



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

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
January 27, 2022

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
Jim Unger, *Alternate*
Michael Murray, *Alternate*

Also attending: Dee Voss, *Administrative Assistant*

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

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

P. Bealo noted that there were five (5) voting members at this meeting.

Minutes of January 6, 2022

★ *D. Lloyd moved, second by J. Gifford, to approve the minutes from the January 6, 2022, meeting as written. There was no discussion on the motion.*

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

PUBLIC HEARINGS:

#22-01: A request from Nicholas Rigattieri and Tessa Parziale Rigattieri for a variance from Article V, Table 220-32F.C(1)(b) to construct a single-family dwelling on a lot with no frontage on a town right-of-way. The property is known as “O Evergreen Rear,” Tax Map 60, Lot 28, in the LDR Zoning District. The applicants are the property owners of record.

James Hanley, Civil Design Consultants; Tessa Parziale Rigattieri and Nichola Rigattieri, 12 North Ave, and owners of the subject property were present for the application.

J. Hanley noted that SEC and Associates had prepared the application and was going to be presenting it. He noted the following in support of the application:

- The property is located behind 2 Evergreen Drive and is identified as Plaistow Tax Map (PTM) 60, Lot 28
- The site is 6.21 acres and is an existing lot of record
- The property is zoned Low Density Residential (LDR)
- The land was formerly owned by the Town and had been acquired by tax lien
- As part of the original subdivision that created the lot, a 25' wide access easement was established on the west side of Evergreen Drive to benefit the subject parcel
- The access easement runs from Evergreen Drive through PTM 58, Lot 60-32-10
- In 2002 the property owners to the west of the subject parcel (PTM 60, Lots 24 and 25) also had landlocked parcels and were successful in obtaining access from the easement through the subject parcel to their land
- The access was approved through a Special Town Meeting and plans were prepared delineating the easement through the subject parcel and their land as well
- Variances were granted to allow homes to be built on the other landlocked parcels utilizing the now-shared easement off Evergreen Drive
- In 2019, in anticipation of selling the subject property, the Town successfully submitted a petition to quiet title supported by a boundary survey plan
- In 2020 the Rigattieris purchased the property from the Town with the intent of building a single-family dwelling on the site
- This past year a four-bedroom septic system was designed located just south of the existing shared driveway adjacent to PTM 68, Lot 60-32-10 and approved by the New Hampshire Department of Environmental Services (NHDES)
- A generous building envelope as well as the septic and well were sited on the plan
- The existing access easement bisects the lot
- The property owners opted to locate the dwelling in one side of the easement, but the land on the other side is equally suited for a dwelling as well
- The land supports the use and all other applicable siting, lot loading and setback requirements can be met.

P. Bealo noted wetland areas on the southern side of the parcel.

J. Hanley replied that there are 3.5+ AC of contiguous uplands. He added that a septic design has been approved by New Hampshire Department of Environmental Services (NHDES) and he showed where it was located on the site.

J. Gifford asked if there was an access easement.

J. Hanley showed on the map and noted that it was already being used to service two (2) other properties.

D. Lloyd asked what the length of access was. It was noted to be 800 feet long, 25 feet wide.

J. Hanley offered the following responses to the variance criteria:

- The proposed variance will not be contrary to the Public Interest because by granting the variance it will allow the Rigatierris the full productive use of property as intended by acquisition as a separate freestanding parcel of land. Access to the lot will be provided by a shared driveway from Evergreen Drive. All proposed construction of the home, septic system, well and driveway will be to current standards in regard to design and permitting. The proposal is for one single family dwelling on a lot that exceeds all other applicable sizing and siting requirement within an area surrounded by single family dwellings. All considered, there will be no negative effect to the general health, welfare, and safety of the general public.
- The Spirit and Intent of the Ordinance is preserved because the intent of the ordinance as it relates to the frontage requirement is to ensure adequate separation of homes and to establish density in keeping with the spirit of the overlying zone. This zone, LDR requires the largest land area, 2.53 acres to qualify for a building lot. This lot as it stands, is 6.21 acres and is comprised of a generous, contiguous upland buildable area. In regard to the driveway, this land has an access that would not endanger or disrupt traffic flow, nor does it, as a single family home, substantially add any traffic volume. In this particular case, the spirit and intent can be met provided that the variance is granted.
- There is Substantial Justice in granting the variance because this property is only limited by the lack of frontage. All other applicable lot sizing and siting requirements can easily be met. This property is similar to other properties abutting it where there is no frontage and access is through other parcels. The owner is only asking for the construction of one single family residential dwelling on this generously sized property. Denial of the variance would require finding a means of creating a Town accepted roadway to serve the site. This alternate proposal, is even feasible would result in considerably more site impact, cost subsequent maintenance for the Town as well as a more intensive development to offset the costs. There is substantial justice in granting the variances which would allow for a reasonable use of the property in keeping with surrounding uses.
- The Values of Surrounding Properties will not be diminished because granting the variance would allow for plans to be submitted for consideration of one single family residential dwelling as allowed and supported in this zone. The proposed driveway to service the dwelling will be designed to meet the specifications for emergency access and will consider all environmental impacts as well. The proposed dwelling, septic system and well will meet all siting and design requirements. With this modest request for an additional dwelling within a residential neighborhood it can be assured that there will be no diminution of surrounding property values.
- Denial would result in Unnecessary hardship if literal enforcement of the provision of the ordinance was applied. Meaning, requiring 200' of frontage where none exists for a lot that has a potential access that does not adversely affect the neighboring properties, nor

does it diminish the spirit and intent of the ordinance creates an unnecessary hardship. Although the objectives and purpose of the ordinance can be demonstrated the general requirements with respect to frontage requirements cannot, particularly when given the history of the lot as a separate tax lot and assessed as such. It is the intention of the owner to only construct one dwelling on this lot. Granting of the variance would only allow for the full productive use of the site as the surrounding property owners enjoy.

P. Bealo noted that given that there is already a paved access for the other two (2) properties it seems punitive not to allow access for this lot as well

T. Parziale noted that they purchased the lot at a town auction as a buildable lot.

J. Unger noted that lot is bisected by the access easement.

J. Hanley confirmed that the lot is split nearly in half by the easement.

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 there were no letters or emails received prior to the meeting.

There was discussion over whether or not the lot could be subdivided and a second lot created. It was noted that it couldn't be done without variance relief because of the lack of frontage.

Noting no further discussion, P. Bealo closed the public hearing.

DELIBERATIONS:

★ G. Ingham moved, second by D. Lloyd, to grant the request for a variance from Article V, Table 220-32F.C(1)(b) to allow a single-family home to be built on a lot without the minimum required 200 feet of frontage on a public right-of way, for the property known as "0 (zero) Evergreen Rear", Tax Map 60, Lot 28, with the following condition:

- ***All other zoning requirements for the construction of a single-family dwelling shall be met***

Discussion:

P. Bealo offered that given that there is already access, across this parcel, to benefit two (2) others without frontage it would only be right to grant this access as well.

J. Unger asked how the other two (2) lots were allowed the access, questioning if it was a Special Town Meeting.

D. Voss offered that it could have been a variance, but not certain the process.

P. Bealo noted that there was some official action that made the other two (2) lots buildable.

J. Gifford offered that it should be a buildable lot if the Town sold it.

P. Bealo replied that it was still up to any potential property owner to do their due diligence prior to purchasing the parcel.

J. Gifford noted that since this property is serviced by an easement, not maintained by the Town, there are additional tax revenues for the Town without additional costs.

J. Unger added that the lot and proposed house are not close to any neighbors.

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

- Granting the variance will not be contrary to the Public Interest because there is no new access proposed and traffic to the area will not be increased by the addition of one (1) single-family dwelling.
- The Spirit and Intent of the ordinance are preserved because the lot is large, nearly twice as large as required and there is separation from the other houses. There is also access for emergency services that are superior to the houses located on the same access road, but to the rear of this parcel.
- There is Substantial Justice in granting the application there is no gain to the public in the denial of the application.
- Surrounding Property Values will not be Diminished as there is plenty of separation between all the houses and no one will be looking in their neighbor's window.
- Literal enforcement of the provisions of the ordinance would result in unnecessary hardship because the property was purchased from the Town, and it would be a hardship if the applicant were now not allowed to build on it..

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.

#22-02: A request from J&C Properties Realty Trust, Jeffrey K. Roy, TR, for a variance from Article V, Table 220-32I to permit an existing structure, as result of a lot line adjustment, to be placed 3.9 feet from the side property line, where 15 feet is the minimum required. The property is located at 3 Chandler Ave, Tax Map 37, Lot 19 in the MDR Zoning District. The applicant is the property owner of record.

#22-03: A request from J&C Properties Realty Trust, Jeffrey K. Roy, TR, for a variance from Article V, Table 220-32I to permit an existing structure, as result of a lot line adjustment, to be placed 5 feet from the rear property line, where 15 feet is the minimum required. The property is located at 3 Chandler Ave, Tax Map 37, Lot 19 in the MDR Zoning District. The applicant is the property owner of record.

#22-04: A request from Valerie Roderick, for a variance from Article V, Table 220-32C.C(1) to allow a lot to be altered, as result of a lot line adjustment, to an area of 16,883SF where 40,000SF is the minimum required. The current lot is 17,157SF. The

property is located at 30 Main St, Tax Map 37, Lot 20 in the C2 Zoning District. The property owners of record are Valerie and Bruce Roderick,

Dan Johnson, Plaistow Consultants; Valerie Roderick, property owner 30 Main St, and Jeff Roy, property owner 3 Chandler Ave, were present for the applications.

D. Johnson noted that he was contracted to do a survey of the lot lines when it was discovered that the house at 3 Chandler Ave was over the lot line with 30 Main Street. He noted that 3 Chandler was built back in the 1940s. He noted that locating the line caused issues with both properties that need to be resolved.

D. Johnson offered the following information in support of the applications:

- Adjusting the lot line on 3 Chandler to include the dwelling on the proper lot creates setback issues from the front and rear property lines requiring variance relief for each encroachment
- Both lots involved are substandard (undersized) and adjusting the lot line while making one lot more compliant, it makes the other lot less compliant, requiring variance relief
- There were also septic system location issues with the parcel at 3 Chandler Ave
- The area to be transferred from 30 Main Street to 3 Chandler Ave is 324 SF
- The house will then be 3.9 feet from the side property line and 5 feet from the rear
- The zoning line for CII versus MDR will continue to follow the property line
- No structures will be changed on the property, only the lot line is changing

G. Ingham noted that this is not an uncommon issue within the Town.

D. Johnson explained that the variance criteria were essentially the same for all three (3) applications for the setback on 3 Chandler, and only slightly different for the lot sizing issue on 30 Main Street. He noted the following responses for the criteria:

ZBA Matter 22-03 and 22-03:

- The proposed variance would not be Contrary to the Public Interest because there is no change in use or appearance to the property along this new lot line
- The Spirit and Intent of the Ordinance are preserved because a portion of the house is presently on the abutter's property, and both agree to lot lines to alleviate this situation
- There is Substantial Justice in Granting the variance because granting the variance would take away the encroachment and legal problems that are suffered by the owner and abutter
- The Values of Surround Properties will not be Diminished because the value of the property will probably increase due to the newly defined property line that both the owner and the abutter agree to
- Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship because:
 - o No fair and substantial relationship exists between the general purpose of the ordinance provision and the specific application of that provision to this property

because the owner's house and lot were established in the 1920s. No one found has cleared this problem of ownership.

- The proposed use is a reasonable one because it is the same as before and after the proposed lot line adjustment

ZBA Matter 22-04:

- The proposed variance would not be Contrary to the Public Interest because there is no change in use or appearance of the property with the new lot area at this time
- The Spirit and Intent of the Ordinance are preserved because a portion of the abutter's house is presently on the owner's property, and both agree to lot lines to alleviate this situation. The new proposed lot area was the result of the proposed lot line adjustment
- There is Substantial Justice in Granting the variance because granting the variance would take away the encroachment and legal problems that are suffered by the owner and the abutter
- The Values of Surround Properties will not be Diminished because the value of the property will probably increase due to a new defined property line that both that both the owner and abutter agree to
- Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship because:
 - No fair and substantial relationship exists between the general purpose of the ordinance provision and the specific application of that provision to the property because the owner's lot was established in the 1920s and 1940s. The lot area was not found to have changed since that time. No one found has cleared up this problem of ownership. Minimum lot area adjustment was attempted
 - The proposed use if a reasonable one because the use is the same before and after the proposed adjustment

P. Bealo asked if the need for the third variance (lot sizing) could have been avoided if equal parcels of land had been exchanged.

D. Johnson explained that both parcels need as much land as possible to meet septic loading calculations.

V. Roderick noted that they way they found all this out was asking for the survey for a fence installation. They also found of that the septic and leachfield are on the wrong property as well. She noted that there is an agreement in place that the septic will be moved off her property within one (1) year.

J. Roy added that this was an attempt to clear up things for both properties and put things where they belong.

J. Gifford offered that it was commendable to see neighbors working together to solve a problem.

D. Johnson noted that the only other way would have been to take the matter to court where no one ends up happy.

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 applications.

Robert Leiber, 4 Spinney Ave, noted that he had a hearing issue and wasn't sure what the proposal was and how it impacted his land. A copy of the proposed lot line adjustment plan was provided to him, with an explanation of what was being proposed, at which point he noted he had no objections.

It was confirmed that no letters or emails had been received regarding these matters.

P. Bealo explained that while the discussion included all three (3) applications, each would be voted upon separately.

Being there was no additional discussion, the public hearing was closed.

DELIBERATIONS:

Draft Motion (#22-02):

★ J. Unger moved, second by G. Ingham, to grant the request for a variance from Article V, Table 220-32I to permit an existing structure, as result of a lot line adjustment, to be placed 3.9 feet from the side property line, where 15 feet is the minimum required, for the property located at 3 Chandler Ave, Tax Map 37, Lot 19, with the following condition:

- ***The Plan presented for the variance applications 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 will void this approval.***

Discussion:

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

- Granting the variance will not be contrary to the Public Interest because this is just clearing up a legal morass, which is always in the public's interest.
- The Spirit and Intent of the ordinance are preserved because there is currently a negative setback, and this variance will allow for a minimal setback to be established.
- There is Substantial Justice in granting the application because there is no gain to the public in the denial of the application and there is substantial gain to the property owner.
- Surrounding Property Values will not be Diminished because there will not be any physical changes to the property, only a paper change of the lot line.
- Literal enforcement of the provisions of the ordinance would result in unnecessary hardship because without the variance the lot line adjustment cannot move forward, and the house would remain over the property line.

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.

DELIBERATIONS:

Draft Motion (#22-03):

★ J. Unger moved, second by J. Gifford, to grant the request for a variance from Article V, Table 220-32I to permit an existing structure, as result of a lot line adjustment, to be placed 5 feet from the rear property line, where 15 feet is the minimum required, for the property located at 3 Chandler Ave, Tax Map 37, Lot 19, with the following condition:

- ***The Plan presented for the variance applications 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 will void this approval.***

Discussion:

It was noted for the record that the findings would be the same for this setback application as they were for the first application.

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

DELIBERATIONS:

Draft Motion (22-04):

★ J. Unger moved, second by D. Lloyd, to grant the request for a variance from Article V, Table 220-32C.C(1) to allow a lot to be altered, as result of a lot line adjustment, to an area of 16,883SF where 40,000SF is the minimum required. The current lot is 17,157SF. for the property located at 30 Main St, Tax Map 37, Lot 20, with the following condition:

- ***The Plan presented for the variance applications 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 will void this approval.***

Discussion:

It was noted that the issue goes back to the 20s and 30s and the lot was already undersized, but this proposal was the lesser of all evils as there will not be any real impact to the abutter, and there is no change to the access or the use of the property.

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

- Granting the variance will not be contrary to the Public Interest because the lot is already undersized, and this small area will not impact the functioning of the lot. It would,

- however, impact the ability of 3 Chandler Av to install a septic system if equal portions of land area were exchanged to maintain the current lot sizing..
- The Spirit and Intent of the ordinance are preserved because the nothing gained by the applicant and it's more to offset the septic issue on 3 Chandler Av.
 - There is Substantial Justice in granting the application because there is no gain to the public in the denial of the application and there would be a hardship to 3 Chandler Av and 30 Main St if the septic cannot be moved to 3 Chandler Av.
 - Surrounding Property Values will not be Diminished because there will not be any physical changes to the property, only a paper change of the lot line.
 - Literal enforcement of the provisions of the ordinance would result in unnecessary hardship because without the variance the lot line adjustment cannot move forward, and the house would remain over the property line and the owner of 3 Chandler Av would not be able to install a new septic system to get the existing one off the 30 Main St property.

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

There was no additional business before the Board and the meeting was adjourned at 7:53 p.m.

Respectfully Submitted:

Dee Voss
Administrative Assistant