

TOWN OF DERRY  
ZONING BOARD OF ADJUSTMENT MINUTES  
December 17, 2015

**Members Present**

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

**Members Absent**

**Alternates Present**

**Alternates Absent**

Katherine Prudhomme-O'Brien  
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.

**15-130 Carrigg Commercial Builders, LLC**

**The applicant is requesting a variance to the terms of Article VI, Section 165-45B.2.b & c of the Town of Derry Zoning Ordinance to allow the construction of an eight unit multi-family building on the property which has 129.70 feet of frontage and lot width where 150 feet is required. 1 Davis Court, Zoned MHDR, Parcel ID 27108**

Attorney Patricia Panciocco, Baroff Professional Association, Bedford, said she was representing Robert Carrigg, Carrigg Commercial Builders, LLC who is also present here this evening along with representatives from Bedford Design.

Attorney Panciocco read the application and criteria for the record. Attorney Panciocco explained the proposal and allowances under the MHDR zoning district. She stated that the Town had sent her client a letter with regard to the property being in disrepair and that if this variance would be granted it will remove an unsightly structure and be replaced with a new 8 unit multi-family structure. Attorney Panciocco described the property and surrounding areas as being a modest area built in the 1920's and earlier and this lot was established with 129' of frontage. She said that the property had been before the Zoning Board in 2011 and at that time the application was different as side setbacks were closer and now applicant is 30' and 132' from the front lot line where before it was

proposed for 102'. The curb cut has been relocated to center and site distance will present no safety issues. The proposed footprint of the proposed structure is smaller but more units than previous request but less square footage as prior request was for 3 levels now proposal is for 2 levels. Attorney Panciocco said that the regulations have changed and the Town reduced number of units allowed as previous zoning allowed 14 units and present zoning criteria allowance is 9 and her client is proposing 8 units. Attorney Panciocco described proposed design look of the building. She said that this proposal will enhance property values as the property will be rehabilitated and the blight will be removed. Attorney Panciocco said that the most important points other than hardship is that the ordinance is to serve public purpose and feels that the proposed use meets the requirements to be granted a variance as only 20' short of frontage all other requirements are met. Attorney Panciocco said that the proposal will not compromise safety as there is on-site parking. The surrounding lots were created before zoning and setbacks will be far greater than all existing structures in the neighborhood.

### **Board Questions:**

Mr. Perkins asked how elevations were to be handled with regards to slope to river. Katie Weiss, Bedford Design, described the layout and said that the back of the structure will have a retaining wall.

Mrs. Evans asked if wetland setbacks to the floodplain would be met. Ms. Weiss said yes and that portion of the property was not in a floodplain.

Mr. Virr asked how far before the property dropped off. Ms. Weiss described the layout for the Board.

There was some discussion with regard to the rear slope of the property.

Mr. Virr asked if asked if there had been any discussion with the Town with regard to the municipal water/sewer system and whether it was capable to handle the number of units proposed. Mr. Carrigg said that he had met with the Town and said that there were no concerns with tying into the municipal service lines.

Mrs. Evans asked if the property ever had its own septic. Mr. Carrigg said he believed it had always been municipal services.

Mrs. Hampton said that the previous proposal was for 3,600 square foot 5 unit structure and this was larger. Mr. Carrigg said that the current proposal was for 7,200 square foot 2 story structure.

Mr. Virr asked if the proposal was for apartments and not condos right. Mr. Carrigg said that was correct.

Mr. Coppola asked how wide Pleasant Street was as he was concerned with adding 16 more cars in the road. Ms. Weiss said it was 23' wide.

Mr. Coppolo said that he questioned the spirit of the ordinance with the frontage requirements for single or multi family structures serviced by community services. Attorney Panciocco said that the property has 129.7' of frontage which is greater than the requirement for a single family. She said that the Board is looking at lots created in the 1920's and none of the lots comply as they predate zoning and to hold this lot to today's standards would be unjust. Attorney Panciocco said that they were seeking a modest reduction as only lacking 20' of frontage.

Mr. Perkins said that he was concerned with the density. Attorney Panciocco said that the property meets Town regulations and feels entitled to use as the dimensional requirement is only lacking 20' of frontage.

Mr. Coppolo said that he did not believe the argument that 20' of frontage was inconsequential as ordinance indicates that 50' matters as it requires 150' for multi-family. He said there is a 40% difference in that requirement and has trouble seeing it as inconsequential. Attorney Panciocco said that a variance is a relief valve to the rules in the ordinance.

There was some discussion with regard to dimensional requirements.

### **Code Enforcement**

Mr. Mackey provided the Board with the following reference:

- The proposal is to remove an existing single family structure and replace with a 2-story, 8 unit apartment building.
- The property is zoned MHDR which allows for multi-family residential use but requires 150 feet of lot frontage and lot width. The parcel contains 129.7 feet, therefore, a variance is required.
- The rear portion of the property drops very steeply to Beaver Brook. This portion of the property is located in the 100 year flood zone and is also regulated under the N.H. Shoreland rules as Beaver Brook is considered a Forth Order Stream in this area. No construction or improvements are proposed in these locations although as the proposed work falls within 250 feet of Beaver Brook, a State permit is required.
- A previous variance request by the same applicant was denied by the Board on June 2, 2011. This request required the same relief from frontage and lot width requirements and the proposal was to construct a 5 unit condominium building (see attached minutes).
- If approved, Planning Board Site Review will be required where items such as parking, site lighting, landscaping, etc. will be addressed.
- Property was subject to enforcement letter for unsecured property.
- There are pictures of the property in the file for review by the Board.

Mrs. Hampton asked if Mr. Mackey could recall the 2011 hearing. Mr. Mackey said that the previous request was for a 5 unit condo set closer to the front. He said that there were multiple abutters present who were not in favor of the proposal. He said that this request is similar as the applicant needs relief due to the lack of sufficient frontage. Mr. Mackey explained the square footage requirement per zone.

Mr. Perkins asked Attorney Panciocco what was the submission that she wished to have the Board consider for review. Attorney Panciocco said that they were copies of zoning map and pictures of the property with regard to overview and assessment cards and lot sizes of other properties in the area.

Mr. Perkins said that he would entertain a motion to accept the additional criteria.

Mr. Virr said that he felt that he did not need to see the information as he was familiar with the area.

Mr. Coppolo said that he also did not feel that he needed the additional information.

Attorney Panciocco said that the Board had approved a plan a month ago which was similar in density and style.

Mr. Perkins said that the evidence presented to the Board was required to have been submitted 10 days in advance so that they have ample time to review. Attorney Panciocco said that she was before Boards all over the State and has always been able to present additional information so it was not always the case.

Mr. Perkins said that the Board was declining additional information to be submitted at this time.

Mrs. Evans said that the 2011 request was for 5 units where 14 were allowed and they are now requesting 8 units. Attorney Panciocco said that the units in 2011 were condo and were to be sold so proposal was for larger style home. She said that they are smaller apartment style 2 bedroom units being proposed.

Mr. Coppolo asked how many bedrooms was proposed before. Attorney Panciocco said that each unit was for 3 bedrooms each.

### **Favor**

No one spoke in favor of the request.

## **Opposed**

The following abutters Sarah & Kevin Desaulners, 10 Pleasant Street, Richard Ganley, 16 Pleasant Street, Jennifer & Kevin Manning, 4 Pleasant Street, Kenneth Bartke, 14 Pleasant Street, Brandan Graff, 7.5 McGregor Street had the following concerns:

- 23 car parking lot not in character with neighborhood.
- Objection to having a parking lot next to homes as their back yards would be viewing parking lot.
- Feel not in spirit and intent of the Ordinance as an 8 unit Townhouse is proposed where currently most homes in the area are single family built in in the early 1900's.
- Feel will decrease the property values of surrounding homes.
- Insufficient parking during winter months and with snow removal as the existing the road is barely one car width in winter months. Pavement of roadway is only 23' wide.
- Increase in traffic in a small, densely populated neighborhood where there are no sidewalks.
- No property maintenance being performed on the property such as lawn mowing etc. Currently being performed by abutters.
- Cited Harrington vs Town of Warner.

## **Rebuttal**

Attorney Panciocco said that she hears the concerns of the abutters and would like to comment to the statements made. Attorney Panciocco said that the road is 23' wide which is pavement width and the road right-of-way is same as all streets. She said that the statement of Harrington vs Town of Warner, property owner was entitled to a return. Supreme Court supported economic return. As for the statement with regard to plowing – no one gets plowed curb to curb and that last years snow was an exceptional year.

Attorney Panciocco said that she would like to return to the application which is a variance request for frontage and that the plan as submitted is showing the maximum number of units allowed on the site. She said that the applicant is seeking a variance so they may proceed to the Planning Board and that is where it will be determined how many units would be allowed. If the Planning Board feels 8 units is too intense they will change and all other matters are under the purview of the Planning Board.

Mr. Coppolo said that the plan showed 8 units so why is this not material. Attorney Panciocco said that the plan shows what 8 units will look like and only here to ask the Board to allow a reduction for the frontage requirement.

There was some discussion with regard to number of units and density and wetlands

Mr. Virr motioned to go into deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

### **Deliberative Session**

Mr. Virr reviewed ordinance section for the Board and said that the area was a unique neighborhood which he has seen in the winter months. He said that there were many difficulties to develop and that the property was non-conforming now. He said that in 2011 testimony had abutters concerns with sewer issues and that he felt that the Town may need to review.

Mr. Coppolo said that the property is a conforming use now as it is has 100' frontage. He said that the Councilor was correct as ordinance does treat multi-family differently and heard discussions of standards and heard testimony and abutter concerns.

Mrs. Hampton said that she had concerns with Fire truck accessibility. She said that she did not hear abutter's testimony to object to build a duplex just not wanting an 8 unit building.

Mr. Perkins said that he has seen narrower areas. He said that he also heard testimony that it would diminish values with proposed application but heard could build something there other than proposal.

Mr. Coppolo said that he has concerns with number of vehicles and evidence of width of roadway. He said that the proposal of 8 units and 23 parking spaces it was reasonable to conclude with have a negative effect to the area. He said that the Keene statement of a 20 bedroom home was unreasonable and that he disagrees with applicant that 8 units' vs 2 was reasonable request.

Mr. Perkins said 8 units or 2 units is not the Board's decision to make . He said that he recalls a Boccia case in Portsmouth where the builder was told how many units could be built and the Courts over ruled. The Keene case cited maximum return as that dwelling could have been converted to office space.

Mr. Coppolo said that the abutters feel that the applicant is not entitled to maximum profit and Councilor is stating that entitled to a profit.

Mrs. Hampton said that she felt that area location matters.

Mr. Perkins said that the 23' wide street justifies speed and do have a concern for increase in volume of traffic.

Mrs. Evans said she agrees with stated arguments as the Board is voting for relief of frontage and that there was concern for more congestion and traffic in the area.

Mr. Perkins reviewed criteria for the Board.

Mr. Virr said that the motion should be made subject to the following conditions:

1. Subject to obtaining all State & local permits and inspections.
2. Subject to Planning Board approval.

Mrs. Hampton asked if Conservation Commission would need to review.

Mr. Mackey said that it was part of normal review.

Mr. Coppolo motioned to come out of deliberative session.

Seconded by Mrs. Hampton.

Vote: Unanimous.

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

**Mrs. Evans motioned on case 14-130, Carrigg Commercial Builders, LLC to Grant a variance to the terms of Article VI, Section 165-45B.2.b & c of the Town of Derry Zoning Ordinance to allow the construction of an eight unit multi-family building on the property which has 129.70 feet of frontage and lot width where 150 feet is required. 1 Davis Court, Zoned MHDR, Parcel ID 27108 as presented with the following conditions:**

- 1. Subject to obtaining all State and local permits and inspections.**
- 2. Subject to Planning Board approval**

**Seconded by Mrs. Hampton.**

**Vote:**

**Mr. Virr:** No. Feel criteria for substantial justice has not been met as will be out of character for the neighborhood. Also feel not in the public interest.

**Mr. Coppolo:** No. Feel variance will be contrary to public interest due to added congestion to road. Property values will be diminished. Spirit and intent of ordinance is not observed. Evidence of proposal does not meet criteria. No unnecessary hardship has been shown.

**Mrs. Hampton:** No. Agree with Mr. Coppolo as surrounding property values will be diminished.

**Mrs. Evans:** No. For the same reasons as stated by Mr. Virr and Mr. Coppolo. Granting will be contrary to public interest.  
**Mr. Perkins:** No. Understand what applicant is requesting but feel will be contrary to public interest and no hardship has been shown.

**The application was Denied a vote of 0-5-0. 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 December 3, 2015 as amended.

Seconded by Mrs. Evans.

Vote: 5-0-0

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

### **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 January 7, 2016**

Mrs. Hampton motioned to approve the minutes for December 17, 2015 as amended.

Seconded by Mrs. Prudhomme-O'Brien.

Vote: Unanimous.

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