



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

**ZONING BOARD OF ADJUSTMENT**  
**MEETING MINUTES**  
**June 24, 2021**

The meeting was called to order at 6:30 pm

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

**Also attending:** Dee Voss, *Administrative Assistant* and Michael Murray, *Applicant for Alternate Member Appointment.*

**★ B. Burri was appointed as a voting member for this meeting.**

P. Bealo explained the process the Board uses for hearing and deciding (deliberating) on each application. He also noted that all motions are routinely made in the “to grant” format, but that is not indicative of how any member, including the one making the motion, might vote. P. Bealo added that notices of decision will be sent within five (5) business days, but that no permits will be issued for thirty (30) days in order to allow for any appeals (requests for re-hearing) as per the NH RSAs

**PUBLIC HEARINGS:**

**#21-11: A request from Richard and Marie DeLuca for a variance from Article III, §220-9.1, to allow a residential driveway to be five (5) feet from the property line, where fifteen (15) feet is the minimum required. The property is located at 79 Old County Road, Tax Map 32, Lot 14 in the RC2 zoning district. The property owner of record is DeLuca 2018 Trust, Richard and Marie DeLuca, Trustees.**

Richard and Marie DeLuca, property owners, were present for the application.

M. DeLuca offered that they were applying for a variance for an additional driveway, which is too close to the property line, because the existing driveway is like a ski slope and her husband fell, breaking his hip, going to get the newspaper.

R. DeLuca explained that they had downsized and built a detached accessory dwelling unit (ADU) at their property on Old County Rd. Their son now lives in the main

house, and they live in the ADU. He added that the property on the side where they want to put the driveway is abutted by Town-owned property and he can't go further into the property, away from the property line, because it would be too close to the septic system. Mr. DeLuca also noted that there will be additional paving at the top of the driveway, on the northwest side of the garage, to provide parking for visitors.

There was discussion regarding the proposed location of the driveway and the proximity to the septic system. There was also discussion whether there was something that could be done to change the existing driveway to be safer. It was noted that the contours shown on the provided plan depicted very steep slopes.

R. DeLuca offered the following responses to the variance criteria:

- The proposed variance will not be Contrary to the Public Interest because it will not increase traffic in any way
- The Spirit and Intent of the Ordinance is preserved because it does not interfere with any abutters
- There is Substantial Justice in Granting the variance because it will help the elderly occupants by avoiding the current steep driveway
- The Values of Surrounding Properties will not be Diminished because it does not interfere with the abutters
- Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship because one of the current occupants suffered a broken hip when walking up the current driveway

P. Bealo asked if the Board had any additional questions, there were none. He asked if there was anyone speaking in favor or, or in opposition to the application. There was no one. It was also noted that no emails or other correspondence regarding this application had been received prior to the meeting. The public hearing was closed.

#### DELIBERATIONS:

**★ B. Burri moved, second by J. Gifford, to grant the request for a variance from Article III, §220-9.1 to allow a residential driveway to be no closer than 5' of the side property line at 79 Old County Rd, Tax Map32, Lot 14 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 location of the new driveway.***

#### Discussion:

J. Gifford offered that the property abuts Town-owned land, and that he saw that this would have no adverse impact. He added that it would be substantial justice to allow these residents to remain in their home safely.

P. Bealo asked if the Town was notified as part of the application. It was confirmed that they had been, and no comments were received.

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 as the public has an interest in allowing people to live out their lives in their homes
- The Spirit and Intent of the ordinance is preserved because the property abuts town-owned land and, while still a narrow setback, it does not interfere with any other properties
- 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. There was no evidence presented that this driveway would in any way diminish the values of surrounding properties
- Literal enforcement of the provisions of the ordinance would result in Unnecessary Hardship because there is no other practical solution for the current steep slopes of the existing driveway

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

**#21-10: A request from Joshua Manning, Lewis Builders Development, for a variance from Article V, Table 220-32F.C(1)(b) to permit a lot to be created by subdivision with 100.4' of frontage, where 200' is the minimum required. The property is located at 17 Harriman Road, Tax Map 50, Lot 78, in the LDR zoning district. The property owner of record is Gerald E. Holt.**

**★ *J. Blinn recused himself and left the table. He noted that he is an abutter to the subject parcel.***

**★ *Voting Members: P. Bealo, D. Lloyd, J. Gifford, B. Burri and J. Unger.***

Tony Augeri and Joshua Manning, Lewis Builders Development were present for the application.

It was noted that a letter of authorization for Lewis Builders Development to represent the property owner, Gerald Holt, had been received.

T. Augeri explained that the application was for a variance that would allow the subdivision of the parcel at 17 Harriman Road, to create two (2) lots, one with less than the required 200' of frontage.

P. Bealo noted that one parcel that was proposed to be created was 3.1 acres in size, but there were known wetlands on the parcel. He asked if it had been confirmed this parcel would meet the minimum lot sizing for contiguous uplands, noting that if they did not the plan would need to be adjusted or a second variance sought.

P. Bealo offered that he had driven by this property in preparation for this public hearing. He noted that the where the property is located on Harriman is heavily wooded, one a curve and a hill. He added that he knew that the State had a requirement of 400' of sight distance on their roads but was unsure of what the Town's requirements are.

J. Manning explained that they could provide 300' of sight distance on either side with the removal of some trees and bushes.

D. Lloyd asked if they had located a potential curb cut in the proposed frontage.

J. Manning offered that it would be to the left side of the proposed frontage.

P. Bealo asked if the applicant had consulted with Dan Garlington, Highway Department Supervisor, they noted that they had not. He noted that an opinion from D. Garlington could weigh heavy on a decision about granting a variance. He suggested that the applicant might want to request a continuance of this public hearing to consult with Mr. Garlington. P. Bealo added that he would like to continue with the presentation and the question and answer from the abutters at this meeting so the applicant would have that input as well.

T. Augeri asked if the Board would accept supplemental information prior to the next meeting. It was agreed that they could, but it would need to be submitted prior to the application deadline.

B. Burri suggested that they look at whether they will need a variance for the acreage/wetlands on the smaller lot proposed to be created.

J. Manning offered that if it doesn't meet the criteria, they will adjust the plan so that it does.

D. Lloyd asked if they were set on the frontages, or had they considered adjusting the frontage to give more to this proposed lot.

T. Augeri replied that the gave one lot the minimum required to avoid having to get variances for both lots. He noted there were challenges with wetlands and no ability to provide an alternate access.

P. Bealo asked if there were any abutters with questions or comments:

Corinne Martin, 9 Buttonwood Farm offered the following:

- She is an abutter, and a concerned resident, looking out for the best interests of the Plaistow Community with ongoing development by corporate entities.
- Approving zoning deviation would begin a hazard and safety concern for the community.
- It is contrary to the public interest and there is little justice in granting this request for a variance.
- It deviates from the spirit and intent of the preservation of the original intent of the ordinance.
- There is already an existing safety concern at this specific corner, which also goes down a hill.
- Granting the variance would be an unnecessary hardship to the residents by adding cross traffic challenges on an already challenging corner.
- Granting the variance would cause dangerous situations for bus stops, walkers, and cyclists
- Granting the variance would not be in the best interests of the Town.

Annmarie Zanfagna, 20 Harriman Road offered:

- She lives across the street from this parcel
- It's already dangerous to back out her car out of her property
- This would interfere with six (6) mailboxes
- Walking the dog is already difficult as are bus stops
- Drivers don't observe the 25mph speed limit which already makes this area dangerous

Elwood Paradis. 15 Harriman Road offered:

- This matter was brought to the Highway Safety Advisory Committee (HSAC) in 1996 and it was their opinion that this was a dangerous proposal at that time, and in his opinion, it was even more dangerous now with more people walking their dogs and bicycling
- He made note of a previous application for 96-units, which he reported to have been turned down for wetlands
- Almost all the drainage from this property runs down to Harriman Road already and his septic and leach field were downstream

E. Paradis gave the Board copies of letters dated from 1996 from Marilyn P. Senter, then secretary of the HSAC and Police Chief, Stephen C. Savage, then HSAC chair.

Susan Colby – 32 Forrest St offered:

- The property frontage is located on a corner that also has a hill and she expressed many of the same safety concerns already expressed regarding the sight distance

P. Bealo noted that the Town only requires 50' to create a right-of-way for a new road. He added that he would like to see what D. Garlington says about the sight distance.

John Blinn, 4 Harmony Way offered:

- This area has a dangerous hill and corner which is even worse in the winter
- He has experience with bad corners from where his road intersects with Harriman and Pollard and not being able to clearly see oncoming traffic
- He confirmed for the record that he was speaking only as an abutter to the property, not as a member of the ZBA or the Board of Selectmen (BOS)

**★ P. Bealo stated that this public hearing was continued to July 29, 2021. It was also noted for those present that there would not be any additional notification of the meeting.**

**#21-12: 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.**

**★ J. Unger recused himself and left the table. He noted that he is an abutter to the subject parcel.**

**★ J. Blinn rejoined the Board at the table.**

**★ Voting Members: P. Bealo, D. Lloyd, J. Blinn, J. Gifford and B. Burri.**

Charlie Zilch, SEC & Associates, and Steve Doherty, DC Development and Construction, LLC were present for the application.

C. Zilch offered the following regarding the variance request:

- The parcel is located in the Medium Density Residential Zoning District
- The 20.02Ac parcel has 51' of frontage and is located behind the Plaistow Public Safety Complex and is accessed via Stephen C. Savage Way, which has been fully constructed to the property line
- Previous obligations of the Town in acquiring the land for the expansion of the Safety Complex where to provide the access

- There was a previous plan developed in 2019 for a Planned Residential Development (PRD) with fifteen (15) units, non-age restricted, that required two (2) variances under the previous PRD ordinance; lack of frontage on a Town road, and the size of the well radius. The well radius is no longer part of the PRD ordinance, but the frontage variance is still necessary.

P. Bealo, noting the plan that was included in the application, offered that the Board doesn't know which units that applicant is looking for the variance to apply to.

C. Zilch replied with:

- This would be a zero lot line condominium with single-family, duplex, and triple units
- With the newly adopted changes to the PRD ordinance, they are now allowed sixteen (16) units by right
- All units will be three-bedroom, all with attached garages
- If available, the project will be connected to the municipal potable water system
- There will be single and shared septic systems
- This developer also built the project known as Snow's Brook as well as a project in Sandown and other surrounding communities and prefers to build to adapt to the existing terrain.
- Granting the variance will allow for an improved layout, decreased impact to the land, including less tree clearing, less pavement and more open space
- They will be able to reduce the number of triplex structures to one

There were three possible layouts presented to the Board. It was noted that the preferred plan would be #3 in the packet, which it was determined would be the plan the variance application would be based on moving forward with the public hearing. That plan showed sixteen (16) units with only one (1) triplex, 450' of roadway and maximizing the open space.

It was noted that the dwelling units were arranged in small clusters within the PRD. The setbacks between structures were noted as follows:

- Unit 1 & 2 – meet minimum set back
- Units 3 thru 8 – thirty (30) feet apart
- Units 9 thru 12 – thirty (30) feet apart
- Units 13 thru 16 – greater than thirty (30) feet apart

C. Zilch explained that if this were a standard subdivision in the MDR zoning district, structures could be as close as fifteen (15) feet to the property line, which meant that structures on abutting lots could potentially be as close as the thirty (30) feet they were requesting.

P. Bealo questioned if granting the variance to allow foundations as close as thirty (30) feet would increase the density of the project.

C. Zilch confirmed that it would not increase density. They could put in sixteen (16) units by right with a standard subdivision, but it would have a lot more impact to the land.

C. Zilch noted that they had first drawn a plan under the previous wetland ordinance (PZO Article IV). When that ordinance was amended in 2021, they had to redesign to meet the new requirements. He added that they have consulted with the Conservation Commission (ConCom) and are able to meet all the requirements of the new ordinance 100%.

C. Zilch added that they have spoken with the Fire Chief and agreed to put sprinkler systems into the structures that are closer than 50' as well as provide hydrants.

A letter from the Fire Department with those requirements was read into the record.

C. Zilch offered the following responses to the criteria for the granting of a variance:

- **The proposed variance will not be contrary to the public interest because:** Granting the variance to allow the proposed units to be positioned closer together does not increase the density. It allows for a better layout that is less impacting. When compared to a similar layout where the homes are positioned 50' apart you can see that there are several advantages. The driveways would be shorter, and the roadway length would be shorter as well. Both considered, overall impervious pavement would be reduced by about 2.5%. If one of the triplex units is eliminated (more in keeping with the surrounding community) providing more marketable single and duplex dwellings, the benefit, although slightly less at 1%, is still maintained. With either layout at the 30' separation, the proposed homes would be closer to the roadway as well as the septic systems that support them. This clustering of the homes and septic systems closer to the road decreases site disturbance and increases allowed open space. Again, a comparison to the 50' layout shows an increase in open space via the 30' setback plan. All considered, lessening the setback requirement will have no negative effect to the general health, welfare, and safety of the general public. Moreover, the variance, if granted will not substantially, alter the essential character of the neighborhood.
- **The spirit and intent of the ordinance is preserved because:** The intent of the ordinance is to ensure that the proposed units are properly spaced to allow for adequate fire protection. In our review with Fire Chief Knutsen, adequate fire suppression can be provided by installing fire suppression sprinklers within all units that are within 50' of another. Additionally, a fire hydrant will be installed in the proposed right of way to provide a second source of fire suppression. In this particular case, the spirit and intent can be met with the additional levels of



protection. The public interest and spirit of the ordinance prong are essentially the same and the elements are satisfied if the applicant can demonstrate the essential character of the neighborhood will not be substantially altered. *Farrar v. Keene* 158 NH 684 (2009)

- **There is substantial justice in granting the variance because: (Note: Any loss to the individual that is not outweighed by a gain to the general public is an injustice)** This zone, MDR has a 15' sideline setback requirement (See Town of Plaistow Zoning Ordinance 220-32I) for structures in a conventional subdivision layout. When you consider that the PRD ordinance requires dwellings to be separated by 50', but you could have two dwellings as close as 30' in a typical subdivision layout then the reduced setback for a clustered layout is reasonable. There is substantial justice in granting the variances which allow the development to be constructed with the 30' setback where the benefit is not offset by any negative impact.
- **The values of surrounding properties will not be diminished because:** Applying a Planned Residential Development to this site is a by rights application of the ordinance with the variance(s) previously granted. The request to reduce setbacks does not increase density; it merely makes for a better layout. Reduction of the setback allows for elimination of one of the triplex units while still maintaining the benefit of less overall impervious and greater open space. Again, this mix of homes is more attractive and marketable. In all, a less impacting layout that does not adversely affect health, welfare and safety to the general public does and will not diminish the values of surrounding property values.
- **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because:** Denial would result in unnecessary hardship if literal enforcement of the provisions of the ordinance were applied. Meaning, requiring the greater setback would result in more impervious area resulting in more stormwater runoff and there would be less open space and more site disturbance. The developer is willing to invest the additional time and resources to install the fire suppression sprinkler system in all units affected by the closer layout. Neither of which is considered in the ordinance.

P. Bealo asked if the Board had any questions.

J. Gifford noted that they were proposing to condense the area where the structures would be and add fire suppression to some of the units.

P. Bealo added that they were also leaving larger tracts of land as open space.

C. Zilch explained that stormwater would be directed off the roads and rooftops and infiltrated back to the ground. He added that by law they aren't allowed to increase stormwater flow off the property at any greater rate than existing.

It was noted that the drainage and stormwater management would be a discussion for the Planning Board.

There were no further questions from the Board. It was noted that no emails have been received prior to the meeting.

P. Bealo asked if there were any abutters speaking in favor of, or opposition to the application or just had questions.

Brad Shaw - 5 Cheney Lane

B. Shaw asked what the purpose was of the 50' separation ordinance as written.

P. Bealo offered that it would only be conjecture, but he thought it was to provide separation between structures which would reduce the chance of spread in case of a fire. He added that if this were a standard subdivision proposal, instead of a PRD, the structures could potentially be as close as thirty (30) feet, which seems to be a conflict.

B. Shaw replied that he understood the conflict but asked if the number of units could be increased from the proposed sixteen (16).

C. Zilch offered that the density is soils-based so it is what it is going to be. He added that there is nothing in the ordinance that provides a density bonus for building a PRD, and the land simply cannot support additional units.

S. Doherty added that he would always prefer to build single-family houses, and that he wants the houses to be attractive, user-friendly homes. Having the ability to place them as close as thirty (30) feet gives them more flexibility to be selective in the cutting, create little pockets of houses tucked into the trees.

#### DELIBERATIONS:

**★ J. Gifford moved, second by B. Burri, to grant the request for a variance from Article VI, §220-48.G.3 to allow foundations to be less than the required 50', but no closer than 30' apart, for the property referred to as Sweet Hill Road Rear, Tax Map 41, Lot 83, with the following conditions:**

- ***This variance is valid only for the foundation arrangement as shown on the plan titled "Conceptual Planned Residential Development Site Plan" and dated May 20, 2021. Any changes that show a different foundation arrangement invalidate the variance.***
- ***Revisions to the Plan, as may be required by the Planning Board during their subdivision review process, that do not change the arrangement or location of the foundation structures on the Plan, do not invalidate this variance.***

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 given that structures within the MDR Zoning District could be as close as thirty (30) feet by complying with the fifteen (15) foot setback from the property line, and the amount of open space and permeable soils to allow water into the ground there is nothing contrary to the Public Interest
- The Spirit and Intent of the ordinance is preserved, the intent is to provide adequate “elbow room.” The arrangement of the sixteen (16) dwelling units will be in smaller clusters, and well surrounded by trees, as if to be small neighborhoods with plenty of room
- There is Substantial Justice in the granting of the variance because they are not asking for more density than they would be allowed with a conventional subdivision. They have satisfied the concerns of the Fire Department by sprinkling buildings that will have foundations closer than fifty (50) feet and providing hydrants
- The surrounding Property Values will not be Diminished. The units are proposed in an arrangement that shouldn’t impact surrounding values, they provide for more open space and with the fewer triplex structures preserve property values
- Literal enforcement of the provisions of the ordinance would result in Unnecessary Hardship they are making the best arrangement of the sixteen (16) units within the allowances of zoning.

***Roll Call Vote: D. Lloyd – yes; J. Blinn – yes; J. Gifford – yes; B. Burri – yes; P. Bealo – yes.***

#### **Review and Approval of Minutes from May 27, 2021, Meeting**

***★ D. Lloyd moved, second by P. Bealo to approve the minutes of the May 27, 2021, meeting. There was no discussion on the motion.***

***Roll Call Vote: J. Blinn – yes; J. Gifford – yes; B. Burri – abstain; P. Bealo – yes; D. Lloyd – yes; The vote was 4-0-1 and the motion passed.***

#### **Other Business – Consideration of Alternate Appointment**

The Board had a discussion with Alternant Member Applicant Michael Murray, reviewing his letter of interest and application for appointment.

***★ J. Gifford moved, second by B. Burri, to recommend to the Board of Selectmen that Michael Murray be appointed as an alternate member to the ZBA.***

***There was no discussion on the motion.***

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

There was no additional business before the Board and the meeting was adjourned at 8:34 p.m.

Respectfully Submitted:

Dee Voss  
Administrative Assistant