



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

**ZONING BOARD OF ADJUSTMENT**  
**MEETING MINUTES**  
**November 30, 2023**

The meeting was called to order at 6:35 pm

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

Also Present: Dee Voss, *Zoning Official, Administrative Assistant*

P. Bealo explained the process the Board uses for hearing and deciding (deliberating) on each application. He noted that all motions are made in the affirmative "to grant" format, but that was not indicative as to how any member might vote on a particular application, including the maker of the motion, or the second. P. Bealo added that notices of decision will be sent within five (5) business days, but that no permits will be issued for thirty (30) days to allow for any appeals (requests for re-hearing) as per the NH RSAs

P. Bealo noted that there were only four (4) members available for this meeting and explained how that could impact voting on any relief request. It was noted that applicants could request a continuance to the next meeting, and if they proceeded at this meeting, the lack of a five (5) member board would not be considered as grounds to request a re-hearing. P. Bealo also noted that each applicant would be asked again at their public hearing if they intended to continue with a four (4) member Board.

***Consideration of the Minutes from the October 26, 2023, meeting were deferred to the end of the meeting.***

**PUBLIC HEARINGS:**

**#23-14: A request from Barbara A. Murphy Fielding and Jarrad Fielding for a variance from Article V, Table 220-32E of the Plaistow Zoning Ordinances to allow a lot with 252.22' of frontage to be subdivided into two lots, which would require a minimum frontage of 300' (150' per lot). The property is located at 11 Springview Terr, Tax Map 53, Lot 37 in the MDR Zoning District. The applicants are the property owners of record.**

Barbara A. Murphy Fielding, property owner 11 Springview Terr, was present for the application and signified they intended to proceed with a four (4) member Board.

B. Fielding explained that she had purchased the property with her son and now they would like to subdivide the property so that he can build a house for himself. She noted that there was enough land, but not enough frontage to subdivide the property.

P. Bealo noted that the property was on the end of a cul-de-sac.

B. Fielding offered that the following responses to the variance criteria:

- The proposed variance would not be Contrary to the Public Interest because the subdivided lot will meet the size requirements and frontage needed to build another house.
- The Spirit and Intent of the Ordinance are preserved because there wouldn't be a significant change in the surroundings in comparison to similar houses on the street.
- There is Substantial Justice in Granting the variance because another house will provide additional tax income to the Town.
- The Values of Surround Properties will not be Diminished because the subdivided lot is equal to many of the surrounding lots, if not bigger.
- 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 that provision to the property because the old and new lot, if allowed, will each have the same or larger frontage than some existing lots on the street.
  - o The proposed use is a reasonable one because the division of the current lot into two (2) lots still would be similar in size to surrounding lots.

There was discussion comparing the subject parcel to other lots in the neighborhood.

M. Murray asked where the line would be drawn to determine how much frontage each lot would receive.

The Board reviewed a Pictometry photo of the parcel as part of the discussion on dividing the frontage. It was noted that a parcel adjacent to the subject parcel had an access easement across another parcel that ran along Ms. Fielding's property. It was conformed that the access easement was not on the subject property. Ms. Fielding noted that she didn't know if the owner would be amenable to her using part of the access easement.

P. Bealo suggested that the creation of one (1) 100% compliant parcel (frontage and land area) and one (1) non-compliant, with the remaining frontage would be the preferred way of subdividing the parcel if it can be done that way.

J. Unger added that trying to make sure any existing structures still meet the current setback requirements would be important as well.

B. Fielding replied that there was room for a driveway in the new frontage without using the neighbor's easement.

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, or if any letters and/or emails had been received. There was no one and none.

P. Bealo asked if anyone was speaking in opposition to the application.

Mark Boutot, 13 Springview Terr., Plaistow, NH

M. Boutot noted that he was the abutter that used the easement (across 10 Springview Terr, owned by Dickinson) to access his property. He noted that it would not be available to the applicant. He also asked if it would be possible to get some kind of a buffer on the new lot that would give him privacy.

P. Bealo explained that the Board is only to consider the frontage variance request, and the next step for the applicant, if approved, would be to file with the Planning Board for the subdivision approval. He advised Mr. Boutot that he would also be notified of that Public Hearing process.

There was discussion as to the location of Mr. Boutot's access easement.

M. Boutot noted that he didn't think there was a lot of room for a driveway as the Town clears snow from the road and the cul-de-sac in the area being discussed, but he added that would be their (the applicant's) issue to figure out.

P. Bealo offered that there could be an access easement between the two (2) resultant parcels.

J. Unger asked if the land was dry and wooded.

B. Fielding replied that it was wooded.

M. Boutot added that there was some wet from drainage off of Smith Corner Road.

P. Bealo asked if there was any additional input, or if the applicant had any final words. There was none and the public hearing was closed.

#### DELIBERATIONS:

**★ J. O'Brien moved, second by J. Unger to grant the request for a variance from Article V, Table 220-32E to allow the parcel at 11 Springview Terrace to be subdivided into two lots. One lot having 150 ft of frontage and the other lot with 102.22 ft of frontage.**

- ***The amount of frontage of each lot as indicated in this motion shall be the same frontage amounts as any application that is filed with the Plaistow Planning Board for subdivision approval. Any discrepancies in the frontage amounts voids this variance.***

#### Discussion:

P. Bealo offered that comparing this lot to similar lots in the district, the applicant made a good case.

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 there is no interest in having oversized, under-utilized lots.
- The Spirit and Intent of the Ordinance are preserved because the resultant lots will be equal to, or larger than, surrounding lots.
- There is Substantial Justice in Granting the variance because the Town doesn't gain anything by a denial, and the applicant would lose the opportunity for a second lot.
- The Values of Surround Properties will not be Diminished, noting there was no evidence submitted that would imply impact to surrounding property values. Again, the lots would be equal to, or larger than, surrounding lots.
- Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship because of the issue preventing subdivision is with the land in the lack of frontage. It was noted to be an unusual sized lot in comparison to others on the street.

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

**#23-15: A request from Shawn and Ashley Tinsley for a variance from Article V, Table 220-32I to allow a shed to be placed 3' from the side property line were 25' is the minimum requirement. The property is located at 98 Newton Rd, Tax Map 69, Lot 41 in the ICR Zoning District. The property owners of record are Ashley Kocserga (Tinsley) and Shawn Tinsley.**

Shawn and Ashley Tinsley, property owners 98 Newton Rd, were present for the application and signified they intended to move forward with a four (4) member Board.

S. Tinsley noted the following in explanation of the application:

- They were seeking a variance to place their shed three (3) feet from the property line.
- Their lot is small
- One side has slopes and trees and would be difficult to level
- The right side has wetlands
- The best location is next to the fence as they would like to try and avoid cutting trees and disturbing the vegetation and wildlife.
- They have seen bobcats, coyotes, skunks, and deer in their yard

Pictures of the location were provided to the Board.

J. Unger noted a shed on the other side of the fence near where the applicant wanted to locate this shed.

S. Tinsley offered that it had been there many years. He added that the neighbors (Belanger) were not opposed to the location of the shed as proposed.

S. Tinsley offered the following responses to the variance criteria:

- The proposed variance would not be Contrary to the Public Interest because the shed will not alter the essential character of the locality, nor will the variance threaten public health safety or welfare.
- The Spirit and Intent of the Ordinance are preserved because the shed won't affect or hinder any of the neighbors' property or land.
- There is Substantial Justice in Granting the variance because they are only located on an acre lot and don't want to cut any trees to preserve the property as natural as possible as most is wooded.
- The Values of Surround Properties will not be Diminished because the shed helps provide storage of needed lawn tools and equipment needed to fix the property. The property is located 100 yards from Brandy (Auto Salvage) and the shed should not have any effect.
- 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 that provision to the property because the lot is only one acre with wetlands and slopes on more than half of it.
  - o The proposed use is a reasonable one because the applicant would like to preserve as much vegetation and trees as possible for animal habitat.

J. Unger questioned the location of the septic, which was noted to be right behind the house.

J. Unger asked if the pictures of the shed meant it was a prefab or kit.

S. Tinsley noted that it was a shed from his parents' property that they were giving to them as a wedding gift.

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

#### DELIBERATIONS:

**★ M. Murray moved, second by J. Unger, to grant the request for a variance from Article V, Table 220-32I to allow a shed to be placed three (3) feet from the left side property line, at 98 Newton Rd, where twenty-five (25) feet is the minimum required setback, with the following condition(s):**

- ***The placement of the shed must meet all other setbacks and requirements of the ICR district.***
- ***The applicant shall provide a location certification plan, prepared by a State of New Hampshire Licensed Land Surveyor, to confirm the shed is properly located no closer than three (3) feet to the side property line.***

#### Discussion:

J. Unger suggested that given the slopes, wetlands and location of the septic, the proposed location was the only logical place. He also reminded that the neighbor's shed was in the same general area on their lot.

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 the shed will not alter the character of the lot. It was also noted that the abutter who would be the most impacted did not attend the meeting or express any concerns.
- The Spirit and Intent of the Ordinance are preserved because the location will not impact others and takes into consideration the location of wetlands, slopes, and the septic.
- There is Substantial Justice in Granting the variance because this is a small lot with limited places to put the shed without cutting trees.
- The Values of Surround Properties will not be Diminished because the shed is a nice looking structure.
- Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship of the slopes and wetlands that make the property unique.

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

P. Bealo noted that the Board is currently looking for alternate members, and that interested residents should contact the office.

***Acting in the capacity as the Building Code Board of Appeals (BCBA), the following will be considered:***

**#23-16: 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 September 27, 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.**

Daniel Kane, 64 Main St, owner of Sweet Hill Farm, LLC, 82 Newton Rd, was present for the application and signified he intended to move forward with a four (4) member Board. D. Kane acknowledged that the Board was acting in the role of the Building Code Board of Appeals.

D. Kane offered the following information related to the application:

- A building permit application as filed to enclose outdoor space on an existing building that has been on the property for five (5) years.
- A response was received requesting full engineered architectural plans, stamped by an engineer for a space that is not structural.
- There is nothing in the building policies or permitting that requires a full set of engineered or construction documents.
- There is nothing in the building code that requires the plans, it is what is required by local jurisdiction.
- D. Kane's view is that he has a residentially used property, and his permits are residential.

P. Bealo asked if the Building Inspector responded within thirty (30) days.

D. Kane acknowledged that he did to request the full set of engineered plans, which would have cost more than the work itself.

P. Bealo asked if Mr. Kane responded to the Building Inspector's request in any way.

D. Kane replied that he did not, because he didn't believe it to be a legitimate request. He added that he's looked at virtually every building permit issued in the last two (2) years, and this is the only one (requesting the engineered plans). D. Kane continued that this was a pattern with the Building Inspector and that it was one thing after another in his view.

M. Murray asked for Mr. Kane to clarify the work to be done. He noted that the way he read the documentation, it looked like the framework was existing and that there were just non-load bearing walls being added.

D. Kane affirmed that was correct, and referred to the picture of the subject building, adding it was a canopy roof that already has structural posts with two (2) full LVL beams running across another single LVL beam, so none of the walls would be load bearing.

P. Bealo offered that they were only here to consider if the Building Inspector's actions were reasonable. He added that while the Board had the photographs, the application was lacking information.

J. Unger questioned that there was only a hand-drawn sketch of the footprint and asked if that was what the Building Inspector sees.

P. Bealo noted that the application does not inform as to what building it applies to.

D. Kane explained that he defined the building in the permit. He reiterated that he'd looked at hundreds of permits and there are hand-drawn sketches, with varying levels of details. He offered that he provided more detail with this application than when the building was originally constructed. D. Kane noted that he wasn't trying to impact the structure or alter the integrity, he was looking to prevent sand from blowing into his clean room.

D. Kane noted that thirty (30) days means thirty (30) days.

P. Bealo offered that there was a response within thirty (30) days.

D. Kane replied that it was required that he *act* upon the permit application within thirty (30) days, to either approve or deny the permit application. He added that requesting a full set of engineered plans was beyond the pale.

P. Bealo responded that he could only go by how he would have reacted, which would have been to reach out and have more communication, and told him, or shown him the exact building.

D. Kane replied that the Inspector had been in the building.

P. Bealo asked how many buildings Mr. Kane has; the response was a dozen. P. Bealo offered that he didn't think that the Inspector could have known which building.

D. Kane offered that P. Bealo was speculating about what the Inspector knew.

P. Bealo responded until he saw the picture, he didn't know which building it was.

There was discussion about the subject building and whether or not the inspector could have, or should have, know which building it was from the application that was filed for the building permit.

J. Unger noted that he saw a response from the Building Inspector, that in lieu of stamped drawings he would accept something from the builder. Mr. Kane replied that he wasn't aware of receiving that.

There was discussion as to which document offered an alternative to the engineered plan. The letter was dated November 27, 2023, which was twenty (20) days after this appeal was filed and was an official denial of the permit.

There was a discussion regarding what information the Building Inspector was requesting, including snow loads, occupancy capacity and egress plans. The denial noted that the Building Inspector would accept the noted items from the builder.

D. Kane offered that an engineer would be required to calculate the snow load requirements.

J. Unger noted that it was an existing roof, and the building was constructed in 2018, was inspected at the time and found to meet the requirements. He didn't see how the snow load would change with this application.

D. Kane added that the occupancy would not change either.

There was discussion about the construction of the walls and how it would impact the egress. It was noted that there are currently five (5) means of egress in the building currently and only one was required.

J. Unger offered that two (2) means of egress would be required. It was also noted that a door that would no longer be exterior, would be replaced by a door in the new wall, so there was no loss in egress. He questioned if the Building Inspector had received the sketch. D. Kane confirmed that he had filed it with the permit application.

There was discussion regarding the existing building and how it functions and what the plans were for the alteration. It was noted that if there are people in the building, there are two (2) ways to exit. Mr. Kane added that he also had a building permit application for interior renovations within this same building.

J. Unger asked how many people work in the building during busy season. Mr. Kane replied two (2).



P. Bealo asked if there were any additional questions. He asked if there were anyone speaking in favor of, opposition to, or if any letter/emails had been received.

It was confirmed that no letters or emails had been received.

Attorney William Warren, Donahue, Tucker and Ciandella, PLLC, representing the Town of Plaistow and the Building Inspector and Rick Foye, Building Inspector asked to speak.

W. Warren noted the following for the Board:

- The Building Inspector only received three (3) pages of information for the building permit application, not the same amount of paper as was provided to the Board for the appeal.
- The three (3) pages consisted of the two (2) page application form, and the hand sketch, which realistically was an existing conditions sketch, not the plan for the structure that was proposed.
- Therefore, the permit application was essentially incomplete.
- The application form, on the first page, states in red that all applications must include two (2) sets of drawings or plans, three (3) sets if commercial, and a detailed scope of work.
- Understanding that it is the applicant's position that this property is primarily residential, the structure that is being proposed is commercial, which is the overwhelming use of the property, while still agricultural in nature.
- Therefore, the building permit application in this case did require three (3) sets of full plans to scale, which were not provided.
- The applicant essentially filed a floor plan and expected the Building Inspector to understand what was being proposed.
- The Building Inspector did not have the benefit of all the materials provided to the Board, including the fourteen (14) exhibits, to put into context what was being proposed. He was dealing with three (3) pages, two (2) of which are not descriptive and the third which is a floor plan.
- The applicant claimed that the Building Inspector was not allowed to request additional information, which is not true.
- The recently updated permitting procedure policies adopted by the Board of Selectmen in November, before the decision was due by the Building Inspector, authorize him to exercise all powers authorized by the State Building Code and encourage applicants to consult with the Department of Building Safety prior to submitting applications, just to avoid these kinds of situations.
- The policy provides that the Building Inspector and the Department of Building Safety may request additional information if they find it necessary, and it was necessary in this case as the applicant provided so little information.
- This is seen as a safety issue. While there may only be two (2) employees working in the building, it only takes one to get hurt.
- The International Building Code (IBC) is incorporated into the State Building Code by reference and requires that an applicant for a building permit describe the work to be done and submit construction documents, including a plan of what is to be done.
- Construction documents are defined as plans that show the design, location, and physical characteristics of the elements of the project necessary for obtaining a building permit. All is so the Building Inspector can confirm that everything is being built to code.

- W. Warren quoted from Section 107.1 which he noted expressly authorizes the Building Inspector to require additional construction documents, prepared by a registered design professional, someone licensed under the laws of the State or jurisdiction where they are located.
- The Building Inspector issued a decision on November 27, which was the sixtieth (60<sup>th</sup>) day, which is what is required for commercial structures and did note that he would be willing to consider different plans. That offer was with the benefit of having reviewed all of the new materials that were provided to the Board.
- The applicant could have avoided the appeal by picking up the phone, calling the Building Inspector, finding out what information was actually required, providing the additional information, a simple explanation of what was going in, identifying the building.

W. Warren summarized that the ZBA was acting as the BCBA under NH RSA 674:34. Normally the ZBA is the finder of fact, however, in this case, the Board's consideration is limited to the "universe of facts" that were available to the Building Inspector at the time of the decision, which was limited to the three (3) pages he received. The Building Inspector could not be reasonably expected to grant a building permit without asking for more information to insure that the construction would be building to the code and would be safe for the employees working at the property. He added the Building Inspector's interpretation of the State Building Code was both lawful and reasonable, and therefore should be affirmed.

D. Kane offered that the IBC and IRC (International Residential Code) have the same provisions for submittal of documents and read from the Code that the submittal of documents consisting of construction documents and other data shall be submitted in two (2) or more sets with each application for permit. He noted that he did submit two (2) sets, and that he didn't know what happened with the other one. D. Kane continued that the construction document shall be prepared by a registered design professional, where required by the statutes of the jurisdiction in which the project is to be constructed. Mr. Kane noted that there is no requirement for the Town of Plaistow for design professional prepared documents; it's not in the application, it's not in the building permitting policies that were in existence the day the permit application was filed. He noted that the change to the policy happened seventeen (17) days after his application was filed. D. Kane added that they weren't even proposed as of the date of the application filing, so he questioned how he could be held to that standard.

D. Kane also noted that it didn't make sense that the Building Inspector did not know what building the permit application related to as he had approved a permit for the same building seven (7) months earlier for other work, and the building was identified the same way on the application. Mr. Kane added that he believed he had followed all policies and practices, and that the issue was not complicated. He noted that the idea that he would pick up the phone and call the Building Inspector in light of their history was unfair and they did not have that kind of relationship. He stated that when he filed a building permit application, he expected to be treated like everyone else, and he feels he is not.

M. Murray questioned what happens when a permit is filed under one set of rules, and the rules change midpoint, which applies.

P. Bealo offered that he wasn't sure the rules changed as it is referenced to the IBC.

J. Unger noted that the building code allows the Building Inspector to ask for a lot of things that he doesn't always have to ask for, and it doesn't have to be written somewhere that the Building Inspector needs engineered plans if the building is technical enough to require that, so he can ask for that. However, when dealing with an existing building from 2018, that met code when constructed and is dealing with non-load bearing wood frame curtain walls they both could get together and confirm details, put together a thumbnail sketch. In this case it seems to be more the lack of communication between the two parties.

D. Kane offered that was a fair comment and noted that if he had been asked for another drawing, he would have done so, but he was asked for a full set of engineered plans. He added that the Building Inspector had been out and seen the construction and offered suggestions in the past that were done.

J. Unger suggested that the floor plan didn't show much, noting that Mr. Kane did mention 2" x 6" and there's nothing wrong with that for the curtain wall construction, but it seemed that a little more information from Mr. Kane and a little more communication from Mr. Foye could have resolved the issue before it had to go through the appeal process.

D. Kane explained that he understood that he had to go through the process to file building permits to do work on the property and he didn't mind being reasonable, but he objects when things are unreasonable.

P. Bealo reminded that Board that they were only dealing with whether or not the Building Inspector was reasonable in his request given the three (3) pages of information that was submitted.

J. Unger offered that he was just trying to understand the questions about the roof since it was a structure that was approved in 2018.

W. Warren noted (holding the building permit application) that this was the information that was available to the Building Inspector at the time of the application.

J. Unger responded that there was a file on the building as well.

W. Warren agreed but noted that there was no identifying information on the application to identify the specific building. He read the description on the building permit application form and questioned how it would identify the specific building to allow the Building Inspector to refer to that file. He added that the applicant did not supply the photo that has been submitted to the Board as Exhibit 1. Mr. Warren offered that without benefit of the photo he didn't see how the Building Inspector could have known from the submitted application which of the twelve (12) buildings were being talked about.

There was additional discussion regarding what was submitted with the application, how the Building Inspector could or should have known which building the permit application was for, or how to find information in the file from previous applications.

P. Bealo suggested that the public hearing be continued and Mr. Kane and Inspector Foye get together at the Farm and work out what is necessary for the building permit to be issued. Offering to buy the beer.

R. Foye explained that when he received the application there was nothing more than a rectangle sketched, he didn't know it was to enclose a patio, and didn't know exactly which building it was. There are multiple buildings there. He also didn't know if the intent was to close it to allow for seating. He didn't know if a new roof was being put on it, or if it was existing. If it were new, he would have to consider the snow loads, how it's designed, the rafters. R. Foye continued that he didn't know what the intent of the project was, noting that he was aware that Mr. Kane would like to put a brewery on the property. He noted that there were just too many factors in evaluating the application that were missing, which is why he sent the email to Mr. Kane. He added that it is a commercial building, while it may be on residential/agricultural land, it's still a commercial building.

P. Bealo asked if there was anyone else who wished to speak.

Craig Lambert, 35 Hazen Ave, Haverhill MA, offered the following comment:

- He was speaking in favor of Mr. Kane's appeal
- He had a copy of the Building Inspector's job description, which he reported states that he (the Building Inspector) was to work with people in Town, including homeowners and business people
- It was not up to Mr. Kane to chase the Building Inspector
- If the Building Inspector has questions, and has already been to the property before, he should go out and speak to Mr. Kane, who is there all the time and ask him what's happening to resolve the issue
- There has been a problem with the Building Inspector before, agreeing that there needs to be a coming together
- The Building Inspector should do what his job description requires and work with people and if he did so, there wouldn't be this problem
- Mr. Kane is doing right by the farm and he's trying to bring economic value and revenue to the Town
- The buildings that are being constructed are nice
- He agreed with J. Unger in that the building is already constructed and inspected and there are no new load bearing walls
- He (Building Inspector) should have gone out and resolved this without wasting the Board's time
- The Building Inspector's job description describes the job as essential

P. Bealo asked if Mr. Kane would like to respond to the comments from Mr. Lambert.

D. Kane responded that his general feeling is that it "takes two to tango" and that he's been down the path of trying to work with the Building Inspector and found it to be fruitless. He added that public servants have a job to work with the public, and he has the job as the home/land owner to follow the rules. He added that he was going to take exception of the buildings being classified as commercial, noting that he is agricultural, which is a permitted residential use in the ICR (Integrated Commercial Residential) district where the building is located and that he would argue that all the way to the Supreme Court. D. Kane offered the idea that agricultural is a commercial enterprise is just not baked into the zoning ordinance, but he respects the fact that people have different views, but that is why he took the position that the permits should have been acted upon

within thirty (30) days because it's a residential use, which he sees as the real issue. The idea of a 300SF space that would be a private brewery is preposterous, the building isn't going to be used for anything other than what it's being used for. If he wants to use something for a brewery it will be another building.

J. Unger questioned the Building Inspector that if he knew up front which building it was, or given a picture, and that they were enclosing a preexisting structurally stable roof built in 2018, would he have required architectural plans.

R. Foye replied it would not have been a problem, but he had no information to go on and that was why he sent the request for additional information.

J. Unger offered that the request was for architectural stamped plans, so he did understand Mr. Kane's point, plans can be expensive.

W. Warren explained that was the language that is used in the IBC as an actual code requirement.

J. Unger commented that the Building Inspector is allowed to do a lot of things, but he doesn't have to do them.

W. Warren offered that he understood Mr. Unger's comment, he was stating that the request tracked the IBC and the question before the Board was whether or not the Building Inspector correctly interpreted and applied the State Building Code, so what that Code allows is relevant. He acknowledged that it may be unnecessary to provide fully engineered plan, but like the Building Inspector had noted, he didn't know what he was working with. The application simply didn't provide enough information and that's why he sent the request, well within the thirty (30) days the applicant was expecting.

W. Warren noted that application date was September 27, 2023, and the request for additional information was October 12, 2023. He added that had the applicant provided the Building Inspector with the information that was provided to the Board, the whole matter could have been avoided.

J. Unger offered in Mr. Kane's defense that the request for more information stated that architectural drawings were needed, it didn't state let's get together and talk, so there is an obvious communications issue. He questioned why Mr. Kane would do anything if he thought he needed stamped plans, and wasn't willing to do that, so he did nothing.

W. Warren acknowledged the point but reiterated that the question before the Board was whether the Building Inspector correctly interpreted and applied the State Building Code. In this case the specific language of the Code is that the Building Inspector is to request additional design document, prepared by a registered design professional, in this case, in this state, in this jurisdiction, that is an architect or an engineer. So, the Building Inspector applied the IBC to the letter of the law in this case, and that is reflected in his letter. W. Warren acknowledged those can be difficult burdens to meet, and are not necessary in every case, the Building Inspector was simply doing what he is authorized to do, and using the actual language out of the building code that he is tasked to enforce. If the practical language of the Code isn't conducive to buying a beer and hashing things out, that's the International Council's fault not the Building Inspector's.

D. Kane offered that there is full sentence to the Code's allowance for the Building Inspector's ability to request additional information that starts off with "where special conditions exist the Building Inspector is authorized to require additional construction documents to be prepared but a registered design professional". He questioned what the special conditions were existing here. He added that it's the Town's policies that are driving this, it's the building permit application and what it asks for. The IBC and IRC state that nothing in their Code will nullify any State, local or regional jurisdiction. He offered that it wasn't for this Board to consider what the Town or the governing body might've said or wanted, or to put in words that aren't there. The building permit application asked for specific things and he gave it. Trying to graft things out of the IBC, the IRC, or the IEBC (?) doesn't work.

W. Warren offered that the special conditions in this case were that there wasn't enough information for the Building Inspector to make an informed decision to determine that the proposed construction would comport with all the applicable building codes, and there is a provision that is designed to address when the Building Inspector doesn't have enough information. Which is exactly what happened here.

D. Kane offered that the Building Inspector had approved permit after permit with less information than was provided, so the idea that there was a "double secret building that special conditions exist upon" is untrue. It's a simple conventional construction frame building that he's been in, he's been by, he approved an existing permit on, and there was an existing permit in the file. He added the idea that the Building Inspector didn't know which building was to him preposterous.

W. Warren questioned why Mr. Kane didn't just provide the photograph that was provided to the Board.

D. Kane replied because he wasn't asked for a photograph, he was asked for construction documents.

W. Warren suggested there were numerous ways to identify which building it was in question.

D. Kane responded that there was history and that he wasn't going out of his way to provide information. He added that he believed every communication from the Building Inspector to be an attempt to punish him for objecting the to Stop Work Order a year ago and for taking actions against the Building Inspector. Mr. Kane offered that anyone with a "half a brain" would have had a new Building Inspector assigned to the project, noting that towns do it all the time. He agreed that there was a failure to communicate that he didn't think could be resolved absent heading to Superior Court, or ultimately Supreme Court, as too much water had passed under the dam. D. Kane offered that the issue is simple to him, it's whether he should have acted upon the building permit given the information that he had, and the Board will decide.

J. Unger, noting the two-page application form and hand-drawn sketch, asked if that was all the information that the Building Inspector was privy to at the time of the application, and that nothing else, nothing structural, was included. It was confirmed.

P. Bealo asked if there was anyone else who wanted to speak.

C. Lambert reiterated his comments from earlier:

- It's in the Building Inspector's job description and he gets paid to go out
- The Building Inspector should have gone out and looked at the site
- If there was something more needed Mr. Kane should have been asked
- It's in the Building Inspector's job description to cooperate with citizens, homeowners, residents, business peoples.
- Had he gone out and looked and said that he wasn't sure what building it was, can you just show me, rather than sending out a letter, everything could have been resolved
- He thanked J. Unger and agreed to his point about the snow loads and how new construction on this building would not be impacted by that.

M. Murray suggested that the meeting be suspended to allow Mr. Foye and Mr. Kane the opportunity to work together and bring this to a conclusion.

P. Bealo offered that he didn't think that unreasonable and asked both parties if they would be amendable to the suggestion. Both agreed.

P. Bealo stated that the public hearing for this matter (#23-16) was continued to January 4, 2024. It was noted for the record that no additional written notification of the continuance would be sent out to the abutters, that this was the official notification.

***Motion for Re-Hearing***

***The Zoning Board of Adjustment, acting in the capacity as the Building Code Board of Appeals, will consider motion(s) for re-hearing filed in the below matters. These are not public hearings, but are a deliberative process that the Board will conduct in accordance with the NH RSA 677***

**#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.**

**#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.**

It was noted for the record that all motions for re-hearing are not public hearings but are a deliberative process in accordance with NH RSA 677.

The legal notices for the interrelated requests were read together but considered separately.

**★ J. O'Brien moved, second by M. Murray to grant the motion for rehearing in Matter #23-07.**

**Discussion:**

P. Bealo offered these were unusual cases for the Board as they are acting as the Building Code Board of Appeals, which there has not been a lot of in the twenty (20) years he'd been on the Board. He noted that acting as the BCBA, the applicant doesn't have the right to request a re-hearing, it goes to a State Court or Board of Appeals. So, he was against the request for that reason, because the Board doesn't have jurisdiction to grant a re-hearing.

J. Unger questioned what Board it would go to, and it was noted to be the State BCBA. He asked if that was the standard.

P. Bealo offered it was the only method per the RSAs for handling this.

P. Bealo added that he wanted to comment on some other comments in the request for rehearing.

- It was expressed in the motion for re-hearing that he and Patrick Kiley (Alternate Member) should have recused themselves and P. Bealo didn't see it in either case
- Mr. Kane knew that P. Kiley was the Health Inspector from other interactions beforehand
- His comments that were called out were neutral at worst, but definitely not negative
- He noted that he wasn't asked to recuse himself from the application that was heard earlier from the same person at the same location.

The members were all asked to certify that they had read the motion for re-hearing, including Exhibit 6, which was a binder of information. All members did so.

P. Bealo offered that Exhibit 6 was thorough and descriptive of building permit applications and procedures in other towns, nowhere does it say that the process used in Plaistow was not lawful. Therefore, he didn't find much value in it.

There was no additional discussion from the Board.

***Roll Call Vote: M. Murray – no; J. O'Brien – no; P. Bealo – no; J. Unger – no. The vote was 0-4-0 and the motion did not pass.***

**#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.**

***★ J. O'Brien moved, second by M. Murray to grant the motion for rehearing in Matter #23-08.***

Discussion:

The Board noted that all the considerations in the matter of #23-07 were also applicable to #23-08.

***Roll Call Vote: J. O'Brien – no; P. Bealo – no; J. Unger – no; M. Murray – no. The vote was 0-4-0 and the motion did not pass.***



***Request to Re-Open and Stay the October 26, 2023, Decision of the ZBA in the matter of:***

**#23-13: A request from Joseph Greenwood for a variance from Article V, Table 220-32F.C(1)(b) to permit the construction of a single-family home on a lot of record that does not have the required frontage on a Class 5 Road. The lot is reported to have 800'+ of frontage on Carlton Path, which is not a Class 5 road. The property is located at 2 Carlton Path (aka 14 Lynwood), Tax Map 18, Lot 8 in the LDR Zoning District. John E. Landry is the property owner of record.**

**★J. O'Brien moved, second by M. Murray to grant the motion for re-hearing in ZBA Matter #23-13.**

It was noted that this application the Board was acting as the Zoning Board of Adjustment and not the Building Code Board of Appeals.

Discussion:

P. Bealo offered that the request letter did not explicitly say it was a motion for re-hearing (it was phrased to "re-open"), but the intent was clear and the Board would be considering the request as such.

P. Bealo noted that the letter offered the following reasons for the request:

- The applicant did not show proof of legal right of access
- The Limited Waiver of Municipal Liability (Waiver) document that Mr. Mosher (3 Carlton Path) had signed, noting Carlton Path to be a Class VI road was not sufficient evidence that it was indeed that

P. Bealo noted that the Waiver document was signed by both the Moshers and the Town and had been recorded at the Registry of Deeds, so he felt it was sufficient evidence that all parties considered Carlton Path to be a Class VI road.

It was also noted that the Board was not granting access to the property through the variance, but only the right to be able to build on a lot that did not have frontage on a Class V road. Access would be something to be worked out prior to the issuance of any Waiver or building permit.

P. Bealo offered that he didn't see any new evidence presented by the requestor. He also noted that a Superior Court Final Decree (2015) that was submitted by the original applicant noting that the Moshers could not restrict access to Carlton Path.

J. O'Brien noted that he had not participated in the original public hearing in this matter and asked the Board if they felt he should recuse himself from this request. The Board asked if he had read the minutes and felt comfortable that he understood the original matter. He indicated that he did and it was consensus of the Board the recusal was not necessary.

There was no additional discussion on the motion.

***Roll Call Vote: P. Bealo – no; J. Unger – no; M. Murray – no; J. O'Brien – no. The vote was 0-4-0 and the motion did not pass.***

James Mosher, 3 Carlton Path, the requestor through his Counsel, Patricia Panciocco, was present in the room and shouted from the back that he didn't understand what the Board was doing. He was cautioned that the meeting was still in session and that there was no testimony allowed during deliberations on these matters. Mr. Mosher hit the chair in front of him and shouted that he was "losing patience" and quickly left the meeting room. Obscenities could be heard from outside and it was the decision of the Chair that the Police be called to insure that all members and staff made it safely to their vehicles.

### **Minutes of October 26, 2023**

***★ J. Unger moved, second by P. Bealo, to approve the minutes from the October 26, 2023, meeting. There was no discussion on the motion.***

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

### **OTHER BUSINESS:**

D. Voss offered that a 2024 ZBA Application Deadline and Meeting Schedule had be prepared in accordance with the Board's By-Laws and requested a vote from the Board to approve it.

***★ M. Murray moved, second by J. O'Brien, to approve the 2024 ZBA Application Deadline and Meeting Schedule. There was no discussion on the motion.***

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

There was no additional business before the Board and the meeting was adjourned at 8:17 pm.

Respectfully Submitted,

Dee Voss  
Administrative Assistant