



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

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
August 25, 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
Jim Unger
Michael Murray, *Alternate*
Jim O'Brien, *Alternate*

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

★ *M. Murray was appointed as a voting members for this meeting.*

Larry Ordway – Remembrance

P. Bealo asked for a moment of silence for the passing of Larry Ordway, long-time member, and chair of the Plaistow ZBA.

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 July 28, 2022

★ *D. Lloyd moved, second by M. Murray, to approve the minutes from the July 28, 2022, meeting as written. There was no discussion on the motion.*

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

PUBLIC HEARINGS:

NOTICE OF CONTINUANCE:

D. Voss read a request for a continuance from the following applicant:

#22-13: A request from Destiny and Joshua Carter for a Special Exception under Article X, for a home occupation, namely a family daycare for not more than six (6) children not living in the home. The property is located at 29 Autumn Cir, Tax Map 48, Lot 13, in the LDR Zoning District. The applicants are the property owners of record.

P. Bealo stated that ZBA matter #22-13 is continued to September 29, 2022.

#22-11: A request from Sweet Hill Farm, LLC to Appeal the Administrative Decision of the Building Inspector/Code Enforcement Officer's issuance of a Stop Work Order. The property is located at 82 Newton Rd, Tax Map 68, Lot 8 in both the ICR and LDR Zoning Districts. The applicant is the property owner of record.

D. Voss reminded that ZBA Matter #22-11 had been previously continued from July 28 to October 27, 2022.

#22-12: A request from Carol Sheehan, for a variance from Article V, §220-32I to allow a shed to be placed 6' from the side property line where 15' is the minimum required. The property is located at 12 Evans Ave, Tax Map 39, Lot 71, in the MDR Zoning District. The applicant is the property owner of record, with Denise E. Stewart having a life estate in the property.

Carol Sheehan, 12 Evans Av, was present for the application.

C. Sheehan noted the following regarding the application:

- The application is for the placement of a residential shed
- The property was approximately 100' X 100"
- The locations of the septic and leachfield were noted as being in the way of placing the shed elsewhere
- There is a chain link fence around the subject area of the property
- The immediate abutter has an 8' privacy fence on the other side of the chain link fence
- There is a well-manicured garden area to the rear of the property and there is a wooded area in back of that

The Board reviewed pictures provided by the applicant of the subject area.

D. Lloyd asked if there would be a door on the front or the side and if the shed would be on footings.

C. Sheehan replied that there would be two (2) doors, a walk-in and a larger one, and the shed would be on footings.

C. Sheehan provided the following responses to the five (5) variance criteria:

- The proposed variance would not be Contrary to the Public Interest because there are woods on the back of the house and side of the shed. The neighbor has a tall fence that would be on the back of the shed. It will fit perfectly and be six (6) feet away from his privacy fence.
- The Spirit and Intent of the Ordinance are preserved because the shed will be constructed to match my house, same color, etc., and it will look like it was built when the house was.
- There is Substantial Justice in Granting the variance because the applicant does not have adequate storage. There is no basement or attic. The applicant also cares for her mother, who is 93 years of age, and much of her belongings are stored in the garage leaving no room for lawn care and recreational equipment.
- The Values of Surround Properties will not be Diminished because the shed will be built of quality materials, same style, and color as the primary dwelling.
- Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship:
 - o 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: There is no water hook-up or electricity. This will not be a living space, just storage
 - o The proposed use is a reasonable one because: the current requirement would put the shed too close to the house

There was discussion regarding the location of the septic and leachfield locations and how they impacted the placement of a shed. It was also noted that there is an incline in the backyard that would need to be dug into if the shed were forced to be placed elsewhere.

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, or if anyone had general questions. There was no one. It was confirmed that no letters or emails had been received prior to the meeting.

P. Bealo questioned if the applicant had anything else to add, there was nothing and the public hearing was closed.

DELIBERATIONS:

★ J. Gifford moved, second by J. Unger to grant the variance request for 12 Evans Ave, Tax Map 39, Lot 71, to allow a shed structure to be placed 6' from the property line, where 15 feet is the minimum required, with the following conditions:

- ***The shed must meet the rear setback requirement of 15' from the property line***
- ***The applicant may be required to provide confirmation from a NH Licensed Land Surveyor if the property line cannot be definitely confirmed to insure compliance with the granting of this variance***

Discussion:

J. Unger offered this as a reasonable request in that this was a small lot, and a shed is reasonable.

P. Bealo noted that he saw the slope as a hardship in the land in addition to the size.

M. Murray added that this was the only location for the shed considering the septic and leachfield.

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 lot is relatively small in size, and a shed is a reasonable residential use
- The Spirit and Intent of the ordinance are preserved because the shed is not proposed to be right against the line and there is a privacy fence between the two properties on the affected side
- There is Substantial Justice in granting the application because there is no gain to the public in the denial of the application
- Surrounding Property Values will not be Diminished because the applicant has demonstrated that they maintain a nice yard, and propose an attractive shed that will not diminish this property's value or those of others
- Literal enforcement of the provisions of the ordinance would result in unnecessary hardship because the applicant has demonstrated that this is the only location the shed can reasonably be placed without impacting the septic system or requiring significant excavation and disruption of the land.

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

#22-14: A request from Josh Manning, Lewis Builders Development, Inc, for a variance from Article V, §220-32.F.C(1)(b) to allow a property to be subdivided into two (2) parcels with less than the required 200' of frontage for each parcel. The two (2) parcels are proposed to have 157.6' and 157.7' of frontage. The property is located at 17 Harriman Road, Tax Map 50, Lot 78 in the LDR Zoning District. Gerald E. Holt is the property owner of record.

Attorney Patricia Panciocco, counsel for Lewis Builders; Gerald Holt, 17 Harriman Road; Besty Rensa, 92 Sweet Hill Rd; Lucia Nicolosi, 17 Harriman Road and Joseph Coronati, Jones and Beach Engineers, were present for the application.

P. Bealo noted that the applicant had been before the Board previously for a similar application. He cited the Fisher v. Dover decision that notes an applicant may not apply for something that has already been denied, however, they can make changes to that application and submit a new application. The new application is to be treated as a separate and distinct application from the first.

P. Panciocco provided the Board with some handouts that included tax maps, with certain properties in the area highlighted. Along with the tax map where subdivision plans for the highlighted areas. She also noted that this is a new application.

P. Panciocco summarized the application for the Board noting the following:

- There was a previous application that was denied
- The applicant has taken the Board's feedback into consideration when preparing this new application
- The previous application form was out of date with the current statutes
- The comments are materially different from the previous application

P. Bealo noted that in the application a previous Board member was quoted. He added that there were no board-level recommendations made and that quoted member is no longer a part of the Board.

P. Panciocco noted there was a lot learned in the previous application and that should be reflected in this plan.

P. Panciocco explained that a previous owner of this property (Urbina-Martin) had received a variance for this same request in 1996. However, since the Town adopted that language regarding older variances that had not been exercised, the variance that was granted in 1996 has now lapsed.

P. Panciocco reviewed the provided zoning map with the Board, noting multiple subdivisions that had been approved over time and their common features. There was emphasis placed on lots in proximity to the subject property and having 150' or less of frontage. It was noted that with zoning changes over the years, many of the lots had become non-conforming with the 200' frontage requirement.

The applicant provided a letter from Keach-Nordstrom Associates (KNA) regarding the frontage of the property as it relates to line of sight. It was noted that some removal of trees and other vegetation would be required to achieve adequate sight distance.

P. Panciocco noted the following in support of the application:

- This is the only access to the property as there is no other frontage
- The owner would like to subdivide, retaining +/-3A for himself and selling off the remaining +/-46A
- The property is primarily residentially zoned
- There is a curve in the frontage on Harriman Road in front of this property
- The variance would create a non-conformity, but it will fit in with the other lots in the neighborhood
- Each lot will conform to land area requirements of the district
- There would be an easement prepared that would address the maintenance of the line of sight

P. Bealo questioned if the lot sizing was calculated as contiguous uplands.

J. Coronati confirmed that is was.

- The sight distance was calculated where the driver's head would be as they were exiting the property
- The easement would give the rights to clear the brush and cut tree limbs that impacted the sight distance
- The line of sight was calculated at 300' in either direction, which was 25' more than recommended in the KNA letter for speed and slope of the road
- A small section of the property will need to be graded to be able to see over the knoll, which would be included in the easement

J. Unger questioned the line of sight easement as to who's property it would be on.

J. Coronati offered that it would not be on the larger (Lewis Builders) parcel, but it would express that the Town would have the right to clear the easement. It would be on the Holt property.

P. Bealo noted that it should state that it's the owner's responsibility to maintain the easement.

P. Panciocco suggested that there were two different things being discussed. The easement would be for the benefit of the 46A parcel for line of sight. It was recommended that the easement be written so as to allow the Town to do what is necessary to make it safe for the traveling public.

J. Coronati added that the grading and clearing would help everyone along Harriman Road.

D. Lloyd offered, only if it is maintained. He added that there was way too much emphasis on the public maintenance of the easement. He noted he had concern over hypotheticals and what ifs if the easement is not maintained by the property owner.

J. Coronati reiterated that the Town could be provided with the rights to do the work, adding that lots of properties have sight distance issues.

M. Murray asked if the initial responsibility would be with the property owner.

P. Panciocco replied that it would unless the Planning Board were to decide differently.

There was a discussion about how far back on the 46A parcel a structure would be set. The applicant proposed that there would be no structures closer than 235' to Harriman Road.

P. Panciocco reviewed for the Board the variance criteria from the application noting the following:

Note: All exhibits are available in the ZBA file.

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

This Application requests relief from the Town of Plaistow Zoning Ordinance ("Ordinance") 200-foot frontage requirement in the Low-Density Residential Zone found under Article V, §220-32F.C(1)(b) to allow the Property to be subdivided into 2 lots: (a) the first with 157.6 of frontage; and (b) the second where Mr. Holt's home is located with 157.7 feet of frontage.

Granting this New Application will not be contrary to the public interest served by frontage of controlling lot sizes, preventing overcrowding and ensuring safe emergency vehicle access. Most lots located along Harriman Road were created before 1986, including those abutting the Property on either side, when only 150 feet of frontage was required by the Ordinance.

The proposed lots will have at least 157 feet of frontage, approximately 21% less than currently required. Both lots will otherwise conform with the Ordinance and any proposed structure located on the vacant lot will be set back 235 feet from Harriman Road.

As opined by Member Burri during the ZBA's July 29, 2021 deliberations, it is more consistent with the public interest for the 2 new lots to mirror other properties in the neighborhood. For this reason, the proposed frontage for each proposed lot includes more than 157 feet, more than many lots along Harriman Road.

P. Panciocco offered that for something built on the 46A to be injurious to the public it would need to markedly conflict with the public interest.

The Spirit and Intent of the Ordinance is observed because:

Whether a variance violate basic zoning objectives requires the board evaluate whether: (1) it will alter the essential character of the neighborhood; or (2) threaten public health, safety, or welfare. The New Application does not propose a use not permitted under the Ordinance and would therefore, not change the essential character of the neighborhood.

As to whether granting the New Application would adversely impact public health, safety or welfare requires examination of the purpose of frontage, specifically whether it would increase overcrowding or prevent safe access for emergency vehicles. Granting this variance to allow new lots with 21% less frontage than required by the Ordinance, but more frontage than many lots in the surrounding area, will not increase hazards to motorists or pedestrians, nor will it increase traffic in any measurable way because the use of those lots will be consistent with other lots in the area.

To enhance public safety, if a subdivision plan is approved, a sit distance easement will be granted to the Town as shown on the attached Plans and the easement area will be improved as described, and in accordance with the recommendations made in the July 27, 2021, Review Letter from Keach Nordstrom Associates, Inc. As KNA's report stated, this will bring the site distance at the end of the new proposed driveway into conformity with the Town's regulations and substantially improve visibility for the members of the public when traveling along the Harriman Road frontage of the Property.

There is Substantial Justice in Granting the variance because:

When considering whether substantial justice is done, the board must weigh any public gain by strictly enforcing the 200-foot frontage requirement against the loss suffered by the Applicant. The public stands to gain nothing from denying the New Application to strictly enforce the 200-foot frontage requirement but the Property owner will suffer a substantial loss.

The 2021 KNA report opined motorist visibility along the Harriman Road frontage of the Property would be improved by removing trees and brush and reducing the elevation of the easement area. During its July 29, 2021 deliberations on the original Application, certain board members acknowledged those benefits would enhance public safety. For these reasons, granting this New Application would be substantially just.

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

The New Application requests a 21% reduction in the 200-foot frontage requirement for each of the 2 proposed lots. The resulting frontage will be equal to or greater than the frontage of surrounding lots. Mr. Holt's home will remain on one lot and any single-family home built on the second lot will be set back from the road by 235 feet to maintain proper spacing and privacy. The planned residential use of these lots will not reduce the value of surrounding properties now or in the future.

Literal enforcement of the provision of the ordinance would result in Unnecessary Hardship because:

First test:

- a. 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:
 - i. Special Conditions - The Property's special condition is its single access point along its 315.2 feet of the oddly curved frontage along Harriman Road. The fact that the frontage is 315.2 feet prevents any reasonable use of the remaining 46 +/- acres located to the rear because it cannot be separated for use without Mr. Holt giving up his home because numerically it is not evenly divided in conformity with the Ordinance See Tax Map 50. This uniquely shaped Property is unlike any other in the surrounding area as illustrated by the Tax Map, but because it was not subdivided before 1986 when 150 feet of frontage was required, it cannot be subdivided into 2 lots in 2022 in conformity with the Ordinance without a variance.
 - ii. Fair & Substantial Relationship Between 200-foot Frontage as Applied to the Property – When the 200-foot frontage requirement in the Ordinance is strictly applied to the Property, it imposes an unnecessary hardship and denies Mr. Holt of any reasonable use of the acreage located to the rear unless he gives up his home. The fact that homes are located on most lots in the area; they are not overcrowded; and emergency vehicles access is not impeded; confirms the absence of any fair or substantial relationship between an additional 50 feet of frontage in this area of Plaistow and the public purpose served by the 200-foot frontage requirement. Mr. Holt should not bear this unnecessary hardship alone and need to leave his home to subdivide and sell his acreage.

(Is the restriction on the property necessary to give full effect to the purpose of the ordinance or can relief be granted to this property without frustrating the purpose of the ordinance?)

b. The proposed use is a reasonable one because:

Granting the New Application to allow a 2-lot subdivision where each lot has at least 157 feet of frontage, in an area where most lots have 150 feet is reasonable.

(The applicant must establish that, because of the special conditions of the property, the proposed use is reasonable.)

Alternative Test Under RSA 674:22(1)(B)

“If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.”

The 46 +/- acre portion of the Property and its corresponding excess frontage “cannot be reasonably used in strict conformance with the ordinance” because its 315.2 feet of frontage along Harriman Road is not evenly divisible by the required 200-feet of frontage. Mr. Holt’s reasonable desire to remain living in his home and his need to sell his acreage requires a variance to reduce the required frontage to a minimum of 157 feet each to reasonably use that acreage.

P. Bealo notes that Mr. Holt’s desire to remain in his property seems could be accomplished with another form of a subdivision, such as a Planned Residential Development (PRD), where that property would be a lot that could be later conveyed to Mr. Holt.

J. Coronati offered that the buyer doesn’t plan to develop the 46 acre lot and would have to build a road to provide frontage.

D. Lloyd asked for confirmation that there were no plans to develop the property.

P. Panciocco responded that there were no immediate plans to develop the property. She reiterated that the variance was previously granted in 1996 and admitted that Mr. Holt did not take advantage of that variance, which has now expired.

P. Bealo noted that he had recently seen a posting for this property on Realtor.com that it was actively being marketed with a drawing for eight (8) units.

P. Panciocco offered that she knew nothing about the Realtor.com posting.

J. Gifford offered that the 235-foot setback that was being offered was a great sales pitch, but that part of the property couldn’t be built on anyway.

P. Panciocco noted that they propose that distance to preserve the spacing between structures.

D. Lloyd expressed concern over the curve of this section of Harriman Road.

P. Panciocco noted that they have illustrated that they could have created the 150' frontage that was allowed prior to the ordinance change.

J. Unger added that 20% grade would not allow for the placement of a house.

P. Panciocco offered that they were asking for the same frontage that was previously granted and added they were increasing the safety for Harriman Road.

J. Unger noted that it was still "fuzzy" who would be responsible for maintaining the easement.

P. Bealo suggested that would be a Planning Board issue.

P. Panciocco explained that the responsibility to maintain the easement would be on the Holt property unless the Planning Board asked for an easement to give the Town access.

J. Coronati added it would be a back up if the owner doesn't maintain the property.

P. Bealo asked if the Board had any additional questions. There were none.

P. Bealo asked if there was anyone speaking in favor or in opposition to the application. There was no one. It was confirmed that no letters or emails had been received.

P. Bealo asked if there was anyone with general questions.

Michelle Plant, 68 Forrest Street asked how many houses could go on the larger lot.

P. Bealo explained that the only issue before the Board was the question of the frontage for a two-lot subdivision. If the applicant prevails with the ZBA they would then need to go to the Planning Board for the subdivision application and all abutters would be notified for that application.

P. Panciocco closed with she hoped the Board would find in favor of their application which she noted would be a win/win for all.

P. Bealo closed the public hearing.

DELIBERATIONS:

★ J. Unger moved, second by D. Lloyd, to grant the request for a variance from Article V, Table 220-32F.C(1)(b) to allow the property at 17 Harriman Road Tax Map 50, Lot 78 lot to be subdivided into two (2) lots with 157.6' and 157.7' of frontage, where 200' is the minimum required, with the following conditions:

- A subdivision application must be filed with the Plaistow Planning Board within 180 days of the date of this decision or the approval of the variance is denied***

- *A sight distance easement shall be referenced in any deeds conveying either lot created by the subdivision plan, the easement shall require any property owner be responsible for the maintenance of the sight distance as shown on the sight distance profile plan, dated February 11, 2021 with revisions through August 6, 2022, represented as Exhibit A(2) at this meeting.*
- *The sight distance profile plan, Exhibit A(2), as presented at this meeting, is included with the subdivision plan that is submitted to the Planning Board.*
- *The sight distance easement to be prepared by Owner in favor of the Town of Plaistow shall have language that notes the costs of continually maintaining the required site distance are the responsibility of the property owner(s).*
- *This variance is valid only for subdivision of the lot as depicted on the plan titled "Harriman Road Subdivision" and dated February 1, 2021 with revisions through August 6, 2022, as submitted with the application. Any change in the frontage calculations will invalidate this variance.*
- *Revisions to the Plan, as may be required by the Planning Board during their subdivision review process, that do not change the frontage as granted by this variance, will not invalidate this variance.*
- *Any house structures shall be placed at least 235' back from the Harriman Road property line.*

Discussion:

J. Unger noted that it would be an improvement for sight distance in the area. He also acknowledged the 150' foot frontages of the other lots that were before the zoning had changed for this area.

P. Bealo noted that Mr. Holt had ample time to exercise the previous variance even after the vote to limit the time to do so.

D. Lloyd offered that he had concerns over the maintenance of the proposed easement and whether or not it would be maintained by the property owner or would fall back on the Town. He added this was already a busy road with a lot of traffic.

J. Gifford added that he had concerns for the winter and this easement becoming a spot where snow is piled up, which would impact the sight distance.

D. Lloyd agreed, comparing it to the intersection of Pollard and Harriman Roads where there is an open space for sight distance that is frequently impacted in the winter with piles of snow.

J. Gifford offered that maintaining the sight distance would be difficult for 3-4 months out of the year.

P. Bealo offered that the applicant would need to understand that they would be maintaining the sight distance year round.

J. Gifford expressed concern over the easement be given to the Town and whether that would create a liability if the easement was not maintained.

P. Bealo also noted that the easement would be a spot where political signs would be placed and impact the sight distance.

Findings and Variance Criteria:

- There are proposed improvements to the sight distance, however there is concern over the maintenance of the proposed easement and liability if the easement is not maintained
- The proposed easement could potentially create a spot for snow storage in the wintertime that would impact the line-of-sight, similar to what currently occurs on the corner of Pollard and Harriman Roads
- The applicant presented evidence that there was a variance granted to a previous owner for the same request in 1996, which because of a change in State Legislation and Zoning has since expired for not being timely exercised
- The application is not Contrary to the Public Interest as it was shown that there are multiple existing lots in this area that are less than the proposed 150'
- The Spirit and Intent of the Ordinance is preserved as there is no threat to the health, welfare, or character of the neighborhood. The concern for the Board was how the line-of-sight easement would be enforced and if there would be any liability to the Town if it is not maintained
- There would be Substantial Justice in the granting of the variance in that the applicant would lose more in a denial of the variance than the public would gain
- There was no evidence presented that shown impact either to improve or diminish the surrounding property values. The applicant did offer that there were no current plans for the development of the 46A residual parcel, however it was noted that there was a posting on Realtor.com for eight (8) proposed lots. The listing did note that there was not yet an approved subdivision
- The hardship proposed by the applicant was that Mr. Holt would lose his home if the variance was not granted. The Board found that that was not a hardship specific to the unique conditions of the land in its environment. The applicant acknowledged that they did not exercise the previous 1996 variance in the allowed timeframe. The Board also suggested that the home lot could be preserved by exploring the possibility of Planned Residential Development Subdivision as an alternative.

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

#22-15: A request from Kennish, LLC, for a variance from Article V, §220-32 & Table 220-32E to allow multiple occupancy of not more than six (6) unrelated persons in a single-family dwelling. The property is located at 16 Atkinson Depot Road, Tax Map 24, Lot 2, in the MDR Zoning District. The applicant is the property owner of record.

Attorney Chris Thornton, and Robert DeFazio, Kennish, LLC, were present for the application.

C. Thornton explained the Kennish, LLC, the property owner of 16 Atkinson Depot Road would like to have occupancy of the residential structure on the property, by up to six (6) unrelated persons. He noted that the persons to be housed were veterans who were being assisted by an organization called Veteran Northeast Outreach Center (VNOC) who were providing transitional to long term housing. He noted that by ordinance they could house up to four (4) unrelated persons, but they were looking to allow up to six (6).

Note: C. Thornton make multiple references to the ordinances allowing up to four (4) unrelated persons to cohabitate, however, a search of the Plaistow Zoning Ordinance could not confirm the statement made by Mr. Thornton.

P. Bealo offered that he understood what the intent was but that it would pose an enforcement issue as to who actually lives in the dwelling.

C. Thornton offered that only eligible veterans would be housed and under limited conditions. He added it could be incorporated into the master lease with VNOC.

P. Bealo noted that the variance would go with the land, and the Town does not have resources to check the status of current residents or future if the property were to be sold.

R. DeFazio explained that VNOC houses homeless veterans who are required to work through a program and get into permanent housing. He noted that VNOC covers the taxes for the property as part of the lease.

There was discussion regarding who would be housed in the dwelling. It was noted by the Board that the issue was not with who the residents would be, but with this type of communal living not being a permitted use in this zoning district.

R. DeFazio noted that he had purchased the property with this use in mind for the veterans.

C. Thornton offered that the last residents were members of the Post family, the previous property owners who were all working and living together. He added that the property is now dominated by the Dover Saddlery business use on the property and the single-family dwelling doesn't make sense. It was noted that the abutting properties on either side were commercial uses and there were significant wetlands to the rear. It was also noted that there were industrial uses not far from this property.

P. Bealo noted that there was already one (1) non-conforming use of the property, and the intent is always to move properties closer to compliance, not farther from it.

C. Thornton suggested that the character of this neighborhood would not see any changes and the structure would keep the status quo of the residential use.

D. Lloyd asked what was meant by "transitional" housing.

C. Thornton replied that they were nearing a permanent placement.

R. DeFazio added that veterans cannot be helped unless they are homeless for one (1) year under some grants.

D. Lloyd asked if there were rules in place for the residents.

R. DeFazio responded that they all had to have jobs and case managers.

J. Unger questioned if the house would be staffer.

R. DeFazio answered that it would not be, but VNOC was just down the road.

P. Bealo suggested that it was not unlike assisted living.

C. Thornton added that it was communal without staffing.

M. Murray asked if the residents purchased their own food. It was confirmed that everyone shared the kitchen for meals on their own.

J. Gifford offered that he wanted to emphasize that this application had nothing to do with who was being housed. He added that he was a great supporter of veterans and that this was a worthy service but noted that the Board still had to consider the land use and the variance criteria.

C. Thornton offered the following response to the variance criteria:

From the application:

- The proposed variance would not be Contrary to the Public Interest because: Veteran homelessness is endemic in America. Too many veterans are denied access to safe housing due to the restrictive zoning that prevents affordable options. Many members of the Plaistow Community are themselves veterans or have a family member that is a veteran and see the need that exists for today's generation. Currently a portion of the property is occupied by a pre-existing, non-conforming use by a commercial/retail business (Dover Saddlery). Separately the property has a large residential dwelling previously occupied by the prior owner's family. The new use will be undetectable to residential abutters and the surrounding neighborhood and district. Absent an allowance of the variance sought a vital segment of the community would be disadvantaged to the detriment of the public good. Alternatively, if the variance is granted, the allowance would be consistent with the public interest by creating inclusive housing opportunities to underserved veterans in the community.
- The Spirit and Intent of the Ordinance are preserved because: The applicable zoning district allows residential uses, but is hot to several pre-existing, non-conforming structures and uses. Each of the neighboring non-conforming structures and uses are similarly situated on the southerly side of Atkinson Depot Road and is apart and aside from any immediate residential abutters. The proposed use only expands access to residential occupants within a

residential dwelling that is already properly situated within the District on a site that is primarily characterized by a pre-existing, non-conforming commercial use as a retail establishment. As the dominant use on the site, the commercial/retail use would be in harmony with the modestly increased intensity that the proposed use would create. Whereas, to limit the applicant to use solely as a single family residence would impose an unnecessary hardship on the applicant without an attendant prediction of the interests for which the Zoning Ordinance is intended to protect.

The variance will allow only the expansion of the residential use congruent and compatible with the existing low impact retail commercial use without overburdening the district or creating and diminution in value to the surrounding properties.

- There is Substantial Justice in Granting the variance because: The Ordinance is intended to preserve the characteristics of the district as neighborhood of single-family and duplex townhouses in an urban fringe setting. By granting the variance, the Board will allow and underserved segment of the community access to housing opportunities within the District consistent with its objectives and characteristics that would not otherwise exist within the district. The benefit to the community will be had without any appreciable impact on the rights and interests of the public and those in the neighborhood, and denial of the same would only limit the Applicant's use without a corollary protection of any abutter's rights. As a result, such a denial would be without gain to the public good and would therefore be an injustice.
- The Values of Surround Properties will not be Diminished because: The site will remain as currently developed without further modification unless ordered by this Board. The site is currently used as mixed use retail/residential with light commercial traffic. The proposed use as residential housing will not meaningfully impact traffic, noise, congestion, or public safety concerns, nor will it change the esthetic character of the site or buildings currently thereon. There will be no injury to public/private interests.
- Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship:
 - o 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 purpose of the ordinance is to accommodate residents in an urban-fringe setting. The proposed use would allow residential use in a slightly higher intensity by expanding housing opportunities to unrelated individuals who are members of an underserved population without any appreciable impact on the surrounding neighborhood. It would be a reasonable accommodation to allow persons with a recognized need to reside within the district that would not otherwise exist but for the grant of the relief sought. No reasonable relationship exists between the limited occupancy within an existing single-family residence and the use for residential purposes by individual veteran residents in a single-family residential setting that otherwise would be denied fair access to affordable housing within the District. By granting the variance residents previously denied

such housing opportunities would gain access to safe and affordable housing within the community, which opportunities would not otherwise exist.

- The proposed use is a reasonable one because: The site has historically had a mixed use as a retail/commercial site and a residential home site. The property is separated from the neighboring residential structures and uses within the District by virtue of the fact that it is located between the southerly side of Atkinson Depot Road and New Hampshire state boundary with Massachusetts. It is situated abutting other non-conforming structures and uses, including a house of worship and day care provider. The proposed use would be consistent with the residential intent of the ordinance by providing residential occupancy in a single-family setting, in a location that has historically had greater intensity upon the property than residential alone. Strict enforcement of the ordinance would only serve to limit the residential housing opportunities within the district to an underserved segment of the community without a gain to the public good.

P. Bealo noted that he didn't see the hardship in being in land itself. He added that he had concerns over adding an additional non-conforming use, to a site that was already non-conforming. He reminded that all five (5) of the variance criteria would need to be met.

C. Thornton offered that he had hoped that that Board could weigh each element and since the Public Interest was so strong in the creation of needed housing that the Board could apply that weight to other criteria.

J. Gifford added that granting the variance would add a second non-conformity to the site. He reiterated that the fact that the housing was intended for veterans is not the point. He offered that his mind was in one spot, and his heart in another.

P. Bealo noted that the criteria must be weighed individually.

C. Thornton suggested that to meet the threshold some stronger criteria responses could be offset to the weaknesses.

J. Gifford noted that the Post family used the structure as a single-family home for many years. He added if the applicant didn't do his due diligence prior to the purchase of the property that did not create a hardship for the Board.

C. Thornton offered that the general provisions of the ordinance allowed for four (4) communal residents, they were seeking to have that expanded to six (6).

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, or if anyone had general questions. There was no one. It was confirmed that no letters or emails had been received prior to the meeting.

P. Bealo questioned if the applicant had anything else to add, there was nothing and the public hearing was closed.

DELIBERATIONS:

★ J. Gifford moved, second by P. Bealo, to grant the request for a variance from Article V, Table 220-32E to allow the property at 16 Atkinson Depot Road, Tax Map 24, Lot 2, to be used to house six (6) un-related individuals in a single-family dwelling with the following condition(s):

- ***A site plan application must be filed with the Plaistow Planning Board within 180 days of the date of this decision or the variance is denied***

Discussion:

J. Unger noted that what is decided will go with the land in perpetuity. He added that who was residing in the dwelling seemed unenforceable, and if it were, the Town does not have the resources.

The Board agreed that assistance to veterans was laudable and important, but that it wasn't enforceable going forward.

There was also discussion regarding adding a second non-conforming use to a parcel that already has a non-conforming use. The intent is to bring properties closer to compliance whenever possible.

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

- The variance, if granted would go with the land. There was concern expressed that making it exclusive to a veteran use would not be enforceable.
- There is already a non-conforming use of the property that existing prior to the current zoning of the property.
- The property owner created the non-compliance issue by not investigating if the use would be permitted prior to purchasing the property.
- It is not in the Public's Interest to grant a variance that would allow a communal use of property in a residential zoning district. The Board decided that the use by veterans, while commendable, was not a relevant factor for the public's interest as it was not practically enforceable.
- There is already a grandfathered non-compliant use of the property and increasing the non-compliance by adding additional commercial use, is not in keeping with the Spirit and Intent of the zoning ordinance.
- There is not Substantial Justice in the granting of the variance as this would be adding yet another non-conforming use to a property that is already non-conforming, which is a loss to the public.
- There was no evidence presented regarding the impact to surrounding property values, but the Board did not feel that there would be an impact.
- There is no hardship in the unique conditions of the land as the building has been consistently used as a single-family dwelling for many years. The property owner created a

personal/financial hardship by not investigating the viability of the proposed use prior to the purchasing of the property.

Roll Call Vote: J. Unger – no; M. Murray – no; P. Bealo – no; D. Lloyd – no; J. Gifford - no. The vote was 0-5-0 and the motion was defeated.

There was no additional business before the Board and the meeting was adjourned at 9:10 p.m.

Respectfully Submitted:

Dee Voss
Administrative Assistant

