



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

**ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
June 30, 2022**

The meeting was called to order at 6:30 pm

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

Also attending: Dee Voss, *Interim Zoning Official, Administrative Assistant* and Jim O'Brien, *ZBA Alternate Candidate*

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

P. Bealo explained the process the Board uses for hearing and deciding (deliberating) on each application. He 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

P. Bealo also noted that there were less than a full-member board and explained that each motion to grant had to be passed with at least three votes to the affirmative, meaning that all members present and eligible to vote at this meeting would have to vote in favor of granting the variance for it to be approved. It was also noted that when there are less than five members, the applicant had the right under the Board's By-Laws to request a continuance to the next meeting. It was also noted that should the applicant voluntarily decide to move forward with their application with less than a full board, they could not use the less than a full board as a reason to request a re-hearing.

Minutes of May 26, 2022

★ D. Lloyd moved, second by M. Murray, to approve the minutes from the May 26, 2022, meeting as written. There was no discussion on the motion.

Roll Call Vote: P. Bealo – abstain; D. Lloyd – abstain; J. Unger – abstain; M. Murray – yes. The vote was 1-0-3 and the motion is passed.

(it was noted that because the minutes are not a granting of relief, there can be a less than three (3) votes to pass, provided there is a majority)

PUBLIC HEARINGS:

Continued from May 26, 2022

#22-09: A request from David A. Jones for a Variance from Article V, §220-32B to permit landscaping contractor business in the C1 Zoning District, where is it not a permitted use. The

property is located at 14 Danville Rd, Tax Map 30, Lot 86 in the C1. The property owner of record is Danville Road Realty Trust, Jeffrey Peabody, TR.

David A. Jones, 138 Newton Rd, #14, Plaistow, NH was present for the application. Also present was Jeff Peabody, 37 Forrest Street, property owner.

D. Jones noted the following in support of his variance request:

- He would like to move both his companies (Neighbor's Oil and David A. Jones Landscaping) to this location
- He has two (2) trucks, some closed trailers and one (1) flatbed trailer
- No materials would be stored on the property. All materials are ordered per the job and delivered directly to the job location.
- Most of the vehicles and equipment would be stored inside the garage and he would be making use of the attached office
- Mr. Peabody has his trailers on the site, and it is anticipated that he will be retiring in two (2) years at which time Mr. Jones, or his family members associated with his business might purchase the property
- He would like to remove some of the asphalt and increase the curb appeal of the site with additional landscaping
- The removal of the asphalt and the increased landscaping was hoped would deter the current vehicle cut-through traffic
- When looking at his business long-term this was an excellent location, and he would like to make many improvements to the site

D. Lloyd questions the residential structure on the property.

D. Jones explained that the property owner's daughter was living in that house and would be remaining.

- There would be a backhoe on the site in the wintertime for snow removal
- He also has a skid steer

P. Bealo noted that if the variance would be granted there would be three uses on the property, Mr. Peabody's, the residential and Mr. Jones' uses.

D. Jones confirmed and talked about the improvements he would like to make to the property. He noted that presentation was critical to his business operations, and it would increase the value of the property and its resale. He noted that he has already done some repairs and updates to the building.

J. Unger asked where the trucks would be stored.

D. Jones noted that he would have three-quarters of the interior garage space for his use. He noted that his trailers are 14-16' and 22' long. He also noted that he has a six-wheel dump truck.

P. Bealo asked where the equipment was currently being stored.

D. Jones replied that it was at Valleyfield Condos, where he lives, as he is using it to maintain and make improvements for the condominium association.

P. Bealo offered that he had checked Google Earth and noted his vehicles there as far back as 2020.

D. Jones explained that he has been doing tree work, composting, construction, etc., all for, and at not cost to, the association. He added that he's been recycling the property from contamination and re-doing the parking lot and general property maintenance.

P. Bealo added that the equipment has been stored there for at least two (2) years, noting that it should be coming and going from the site as needed, not stored there.

D. Jones noted that he used to store his equipment at 6 Danville Rd, but the new owners are making use of the entire site and there's no room for it there any longer.

Mr. Jones was asked to respond to the criteria for the granting of a variance, with the following responses:

The proposed variance would not be Contrary to the Public Interest because there would not be any materials stored on the site, as that only increased his handling costs/

The Spirit and Intent of the Ordinance are preserved because he had garage space and a point of sales location on Red Oak Dr for fifteen (15) years.

P. Bealo noted that it was a permitted use in that district, at least at the time Mr. Jones first went into the property.

D. Jones added that 50% of his business is done from his office.

There is Substantial Justice in Granting the variance because he only had three (3) machines that he would be storing on the property. Mr. Jones added that he wasn't trying to build his business but was looking to maintain what has already been built. He reiterated that the location would reflect his business and that it wouldn't be a junk yard.

The Values of Surround Properties will not be Diminished because he was considering a landscaping and lighting competition. He again noted that it wouldn't be a junk yard and would look better than it currently does. D. Jones noted that his grandson wanted everything to look as good as a golf course and that he had also had his insurance company look at some of the trees on this site and the abutting site, where some are questionable and need attention.

P. Bealo asked what about the hardship; he asked what made this parcel unique in its setting, not more profitable to Mr. Jones, such that there would be a hardship in not granting the variance.

D. Jones responded that he didn't want this site to look like everyone else's. He said that he wanted people to knock on the door and ask how they made it look so good. He reiterated the improvements he

was making and also what he wanted to do. D. Jones noted that they are a small company of seven (7) employees. He noted that there were three (3) generations involved with the business.

M. Murray questioned where it was intended that the pavement would be removed.

There was discussion regarding the decreasing of the driveway to Danville Road so it would just be used for the residence and the business entrance would be on Greenough Rd.

There was additional discussion regarding the improvements Mr. Jones wanted to make to the site.

J. Peabody noted where the parking was located on his site plan.

D. Jones closed with his desire to invest in and clean up the property so that it would properly market his family business to the public and be something he could pass along to the next two (2) generations.

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 also noted that there were no emails or letters received prior to this public hearing. P. Bealo closed the public hearing.

DELIBERATIONS:

M. Murray moved, second by D. Lloyd, to grant the request from David A Jones for a variance from Article V, Table 220-32B to allow a landscaping contractor business at 14 Danville Rd, Tax Map 30, Lot 86 in the C1/Danville Road Overlay District. with the following conditions:

- ***Application to the Planning Board for site plan review must be made within 180 days of the date of this approval.***
- ***Failure to meet the above condition of approval will result in the variance being denied.***

P. Bealo offered that this was an interesting case but cutting to the chase he couldn't see a hardship in this property. He noted that it has been continually commercially used for many years. P. Bealo added saying that there would not be materials stored on site was nice, but difficult to enforce especially if the future generation look to expand the business over time.

D. Lloyd agreed, noting that the sad part is that the site would be cleaned up.

J. Unger added that he had no doubt the site would look good, but he also could not see the hardship in the land.

The Board reviewed the variance criteria with the following findings:

- **Public Interest:** There was no evidence presented by the applicant to show that the variance would not be contrary to the public interest. The Board acknowledges that Mr. Jones stated that he had many site improvements planned, and they do not doubt that he would make those improvements. However, that does not provide evidence with regard to the non-permitted use and whether or not it would be contrary to the public interest. There was concern expressed that while Mr. Jones noted he would be limiting his

- landscaping use, that he also noted that he would be passing the business on to the next two (2) generations, and there was concern that there would be future expansion of the landscaping use.
- Spirit and Intent of the Ordinance: Similar to the public interest, the Board had concern regarding the expansion of the use in the future.
 - Substantial Justice: There was no evidence presented by the applicant that supported that his loss in the denial of a variance would not be outweighed by a gain to the general public. The Board expressed concern that there was already two (2) approved uses on the property, and a residential use, and they had concern over allowing a third use, particularly one that is not permitted in the district and how that would impact the general public.
 - Surrounding Property Values: While the Board acknowledges that Mr. Jones would likely improve the aesthetics of the site, which wouldn't adversely impact surrounding property values, there was no evidence presented to the Board that supported whether an additional business use would not diminish the surrounding property values.
 - Unnecessary Hardship: The Board found that there was no evidence presented regarding any unique characteristics of the parcel, in its location, that cause a hardship by denying the variance. The property has had a number of successful permitted commercial uses over time, and there was no evidence presented that supported that wouldn't be true in the future.

Roll Call Vote: D. Lloyd – no; J. Unger – no; M. Murray – no; P. Bealo – no. The vote was 0-4-0 and the motion was defeated, and the variance is denied.

Other Business:

Changes to the Zoning Board's By-Laws.

D. Voss read two (2) proposed additions to the Board's By-Laws. The Board discussed the genesis of each proposed addition and the clarity they provided to the Board's process.

Under the Public Hearing Section add:

- *Once a public hearing has been closed, there shall be no additional input provided to the Board in support of, or opposition to, the application. An application may not be withdrawn once the public hearing has been closed and the Board begins deliberations.*

Under the Decisions Section add:

All motions for relief will be made in the "to grant" format and shall be passed by at least three (3) votes to the affirmative. Any motion to grant relief that does not pass by at least three (3) votes in the affirmative shall be considered as denied.

As per the Board's By-Laws, there will be a second reading and a vote to adopt at the next meeting.

Membership

New Alternate – Jim O'Brien

The Board had a discussion with J. O'Brien regarding his application to become an alternate member to the Board.

P. Bealo moved, second by D. Lloyd to endorse the appointment of Jim O'Brien as an alternate member of the Zoning Board of Adjustment (ZBA).

Discussion:

It was noted that the ZBA can only make the recommendation for appointment; the Board of Selectmen (BOS) will make the decision.

Roll Call Vote: J. Unger – yes; M. Murray – yes; P. Bealo – yes; D. Lloyd – yes. The vote was 4-0-0 U/A.

With the resignation of Gary Ingham, there is an open space on the Board. J. Unger was asked if he would be willing to fill that space, and he agreed.

P. Bealo moved, second by D. Lloyd to recommend to the Board of Selectmen that J. Unger be elevated to a regular member position on the ZBA. There was no discussion on the motion. Roll Call Vote: M. Murray – yes; P. Bealo – yes; D. Lloyd – yes; J. Unger – abstain. The vote is 3-0-1 and the motion is passed.

There was no additional business before the Board and the meeting was adjourned at 7:35 p.m.

Respectfully Submitted:

Dee Voss
Administrative Assistant