



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

**ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
May 30, 2019**

The meeting was called to order at 6:30 p.m.

Roll Call: Peter Bealo, *Chair*
Dan Lloyd, *Vice Chair*
John Blinn
Jonathan Gifford
Gary Ingham

Review/Approval of Minutes - April 25, 2019 Minutes

★D. Lloyd moved, second by J. Blinn, to approve the minutes from the April 25, 2019 meeting. There was no discussion on the motion. The vote was 5-0-0 U/A.

PUBLIC HEARINGS:

Continued from April 25, 2019

#19-05: A request from Henry Corey for a variance from Article V, §220-37, to allow the land area within the LDR zone to be allowed to apply towards the minimum lot area requirements of §220-32E C:2 which requires 40,000SF per dwelling unit. The property is located at 57 Sweet Hill Rd, Tax Map 62, Lot 12 in both the MDR and LDR districts. Peter & Karen Ray are the property owners of record.

Kevin Hatch LLS, Cornerstone Survey Associates, Inc. was present for the application. The applicant Henry Corey was in the gallery for the application.

It was noted for the record that written authorization from the property owner had been received to allow Cornerstone's representation for the application.

K. Hatch noted that he had discussions with Mike Dorman, Chief Building Official regarding the best way to approach the proposed duplex on this parcel. It was also intended that the duplex structure would be under a condex (condominium) form of ownership. He offered that he wasn't sure there was a needed for a variance. K. Hatch explained that this parcel was split into two districts, MDR (Medium Density Residential) and LDR (Low Density Residential). He noted that when a parcel is split by a zoning district line an allowed *use* in one district can be carried into the other district if it is not permitted in that district. However, the proposed duplex is allowed in both the MDR and LDR districts. M. Dorman directed him that he would have to apply for a variance because half this parcel was located in the LDR district and the minimum requirements for a duplex in that district could not be met on this parcel.

K. Hatch noted the following information in support of the application for a variance:

- The property is noted as Tax Map 62, Lot 12
- The property is 1.94A, which is approximately 84,000SF
- The applicant is proposing to build a duplex on the property
- The property is currently undeveloped
- The property is split zoning with the frontage being in the MDR district and the back part of the parcel being in the LDR district
- A duplex is an allowed use in both MDR and LDR districts
- There is 210ft of frontage on Sweet Hill Road, which is the minimum required for a duplex in either district
- NHDES (New Hampshire Department of Environmental Services) has approved a septic design for a duplex, which shows the land can support a duplex

There was additional discussion about the wording in the Zoning Ordinance. K Hatch reiterated that the “use” of a duplex was allowed in both the MDR and LDR districts and the property would look exactly the same with or without a variance.

It was noted that if Mr. Hatch disagreed with the Zoning Official’s interpretation in the denial letter, the proper application would have been to appeal that decision.

K. Hatch offered that the safest way to resolve the question was to apply for a variance.

- The duplex structure is proposed to be built completely within the MDR portion of the property, which is approximately 41,020SF of land
- The remainder of the land is in the LDR district

K. Hatch explained that in the spirit of being a good neighbor the applicant had talked to the most impacted neighbors to explain his intent.

- NHDOT (New Hampshire Department of Transportation) permits are pending
- The duplex is proposed to be under condex (condominium) ownership and not as rental property

J. Gifford asked if there were pictures of the proposed structure.

P. Bealo noted that it was not within the Board’s purview to review the structure itself

K. Hatch offered that the structure would be a craftsman-cape style building.

K. Hatch offered the following responses to the criteria for the granting of a variance:

- The proposed variance would not be contrary to the Public Interest because the 2-unit building will be entirely located within the MDR zone and is an allowed use in both the MDR and LDR zones

- The Spirit and Intent of the Ordinance are preserved because the intent of these zones is to keep the use and the density of the town located in defined areas. This use of a 2-family residence is allowed in both zones, and the density of the 2-family home is allowed in the zone it is located in
- There is Substantial Justice in granting the variance because this proposal allows the landowner an allowed use of his land without penalizing them for the zoning line that bisects the lot
- The Values of Surrounding Properties will not be Diminished because this proposal will create a residential use in a residential neighborhood and will have no adverse effect on surrounding property values
- Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship because the placement of the zoning line that bisects the lot effectively splits the lot in two, and §220-17 allows on 30' of the lot to be used outside of the zone the actual use (house) is placed. This would make sense for a commercial building abutting residential use, but not when a two-family home is allowed in both zones

P. Bealo noted that the use was permitted in the MDE, but only with certain amount of land. He added he had to think about whether or not it would affect property values because there were no other two-family structures in the neighborhood.

There was discussion on where other duplexes/two-family structures were located. It was noted there was one two-family further down Sweet Hill Road that had been there many year, but that the majority of duplexes were a fair way down Pollard Road.

K. Hatch offered that the property met the frontage requirements for a duplex and the land requirements if the property were completely zoned MDR and not split. He added that there was plenty of “elbow room” on the parcel and to the abutters.

P. Bealo asked if the Board had any questions, there were none. He asked if there was anyone in the gallery speaking in favor of, or in opposition to, the application or had questions. There was no one.

J. Gifford suggested it was almost a matter of semantics, the applicant is not asking to subdivide the parcel and that he didn't see a negative, but had a concern about what precedent might be set.

D. Lloyd offered that was also his concern.

J. Gifford noted that a duplex could be approved on either side of the line.

K. Hatch explained that the zoning district split was nearly a 50/50 split; the total parcel is 84,500 and the section in the MDR is 41,020. He noted that the zoning district line was nearly the same as the line that defined the edge of wetlands. He added that the distance from the back of the proposed location of the building to the LDR zoning line was +/-100 ft.

There was discussion about the original placement of the zoning line, which was noted to be 300ft on either side of the centerline of the road. There was speculation as to how that was determined as the proper way to zone the district. It was supposed that it was based on the uses at the time the line was drawn.

It was noted that there had been a promise by the applicant of a buffer to an impacted abutter.

G. Ingham asked if the buffer offer had been put in writing.

K. Hatch replied that the builder had indicated he will put it in writing.

P. Bealo explained the deliberations process and the once the public hearing was closed, no additional input would be allowed by either the applicant or other interested parties. He noted that applicants were welcome to stay, or not, but in either event would be notified by mail of the Board's decision. It was also noted that no permits could be issued for a period of thirty (30) days to allow those who may disagree with the Board's decision to request a re-hearing per the State's RSAs.

There were no additional questions or comments and the public hearing was closed.

DELIBERATIONS:

Continued from April 25, 2019

#19-05: A request from Henry Corey for a variance from Article V, §220-37, to allow the land area within the LDR zone to be allowed to apply towards the minimum lot area requirements of §220-32E C:2 which requires 40,000SF per dwelling unit. The property is located at 57 Sweet Hill Rd, Tax Map 62, Lot 12 in both the MDR and LDR districts. Peter & Karen Ray are the property owners of record.

★D. Lloyd moved, second by J. Gifford, to grant the request for a variance to allow the parcel at 57 Sweet Hill Road to be treated as if it was completely zoned MDR for the purposes of constructing a duplex.

Discussion:

G. Ingham noted that he had two concerns about the application:

- Would this be precedent setting
- The area does not currently have any duplexes and if the duplexes on Pollard are an example a duplex here may not diminish property values, but it will diminish the neighborhood

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

- The proposed variance would not be contrary to the Public Interest because a duplex is an allowed use in the MDR. There just isn't enough land in the MDR to meet those minimum requirements
- A two-family (duplex) is an allowed use in the MDR, but there is not enough land to meet the minimum requirements, which is contrary to the Spirit and Intent of the Ordinance
- Substantial Justice - The applicant is not penalized by the denial of the variance as they would still be able to build a single-family dwelling

There was discussion that a single-family dwelling could be built with the same number of bedrooms as the NHDES approved septic design for a duplex. It was also noted that a single-family dwelling with an ADU (Accessory Dwelling Unit) could also be constructed without the need for a variance.

- There was concern that since there are no other duplex (condex) dwellings in the area that putting one on this property would indeed Diminish Surrounding Property Values
- There is a Hardship in that the land is split in two (2) zoning districts with different minimum requirements for a duplex in each district

J. Gifford offered that there are several bungalow-style dwellings located on Sweet Hill Road and he didn't see that the proposed duplex would be contrary to the area.

There was no additional discussion on the motion. The vote was 2-3-0 (Bealo, Lloyd and Ingham dissenting.

Each member who voted no was asked to state their reasons for the record:

P. Bealo:

- Not convinced that surrounding property values would not be diminished
- Granting the variance would be contrary to the spirit and intent of the ordinance

G. Ingham:

- The spirit and intent of the ordinance would not be protected by the granting of the variance
- There would be a negative impact on the surrounding property values

D. Lloyd:

- The variance would be contrary to the spirit and intent of the ordinance
- Disagreed with the applicant the surrounding property values would not be diminished

#19-06: A request from 201 Highland, LLC for a variance from Article V, §220-32B, to allow a mini-storage use, which is not a permitted use in the district. The property is located at 88 Plaistow Rd, Tax Map 27, Lot 21 in the C1 districts. MBT Holdings, LLC is the property owner of record. The property owner is also

requesting a 2-year extension of the approval of ZBA matter #17-08 (wetlands buffer variance), granted September 28, 2017.

Michael Malynowski, Allen & Major Associates, Inc., was present for the application.

It was noted for the record that written authorization had been received by both the applicant and the property owner to allow Allen & Major to represent the application.

M. Malynowski offered the following information in support of the variance application:

- The property is located at 88 Plaistow and is 17+A of land that wraps around the back of the Tractor Supply property
- In 2017/18 the Planning Board reviewed and approved a site plan application for a mixed use of the property
- Retail was approved for the front portion of the property
- A garage and bus terminal was approved for the back portion of the property
- The owner's intent was to relocate his bus company to this location, but has since changed those plans and is looking to sell the property
- The applicant is the potential buyer of the property and is proposing a self-storage facility on the site
- The self-storage use is currently only allowed in the Industrial districts
- The proposal is for a climate-controlled self-storage facility
- If the variance for the use is approved the applicant will have to go to the Planning Board to amend the site plan
- The proposed building will be slightly larger than the approved building, but will require less parking and less pavement
- The new structure is intended to be three (3) stories
- Storage will be inside, no exterior storage is proposed
- Main access will remain the same as previously approved
- There is still the need for the wetlands filling that was previously approved by the State
- There will be less vehicles trips per day
- The applicant is also asking for a two (2) year extension of the previously granted wetlands buffer variance (Case #17-08, granted September 28, 2017) so that it can be included in this project

D. Lloyd asked if all building setbacks will still be maintained. It was confirmed that they would be.

D. Lloyd asked about spillage.

M. Malynowski they would still need to meet all State permitting requirements, which would include amending the AoT (Alteration of Terrain) permit.

D. Lloyd asked if this would be a twenty-four (24) hour operation.

It was noted that the Planning Board had jurisdiction over the hours of operation, which would then have to be noted on the final plan.

G. Ingham asked if the height of the building would be seen by abutters,

M. Malynowski noted that it would not, nor would it be visible from Route 125.

J. Blinn asked about the septic system.

M. Malynowski explained that it would be a smaller system because of the lesser use.

D. Lloyd questioned the parking.

M. Malynowski replied that the parking would meet the Planning Board's regulations.

P. Bealo inquired about the size of the building.

M. Malynowski explained that the footprint was proposed to be 30,000SF, with three (3) floors for a total of 90,000SF. He added that the parking requirements for this use, even with the increase in square footage was less than the single-story bus terminal.

It was noted that the access to the property was not intended to change.

M. Malynowski offered the following in support of the variance application:

The proposed variance would not be contrary to the Public Interest of the ordinance because the essential character of the neighborhood would not change. The proposed use will be situated to the rear of the site, which is surrounded by wooded buffers. The use will not threaten the public's health, safety or welfare because all operations will be in accordance with all applicable state and local regulations. The proposed use will be less intensive than the current allowed uses, the reducing the overall traffic flow from the site.

The Spirit and Intent of the ordinance is preserved because the proposed use is less intrusive than the currently permitted uses (garage and bus storage) and will not be easily visible from the public road nor abutting properties.

There is Substantial Justice in granting the variance because the general public does not stand to benefit from a denial of this variance request, since the proposed use is consistent with other types of uses allowed in Town and would provide a useful service to the residents not commonly available now.

The Values of Surrounding Properties will not be diminished because substantially all the abutting properties are similar in size and nature to the subject property. The proposed development will take a blighted property, that has been negatively affecting surrounding properties for years, and convert it into a state-of-the-art commercial development that

has been designed to mitigate the flow of stormwater and to enhance the value of the property as well as the neighborhood.

Literal enforcement of the provisions of the ordinance would result in Unnecessary Hardship because due to the unique shape of the property and the unusual size, shape and location of natural wetland features, the rear portion of the parcel is segregated from the street frontage and public visibility, which are required to support a marketable and viable commercial or retail use. The property contains approximately seventeen (17) acres of land and is bound by wetlands on three (3) sides with a finger-like wetlands projection that protrudes into the rear upland section of the property. Due to these unique conditions, the rear of the property is completely cut off from the front of the parcel, which makes it unmarketable for traditional commercial or retail requiring visibility from the public way. Granting the requested relief will allow a minimally intrusive use to be situated on less than a visible portion of the site, will also increase the tax value of the property, and generate additional revenues for Plaistow without negatively impacting the neighbors or the Town.

P. Bealo asked if the Board had any additional questions. There were none. He asked if there was anyone speaking in favor of or in opposition to the application. There was no one and the public hearing was closed.

DELIBERATIONS:

#19-06: A request from 201 Highland, LLC for a variance from Article V, §220-32B, to allow a mini-storage use, which is not a permitted use in the district. The property is located at 88 Plaistow Rd, Tax Map 27, Lot 21 in the C1 districts. MBT Holdings, LLC is the property owner of record. The property owner is also requesting a 2-year extension of the approval of ZBA matter #17-08 (wetlands buffer variance), granted September 28, 2017.

★D. Lloyd moved, second by G. Ingham, to grant the variance request to allow a mini-storage use at 88 Plaistow Road.

G. Ingham offered that the property is surrounded by trees and the proposed use was better than a bus company. He added that it looked like a good plan, noting that the building would not be easily seen from the road.

D. Lloyd noted that it took away the possibility of diesel leaks and fumes that might have been a problem with a bus company. He added that he wished he had asked about vehicle storage on the property.

P. Bealo reminded that it was stated there would be no outside storage.

J. Gifford added that these high-rise storage facilities tend to get a different clientele than the single-level businesses do.

J. Blinn noted a new self-storage on Route 111 in Hampstead, offering that it was a clean operation, there wasn't a lot of activity and it was a nice-looking building.

D. Lloyd offered that his other questions were about hours of operation and lighting, which will all be addressed by the Planning Board.

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

- The proposed variance is not contrary to the Public Interest because it will be an improvement of the property and the proposed use is less intrusive than the approved and permitted uses
- The Spirit and Intent of the ordinance are preserved because the proposed use is less intrusive than the current approved use and there will not be as much activity on the site
- There is Substantial Justice in allowing the variance, both the public and the applicant will gain
- The Values of Surrounding Properties will not be diminished as this is a commercial property, located in a commercial district and the use is compatible with other uses in the district
- There are unique issues with this parcel and the wetland features that make use of the property challenging. Denying the variance would create an Unnecessary Hardship.

There was no additional discussion on the motion. The vote was 5-0-0 U/A.

★J. Gifford moved, second by J. Blinn, to extend the previously granted wetlands buffer variance (Case #17-08, granted September 28, 2017) for a period of two (2) years.

There was no discussion on the motion. The vote was 5-0-0 U/A.

The Board was reminded of the Spring Planning and Zoning Conference scheduled for June 1, in Concord. The Board was asked if they would be attending the in-house training on Roles, Responsibilities, Relationships and Authority that is being held on June 11, 2019 at Town Hall. All will attend.

There was no additional business before the Board and the meeting was adjourned at 7:37 p.m.

Respectfully Submitted:

Dee Voss
Administrative Assistant