



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

**ZONING BOARD OF ADJUSTMENT**  
**MEETING MINUTES**  
**December 01, 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*

★ *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 also explained that there were not five (5) voting members available for this meeting and the significance that meant in the voting on each matter, noting that each request for relief would have to be passed by at least three (3) votes to the affirmative of the motion. The applicants were advised that they could request a continuance to the next meeting in hopes that there would be a full board. It was also noted that the lack of a five (5) member board could not be used as grounds to request a re-hearing.

**Minutes of October 27, 2022**

★ *M. Murray moved, second by J. O'Brien, to approve the minutes from the October 27, 2022, meeting as written. There was no discussion on the motion.*

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

**PUBLIC HEARINGS:**

**#22-17: A request from Rachel Bealo for a Special Exception under Article X, All Sections, for a Home Occupation, namely an office for a consulting business. The property is located at**

**82 Sweet Hill Rd, Tax Map 62, Lot 56 in the LDR Zoning District. The property owners of record are Peter M. and Rachel A. Bealo.**

***★ P. Bealo recused himself from this application and left the table. J. Unger chaired this application.***

Rachel Bealo, 82 Sweet Hill Road was present for the application.

R. Bealo acknowledged the lack of a full board and decided to continue with their application.

R. Bealo explained that she would like to have an office in her home for a consulting business. The office would be just a desk, phone, and laptop. Meetings would be via Zoom or offsite.

The Board reviewed the requirements of Article X with the applicant noting the following:

- The business use will be secondary to the residential use
- The business qualifies for a home occupation under §220-66.A (Consultants)
- 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 <1.0% 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
- There will not be any outside merchandize displayed
- There is sufficient off-street parking, though there will not be any clients coming to the home
- There are no expected large business-related deliveries
- The applicant does not have a business vehicle, only their personal vehicle
- 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.

J. Unger asked if the Board had any questions, there were none. It was noted that no emails or letters had be received prior to the meeting regarding this application.

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

Edward Hale, 69 Sweet Hill Road, offered that he did not have objections to the home office but that he did not want there to be a sign for the business. It was explained that the applicant was entitled to a sign per the home occupation ordinance. R. Bealo reiterated that she did not intend to have a sign, adding that she did not want people coming to her home.

There was no additional input, and the public hearing was closed.

#### DELIBERATIONS:

**★ M. Murray moved, second by J. O'Brien to grant the request from Rachel Bealo for a Home Occupation, under Article X, to allow an office for a consulting business at 82 Sweet Hill Rd, Tax Map 62, Lot 56 with the following findings of fact and/or conditions:**

- *The applicant has met all the requirements for the granting of a Home Occupation as prescribed by Article X (ten) of the Plaistow Zoning Ordinances*
- *It is the applicant's responsibility to renew the Home Occupation every three (3) years in accordance with Plaistow Zoning Ordinance Article X (ten), no notification of renewal will be sent*

#### Discussion:

It was noted that this was a classic home occupation that met all the requirements of Article X.

**Roll Call Vote: J. Unger – yes; M. Murray – yes; J. O'Brien – yes. The vote was 3-0-0 U/A**

**★ P. Bealo returned to the table.**

**#22-18: A request from Charles Nutter for a Special Exception under Article X, All Sections, for a Home Occupation, namely an office for a garage door business. The property is located at 88 Main St, Tax Map 39, Lot 62 in the VC Zoning District. The property owner of record is Edward R. Nutter.**

Charles Nutter, 88 Main Street was present for the application.

C. Nutter acknowledged the lack of a full board and decided to continue with their application.

C. Nutter explained that he would like to have an office in his home for his garage door business so that he could do his bookkeeping.

The Board reviewed the requirements of Article X with the applicant, noting the following:

- The business use will be secondary to the residential use
- The business qualifies for a home occupation under §220-66.C (Contractor)

- 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 not the property owner, but has the property owner's written permission
- The proposed business use will only occupy +/-1.0% 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
- 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 has a single business vehicle
- 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

P. Bealo asked if the Board had any questions.

M. Murray asked where the garage doors would be stored.

C. Nutter responded that he would pick them up from the source and take them to the job or have them delivered directly to the job site.

It was noted that no letters or email had been received prior to the meeting regarding this application.

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

Dale Pellerin, 86 Main Street, noted that he had no objections to the application.

There was no additional input, and the public hearing was closed.

#### DELIBERATIONS:

**★ M. Murray moved, second by J. Unger, to grant the request from Charles Nutter for a Home Occupation, under Article X, to allow an office garage door business at 88 Main St, Tax Map 39, Lot 62 with the following findings of fact and/or conditions:**

- *The applicant has met all the requirements for the granting of a Home Occupation as prescribed by Article X of the Plaistow Zoning Ordinances*
- *It is the applicant's responsibility to renew the Home Occupation every three (3) years in accordance with Plaistow Zoning Ordinance Article X (ten), no notification of renewal will be sent*

Discussion:

It was noted that this again was another straightforward home occupation application. The applicant is only using a minimal amount of space in the home, and there will not be any outside display of merchandise.

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

**#22-19: A request from Federated Realty Five, LLC c/o Jonathan Rauch, for a Variance from Article IX, §220-59.A.2 to allow a 129.9SF attached sign on the northerly side of the building which is 12.3% of the building façade and exceeds the allowable maximum of 5%. The property is located at 49 Plaistow Rd, Tax Map 26, Lot 67 in the C1 Zoning District. The applicant is the property owner of record.**

Charlie Zilch, SEC and Associates, and David Sanderson, Convenient MD, were present for the application.

C. Zilch acknowledged the lack of a full board and decided to continue with the application.

C. Zilch explained that the applicant had previously been granted a variance for a sign greater than 5% of the building façade on the southern side of the building. Once construction had begun and the foliage filled in on the site, it was determined that a sign on that side of the building was blocked by the trees, so they were seeking to swap the sign to the northern side of the building. He noted that the northern building façade was the same dimensions as the southern side of the building and the requested sign was the same size as well.

P. Bealo noted that there was more residential exposure to a sign on the northern side of the building. He asked if the applicant would be amenable to putting the sign on a timer that would turn off the sign after business hours. He asked if the applicant would be agreeable to the timer being a condition of approval.

D. Sanderson agreed that they could turn off the light within one (1) hour of close of business each day.

M. Murray offered that he had driven Garden Road and he did not think the sign would be seen on the southern side in the spring and summer.

C. Zilch explained that the sign that will be on the front of the building is less than what is allowed for that façade. He noted that even with the sign on the north side of the building being greater

than the allowed 5%, the total of the two attached signs combined would be less than the allowed combined signage.

C. Zilch offered the following responses to the variance criteria:

**The proposed variance will not be contrary to the public interest because:** By granting the variance, it will allow for a slight deviation to the on-building sign area allowance. This will allow the two most prominent sides of the building to display two equal area signs for easier identification for patients and visitors in need of care. Granting the variance will not result in signage that would be offensive or distracting to the commuters of Plaistow Road or create a hazard in any way. In all, the signage will not have an adverse effect on the abutting properties or surrounding community.

**The spirit and intent of the ordinance is preserved because:** The intent of the ordinance is to provide business owners a fair and equitable allowance on sign area to maintain balance and uniformity amongst the commercial properties. The ordinance is designed to limit overly large and/or obnoxious signs that may be aesthetically unpleasant or distracting. Our request merely asks that we take the allowed total sign area and equally distribute between two facades. The resulting redistribution of the sign area is slight and would not result in an offensive or distracting display thereby preserving the spirit and intent of the ordinance.

**There is substantial justice in granting the variance because:** There will be substantial justice in granting the variance by allowing the two signs most critical for site identification to be displayed where 90% of the traffic will enter the site. Again, the size of the two signs in total is slightly less than what is allowed. The west facing sign will only be 6.2% of the allowed 10% and the north facing sign will be 12.3% of the 5% allowed. Both signs will be uniform in size and display and will offer faster and easier recognition to those in need of the facility.

**The values of surrounding properties will not be diminished because:** The proposed signage is permitted in the zone and as demonstrated, meets all other sizing requirements. This is a medical care facility and as such identification for those in need is critical. The request to allow for a slightly larger sign offers quicker and easier identification without being unsightly or distracting. The proposal is in keeping with surrounding businesses and this facility will be an asset to the community. In all, there will be no diminution of surrounding property values.

**Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because:** The proposed use as an urgent care medical facility is not warranted any special consideration within the sign ordinance despite the need for a more prominent display for those in need. Our proposal for a slightly more prominent sign display on one side is offset on the adjacent side. The balance of the signs achieves the goal without exceeding the total allowance. This simple approach addresses the issue without varying greatly from the strictest interpretation of that ordinance. Denial would be an unnecessary hardship due to the nature of the business and the need for rapid and easily discernible signage particularly when considering the reasonable alternative proposed.

P. Bealo asked if the Board members had any questions, there were none. It was noted that no emails or letters had been received prior to the meeting regarding this application.

It was suggested that the previously granted variance for the signage on the southern building façade be relinquished as part of any approval of this variance. The applicant was in agreement.

P. Bealo asked if there was anyone speaking in favor of, or opposition to, or had general questions regarding the application. There was no one and with no additional input, the public hearing was closed.

#### DELIBERATIONS:

**★ M. Murray moved, second by J. O'Brien, to grant the request for a variance from Article IX, §220-59A.2 and to permit a 129.9 SF sign to be placed on the northern façade of the parcel located at 49 Plaistow Road, Tax Map 26, Lot 67 with the following condition:**

- ***The variance previously granted on October 20, 2021 for a greater than 5% sign on the southern building façade is relinquished and voided.***
- ***The North facing sign light will be turned off one (1) hour after closing for each day***

#### Discussion:

P. Bealo noted that the Board had already granted a variance for the same sign, just on a different façade and that he didn't see that this was much different than that approval.

The Board made the following findings with reference to the application:

- Adequate signage for a medical care facility is in the Public's Interest.
- The total amount of signage proposed between the two attached signs does not exceed the maximum allowable, therefore granting the variance is not contrary to the Spirit and Intent of the ordinance.
- There is Substantial Justice in granting the variance as there is no gain to the general public in a denial of the variance, while there would be a loss to the applicant.
- All properties in the area are commercially zoned with the exception of a few residential uses Garden Rd, so there is no predicted loss in surrounding property values. Turning the lights off one (1) hour after closing will benefit the residential uses on Garden Rd.
- The request is found to be reasonable and there is no fair and substantial relationship exists between the general purpose of the ordinance provision and the specific application to this property.

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

**#22-20: A request Zaremba Program Development, LLC for a variance from Article V, Table 220-32M.C(5) to allow construction within the 80' front property setback. The 80' setback is applicable to properties of greater than 120,000SF of land and/or propose**

**buildings that are greater than 10,000SF. There are two properties included in this request, 197 Plaistow Rd, Tax Map 44, Lot 18 and 201 Plaistow Rd, Tax Map 44, Lot 17, both in the C3 Zoning District. PPR Realty Trust, Peter DeJager, Jr. TR is the property owner of record for both parcels.**

Jeffrey Christensen, Cleveland, Waters and Bass. PA; Morgan Dunson, Nobis Group; and Matt Casey Zaremba Program Development, LLC were present for the application.

J. Christensen acknowledged the lack of a full board and decided to continue with the application.

J. Christensen explained the following regarding the application:

- There are two (2) lots involved with the application
- The proposal is for a single-story retail business
- The proposal includes thirty-six (36) required parking spaces
- The proposed size of the building is 10,600SF
- Both lots are irregularly shaped
- There are significant wetland areas on both lots
- The 80' set back and the location of the wetland areas make development of either lot challenging
- Any proposed structure would most likely require relief from either the wetland setback or the front property line setback

The Board reviewed the proposed layout of the development including the location of the wetlands.

J. Christensen informed that they had consulted with the Conservation Commission(ConCom) regarding support for a wetland setback variance. ConCom offered that they would support an application for a front property line setback over a wetlands setback variance and provided a letter to that effect.

J. Christensen offered the following in support of the variance application:

**The proposed variance will not be contrary to the public interest and the spirit and intent of the ordinance is preserved because:** There will not be any impact to the character of the commercial area and all the uses abutting are commercial. Also, the state right-of-way is somewhat larger in front of the two (2) parcels, which creates the sense of a greater setback from the roadway. Granting relief from the front setback will allow for the development of the property without wetlands impact or any detriment to the health, safety, and welfare of the community. Allowing the property to be developed will also provide additional tax revenues to the Town.

**There is substantial justice in granting the variance because:** There would be a loss to the applicant in not being able to develop the property, but there is not any gain to the general public in a denial. Allowing the building to encroach into the front setback preserves the wetland areas.

**The values of surrounding properties will not be diminished because:** This is already an area that has been developed commercially. There is commercial on both sides of the properties in



question, therefore the residential abutters are already looking at commercial properties in front of them and a new building will not diminish any commercial or residential property values.

**Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because:** The unique characteristics, size and shape of the lots, the location of wetland areas of the commercially zoned property, make commercial development challenging. Placing the building towards the front of the property will provide for development with the least amount of impact.

P. Bealo asked if the Board had any questions.

J. Unger agreed that the lots were strangely shaped. He asked what the approximate distance would be from the building to the edge of pavement on Route 125. It was noted that it would be +/-65', which was noted to be farther back from the building on either abutting lot.

J. Christensen noted that the 10,600SF building was the standard for this retailer (Dollar General).

There was discussion regarding the retail business. It was noted that between 1,000-1,200SF of the proposed 10,600SF building would be business-related storage towards the rear.

P. Bealo asked if the Board had any additional questions. There were none. It was noted that no emails or letters relating to this application had been received prior to the public hearing.

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

Michelle Faia, 15 Old County Road, asked what the hours of operation were proposed to be and what kind of lighting they would have.

M. Dunson offered that the current hours of operation were proposed to be 8:00AM to 10:00PM, seven (7) days a week, but would be scaled back if they were not seeing customer traffic. She added that the lighting would be full cutoff compliant and would be turned on one-half/one hour before opening and turned off one-half/one hour after closing.

M. Faia asked about truck deliveries.

M. Dunson responded that deliveries were usually made once a week, during business hours.

It was noted that the hours of operation, deliveries, and lighting were under the jurisdiction of the Planning Board site plan review process and all abutters would again be notified when the application is before that board.

The Board discussed a few standard conditions with the applicant:

- Requiring that the plan presented to the ZBA is the same plan presented to the Planning Board as it pertains to the variance

- Submission to the Planning Board within 180 days of any approval that may be granted
- Requiring that the lots are combined as part of the Planning Board site plan review process
- Notice to the applicant that no work can commence, or permits be issued prior to Planning Board site plan review

The applicant did not express and concerns regarding the suggested conditions.

P. Bealo asked once more if there was any additional input or questions, there was none, and the public hearing was closed.

#### DELIBERATIONS:

**★ J. O'Brien moved, second by J. Unger, to grant the variance from Article V, Table 220-32I and allow a building to be placed eighteen (18) feet from the property line where 80' is the minimum required in the Commercial 3 Zoning District for the properties located at 197 and 201 Plaistow Road with the following conditions:**

- *The applicant must make application to the Planning Board for site plan review within 180 days of the date of this decision or the variance shall be considered as voided*
- *The parcels for 197 and 201 Plaistow Road must be combined to a single parcel as part of the Planning Board's Site Plan review process*
- *The Plan that was submitted with the application shall be the same plan that is submitted to the Planning Board as it relates to the variance granted. Any change to the plan as it relates to the variance voids the approval*
- *No permits can be issued without completing the Planning Board site plan approval process*

#### Discussion:

J. Unger suggested that the parcels were the "poster child" for odd-shaped lots.

P. Bealo added that the wetlands were also a challenge in their size and location.

J. Unger also noted that the state right-of-way area in the front created a notch into the property that other parcels in the area did not have.

The Board made the following findings with reference to the application:

- With the support of the Conservation Commission, it was determined that it is in the Public Interest to grant a setback variance rather than a wetland buffer variance
- The proposed building will not be any closer to the roadway than other buildings in the area and will not be contrary to the Spirit and Intent of the ordinance
- There is Substantial Justice in the granting of the variance as a denial would not cause a loss to the public but would be a hardship to the owner. The property is properly located for the use and will provide additional tax revenue to the Town

- There will not be any adverse impact to the Surrounding Property Values as this will be a new construction building and any residential uses are hundreds of feet away
- The hardship is in the odd shape of the lot and the location of large wetland areas. It was noted that the State had taken part of the frontage of the property to widen Route 125, which created more of a setback issue for the property. It was also noted that it would be very difficult to build any sized building without some kind of relief from zoning.

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

### **OTHER BUSINESS: 2023 Application Deadline and Meeting Schedule**

The Board reviewed a draft of the 2023 Application Deadline and Meeting Schedule.

***★ P. Bealo moved, second by J. Unger, to approve the 2023 ZBA Application Deadline and Meeting Schedule as proposed on December 1, 2022 in a document titled “2023 Draft Application Deadline and Meeting Schedule”***

There was no discussion on the motion.

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

There was no additional business before the Board and the meeting was adjourned at 7:52 p.m.

Respectfully Submitted

Dee Voss  
Administrative

Assistant

