looking like the abutting similar use.

G. Prunier offered that the applicant wanted to upgrade the landscaping and provide some screening for the abutters.

P. Bealo noted that the properties on Kelly Road were uphill, and looking down into this property, which would make screening ineffective.

E. Bar-Or replied that he could use fencing or landscaping and that he was willing to do whatever needed to be done.

J. Blinn asked what the hours of operation would be.

E. Bar-Or responded 7:00AM to 3:30PM, Monday-Friday, half a day on Saturday and no Sunday hours. He added that salvage yards have a bad reputation, but his property in Middleton has no complaints against it.

D. Lloyd asked what kind of equipment was to be used.

E. Bar-Or answered that he would be using a loader and much of the same equipment as Chaya Brothers next door.

D. Lloyd asked if there was a plan for any crushing.

E. Bar-Or replied that there was no need, he would be using this lot primarily for storage. He added that he has a crusher in Middleton, what he needs is the buildings and the space.

There was discussion about the operations on the site. It was noted that it would be mostly for storage and preparation for export.

E. Bar-Or offered that if the property owner had renewed the license, this application would not even be necessary. He added that if they could have sold it for residential, they would have. He also noted that his business was mainly exporting, which was better than selling the cars for parts. Mr. Bar-Or offered that he could provide the Town with all EPA (Environmental Protection Agency) number as well as all his gas and oil disposal records. He reiterated that he does not deal in any loose or scrap materials. He noted would be looking to employ 5-8 people and that his industry was nearly recession proof.

There was discussion regarding the surrounding uses and properties. It was noted that the previous salvage yard had been there for many years and had not prevented anyone from buying residentially in the area. It was also noted that the parcel was oddly-shaped and would be challenging for a residential subdivision.

G. Prunier offered the following responses to the variance criteria:

- Granting the variance will not be contrary to the Public Interest because under the current circumstances of the present location of the Property, the history of the Property and the limited interest in the Property for residential use, it is not in the public interest to retain the restriction to residential. There has been little interest in the site for residential purposes. The site is particularly well suited for a salvage yard since its prior use was as a salvage yard and little to no changes have been made to the Property.

To provide guidance regarding “public interest,” courts have recognized that two approaches to ascertain whether granting a variance would violate an ordinance is “basic zoning objectives.” One approach is to examine whether the variance would alter the essential character of the neighborhood, and another is to examine whether granting the variance would threaten public health, safety, or welfare. Here, the neighborhood is a neighborhood of mixed uses. There are two substantial businesses abutting the Property, as well as a few residential homes. In fact, one of the businesses is similar to the use being proposed by the applicant. The Property was used for over 70 years as a salvage business until recently. The Property will not alter the essential character of the neighborhood because there will be no physical changes to the Property, and it does not threaten the public health, safety, and welfare.

- The Spirit and Intent of the ordinance is preserved because the requirement that a variance be “not contrary to the public interest” is related to the requirement that the variance observe the “spirit of the ordinance.” Here, the Applicant’s proposal will observe the spirit of the ordinance. The proposed use of the Property is the same as its use for decades. The public’s interest as discussed above is also consistent with the spirit of the ordinance. The Applicant’s use will be similar to the abutting businesses.
- Substantial Justice would be done by granting the variance because the Property has remained idle for the past few years despite recent marketing efforts. The Property suffers from physical restrictions in that there is no public water or sewer which impose physical limitations on the development of the Property, as well as the soil properties which have remnants from the previous business.

Under New Hampshire law, “any loss to the individual that is not outweighed by a gain to the general public is an injustice.” Here, with the physical limitations and the soil irregularities, there is a material and substantial loss to the individual owners with no gain to the public.

The purposes and goals of zoning are accomplished by granting the variance to the Property. The use does not have an adverse impact or harm to the abutter, as nothing changes to the physical characteristics. Substantial justice is accomplished by granting the variance.

- The proposed use will not Diminish the Surrounding Property Values because the Property will be updated, enhanced, and landscaped. There will be no adverse impact on the value of surrounding properties abutting this Property. A letter has been submitted by an expert stating that there will be no diminution of the Property. The enhancement of the Property could add value to the abutters’ Property.
- Literal enforcement of the provisions of the ordinance would result in Unnecessary Hardship because over the past ten (10) to twenty (20) years, New Hampshire has clearly confirmed the State’s respect for individuals to make reasonable use of their land. New Hampshire courts have recognized that sometimes properties are uniquely situated or especially appropriate for a particular use. In those instances, the courts have declared that a variance is appropriate because of those special circumstances. Here, we have such a case.

The Property is located on Main Street and a highway in Plaistow. It is highly traveled roadway and not conducive to residential uses. In addition to the unique and inappropriate location for residential uses, the Property also has unusual limitations and restrictions from the lack of public water and sewer. The zoning requirements (limiting to residential) as applied to this Property interfere with the proposed reasonable use of the Property.

In recent years, New Hampshire has also confirmed that we must be careful not to deprive individuals of reasonable use of their land when the restriction will have no public benefit or will not otherwise accomplish purposes of the Zoning Ordinance. In this case, the Property is sandwiched between two commercial and industrial businesses and places a hardship on the land to try to use it for residential purposes.

P. Bealo noted that virtually no residential properties in Plaistow have water and sewer at this time, so the lack of it being available for this parcel did not make it unique.

Douglas Martin, KW Commercial Real Estate, offered photos of the existing buildings on the property. He noted that there was also a two-family residential structure located on the property, which was currently occupied.

P. Bealo took issue with the real estate listing of this being an industrial property and reminded that it was zone Medium Density Residential (MDR). He questioned why the applicant would state the property was not suited for residential use if there was a residential use on the property already. He questioned if there was any effort made to list the property residentially.

D. Martin responded that it is not an attractive property, and that people did not want to look in their backyards at Chaya Brothers.

P. Bealo asked if any consideration had been given to purchasing adjacent lot Tax Map 31, Lot 70 that would provide a better residential access from Kelly Road.

There was discussion about the operations at the neighboring Chaya Brothers, which was noted to also export vehicles more than selling them as parts. It was noted that salvage yards industry has changed a lot and that the focus was now on best management practices and “green” certification.

D. Martin suggested that it wouldn’t be safe to have a school bus stop on this road.

P. Bealo replied that there were already many bus stops along the road.

P. Bealo asked the Board if they had any additional questions, there were none.

P. Bealo asked if there was anyone speaking in favor of the application.

Lori Thomas, one of the property owners, offered that the way Kelly Road was situated people were not looking down at the cars, it was more like they would be looking over the cars.

D. Martin offered that this location was previously excavated and was eight (8) feet lower than Kelly Road. He added that there had been a lot of natural growth that had occurred for natural screening.

It was confirmed that there was no one else remotely, or in person, speaking in favor of the application and that no emails had been received prior to the meeting.

P. Bealo asked if there was anyone speaking in opposition to the application. There was no one remotely or in person, and no emails had been received prior to the meeting. The Public Hearing was closed.

Deliberations:

★ G. Ingham moved, second by D. Lloyd to grant the request for a variance from Article V, Table 220-32E.B to allow a salvage yard to be located in the MDR zoning district for the property located at 233 Main St, Tax Map 31, Lot 21.

Discussion:

P. Bealo suggested adding a condition that there be a 100' buffer around the property.

G. Ingham asked if that would be the entire parcel, or just where it abuts residential uses.

P. Bealo replied, just where it abuts residential use.

J. Unger questioned if the buffer would be to mitigate noise or the view or both. The response from P. Bealo was both.

There was discussion regarding a possible condition to the motion. It was noted that this would be an opportunity to clean the property up and have a better situation for the abutters. It was also noted that if the operations of the salvage yard are done properly there isn't much difference between the proposed use and living next door to a Tractor Supply.

There was discussion about another salvage yard in Bow, New Hampshire that some members were familiar with and how well it was operated. It was also noted that the business would be subject to annual inspections and if there are cars on the lot then the owner isn't making money.

There was discussion regarding the use of the property residentially. It was suggested that buyers were not likely to purchase in any subdivision on this parcel as it abuts the same salvage yard use at Chaya Brothers. It was noted that if the variance were to be granted then Chaya Brothers could buy it and expand their use.

It was noted that the cars on the parcel would mostly be sellable and arranged like a dealership.

There as discussion about the number of residential parcels around the subject parcel. It was also noted that a lot of the vegetation had begun to come back, suggesting that the parcel could be restored for a residential use. There was disappointment expressed that abutters were not present for this public hearing.

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

- Granting the variance would not be contrary to the Public Interest because:
Some members felt that the property is unique in that it has already been used for many years as a salvage yard and because of its location between two other commercial businesses. It noted that the salvage yard industry is much different today than in the 1950s when zoning was established. It was also noted there was no representation from the abutters to contest the application. Other members noted that the Town had vote to make this a residential zone because they didn't want uses like this to be in this zoning district.
- The Spirit and Intent of the Ordinance are preserved because:
It was suggested that the zoning of the property to residential in the 1950s was an indication that the Town wanted this area to not be developed commercially. Other members felt that the fact that the salvage yard use existed until 2017. It was questioned how much effort had been put into marketing the property residentially. It was also suggested that a developer would come into Town and search the Assessor's maps to look for open parcels, and if they saw this one and thought it viable for residential would have purchased it whether it was marketed that way or not.
- There is Substantial Justice in granting the variance because:
They property will be put back to use, which is not happening now.
- The Values of Surrounding Properties will not be Diminished because:
The salvage yard use has been there and unchanged for many years. The houses on Kelly Road were built and/or purchased since the salvage yard was there.
- Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship because:
Some members felt that this area was highly traveled and may not be suitable for residential use. Other members noted there were residential uses all up and down Main Street. It was also noted that not having sewer and water did not make the property unique. It was suggested that the property owner had been paying taxes based on the use for a long time and not granting the variance would prevent them from selling the parcel. It was also noted that there would be control with the Planning Board review process that would help to clean the site up.

P. Bealo offered that he does not see where the application meets all the criteria for a variance. He read from the *Office of Strategic Initiatives - Handbook for Zoning Board of Adjustment Members* to offer clarification of what is required.

D. Lloyd suggested that it was the uniqueness of the property that limited what could be done.

There was discussion regarding the requirements of residential lots, and a Planned Residential Development (PRD), in the MDR. It was suggested that putting residential next to the existing commercial uses would not result in nice house lots. It was also suggested that it might be suitable for apartment buildings, but any residential use would still be looking at the Chaya Brothers Salvage Yard. It was also noted that Plaistow is an MS4 (Municipal Separate Storm Sewer Systems) regulated community. It was again noted that the Planning Board would have jurisdiction over any drainage issues that could impact that permitting.

Roll Call Vote: G. Ingham – no; J. Unger – yes; P. Bealo – no; D. Lloyd – yes; J. Blinn – yes. The vote was 3-2-0 and the motion passed.

There was no additional business before the Board and the meeting was adjourned at 8:14 p.m.

Respectfully Submitted:

Dee Voss
Administrative Assistant