



Plaistow Zoning Board of Adjustment
145 Main Street – Plaistow, NH 03865
Telephone – 603-382-5200 X202

For Office Use Only

Case # 24-02
Date Submitted: 2/8/2024
Hearing Date: 2/29/2024
of Notices: _____

5009 \$45.125

xref 24-03

\$170
+ \$125 / 295

APPLICATION FOR APPEAL

Note: all matters that come before the ZBA are referred to as "appeals." This form is required to be filled out for all applications including: Appeal of Administrative Decision; Special Exception; Variance and Equitable Waiver. Please complete the specific section based on the application being made.

GENERAL INFORMATION (ALL APPLICATIONS):

Name of Applicant: Amanda Poole

Mailing Address: 123 Mast Road Lee, NH 03861
(Street & Apt. #) (Town) (State) (Zip)

Telephone: 6039695581 Email Address: amandapoole1983@gmail.com

Location of Property: 216 Main St Plaistow, NH

Owner of Property: Kevin Joyce
(If applicant is not the property owner, written authorization to allow the application must accompany the application.)

Zoning District: MDR Map # 30 Lot # 023

Applicant Signature: Amanda Poole

FILL OUT THIS SECTION FOR AN APPEAL FROM AN ADMINISTRATIVE DECISION: relating to the interpretation and enforcement of the provisions of a zoning ordinance.

Decision of the enforcement officer to be reviewed: _____

FILL OUT THIS SECTION FOR A SPECIAL EXCEPTION REQUEST

Article: _____ Section: _____ (The Article and Section Numbers **must** be completed. If you are unsure of these numbers, please seek the guidance of the Department of Building Safety)

To permit: _____

FILL OUT THIS SECTION FOR A VARIANCE REQUEST:

Article: V Section: 220-32E (The Article and Section Numbers **must** be completed. If you are unsure of these numbers, please seek the guidance of the Department of Building Safety)

State the reason for this variance request. Be specific in what you are asking the Board to allow:

Requesting 1st floor business use as a beauty salon. To be staffed with licensed cosmetologists.

Criteria (All sections must be completed):

1. The proposed variance will not be Contrary to the Public Interest because: It compliments the surrounding area and businesses - does not compete
2. The Spirit and Intent of the Ordinance is preserved because: Exterior of building doesnt change only slight modification to the amount of traffic and number of visitors.
3. There is Substantial Justice in Granting the variance because: *(NOTE: Any loss to the individual that is not outweighed by a gain to the general public is an injustice)*
There is no loss to the individual - allowing the business will add value to immediate neighborhood
4. The Values of the Surrounding Properties will not be Diminished because:
Supports the community with necessary and valued business. Building is currently vacant.
5. Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship:
 - 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: no significant impact will be generated by approval to change use.

(Is the restriction on the property necessary in order 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: low community impact

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



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Article: _____ Section: _____ (The Article and Section Numbers **must** be completed. If you are unsure of these numbers, please seek the guidance of the Department of Building Safety)

To permit: _____

FILL OUT THIS SECTION FOR A VARIANCE REQUEST:

Article: V Section: 220-32E (The Article and Section Numbers **must** be completed. If you are unsure of these numbers, please seek the guidance of the Department of Building Safety)

State the reason for this variance request. Be specific in what you are asking the Board to allow:

Requesting 2nd floor be used for office space.

Criteria (All sections must be completed):

1. The proposed variance will not be Contrary to the Public Interest because: It doesn't change the physical nature of the building. Office space will be low impact on traffic. Will create opportunity for small business/local business to grow
The external environment of building doesn't change. Adjusted use only involved interior layout of building.
2. The Spirit and Intent of the Ordinance is preserved because: The community and nearby residents/abutters will experience little to no impact. Preserves what is existing today and doesn't modify external factors involved with current use of the building.
3. There is Substantial Justice in Granting the variance because: *(NOTE: Any loss to the individual that is not outweighed by a gain to the general public is an injustice)*
The general public will gain space to support local business. No loss - infact gains are made by intended use.
4. The Values of the Surrounding Properties will not be Diminished because:
Low noise level, low traffic, reasonable day time business hours. No changes to external building or existing traffic flows.
Supports community with valued services
5. Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship:
 - 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: Its proposed use won't have significant impact on the community.

(Is the restriction on the property necessary in order 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: low community impact

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

4 PINE PARK LTD PARTNERSH
PO BOX 1099
61 NORTH MAIN STREET
MIDDLETON, MA 01949-1099

BILLCLIFF ANDREW
218 MAIN ST
PLAISTOW, NH 03865

WELLINGTON TOWNHOUSE PROP
(OWNERS OF THREE (3) ABUTTING PROPERTIES)
PO BOX 423
PLAISTOW, NH 03865

AMANDA POOLE
123 MAST RD
LEE, NH 03861

KEVIN JOYCE
44 BROOKSIDE DR
KINGSTON, NH 03848

February 7, 2024

Via Hand Delivery

Plaistow Zoning Board of Adjustments
Town Hall, 2nd Floor
145 Main Street
Plaistow, NH 03865

**RE: Support of 216 Main Street Variance Application
(Application No. ____)**

Dear Board of Adjustments:

I submit this letter in support of Amanda Poole's Variance Application concerning the 216 Main Street property, which is located in a Medium Density Residential zoned area. I am the current owner of 216 Main Street, and I intend to sell the property to Ms. Poole pending this Board's variance approval.

As the property's current owner, I authorize Ms. Poole to apply for this variance requesting to operate a beauty salon and office space at 216 Main Street.

In December 2018, I applied for a variance from the Plaistow Zoning Board of Adjustments seeking permission to operate a barbershop and a barber school at 216 Main Street.

The Board granted that request. However, due to COVID-19 and other unforeseen circumstances, I was unable to exercise the variance, and it expired. I re-applied for the same variance in May 2022, again requesting permission to operate a barbershop and barber school. The Board again granted that request.

Unfortunately, I was unable to receive the proper inspections in the required timeframe, and the variance expired once again.

While the Board previously approved my request for barbershop and a barber school, the uses requested by Ms. Poole's application are materially different in nature and degree.

First, Ms. Poole is seeking this Board's permission to operate a beauty salon at 216 Main Street, and a beauty salon is, as a matter of law, a very different use.

Under New Hampshire law, barbering and cosmetology

have materially different definitions. RSA 313-A:1, II defines “barbering” as “[s]having or trimming the beard or cutting the hair”; “[g]iving facial or scalp massages or treatment with oils, creams, lotions, or other preparations, either by hand or mechanical appliances”; or “[s]hampooing, arranging, dressing, or styling the hair.” A barber can perform only these few services. The statute defines “cosmetology” as providing a materially different list of services. By statute, cosmetology includes “arranging, dressing curling, waving, cleansing, cutting, bleaching, coloring, or similarly treating the hair of any person, and performing other work customarily performed by a cosmetologist such as giving facials, manicures, pedicures, and artificial nail enhancements, applying makeup or eyelashes to any person, and removing superfluous hair.”

The conclusion that barbering and cosmetology are materially different is bolstered by the Legislature’s decision to impose differing qualifications for each profession.

Cosmetologists are required to: have 1,500 or 3,000 hours of training (depending on whether he/she attended an approved cosmetology school). RSA 313-A:11. To be a barber, on the other hand, one is only required to complete 800 or 1,600 hours of training (depending on whether he/she attended an approved barbering school). RSA 313-A:10. The two professionals also take very different exams.

Further, RSA 313-A:1 draws a distinction between the businesses that can lawfully perform barbering services and those that can perform cosmetology services; barbering occurs at a barbershop, and cosmetology occurs at a beauty salon. RSA 313-A:1, III (defining “barbershop”) and RSA 313-A:1, XII (defining “salon”). Ms. Poole’s application is clear that she is not seeking to conduct barbering services or maintain a barber shop; her planned use as a beauty salon is, according to the Legislature, materially different than the uses for which a variance was granted in 2022.

There is another key difference between Ms. Poole’s present application and the previously granted variance – the 2022 variance allowed for the operation of a barber school, but Ms. Poole does not seek permission to conduct such educational services at the premises. Rather, she seeks permission for office space on the second floor. The previously granted variance

should not preclude a review of the merits of Ms. Poole's application because her use is materially different and warrants its own evaluation under the variance standard.

Published court decisions support the conclusion that Ms. Poole's present application is materially different and should be considered on its merits. In *Bates v. Town of Durham Zoning Bd. of Adjustment*, 2008 N.H. Super. LEXIS 151 (2008), the applicant applied to build a new house, with a farmer's porch on the front and southern sides of the residence. *Id.* at *4. The second application requested a wrap-around porch. *Id.* The ZBA, and subsequently the court, found the wrap-around porch to be materially different from the originally proposed farmer porch, so it was proper to grant the second variance application. *Id.* at *4-5. If two designs of a porch are materially different, this Board should conclude that Ms. Poole's planned beauty salon (staffed by cosmetologists) is materially different from a barbershop and barber school.

Because Ms. Poole's application is materially different from my previously granted variance, I write in support of Ms. Poole's request. This Board should grant Ms. Poole's application and allow the operation of a beauty salon at 216 Main Street.

I will attend the Zoning Board of Adjustments meeting on February 29, 2024, and I intend to retain a court reporter to transcribe the proceedings.

I enclose copies of the statutes and case cited above for the Board's convenience.

Sincerely,

A handwritten signature in black ink, appearing to be 'Kevin Joyce', written over a horizontal line.

Kevin Joyce

Encl.

TITLE XXX

OCCUPATIONS AND PROFESSIONS

CHAPTER 313-A

BARBERING, COSMETOLOGY, AND ESTHETICS

Section 313-A:1

313-A:1 Definitions. –

As used in this chapter:

I. "Barber" means any person practicing barbering.

II. "Barbering" means:

(a) Shaving or trimming the beard or cutting the hair;

(b) Giving facial or scalp massages or treatment with oils, creams, lotions, or other preparations, either by hand or mechanical appliances; or

(c) Shampooing, arranging, dressing, or styling the hair.

II-a. "Master barber" means any person licensed by the board as a master barber to practice the following:

(a) Shaving or trimming the beard or cutting the hair;

(b) Giving facial or scalp massages or treatment with oils, creams, lotions, or other preparations, either by hand or mechanical appliances;

(c) Shampooing, arranging, dressing, or dyeing the hair or applying hair tonics;

(d) Applying cosmetic preparations, antiseptics, powders, oils, clays, or lotions to scalp, face, or neck, or removing superfluous hair from the face and neck of any person; or

(e) Styling, waving, curling, straightening, or bleaching the hair by mechanical or chemical means.

III. "Barbershop" means any establishment or place of business wherein the practice of barbering is engaged in or carried on.

IV. "Board" means the board of barbering, cosmetology, and esthetics.

V. "Cosmetologist" means any person practicing cosmetology.

VI. "Cosmetology" means arranging, dressing, curling, waving, cleansing, cutting, bleaching, coloring, or similarly treating the hair of any person, and performing other work customarily performed by a cosmetologist such as giving facials, manicures, pedicures, and artificial nail enhancements, applying makeup or eyelashes to any person, and removing superfluous hair.

VII. "Esthetician" means any person practicing esthetics.

VIII. "Esthetics" means:

(a) Giving facials, applying makeup, giving therapeutic skin care treatments, removing superfluous hair, or applying eyelashes to any person;

(b) Beautifying the face, neck, arms, and shoulders, by use of cosmetic preparations, antiseptics, tonics, lotions, or creams;

(c) Massaging, cleansing, or stimulating the face, neck, arms, and shoulders, by means of the hands, devices, apparatus, or appliances, with the use of cosmetic preparations, antiseptics, tonics, lotions, or creams; or

(d) Providing pedicure and manicure services, including therapeutic skin and nail care treatments for the feet and hands, beautifying the feet and hands, and massaging, cleansing, or stimulating the feet and hands by means of the hands, devices, apparatus, or appliances, with the use of cosmetic preparations, antiseptics, tonics, lotions, or creams, trimming or filing the nails, and polishing the nails.

VIII-a. "Fitzpatrick scale" means the following scale for classifying the 6 skin types, based on the skin's reaction to the first 10 to 45 minutes of sun exposure after the winter season:

Skin Type Sunburning and Tanning History

1 Always burns easily; never tans

2 Always burns easily; tans minimally

3 Burns moderately; tans gradually

TITLE XXX

OCCUPATIONS AND PROFESSIONS

CHAPTER 313-A

BARBERING, COSMETOLOGY, AND ESTHETICS

Section 313-A:10

313-A:10 Qualifications; Barbers. –

I. In order to be issued a barber's license by the board, a person shall:

- (a) Be of good professional character;
- (b) Have completed high school or its equivalent;
- (c) Have received training of:
 - (1) A minimum of 800 hours of training in a school of barbering approved by the board; or
 - (2) A minimum of 1,600 hours distributed over a period of at least 12 months under a licensed barber who has engaged in the practice of barbering within the state for at least 2 years;
- (d) Pass an examination conducted by the board; and
- (e) Pay a fee established by the board.

II. An applicant not meeting the conditions of RSA 313-A:10, I(b) through (c) may petition the board for exemption. The board, acting under rules adopted under RSA 313-A:8, XVI, may grant the exemption.

III. In order to be issued a master barber's license by the board, a person shall:

- (a) Be of good professional character;
- (b) Have completed high school or its equivalent;
- (c) Have received training of:
 - (1) A minimum of 1,500 hours of training in a school of master barbering approved by the board; or
 - (2) A minimum of 3,000 hours distributed over a period of at least 18 months under a licensed barber who has engaged in the practice of barbering within the state for at least 2 years;
- (d) Pass an examination conducted by the board; and
- (e) Pay a fee established by the board.

Source. 2000, 118:1. 2007, 47:2, eff. July 20, 2007.

TITLE XXX

OCCUPATIONS AND PROFESSIONS

CHAPTER 313-A

BARBERING, COSMETOLOGY, AND ESTHETICS

Section 313-A:11

313-A:11 Qualifications; Cosmetologists. –

I. In order to be issued a cosmetologist's license by the board, a person shall:

- (a) Be of good professional character;
- (b) Have completed high school or its equivalent;
- (c) Have received training of:
 - (1) A minimum of 1,500 hours of training in a school of cosmetology approved by the board; or
 - (2) A minimum of 3,000 hours distributed over a period of at least 18 months under a licensed cosmetologist who has engaged in the practice of cosmetology within the state for at least 2 years;
- (d) Pass an examination conducted by the board; and
- (e) Pay a fee established by the board.

II. An applicant not meeting the conditions of RSA 313-A:11, I(b) through (c) may petition the board for exemption. The board, acting under rules adopted under RSA 313-A:8, XVI, may grant the exemption.

Source. 2000, 118:1, eff. Jan. 1, 2001.

Bates v. Town of Durham Zoning Bd. of Adjustment

Superior Court of New Hampshire, Strafford County

August 13, 2008, Decided

Docket No.: 08-E-0024

Reporter

2008 N.H. Super. LEXIS 151 *

Bruce and Ellen Bates v. Town of Durham Zoning Board of Adjustment & Evelyn Sidmore

Notice: THE ORDERS ON THIS SITE ARE TRIAL COURT ORDERS THAT ARE NOT BINDING ON OTHER TRIAL COURT JUSTICES OR MASTERS AND ARE SUBJECT TO APPELLATE REVIEW BY THE NEW HAMPSHIRE SUPREME COURT.

Subsequent History: Related proceeding at [Bates v. Town of Durham Zoning Bd. of Adjustment, 2009 N.H. Super. LEXIS 86 \(2009\)](#)

Judges: [*1] Kenneth C. Brown, Presiding Justice.

Opinion by: BROWN

Opinion

ORDER

The petitioners, Bruce and Ellen Bates, appeal the decision of the Town of Durham Zoning Board of Adjustment ("ZBA") granting a variance to the respondent, Evelyn Sidmore. The respondents object. The court held a hearing on this matter on June 17, 2008. After review of the parties' arguments and the applicable law, the court finds and rules as follows.

The court takes the following facts from the certified record ("CR"). On May 25, 2006, Ms. Sidmore applied for variances to replace an existing modular home at 8 Cedar Point Road in Durham, New Hampshire with a new house on an expanded footprint with accessory apartment that would violate certain setback requirements. (CR Tab C). Ms. Sidmore's property abuts the petitioners' property and is on a bay. The ZBA approved Ms. Sidmore's application on rehearing on October 10, 2006. (CR at 241). Ms. Sidmore constructed the new house. She then received notice from the Town of Durham of violations of her conditional building permit based on the extended porch, the new

chimney, increased elevation, new retaining walls, and excavation work that was not approved. (CR at 297). On August 22, 2007, Ms. Sidmore [*2] applied for variances "to install cement retaining walls for soil removal and erosion control on south end of the basement and north end, 8 feet east from original house stairs, and also, to construct rear door egress stairs from south door, north door stairs, deck/landings and chimney within the shoreland and sideyard setbacks." (CR at 273, 301).

The ZBA held a public hearing on the application on November 13, 2007. (CR at 300). A portion of the application was approved with conditions. (CR at 362). Specifically, the ZBA voted to grant a variance to allow construction of the deck on the east corner of the residence, which encroaches into the sideyard setback. (CR 311, 363). The petitioners filed a motion for rehearing, which was denied. (CR at 384). This appeal followed.

[RSA 677:6](#) provides, in pertinent part:

In an appeal to the court, the burden of proof shall be upon the party seeking to set aside any order or decision of the zoning board of adjustment . . . to show that the order or decision is unlawful or unreasonable. All findings of the zoning board of adjustment . . . upon all questions of fact properly before the court shall be prima facie lawful and reasonable. The order or decision [*3] appealed from shall not be set aside or vacated, except for errors of law, unless the court is persuaded by the balance of probabilities, on the evidence before it, that said order or decision is unreasonable. (2008).

The petitioners initially argue that the ZBA did not have jurisdiction to act on the second application, since it was essentially the same relief as the first application. In the alternative, the petitioners argue the ZBA acted unlawfully or unreasonably in granting a variance for the deck to encroach on the setback because Ms. Sidmore failed to meet the variance criteria. Specifically, the

petitioners argue Ms. Sidmore failed to produce evidence of hardship or the impact on the value of neighboring properties, and further the variance is contrary to the spirit and intent of the ordinance. Finally, the petitioners assert the applicant acted in bad faith in providing the ZBA with one set of building plans and the Building Inspector with a separate expanded set of plans.

Initially, the court addresses whether the ZBA should have considered Ms. Sidmore's application. "When a material change of circumstances affecting the merits of the application has not occurred or the application [*4] is not for a use that materially differs in nature and degree from its predecessor, the board of adjustment may not lawfully reach the merits of the petition." Fisher v. City of Dover, 120 N.H. 187, 190, 412 A.2d 1024 (1980). "The burden of proving a material change of circumstances before the board of adjustment lies on the party seeking the variance." *Id.* "The determination of whether changed circumstances exist is a question of fact which necessitates a consideration of the conditions and circumstances which existed at the time of the prior denial." *Id.* at 190-91 (quotations and citation omitted).

The first application included plans for a proposed farmer's porch. (CR at 57). The porch would be on the front and southern sides of the residence. (CR at 57). The ZBA approved the application. (CR at 241). Following construction of the residence, Ms. Sidmore applied for a variance requesting approval for a wrap-around deck on the east corner. (CR at 311). The ZBA discussed this issue and determined that the two applications were different. (CR at 306). The court agrees with the ZBA's decision that the expanded version of the porch to become a wrap-around deck creates a changed circumstance sufficient [*5] for the ZBA to consider the second application. (CR at 305-06). Accordingly, the petitioners' argument regarding jurisdiction is without merit.

Since the court finds that the ZBA had jurisdiction to consider the second application, the court determines whether the ZBA acted unlawfully or unreasonably in granting the application as it applies to the deck. The court's review "is not to determine whether it agrees with the zoning board of adjustment's findings, but to determine whether there is evidence upon which they could have been reasonably based. The court thus may not review the evidence *de novo*." Chester Rod & Gun Club, Inc. v. Town of Chester, 152 N.H. 577, 583, 883 A.2d 1034 (2005) (quotations and citation omitted). When an applicant requests a variance, it is the

applicant's burden to show:

- (1) the variance will not be contrary to the public interest; (2) special conditions exist such that a literal enforcement of the provisions of the ordinance will result in unnecessary hardship; (3) the variance is consistent with the spirit of the ordinance; (4) substantial justice is done; and (5) granting the variance will not diminish the value of surrounding properties.

Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102, 105, 920 A.2d 1192 (2007) [*6] (citation omitted). The petitioners argue that the applicant failed to meet the unnecessary hardship, spirit of the ordinance, and value of surrounding properties prongs. The court addresses each of these criteria in turn to determine if there was sufficient evidence before the ZBA.

I. UNNECESSARY HARDSHIP

"[The] factors that should be considered in the area variance hardship calculation include: (1) whether an area variance is needed to *enable* the applicant's proposed use of the property given the special conditions of the property; and (2) whether the benefit sought by the applicant can be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance." Boccia v. City of Portsmouth, 151 N.H. 85, 92, 855 A.2d 516 (2004) (citations omitted) (emphasis in original).

In addressing the unnecessary hardship prong, the ZBA considered that the property is unique in that "almost the entire lot was already located within the 125 ft. shoreland setback." (CR at 57). The residence on the property is "as far back from the bay as possible." (CR at 58). The purpose of the deck and stairs is to provide access to a second door for the apartment. (CR at 247, 306). Ms. Sidmore [*7] represented in the application that: "The stairs and landings are simply necessary means of egress from the house." (CR at 246). One member provided during discussion: "it was not, because this was a single-family home, where the only necessary means of egress was the front door." (CR at 310). However, the testimony included that: "Mrs. Sidmore's mother, who had owned the property for years, was now in a nursing home, and a temporary ramp allowing her to enter the house would be consistent with this deck." (CR at 306).

As to an alternative method, evidence was submitted

that the applicant would be permitted to build a three feet by three feet landing and stairs to provide access to the door and it would be a smaller encroachment into the setback. (CR at 306). The ZBA, however, heard testimony that "a 3 ft by 3 ft stairs would actually stick out more and be more of an encroachment than having this deck, which allowed the stairs to run parallel with the building." (CR at 306).

After review of the record, the court finds sufficient evidence before the ZBA for a finding that the applicant met the unnecessary hardship prong of the variance standard. The court finds that the ZBA's decision [*8] as to this prong is neither unreasonable nor unlawful.

II. SPIRIT OF THE ORDINANCE

"The requirement that the variance not be contrary to the public interest is related to the requirement that the variance be consistent with the spirit of the ordinance." [*Malachy Glen Associates, Inc., 155 N.H. at 105*](#) (quotations and citation omitted).

[T]o be contrary to the public interest ... the variance must unduly, and in a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives. One way to ascertain whether granting the variance would violate basic zoning objectives is to examine whether it would alter the essential character of the locality.... Another approach to [determine] whether granting the variance would violate basic zoning objectives is to examine whether granting the variance would threaten the public health, safety or welfare.

[*Id. at 105-06*](#) (quotations and citation omitted). The petitioners do not argue that the ZBA had insufficient evidence to find that the variance was not contrary to the public interest. Therefore, the court looks to the record to determine if the ZBA had sufficient evidence to determine whether the variance would be consistent [*9] with the spirit of the ordinance.

Chair Gooze provided during the discussion: "in terms of the spirit and intent of the Ordinance . . . there were abutters who were unhappy with the deck." (CR at 311). Attorney Shulte provided: "the concern was that having the deck wrap around changed the use of the walkout doors built on that end, the use of the back yard, and the way the apartment would be used, which would impact the Bates' use of their back yard." (CR at 307).

Attorney Shulte further provided that "it was a gross violation of the [] Ordinance . . . and had a dramatic impact on the Bates'." (CR at 308.). "There was discussion as to whether or not the deck impacted the neighborhood, in terms of spacing. Ms. Woodburn [a member of the ZBA] said it was not significantly different than what was there now in the neighborhood." (CR at 311).

After review of the record, the court finds sufficient evidence before the ZBA for a finding that the applicant met the spirit of the ordinance prong of the variance standard. The court finds that the ZBA's decision as to this prong is neither unreasonable nor unlawful.

III. VALUE OF SURROUNDING PROPERTIES

The following evidence was before the ZBA regarding [*10] whether the variance to build the deck would diminish the value of surrounding properties. Steven Kalvelage testified "from his standpoint as someone who lived near this property, his property values had gone up as a result of the changes that had occurred there." (CR at 309). Mr. Kalvelage further stated: "he didn't see the chimney and the porch from his property, and also said that although he could see the Bates' property from the water, the Sidmore addition was barely visible from the water. He said the addition to this home was a significant improvement for the neighborhood." (CR at 309). A letter was read from Richard and Dawn Delude that provided: "the Sidmore home now looked beautiful from the water and the land, and was a welcome change from the mobile home that had existed on the site before." (CR at 309).

Based on the foregoing, the court finds sufficient evidence before the ZBA for a finding that the applicant met this prong of the variance standard. The court finds that the ZBA's decision as to this prong is neither unreasonable nor unlawful.

As to the petitioners' argument that Ms. Sidmore acted in bad faith, after review of the record, the court finds this argument without [*11] merit. The changes to the original plans occurred during construction. (CR at 304). Any argument that Ms. Sidmore acted in bad faith would be an argument for attorney's fees, see [*Funtown USA, Inc. v. Town of Conway, 129 N.H. 352, 354, 529 A.2d 882 \(1987\)*](#), which are not warranted here.

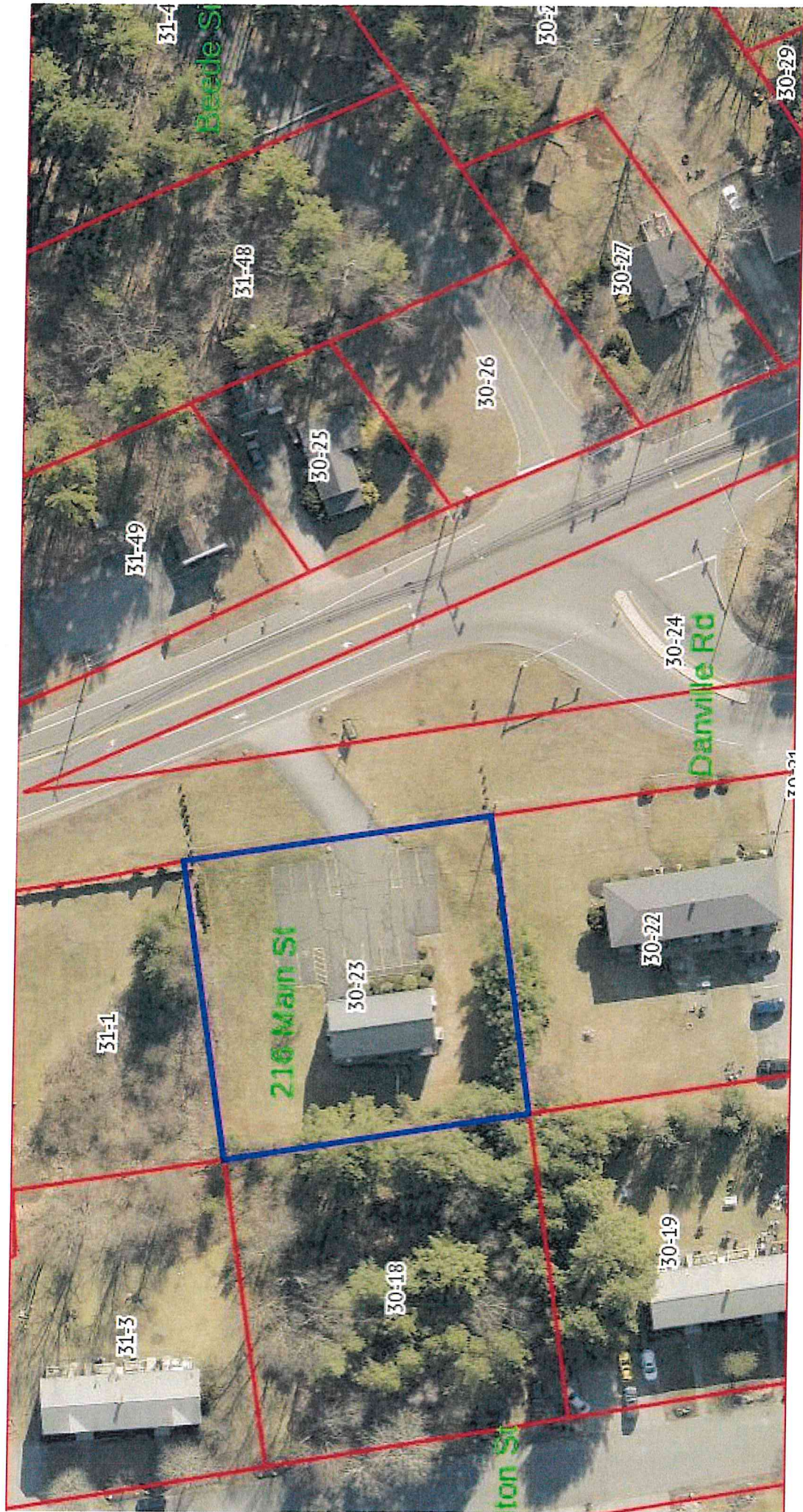
In conclusion, the court finds that the ZBA had sufficient evidence upon which the decision to grant the variance could reasonably been based. The issue is not whether

the court agrees with the findings of the ZBA. The court is not persuaded by the balance of probabilities based on the evidence before it that the ZBA's decision was unlawful or unreasonable. Accordingly, the decision of the ZBA is **AFFIRMED**.

The parties submitted requests for findings of fact and rulings of law. The court's findings and rulings are in narrative form in this order. Therefore, any requests of the parties for findings and rulings are granted, denied, or determined to be unnecessary, consistent with the above narrative. E.g. [Howard v. Howard, 129 N.H. 657, 659, 531 A.2d 331 \(1987\)](#); [Geiss v. Bourassa, 140 N.H. 629, 632-33, 670 A.2d 1038 \(1996\)](#).

So Ordered.

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The Plaistow Zoning Board of Adjustment will hold a public hearing **Thursday February 29, 2024, at 6:30 p.m., 145 Main St, Second Floor, Plaistow, NH 03865 to consider the following application(s) for relief:**

PLEASE NOTE: DUE TO STAFFING ISSUES, THIS MEETING MIGHT NOT BE BROADCAST OR RECORDED.

ALL REQUESTS ARE TO THE PLAISTOW ZONING ORDINANCES:

#24-01: A request from Anthony F. Pacillo, III, for a Special Exception under Article X, to permit a Home Occupation, namely an office for a leasing company. The property is located at 4 Ashley Nicole Dr., Tax Map 9, Lot 8, in the LDR Zoning District. The property owner of record is A.N. Pacillo Trust, Anthony Pacillo, TR.

#24-02: A request from Amanda Poole for a variance from Article V, §220-23E to permit a beauty salon, in a zoning district where it is not a permitted use. The property is located at 216 Main St., Tax Map 30, Lot 23, in the MDR Zoning District. The property owner of record is Kevin S. Joyce.

#24-03: A request from Amanda Poole for a variance from Article V, §220-23E to permit an office use, in a zoning district where it is not a permitted use. The property is located at 216 Main St., Tax Map 30, Lot 23, in the MDR Zoning District. The property owner of record is Kevin S. Joyce.

#24-04: A request from Nolan Murphy, for a Special Exception under Article X of the Plaistow Zoning Ordinances, to permit a Home Occupation, namely an office for a construction company. The property is located at 9 Laperle Ave., Tax Map 24, Lot 22, in the MDR Zoning District. The property owners of record are Nolan J. and Linsay G. Murphy.

**You are being notified of these public hearings because you are noted to be an abutter to the subject property and/or other interested party to one or more of the above applications.
If you are part of an HOA/COA, please distribute this information to all your members.**

Multiple applications are listed in order of receipt and as a usual course of business the Board will hold the public hearings in that order. However, the chair does have the discretion to change the order in the interest of a more efficient meeting.

Documents and Plans pertaining to the above public hearings will be provided on the Zoning Board of Adjustment page of the Town's Website www.plaistow.com no later Tuesday, February 27, 2023. Applications will also be available for viewing in the Planning/ZBA Office during regular business hours.

*The Town of Plaistow complies with the Americans with Disabilities Act regulations.
Please call (603) 382-5200 X202, during regular business if you have questions regarding accessibility in attending this meeting.*