



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

**ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
September 29, 2022**

The meeting was called to order at 6:30 pm

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

Dee Voss, *Interim Zoning Official, Administrative Assistant, excused*

★ *M. Murray and J. O'Brien 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 noted that there were only four (4) voting members available for this meeting and noted the significance of the lack of five (5) members as it applies to the voting structure. It was noted that the lack of a five-member board would not be considered as a reason for considering any re-hearing request.

Minutes of August 25, 2022

★ *M. Murray moved, second by J. Unger, to approve the minutes from the August 25, 2022, meeting as written. There was no discussion on the motion.*

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

PUBLIC HEARINGS:

#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.

Destiny Carter, Joshua Carter, applicants, and property owners 29 Autumn Cir and Jennifer Legere, 6 Forest St, Exeter, NH, owner A Place to Grow (remote) were present for the application.

D. Carter explained that she would like to have an in-home day care for five (5) children, plus her own child.

P. Bealo noted that under the ordinance she would be allowed up to six (6) children in addition to her own child.

The Board reviewed the home occupation special exception criteria with the applicant:

- The business use will be secondary to the residential use
- The business qualifies for a home occupation under §220-66.B
- The business will not be injurious, noxious, or offensive to the neighbors by reason of emission of odor, fumes, dust, smoke, vibration, or noise
- This proposed business use is within a single-family dwelling
- The applicant is the property owner
- The proposed business use will only occupy 21.6% of the living space
- The proposed business use will not change the residential character of the dwelling or the property
- The applicant is not proposing to have a sign at this time, but it was noted that should they want to in the future it was restricted to three (3) square feet, could not be illuminated, and requires a permit
- There are no additional employees not living on the property employed on the premises

D. Carter noted that there are no other employees.

J. Legere suggested that D. Carter not limit herself in case she needed a substitute teacher one day.

P. Bealo noted that per the ordinance, it was allowed to have one other person, not living in the home, employed at the home.

- There will not be any outside merchandize displayed
- There is sufficient off-street parking, though customers do not routinely come to the property
- There are no expected large business-related deliveries
- The applicant only has personal vehicles, no business vehicles
- There will not be any flammable, noxious or dangerous materials stored in the vehicle
- There are no covenants in the deed that would prevent a home occupation
- This is not a condominium unit
- This will be the only home occupation for this property
- The applicant has submitted all required documentation for the application.

M. Murray asked if the children were school aged who might need transportation to school or if they were younger.

D. Carter noted that they were younger.

P. Bealo added that there was a bus stop on a near-by corner.

J. Legere noted that the State licensing allows up to six (6) children, plus three (3) after school and asked if that would be allowed

P. Bealo responded that under a home occupation it would not be. He added that State requirements are separate and apart of the Town's ordinance.

P. Bealo explained that the property was subject to inspection prior to the issuance of a Certificate of Occupancy (CO) and that if the Board felt it was warranted, the applicant could be required to file an application with the Planning Board for site plan approval. It was consensus that Planning Board action was not necessary. It was also noted that home occupation was valid for three (3) years, it is the applicant's responsibility to track the expiration date and renew the home occupation prior to expiration, and no notices of expiration will be sent.

P. Bealo asked if the Board had any questions.

J. Unger asked if there would be a fenced play yard. It was confirmed that there would be.

P. Bealo asked if there was anyone speaking in favor of, opposition to, or had general questions about the application.

Debra Christophersen, 6 Kimberly Way, Kingston, owner of the property at 27 Autumn Cir offered that there were older people and young drivers living on the street, which gave her concerns for the young children being dropped at the daycare if parking is allowed in the street.

P. Bealo noted that the street is not posted as "no parking" so it would be difficult for the Board to prohibit it for the home occupation. He added that from the Pictometry image provided to the Board there appears to be off-street parking for at least 3-4 cars in the applicant's driveway.

D. Christophersen asked what if all the daycare children arrived at the same time.

J. Unger responded that when his children were in daycare they were not allowed to come out of the house alone, the parent needed to go inside to get the child. He added at that point they become the parent's responsibility.

D. Christophersen offered that she was just concerned because there haven't been young children in the circle for many years.

P. Bealo acknowledged the concern as valid but reiterated that there was parking in the driveway and that the worst case scenario looked like there might be three (3) cars at most parked in the street if everyone came at the same time.

D. Christophersen noted that her concern was for both the children and the others in the circle.

P. Bealo asked if there were any other questions, or comments from anyone.

J. Legere asked if they could begin the inspection process, knowing that licensing could not be issued until after the thirty days.

P. Bealo replied that they could begin the inspections process.

J. Legere requested that be included in the letter if the application is granted.

P. Bealo responded that he would request it be done. (Note: The Town does not have jurisdiction over the State's licensing process, including inspections).

P. Bealo called the public hearing to a close.

DELIBERATIONS:

★ M. Murray moved, second by J. O'Brien to grant the request from Destiny and Joshua Carter for a Home Occupation, under Article X, to allow an in home family daycare at 29 Autumn Cir, Tax Map 48, Lot 13 with the following findings of fact and conditions:

- ***The applicant has met all the requirements for the granting of a Daycare as a Home Occupation as prescribed by Article X of the Plaistow Zoning Ordinances***
- ***There shall not be any more than six (6) children, not residing in the home, attending the daycare at the same time***
- ***The applicant shall obtain licensing from the State of NH as required***
- ***The Home Occupation must be renewed every three (3) years in accordance with Plaistow Zoning Ordinance Article X***

Discussion:

P. Bealo offered with the exception of the parking concerns, this was a pretty standard home occupation application. He added that there are other day cares with far more dangerous parking concerns. He also added that it was not likely that all six (6) children would be arriving at the same time. P. Bealo offered that he didn't see any reason this application should not be approved. The Board members agreed.

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

REQUEST FOR RE-HEARING (Deliberations Only):

#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.

P. Bealo noted that all the Board members had received a copy of the letter. He also noted there is no testimony for a re-hearing request.

P. Bealo offered the following comment in regard to the request for re-hearing:

- The ZBA found that the applicant only failed one variance criteria, Hardship, which he noted to be a high bar and a tough criteria to meet, so only those factors of the appeal that address the Hardship criteria will be examined by his comments.
- In point 1, page 1 of the applicant's appeal reference is made to a prior case by the same applicant regarding the same lot. The ZBA did not consider the prior 2021 case in the August 2022 proceedings, so will not address comments from the 2021 case here. This is a separate case, so the reasoning from the former case is not relevant to this matter.
- In point 1, page 1 of the applicant's appeal reference is made to street profiles, sight lines and engineer's comments that have nothing to do with the hardship criteria, so the ZBA will not address these comments. We can say that these issues/solutions did relate to its decisions on the remaining four (4) variance criteria. Which the Board stated were all met.
- With reference to the uniqueness of the property having additional acreage but insufficient frontage to subdividable: at least three (3) additional abutting properties share this trait, thus demonstrating the trait is not unique. Two (2) properties with more than five (5) acres of land and one with more than ten (10), all three would require variances for frontage issues.
- The referenced KNA (Keach-Nordstrom Associates) memorandum did not relate to the hardship criteria, so will not be addressed here. They related to the remaining four (4) variance criteria which were found to be met.
- To Item 4: ZBA denying a variance is not a "land taking". The ZBA only denied a variance for subdivision due to frontage, thus creating two (2) nonconforming lots from the existing conforming lot. The owner can continue to live on his land and do anything else with the land that is within zoning. The Board is not precluding the applicant from doing other things with the land, just not subdividing it.
- Item 6: site distance issues, has nothing to do with the hardship criteria.
- Item 7: The ZBA is not in possession of this Kane letter, and even if it was, it is not relevant to the hardship issue, but other variance criteria.

J. Unger from this application, the only criteria not met was the hardship. He did note that personally comparing this lot of 46 acres to ones or ten (10) was not the same and that he felt the lot is unique, but that doesn't mean that they should be able to create two (2) non-conforming lots, adding that one of the lots could have been made conforming.

J. O'Brien noted that he wasn't a voting member in August, although he was at the meeting. He questioned whether he was eligible to vote on this matter.

P. Bealo offered that per the letter of the law, he has the right to vote on the re-hearing request or abstain as he felt comfortable. He added that if it were him, and he had been at the original hearing of the matter, that he would feel comfortable voting on it because he was physically present to hear the case and to review the case within the last month.

J. O'Brien noted that the letter went into great detail but did not address the reasons for denial at the public hearing in August. He added that he didn't see much value in the letter.

M. Murray agreed that there were many items in the letter that did not pertain, and not much to address the denial and allow the re-hearing.

J. Unger offered that the only way things might change would be if the same members originally voted, were voting, but he expected that the results would be the same. He also noted that he didn't see any new evidence.

P. Bealo agreed that there was no new evidence, nor was there anything procedural the Board erred on. He noted that the letter took the Board to task on the handling of the KNA letter, but the criteria that memo addressed were considered as being met in the Board's deliberations.

Roll Call vote: J. Unger – no, there is no reason to re-hear the matter; P. Bealo – no; J. O'Brien - no; M. Murray – no. The vote was 0-4-0 and the re-hearing is denied.

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

Respectfully Submitted as Recorded from the video of the meeting:

Dee Voss
Administrative Assistant

