

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
November 3, 2016

Members Present

Lynn Perkins, Chairman
Allan Virr, Vice Chairman
Heather Evans, Secretary
Teresa Hampton
Stephen Coppolo

Members Absent

Alternates Present

Donald Burgess
Randall Kelley

Alternates Absent

Joseph Carnevale

Code Enforcement

Robert Mackey

Mr. Perkins called the meeting to order at 7:00 p.m. with the salute to the flag, and notice of fire and handicap exits and that this and all Zoning Board meetings are videotaped.

The Board introduced themselves for the record.

It was noted for the record that Mr. Perkins stepped down and that that Mr. Burgess would sit for the following case:

16-123 Pasquale & Christine Perfetto

The applicant is requesting a variance from the terms of Article VI, Section 165-47B.4 of the Town of Derry Zoning Ordinance to allow the extension of an existing garage to within 8 feet of the side property line where 15 feet is required. 10 Lawrence Road Parcel ID 03116-01 Zoned LMDR

Mr. Coppolo said that he had a former interest in 13 Lawrence Road as it was his father-in-law's but the property was sold on October 7, 2016. He said if the Board wished he would step down.

Mr. Virr said that he did not feel there would be a conflict and polled the Board.

Vote: Unanimous - no conflict.

Mr. Kelley, Mrs. Hampton, Mrs. Evans, Mr. Burgess, Mr. Virr

Timothy Peloquin, Promised Land Survey, LLC, said that he was representing the applicant. Mr. Peloquin read the application request and letter of explanation for the record. He described the properties for clarification of the request. He said the proposal is to build an addition to the existing garage so the applicant could have a place to house his antique vehicles.

Board Questions

Mrs. Evans asked if the rear of the property had a buffer with trees. Mr. Peloquin said no that the property was wide open.

Mr. Burgess asked if the proposed garage would be extending the existing pad. Mr. Peloquin said yes by approximately 14'.

Mr. Coppolo asked if the purpose of the existing pad was for vehicles. Mr. Peloquin said yes that it currently has a trailer, snow machine and ATV on it.

Mr. Coppolo asked if that was what was proposed to be located in the garage. Mr. Peloquin said yes that the intent was for vehicles.

Mr. Coppolo asked if there was a garage in the main dwelling with how many bays. Mr. Peloquin described the property and proposal for the Board.

Mrs. Hampton asked if the vehicles were stored on the property until sold from the property. Mr. Peloquin said no that the vehicles were a collection only. The owner wishes to upkeep the pristine look of the property and have their items stored inside.

Mr. Virr asked Mr. Mackey if there was an ordinance that speaks to the number of registered vehicles that could be kept on a property. Mr. Mackey said that the ordinance speaks to the number of unregistered outside storage but not inside storage.

Mr. Burgess asked if the driveway would be extended. Mr. Peloquin said that there may be some additional crushed stone added at entrance to proposed garage.

Mr. Kelley asked if the request was to extend the building 3 ½' into the setback in order to build a man cave for his car collection. Mr. Peloquin said that was correct.

Mrs. Hampton asked if the cars would be washed and oil changes done on them. Mr. Peloquin said that he did not know the answer but did not feel that the owners would neglect the property.

Mr. Kelley said that he used to service older vehicles and people that have these types of vehicles are usually very meticulous and highly doubt they would change the oil and would dispose of it improperly.

Code Enforcement

Mr. Mackey reviewed the following information for the record:

- The applicants are seeking approval to construct a 24' x 32' addition to an existing 768 sq. ft. detached garage within 8' of the property line.
- Town appraisal records indicate the existing home was constructed 1830. The property is located in the Low Medium Density Residential Zoning District (LMDR) which requires a 15' minimum setback to the side and rear property lines.
- There is a wetland on the property and the new construction will meet the required 75' wetland setback.
- If approved, the applicant must obtain a building permit from the Code Enforcement Office prior to commencing work.
- There are pictures of the property in the file for review by the Board.

Mr. Coppolo asked Mr. Mackey if the request would require State or Conservation approval. Mr. Mackey said no.

Favor

No one spoke in favor to the request.

Opposed

No one spoke in opposition to the request.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mr. Burgess, Mr. Coppolo, Mrs. Hampton, Mrs. Evans, Mr. Perkins.

Deliberative Session

Mr. Virr said that the request was not terrible due to the nature of the property. He said the standard condition of being subject to obtaining all State and local permits and inspections be made.

Mr. Coppolo said that he didn't feel need for other conditions as encroachment to radio tower is not even noticed.

Mrs. Hampton motioned come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Burgess, Mr. Coppolo, Mrs. Hampton, Mrs. Evans, Mr. Perkins.

Mr. Virr motioned on case #16-123 Pasquale & Christine Perfetto to Grant a variance from the terms of Article VI, Section 165-47B.4 of the Town of Derry Zoning Ordinance to allow the extension of an existing garage to within 8 feet of the side property line where 15 feet is required. 10 Lawrence Road Parcel ID 03116-01 Zoned LMDR as presented with the following conditions:

- 1. Subject to obtaining all State & local permits and inspections.**

Seconded by Mrs. Evans.

Vote:

Mr. Coppolo: Yes.
Mrs. Hampton: Yes.
Mr. Burgess: Yes.
Mrs. Evans: Yes.
Mr. Virr: Yes.

The application was Granted by a vote of 5-0-0. Anyone aggrieved by a decision of the Board has 30 days to file a request for a rehearing. After that the recourse would be to appeal to Superior Court.

It was noted for the record that Mr. Perkins resumed his seat as Chair and that Mrs. Hampton stepped down and Mr. Kelley would sit for the following case:

16-124 Paul & Adele Magnum & David & Michelle Dalton

The applicants are requesting a variance from the terms of Article VI, Section 165-47B.2 of the Town of Derry Zoning Ordinance to allow the frontage of parcel 03012-004 to be 100.76 feet where 150 feet is required, a variance from Section 165-47B.3 to allow a lot width for parcel 03012-004 to be 111.36 where 150 feet is required, and a variance from Section 165-67B.4 to allow a shed on parcel 03012-004 and a barn on parcel 03012 to be 11.9 feet from the side setback where 15 feet is required. Parcel ID 03012, 29 Windham Depot Road & Parcel ID 03012-004, 27 Windham Depot Road, Zoned LMDR

Timothy Peloquin, Promised Land Survey, LLC, said that he was representing the applicant. Mr. Peloquin read the application request and letter of explanation for the record. He said that the initial request is for 3 variances and explained them for the record. Mr. Peloquin said that after speaking with Mr. Mackey the storage shed is

actually a tent type shed that does not require a permit as can be relocated. Mr. Peloquin said that the owners wish to do an equal land swap as trying to protect the stone wall and that he has redrawn the proposal and has a new plot plan that he would like to submit to the Board to remove the last part of the variance request.

Mr. Perkins motioned to accept the new plot plan.

Vote: Unanimous.

Mr. Kelley, Mr. Coppolo, Mrs. Evans, Mr. Virr, Mr. Perkins.

Mr. Peloquin provided the Board with the new plot plan and explained the changes for the record.

Board Questions

Mr. Virr said that he thought there was a stone wall RSA in 1791 and reaffirmed in 1892 that stone walls could not be removed. Mr. Peloquin said that walls can be removed and that this wall is important to the Magnum's historic property as the wall is where an old barn had been formally located.

Mrs. Hampton asked if both property owners are happy with the proposal. Mr. Peloquin said yes.

Mr. Virr said that he was concerned that the property is already non-conforming and reducing frontage would be increasing non-conformity.

Mr. Coppolo said that he can see the problem with the historic wall belonging to other lot and it makes sense to have one owner of all historic elements in order to preserve the historic value. He asked if there was monetary consideration being made to shift the lines. Mr. Peloquin said there was no money exchange and it is important to the Magnum's and they are paying for all the surveying and recordings.

There was some discussion with regard to the historic nature of the area and location of the wall.

Code Enforcement

Mr. Mackey reviewed the following information for the record:

- The applicants are seeking approval to allow a lot line adjustment between the two properties in order to have a shed belonging to #27 Windham Depot Road to be located on their property and an old stonewall/foundation associated with #29 Windham Depot Road (an historic property) be located on that property.
- The variances are necessary as the frontage of #27 (already non-conforming per the 150' frontage requirement in the Low Medium Density Zoning District) will

- be further reduced. The other variance is required as the distance between the existing barn on #29 and the existing shed located on #27 will only allow for 11.9' setbacks when the distance is split equally between the two structures. This part of the request has been removed and does not require the variance.
- The proposal also includes an equal land swap so the area of the parcels will not be affected.
 - Town records indicate that the home located at #27 was constructed in 1990. The shed is a metal frame structure covered in fabric and is considered temporary and does not require a building permit. The home at #29 was constructed in 1728. That being said the variances would be all for lot 4.
 - If approved, Planning Board approval will be required.
 - There are pictures of the property in the file for review by the Board.

Board Questions

Mr. Coppolo asked if the frontage was not 100.76' and find it different will be back here. Mr. Peloquin said that he would make frontage to what is requested.

Mr. Virr said that he felt that the motion needs to be revised to not include the Magnum property as they do not need a variance.

Favor

No one spoke in favor to the request.

Opposed

No one spoke in opposition to the request.

Mr. Kelley motioned to go into deliberative session.

Seconded by Mr. Coppolo.

Vote: Unanimous.

Mr. Kelley, Mr. Coppolo, Mrs. Evans, Mr. Virr, Mr. Perkins.

Deliberative Session

Mr. Coppolo said that he wished to clarify that the stone wall remain as is and no structure to be built on it.

Mr. Perkins said that he did not feel that the stone wall could be built on in its current condition.

Mr. Coppolo said that he also wished to suggest that an easement be made so the Magnum's could access the wall for any repairs that may need to be made in the future.

There was some discussion with regard to non-conformity and historic value.

Mr. Virr asked if the variances were only for the Daltons. Mr. Mackey said yes that the variances are now are only for the Dalton's as the Magnum's only needed a variance for the barn but the setback has been resolved so no longer required and that the land swap is even.

Mr. Kelley said that he would like a condition that the wall not be built on and was concerned with fixing the foundation and then something being built there.

Mr. Coppolo said that the Board is unable to put conditions on a lot that is not before us.

Mr. Virr said that they would need to vote to amend the proposed request to remove the Magnum portion of the request relating to the barn setback and would like to ask Mr. Peloquin if that was what was being requested.

Mr. Virr motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mr. Kelley, Mr. Coppolo, Mrs. Evans, Mr. Virr, Mr. Perkins.

Mr. Virr asked Mr. Peloquin to state for the record that the only variance request is for the Dalton lot and not the Magnum lot.

Mr. Peloquin said that he would like to amend the original request to be requesting variances from the terms of Article VI, Section 165-47B.2 of the Town of Derry Zoning Ordinance to allow the frontage of parcel 03012-004 to be 100.76 feet where 150 feet is required, a variance from Section 165-47B.3 to allow a lot width for parcel 03012-004 to be 111.36 where 150 feet is required at 27 Windham Depot Road.

Mr. Burgess said that he would like to have an easement for the wall to be added so the Magnum's could fix the wall in the event that the Dalton's sold the property.

Mr. Perkins asked Mr. Coppolo if that would be a legal aspect to create an easement. Mr. Coppolo said that feel fine as would require the Dalton property to do something. He said that it was not the Boards job here to set requirements to a lot that is not before us. He suggested that it would be a good idea to seek private counsel.

Mr. Peloquin said that he would make the suggestion to both parties.

Mr. Coppolo motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

Mr. Kelley, Mr. Coppolo, Mrs. Evans, Mr. Virr, Mr. Perkins.

Deliberative Session

Mr. Virr said that a condition of being subject to Planning Board approval be made.

Mr. Kelley said that he agreed with Mr. Virr.

Mr. Virr motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mr. Kelley, Mr. Coppolo, Mrs. Evans, Mr. Virr, Mr. Perkins.

Mrs. Evans motioned on case #16-124 David & Michelle Dalton to Grant a variance from the terms of Article VI, Section 165-47B.2 of the Town of Derry Zoning Ordinance to allow the frontage of parcel 03012-004 to be 100.76 feet where 150 feet is required, a variance from Section 165-47B.3 to allow a lot width for parcel 03012-004 to be 111.36 where 150 feet is required 27 Windham Depot Road, Parcel ID 03012-004, Zoned LMDR as presented with the following conditions:

- 2. Subject to Planning Board approval.**

Seconded by Mr. Virr.

Vote:

Mr. Kelley: Yes.

Mr. Coppolo: Yes.

Mrs. Evans: Yes.

Mr. Virr: Yes.

Mr. Perkins: Yes.

The application was Granted by a vote of 5-0-0. Anyone aggrieved by a decision of the Board has 30 days to file a request for a rehearing. After that the recourse would be to appeal to Superior Court.

Approval of Minutes

Mrs. Hampton motioned to approve the minutes of October 20, 2016 as written.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mr. Kelley, Mr. Burgess, Mr. Coppolo, Mrs. Hampton, Mrs. Evans, Mr. Perkins

Other Business

Mr. Mackey said that the Board has been provided with a survey from MRI to gather input from individual members of the Conservation Commission, ZBA and Planning Board as it relates to land use and planning regulation. They are asked to be returned to the office by November 18, 2016.

Mr. Mackey also informed the Board that the next meeting on November 17th is a full agenda and will require a joint meeting with Planning Board and Conservation Commission.

Mr. Perkins asked if the agenda would be adjusted so the joint meeting would be first on the agenda. Mr. Mackey said yes.

Adjourn

Mr. Burgess motioned to adjourn.

Seconded by Mr. Coppolo.

Vote: Unanimous.

Mr. Kelley, Mr. Burgess, Mr. Coppolo, Mrs. Hampton, Mrs. Evans, Mr. Virr, Mr. Perkins

Adjourn at 8:30 pm

Minutes transcribed from tape:

Ginny Rioux

Recording Clerk

APPROVAL OF MINUTES November 17, 2016

Mr. Coppolo motioned to approve the minutes November, 2016 as amended.

Seconded by Mr. Kelley.

Vote: Unanimous.

Mr. Kelley, Mr. Burgess, Mr. Coppolo, Mrs. Evans, Mr. Virr, Mr. Perkins