



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

**ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
April 28, 2022**

The meeting was called to order at 6:30 pm

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

Also attending: Dee Voss, *Interim Zoning Official, Administrative Assistant*

★ *M. Murray 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 noted that all motions are made in the affirmative “to grant” format, but that was not indicative as to how any member might vote on a particular application, including the maker of the motion, or the second. 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

Minutes of March 31, 2022

★ *M. Murray moved, second by D. Lloyd, to approve the minutes from the March 31, 2022, meeting as written. There was no discussion on the motion.*

Roll Call Vote: P. Bealo – yes; D. Lloyd – yes; J. Blinn – abstained; G. Ingham – yes; M. Murray – yes. *The vote was 4-0-1 and the motion passed.*

PUBLIC HEARINGS:

#22-06: A request from Jinalben Patel for a variance from Article V, §220-32L to permit a combined residential and commercial use on a lot with less than 420,000 sf of land and less than 150 feet of frontage along Route 125. The property is located at 2 Main St, Tax Map 24, Lot 43 in the C1 zoning district. Navya Realty Trust is the property owner of record.

#22-07: A request from Jinalben Patel for a variance from Article V, §220-32B to permit a residential dwelling unit, which is not a permitted use in the C1 Zoning District. The property is located at 2 Main St, Tax Map 24, Lot 43 in the C1 zoning district.. Navya Realty Trust is the property owner of record.

Michael Malynowski, Allen & Major Associates, was present for the application.

M. Malynowski noted the following regarding the application:

- The parcel is the location of the former Mortgage Specialist business
- The applicant was granted Planning Board approval for a convenience store use
- Historically this was the Grange building
- The building is a two-story, wood frame structure
- The first floor solely for the convenience store, the second floor is currently approved for general storage
- The second floor was storage and office when it was the mortgage building
- The applicant would like to have a caretaker's unit on the second floor, the manager for the store has requested to live on the premises
- Residential is not permitted in the Commercial I (C1) district, thus the request for the variance
- There wouldn't be any need for any changes to the Planning Board approved site plan, as the parking calculations wouldn't change
- The employee count is duplicated in the store
- The unit would not be for rent

There was discussion regarding the variance request for the 420,000SF and the residential use not permitted on less than that lot size.

- The property is located in the C1 zone
- The location of the property is next to the plaza where Walgreens and Petco are located and across the street from the plaza where Shaw's is located

M. Malynowski distributed a copy of the zoning map, and discussed some of the parcels, and their uses both commercial and residential uses. He offered that the request would not be contrary to other uses that are currently existing in the area. He added that there would not be any increases in traffic counts as that has already been summarized in the convenience store use and a single residence will not impact the counts. Utilities will remain the same. Only the septic will have to be re-approved by the State, but there is excess capacity in the approved design.

J. Blinn asked if the proposed apartment would be used by the owner or a caretaker and asked if rent would be charged.

M. Malynowski replied that the caretaker is not the owner and will not be paying rent.

J. Blinn asked if the caretaker would have a family.

M. Malynowski responded that he didn't know.

J. Blinn noted that the resident of the unit could change.

M. Malynowski stated that was his understanding but added that it was not a "for rent" unit.

D. Lloyd asked if the traffic study was done recently, noting that the previous one before the Board as antiquated and did not take into account the new traffic lights.

M. Malynowski noted that they had just reviewed the traffic based on the conversion from office use to a retail store and added that New Hampshire Department of Transportation (NHDOT) had reviewed the

traffic information as well as part of the issuance of the driveway permit for the convenience store. He noted that the site plan was approved as an “in” only and was re-designed as part of the Planning Board approved site plan.

P. Bealo noted there was an “in-out” on Main Street.

M. Malynowski noted the criteria for both applications would be the same and offered the following responses to the variance criteria:

- The proposed variance would not be Contrary to the Public Interest because the essential character of the neighborhood will not be altered since the proposed accessory use (residential dwelling) will be situated above the existing variety store and will not threaten the public’s health, safety, or welfare because the proposed use will be operated in accordance with all applicable state and local regulations. The proposed use will be subordinate to the current retail use and allow for the store operator to occupy the premises.
- The Spirit and Intent of the Ordinance are preserved because the proposed accessory use is less intrusive than the currently permitted retail use and will not be easily visible from the public road nor abutting properties.
- There is Substantial Justice in Granting the variance because the general public does not stand to benefit from a denial of this variance request, since the proposed use is consistent with several of the abutting properties which are single family dwellings and would provide added security to the current on-site retail business by allowing for the store operator to occupy the premises.
- The Values of Surround Properties will not be Diminished because substantially all of the abutting properties are similar in size and nature to the subject property. The proposed development will take a blighted property that has been negatively affecting surrounding values for years and convert it to a state of the art commercial development that has been designed to mitigate the traffic and to enhance the value of the property as well as the neighborhood.
- 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 of the property because substantially all of the abutting properties are similar in size and nature to the subject property. The proposed development will take a blighted property that has been negatively affecting surrounding values for years and convert it into a state-of-the-art commercial development that has been designed to mitigate the flow of stormwater and to enhance the value of the property as well as the neighborhood.
 - o The proposed use is a reasonable one because substantially all of the abutting properties are similar in size and nature to the subject property. The proposed development will take a blighted property that has been negatively affecting surrounding values for years and convert it into a state-of-the-art commercial development that has been designed to mitigate the flow of stormwater and to enhance the value of the property as well as the neighborhood.

P. Bealo referred to the State handbook for zoning ordinances, noting the fifth criteria (hardship) and read from the handbook. He noted that only one characteristic of the property differs from all others does a hardship exist and he was having difficulty with that standard. He suggested no evidence had been offered to differentiate this property from others in the C1 zone.

M. Malynowski offered that it was a small family business store, and they were trying to provide added security for the store where other plazas would have state-of-the-art security systems. He noted that the second reason would be the aesthetics of the property, having a live-in person makes it less likely that the property will fall into disrepair.

P. Bealo responded that neither suggestion differentiated the property from others in the C1 zone.

A comparison was made to the Walgreens to this proposed use.

M. Malynowski offered that there was a hardship in other surrounding residential uses.

P. Bealo offered that only one use was shown as a grandfathered residential use in the C1 district, all other uses pointed out were in the C2 zone, where residential and combine uses are permitted.

D. Lloyd noted that he wasn't grasping the security issue as if that were the case all businesses would want to have someone living on site. He added that security cameras were not expensive. He added that there shouldn't be trash on the property anyway, so both issues were moot to him.

G. Ingham asked what happens to the person living on the property should the business fail.

M. Malynowski replied that it was his understanding that the residential use would go away if the business use did. He reiterated they were not asking for a "for rent" use, the residential use is tied to the business.

P. Bealo noted that he wished for success for all businesses, but in this case there would be a variance granted for a residential use whether the business was there or not.

M. Malynowski suggested that the Board tie the variance to this specific mixed use.

P. Bealo also asked how this would be enforced. Would it be expected that the Building Inspector would have to check in to see if the right person was living in the apartment.

J. Blinn also noted there had been squatter situations in the past where the resident refused to leave.

M. Malynowski suggested that there were routine inspections done for the convenient store use.

There was discussion regarding the inspection process. It was noted that once the Certificate of Occupancy was issued there would be no routine inspections done. It was noted that the Health Department would do inspections of the Convenience Store, but inspection of the apartment would not be under their jurisdiction. It was noted that the Town used to inspect units when there was a change in tenancy, but that was no longer required.

P. Bealo offered that he didn't think that a condition could be placed on a variance that would demand the Building Inspector to routinely check on the unit as it would get lost over time.

D. Lloyd added that there was no way of knowing when the person changed, if they would be bringing in family, there was no good way of tracking it.

J. Blinn noted that it was also more difficult to remove a someone with children. He noted that the apartment would go away. He added that it was a big investment for a new business starting out.

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, or opposition to, the application. There was no one. It was confirmed that no emails or letters had been received prior to the public hearing.

P. Bealo asked for final comments from M. Malynowski, there were none and both public hearings were closed.

DELIBERATIONS:

#22-06: A request from Jinalben Patel for a variance from Article V, §220-32L to permit a combined residential and commercial use on a lot with less than 420,000 sf of land and less than 150 feet of frontage along Route 125. The property is located at 2 Main St, Tax Map 24, Lot 43 in the C1 zoning district. Navya Realty Trust is the property owner of record.

★ G. Ingham moved, second by J. Blinn, to grant the request from Jinalben Patel for a variance from Article V, Table 220-32L to permit the construction of a residential unit on a parcel of less than 420,000SF in the Commercial 1 District, at 2 Main St, Tax Map 24, Lot 43:

Discussion:

P. Bealo offered that he understood what they were trying to do, and to a certain extent why, but he was struggling with finding a hardship in the property.

G. Ingham noted that his concern was over the apartment if the business use failed; J. Blinn agreed.

J. Blinn offered that the store use could thrive without the store use, so they were not impacting the business use.

D. Lloyd offered that the business was not losing money by denying the variance, since they weren't charging the manager to live there.

J. Blinn noted that with all the cameras that are available, a security system is reasonable.

P. Bealo added that no matter what the cost of security equipment, it still does not make the property unique by definition.

M. Murray added that the manager could not be expected to be on the property 24/7 to provide security all the time.

P. Bealo noted that all convenience stores in the area have security cameras.

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

- Granting the variance would be contrary to the public interest as there was concern over what would happen to the resident and/or the residential use, should the business use fail. It was also noted that the store can operate without the residential unit.
- Granting the variance would not be in keeping with the spirit and intent of the ordinance as the size of the lot is significantly less in size than the 240,000SF
- There is no gain to the general public in the denial, so substantial justice is not at issue

- The Board did not find that there would be a detrimental effect on the surrounding property values
- The Board found that there were no unique characteristics of the parcel, in its location, that cause a hardship by denying the variance. The Board found the suggestion that having a live in manager on the site for security was not valid as a hardship, as the person would not be on the site 24/7

Roll Call Vote: D. Lloyd – no; J. Blinn – no; G. Ingham – no; M. Murray – no; P. Bealo – no. The vote was 0-5-0 and the motion to grant was defeated.

#22-07: A request from Jinalben Patel for a variance from Article V, §220-32B to permit a residential dwelling unit, which is not a permitted use in the C1 Zoning District. The property is located at 2 Main St, Tax Map 24, Lot 43 in the C1 zoning district.. Navya Realty Trust is the property owner of record.

★ G. Ingham moved, second by D. Lloyd, to grant the request from Jinalben Patel for a variance from Article V, Table 220-32B to permit a residential use in the Commercial 1 District, at 2 Main St, Tax Map 24, Lot 43:

Discussion:

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

- Granting the variance would be contrary to the public interest as there was concern over what would happen to the resident and/or the residential use, should the business use fail. It was also noted that the store can operate without the residential unit. The concern was over some of the negatives that had been discussed.
- Granting the variance would not be in keeping with the spirit and intent of the ordinance as residential has not been a permitted use in the Commercial 1 Zoning District for many years
- There is no gain to the general public in the denial, so substantial justice is not at issue
- The Board did not find that there would be a detrimental effect on the surrounding property values
- The Board found that there were no unique characteristics of the parcel in its location that cause a hardship by denying the variance.

Roll Call Vote: J. Blinn – no; G. Ingham – no; M. Murray – no; P. Bealo – no; D. Lloyd - no. The vote was 0-5-0 and the motion to grant was defeated.

There was no additional business before the Board and the meeting was adjourned at 7:06 p.m.

Respectfully Submitted:

Dee Voss
Administrative Assistant