



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

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
July 29, 2021

The meeting was called to order at 6:30 pm

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

Also attending: Dee Voss, *Administrative Assistant*

★ J. Unger and B. Burri were appointed as a voting members 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

P. Bealo noted that the application would be taken out of order.

Minutes of June 24, 2021

★ D. Lloyd moved, second by J. Unger, to approve the minutes from the June 24, 2021, meeting as written. There was no discussion on the motion.

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

PUBLIC HEARINGS:

#21-13: A request from Jonathan Harris/Lifestyles Electric for a special exception under Article X to permit a home occupation, namely an office for an electrical business. The property is located at 100 Sweet Hill Rd, Tax Map 69, Lot 34 in the LDR Zoning District. The property owners of record at Jonathan P. and Ashley E. Harris.

Jonathan and Ashley Harris, property owners of 100 Sweet Hill Road, were present for the application.

A. Harris explained that they would like to have a home office for her husband's electrical business. She noted that she assisted with the business as well, doing the office work.

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

- The business use will be secondary to the residential use
- The business qualifies for a home occupation under §220-66.C (tradesman)
- The business will not be injurious, noxious, or offensive to the neighbors by reason of emission of odor, fumes, dust, smoke, vibration, or noise
- This proposed business use is within a single-family dwelling
- The applicant is the property owner
- The proposed business use will only occupy 7% of the living space
- The proposed business use will not change the residential character of the dwelling or the property
- The applicant is not proposing to have a sign at this time, but it was noted that should they want to in the future it was restricted to three (3) square feet, could not be illuminated, and requires a permit
- There are no additional employees not living on the property employed on the premises
- There will not be any outside merchandise displayed
- There is sufficient off-street parking, though customers do not routinely come to the property
- There are no expected large business-related deliveries
- The applicant has a single business vehicle
- There will not be any flammable, noxious or dangerous materials stored in the vehicle
- There are no covenants in the deed that would prevent a home occupation
- This is not a condominium unit
- This will be the only home occupation for this property
- The applicant has submitted all required documentation for the application.

P. Bealo also noted that should the special exception be granted the property was subject to inspection by the Code Enforcement Officer. It was also noted that the Home Occupation Permit would need to be renewed every three (3) years, and it was the permit holder's responsibility to know when that is, as no reminder is sent.

P. Bealo asked if the Board had any questions, there were none. He asked if there was anyone speaking in favor of, or in opposition to, the application for a home occupation. There was no one. It was also noted that no emails had been received prior to the meeting, and the public hearing was closed.

DELIBERATIONS:

★ G. Ingham moved, second by J. Unger, to grant the request from Jonathan Harris/Lifestyles Electric for a Home Occupation, under Article X, all sections to allow an office for an electrical business at 100 Sweet Hill Rd, Tax Map 69, Lot 34.

Discussion:

It was noted that this is a classic request for a home occupation and all the criteria of the special exception were met.

Roll call vote: D. Lloyd – yes; G. Ingham – yes; J. Unger – yes; B. Burri – yes; P. Bealo - yes. The vote was 5-0-0 U/A.

#21-14: A request from DC Development for a 2-year extension of the approval of variances #19-12, and #19-13, granted on August 29, 2019, regarding access from a non-accepted public way with less than 200’ of frontage. The property the variances were granted for 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 as an abutter and left the table. M. Murray was appointed as a voting member for this application.

★ Voting members: P. Bealo, D. Lloyd, G. Ingham, B. Burri, and M. Murray

Charlie Zilch, SEC and Associates was present to represent the requesting applicant.

C. Zilch explained the history of this property, noting that he had obtained three (3) variances for sections of the Planning Residential Development (PRD) ordinance in August Of 2019. At the time of those requests there was not a potential buyer for the property, but there is now. That developer has been before the Board for an additional variance request to formalize a plan to bring to the Planning Board for review. However, they will not be prepared to go before the Planning Board prior to the expiration of the variances granted in 2019 and are therefore requesting the extension of that time. C. Zilch also noted that they were only asking for the extension of the time for two (2) of the three (3) variances that were previously granted because the last one is no longer necessary due to a change in the zoning ordinance. He also noted that once the development is built and the road becomes a town right-of-way these other variances will be moot as well.

C. Zilch offered that the plan is still to develop the parcel as a PRD as shown to the Board at their last appearance.

P. Bealo asked if the Board had any questions.

G. Ingham asked if the variances that were granted in 2019 resulted in an increase to the density of the development.

C. Zilch replied that they did not however, there was a change in the Zoning Ordinance that allowed them one (1) additional unit, so instead of the fifteen (15) shown then they are showing sixteen (16) units on the current plan.

P. Bealo asked if there was anyone speaking in favor of, or in opposition to, the application to extend the two-year variance deadline. There was no one. It was noted that no emails had been received prior to the meeting, and the public hearing was closed.

DELIBERATIONS:

★D. Lloyd moved, second by M. Murray, to grant a two-year extension of the variance approvals in ZBA matters #19-12 and #19-13 granted to the John Alden Palmer, Jr. Rev Trust of 2006 on August 29, 2019, with the following conditions:

- ***The new expiration date of the variances will be August 29, 2023***
- ***There will not be any additional extension of the granted variances in these matters***

Discussion:

It was suggested that it would be appropriate to grant the extension so the subdivision plan could move forward to the Planning Board for review.

Roll Call Vote: G. Ingham – yes; B. Burri – yes; M. Murray – yes; P. Bealo – yes; D. Lloyd – yes. The Vote was 5-0-0 U/A

Continued from June 24, 2021

#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. Unger returned to the table as a voting member. M. Murray no longer voting member for this application.

★Voting Members: P. Bealo, D. Lloyd, G. Ingham, J. Unger, and B. Burri.

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

T. Augeri noted that they had submitted a letter of authorization from the property owner, Gerald Holt, to allow their representation at this meeting. It was confirmed that the letter had been received.

T. Augeri reminded that Board that they had been at the previous meeting regarding a frontage variance that would allow them to subdivide Mr. Holt's parcel into two (2) parcels. One parcel would include Mr. Holt's current home and +/- 3Ac of land and would be completely compliant with the zoning requirements. The other parcel would be +/- 46Ac but lacked the necessary frontage to meet the zoning requirements, and that was the only matter before the Board.

T. Augeri provided the following responses to the variance criteria:

The proposed variance will not be Contrary to the Public Interest because; This application is for a variance from the frontage requirements for the Town of Plaistow under Article V, §220-32F.C(1)(b). The Owner seeks to subdivide his land into two parcels, one with the existing structure and the other as a large piece of vacant land. It would not be contrary to the public interest to grant this variance application because houses on both sides of the Owner were built when the town's frontage requirement was 150 feet, and the Owner would exceed that standard if it were the current standard in total. Instead of seeking two variances, one for each lot, the Owner is seeking to subdivide so a variance is being sought only for the proposed vacant lot.

The Spirit and Intent of the Ordinance is observed because; The proposed variance is minor, and the frontage requirement is to prevent overcrowding and to maintain separation for safety and fire access. Because of steep slope future building, if allowed, would be away from the street and meet the spirit and intent of the ordinance to prevent overcrowding and maintain separation for safety and fire access. Any dwelling would be set back off the road.

P. Bealo asked how far off the road a dwelling would be.

J. Manning responded it would be 250' feet. He added that other houses on the road were much closer.

There is Substantial Justice in Granting the variance because; The proposed variance merely seeks to allow the Owner to subdivide to allow only 1 variance instead of 2. If the Owner's variance application is granted it would allow for a reasonable use of the larger piece of land. It would also allow the Owner to keep his current house without the burden of maintaining the larger track. For these reasons there is substantial justice in granting this variance.

The Values of the Surrounding Properties will not be Diminished because; All the Owner is seeking to do is subdivide his property into two parcels with the larger of the two parcels to be created remaining vacant for the immediate future. Other than this subdivision there will be no change in the land for the immediate future, and therefore no diminishment of values of the surrounding properties.

J. Manning added that it was a residential use, in the residential zone.

P. Bealo suggested that the applicant would not be proposing this subdivision if there wasn't a plan for future development.

J. Manning responded the only proposal is to separate the existing house.

T. Augeri added that even if the variance were approved it would be up to the Planning Board to decide on the subdivision.

It was noted that the smaller parcel would be fully compliant with zoning. Any future development of the larger parcel would require additional scrutiny.

Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship because; The proposed variance would allow the Owner to subdivide his property into two parcels, retain his current structure on the smaller parcel, and still meet the current frontage requirements his neighbors enjoy. If granted the two parcels created would meet all other Town ordinance requirements. In addition, there are no immediate plans to develop the larger parcel that will be created if this variance is allowed.

To decide otherwise would create an undue hardship for the Owner. If granted this variance would still result in the Owner's parcel with existing home having a frontage greater than is currently required and as such would meet any separation and public safety concerns the town may have.

Finally, the Board allowed time to review and address concerns about sufficient site distances. The Town consulted Steve Keach, P.E. to review this issue and he provided a July 27, 2021 memo that recommends the Town require not less than 275 feet of all-season safe sight distance at any future driveway serving Lot 78-1. This variance application does not involve the creation of such a driveway.

P. Bealo asked if they had rechecked the smaller lot for compliance with minimum lot sizing taking into consideration any wetlands.

J. Manning explained that they had increased the size of that parcel slightly to provide for the required minimum of contiguous upland. He added that the change had no impact on the proposed frontage that the variance was being requested for. He added that it was a burden for Mr. Holt, now in his 80s to maintain the entire parcel, but he would like to keep the smaller parcel, which he is able to maintain.

J. Manning explained the profile plan for the Board, noting that with some clearing on trees and vegetation, a sight distance of 300' could be achieved on either side of a proposed driveway location.

P. Bealo offered that there could be conditions added to any motion made that would include a mandating that maintenance easement for the sight distance be added to the deed for the property.

J. Manning noted that there would be a grading and sight distance easement that would need to be maintained.

J. Unger asked who would be maintaining it.

J. Manning replied that it would be the property owner.

There was discussion regarding how the sight distance was determined.

It was noted that the Board had asked the applicant to reach out to Highway Supervisor, Dan Garlington, for input on the sight distance. An email from D. Garlington was read for the record. The email noted that Mr. Garlington didn't feel it was within his purview to comment on the sight distance. When that email was received by the applicant, they then requested that the sight distance be reviewed by Town Engineer. The plan was sent to Steven Keach, Keach-Nordstrom Associates, Planning Board Review Engineer. The review memo from Mr. Keach was read for the record, noting that not less than 275' of sight distance, in both directions, was adequate for this type of road, with the posted speed limit of 25MPH, using the industry standards. The memo further suggested that such a distance be certified by the Building Code Official prior to issuance of any certificates of occupancy.

The two (2) 1996 letters from Highway Safety Committee members, Merilyn Senter, and Stephen Savage, also Police Chief at the time, were read into the record. The letters had been read at the previous meeting on this application as well.

There was additional discussion about the technical details of the sight distance plan. It was noted that there would need to be some clearing and grading done to achieve the adequate sight distance. Concern was expressed about the sight distance in the winter with snowbanks along the side of the road. J. Manning suggested that clearing the trees and lowering the grades would improve sight distances in all seasons. Additional concern was expressed that if this were a roadway instead of a driveway it could be more problematic. It was noted that a roadway was not what was before the Board with this application.

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

James Zanfagna, 20 Harriman Road, read a letter he had prepared (attached to these minutes). He noted the following concerns:

- Blind curves on Harriman in both directions
- Eight (8) mailboxes right in the area
- Safety for pedestrians, runners, and pet walkers
- Destruction of wildlife habitats and other ecosystems

- Noise from construction
- Air pollution during construction
- Stormwater runoff
- Impact to the local water supply
- New traffic in the neighborhood
- Additional maintenance vehicles (snowplows)

P. Bealo noted that Mr. Holt has the right, whether or not he developed or sold the land, to cut every tree outside of the wetlands and without a variance.

Megan Martin, 9 Buttonwood Farm asked if the sight distance was for a driveway standard or for a roadway standard.

P. Bealo replied that would be a Planning Board review item, the only matter before this Board was the frontage requirement variance.

J. Manning offered that they had used a roadway standard.

A letter from Deborah Nugent, 13 Harriman Road, was read for the record (letter attached to minutes). Her concerns were:

- Community safety in light of the hills and curves in the road
- Traffic safety and vehicle accidents
- Wetlands concerns if the property is developed

It was noted that there were no emails received, prior to the meeting.

J. Manning offered that there was more to the sight distance improvements than just removing trees; there would be modifications to the grades to achieve optimal sight distance.

There was discussion of where the re-grading would need to be done and additional discussion about a maintenance easement that would be needed.

Corinne Martin, 9 Buttonwood Farm offered the following:

- The applicant had stated that there were no plans yet to develop the property, yet she found real estate listings that noted this property was under agreement
- She suggested that the evidence of the real estate listing implied that there were plans to develop the property once subdivided

T. Augeri stated that there were no current plans to develop the property.

C. Martin asked if there was potential for a roadway to be developed on this parcel if subdivided.

P. Bealo noted that would be up to the Planning Board to review.

C. Martin questioned if the sight distance would be safe in all seasons and how snowbanks would impact the situation.

P. Bealo reiterated that the Board was not looking at the driveway, but at the frontage requirement.

C. Martin expressed concern over the privacy of the neighbors if the trees were cut, property values and the storage of equipment and materials during any potential development. She noted that allowing the variance was the first domino in the development of the property.

D. Voss explained that there had been a conceptual plan for a 55+ housing development that was proposed many years ago under the then Elderly Housing Ordinance. It was noted that the plan was submitted as a place holder as there was a unit cap, but it never went to Planning Board review or public hearing.

P. Bealo asked if there was anything new from anyone in the audience. There was not. He asked if there were any additional questions from the Board, there were none. He asked if there the applicant would like to offer anything additional. There was nothing else and the public hearing was closed.

DELIBERATIONS:

★ P. Bealo moved, second by B. Burri, to grant the request for a variance from Article V, Table 220-32F.C(1)(b) to allow a lot to be subdivided that creates a lot with 100.4' of frontage, where 200' is the minimum required, with the following conditions:

- *A sight distance easement be referenced in any deeds conveying either lot created by the subdivision plan, that requires any property owner be responsible for the maintenance of the sight distance as shown on the sight distance profile plan, dated May 5, 2021, presented at this meeting.*
- *The sight distance profile plan, dated May 5, 2021, as presented at this meeting, is included with the subdivision plan that is submitted to the Planning Board.*
- *The sight distance easement to be prepared by Owner in favor of the Town of Plaistow shall have language that notes the costs of continually maintaining the required site distance are the responsibility of the property owner(s).*
- *This variance is valid only for subdivision of the lot as depicted on the plan titled "Harriman Road Subdivision" and dated February 1, 2021, as submitted with the application. Any change in the frontage calculations will invalidate this variance.*
- *Revisions to the Plan, as may be required by the Planning Board during their subdivision review process, that do not change the frontage as granted by this variance, will not invalidate this variance.*
- *Any house constructed on the property shall be set back at least 235' from Harriman Road.*

The Board reviewed the variance criteria with the following findings:

- ***The Public Interest is in having adequate separation between lots for safety and aesthetics. The request is to allow the lot to have only half of the required frontage. With the frontage 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 frontage.***

B. Burri suggested that it would have been better for them to try to subdivide giving each parcel 150' frontage to be consistent with the other properties in the area.

It was noted that this would have required two (2) variances, one for each lot. Instead of requested a 50% variance (100' of the required 200') for the single lot, it would have been asking for a 25% variance (150' of the required 200') for each lot.

- ***The Spirit and Intent of the Ordinance is to provide for separation between lots and for adequate sight distance to safely locate access points. The fact that there would need to be trees removed and a maintenance easement in place, which could become an enforcement issue in the future, shows that there is not adequate sight distance, as is, for public safety.***

G. Ingham noted that it was a safety issue for him. He expressed concern that there was no guarantee that the sight distance easement would be maintained.

D. Lloyd added that the sight distance easement didn't change the existing conditions of the winding and hilly road.

P. Bealo noted that there was a driveway across the street.

- ***There would be a loss to the general public in roadway safety with the limited site distance.***

J. Unger noted the steep slope of the area where the driveway would be, adding that would be something for the Planning Board to review. He added that removal of some of the trees and re-grading the area would certainly improve the sight distance, but he was concerned that enforcement of the maintenance easement would be an issue.

P. Bealo also noted that with some many wetland areas on the property they would be not getting a lot of housing density.

J. Unger pointed out that if the property were to be developed that the frontage would then become moot as they only need 50' for a right-of-way.

-

- ***Property Values may or may not be impacted, depending on when, if, or how the larger portion of the parcel may be developed. However, the lesser frontage would not adversely impact surrounding property values on its own.***

P. Bealo noted that there was no evidence submitted that would suggest a diminishment of property values. He added that the concern about construction noise was valid, but they would be temporary.

D. Lloyd suggested that people would not have purchased houses on Harriman if the property had been developed. He added that it was a slippery slope for quality of life.

P. Bealo offered that landowners have the right to develop their property within the law.

J. Unger added that there were other options to develop the property, including taking down the existing house and building over the entire site. He noted that it wasn't the most convenient options, but there are options.

- ***The applicant stated that it was a hardship for the current owner to maintain the entire parcel and therefore he wanted to subdivide to sell a portion of it. It was noted that the entire parcel proposed to be subdivided is heavily wooded so it was unclear what maintenance was needed and why it would pose a hardship.***

D. Lloyd noted that it was offered that the current owner didn't want to maintain the woods and that was suggested as a hardship.

J. Unger offered that the loss of the house would be a hardship to its current owner. He also noted that the improved site distance would be a good thing.

All agreed this was a tough case to decide.

There was no additional discussion.

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

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

Respectfully Submitted:

Dee Voss
Administrative Assistant

