



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

**ZONING BOARD OF ADJUSTMENT**  
**MEETING MINUTES**  
**May 25, 2023**

The meeting was called to order at 6:34 pm

**Roll Call:** Peter Bealo, *Chair, excused*  
Jim Unger, *Vice Chair*  
Jonathan Gifford, *excused*  
Michael Murray  
Jim O'Brien  
Patrick Kiley, *Alternate*

Also Present: Dee Voss, *Zoning Official, Administrative Assistant*  
Attorney Will Reddington, *Wadleigh, Starr & Peters, PLLC, ZBA Counsel*

★ *P. Kiley was appointed as a voting member for this meeting.*

**Minutes of March 30, 2023**

★ *M. Murray moved, second by J. O'Brien, to approve the minutes from the March 30, 2023, meeting as written. There was no discussion on the motion.*

**Roll Call Vote:** J. Unger – yes; M. Murray – yes; J. O'Brien – yes; P. Kiley – yes. The vote was 4-0-0 U/A.

**PUBLIC HEARINGS:**

**#23-05:** A request from Jay DeRoche for a variance from Article IX, §220-58.1.A to allow a 24SF sign where 3SF is the maximum allowed. The property is located at 18 Greenough Rd, Tax Map 29, Lot 14 in the LDR Zoning District. The property owner of record is the Carl G. Davis Post #34.

Jay DeRoche, 20 Sunrise Terr, Plaistow, President of the Vic Geary Drop In Center, was present for the application.

J. DeRoche noted the following information in support of the application:

- The Vic Geary is a non-profit senior center.
- The building is owned by the Carl G. Davis Post #34, and the Vic Geary rents the building.
- There are many services offered through the Center, including meals on wheels and drop in activities.

- The sign would include their phone number and email address to provide additional information.
- The building is sometimes rented out for other activities.
- They would like to have more of a presence with their sign on the street to assist people in finding their location, which is why they are requesting a larger sign.
- The Timberlane Regional High School (TRHS) is located on the same side of the street as the Vic Geary Center.
- TRHS recently installed a digital sign, which is larger than the sign being requested in this application. It was acknowledged that the Town does not have jurisdiction over the school and their sign.
- There are residential uses across the street.

J. DeRoche offered the following responses to the variance criteria:

- The proposed variance will not be Contrary to the Public Interest because it will provide information about the center and will not be a hinderance
- The Spirit and Intent of the ordinance will be preserved because it will not take away from the present set up of the district
- There is Substantial Justice in granting the variance because it would be a gain for the public
- The Values of Surrounding Properties will not be Diminished because it will not diminish the values of the surrounding properties
- Literal enforcement of the provision of the ordinance would result in Unnecessary hardship because
  - o No fair and substantial relation exists between the general purpose of the ordinance provision and the specific application of that provision to the property because it will not frustrate the purpose of the ordinance
  - o The proposed use is a reasonable one because it benefits the center and the community

J. Unger noted that the proposed drawing with the permit application showed the sign parallel to the road.

J. DeRoche responded that was so it wouldn't obstruct views on the road or exiting the parking lot. He also noted that the sign would not be lit.

M. Murray offered that the center provides activities to seniors in other several other towns. He added that it was a good thing for the Town.

J. Unger asked if the Board had any additional questions. There were none. He asked if there was anyone speaking in favor of, or opposition to, the application. There was no one. He also asked if any letters or emails have been received prior to the meeting. There were none and the public hearing was closed.

#### DELIBERATIONS:

**★ J. O'Brien moved, second by M. Murray, to grant the request from Jay DeRoche for a variance from Article IX, §220-58.1.A and to permit a 24 SF freestanding sign at 18 Greenough Rd, Tax Map 29, Lot 14. The vote was 4-0-0 U/A.**

Discussion:

The Board reviewed the variance criteria and made the following findings with reference to the application:

- Considering the use and users of the facility, the signage is in the Public Interest as it allows for easier identification of the location.
- The area of this property is next to all buildings related to the Timberlane Regional School District, and while there is residential across the street, it is not seen that the sign will be contrary to the Spirit and Intent of the ordinance.
- There is Substantial Justice in granting as there will not be any loss to the general public. The Board felt that there would be a gain to the public in making the location more easily identifiable to someone seeking out the location. It was also noted that the Vic Geary Drop In Center provides many services to seniors in as many as seven (7) local communities.
- There will not be any adverse impacts to surrounding properties as this location is next to buildings related to the Timberlane Regional School District, and the sign is not oversized, objectionable, or illuminated. It may also help prevent drivers from having to turn around because they missed the building for lack of signage.
- Considering the use of the building, the services provided to the seniors and the community, a three square foot sign is not adequate and would cause a hardship to those using the facilities.

**Roll Call Vote: M. Murray – yes; J. O'Brien – yes; P. Kiley – yes; J. Unger – yes. The vote was 4-0-0 U/A.**

**#23-06: A request from Dennis Fontaine & ReVision Energy, Inc., for a variance from Article XVA, Table 220-50.3 to allow the installation of a mid-size ground mounted 870SF solar array of 16.32kW, in the MDR Zoning District where only small ground mounted arrays, not to exceed 500SF and 10kW are permitted. The property is located at 20 Congressional Av, Tax Map 50, Lot 21-2, in the MDR Zoning District. The property owners of record are Lauren R. Whalen and Dennis J. Fontaine.**

Dennis Fontaine, Property Owner 20 Congressional Av and Heather Iworsky, ReVision Energy were present for the application.

H. Iworsky noted the following in support of the application:

- The property owner is seeking a larger system to meet their electrical needs for their residential property that would include heating, cooling, lighting, electrical vehicle charging
- The system was sized based on the historical use on the property
- A metering system was used to determine the best location to take advantage of “sun hours”

- A rooftop system would not be able to provide the adequate supply as it does not face the solar south direction

H. Iworsky provided the following responses to the variance criteria:

- The proposed variance will not be contrary to the Public Interest because the solar array will not threaten public health, safety, or welfare, therefore there is no evidence that this construction will be contrary to the public interest. All work will comply with local, and state adopted code. All equipment is listed and tested by a recognized laboratory. The system shall conform to rapid shutdown requirements per NEC690. Electrical equipment shall be installed to maintain clearances required by NHC 110 and labeled per NEC 2017, or any later code that the Town may have adopted
- The Spirit and Intent of the Ordinance is preserved because the solar array will be constructed to code and within the 35' front and 15' side and rear setbacks for zone MDR. Although the scale of the solar array exceeds the ordinance recommendation for this zone, it will be 100% used for the residential property at 20 Congressional Av and will be screened from public and abutter view. A permitted 'Small Solar System' ground mount solar energy system will not provide enough electricity to fulfill the electric demands of the homeowner goals
- There is Substantial Justice in granting the variance because approval of the variance will benefit the property owner and not serve an injustice to the general public. The solar array is custom sized to produce enough clean energy electricity to offset electricity use at the home now and within the coming months when they install more electric features for heating and cooling. This is both a financial and environmental investment to secure energy before public utility rates continue to increase. Fencing and vegetation will be extended to screen the solar array from view. Neighbors and the surrounding environment will benefit off of renewable energy and carbon emission reduction
- The Values of Surrounding Properties will not be Diminished because according to the Appraisal Institute.org, there are no studies to conclude solar diminishes property value. In fact, the only articles published are those stating that it increases property value. The top drivers of diminished property value are foreclosures, neglected maintenance, poor environment (leaking methane from landfills) and economy. The solar array will not produce toxins, noise, glare, or odors and will be screened to prohibit view from abutters by expanding the existing fence with privacy fabric to surround the array and the addition of evergreen shrubs.
- Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship:
  - o No fair and substantial relationship exists between the general purpose of the ordinance provision and the specific application of the provision to the property because the site of the solar installation is chosen in the rear of the house in an area clear of vegetation. A roof mounted solar array will not work due to the existing construction to support the solar panels. Not having the solar array will result in increasing electric and fuel costs to maintain a livable, healthy, comfortable home.
  - o The proposed use is a reasonable one because by approving this variance to construct a mid-size solar energy system, the homeowner will see \$81,463

net total savings after 25 years of solar production. The solar panels are warrantied for 25 years and will last much longer. Conversions from fossil fuel heating have already been made. Mini-split ductless heat pumps were installed to heat the home and they rely on electricity.

H. Iworsky further explained that there was a chain link fence that is 39' away from the neighbors and it would offer some screening, arborvitaes that once established will offer additional screening. She also noted that net metering has already been approved for the system, which would offset the main panel of the house and provide energy back to the grid that benefits the public.

H. Iworsky offered the summary that solar has no glare, no toxins, there will not be the need for any tree removal, and there is not enough room or proper structure on the roof, which is facing the wrong direction.

J. Unger asked if there were any questions from the Board.

J. O'Brien asked if there would be battery storage for any excess energy.

H. Iworsky replied that there would not be a battery, that any excess is tied back to the grid.

J. Unger questioned how high the array was.

H. Iworsky responded that it was 11-11½' high.

J. Unger noted that would make it visible over the fencing.

H. Iworsky explained that it would be taller than normal fencing, and the arborvitaes will need time to grow to properly screen the array, adding there was vegetation along the road as well.

There was discussion about the vegetation that was already there and what would be planted to screen the array.

J. O'Brien noted that he had driven past the house, and it was difficult to see from the street.

D. Fontaine added that it was screened at the rear of the property, but the area for the array was not as dense.

J. Unger asked what the output of a compliant system would be compared to the proposed system.

H. Iworsky offered that it would be 1/2 - 2/3 the output of the larger systems, 11,000 to 12,000 kW, and the property owner would still be paying an electric bill.

J. Unger asked if there were any further questions from the Board. There were none. He asked if there was anyone speaking in favor of, or opposition to the application.

Melissa Briscoe, 16 Congressional Av offered that the map that was presented was outdated as a barn that appears on it no longer exists.

H. Iworsky noted that it was a valid survey of the property lines from the registry and had been accepted by the Building Inspector.

M. Briscoe offered that most of the fence in that area was only four (4) feet tall on the Pollard Road side of the property and she had concerns about screening.

H. Iworsky explained that the vegetation (arborvitaes) would be the best way to screen the array, but they will take time to grow high enough. It was also noted that trees could not be put in front of the array as it would block the sun. She also reiterated that the array does not produce any glare, added that they are black to absorb the sunlight.

J. Unger asked if there were any letters or emails received prior to the meeting. It was confirmed that there were none and the public hearing was closed.

#### DELIBERATIONS:

**★ M. Murray moved, second by P. Kiley, to grant the request from Dennis Fontaine and ReVision Energy for a variance from Article XVA, Table 220-50.3 and to permit 870 SF, 16.32kW ground mounted solar array at 20 Congressional Ave, Tax Map 18 Greenough Rd, Tax Map 50, Lot 21-2.**

#### Discussion:

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

- Solar is the coming remedy for increased electrical needs, and there is nothing against the Public Interest if it is installed correctly and to code
- The Spirit and Intent of the ordinance is to not have large solar arrays in the residential district, while this one is not overly huge, it is not allowed by the current zoning
- There is Substantial Justice in granting as there will not be any loss or gain to the general public if this application were to be approved
- The Board felt this would be a matter of opinion and while it might not decrease the surrounding property values, might decrease the buyer pool in the neighborhood as not everyone wants to live next door to a solar array
- The Board felt that the hardship that was presented and they were asked to consider was the financial savings to the property owner that solar would provide rather than the uniqueness of the land that required a larger than allowed array. A larger array would obviously provide more financial savings to the property owner, but there would still be savings provided with a compliant array

**Roll Call Vote: J. O'Brien – no; P. Kiley – yes; J. Unger – no; M. Murray – yes. The vote was 2-2-0 and the motion did not pass, therefore the variance is denied.**

- The application fails to meet the spirit and intent of the ordinance as well as the hardship and the criteria for the granting of a variance are not met.

**#23-07: A request from Sweet Hill Farm, LLC for an Appeal of the Administrative Decision of the Building Inspector/Code Enforcement Officer failing to act on Building Permit Application filed on February 9, 2023. The subject property of the building permit application is 82 Newton Road, Tax Map 68, Lot 8 in both the LDR and ICR Zoning Districts. The applicant is the property owner of record.**

Thomas MacMillan, MacMillan Law Offices, 145 So. Main St, Bradford, MA; Kristin Yasenka, Yasenka Law, PLLC, Portsmouth, NH; and Dan Kane, 64 Main St, Property Owner Sweet Hill Farm, were all present for the application.

J. Unger noted that D. Kane had submitted a six (6) page letter to the Board just that morning, adding the letter was filled with many NHRSA citations, building code citations and other case law that the Board would like to have guidance from their counsel to better understand the applicability in these matters. He noted that the Board would like to continue all four (4) applications to the June public hearing night.

T. MacMillan, K. Yasenka, and D. Kane all agreed to the continuance.

***J. Unger stated that the public hearings would be continued to June 29, 2023, 6:30PM, at the Plaistow Town Hall.***

T. MacMillan asked for confirmation that this was applicable to all four (4) matters. It was confirmed.

**#23-08: A request from Sweet Hill Farm, LLC for an Appeal of the Administrative Decision of the Building Inspector/Code Enforcement Officer failing to act on Building Permit Application filed on March 27, 2023 for a Bee House. The subject property of the building permit application is 82 Newton Road, Tax Map 68, Lot 8 in both the LDR and ICR Zoning Districts. The applicant is the property owner of record.**

**#23-09: A request from Sweet Hill Farm, LLC for an Appeal of the Administrative Decision of the Building Inspector/Code Enforcement Officer to issue a foundation only permit for application for Farmhouse Mudroom, Permit No. BP2023-000076. The subject property of the building permit application is 82 Newton Road, Tax Map 68, Lot 8 in both the LDR and ICR Zoning Districts. The applicant is the property owner of record.**

**#23-10: A request from Sweet Hill Farm, LLC for an Appeal of the Administrative Decision of the Building Inspector/Code Enforcement Officer to issue a foundation only permit for application for Hops Barn, Permit No. BP2023-000071. The subject property of the building permit application is 82 Newton Road, Tax Map 68, Lot 8 in both the LDR and ICR Zoning Districts. The applicant is the property owner of record.**

#### **REQUEST FOR RE-HEARING**

**#23-01: A request from AFGC, LLC/Ann F. Corey for a variance from Article V, §220-32M.B, to allow the conversion of three (3) second floor commercial units, into two (2), 1-**

**bedroom residential efficiency apartments. The property is located at 176 Plaistow Rd, Tax Map 31, Lot 60 in the C3 Zoning District, where residential use is not allowed. The applicant is the property owner of record.**

The members were asked to certify for the record that they had received and read the request for re-hearing packet submitted by Attorney Patricia Panciocco on behalf of the applicant.

***Roll Call: J. Unger – yes; M. Murray – yes; J. O’Brien – yes; P. Kiley – yes.***

***★ J. O’Brien moved, second by M. Murray, to grant the re-hearing request for ZBA Matter #23-10 regarding a non-permitted residential use variance application for 176 Plaistow Rd with the following conditions:***

- *The applicant must submit all re-notification fees, and abutter mailing labels, for the re-hearing, prior to the next meeting application deadline of June 14, 2023, at 3:30 PM*
- *Failure to submit re-notification fees, and mailing labels, prior to the stated deadline results in the denial of the re-hearing request, with prejudice.*

Discussion:

J. Unger noted that the Board was careful in stepping through the variance criteria with this application. In reviewing the minutes, he didn’t find that there was any new evidence submitted with the request for re-hearing.

M. Murray agreed that the Board had taken time to go through all the variance criteria thoroughly.

There was no additional discussion on the motion.

***Roll Call Vote: P. Kiley – no; J. Unger – no; M. Murray – no; J. O’Brien – no. The vote was 0-4-0 and the motion did not pass, and the request for re-hearing is denied.***

The Board made the following findings:

- *The Board felt that careful, thoughtful, and thorough consideration had been given to the application at the March 30, 2023 public hearing and there were no procedural errors*
- *There was no additional evidence provided in the applicant’s request for re-hearing that the Board felt they had not already considered or would have swayed their decision in this matter.*

**OTHER BUSINESS:**

ZBA By-Law Amendments

M. Murray asked about the second reading of the proposed changes to the Board’s By-Laws. That reading will be scheduled for the June meeting.

There was no additional business before the Board and the meeting was adjourned at 7:31 p.m.



Respectfully Submitted,

Dee Voss  
Administrative Assistant