



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

**ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
September 26, 2019**

**Note: This meeting was held at the Plaistow Public Library, 85 Main Street**

The meeting was called to order at 6:35 p.m.

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

★ *Ethan Conley was appointed as a voting member.*

**Review/Approval of Minutes – August 29, 2019 Minutes**

★ *G. Ingham moved, second by E. Conley, to approve the minutes from the August 29, 2019 meeting. There was no discussion on the motion. The vote was 5-0-0 U/A.*

**PUBLIC HEARINGS:**

**#19-17: A request from William & Cheryl Dumaine for a variance from Article V, §220-32F.C(7) to allow a shed for a horse to be within 59' of the side property line where 100' is the minimum. The property is located at 74 Kingston Rd, Tax Map 44, Lot 37, in the LDR District. The applicants are the property owners of record.**

William and Cheryl Dumaine, 74 Kingston Rd, were present for the application.

W. Dumaine noted the following in support of the application:

- They have one (1) horse, which is currently being boarded
- They have had the horse since he was three (3) years old and the horse is now thirty-one (31) and will not be around forever
- The cost of boarding the horse is \$400/month
- They do not feel that the horse is being properly cared for at its current location
- The horse has lost seventy (70) pounds since being boarded

C. Dumaine offered concern over the condition of her horse in its current situation and noted that they would provide much better care for the horse at their property.

It was noted for the record that the submitted drawing was mislabeled. 72 and 76 Kingston Road were labeled in reserve. It was verified that the intent was to place the horse shed within fifty-nine (59) feet of the 72 Kingston Road side of the property.

P. Bealo explained the process for the public hearing. He noted that the applicant would be allowed to present their case, the Board would be able to inquire and the abutters would have ample opportunity to ask questions and be heard. He added at the end of testimony the Board would then enter Deliberations, at which time there could not be any additional input by the applicant or the abutters.

P. Bealo noted that a decision would be made at this meeting and if there was someone how disagreed with the Board's decision they would have thirty (30) days to request a rehearing.

It was noted that there are two (2) reasons that the Board can grant a request for re-hearing. If there is a procedural error made by the Board, or if there is new evidence presented that would have changed the vote. It was also noted that there is no testimony taken in consideration of a re-hearing request and if a re-hearing is granted the costs of notification is the responsibility of the requestor.

W. Dumaine continued:

- The proposal was to place the horse shed fifty-nine (59) feet from 72 Kingston Road
- There would be an electric-fenced paddock area for the horse
- The property at 72 Kingston Road only comes half way up this side of the applicant's property. The remainder is abutted by 68 Kingston Road, which comes around the back of 72 Kingston Road

The applicant was asked to present his responses to the variance criteria and the following was noted:

- The proposed variance will not be Contrary to the Spirit and Intent of the Ordinance because the animal will be in a fenced in area on the property
- The Spirit and Intent of the Ordinance is preserved because it will not affect the appearance of any abutters properties
- There is Substantial Justice in Granting the variance because it (the horse) is a pet at this point, 31 years old, and have owned it since it was 3 years old
- The Values of Surrounding will not be Diminished because it is all woods and not seen from the main roadway
- Literal enforcement of the provisions of the ordinance will result in an Unnecessary Hardship because the property is only 175' wide and they cannot meet the sideline requirements for the shed
- The real hardship is that this horse is like their baby and it's not being properly cared for

P. Bealo asked how far from the rear property line the shed would be placed.

W. Dumaine replied it would be the 100' feet required.

G. Ingham questioned another structure shown on the applicant's drawing. It was noted to be an existing storage shed that houses the applicant's lawn maintenance tools.

G. Ingham asked what kind of structure was proposed.

W. Dumaine responded that he would like to build a three-sided lean-to structure.

There was additional discussion about the existing conditions of the property, including landscaping and the proposed location of the turnout area, shown on the drawing to be fifty (50) feet from 72 Kingston Road.

P. Bealo asked what was done about the horse's droppings.

W. Dumaine explained that they were picked up daily and put into a sealed dumpster, which was picked up monthly.

There was additional discussion about the paddock (turnout) area. It was noted that it would be cleared of brush to allow room for the horse. It was noted that the paddock area was in compliance with the ordinance.

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

#### Wanda Torrey, 76 Kingston Rd

W. Torrey offered that she was not in favor of the application for the following reasons:

- She would be able to see the shed from her kitchen and bedroom windows
- The only screening on that side was time tall trees and blackberry bushes
- She was concerned about odors
- She was concerned about rodents that might be drawn to the feed

D. Lloyd asked if there about the horse farm that is located on Crane Crossing Road.

W. Torrey offered that farm wasn't that close. She added that she also had concerns about flies and mosquitoes that might be drawn to the horse.

J. Gifford questioned if the concern was that the building would be within site distance.

W. Torrey offered that both would be.

#### Jyme and Bob Marcotte, 72 Kingston Road

J. Marcotte read a written statement for the Board noting the following concerns:

- High potential for primary contaminants entering the drinking water – potential for runoff, which might contain contaminants from the horse’s waste negatively impacting their well
- Odors – horse manure odor and the potential for ammonia-form of nitrogen impacting air quality
- Insects/Rodents – expectations that there would be an increase in the rodent and fly populations
- Safety Concerns – large unpredictable animal living in close proximity to their home
- Negative Impact on Property Value – concerns that the location of the horse shed would negatively impact their property’s value

The summary of the written statement requested that the Board deny the application.

P. Bealo asked what the depth was of the Marcotte’s well.

B. Marcotte replied that it was less than 200’.

There was a discussion of the location of the Marcotte’s well in proximity to the Dumaine’s property. It was reported to be on the northside of the house, twenty-five (25) feet to the rear. It was also noted that the land slopes downward from the Dumaine’s property towards the Marcotte parcel.

P. Bealo estimated that the well was approximately 120’ feet away from looking at the provided tax map.

J. Gifford offered that he didn’t think a well 120’ away and 200’ down would be impacted by a single horse.

B. Marcotte suggested that the Board’s measurements were generous and that his well was closer than what they were considering. He reiterated that the land also slopes down towards their property.

There was a discussion about the slope of the properties.

B. Marcotte offered that he works for a water company and has concerns about the horse’s waste contaminating his well. He noted that surface water runs towards his well and that water could also run through fractures in the land to get into the groundwater system.

J. Gifford, noting the current age of the horse, asked what the life expectancy of a horse is.

W. Dumaine offered that it could be anywhere from 25-45.

D. Lloyd asked if they were planning to replace the animal once this one passes. It was noted that the applicant was not.

D. Lloyd asked how tall the horse was.

W. Dumaine responded that the horse was 14.5 hands, approximately 750 pounds.

C. Marcotte offered that if they could put the shed 100' from the property line they would and then would not need a variance for the shed. She expressed concern that if the variance is granted that she will not have any peace with her neighbors. She added that all she wants is a place for her horse to be well treated until he passes. C. Dumaine added that they clean up after the horse and they also have a well. They never had contamination issues at their former property.

J. Gifford asked the Marcottes for confirmation that their concern was over runoff from the Dumaine's property.

B. Marcotte confirmed that was one of his concerns.

There was a discussion of the building permit process. It was noted that had the Dumaines been able to meet all the setback requirements a variance would not have been necessary and there would not have been any notification of abutters.

B, Marcotte asked if there was an expiration date to a variance.

It was explained that when a variance is granted the applicant has two (2) years to exercise the variance or it is considered abandoned and void. If the variance is properly exercised, then it remains with the property (not the owner) forever.

J. Gifford asked if the horse was not replaced once it passes would that satisfy the abutters.

B. Marcotte responded that it would not.

There was discussion about potential conditions that could be placed on the granting of the variance. It was noted that if the property owner did not want to implement the conditions he would also have the option to not exercise the variance.

D. Lloyd offered that he has lived near horses for twenty (20) years and there has never been a problem with smell or rodents and he's "OCD" about his property. He added that it's nice to see the animals out in their paddock. D. Lloyd offered that the applicants offer that they pick up after the horse daily. He added that they are trying to work out the situation in the best interests of everyone.

B. Marcotte noted that the applicants are not going to walk around behind the horse all day to pick up after it and he had concerns around rodents. He noted that there were previous issues with chickens who were close by.

D. Lloyd replied that it all depended on how things were stored.

E. Conley asked if the horse shed could be moved further back on the property.

W. Dumaine noted that about twenty (20) feet back the property significantly drops off to a big hole. He added that it would also mean a farther distance the he would have to carry the manure to get to the dumpster.

B. Marcotte asked what happened in the winter time with the horse dropping in the snow.

W. Dumaine explained that he plows a path around in the snow for the horse to walk around in and that's where the horse would drop. He added that the picks up the waste, shakes the snow off and places it in the bin.

B. Marcotte questioned how the urine was cleaned up.

W. Dumaine replied that urine is not picked up.

G. Ingham reminded that the variance was not about the horse, the applicant was allowed to have the horse. The application is about the location of the shed, not about the horse.

J. Marcotte offered that they were not disputing the applicant's right to have the horse, they just didn't want it any closer to their property than what was allowed.

It was reiterated that regardless of how close the shed was the paddock structure, where the horse would spend the majority of their time, was compliant with the ordinance.

P. Bealo asked if there were any additional questions or comments. There were none and the public hearing was closed.

#### DELIBERATIONS:

**#19-17: A request from William & Cheryl Dumaine for a variance from Article V, §220-32F.C(7) to allow a shed for a horse to be within 59' of the side property line where 100' is the minimum. The property is located at 74 Kingston Rd, Tax Map 44, Lot 37, in the LDR District. The applicants are the property owners of record.**

***★ J. Gifford moved, second by G. Ingham, to grant the application for a variance to allow a horse shed to be within 59' of the property line, where 100' is the minimum required, for the property located at 74 Kingston Road, Tax Map 44, Lot 37 with the following condition:***

- A certification of the location of the horse shed, done by a licensed land surveyor, must be submitted to the Department of Building Safety prior to the issuance of a Certificate of Occupancy and/or the closing of the building permit.***

*(It was noted for the audience that for clarity and consistency, the Board routinely phrases their motions as “to grant,” it is not an indication of how the members might vote)*

P. Bealo and E. Conley both noted that they were torn over this application. It was noted that all concerned made coherent and good points.

P. Bealo offered that it was a rather large distance that the applicant was requesting.

G. Ingham noted that he was not torn, the applicant is allowed to have a horse and to not have a place to house the horse would just be cruel.

P. Bealo asked if he would feel the same if the request was for the shed to be right against the property line.

G. Ingham said he would feel the same.

J. Gifford offered that he didn't see it as much of a problem for the location of the shed because it is within the paddock area. He noted that if the top soil is removed and replaced with sand it would allow the urine to dissipate and the cleanup of the fecal matter would be easier. He added that it would be a fair expense to the applicant.

P. Bealo reminded that there was discussion about the shed not being used for animals once this animal passed.

There was discussion about amending the motion to in order to address some of the issues raised by the abutters. Additional conditions were discussed, resulting in an amended motion.

**★ J. Gifford amended his motion, second by G. Ingham, to grant the application for a variance to allow a horse shed to be within 59' of the property line, where 100' is the minimum required, for the property located at 74 Kingston Road, Tax Map 44, Lot 37 with the following conditions:**

- ***A certification of the location of the horse shed, done by a licensed land surveyor, must be submitted to the Department of Building Safety prior to the issuance of a Certificate of Occupancy and/or the closing of the building permit.***
- ***The Paddock area is to be excavated to a depth of at least 4" and replaced with sand.***
- ***Upon the passing of the current owner's horse, no other farm animals will be housed on the property.***
- ***Grain and feed shall be kept in rodent proof containers.***

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

P. Bealo noted that the paddock structure is compliant and there isn't anything the animal might do in the shed that they wouldn't be doing in the paddock area

G. Ingham noted that the animal would be in compliance.

- The Spirit and Intent of the Ordinance are preserved

P. Bealo reiterated that the paddock is still compliant and the horse will not be any closer that allowed to the property line that it would without the variance

- There is Substantial Justice in granting the variance

P. Bealo offered that because the paddock is compliant, the horse would always be in compliance with the ordinance. The horse is allowed, it's the location of the structure that is in question.

J. Gifford offered that for him it comes down to a paddock versus shed issue. The animal will always be within the paddock area whether or not it's in the shed. The paddock is compliant.

- Values of Surrounding Property Values will not be Diminished

P. Bealo offered that he heard the concerns expressed by the abutters and he wasn't sure how he would feel living next door to a horse.

J. Gifford offered that he didn't see it as a negative.

D. Lloyd added that it would be a temporary situation.

P. Bealo suggested that would not help if an abutter were looking to sell their property prior to the horse's passing.

E. Conley offered that he had the same concerns about the property value question.

- Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship

G. Ingham offered that this piece of land (the size) was established long before the zoning in the area and the applicant only has 175' of width to work with.

P. Bealo added that this whole area is zoned LDR (Low Density Residential) and few houses meet the minimum requirements of the district.



D. Lloyd noted that even if the three-sided shelter wasn't there the horse could still be. He reiterated that this would be a temporary situation.

There was no additional discussion of the Board.

***The vote was 3-2-0 (Bealo, Conley dissenting)***

There was no additional business before the Board and the meeting was adjourned at 7:55 p.m.

Respectfully Submitted:

Dee Voss  
Administrative Assistant