



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

**ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
July 25, 2019**

The meeting was called to order at 6:33 p.m.

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

Also Present: Ethan Conley alternate candidate

**Review/Approval of Minutes – May 30, 2019 Minutes**

**★D. Lloyd moved, second by J. Gifford, to approve the minutes from the June 27, 2019 meeting. There was no discussion on the motion. The vote was 5-0-0 U/A.**

**PUBLIC HEARINGS:**

**★J. Blinn recused himself and was seated in the gallery.**

**★T. Fisher was appointed as a voting member, in place of J. Blinn, for this application.**

**#19-09: A request from Blinn Family Realty, LLC for a variance from Article III, §220-16.B to allow display and sales of five (5) motor vehicles within 1,000 feet from another motor vehicle dealership. The property is located at 38 Westville Rd, Tax Map 27, Lot 40 in the C1 District. Blinn Family Realty, LLC is the property owner of record.**

Brian Haynes, SEC & Associates and John Blinn, property owner, were present for the application.

B. Haynes noted that following in support of the application:

- The subject parcel is 1.42A, with 430 feet of frontage on Westville Rd
- The property is located entirely within the Commercial I (CI) district
- The site plan for the auto body use was approved in 2009, and amended in 2012 and 2017
- The property is serviced by on-site well and septic

- Mr. Blinn formerly had his business located at 38 Westville Rd, where he had obtained a variance that allowed the sale of five (5) motor vehicles. Because the variance stays with the land, and the new location is within 1,000 feet of that property a variance is required to allow the sale of motor vehicles at the current site
- The motor vehicle sales would be limited to five (5) vehicles and will be secondary to the current auto body repair use

P. Bealo asked where the proposed display parking would be. It was located on the plan. It was also noted that the Planning Board would approve the display location as part of their site plan review.

B. Haynes offered the following responses to the criteria for the granting of a variance:

- The proposed variance will not be contrary to the Public Interest because it will allow full and productive use of the property and business. The addition of vehicles sales to the established auto bay shop use not only enhances the business. It was noted that the vehicles are acquired through insurance companies or be owners who are unable/unwilling to have the necessary repairs done, not with the intention of resale. It is difficult for the vehicles to be disposed of in a financially feasible manner without the ability to have a dealer license. There will not be any increase in parking on the site or employees because the motor vehicle sales. The majority of the sales will be handled on-line and by existing staff
- The Spirit and Intent of the Ordinance is preserved because the intent of the ordinance is separation between automobile dealerships. The applicant believes the focus of the prohibition was to prevent overcrowding of dealerships on Route 125 and Route 108. Those retail locations are primarily sales, not the unique situation in this case where the sales are ancillary to the primary use of the auto body shop. Mr. Blinn was the one who obtained the variance for his former location at 39 Westville Road and since the variance stays with the land he no longer has benefit of that variance. The distance between the two properties is +/- 120 feet, with a distance of 620 feet between buildings. While the separation is not quite what the ordinance calls for the use is substantially diminished from what would be allowed on Route 125 or Route 108.
- There is Substantial Justice in granting the variance because the addition of vehicle allows for the full function of the site, the equipment, staff and space. It allows Mr. Blinn the ease to apply for titles once the vehicles have been repaired and are ready for resale, which offers an additional service to the public. This all enhances the property without impacting the abutters or the general public. There is substantial justice in granting the variance which allows for the full productive use of the property without sacrificing the existing intended use.
- The Values of Surrounding Properties will not be Diminished because granting the variance would allow the addition of vehicle sales to an existing auto body service business. The two like uses will complement each other and easily accommodated on the same site intended for the parking/storage of vehicles. There will be no increase in traffic, noise, or employees, nor will there be any

need for any site changes that would impact stormwater flows. Considering that granting the variance only enhances the site, the values of surrounding properties will not be diminished.

- Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship because the zoning restriction does not consider these unique circumstances. This is not intended to be a full volume dealership, it will be very limited to the five (5) requested spaces in support of the existing business. The restriction unnecessarily limits this property already established as an automotive-focused business. The business that has the variance is currently not making use of the ability to sell motor vehicles. Considering the extremely limited request and the intent of the ordinance as a means to limit overcrowding of vehicle dealership, full compliance with the setback is unnecessarily limiting. All considered, denial would result in unnecessary substantial hardship if the literal enforcement of the provisions of the ordinance were applied in this case.

There was a discussion about the previously granted variance at 39 Westville Rd. It was reiterated the Mr. Blinn is the one who obtained the variance when his same business was located there. It was noted that the variance stays with the property, regardless of who obtained it. It was also noted that the current business at 39 Westville Rd (Endurance Auto) was not currently making use of the ability to sell motor vehicles and does not have a State license to do so.

P. Bealo noted that there are residential condos located next door to 38 Westville Rd. He expressed concern that there allowing the vehicle sales would result in flags and additional signage.

J. Blinn offered that he wasn't intending any signage of that type, but that there would be a small sign on the building for the vehicle sales.

It was reminded that the motor vehicle sales would be secondary to the current auto body repair business.

J. Blinn noted that without the dealer license it was difficult to obtain titles for the vehicles which would then allow him to resell them.

T. Fisher asked what would be the alternate plan for the vehicles if the variance is not granted.

J. Blinn responded that he would be forced to call someone to take vehicles at a reduced wholesale price, which would be a substantial financial loss to him. He added there could also be a potential loss of business.

P. Bealo asked if there were already vehicles for sale on the site.

J. Blinn offered that there were not. He added that he doubted there would ever be a time that he would have the five (5) requested spaces filled with vehicles for sale.

There was discussion of the next steps should the variance be approved. It was noted that Mr. Blinn will have to apply to the Planning Board for an amendment to the site plan. That would also include notification to the abutters. Mr. Blinn will not be allowed to display vehicles for sale without the Planning Board's approval of the amended site plan.

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.

P. Bealo explained the process, noting that once the public hearing is closed there can be no additional input to the Board. Applicants will be notified in writing within five (5) business days. No permits can be issued for thirty (30) days to allow for any requests for re-hearing to be received.

P. Bealo asked one more time if anyone else had anything to contribute.

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

#### DELIBERATIONS:

*(Note: Voting members are P. Bealo, D. Lloyd, J. Gifford, G. Ingham and T. Fisher)*

**#19-09: A request from Blinn Family Realty, LLC for a variance from Article III, §220-16.B to allow display and sales of five (5) motor vehicles within 1,000 feet from another motor vehicle dealership. The property is located at 38 Westville Rd, Tax Map 27, Lot 40 in the C1 District. Blinn Family Realty, LLC is the property owner of record.**

***★D. Lloyd moved, second by G. Ingham to grant the variance request to allow the display and sales of five (5) motor vehicles at 38 Westville Road, Tax Map 27, Lot 40.***

The application was summarized noting the following:

- The intent of the original ordinance is well understood. It was enacted to stay the number of used car dealerships that were “blossoming like dandelions” on Route 125 and was reactive at the time
- Also understand that this particular request is not in the same category as this is a related accessory to the primary use of an auto body repair shop
- The existing business is already taking in used cars and now they are trying to avoid losses on those vehicles by being able to sell them at retail price

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

- Granting of the variance is not contrary to the Public Interest because there is no expansion of the business, nor physical change to the property. Signage will be minimal and the vehicles are already there

- The Spirit and Intent of the ordinance are preserved because this is not a major expansion and it is not the same as the motor vehicle sales on Route 125, it is a supportive function of an existing business. It is the commercial version of a residential ADU (Accessory Dwelling Unit)
- There is Substantial Justice in granting the variance because there is no loss or gain to the general public. There is no conflict with the 1,000-foot restriction because this is a secondary use to the business and parking will be in existing, well-defined areas
- The Surrounding Property Values will not be Diminished because no extra parking is being proposed, there will not be any physical changes to the site and minimal signage. Nothing will be different from the current conditions of the site
- Literal enforcement of the provisions of the ordinance would result in Unnecessary Hardship because the business owner would still be acquiring these motor vehicles but would suffer a loss if he had to sell them at a wholesale discount and not be able to sell on his own in a retail market

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

*★ J. Gifford excused himself from the meeting at 6:59 p.m.*

*★ J. Blinn returned to the table as a voting member at 6:59 p.m.*

*★ T. Fisher is still a voting member (for J. Gifford).*

### **PUBLIC HEARINGS CONTINUED**

**#19-10:** A request from Justin Hartmann for a variance from Article V, §220-32I to allow an existing deck to be extended two (2) feet into the minimum setback of twenty-five (25) feet. The property is located at 2A Sunrise Terr, Tax Map 14, Lot 17-1, in the LDR District. Justin M. Hartmann and Jessica L. Soares are the property owners of record.

Justin Hartmann and Jessica Soares-Hartmann were present for the application.

J. Soares-Hartmann offered the following in support of the variance application:

- They have an 8' X 12" deck that they would like to increase to a 12' X 14' size
- The current deck is located right at the twenty-five (25) foot setback from the property line
- They would also be changing the location of the stairs to the opposite side of the deck

The Board reviewed the sketch provided by the applicant to discuss the location of the house and existing deck as well as the proposed expansion. It was noted that the house was constructed in 2015.

J. Soares-Hartmann noted the following responses to the criteria for the granting of a variance:

- The proposed variance will not be contrary to the Public Interest because the two (2) feet being added to the structure is being added to an existing structure. Footings will not be moved, the extra two (2) feet will be cantilevered off the existing structure
- The Spirit and Intent of the Ordinance are preserved because the deck will not impede on surrounding properties
- There is Substantial Justice in granting the variance because the additional square footage will allow the deck to be more functional and symmetrical
- The Values of Surrounding Property Values will not be Diminished because the deck will add value to the home and property and will be attractive in nature. Additionally, the deck will be professionally installed
- Literal enforcement of the provisions of the ordinance would result in Unnecessary Hardship because the additional square footage will allow the deck to be more useful and enjoyable.

P. Bealo asked what the distance was from the proposed edge of the new deck to the closest structure on the abutting property.

J. Hartmann offered that the abutter's garage faced their property and the distance is approximately forty-five (45) feet.

P. Bealo asked if there was any landscaping or screening between the properties.

J. Hartmann replied that there is a line of arborvitaes that are currently at a twelve (12) foot height and growing.

There was discussion about the deck and its proximity to the abutters. It was noted that the deck is a raised structure that faces the abutter's garage. It was also noted that two second-floor windows are visible on the house, which is on the opposite side of the garage. There was also discussion about the relocation of the stairs leading to the deck.

It was noted that there was a shed shown on the sketch that was closer to the abutters than the deck was proposed to be. J. Hartmann noted that they had received a variance for the shed a year previously.

P. Bealo suggested that the proposed expansion of the deck was no more intrusive than the shed in its current location.

D. Lloyd offered that the shed was nicely done, as promised, and the property was very well maintained.

T. Fisher added that if the variance is granted, he had no doubt that the deck would look just as nice as the rest of the property.

G. Ingham asked if the existing deck would be added on to, or torn down and replaced.

J. Hartmann replied that the intent was to expand the existing deck by sistering the joints.

P. Bealo asked if there were any more questions from the Board, 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:

*(Note: Voting members are P. Bealo, D. Lloyd, J. Blinn, J. Gifford, and G. Ingham)*

**#19-10:** A request from Justin Hartmann for a variance from Article V, §220-32I to allow an existing deck to be extended two (2) feet into the minimum setback of twenty-five (25) feet. The property is located at 2A Sunrise Terr, Tax Map 14, Lot 17-1, in the LDR District. Justin M. Hartmann and Jessica L. Soares are the property owners of record.

**★ T. Fisher moved, second by J. Blinn to grant the variance from Article V §220-32I and allow a two-foot extension of the existing deck into the twenty-five (25) foot minimum setback for the property located at 2A Sunrise Terr, Tax Map 14, Lot 17-1.**

D. Lloyd offered that he didn't see any issues with this request.

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

- Granting the variance is not contrary to the Public Interest because there is still reasonable separation between dwellings and there is screening with the arborvitaes
- The Spirit and Intent of the Ordinance is preserved because there is no significant intrusion. There is less intrusion than the shed that a variance was granted previously, which has gone without complaint
- There is Substantial Justice in granting the variance because denying it would not be a gain to the general public, only a loss to the applicant
- Judging from the way the property's current condition, the expansion of the deck will be done professionally and well maintained. Surrounding property values will not be diminished
- Without a substantial gain to the public or to the abutter if the variance is granted it would be an Unnecessary Hardship to the applicant to deny. It also enhances the property by making the deck more functional and enjoyable

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

#### **OTHER BUSINESS – APPOINTMENT RECOMMENDATION – Ethan Conley**

Ethan Conley was present for a second meeting as an observer. He noted he his background, growing up in Windham, NH and living in Methuen, MA before relocating to Plaistow. His profession career is in commercial real estate development. Mr. Conley offered that his reason for wanting to be an alternate to the Board is to become involved in the Plaistow Community.

***★ T. Fisher moved, second by D. Lloyd to recommend to the Board of Selectmen that Ethan Conley be appointed as an alternate to the ZBA. There was no discussion on the motion. The vote was 5-0-0 U/A.***

There was no additional business before the Board and the meeting was adjourned at 7:20 p.m.

Respectfully Submitted:

Dee Voss  
Administrative Assistant