



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

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
September 30, 2021

The meeting was called to order at 6:31 pm

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

Also attending: Dee Voss, *Administrative Assistant*

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

Minutes of August 26, 2021

★ *P. Bealo moved, second by G. Ingham, to approve the minutes from the August 26, 2021, meeting as written. There was no discussion on the motion.*

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

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:

#21-18: A request from Saint Mathews United Methodist Church for an equitable waiver from Article V. Table 220-32I to allow a picnic pavilion to be 22.9’ from the side property line where 50’ is the required minimum. The property is located at 101 Sweet Hill Road, Tax Map 68, Lot 8C in the ICR zoning district. The applicant is the property owner of record.

D. Voss read a request for continuance, from the applicant's consultant, William Gregsak. It was noted that the application would be continued to October 28, 2021 and that no additional notification to the abutters would be made.

#21-19: A request from Semaan Properties NH, LLC for a variance from Article V, Table 220-32I to allow a building to be set 36.3' from the front property line, where 50' is the minimum required. The property is located at 27 Plaistow Road, Tax Map 25, Lot 33, in the C1 zoning district. The applicant is the property owner of record.

#21-20: A request from Semaan Properties NH, LLC for a variance from Article V, Table 220-32I to allow a building to be set 28.6' from the side property line, where 35' is the minimum required. The property is located at 27 Plaistow Road, Tax Map 25, Lot 33, in the C1 zoning district. The applicant is the property owner of record.

Dan Koravos, DK Engineering and Joseph Semaan, Semaan Properties NH, LLC, were present for the application.

D. Koravos offered the following information related to the application:

- The property is located south of the Bank of America office, across the street from the Ethan Allen furniture store, and was last a Trump Store business and a pawn shop prior to that
- The existing building is non-conforming in that it is currently in the front setback at 29.8'
- Parking has been on the side and in the rear
- The existing parking is insufficient to meet the Town's requirements or the owner's proposed new retail use
- The property is <0.5Ac in size
- The minimum setbacks for this property are 50' rear (to residential use), 50' front and 35' on the sides
- The new property owner would like to raze the existing structure and build new
- They would be staying within the existing footprint for the front and pulling the building back slightly to make it closer to meeting the setback, but with the wetlands to the rear they cannot push it all the way back and still provide parking
- The septic is located on the southern side of the property
- They would be installing a subsurface infiltration system under the rear parking to control and treat stormwater runoff
- The building is proposed to be two floors which because of the slope would provide for ground-level access to the rear and the front. The rear would be at parking lot level, the front would be at street level
- They would like to add stairs to the second floor on the side for additional egress

P. Bealo asked if there was room to locate the stairs at the rear of the building.

D. Koravos replied that there was not, and this would make for better access than the existing.

- The existing building is 1225-1250SF; the proposed building is 1750-1775SF, and even with the larger building there is 350SF less encroachment into the setbacks.

The Board reviewed pictures of the existing site and discussed the location of the septic. It was also noted that current building wasn't worth repairing. The basement in the current building has a three (3) foot slope from front to back and a hole cut in the floor to allow for interior stairs.

D. Koravos noted that his responses to the variance criteria would be the same for both application requests. He offered the following:

- The proposed variance will not be Contrary to the Public Interest because the new facility will increase the value and appearance of the existing retail building and use and enhance the tax base for the community
- The Spirit and Intent of the Ordinance is preserved because the spirit and intent of the ordinance is to provide spacing and prevent impact to abutters. The front property line in question borders Plaistow Road. The proposed structure will be over 36' feet from the right-of-way thereby maintaining a safe distance between the structure and traffic. The property line on the south side of the building is bordered by mature vegetation a retaining walls between the two properties
- There is Substance Justice because granting the variance would allow for the productive use of the property. There is no benefit to the community which is not outweighed by the detriment to the property owner if the variance request is denied
- The Values of Surrounding Properties will not be Diminished because considering the exiting building, the addition of the new retail facility would not diminish the values of the surrounding properties. The new building would create a new destination for upscale retail clientele
- Literal enforcement of the provisions of the ordinance would result in Unnecessary Hardship because the property is the smallest in the area and restricted to the rear by a wetland area and the site topography. The proposed use is well suited to the site as well as the area. Literal enforcement of the ordinance would result in severe reduction to the size of the building and eliminate the majority of the proposed parking.

P. Bealo asked if the proposed two-story building were to be moved back whether it would interfere with the well and the wetlands.

D. Koravos confirmed, added they had been to the Conservation Commission (ConCom) to get support for a Conditional Use Permit that they will need from the Planning Board for the width of the parking, sidewalk, and driveway. He also noted that the existing parking spaces were only stripped for a nine (9) foot length, where eighteen (18) is the current standard.

P. Bealo asked if there was anyone speaking in favor, opposition, or just had a question.

Michael Brantmuller, 28 Chandler Ave, asked for further explanation of the subsurface infiltration system for stormwater management.

D. Koravos offered that it was a system of catch basins and chambers to collect water from the pavement and hold it for treatment before it infiltrated into the ground water.

M. Brantmuller offered that he thought it was a great plan.

D. Voss noted that no emails or letters had been received for this application.

P. Bealo asked if there was any additional input. There was none and the public hearing was closed.

DELIBERATIONS:

Motion #21-19

G. Ingham moved, second by J. Gifford, to grant the request for a variance from Article V §220-32I to allow a structure to be set 36.3' from the front property line, where 50' is the minimum, for the parcel located at 27 Plaistow Road, Tax Map 25, Lot 33.

G. Ingham offered that this established business will be perfect for this location. He noted that the family-owned business has been in Town more many years and taking the old building down for a brand new one will be an improvement.

J. Gifford added that the type of business, with 4-5 customers at a time would be well suited to this building and location, noting that another business would most likely require more parking.

D. Lloyd added that it would be getting rid of an eyesore for a brand new building.

P. Bealo noted that there would also be 320SF less encroachment without impacting any abutters.

J. Unger offered it would definitely be an improvement.

The Board stepped through the variance criteria with the following findings:

- Granting the variance will not be contrary to the Public Interest because the new building will be more conforming than the existing eyesore of a building
- The Spirit and Intent of the ordinance are preserved because separation is still maintained
- There is Substantial Justice in granting the application as explained by the applicant very coherently, there is no gain to the public that would outweigh a detriment to the applicant and the applicant will have full use of the property as intended
- Surrounding Property Values will not be Diminished and may in fact improve with the new structure. No evidence to the contrary was presented
- Literal enforcement of the provisions of the ordinance would result in unnecessary hardship because the lot is very small with limited possibilities, and this will be making the best use of the property.

There was no additional discussion on the motion.

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

Motion #21-20:

D. Lloyd moved, second by J. Unger to grant the request for a variance from Article V §220-32I to allow a structure to be set 28.6' from the front property line, where 35' is the minimum, for the parcel located at 27 Plaistow Road, Tax Map 25, Lot 33.

It was noted that the same finding for Matter #21-19 were applicable to this application as well with the exception that the abutters to the encroachment would change. It was also noted that the way the building would have to be placed only left the proposed placement of the stairs as a reasonable second egress.

There was no additional discussion on the motion.

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

Request for Re-Hearing (Deliberations Only)

#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.

Since the motion for re-hearing is a deliberative process only, without public testimony, the Board opted to waive reading of the lengthy submission. Each member was asked to certify on record that they had read the entire document:

G. Ingham – yes; J. Unger – yes; P. Bealo – yes; D. Lloyd – yes; J. Gifford – yes.

A copy of the entire motion for re-hearing is attached to these minutes.

G. Ingham noted that he had spoken with Mr. Holt, the property owner, to request permission to hunt the property. He noted that they didn't discuss the matter except to note that G. Ingham was on the Board, but he wanted to make the Board aware of the encounter.

P. Bealo offered that he didn't think there would be a conflict, but if G. Ingham felt more comfortable recusing himself an alternate was available to be appointed in his place.

G. Ingham stated that he would prefer to recuse himself to remove any doubt of the process.

G. Ingham left the table. M. Murray was appointed as a voting member and certified that he had read the entire motion for re-hearing in this matter.

Voting members for this matter: P. Bealo, D. Lloyd, J. Gifford, J. Unger, M. Murray

★ P. Bealo moved, second by J. Gifford, to grant the motion for a re-hearing of ZBA matter #21-10 as requested by the applicant, Lewis Builders Development.

P. Bealo offered that there were five (5) points made in the motion for re-hearing. He offered comment to address each individual point

1. The finding that separation of the proposed lots created a safety issue because: "... the frontage [is] located in an area where the road curves and there is an incline, pedestrian, bicycle and motor vehicle traffic could be adversely impacted with the shorten (sic) frontage." is contrary to the evidence presented to the ZBA that Lewis Builders proposed, and agreed to as a condition of approval, to regrade the parcel to reduce the incline and clear cut trees and brush to increase site lines and thus have a positive impact for pedestrian, bicycle and motor vehicle traffic. Lewis Builders' evidence included a Site Distance Plan prepared by Jones and Beech, presented to the ZBA, and reviewed by the Town's consultant Steve Keach in which he concluded it met all safety standards.

P. Bealo Response: The ZBA considered Mr. Keach's statement regarding adequate sightlines but concluded through their local knowledge that:

- A. The sightlines would be difficult to maintain because of regrowth, and in winter due to snow piles adjacent to the road.
 - B. Entire road is narrow and due to curve and hill even with changes visibility is difficult.
2. The finding that: "The fact that there would need to be trees removed and maintenance easement in place, which could become an enforcement issue in the future, (emphasis added) shows that there is not adequate sight distance, as is, for public safety." is also contrary to the evidence presented that in fact Lewis Builders would not leave the subdivided lots "as is" but in fact would remove trees to increase sight distance, and therefore improve public safety at the location from the status quo. In addition, ZBA relied on a hypothetical reason (emphasized above) to support its finding and not any evidence presented. Lewis Builders' evidence included a Site Distance Plan prepared by Jones and Beech, presented to the ZBA, and reviewed by the Town's consultant Steve Keach in which he concluded it met safety standards. Additionally, the Town's consultant provided how the condition could be achieved in his recommendations to the Town.

P. Bealo Response: The ZBA considered Mr. Keach's statement regarding adequate sightlines but concluded through their local knowledge that:

- A. The sightlines would be difficult to maintain because of regrowth, and in winter due to snow piles adjacent to the road.

- B. Entire road is narrow and due to curve and hill even with changes visibility is difficult.
- 3. The finding that "There would be a loss to the general public in roadway safety with the limited site distance." is contrary to the evidence presented (see #2 above), and contrary to the ZBA's express finding that "there would need to be trees removed and a maintenance easement in place...". Lewis Builders' evidence included a Site Distance Plan prepared by Jones and Beech, presented to the ZBA, and reviewed by the Town's consultant Steve Keach in which he concluded it met safety standards. Lewis Builders also presented evidence that the clearing of trees would provide a current public safety benefit for drivers of Harriman Road.

P. Bealo Response: The ZBA considered Mr. Keach's statement regarding adequate sightlines but concluded through their local knowledge that:

- A. The sightlines would be difficult to maintain because of regrowth, and in winter due to snow piles adjacent to the road.
- B. Entire road is narrow and due to curve and hill even with changes visibility is difficult.
- 4. The finding that "Property Values may or may not be impacted, depending on when, if, or how the larger portion of the parcel may be developed." is contrary to the scope of the ZBA's consideration, and contrary to the evidence presented that there were no immediate plans to develop the parcel. In addition, the ZBA chair expressly noted during the July 29 hearing that any plans for development were beyond the ZBA's purview and would require scrutiny and approval by the Town Planning Board at a later hearing. Additionally, the criteria for examination must provide a finding of a diminution of property value which this finding does not meet.

P. Bealo Response: In the applicant's presentation on meeting the variance criteria, the applicant noted "Any dwelling would be set back from the road", so they opened the door to questioning future land use. Applicant also stated that the drawing, showing sight lines from the new property's access way, showed a road not a driveway in the proposed location. Even so, ZBA Chair notes that no evidence for diminution of property values was presented.

- 5. The finding that "It was noted that the entire parcel proposed to be subdivided is heavily wooded so it was unclear what maintenance was needed (in response to applicant's statement that it was a hardship for the current owner to maintain the entire parcel) and why it would pose a hardship." is contrary to the evidence and contrary to the fact no contrary evidence was presented during the hearing to refute the applicant's assertion that maintaining the entire parcel is a hardship. Part of the hardship is protecting the "heavily wooded" property from trespassers and uninvited persons shooting firearms. In addition, Lewis Builders presented uncontroverted evidence that there are no immediate plans to develop the property and if the variance was granted the two parcels would otherwise meet all Town requirements.

P. Bealo Response: Merely stating that maintenance is a hardship does not make it so. And it would not be a hardship that “goes with the land” or is unique to this parcel. Applicant provided no evidence or details of exactly what the maintenance hardship is. Protecting property from trespassers was not offered as the reason during the hearing, nor was there evidence or even a statement that the property was posted. If not posted, owner allow trespassers, hunters, etc.

Members of the Board agreed with the responses to each point as present by P. Bealo.

P. Bealo added that there were no obvious moves to protect the property at this time.

M. Murray added that there no sign of hardship at the present.

There was no additional discussion on the motion.

Roll call vote: J. Unger – no; M. Murray – no; P. Bealo – no; D. Lloyd – no; J. Gifford - no. The vote was 0-5-0 and the motion was defeated.

The Board stated that there was no new evidence presented in the motion for re-hearing, nor was there improper process for consideration of the application.

There was no additional business before the Board and the meeting was adjourned at 7:22 p.m.

Respectfully Submitted:

Dee Voss
Administrative Assistant