



Town of Plaistow, New Hampshire
145 Main Street, Plaistow NH 03865
Phone: (603) 382-8469

ZBA Minutes 09-26-13

ZONING BOARD OF ADJUSTMENT MINUTES **September 26, 2013**

Call to Order: 7:00 P.M.

ROLL CALL: Present was *Chairman*; Larry Ordway, James Allen, and *Alternate*; Martha Sumer. Excused were Tim Fisher and Paul Boniface.

L. Ordway appointed M. Sumner a voting member for the meeting.

Minutes of August 28, 2013

L. Ordway noted that he was the only member present at the August 28th meeting that is present tonight.

The Board discussed and decided to postpone approving the minutes until the next meeting.

L. Ordway explained to the applicants that there are only three members sitting on the Board and all cases heard need three affirmative votes to be granted. He explained that the applicants have the right to ask for a postponement until there are five voting members sitting on the Board. If the applicants choose to continue with the hearing and it is denied they cannot use lack of a full Board as grounds for a rehearing. He added that if continued, the hearing would be continued to the October 31, 2013 meeting and that no further notifications would be sent. He asked the applicants to tell the Board if they would like to postpone the hearing when their case is called before the Board.

#13-13: A request from Sam Milone for a variance from Article V §220-32A.B Permitted Uses, to allow sales, o display, of motor vehicles in the Industrial District which is currently not a permitted use. The property is located at 33 Westville Rd, Unit 3, Tax Map 40, Lot 9-B3 in the I District. The property owner of record is D & H Construction of Plaistow, INC.

Present for the hearing was S. Milone. He stated that he wished to go forward with his hearing. He read a letter he prepared to the Board that explained the following:

- He is requesting a retail dealer's license at 31/33 Westville Rd
- He has been a Plaistow resident for 13 years
- He has been in the automotive industry for 34 years
- He has been licensed for 30 years
- He has never had any issues in NH or MA
- NH has made the decision to rescind the bonded sales license in 2015 which will mean he will no longer have the license to continue his work and support his family.
- He proposes to keee3p his business in Plaistow
- 31/33 Westville Rd. supports his business needs
- No cars will be placed in the business front; inside display only; 7 or 8 cars at one time
- Most sales done on internet through e-bay and Craig's list
- Other than the business sign there will be no form of advertisement
- He only want a license and an office

S. Milone added the following information upon discussion with the Board:

- Vehicles will not be kept outside; indoors only
- Most of his sales are done on-line
- Inside the building can hold 12 to 15 cars at a time but he typically only has 8 to 10 cars inside at one time
- It is the end unit on the right of the building
- Only small repairs are done on-site; oil changes and brakes. Most repairs are sent out.
- He will have a lift in the unit
- He gets his cars from dealers and auctions
- He has had a Plaistow license for 12 to 15 years
- There is only one abutter to the property and he was notified

L. Ordway asked the applicant if it would be acceptable to him if the Board placed a restriction on the number of cars allowed in the building.

S. Milone replied that he would like to have up to 12 cars at one time if the Board agrees; inside only.

J. Allen asked if he will hire a mechanic if business picks up.

S. Milone answered no; he is not a service station. He buys and sells only.

There were no further questions from the Board and there was no one present to speak in favor of or against the application and the case was closed.

L. Ordway explained the deliberations process noting that no further input could be given. He added that they will be notified in writing within ten (10) business days. If granted they cannot proceed with plans for thirty (30) days in case someone would like to appeal the decision.

#13-14: A request from Robert Gordon for a variance from Article V, §220-32D.C(1)(a) to allow an existing single family dwelling to be converted to a two family on a lot that has less than the required 80,000 sq. ft. of street frontage. The property is located at 99 Main St, Tax Map 40, Lot 97 in the VC District. The property owner of record is Rodi Trust, Robert J. Gordon, Trustee.

#13-15: A request from Robert Gordon for a variance from Article V, §220-32D.C(1)(b) to allow an existing single family dwelling to be converted to a two family on a lot that has less than the required 200 ft. of land. The property is located at 99 Main St, Tax Map 40, Lot 97 in the VC District. The property owner of record is Rodi Trust, Robert J. Gordon, Trustee.

L. Ordway noted for the record that that the cases #13-14 and #13-15 have been procedurally withdrawn. The relief requested was withdrawn in 1996 and cannot be applied for more than once.

#13-16: A request from Sandra LaVersa for a special exception under Article X to allow a home occupation, namely a seamstress and teddy bear business. The property is located at 19 Main St, Tax Map 37, Lot 59 in the CII District. The applicant is the property owner of record.

Present for the hearing was Sandra LaVersa.

L. Ordway noted for the record that another variance was granted for this property. He added that if this variance is granted it will supersede the previous one.

S. Laversa replied that she understood. The previous business has been closed for a year. She explained the following to the Board:

- She would like to run a business where she makes teddy bears out of clients own special materials.
- She would like clients to be able to come to the house to drop off the materials
- She has plenty of parking to accommodate the business
- There are no employees; just herself

The Board and applicant stepped through the criteria for the granting of the special exception and the following was noted:

- The home occupation will fall under Section B – Seamstress
- The only equipment will be a sewing machine
- The applicant has lived at the site for 4 ½ years
- It is a single family home and she is the owner
- The home occupation will occupy 361.5 sq. ft; within the 25% requirement
- She does plan to have a sign and understands the 3'x3' sq ft, no lighting requirement
- There are no employees; only herself
- There will be no outside merchandise display
- Clients will visit the home one at a time
- There is ample parking with space for up to six cars
- No deliveries; clients supply the material and the rest is delivered to her P.O Box
- There are no flammable materials
- There is no covenance on the deed

L. Ordway stated that if the special exception is granted then it is good for three years and it is the applicant's responsibility to renew it. The Town will not notify her.

There were no questions from the Board and there was no one present to speak in favor of or against the application and the case was closed.

L. Ordway explained the deliberations process noting that no further input could be given. He added that they will be notified in writing within ten (10) business days. If granted they cannot proceed with plans for thirty (30) days in case someone would like to appeal the decision.

#13-17: A request from Gail & Dean Manemanus for a special exception under Article X to allow a home occupation, namely an office for a courier service to include livery and corporate accounts. The property is located at 11 Old County RD, Tax Map 44, Lot 26 in the MDR District. The applicants are the property owners of record.

L. Ordway explained that a deed was not submitted with the application; it was a release from the bank for a mortgage that was submitted. He added that the Board cannot grant a request without the complete paperwork. He explained that it would be in the applicant's best interest to request a postponement and submit the paperwork before the next meeting.

L. Ordway noted that there was already a home occupation on the property now.

D. Manemanus replied that it is a home occupation for a prior business that will be dissolved.

D. Manemanus requested the application be postponed until next month's meeting.

M. Sumner motioned to approve D. Manemanus request for postponement to the next meeting, second by J. Allen.

There was no discussion on the motion and the vote was 3-0-0 U/A.

CONTINUED FROM AUGUST 29, 2013

#13-11: A request from Julian Kiszka for a variance from Article IV, §220-21.C.(1) to allow the installation of three (3) solar PV top-of-pole arrays, the first of which would be ten (10) feet from the edge of wetlands and within the twenty-five foot "no cut, no-disturb" wetlands buffer. The property is located at 1 May Ray Ave, Tax Map 40, Lot 96 in the CII District. The applicant is the property owner of record.

CONTINUED FROM AUGUST 29, 2013

#13-12: A request from Julian Kiszka for a variance from Article IV, §220-32I to allow the installation of three (3) solar PV top-of-pole arrays eighteen (18) feet from the front property line where thirty-five (35) feet is the minimum required. The property is located at 1 May Ray Ave, Tax Map 40, Lot 96 in the CII District. The applicant is the property owner of record.

It was noted for the record that there is a letter of support from the Conservation Commission as well as a letter granting Harmony permission to represent the applicant.

Present for the application was George Horrocks and Heath Sargent; both from Harmony and representing the applicant Julian Kiszka who was also present.

H. Sargent noted for the record that it is 25' from the wetlands not 10' as the agenda states.

The Board looked at the application and it does state 25'.

H. Sargent gave the aboard an overview of the project offering the following information:

- This is a double variance request
- It is a residential proposal for three solar arrays
- He provided the Board with pictures of the arrays
 - Each array holds 12 modules; 36 modules in total
 - The roof is typically the preferred place for installation; that was not possible due to the neighbors trees that could not be cut
 - They needed to go to a ground installation because the roof was no longer an option
 - The location chosen is the best part of the property for efficiency of the solar arrays
 - The pictures provided show the shade the trees cast on the property
 - The arrays are movable in 10 degree increments
 - The arrays will supply electricity only
 - The center post is a schedule 80 steel post; it needs to be painted every 5 years or so
 - The rest of the arrays require no maintenance

L. Ordway asked why the arrays could not be moved to meet the 25' requirement.

H. Sargent explained that if they were moved forward the shading of the trees would prevent the arrays from reaching 80% efficiency; the state of NH requires 80% efficiency for their rebates and overall blessing of solar.

G. Horrocks explained the efficiency further to the Board.

L. Ordway expressed concern over the height of the posts.

G. Horrocks explained that the post is 8" in diameter, the center post is 8' tall, and the back post is 15' tall. He explained that they are designed to be as low maintenance to the owner as possible allowing the owner to walk under them, mow under them easily and not need to shovel them out in the winter.

J. Kiszka explained that they will plant green arborvitaes that will grow 15' tall to help protect the neighbors view. They will be planted 2 feet apart, and within a certain period of time the neighbors will not see the arrays at all.

J. Allen asked if the arrays could be spun in the opposite direction.

H. Sargent explained that they cannot. He explained that they are called the high wind version and must be in this direction versus horizontal due to high winds and snow; regulations from the state.

L. Ordway asked about the wetlands noting that they did not look significant to him.

J. Kiszka replied that they are caused by a spring at the top of May Ray; it is a run-off area. He added that the water is probably dry now.

A letter from the Conservation Commission, dated September 6, 2013, was read into the minutes. It stated that after the Conservation Commission reviewed that plans for the solar arrays they decided that the impact to the wetlands would be minimal.

J. Allen noted that the center post can rust from the inside out and if not properly maintained is in the ground.

The applicant stepped through the requirements for the granting of a variance noting the following:

The variance is not contrary to the public interest

The installation with zero maintenance will not affect anyone in a negative way; it will provide clean and pure energy for the applicant and meets state requirements.

The spirit of the ordinance is observed

The system poses no safety issues or esthetics issues especially with the shrubbery that will be provided.

The values of surrounding properties are not diminished

The property value increases by 20x's for every \$1,000 in electricity saved making the property value increase by 20,000 for every \$1,000 saved. The trees planted help with the esthetics of the neighborhood as well.

Granting the variance will be beneficial to the public interest

Solar energy is more available and efficient as time goes on; it has little to no impact on the community.

Literal enforcement of the ordinance would result in a hardship

The eighteen feet was calculated for optimal energy of the arrays and to meet the state requirements. Moving it would make the shading from the trees become an issue that would affect efficiency.

J. Kiszka added that he has spoken with his neighbors and they have given the project the thumbs up.

There were no further questions from the Board and there was no one present to speak in favor of or against the application and the case was closed.

DELIBERATIONS:

#13-13: A request from Sam Milone for a variance from Article V §220-32A.B Permitted Uses, to allow sales, o display, of motor vehicles in the Industrial District which is currently not a permitted use. The property is located at 33 Westville Rd, Unit 3, Tax Map 40, Lot 9-B3 in the I District. The property owner of record is D & H Construction of Plaistow, INC.

M. Sumner motioned to grant the request from Sam Milone for a variance from Article V §220-32A.B Permitted Uses, to allow sales, o display, of motor vehicles in the Industrial District which is currently not a permitted use. The property is located at 33 Westville Rd, Unit 3, Tax Map 40, Lot 9-B3 in the I District. The property owner of record is D & H Construction of Plaistow, INC.

J. Allen second the motion and the case was opened for discussion.

L. Ordway summarized the case noting the following:

- The applicant sells the vehicles mostly on the internet
- There will be no outside display of vehicles
- The applicant buys his cars from dealers and auctions
- He will install a lift for minor repairs
- No major repairs will be done at this site
- There will only be 10 to 12 vehicles in the building at one time

L. Ordway amended the motion to include the condition that no more than 12 vehicles will be kept inside the property at any one time. The Board members agreed.

The Board stepped through the requirements for the granting of a variance noting the following:

The variance is not contrary to the public interest

It is an industrial zone and it is a lighter use than what is typical of an industrial use.

The spirit of the ordinance is observed

This use will be an improvement to what is normally done in an industrial zone

Substantial justice is done

Granting this variance with the restriction will benefit the public because it is bringing a business to Town, helps owner pay the taxes, and makes use of the building.

The values of surrounding properties are not diminished

It is an industrial area and having it full only benefits the Town.

Literal enforcement of the ordinance would result in a hardship

S. Milone will be a good tenant and to restrict him would cause a financial hardship to the owner.

There was no further discussion on the motion and the vote was 3-0-0 U/A.

#13-16: A request from Sandra LaVersa for a special exception under Article X to allow a home occupation, namely a seamstress and teddy bear business. The property is located at 19 Main St, Tax Map 37, Lot 59 in the CII District. The applicant is the property owner of record.

J. Allen motioned to accept the request from Sandra LaVersa for a special exception under Article X to allow a home occupation, namely a seamstress and teddy bear business. The property is located at 19 Main St, Tax Map 37, Lot 59 in the CII District. The applicant is the property owner of record.

The motion was second by L. Ordway and the case was opened for discussion.

L. Ordway summarized the case noting the following:

- The business will be taking clothing articles from clients and making them into teddy bears
- There will be very little materials on the site
- There will be no noisy equipment
- There is plenty of parking on the site
- There will only be one client on-site at a time
- There will be only one 3'x3' sign with no lighting
- The prior home occupation was discontinued one year ago
- The Board made it know that this request will supersede the prior request

There was no further discussion on the motion and the vote was 3-0-0 U/A.

#13-11: A request from Julian Kiszka for a variance from Article IV, §220-21.C.(1) to allow the installation of three (3) solar PV top-of-pole arrays, the first of which would be ten (10) feet from the edge of wetlands and within the twenty-five foot "no cut, no-disturb" wetlands buffer. The property is located at 1 May Ray Ave, Tax Map 40, Lot 96 in the CII District. The applicant is the property owner of record.

CONTINUED FROM AUGUST 29, 2013

#13-12: A request from Julian Kiszka for a variance from Article IV, §220-32I to allow the installation of three (3) solar PV top-of-pole arrays eighteen (18) feet from the front property line where thirty-five (35) feet is the minimum required. The property is located at 1 May Ray Ave, Tax Map 40, Lot 96 in the CII District. The applicant is the property owner of record.

L. Ordway noted that these two cases will be motioned and discussed together. The Board agreed.

M. Sumner motioned to approve the request from Julian Kiszka for a variance from Article IV, §220-21.C.(1) to allow the installation of three (3) solar PV top-of-pole arrays, the first of which would be ten (10) feet from the edge of wetlands and within the twenty-five foot "no cut, no-disturb" wetlands buffer. The property is located at 1 May Ray Ave, Tax Map 40, Lot 96 in the CII District. The applicant is the property owner of record, and she motioned to approve the request from Julian Kiszka for a variance from Article IV, §220-32I to allow the installation of three (3) solar PV top-of-pole arrays eighteen (18) feet from the front property line where thirty-five (35) feet is the minimum required. The property is located at 1 May Ray Ave, Tax Map 40, Lot 96 in the CII District. The applicant is the property owner of record.

The motions were second by J. Allen and the cases were opened for discussion.

L. Ordway summarized the case noting the following:

- The reason for the request is that the applicant cannot install on the roof due to the overhang of the neighbors trees which

would make the arrays less efficient

- The alternative is the post arrays and the only spot on the property where it would be 80% efficient is where they are proposing to install it.
- Maximum height will be 15' and minimum height is 7'
- The angles of the arrays can be changed in the summer and winter
- The arrays will be buffered by a row of arborvitae trees that will reach as high as 15' and will almost completely shade the array from the neighbors view.

L. Ordway expressed concern over the trees weakening and splitting when they reach maximum height.

J. Allen replied that they could stagger the trees. He noted that the application states the center pole is a schedule 40 steel were the applicants stated that it was a schedule 80 steel post. He is concerned that the schedule 40 will rot faster.

The Board decided to add the condition to the motion that the center post must be a schedule 80 steel post.

The Board stepped through the requirements for the granting of a variance noting the following:

The variance is not contrary to the public interest

The trees will screen the array from the public's view. Public interest is enhanced by the fact that the applicant's are creating their own electricity and not putting hydro carbons into the air.

Substantial justice is done

No one was here to speak in opposition to the application.

The spirit of the ordinance is observed

The Conservation Commission's only issue with the wetlands was the concrete footing for the posts; it will have a minimal impact on the wetlands.

The values of surrounding properties are not diminished

The value of the owner's property should increase, but neighbors who must look at the arrays could be diminished. The row of trees to shade the arrays should help with that issue.

Literal enforcement of the ordinance would result in a hardship

The hardship is that the property is a residential lot and the owner cannot cut the neighbors trees to install it on the roof as he would have liked to. The hardship is in the size of the lot.

There was no discussion on the motion and the vote was 3-0-0 U/A.

Other Business/Updates: Misc. Notices, letters, and other Correspondence from Dept. of Building Safety, Planning Department and ZBA

There was no other business before the Board; the meeting was adjourned at 8:20 P.M.

Respectfully submitted as recorded by Laurie Pagnottaro.

Approved by the Zoning Board of Adjustment on _____

Larry Ordway, Chairman

