

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
February 15, 2024

Members Present

Lynn Perkins, Chairman
Craig Corbett, Vice Chair
Crystal Morin, Secretary
Richard Tripp @

Members Absent

Donald Burgess

Alternates Present

James Dietzel
Michael Donlon

Alternates Absent

Gaspar Obimba

Code Enforcement

Robert Wentworth, Assistant Building Inspector

Mr. Perkins called the meeting to order at 7:00 p.m. with the salute to the flag. To participate in this meeting, you can be present or by dialing 323-909-140 or by clicking on the website address: derrycam.org/TuneIn the phone numbers are 646-558-8656 or 312-626-6799 meeting ID: 323-909-140 or if anybody has a problem, please call 603-845-5585 or email at: ginnyrioux@derrynh.org. In the event that the public is unable to access the meeting, the meeting will be adjourned and rescheduled otherwise the meeting will end at 10:00 PM.

The Board members introduced themselves.

24-103 Lynne Caloggero
Owner: Peak Premises, LLC

The applicants are requesting a variance to the terms of Article VI, Sections 165-45.B.1.a.ii, 165-45.B.1.b.i, 165-45.B.1.c.i and 165-45.B.1.d.ii of the Town of Derry Zoning Ordinance to allow the property to be subdivided into 2 single family building lots which will have less than the required frontage, lot width and lot area at 27 Mt. Pleasant Street, Parcel ID 32054, Zoned MHDR

Mr. Corbett informed the applicant that this was a continuation from the February 7th meeting and the original members that were sitting that evening were not present and

asked if wished to proceed with Mr. Perkins and Mr. Dietzel to sit due to the absence of Mr. Tripp and Mr. Burgess or could table to the next meeting. Mrs. Caloggero said that she had no preference and wished to proceed.

Mr. Corbett said that heard original testimony and heard from abutters. The Board had asked if could show a plan with structure removed and change out plan.

Mrs. Caloggero said that she had provided a new plan for the Board's review as requested during the February 7, 2024, meeting. Mrs. Caloggero described the proposal for the record and explained that the grandfather status was lost due to the amount of time that had passed since the fire occurred.. They decided on this presentation as had reviewed the neighborhood and feel that this proposal would fit better with the surrounding area as homes would be similar in design.

Board Questions

Mr. Donlon asked if seeking relief from frontage and lot area. Mrs. Caloggero said that they are just a bit shy to meet the lot requirements but will meet all other requirements of setbacks.

Mr. Perkins asked if the first proposal plan was to move original footprint. Mrs. Caloggero said no that the original plan was to subdivide the property down the center and by doing so would create the existing structure to be to close to the side property line. The proposal presented today is to raze the existing home and meet all setbacks.

Mr. Perkins said that the proposal was to be 3.5 feet. Mrs. Caloggero said yes that was on the first proposal but not on the new proposal.

Mr. Corbett asked if proposed home design was going to be identical. Mrs. Caloggero said that the homes would be structured differently so each would stand alone. She said that cost wise the first proposal is more beneficial but the second proposal is what felt that the neighbors would accept more. The existing home is a total loss but were originally trying to preserve the foundation.

Mr. Corbett asked what was the requirements to create a lot in this zone. Mr. Wentworth said the applicant would need 10,000 square feet per lot so a variance is required to create 2 lots.

Mr. Corbett informed the public that now would be the time to call in favor of the proposed request. He said if wish to speak press star 9 and someone will answer your call.

Favor

No one spoke in favor of the request.

Mr. Corbett informed the public that now would be the time to call in opposition of the proposed request. He said if wish to speak press star 9 and someone will answer your call.

Opposed

Ross Curran, 33 Mt. Pleasant Street, said he believes the applicant is seeking 4 variances and if that was correct.

Mr. Perkins said that the applicant originally was requesting 4 variances but has modified original request so now only seeking 3. Mr. Mackey had spoke to average front setbacks at the previous meeting.

Mr. Curran said that all the homes on Mt. Pleasant have their driveways located on the sides of their homes but proposal shows driveways to be in the front of the property so feel will not be in keeping with the neighborhood.

There was some discussion with regards to driveway locations.

Mr. Corbett said if the applicant was not seeking to subdivide the property they would still need a variance to rebuild the existing structure so asking to have proposed driveways to be located in similar location. Mr. Curran said yes.

Mr. Perkins said that the Board can deliberate to modify the setbacks as Mr. Curran's concern is to have the proposed lots conform to surrounding area verses setting back he said that it would be part of the Planning Board's discretion on where should be placed. Mr. Curran said he would prefer it if they were built on the sides of the homes. The area is over 110 years or more and believe there is ledge in the area as a lot of homes have rock foundations so have a large concern with blasting and jackhammering.

Mr. Perkins said Mrs. Hood had a lot of land and feel it would have been hard to raise cows on rock but unable to determine what is underground.

Mr. Curran said they are seeking to subdivide into 2 lots what prevents them from selling the lots and not building them. What prevents the sale of the lots as saying seeking to protect the neighborhood does not mean that they will do. Mr. Corbett said that if approved would need to be built to specks provided but nothing says they are unable to sell the lots. A variance expires 2 years if not acted on.

Mr. Perkins said that the applicant is coming in as a proposal and the Board weighs out concerns raised by neighbors and proposals.

Mr. Curran said that if approved and start construction to tie into town services during the school year the area has a heavy traffic flow and is a parking lot during the school year. Mr. Corbett said that they are unable to prevent construction on property and unable to put stipulations of build times.

Mr. Perkins said that he suffers same concerns with living in a neighborhood with a school but construction times are not purview of Board and feel that the applicant will be in consult with the Town during process if approved. He said that the plan if approved will also be subject to Planning Board approval but they also do not oversee construction times and that the applicant may need to hire police services during construction times.

Mr. Perkins said that it was also within the Board's purview to postpone to have applicant do some fact finding on ledge concern but not relevant to decision making.

Mr. Corbett reviewed potential concerns outlined by Mr. Curran.

Ann Marie McCoole, Mt. Pleasant Street, said that there is ledge in the area as part of her basement is ledge. She said that she has concern with the large trees on the property as if they fall will be on her home. Ms. McCoole said that also if proposing 2 new homes why would they keep old unsightly sheds.

Mr. Corbett said unable to speak of tree or shed concerns as out of Board's purview but applicant may address during rebuttal.

Rebuttal

Mrs. Caloggero said she would try to answer some of the concerns raised as follows:

Driveway – when drawing out proposed plan their engineer did not ask about locations but there is more than enough room to locate them on the sides of the homes.

Sale – intention is to build as people typically purchase lots to build.

Traffic - intention is to build during summer months when school is out.

Ledge – current home has no rock in basement as standing. As progress along will evaluate as not cost effective to jack hammer so would then do a crawl space.

Trees & Shed – build beautiful homes so the old run down sheds are not part of their plan to keep and trees will be reviewed for removal if needed.

Mrs. Caloggero said she believes that they have addressed the Board and abutters concerns and meet the requirements for granting their request.

Mr. Perkins said that the proposed structure on the proposed new lot would be 15.5 feet from the lot lines and is that consistent with both lots. Mrs. Caloggero said yes, only show on one side but believe both homes would be set in the building envelopes.

Mr. Donlon motioned to go into deliberative session.

Seconded by Mr. Dietzel.

Vote: Unanimous.

Mr. Dietzel, Mr. Donlon, Mrs. Morin, Mr. Perkins, Mr. Corbett

Deliberative Session

Mr. Corbett said that it is the Board's decision to discuss the subdivision proposal for the first proposal or the second proposal.

Mr. Perkins said he felt that the second proposal is the one to focus on as diminishes infractions so the Board should structure the motion to reflect the second proposal.

The Board agreed to proceed with the second proposal.

Mr. Perkins recognized that Mr. Tripp just joined the meeting and said that he would step back if Mr. Tripp wished to resume his place on the case.

Mr. Tripp said he would step down at this time.

Mr. Corbett said that one less variance required he felt was a better proposal and as stated by Mr. Wentworth the property is short approximately 750 feet and shy on the frontage requirement. The property is existing in status for a number of years and could rebuild one home with large lot without a variance. He said that he also hears the concerns of the abutters and that the applicant has addressed the driveway conformity.

Mr. Dietzel said he was concerned with the change of the neighborhood but that is progress as things change. The concern of the neighborhood is clear that the existing home has to come down and that construction does create noise but only for a few weeks. He said that the ordinance setbacks have purpose so hesitate to grant but feel that the applicants point of view outweighs abutters concerns.

Mr. Perkins said the idea of why not build a duplex as can ask to build a duplex and relief being in center of lot may be a better proposal than current request. He said that noise of construction is going to happen regardless and value Mr. Dietzel's points of construction disturbance with 2 single family homes.

Mr. Donlon said that construction is inevitable either rebuild or 2 new homes or rebuild on existing foundation. If denied still have ledge concern and applicant has stated not cost effective to dig or blast for foundation so there would be no new foundation concerns. Mr. Donlon said that he has a hard time seeing hardship as will have a cost factor either way modified to build 2 family or shoot for the moon and request 2 lots.

Mrs. Morin said that she was struggling with the spirit of the ordinance as feel two more homes would be overcrowding the area.

Mr. Corbett said proposal is 2 homes meeting side setbacks with lack of sufficient frontage and lot area. He said that the property currently had a multi-family structure that was damaged by fire and has lost its right to rebuild. Mr. Corbett said that he did not feel that the request for 2 single family homes was excessive but can see both sides.

Mr. Perkins said that the Board make points clear and structure a motion and vote or suggest to table to the next meeting so can review. Would need to structure motion before out of deliberative session and reviewed condition for the record. He said that if the Board moves forward some discussion with driveway locations may need to be made as a condition and a third condition be that the locations of the homes be moved back to meet setbacks.

Mr. Corbett said that he does like the condition of keeping the driveways on the side for neighborhood conformity. He said that he has no issue with request to have homes pushed back further on the property.

Mr. Corbett polled the Board with regard to driveway location.

Mr. Donlon said that the concern of the driveway he feels will fall in line with construction.

Mr. Dietzel said he agrees with Mr. Donlon that it was the applicant's decision.

Mrs. Morin said that the home setback with the driveway in the front is not part of the Board's purview only here with regards to lot size and frontage.

Mr. Perkins said that he agrees with front and house at 35' or on the side with conforming to neighborhood.

Mr. Corbett said he would not wish home be closer to the road.

Mr. Donlon said to leave at 25 and put the driveway to the side as hearing concerns from abutters 25' setback could have stacked parking.

Mr. Perkins said a third condition be that the driveway be located on the side of the property.

Mr. Perkins motioned to come out of deliberative session.

Seconded by Mr. Donlon.

Vote: Unanimous

Mr. Dietzel, Mr. Donlon, Mrs. Morin, Mr. Perkins, Mr. Corbett

Mrs. Morin motioned on case #24-103 Lynn Caloggero, Owner: Peak Premises, LLC to Grant a variance to the terms of Article VI, Sections 165-45.B.1.a.ii, 165-45.B.1.b.i and 165-45.B.1.c.i of the Town of Derry Zoning Ordinance to allow the property to be subdivided into 2 single family building lots which will have less than the required frontage, lot width and lot area at 27 Mt. Pleasant Street, Parcel ID 32054, Zoned MHDR as presented with the following conditions:

1. Subject to obtaining all State & Town permits and inspections.
2. Subject to Planning Board subdivision approval.
3. Driveways to be located on the sides of the proposed structures.

Seconded by Mr. Perkins.

Mr. Corbett noted the findings of fact as follows for case #23-103:

- The zoning district for the property is located in the Medium High Density Residential Zoning District (MHDR).
- 10,000 square foot with 100 feet of frontage is required for properties serviced by municipal water and sewer.
- Applicant is requesting a variance to allow the property to be subdivided into 2 single family building lots.
- Relief is being requested for lot size, frontage requirements and lot area.

The Board also includes all facts found in the meeting minutes for this application and incorporates all meeting minutes into its finding of fact and decision.

Vote:

Mr. Dietzel: Yes.

Mr. Donlon: No. Lack of due diligence and unreasonable use for the property.

Mrs. Morin: No. No hardship has been shown and does not meet the spirit and intent of the ordinance.

Mr. Perkins: No. I don't agree with hardship or substantial justice. I believe the same number of bedrooms and habitable space could be achieved without the multiple infractions being requested.

Mr. Corbett: Yes.

The application was Denied by a vote of 2-3-0. 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 that Mr. Dietzel would sit for the following case.

24-104 Laurie L. Dempsey

The applicant is requesting an equitable waiver to the terms of Article VI, Section 165-47.B.4 of the Town of Derry Zoning Ordinance to allow the recently constructed carport to remain less than 35 feet from the front property line at 1 Towne Drive, Parcel ID 01024-001, Zoned LMDR

Laurie Dempsey, 1 Towne Drive, reviewed the required criteria for the record. Mrs. Dempsey said that their box truck does not fit in their existing garage and is difficult to clean off during the winter months. She said that they had previously installed a tarp type

structure but they have blown away or collapsed during the winter. The metal structure has cement supports in the ground and a metal roof and frame and is only 30 feet to the road not the required 35 feet.

Board Questions

Mr. Perkins asked why here as violation not ignorance of law to build a metal frame structure verses a carport. Mrs. Dempsey said that their box truck is unable to go into the existing garage and they were just replacing an existing carport with a more sturdier structure so it didn't get damaged in the winter months.

Mr. Corbett asked if building where the carport was. Mrs. Dempsey said yes just beyond the retaining wall.

Mr. Perkins asked if placing on existing piers. Mrs. Dempsey said they have replaced some of the piers as they were not deep enough.

Mr. Perkins asked if placing where previous carport was. Mrs. Dempsey said yes.

Code Enforcement

Mr. Mackey had provided the Board with the following information:

- The applicant is requesting an Equitable Waiver to allow the recently constructed carport type structure to remain less than 35 feet from the front property line.
- As the structure is substantially complete, the applicant was advised that they could apply for an equitable waiver to try to address the encroachment issue.
- Since the violation has not existed for 10 years, the second set of criteria for the Equitable Waiver applies.
- If approved, the applicant will be required to obtain a building permit.
- There are pictures in the file for review by the Board.

Mr. Wentworth said that the case was a typical lot line encroachment.

Mr. Corbett informed the public that now would be the time to call in favor of the proposed request. He said if wish to speak press star 9 and someone will answer your call.

Favor

No one spoke in favor of the request.

Mr. Corbett informed the public that now would be the time to call in opposition of the proposed request. He said if wish to speak press star 9 and someone will answer your call.

Opposed

No one spoke in opposition of the request.

Mr. Tripp said that it appears that just seeking to rebuild previous structure. Mrs. Dempsey said yes as the previous owner had told her that one had been there before but when purchased it was not there. She said she was unaware that she needed a permit.

Mr. Corbett asked if reason building metal was due to previous one blowing away. Mrs. Dempsey said yes.

Mr. Corbett motioned to go into deliberative session.

Seconded by Mrs. Morin.

Vote: Unanimous

Mr. Dietzel, Mr. Tripp, Mrs. Morin, Mr. Corbett, Mr. Perkins.

Deliberative Session

Mr. Corbett said he felt this was like a typical shed case and that he understood the reason for the proposed structure.

Mr. Tripp said he agreed that once she explained that was seeking to rebuild in a previous location and did not realize a permit was needed.

Mrs. Morin said that reason for proposed metal carport was due to a previous collapse of a standard portable carport.

Mr. Perkins reviewed the condition for the record.

Mr. Corbett motioned to come out of deliberative session.

Seconded by Mrs. Morin.

Vote: Unanimous

Mr. Dietzel, Mr. Tripp, Mrs. Morin, Mr. Corbett, Mr. Perkins.

Mrs. Morin motioned on case #24-104 Laurie L. Dempsey to Grant Equitable Waiver to the terms of Article VI, Section 165-47.B.4 of the Town of Derry Zoning Ordinance to allow the recently constructed carport to remain less than 35 feet from the front property line at 1 Towne Drive, Parcel ID 01024-001, Zoned LMDR as presented with the following conditions:

4. Subject to obtaining all State & Town permits and inspections.

Seconded by Mr. Corbett.

Mr. Corbett noted the findings of fact as follows for case #23-104:

- The zoning district for the property is located in the Low Medium Density Residential Zoning District (LMDR).**
- The applicant is requesting an equitable waiver to allow a recently constructed carport type structure less than 3' from the front property line.**
- An equitable waiver would address the encroachment issue as the carport is complete.**
- Equitable waiver applies as the violation**
- A building permit will be required to be obtained from the building department.**

The Board also includes all facts found in the meeting minutes for this application and incorporates all meeting minutes into its finding of fact and decision.

Vote:

Mr. Corbett: Yes.

Mr. Tripp: Yes.

Mrs. Morin: Yes.

Mr. Dietzel: 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.

It was noted for the record that Mr. Dietzel left the meeting and that Mr. Donlon would sit for the following case.

24-105 Shawn Moreau

The applicant is requesting a variance to the terms of Article VI, Section 165-39.A of the Town of Derry Zoning Ordinance to allow the construction of a single-family

dwelling with an accessory dwelling unit on the property at 2.5 Bowers Road, Parcel ID 02057-001, Zoned IND 1

Matthew Peterson, Keach-Nordstrom Associates, said he was here with the applicant Shawn Moreau. Mr. Peterson reviewed the required criteria and proposal for the record. He said that the applicant had originally thought of having the property consist of a shipping facility with storage containers but in reviewing of the area feel that a residential structure would be a better fit for the area. Mr. Peterson said that the zoning for the area was changed from residential to industrial 1 in 1990.

Board Questions

Mr. Perkins asked if could review the merger. Mr. Peterson said that the property was purchased in 2022 and that the property had undergone a merger with 2 Bowers Road and have recently had the property brought back to separate parcel.

Mr. Corbett said that it appears that Bowers Road is half residential and half industrial zone. Mr. Peterson reviewed the area for the record.

Mr. Perkins said that the lot was cleared. Mr. Moreau said that he has done some landscaping and removed trees and had some storage containers on the property. He said that the Town had a stop work order on the property. He sat down with Mr. Mackey and the Planning Director and discussed various options and after he feels that this request is a better fit for the neighborhood.

Mr. Donlon asked if intent was to build and move into. Mr. Moreau said yes.

Mr. Perkins asked if the rip wrap installed on road was his. Mr. Moreau said yes as he installed due to the runoff drainage was clogging the drain.

Code Enforcement

Mrs. Morin reviewed Mr. Mackey's staff report for the record as follows:

- The applicant is requesting a variance to allow the property to be utilized for residential use by the construction of a single-family dwelling (which will also include an attached accessory dwelling unit (ADU).
- The property is located in the Industrial I Zoning District (IND I) which does not permit residential use, although there are multiple pre-existing homes in the immediate area.
- The property in question has been cleared and leveled by the owner who had been in discussions with the Town regarding potential commercial uses for the property but has determined that the construction of a dwelling is more suitable for the site and surrounding area.
- The proposed home would be serviced by a private well and septic system.

- If approved, appropriate permits and inspections will be required to be obtained from the Building and Fire Departments.
- There are pictures in the file for review by the Board.

Mr. Corbett informed the public that now would be the time to call in favor of the proposed request. He said if wish to speak press star 9 and someone will answer your call.

Favor

No one spoke in favor of the request.

Mr. Corbett informed the public that now would be the time to call in opposition of the proposed request. He said if wish to speak press star 9 and someone will answer your call.

Opposed

No one spoke in opposition of the request.

Mr. Corbett motioned to go into deliberative session.

Seconded by Mr. Donlon.

Vote: Unanimous.

Mr. Donlon, Mr. Tripp, Mrs. Morin, Mr. Corbett, Mr. Perkins

Deliberative Session

Mr. Tripp said he feels that this was a reasonable request.

Mr. Donlon said he agreed with the proposal as would be in keeping with the neighborhood.

Mrs. Morin said that most people are not happy living next to industrial areas so feel abutters would be happy with a residential home.

Mr. Perkins said that he believed that there was a landscape company further up the road. He said that applicants desire is to reduce the impact to the area makes sense and in good light with repair to the roadway drainage. Mr. Perkins said that this request makes more sense than a storage facility. He reviewed the condition for the record.

Mr. Tripp motioned to come out of deliberative session.

Seconded by Mr. Donlon.

Vote: Unanimous.

Mr. Donlon, Mr. Tripp, Mrs. Morin, Mr. Corbett, Mr. Perkins

Mrs. Morin motioned on case #24-105 Shawn Moreau to Grant a variance to the terms of Article VI, Section 165-39.A of the Town of Derry Zoning Ordinance to allow the construction of a single-family dwelling with an accessory dwelling unit on the property at 2.5 Bowers Road, Parcel ID 02057-001, Zoned IND 1 as presented with the following conditions:

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

Seconded by Mr. Donlon.

Mr. Corbett noted the findings of fact as follows for case #23-105:

- **The zoning district for the property is located in the Industrial I Zoning District (IND I).**
- **The applicant is requesting a variance to allow the property located in the Industrial I zone to be utilized as a residential use of a single-family dwelling with an ADU.**
- **IND I does not permit residential use, but there are multiple pre-existing homes located in the area.**
- **The property was cleared and leveled by owner who was discussing commercial uses for the property but has determined a dwelling was more suitable for the site and surrounding area.**
- **The proposed home would be serviced by a private well and septic system.**
-

The Board also includes all facts found in the meeting minutes for this application and incorporates all meeting minutes into its finding of fact and decision.

Vote:

Mrs. Morin: Yes.

Mr. Corbett: Yes.

Mr. Tripp: Yes.

Mr. Donlon: 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

Mr. Corbett motioned to table the minutes of February 1, 2024.

Seconded by Mr. Donlon.

Vote: Unanimous.

Mr. Donlon, Mr. Tripp, Mrs. Morin, Mr. Corbett, Mr. Perkins.

Other Business

Mr. Mackey informed the Board that there have been 5 cases submitted for the next meeting.

Adjourn

Mr. Corbett motioned to adjourn.

Seconded by Mrs. Morin.

Vote: Unanimous.

Mr. Donlon, Mr. Tripp, Mrs. Morin, Mr. Corbett, Mr. Perkins

Adjourn at 8:58 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

Approval of minutes March 21, 2024

Mr. Donlon motioned to approve the minutes of February 15, 2024 as written.

Seconded by Mr. Obimba.

Vote: Unanimous.

Mr. Obimba, Mr. Donlon, Mr. Burgess, Mrs. Morin, Mr. Corbett, Mr. Perkins.