



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

ZONING BOARD OF ADJUSTMENT
October 27, 2016

The meeting was called to order at 7:00 p.m.

Roll Call: Peter Bealo, *Chair*
Tim Fisher, *Vice Chair*
Jim Allen
Joyce Ingerson, *Excused*
Dan Lloyd
John Blinn, *Alternate*

The Pledge of Allegiance was led by Planning Board Chair, Tim Moore.

★John Blinn was appointed as a voting member for this meeting in place of Joyce Ingerson.

Review of Minutes

★D. Lloyd moved, second by T. Fisher, to approve the minutes of the August 25, 2016 meeting. There was no discussion on the motion. The vote was 5-0-0 U/A.

★T. Fisher moved, second by J. Allen to approve the September 29, 2016 minutes. There was no discussion on the motion. The vote was 5-0-0 U/A.

#16-12: A request from Jonathan Gifford for a special exception under Article X, All Sections to permit a home office for a business, namely the buying and selling of computer parts. The property is located at 148 Main St, Tax Map 41, Lot 14 in the VC District. Jonathan and Christine Gifford are the property owners of record.

Jonathan Gifford, 148 Main Street, was present. He noted the following information in support of the application:

- The business is online computer brokerage, not PC sales, but larger main frame systems
- There is nothing that will affect the neighbors or the neighborhood
- Any deliveries to the property are made by routine UPS/FedEx trucks
- There will be no sign, "John Q. Public" is not the customer base for the business

The Board reviewed the requirements of Zoning Ordinance Article X with Mr. Gifford noting the following:

- The residential use was established prior to the application for the business use

- The business is a mix of §220-66A and C as a permitted home occupation
- There is nothing that is injurious, noxious or offensive to the neighborhood as there is no omission of odor, fumes, dust, smoke, vibration and/or noise. There is no equipment or process that will create a visual, audible or electrical interference of fluctuation
- The structure is a single-family dwelling
- The proposed business office use will occupy 9% of the dwelling space, well below the maximum of 25%
- The residential character of the dwelling will not be changed as there will be no changes made
- There will be no outside storage
- No sign is proposed at this time
- Mr. Gifford is the sole-proprietor, but there may occasionally be a technician helping him
- There will be no outside merchandise display
- All deliveries will be made by routine USP/FedEx trucks
- There is nothing flammable or dangerous being stored
- There are no commercial vehicles related to this business, but there is ample parking for the residence
- There are no covenants in the deed to prevent the home occupation
- This residence is not part of a condominium
- This will be the only home occupation for this residence

P. Bealo explained that the home occupation is subject to inspection by the Code Enforcement Officer and must be renewed every three (3) years.

P. Bealo asked if there were any questions from the Board.

T. Fisher asked how any waste was disposed.

J. Gifford noted that any waste could be put out with household trash. He added that occasionally he obtains a dumpster for trash related to his farm also located on the property.

P. Bealo asked if there was anyone speaking in favor of or opposition to the application. There was no one and the matter was closed.

DELIBERATION

★D. Lloyd moved, second by T. Fisher, to grant the special exception for a home occupation at 148 Main St as described in the legal notice.

P. Bealo offered that the application met all the requirements of the ordinance.

D. Lloyd suggested that it was a “text book” home occupation.

There was no additional discussion on the motion. The vote was 5-0-0 U/A.

#16-11: A request from Chandler Place, LLC, for a variance from Article XIV, §220-110(c), to permit a waiver of the recreation facilities impact fee for the applicant's proposed 39 unit, tax credit, age-restricted housing for older persons project.. The property is located at 18 Chandler Ave, Tax Map 38, Lot 4 in the MDR District. The applicant is the property owner of record.

Attorney Bernard Campbell, Beaumont and Campbell, PA, and Steven Lewis, Principal Chandler Place, LLC were present for the application.

B. Campbell offered the following in support of the application:

- The request is not the typical dimensional or use variance request
- The Planning Board has approved waiving the School Impact Fee
- The Planning Board supports the waiving of the Recreation Impact Fee, but cannot by ordinance, waive the Recreation Impact Fee
- The applicant has not requested a waiver of the Public Safety Impact Fee

B. Campbell gave an overview from the Board of Adjustment Handbook regarding the purpose of a variance, not to prevent an ordinance from becoming “confiscatory or unduly oppressive” a kind of safety valve. He also cited RSA 674:21(V) regarding the definition of an impact fee, noting in his opinion, the key phrase in the statute to be that the fees must be tied to the “needs occasioned by development.” Attorney Campbell suggested that this community does not create the demand supported by the Impact Fee.

B. Campbell additionally noted:

- This development is a first of its kind in Plaistow
 - o Age-restricted housing
 - o Financed by tax credit financing
 - o Governed by Section 42 of the Internal Revenue Code

B. Campbell offered that a requirement for an impact fee is that the community must have a CIP (Capital Improvement Plan) program, which is adopted by the Planning Board. However, he noted that there are no specific recreation projects outlined in the 2015 CIP, instead there is mention of funding a reserve fund for future activities, or to address items in the Recreation Strategic Plan (RSP). He listed a number of projects from the RSP such as trails, playing fields, community garden, volleyball court, dog park, pool, gym. Attorney Campbell suggested that the age-restricted (62+ years), low income housing project will have minimal impact on the need for the projects listed in the Plan, therefore lacking a reasonable nexus for an impact fee. He added that the project would have community gardens, a community center and walking trails internalized and open to the public.

B. Campbell reiterated that this request has the support of the Planning Board, who are the creators of the Zoning Ordinance, the Master Plan and the CIP.

B. Campbell offered that following responses to the criteria for the granting of a variance:

- The request is not contrary to the public interest because it does not violate the basic objective of the zoning ordinance. It does not alter the essential character of the neighborhood or threaten the health, safety and welfare of the residents. It was further suggested that while the applicant does not have to show a benefit to the public granting the variance would be a benefit as it would allow the applicant to provide needed housing for the community of Plaistow.
- The spirit and intent of the ordinance are preserved because this project does not meet the “needs occasioned” test of RSA 674:21 (V) which is the legal requirement for the imposition of an impact fee; therefore granting the relief will not violate the spirit and intent of the ordinance.
- Substantial justice will be done because the granting of the variance will help assure that the project can financially go forward, allowing the applicant to provide a housing opportunity that does not currently exist in Plaistow. It was also noted that there is no gain to the community that is outweighed by the loss to the applicant.
- Granting the variance will not diminish surrounding property values because there is no physical impact to the site at all.
- Literal enforcement of the ordinance would create an unnecessary hardship in this case because the “special conditions” of the property are once that will be created through covenants related to the nature of the housing to be provided. The purposes of the ordinance are not related to the effect which this project has on the community. In addition, the use is reasonable and a needed housing alternative.

B. Campbell offered that he believed that this application meets all the requirements for the granting of a variance.

P. Bealo asked if there were any questions from the Board.

J. Allen, noting that the minimum age is 62+ asked what would happen if there was a problem where a grandparent became a caretaker or needed a caretaker themselves.

S. Lewis explained that there are no children allowed at this project. He added that the protected class status of the elderly allows them to place this restriction on the development. He added that this was an independent living project and nearly all the units are one bedroom. He noted that there are two units set aside as two bedroom for a temporary situation.

J. Allen asked if residents were allowed pets.

S. Lewis replied that Federal Law allows for a companion pet, but they are allowed to restrict the size of that pet. He added that the project was located on a sizeable 11 acre lot. The building will occupy 15-16% of the land and the rest will be open space to include community gardens and walking trails.

There was discussion regarding the difference between a private assisted living project and a federally-funded independent living one. It was noted that while the minimum age requirement for this project is 62, the average age of the residents is 77 and the project is tailored for use by that age group. It was noted that the approved plan calls for 3,000 feet of walking trails with benches and tables along the way; a community center with a business office; and a community kitchen. It was also noted that part of their funding requirement is community outreach to share their services.

J. Allen asked if other towns where Mr. Lewis has built similar projects have waived their impact fees.

S. Lewis replied that Salem has waived all impact fees and Londonderry was giving them land to build on as well as waiving the fees.

D. Lloyd inquired if the other projects were complete.

S. Lewis answered that Salem has a seven (7) year waiting list, Atkinson has a five (5) year waiting list and of the twenty-five (25) units that will be available in the first building (of two) for the Plaistow project he has forty-five (45) applicants, all current Plaistow residents.

P. Bealo asked if there was anyone speaking in favor of the application.

Tim Moore, 33 Sweet Hill Rd, Chair Plaistow Planning Board, noted that the Planning Board very seldom voices an opinion either way on a Zoning Board matter, but he felt this was a very complicated issue. He offered that Attorney Campbell had given a good explanation of the laws related to the imposing of impact fees. He continued that the enabling statute does allow for a method to be built into the ordinance to allow the Planning Board to waive these fees. T. Moore gave the example of the Waterline Impact Fee being waived, or offset if a developer provides infrastructure worth at least as much as the impact fee that would be imposed. He offered that he could not remember why there are no offset credits offered for this impact fee, but did note that the protected class status of the residents did make a difference to the Planning Board. He added that he was not trying to imply that those 62 and older weren't active and interested in recreation, but that they simply didn't have the required impact under the statute. T. Moore added that the walking trails and community gardens, open to the public, would be the exact thing that the Planning Board would typically give offset credits for.

T. Moore also noted that when impact fees are collected there has to be a capital expense related to those fees. If the growth related to the project caused a need to build additional facilities then an impact fee assessment would be in order. He added that once collected the Town has only six (6) years to spend the fund on a related capital project or encumbered if there is a capital project underway. He also noted

that other towns have had to refund large amounts of money for projects that have not gone forward.

T. Moore noted that there has been \$50,000 a year going into the Recreation Capital Reserve Account (CRA), which does not have the same spending time restriction as impact fees do, making it more like a savings account for the Town. It can be withdrawn as needed. He also noted that monies that are voted to go into Capital Reserve Accounts are incorporated in everyone's tax bill, including taxes that will be paid by this developer and therefore the Planning Board felt it was fair to support the waiver.

P. Bealo asked if the Board had any questions of T. Moore. There were none.

P. Bealo asked if there was anyone speaking in opposition to the application.

Sue Sherman, 3 Kimball Ave and 38 year resident of Plaistow and Christina Cruz, Plaistow Recreation Director offered opposition to the application.

S. Sherman offered that her perspective of recreation is somewhat different than what has been portrayed at this meeting. She noted that the Master Plan speaks to both active and passive recreation. Ms. Sherman noting that recreation is for everyone, including elders. She listed many of the projects included in the Recreation Strategic Plan including: walking trails, cross country skiing, bocce, horseshoes, dog park, community centers, adult fitness park, playgrounds, (golf) driving range, Frisbee court, nature and bird watching areas and she felt that this housing project did create a demand in many of these areas.

C. Cruz added that Plaistow provides many no and low cost programs from babies to seniors. She offered that it was important not to compare Plaistow to a Salem or a Londonderry as we are a unique community. C. Cruz suggested that \$24,000 (the estimated Recreation Impact Fee) wasn't going to stop this project in its tracks. She added that some of these seniors will be visited by their families, including grandchildren and could be using the town's recreation facilities for those visits.

P. Bealo asked B. Campbell if he had any closing remarks.

B. Campbell offered that he appreciated that advocacy for community recreation. He noted that approximately 50% of the residents will not have cars. He suggested that the grandchildren's visits do not create the demand in Plaistow, but in the communities where those children live.

B. Campbell explained that he felt the applicant has met the legal test for the granting of a variance. He added that this project will not create the demand for a project that doesn't already exist. He reminded that there was a six (6) year time frame for the spending of the impact fees and that the project will be providing many internalized recreational activities that will be open to the general public.

DELIBERATION

★T. Fisher moved, second by D. Lloyd, to grant the variance request for 18 Chandler Ave as described in the legal notice.

P. Bealo noted that it was an interesting use of a variance request.

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

Public Interest:

T. Fisher noted that for him it was a question of demand on facilities.

P. Bealo recalled that of twenty-five (25) units available there is a waiting list of forty-five (45) Plaistow residents.

J. Allen added that these are not new residents.

D. Lloyd noted that they are already paying taxes for recreation.

J. Allen offered that it was like his paying school taxes even though he's never sent a kid through the school system.

J. Blinn asked if this issue should have been decided prior to the project being approved. It was noted that Mr. Lewis was not the owner of the property when the Planning Board approved the project.

Spirit and Intent of the Ordinance:

There was discussion about the Planning Board's support of the waiver, even though the Recreation Department does not. It was also noted that any onsite recreation facilities could potentially be an offset to any impact fees imposed if the ordinance had allowed it like it does for other impact fees.

J. Allen questioned if there had been any other recreation opportunities in other developments.

P. Bealo noted that one project (Village Way) donated land to the town along Little River for future walking trails.

D. Lloyd offered that the project was never going to change into some different kind of housing because of its Federal funding.

Substantial Justice

The letter of support from the Planning Board was again noted and the fact that they would have most likely waived them if they could under the ordinance for this particular project.

Surrounding Property Values

This application does not change anything about the physical conditions of the property, so there will be no effect to surrounding property values.

Unnecessary Hardship

P. Bealo noted that this is not a usual variance request. He noted that this type of project was a low financial margin and will be providing internal recreational facilities.

J. Blinn asked if money from impact fees could go to the Vic Geary Center.

P. Bealo noted that it cannot go towards operating budget type expenses, only new capital investments.

D. Lloyd added that there was a big difference as this money would be coming from residents already operating on a fine line.

T. Fisher offered that if the impact fee is imposed it could deter the project.

There was discussion about how far along the project already was and how invested Mr. Lewis already is. There was doubt expressed that the project would stop if the variance was denied.

D. Lloyd noted that the developer chose Plaistow and that there were already forty-five (45) current residents on a waiting list. He suggested that a denial might mean that future like projects may not be brought to Plaistow.

T. Fisher suggested that there will be some demand on the recreation facilities for visiting families.

P. Bealo offered that they would be using existing fields, not building new ones.

D. Lloyd reminded that a percentage of everyone's taxes, including this project, are already funding recreation in Plaistow.

There was no additional discussion on the motion. The vote was 3-2-0 (Fisher and Allen dissenting) Motion passed.

#16-13: A request from METCON Realty, LLC, for a variance from Article IX, §220-60, to erect a replacement sign at the intersection of 144 Main St and the Town right-of-way having dimensions no larger than 16.5' wide and 15.5' wide - 256

square feet. The property is located at 144 Main St, Tax Map 41, Lot 11 in the VC District. The Town of Plaistow is the property owner of record.

Joseph Barbone, General Manager for METCON Realty, was present for the application.

It was noted for the record that a letter of authorization for the application, signed by Sean Fitzgerald, Plaistow Town Manager had been received with the application.

J. Barbone distributed copies of his presentation to the Board. The packet included pictures of other free-standing signs in the Village Center District; photos of the current sign and its surroundings; as well as renditions of what the proposed sign would look like. He noted that the sign will speak to the historic character of the district, resembling the old train depot currently located across the street, while providing adequate recognition for those trying to find the location.

J. Barbone offered testimony in support of granting the variance noting the following:

- The variance will not be contrary to the public interest; in fact it will enhance the public interest. The existing sign is not attractive or in keeping with the character of the Village Center District. The new sign will enhance the aesthetics of the area. It will also assist in directing traffic to the site and keep it from winding up further in the Village Center.
- The variance will keep within the spirit and intent of the ordinance because the design will preserve the character of the district. There will be architectural enhancements over the current sign. He noted that the current conditions of the sign location included the railroad crossing. It was also noted that there has been talk about moving historic railroad depot over to this side of the street. Mr. Barbone noted that the hip roof of his sign would mimic the roof of the depot.
- There is substantial justice to granting the variance as the visual impacts will be greatly improved. There is a plan for landscaping around the sign with small evergreens, perennials, annuals and other seasonally themed decorations.
- There will be no diminishment of surrounding property values; this sign will be an enhancement. The current sign is an eyesore and inconsistent with the Village Center District.
- The hardship with this property is that it is located in an Industrial District, but does not have any Industrial District road frontage. If the sign were located in the Industrial District they would be allowed a sign ten (10) times larger than the allowable in the Village Center District. If they did put a larger sign on their property it would serve no purpose as it would not be seen from the road. Not having a larger sign could also prohibit them from bringing additional business and additional jobs to Plaistow if they cannot provide signage for those new businesses.

There was no additional business before the Board. The meeting was adjourned at 8:49 p.m.

Respectfully Submitted:

Dee Voss
Administrative Assistant