



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

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
October 28, 2021

The meeting was called to order at 6:33 pm

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

Also attending: Dee Voss, *Administrative Assistant*

★ *J. Unger and M. Murray were appointed as a voting members for this meeting.*

Minutes of September 30, 2021

★ *D. Lloyd moved, second by J. Gifford, to approve the minutes from the September 30, 2021, meeting as written. There was no discussion on the motion.*

Roll Call Vote: P. Bealo – yes; D. Lloyd – yes; J. Gifford – yes; J. Unger – yes; M. Murray – yes. *The vote was 5-0-0.*

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:

#21-22: A request from Anthem Real Estate Holdings, LLC for a variance from Article V, Table 220-32I to allow a storage container to be 12’ from the side property line, where 50’ is the minimum required. The property is located at 108 Main St, Tax Map 40, Lot 27, in the VC zoning district. The applicant is the property owner of record.

Property owners Mike and Denise Gallant (Anthem Real Estate Holdings) were present for the application.

M. Gallant noted the following regarding the application:

- The storage container was to hold incoming job supplies in a location convenient to the workspace
- The storage container is already in place as he was not aware of the need to amend his site plan or get a permit
- It is a 40' X 8' storage container
- There is no where else to locate the container on the property that provides access to supplies unless the building is expanded.

D. Gallant review their responses to the variance criteria noting the following:

- The proposed variance will not be Contrary to the Public Interest because the storage container can be removed at any time, is not unsightly, will be kept in good condition, and helps to serve the location community with their glass, mirror, and screen needs
- The Spirit and Intent of the Ordinance is preserved because the neighbor next to the removable container does not have any windows on that side, nor do they have adequate yard between their house and our property
- There is Substantial Justice in Granting the variance because the storage container helps to support operations of a small local community business as the square footage of the existing building does not provide adequate space
- The Values of Surrounding Properties will not be Diminished because it is not a permanently fixed structure. It can be moved or removed at any time
- Literal enforcement of the provisions of the ordinance would result in Unnecessary Hardship because there is nowhere on the property within working distance of the building that would meet the required side setback

P. Bealo noted that while it was more convenient to have it located where proposed, there was room to the rear of the lot where the container could be placed and not need a variance.

M. Gallant responded that they push the snow to the rear in that area. He also noted if the container were placed back further delivery trucks would not be able to get back there to unload product. He also noted that there were two (2) wellheads to the rear of the building.

P. Bealo asked where the septic was located.

M. Gallant replied that it was to the right and up close to the building.

J. Gifford questioned if there was another space with all the available land to locate the storage container.

D. Gallant explained that there was not. She added that they were considering the possible future expansion of the building, but that would most likely require a variance as well.

D. Lloyd asked if there was any (roof) overhang over the container.

M. Gallant offered there was not and added that the container was used for cold storage.

J. Gifford suggested that there should be a way to make use of the available land.

M. Gallant replied that he was not able to be big trucks to the rear of the building as there were powerlines in the way. He added that is deliveries came as early as 5:00-6:00AM and having big trucks backing further into the property could be more disturbing to his neighbor.

P. Bealo offered that he wouldn't be surprised if when they go before the Planning Board to amend the site plan, that the Board will not allow 18-wheeled trucks for deliveries.

P. Bealo asked if the Board had any additional questions, there were none. He asked if there was anyone speaking in favor of, or in opposition to, the application. There was no one. It was also noted that no letters or emails had been received prior to the meeting. P. Bealo asked the applicants if they had anything else to present to the Board, there was nothing. The public hearing was closed.

DELIBERATIONS:

★ J. Gifford moved, second by M. Murray, to grant the request for a variance from Article V, 220-32I and to permit a storage container to be placed within 12' of the property line, where 50' is the minimum, for the parcel located at 108 Main St, Tax Map 40, Lot 27.

Discussion:

The Board reviewed the variance criteria with the following findings:

The proposed variance will not be Contrary to the Public Interest because:

J. Gifford noted that it was a one-year permit. He asked if it were renewable. It was confirmed that it was.

P. Bealo offered that business was almost too good and perhaps they were getting too big for the site, particularly if they cannot utilize the back of the property.

J. Unger offered that was typical of most of the properties in the Village Center district, nearly everyone needs a variance.

D. Lloyd added that the access to the rear of the property was really slim and did not provide a lot of room.

The Spirit and Intent of the Ordinance is preserved because:

P. Bealo offered that the spirit and intent of the ordinance is to provide room between structures for access and safety.

D. Lloyd noted the 8' wide container was right up against the building.

J. Gifford expressed concern the Fire Department wouldn't be able to access the rear of the building, particularly in the winter if snow is piled there.

There is Substantial Justice in Granting the variance because:

P. Bealo questioned if there would be a gain to the public in denial of the variance, noting there is space on the property to expand.

J. Gifford noted that it would not be as cost effective. He added that there were no neighbors present to express opposition.

M. Murray added that the container is already there and there are no complaints from the neighbors.

The Values of the Surrounding Properties will not be Diminished because:

P. Bealo offered that there would not be once it is added to the site plan.

J. Unger added that they were to expand the building the temporary container would be removed.

D. Lloyd recalled that was a condition of a former approval at 73 Newton Road.

Literal Enforcement of the provisions of the ordinance would result in Unnecessary Hardship because:

J. Gifford noted that the location was more convenient but suggested that anything can be managed. They could use a forklift, the snow could be pushed further back, or they could add a travel access.

D. Lloyd offered that this solution was the most cost effective.

J. Unger added that they had not owned this business all that long.

J. Gifford offered that if they lose a pallet of glass then they would be losing money. He added that it wasn't unsightly but could be painted to match the building to make it more aesthetic.

D. Lloyd suggested they could add some vegetation.

J. Gifford responded that vegetation might get in the way of plowing.

There was discussion about amending the motion to make the trailer temporary in the event that an addition was added to the building, and to make the container more aesthetically appealing.

★ J. Gifford moved, second by P. Bealo to amend the motion to include the following conditions:

- *The storage container will be considered temporary and must be removed if the building is ever expanded*
- *The appearance of the storage container needs to be most aesthetically appealing by painting or other enhancements.*

Roll Call Vote (on the amendment to the motion): D. Lloyd – yes; J. Gifford – yes; J. Unger – yes; M. Murray – yes; P. Bealo – yes. The vote was 5-0-0 U/A

There was no additional discussion on the amended motion:

Roll Call Vote (on the amended motion to grant with conditions): J. Gifford – yes; J. Unger – yes; M. Murray – yes; P. Bealo – no; D. Lloyd – yes. The Vote was 4-1-0, and the motion passed.

#21-27: A request from Federated Five, LLC for a variance from Article IX, §220-59A.2 to permit a 129.9SF second attached sign, which exceeds 5% of the building façade, the maximum allowable for a second attached sign. The building façade is calculated to be 1,059SF, which would allow for a second attached sign of 52.95SF. The property is located at 49 Plaistow Rd, Tax Map 26, Lot 67 in the C1 zoning district. The applicant is the property owner of record.

Charlie Zilch, SEC and Associates and Dave Sanderson, Convenient MD, were present for the application.

It was noted that an agent authorization letter was included with the application packet.

C. Zilch noted that following information for the Board:

- The applicant had been previously granted two (2) setback variances.
- The Planning Board has conditionally approved the site plan
- The approved plan proposes to raze the existing building and erect a new 5,150SF building for a Convenient MD facility
- The property is 35,500SF/0.82Ac with 213' of frontage on Route 125 and 242' frontage on Garden Road.
- The property is entirely located in the Commercial 1 (C1) zoning district
- There will be access from both Route 125 and Garden Road
- Now that they have Planning Board approval they are looking to start working on their signage for the new building
- The façade of the west-facing side of the building is 2,109SF; the façade of the south-facing side of the building is 1,507SF

- 10% of the west-facing side of the building allows for a sign of 210.9SF, 52.9SF for the south-facing facade. Added together is 263.8SF of allowable signage
- Equally distributing the allowed sign area between the two allowed signs would be 131.9SF for each sign
- The proposal calls for equal signs of 129.9SF (259.8 total), slightly small than the total of the allowed square footage of the signs.
- The west-facing facade will be at 6.2% (max 10% allowed) and the south-facing facade will be at 12.3% (max 5% allowed)

There was discussion about the map that showed where specific signs would be placed. It is proposed that there be two (2) attached building signs, one freestanding sign on Route 125 and a directional arrow at the Garden Road entrance. All signs will be internally illuminated.

P. Bealo asked if the signs would be lit 24 hours a day.

D. Sanderson replied that the business hours will be 8:00AM to 8:00PM and the signs will be on a little before and after those hours.

There was discussion about the size of the signs. It was noted that the applicant was proposing slightly less than what is currently allowed, just asking to reallocate the square footage for each sign differently than allowed by ordinance.

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

- The proposed variance will not be Contrary to the Public Interest because: By granting the variance, it will allow for a slight deviation to the on-building sign area allowance. This will allow the two most prominent sides of the building to display two equal area signs for easier identification for patients and visitors in need of care. Granting the variance will not result in signage that would be offensive or distracting to the commuters of Plaistow Road or create a hazard in any way. In all, the signage will not have an adverse effect on the abutting properties or surrounding community.
- The Spirit and Intent of the Ordinance is Preserved because: The intent of the ordinance is to provide business owners a fair and equitable allowance on sign area to maintain balance and uniformity amongst the commercial properties. The ordinance is designed to limit overly large and/or obnoxious signs that may be aesthetically unpleasant or distracting. Our request merely asks that we take the allowed total sign area and equally distribute between two facades. The resulting redistribution of the sign area is slight and would not result in an offensive or distracting display thereby preserving the spirit and intent of the ordinance.
- There is Substantial Justice in granting the variance because: There will be substantial justice in granting the variance by allowing the two signs most critical for site identification to be displayed where 90% of the traffic will enter the site. Again, the size of the two signs in total is slightly less than what is allowed. The west facing sign will only be 6.2% of the allowed 10% and the south facing sign will be 12.3% of the 5%

allowed. Both signs will be uniform in size and display and will offer faster and easier recognition to those in need of the facility.

- The Values of Surrounding Properties will not be Diminished because: The proposed signage is permitted in the zone and as demonstrated, meets all other sizing requirements. This is a medical care facility and as such identification for those in need is critical. The request to allow for a slightly larger sign offers quicker and easier identification without being unsightly or distracting. The proposal is in keeping with surrounding businesses and this facility will be an asset to the community. In all, there will be no diminution of surrounding property values.
- Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship because: The proposed use as an urgent care medical facility is not warranted any special consideration within the sign ordinance despite the need for a more prominent display for those in need. Our proposal for a slightly more prominent sign display on one side is offset on the adjacent side. The balance of the signs achieves the goal without exceeding the total allowance. This simple approach addresses the issue without varying greatly from the strictest interpretation of that ordinance. Denial would be an unnecessary hardship due to the nature of the business and the need for rapid and easily discernible signage particularly when considering the reasonable alternative proposed.

P. Bealo asked if Route 125 was divided by a median in this area. It was confirmed that it is.

D. Sanderson also noted that the entrance is at a signalized intersection.

P. Bealo offered that northbound traffic on Route 125 would have better visibility of the facility with the larger sign on the south-facing façade. Southbound traffic would have the same visibility because of the signage at the signal.

D. Lloyd added that they were eliminating on of the Route 125 curb cuts and there would only be the one at the signal.

P. Bealo asked if the Board had any additional questions, there were none. He asked if there was anyone speaking in favor of, or in opposition to the application. There was no one. It was noted that there were no letters or emails received regarding this application. P. Bealo asked the applicant if they had anything else to share with the Board. There was nothing else and the public hearing was closed.

DELIBERATIONS:

★ P. Bealo moved, second by D. Lloyd, to grant the request for a variance from Article IX, §220-59A.2 and to permit a 129.9 SF sign to be placed on the southern façade of the parcel located at 49 Plaistow Road, Tax Map 26, Lot 67.

Discussion:

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

- The proposed variance will not be contrary to the Public Interest because it is assisting people, who may be injured, in locating the facility easier, since the south-facing façade is the first they would see
- The Spirit and Intent of the Ordinance is Preserved because there will not be any additional signage than is allowed by zoning, just the same amount reallocated
- There is Substantial Justice in granting the variance as there is no gain to the public by not granting the variance
- The Values of Surround Properties will not be Diminished because this is already a well-developed commercial area. It will also be turned off after business hours for the few residential uses on Garden Road
- Literal enforcement of the provisions of the ordinance would result in Unnecessary Hardship because: The hardship would be to the public/user as it could be more difficult to find the business

There was no additional discussion on the motion.

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

#21-23: A request from HOW-Plaistow, LLC, a Massachusetts limited liability company, for a variance from Article III, §220-10.A to allow a new extension of a road and existing road to remain private, rather than a public road. The properties are located at 214A Plaistow Road (rear) Tax Map 45, Lot 1, owner of record is Panniello Plaistow 214 Realty Trust, Maria C. Levin TR and 214 Plaistow Rd, Tax Map 45, Lot 2, owner of record is Panniello 218 Realty Trust, Michael J. Panniello, TR. Both properties are located in the I2 zoning district.

William Bergeron, Hayes Engineering, Inc., Wayne Finnegan, Howland Development, and Attorney Paul Feldman were present for the application.

It was noted that an agent authorization letter was included with the application packet.

W. Bergeron explained that the applicant had been to the Planning Board for preliminary design review of the proposed site changes. The existing 50' wide right-of-way from 1976 is proposed to be extended to a cul-de-sac to provide frontage to a rear property and one (1) additional lot. The existing uses are intended to remain and with some lot line adjustment, consolidation, and subdivision, four (4) lots will be created. The existing roadway is already private. A change in the ordinances in 2000 required all frontage for all newly created lots to be on a public right-of-way, which would require the additional ~150' of roadway added to be public, so the road would go from private from Route 125 to the new addition of roadway where it would then turn public. The applicant would like the entire length of the road to be private, not just the newly created section. W. Bergeron noted it made no sense for the existing section to remain private and the new section to be public. He added that the road would only be for the use of the businesses located on it, and it would not be able to be connected to other existing roads. With the road

private, there would not be any maintenance expense to the Town and the owner would be responsible for plowing in the winter. It was noted that leaving the roadway private would also help them expedite the construction of the project once they were able to get Planning Board approval.

W. Bergeron noted that he was requesting the Board's approval of this request first as the subsequent applications would be moot without this one being granted.

P. Bealo asked how long of an extension was the proposed right-of-way.

W. Bergeron replied it was 120' in order to get the proper turning radius in the cul-de-sac for fire apparatus.

P. Feldman offered the following:

- The entire parcel is 32.5Ac
- The property is currently being used by Century Leasing and there is a second business that does restorations and asbestos abatement. This subdivision plan will enable each business to have its own lot
- The proposal would be to construct a 300,000 warehouse building on one of the new parcels
- Each new lot would have at least the minimum required 150'
- In March of 2000 all new roads were to be public
- They are seeking the entire road, not just the new section to be a private road

P. Feldman 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: There will not be any adverse impact to the health, safety, or welfare of the community whether the road is public or private. There is an interest to the public in not having to pay to maintain a road being predominantly used by private business.
- The Spirit and Intent of the Ordinance is preserved because: The ordinance was intended to address new roads. Much of this road has been in existence since 1976, the applicant is not looking to establish a brand new road.
- There is Substantial Justice in Granting the variance because: There is a benefit to the applicant by being able to develop the land sooner by leaving
- The Values of the Surrounding Properties will not be Diminished because: There is no different impact on surrounding properties as a result of the road being private rather than public.
- Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship because: There will be a substantial delay for the road to be accepted as a public way resulting in a delay of the project development with no corresponding benefit to the Town or others.

W. Bergeron noted that it was important to understand that this was a dead-end cul-de-sac and there is no opportunity to be connected to other properties in the future.

J. Gifford questioned another road that was shown on the presented plan.

W. Bergeron explained that it was an existing internal drive and not intended to be part of the road.

J. Unger asked if the drive would be needed once the lots are consolidated and asked if the Town was currently maintaining it.

W. Bergeron responded that the Town does not and would not be maintaining it.

P. Bealo offered that a private way to a legal public way made no sense.

P. Feldman noted that the road would be brought to Town standards.

P. Bealo noted that there were 51-52 loading docks shown on the plan. He added assuming that each would be used by one (1) truck in/out per day, which could mean ~100 truck trips per day.

W. Bergeron offered that would depend on the final user, which has not yet been determined. It was noted that not every bay may be used every day, and some trucks may stay longer than a day.

P. Bealo asked if the predominant traffic path would be south on Route 125.

W. Bergeron noted that there had already been a scoping meeting with the New Hampshire Department of Transportation (NHDOT) and Vanesse & Associates was working on a complete traffic study.

P. Bealo explained that he was trying to get a worst case scenario on how many trips there would be.

J. Gifford asked if the Planning Board had jurisdiction over roadway construction.

W. Bergeron replied that there would be a review.

P. Feldman reminded that the road would be a subdivision road, built to Town standards, but would not have to be maintained by the Town.

P. Bealo asked if the Board had any additional questions, there were none. He asked if anyone wanted to speak in favor of the application or had questions.

Greg Taillon, 111 Willard Way, noted that he was a member of the Planning Board who had reviewed the preliminary design. He confirmed that the Planning Board had no concern with the private versus public roadway, but he questioned what the advantage was to the application taking the additional maintenance responsibilities into account.

W. Bergeron offered that with such a short street, it wouldn't be too high up on the Town's priority list for plowing. The businesses would have their own contractors ready to take care of plowing the road when its necessary to keep business operations up and running instead of having to rely on municipal services.

J. Gifford asked if there were other compliance issues with a private road. It was noted all it does is change who maintains it.

P. Bealo asked if the road would be gated.

W. Bergeron showed on the plan where there would be a gate at the storage container business, adding there was not one planned for the warehouse facility, but it would depend on the end user.

P. Feldman offered it was an advantage to the developer to be able to start construction prior to the road being accepted, and because the Planning Board expressed a preference for the road to remain private and because of the use it's not fair to ask the Town to maintain the roads.

P. Bealo asked if there was anyone speaking on opposition to the application. There was no one. He asked if any letters or emails had been received; there were none. P. Bealo asked the applicant if they had anything else to add, there was nothing. The public hearing was closed.

DELIBERATIONS:

★J. Gifford moved, second by J. Unger, to grant the request for a variance from Article III General Provisions, §220-10.A and to permit a roadway to remain private for the parcels known as 214 and 214A Plaistow Road, Tax Map 45, Lots 1 & 2. With the following condition(s):

- ***The Plan present for the variance application must be the same plan presented to the Planning Board for review as it pertains to the granting of this variance. Any proposed changes in the Plan that would impact this variance request will void this variance.***

Discussion:

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

- The proposed variance will not be Contrary to the Public Interest because there is a cost savings to the Town to not have to maintain this road that will only be used to service these businesses
- The Spirit and Intent of the Ordinance is preserved because the main part of the road has been private since the 1970s and having the short new extension of the road public makes no sense, particularly since it will not be able to be connected to any other Town roads.
- There is Substantial Justice in granting the variance because there is no advantage to the Town to make the road public, the loss is to the individual in the increased costs

- The Values of Surrounding Properties will not be Diminished because it's all commercial industrial now and will still be. The development of the property may increase surround property values
- Literal enforcement of the provisions of the ordinance would result in Unnecessary Hardship because the road is already half private and there is only an additional 150' of length that would be public.

There was no additional discussion on the motion.

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

#21-24: A request from HOW-Plaistow, LLC, a Massachusetts limited liability company, for a variance from Article II, §220-2 (frontage definition) to allow frontage on a new lot to be created by a new subdivision to be on a private rather than public road. The property is located at 214A Plaistow Road (rear), Tax Map 45, Lot 1 (new lot 1A) in the I2 zoning district. The owner of record is Panniello Plaistow 214 Realty Trust, Maria C. Levin TR.

#21-25: A request from HOW-Plaistow, LLC, a Massachusetts limited liability company, for a variance from Article II, §220-2 (frontage definition) to allow frontage on a new lot to be created by a new subdivision to be on a private rather than public road. The property is located at 214A Plaistow Road (rear), Tax Map 45, Lot 1 (new lot 1B) in the I2 zoning district. The owner of record is Panniello Plaistow 214 Realty Trust, Maria C. Levin TR.

William Bergeron, Hayes Engineering, Inc., Wayne Finnegan, Howland Development, and Attorney Paul Feldman were present for the application.

It was noted that an agent authorization letter was included with the application packet.

P. Feldman explained where the two new lots would be located. He offered that since the Town's zoning requires new lots to be established on a public right-of-way, and there has now been a variance granted to allow the road to be private, they will need variance to establish the two new lots. He noted that the lots will be fully compliant with all dimensional requirements.

It was noted that the responses to the five (5) variance criteria would be the same for both applications regarding the lot frontage on a private road.

- The proposed variance will not be Contrary to the Public Interest because: Lot 45-1A is a new lot that has the required amount of frontage on a reconstructed and extended road that is the subject of a variance so that the reconstructed road will remain private rather than a public road. Lot 45-1A has already been improved and will continue to be used in the same manner as existing conditions. The lot owners using the road will be responsible for the repair and maintenance of the road. There will be no impact on public health, safety or welfare because the road remains private.
- The Spirit and Intent of the Ordinance is preserved because: Lot 45-1A is a new lot that has the required amount of frontage on a reconstructed and extended road that is the

subject of a variance so that the reconstructed road will remain private rather than a public road. Given that variance, the variance requested here regarding the frontage definition will enable Lot 45-1A to comply with the frontage requirement of the Ordinance and be a conforming lot.

- There is Substantial Justice in Granting the variance because: The modified road does not change access to or the existence of the current use on Lot 45-1A. There will be no public funds expended for maintenance and repair of the road providing frontage. Without this variance the lot will not be conforming. There will be no adverse impact to the public if the variance is granted. There will be no benefit to the public if the variance is not granted.
- The Values of the Surrounding Properties will not be Diminished because: There is no different impact on surrounding properties as a result of Lot 45-1A having the required frontage on a road that is private rather than public.
- Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship because: There will be unnecessary hardship in that Lot 45-1A will lack frontage and will continue to be non-conforming.

P. Bealo asked if the Board had any additional questions, there were none. He asked if there was anyone speaking in favor of or opposition to the application. There was no one. It was confirmed that no letters or emails related to this application had been received. The public hearing was closed.

DELIBERATIONS:

P. Bealo noted that the criteria for both applications 21-24 and 21-25 were so similar and suggested that it would only be necessary to go through the criteria a single time.

★ J. Unger moved, second by J. Gifford, to grant the request for a variance from Article II, Definitions, and allow a new lot to be known as Tax Map 45, Lot 1A to be created on a private road. The lot is proposed to be created from 214 Plaistow Road, Tax Map 45, Lots 1, with the following condition(s)

- ***The Plan present for the variance application must be the same plan presented to the Planning Board for review as it pertains to the granting of this variance. Any proposed changes in the Plan that would impact this variance request will void this variance.***

Discussion:

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

- The proposed variance would not be Contrary to the Public Interest because now that the road is planned to be private it would be contrary to the public interest to not allow the lot.

- The Spirit and Intent of the Ordinance are preserved because the frontage meets the Town's requirements, the only issue is that the road is now private.
- There is Substantial Justice in Granting the variance because there is no advantage to the Town not to grant the variance. The only issue is a private versus public road, all other requirements are met.
- The Values of Surround Properties will not be Diminished because the development is part of the surrounding properties. The value of lot 1B is not diminished and the value of 1A will be improved as it will be more compliant.
- Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship because the lots will be conforming in all other ways, the only issue is the public versus private, which is an advantage to the Town.

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

★ J. Unger moved, second by M. Murray, to grant the request for a variance from Article II, Definitions, and allow a new lot to be known as Tax Map 45, Lot 1B to be created on a private road. The lot is proposed to be created from 214 Plaistow Road, Tax Map 45, Lots 1, with the following condition(s):

- ***The Plan present for the variance application must be the same plan presented to the Planning Board for review as it pertains to the granting of this variance. Any proposed changes in the Plan that would impact this variance request will void this variance.***

Discussion:

It was noted that the same findings would be applicable to this lot as was to the other lot.

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

#21-26: A request from HOW-Plaistow, LLC, a Massachusetts limited liability company, for a variance from Article V, Table 220-32K.C(4) to permit a warehouse building to have an average height of 52' where 45' is the minimum allowed. The property is located at 214A Plaistow Road (rear), Tax Map 45, Lot 1 (new lot 1B) in the I2 zoning district. The owner of record is Panniello Plaistow 214 Realty Trust, Maria C. Levin TR.

William Bergeron, Hayes Engineering, Inc., Wayne Finnegan, Howland Development, and Attorney Paul Feldman were present for the application.

It was noted that an agent authorization letter was included with the application packet.

P. Feldman noted that this was a true classic variance request, and it would be important to the functioning of the building, particularly the roof drain system. He also noted that the building was set so far back from the road that the height of the building would not be seen by the public and the additional seven (7) feet would be important to the use and imperceivable to the public, therefore not an affront to zoning. It was also noted that there is a substantial tree buffer that provides some screening for the building.

There was discussion about the term “average height of 52’.” It was noted that in some areas the height would be 54.29’ but the foundation is 4’ below grade. It was explained that some of the differences in the height is attributed to the difference in ground level (topography) in some areas, not the actual structure itself.

W. Bergeron explained that this use to be a gravel pit, and current sits 4-5’ above the water table. Plaistow Road itself sits high than this property. In order to provide adequate stormwater treatment and management, they are designing an infiltration system. The height of the building will not only provide adequate space for the common warehouse uses, but it will also provide the proper pitch for the stormwater management system proposed for the site.

The Board review the architectural renderings provided for the building and noted that it was an attractive building for a warehouse use.

J. Gifford asked if the additional height would impact the Fire Department’s ability to respond to a fire.

W. Bergeron offered that Fire Department Regulation require that the building be sprinklered. They will be providing a water holding tank to provide sprinkler service to the building. Their well will supply the tank.

P. Feldman offered that while the 45’ height will not allow the proper pitch to direct any stormwater flow to the infiltration system. The site and soil conditions are the reason for the particular stormwater management design. The additional height will also make the warehouse more useable for today’s market.

The applicant provided the following responses to the variance criteria:

- The proposed variance will not be Contrary to the Public Interest because the proposed use is allowed as of right in the Industrial 2 zone. Current market demand for warehouse requires high clearance to accommodate equipment and is an important design parameter. There will be no impact on public health, safety or welfare and given the substantial setback from Route 125 will not adversely affect the general character of the neighborhood.
- The Spirit and Intent of the Ordinance is preserved because the proposed height will encourage the use of the property based upon modern design parameters and will attract businesses that will be an asset of the community. This variance will facilitate efficiency in the development of this parcel without adverse effects on abutters.

- There is Substantial Justice in Granting the variance because the marketability of the proposed warehouse will be improved, promoting higher property values and real estate taxes, without detriment to the public.
- The Values of the Surrounding Properties will not be Diminished because: The closest off-site abutter (outside the proposed subdivision) is over 700 feet away. There is a substantial tree buffer and there is a substantial setback from Route 125. As a result, the additional 7 feet in height will be minimally discernable.
- Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship because current warehouse requirements and racking systems are optimized beginning with clearance heights of 36 feet which in the current case results in a 52-foot average building height. Requiring compliance with the 45-foot limit will result in a less efficient building and may render the project uneconomic to pursue. The existing ground grades are generally within 4 feet of the water table. In order to infiltrate the roof runoff on site to balance the way the site drainage system functions it is necessary to pitch the roof to the north side of the site with the minimum roof pitch allowed by code. This adds 6.8 feet to the structure height. The other factor for the height is that the high point of the roof is on the loading dock side of the building. This adds 4 feet to the height of the building. The reason that the roof pitches away from the loading dock side of the building is because infiltration under the loading docks is undesirable due to the concrete slabs for the trucks.

P. Bealo asked if the Board had any additional questions, there were none. He asked if there was anyone speaking in favor of or opposition to the application. There was no one. It was confirmed that no letters or emails related to this application had been received. The public hearing was closed.

DELIBERATIONS:

★ M. Murray moved, second by D. Lloyd to grant the request for a variance from Article V, Districts and Requirements, Table 220-32K, and allow a warehouse structure to have an average height of 52' where 45' is the maximum allowed, for the property located at 214 Plaistow Road. The lot is proposed to be created from 214 Plaistow Road, Tax Map 45, Lots 1, with the following condition(s):

- ***The Plan present for the variance application must be the same plan presented to the Planning Board for review as it pertains to the granting of this variance. Any proposed changes in the Plan that would impact this variance request will void this variance.***

Discussion:

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

- The proposed variance would not be Contrary to the Public Interest because the difference is minimal and a market variable. The public has no vested interest in the height of this proposed building.
- The Spirit and Intent of the Ordinance are preserved because the height of a building is a safety concern. Having the height at 52' will allow for an adequate sprinkler system and meet market needs. With the building setback so far from Route 125 and at a lower level, it will not even be noticeable.
- There is Substantial Justice in Granting the variance because there would be no gain to the general public in denial of the variance, only harm to the applicant.
- The Values of Surround Properties will not be Diminished because the building will be set far back on the property and will not be in proximity to any other abutting buildings or businesses.
- Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship because there would be an impact to the ability to provide an adequate stormwater management system and make the building marketable.

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

Continued from September 30, 2021

#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.

#21-21: 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 32.3' from the rear property line where 35' 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.

Tim Lavelle, James Lavelle Associates, and William Gregsak, Gregsak and Sons, were present for the application.

It was noted that an agent authorization letter was included with the application packet.

T. Lavelle explained that the church had received a building permit to construct a 20' X 40' pavilion on their property located at 101 Sweet Hill Road. The building permit had been issued by the former Building Inspector, who didn't require the church to get Planning Board site plan approval first. T. Lavelle noted that when they marked out the location for the foundation, they used the wrong point to start from, so the foundation was put in the setback. The error was noted

after the foundation was poured when they went back to do the certification. He acknowledged that they should have gone to the Planning Board for site plan approval prior to the construction of the foundation but added that the errors were in good faith. He also noted that there had been an error in the plan that incorrectly noted that setback from the abutting property at 92 Newton Road. The owner of that property is the church's pastor Steve Murray, who has no objections to the location of the structure. It was noted that there is electricity proposed to be provided to the structure, but there will not be an bathrooms.

J. Unger questioned what the structure was. It was confirmed to be a full slab foundation.

P. Bealo asked how much the cost of the foundation was.

Linda Alfonsi, Rock Church Treasurer, replied that the site work (excavation) was donated, and the other costs totaled \$16,080. She noted that prices now would likely be higher.

P. Bealo noted that the requirement for an equitable waiver be corrective costs be "substantial" which he had found case law to define that as more than 50% of the total costs.

L. Alfonsi offered that they had trusses sitting on the ground right now that cost \$20,000.

P. Bealo suggested that if the building size remained the same, those trusses will still be usable once everything is sorted out.

T. Lavelle questioned where the 50% was defined as "substantial?" He added that \$16,000 is a substantial amount.

P. Bealo offered that there were two (2) parties involved in this plan and multiple errors were made.

T. Lavelle responded that he couldn't blame his crew as it was he who used the wrong point to set the foundation from.

P. Bealo noted that the quality control was careless.

T. Lavelle offered that he didn't intentionally use the wrong point, and he wasn't trying to get away with anything, the measurements were just off, and he knew that he needed to make things right.

J. Unger asked what the cost would be to correct the error.

T. Lavelle responded, to the church, nothing.

P. Bealo suggested that the foundation could be demoed and relocated at no cost to the church as it should be covered under a liability insurance policy.

D. Lloyd questioned with all the property on this lot, why the pavilion was located so close to the property lines.

T. Lavelle replied they wanted it close to their parking lot.

D. Lloyd offered that relatively close could still be another twenty (20) feet into the property, not set in the immediate corner.

T. Lavelle added they wanted it close to their parking lot with a walkway and to leave the rest of the lot for other uses.

J. Unger offered that they could have easily met the setback and still not be anywhere near the middle of the lot.

T. Lavelle stated that he acknowledges there were mistakes made and he was at this meeting to throw himself on the “mercy of the court” and there was nothing more that he could say other than he was sorry.

P. Bealo asked if there was another proposed use for the lot.

L. Alfonsi replied that they used it to run children’s programs and projects like the “Rock, Run, Raiser.”

P. Bealo noted that there was another error on the plan as Corliss Hill Road was incorrectly spelled.

P. Bealo offered that the former Building Inspector did make a mistake in issuing the building permit prior to Planning Board approval, but he noted that there were two (2) engineering firms, who know how to read the zoning requirements, who were involved with the development of the plan and the setting of the foundation that put the building 75-80% in the setback. He found this to be egregious and it should be fixed without cost to the church.

D. Lloyd added that when you build at your home you are responsible for who you hire to do the work. You don’t blame the Building Inspector for the error in the location; it is the responsibility of the contractors to get it right.

J. Unger offered that he didn’t think they intended to mark the location wrong.

T. Lavelle noted that it was a comedy of errors.

P. Bealo asked if there were any additional questions from the Board, there were none. He asked if there was anyone speaking in favor of the application; L. Alfonsi raised her hand.

An email received by D. Voss from S. Murray, noting no objections to the location of the pavilion was read into the record.

P. Bealo asked if there was anyone speaking in opposition to the application. There was no one. It was noted that no additional letters or emails had been received. The public hearing was closed.

DELIBERATIONS:

★ P. Bealo moved, second by D. Lloyd to grant the request for an equitable waiver from Article V, §220-32I to allow a structure to be set 22.9' from the side property line of a residential use, where 50' is the minimum, for the parcel located at 101 Sweet Hill Road, Tax Map 68, Lot 8C, with the following condition:

- ***If approved, prior to the application's application to the Planning Board, a third-party surveyor, unaffiliated with any firm representing the applicant, shall certify to the Plaistow Building Inspector the dimensions and actual setbacks of this structure, in writing.***

Discussion:

The Board discussed the criteria for granting an equitable waiver with the following findings:

- Has the violation existed in excess of ten (10) years? No.
- If not, was the violation discovered after the structure was substantially built?

P. Bealo offered that substantially complete would be more than 50% and noted that he had found court cases that defined it that way. He added that the foundation was well under 1/3 of the costs and that correcting it would be covered by liability insurance so would be at no cost to the applicant.

- Was this a good faith error on measurement?

P. Bealo suggested that this was more ignorance of the ordinance and the setbacks. He added that these professionals should at least know where to find the ordinances.

- Will this violation be a public or private nuisance?

D. Lloyd questioned if the cost to correct the violation outweighed the impact of the violation. He questioned if it would be more expensive to correct the foundation location or to move the lot lines to meet the setbacks. He noted that he wasn't seeing where they met compliance with the first three criteria, adding that all four criteria had to be met.

J. Gifford offered that they should move the lot lines assuming that S. Murray would be amenable to that.

J. Unger added that they should consider doing that as it would just be a paper process to change.

D. Lloyd noted that there could be an impact to property values if the setbacks are not met.

P. Bealo added that with it being a pavilion and so close to property lines he could see it impacting property and resale values.

J. Unger offered that with the building existing any potential buyer would already be aware of it.

J. Gifford added that the costs to correct it would be substantial and wondered if a variance would have been more appropriate.

P. Bealo noted that they did not apply for a variance.

M. Murray offered that since the properties were all affiliated with the church he didn't see the harm.

P. Bealo suggested they could make it right by other means, such as a lot line adjustment, which would just be a paper exercise.

J. Gifford reiterated that a variance would seem like a "no brainer" and he wasn't sure about granting an Equitable Waiver.

The Board was cautioned that the application before them was for an equitable waiver, not a variance. It was further noted that there was no evidence to support a variance request before them and it would be inappropriate to comment on a request that wasn't before them.

- Will the cost of fixing the violation far outweigh any benefit to the public?

P. Bealo reiterated that he didn't feel they met the substantial cost element of an Equitable Waiver as it did not exceed 50% of costs.

J. Unger asked if there was any literature available regarding the 50%.

P. Bealo responded that he had done a Google search of New Hampshire Court cases, but he did not print any out to bring.

J. Gifford offered that town hasn't lost anything with this request. He added with some of the work being donated, and not known if that would be an option again, would the relocation costs be even higher. He also noted that there was no evidence that insurance would cover the costs.

P. Bealo noted that they had already been on record admitting fault.

J. Unger offered there is usually a protective clause regarding errors and omissions.

P. Bealo noted that they could do a lot line adjustment at the same time as they go for their site plan and take care of everything at one Planning Board meeting.

Roll Call Vote: J. Unger – yes; M. Murray – no; P. Bealo – no; D. Lloyd – yes; J. Gifford – yes. The vote was 3-2-0, and the motion passed.

★ P. Bealo moved, second by J. Gifford to grant the request for an equitable waiver from Article V, §220-32I to allow a structure to be set 32.3' from the rear property line, where 35' is the minimum, for the parcel located at 101 Sweet Hill Road, Tax Map 68, Lot 8C, with the following condition:

- ***If approved, prior to the application's application to the Planning Board, a third-party surveyor, unaffiliated with any firm representing the applicant, shall certify to the Plaistow Building Inspector the dimensions and actual setbacks of this structure, in writing.***

Discussion:

It was noted that all discussion would be the same for both applications.

Roll Call Vote: M. Murray – no; P. Bealo – no; D. Lloyd – yes; J. Gifford – yes; J. Unger – yes. The vote was 3-2-0, and the motion passed.

OTHER BUSINESS

Updated ZBA Application Form

D. Voss noted that a draft updated ZBA application form was in the member folders. It was noted that the new form was more inline with the recommendations in the Handbook for Location Zoning Board of Adjustment Members.

M. Murray offered two minor corrections:

- An extra word in the payment section
- Changing 99% to in most cases in the "What to Expect" section.

★ J. Unger moved, second by J. Gifford, to approve the revised ZBA application form, with the two noted changes, to be effective immediately.

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

2022 ZBA Application Deadline and Meeting Schedule

D. Voss noted the draft 2022 ZBA Application Deadline and Meeting Schedule that had been prepared in accordance with the Board's By-Laws.

★ P. Bealo moved, second by M. Murray, to approve the 2022 ZBA Application Deadline and Meeting Schedule.

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

NON-PUBLIC – 91-A:3, II(e): 9:35 p.m. – 9:46 p.m.

★ P. Bealo moved, second by D. Lloyd to enter into a non-public session under NH RSA 91-A:3,II(e).

Roll Call Vote: J. Gifford – yes; J. Unger – yes; M. Murray – yes; P. Bealo – yes; D. Lloyd – yes. And the vote was 5-0-0 U/A.

P. Bealo noted that there would not be any decisions made during non-public and the Board would be immediately adjourning the meeting after the non-public session.

The Board existed non-public session at 9:46 p.m. There was no vote to seal the minutes.

There was no additional business before the Board and the meeting was adjourned at 9:46 p.m.

Respectfully Submitted:

Dee Voss
Administrative Assistant