

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
December 3, 2015

Members Present

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

Members Absent

Teresa Hampton

Alternates Present

Katherine Prudhomme-O'Brien

Alternates Absent

Dana Nauerz
Michael Demeo

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 Mrs. Prudhomme-O'Brien would sit for the cases this evening due to the absence of Mrs. Hampton.

Mr. Perkins said that case #15-127 Mitchell P. Poirier would be heard last as applicant is not currently present but on way to meeting.

Mrs. Prudhomme-O'Brien said that her daughter was a patient of Dr. Copeland and felt that she could still be fair but will step down if the Board wished.

There was no objection from the Board or Mr. Copeland.

15-129 Scott Copeland

The applicant is requesting a variance to the terms of Article VI, Section 165-45A of the Town of Derry Zoning Ordinance to allow an expansion of the mixed use at the property, specifically a residence on the upper floors and a dental office on the first floor. 132 East Broadway, Parcel ID 37032, Zoned MHDR

Scott Copeland, owner, read his variance request criteria for the record. He said that he moved to Derry after residing in Lowell, MA due to their restrictive covenants. He said that the people that resided in the Derry home actually purchased their home in Lowell so they essentially swapped homes. He said that is time to transfer his business and retire

due to health issues. Mr. Copeland said that they have maintained the historic factor of the property and take pride in the appearance of their home and property.

Board Questions:

Mr. Coppolo asked if actual space was expanding or just who. Mr. Copeland said the space was not expanding just who would be utilizing the practice.

Mr. Perkins asked if expanding the first floor footprint. Mr. Copeland said no that the footprint will remain the same.

Code Enforcement

Mr. Mackey provided the Board with the following reference:

- The applicant is requesting approval to have the ability to expand the commercial use (Dental Orthodontist Office) currently located in a portion of the first floor of the residence.
- At this time, the property consists of a residence and an orthodontist office that was approved by Special Exception for a home occupation in 1985 (see attached). The zoning designation of the property is Medium High Density Residential (MHDR).
- The applicant is requesting a variance to expand the commercial use (a dental office) to occupy the entire first floor area with residential use on the 2nd and 3rd floors.
- A use variance is required as the proposal will no longer meet the requirements for a special exception, specifically with regard to residency, business square footage and number of non-residential employees.
- The property is located in a mixed use area in close proximity to commercially zoned properties and uses.
- There are pictures of the property in the file for review by the Board.

Mr. Coppolo said that the 1985 minutes shows a close 3-2 vote which was close of not obtaining. Mr. Copeland said that the vote was 3-1 and that he felt that the Board was cautious on expansion at the time. He said that he has spoken with his only real residential neighbor, Robert Wentworth and asked if he would have any objection to this request and he said that he did not feel there were any concerns.

Favor

No one spoke in favor of the request.

Opposed

No one spoke in opposition of the request.

Mrs. Evans motioned to go into deliberative session.

Seconded by Mrs. Prudhomme-O'Brien.

Vote: Unanimous.

Mrs. Prudhomme-O'Brien, Mr. Coppolo, Mrs. Evans, Mr. Virr, Mr. Perkins.

Deliberative Session

Mr. Perkins said that he could not think of any other conditions other than to be subject to all State and Town permits and inspections.

Mr. Virr asked if there was transition to another orthodontist. Mr. Copeland said that he was seeking to lease the business for 10 years and still reside on the property.

Mr. Coppolo asked if he would rent from the tenant. Mr. Copeland said he would own property and lease space to tenant.

Mr. Perkins said that a possible condition of the variance to only stay with property until otherwise change ownership and state usual conditions.

Mr. Coppolo said that he is not sure the conditions of being subject to State and local permits and inspections are required.

Mr. Coppolo motioned on case #15-129 Scott Copeland to Grant a variance to the terms of Article VI, Section 165-45A of the Town of Derry Zoning Ordinance to allow an expansion of the mixed use at the property, specifically a residence on the upper floors and a dental office on the first floor. 132 East Broadway, Parcel ID 37032, Zoned MHDR as presented with the following conditions:

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

Seconded by Mrs. Prudhomme-O'Brien.

Vote:

Mrs. Prudhomme-O'Brien: Yes.
Mr. Coppolo: Yes.
Mrs. Evans: Yes.
Mr. Virr: Yes.
Mr. Perkins: Yes.

The application was Granted 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.

15-127 Mitchell P. Poirier

The applicant is requesting a variance to the terms of Article VI, Section 165-46.C.4 of the Town of Derry Zoning Ordinance to construct a 12' x 30' carport with less than the required setbacks to the front and side property lines. 9 Gena Avenue, Parcel ID 58066, Zoned MDR

Mitchell P. Poirier, owner, said that he wished to apologize to the Board as when he had submitted his request to be rescheduled he had not heard if it was granted so he was unaware that he was scheduled this evening.

Mr. Poirier read his variance request for the record. He said that they utilize their porch year round for grilling and would like to cover the area and extend the roof over to create a carport. He said that he has reached out to a company to have tinted panels so as to allow light to enter. Mr. Poirier said that he had contacted the Building Department with regard to snow and wind factors and was informed at that time that he was unable to erect without a variance as there was not enough room to the side lot line.

Code Enforcement

Mr. Mackey provided the Board with the following reference:

- The applicant is applying for a variance to construct a 12' x 30' carport 6' from the side lot line at the closest point.
- The property is located in the Rainbow Lake area which consists of mostly undersized lots as well as non-conforming structures as its development pre-dates current zoning regulations.
- As the proposed construction falls within 250' of Rainbow Lake, State approval is also required as the Lake falls within the purview of the Comprehensive Shoreland Protection Act.
- If approved, appropriate permits & inspections will be required.
- There are pictures of the property in the file for review by the Board.

Board Questions:

Mr. Virr asked if the awning was permanent or rollup. Mr. Poirier said it was permanent.

Mr. Perkins asked if it was a shed type to elevate snow and rain. Mr. Poirier said that was correct.

Mr. Virr asked what was the type of construction. Mr. Poirier said that it was a composite aluminum construction. He explained how it was to be erected.

Mr. Perkins asked if the roof panels were translucent. Mr. Poirier said yes.

Mrs. Evans asked if the lot line setbacks were to be 6' and 8' off side lot line and if there would be any electrical. Mr. Poirier said that the setbacks are what he had measured and there would be no electric.

Mr. Coppolo asked what was the age of the home. Mr. Poirier said that the home was recently built and they purchased in August. He believes that the home was constructed sometime during the spring of this year. The contractor left a small porch and the rest of the home was new stick frame, insulation and roof rafters. He said that the property is all new except possibly 15% where the front porch exists.

Mr. Mackey said that the structure was not a complete tear down but has had an extensive remodel.

Mr. Perkins said that he remembers seeing the property on MLS and believe kept a portion of the property original due to variance. Mr. Mackey said that was correct.

Favor

No one spoke in favor of the request.

Opposed

No one spoke in opposition of the request.

Mr. Coppolo motioned to go into deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous

Mrs. Prudhomme-O'Brien, Mr. Coppolo, Mrs. Evans, Mr. Virr, Mr. Perkins

Deliberative Session

Mr. Perkins asked the Board to structure a motion.

Mr. Coppolo said that he had no issues with the request.

Mrs. Prudhomme-O'Brien said that she heard testimony that the former owner only rehabbed the property as if repositioned it would have required a variance. She said that she felt that the applicant needs shelter for their vehicles and shouldn't be denied the request.

Mrs. Evans said that she has the following conditions:

1. Subject to obtaining all State and Town permits and inspections.
2. Subject to obtaining Shoreland permits.

Mr. Perkins said that subject to obtaining all State and Town permits and inspections should cover the Shoreland permit requirement.

Mrs. Prudhomme-O'Brien motioned to come out of deliberative session.

Seconded by Mrs. Evans

Vote: Unanimous

Mrs. Prudhomme-O'Brien, Mr. Coppolo, Mrs. Evans, Mr. Virr, Mr. Perkins

Mrs. Evans motioned on case #15-127 Mitchell P. Poirier to Grant a variance to the terms of Article VI, Section 165-46.C.4 of the Town of Derry Zoning Ordinance to construct a 12' x 30' carport with less than the required setbacks to the front and side property lines. 9 Gena Avenue, Parcel ID 58066, Zoned MDR as presented with the following conditions:

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

Seconded by Mrs. Prudhomme-O'Brien.

Vote:

Mrs. Prudhomme-O'Brien: Yes.

Mr. Coppolo: Yes.

Mrs. Evans: Yes.

Mr. Virr: No. Do not see where hardship has been established.

Mr. Perkins: Yes.

The application was Granted a vote of 4-1-0. 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. Coppolo motioned to approve the minutes of November 19, 2015 as amended.

Seconded by Mrs. Evans.

Vote: 5-0-0

Yes: Mrs. Prudhomme-O'Brien, Mr. Coppolo, Mrs. Evans, Mr. Virr, Mr. Perkins

Correspondence

Mr. Perkins said that Elizabeth Robidoux has asked that the Board and the public to please take part in the Town of Derry Survey either by going online to www.derry-nh.org or you can pick up a hard copy at the Town Clerk's office.

Adjourn

Mr. Coppolo motioned to adjourn.

Seconded by Mrs. Prudhomme-O'Brien.

Vote: Unanimous.

Mrs. Prudhomme-O'Brien, Mr. Coppolo, Mrs. Evans, Mr. Virr, Mr. Perkins

Adjourn at 8:45 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes December 17, 2015

Mr. Coppolo motioned to approve the minutes for December 3, 2015 as amended.

Seconded by