

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
April 7, 2022

Members Present

Lynn Perkins, Chairman
Craig Corbett – Vice Chair
Crystal Morin, Secretary
Allan Virr
Donald Burgess

Members Absent

Alternates Present

Alternates Absent

Michael Donlon
Richard Tripp

Code Enforcement

Robert Mackey, Code Enforcement Director

Mr. Perkins called the meeting to order at 7:06 p.m. with the salute to the flag. Mr. Perkins stated that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 this public body is authorized to meet now physically and also electronically. As such this meeting is being held and will also be providing public access to the meeting by telephone with additional access possibilities by video utilizing the ZOOM app for the electronic meeting. 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. Mr. Perkins said that all votes taken are taken during this meeting shall be done by roll call vote.

Mr. Perkins said the first order of business was the election of officers.

Position of Chairman

Mrs. Morin nominated Mr. Perkins for the position of Chair.

Seconded by Mr. Corbett.

Vote: Unanimous.
Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett

Position of Vice Chair

Mr. Perkins nominated Mr. Corbett for the position of Vice Chair.

Mr. Virr nominated Mrs. Morin for the position of Vice Chair.
Motioned failed as did not obtain a second.

Mr. Morin seconded Mr. Corbett for the position of Vice Chair.

Vote: Unanimous.
Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Perkins

Position of Secretary

Mr. Perkins nominated Mrs. Morin for the position of Secretary.

Seconded by Mr. Corbett.

Vote: Unanimous.
Mr. Burgess, Mr. Virr, Mr. Corbett, Mr. Perkins

Mr. Perkins informed the public that provided case #22-123 SFC Engineering Partnership, Inc., Owner: Jeric Realty, LLC for 34 Route 111 has requested to be withdrawn and will not be heard this evening.

Mr. Corbett motioned to accept the withdrawal of case #22-123 SFC Engineering Partnership, Inc., Owner: Jeric Realty, LLC for 34 Route 111 has requested by the applicant without prejudice.

Seconded by Mr. Virr.

**Vote: Unanimous,
Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins.**

**22-124 Franklin Street, LLC
 c/o Muhammad Asim Ghani**

The applicant is requesting a variance to the terms of Article VI, Section 165-49.C.4 of the Town of Derry Zoning Ordinance to allow the proposed 3 unit condominium

to be located more than zero feet from the front property line and more than 5 feet from the side property line at 16 Franklin Street, Parcel ID 30070, Zoned TBOD

Steven Keach, Keach-Nordstrom Associates, reviewed the required criteria for the record. He said that the applicant had appeared before the Board in November 2021 to replace the existing structure to a 3-family and was granted. Mr. Keach said that it had been suggested by Mr. Sioras to come back to the Zoning Board for the reasons stated in the application as being so close to the front lot line.

Board Questions

Mr. Perkins asked if same firm represented in November. Mr. Keach said no that he believes it was Attorney Cronin.

Mr. Perkins asked if same parcel with layout. Mr. Keach said he was unsure of prior presentation but proposal is a multi-unit building and in discussions in Planning Board review with staff was advised to come back to request changes to setbacks.

Mr. Virr said he recalled the prior request and asked how far from street was being proposed. Mr. Keach said 49.8' and 24.9' would be the closest points as shown on proposed plan.

Mr. Virr asked why that far back. Mr. Keach said it was to create more site view so cars were not backing out onto Franklin Street.

Mr. Virr asked if it was a suggestion by Planning to set further back. Mr. Keach said they revised the plan so as to address safety concerns.

There was some discussion with regard to parking and number of bedrooms.

Code Enforcement

Mr. Mackey provided the following information with regard to the property for the record.

- The applicant is requesting approval to allow the 3-unit condominium to be located more than zero feet from the front lot line along Franklin Street and more than 5 feet from the side lot line abutting Pearl Street.
- A variance was granted on November 18, 2021, to allow the 3-unit structure to built on the property.
- Unlike most other zoning districts in the Town, the regulations for TOBD set maximum setbacks for the front and side rather than the typical minimum setbacks. Therefore, the applicant is requesting relief from these provisions.
- If approved, Planning Board site plan review will be required.
- by the Board.

Mr. Perkins 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 will answer your call.

Favor

No one spoke in favor of the request.

Mr. Perkins 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 will answer your call.

Opposed

Laura Valliere, 4 Pearl Street, said she lived as=cross street and would like the setbacks to stay for safety reasons. She said there are no sidewalks and a lot of people walk in the area so opposed as to no setback requirement.

Mr. Perkins said this request is to be further back and previous case was to be closer to Franklin Street. Mrs. Valliere asked if required to have a setback.

Mr. Corbett said that the required setback in this zone is zero and the applicant is seeking to be further back. Mrs. Valliere said here for safety aspect as have had four crashes into her property since she purchased.

Rebuttal

Mr. Keach said that he felt that the Board had addressed the abutters concerns.

Mr. Corbett motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins.

Deliberative Session

Mr. Perkins said that the applicant was here in November and now presentation increases the non-conformity numbers. He said he was concerned with style and size of proposed units and if were here for a single or a 2-family would not have a problem.

Mr. Corbett said he felt better proposal than previous plan in November. Parking and such is outside of Boards purview. He said that the applicant is now here seeking more non-conformity and see both sides of the matter..

Mr. Perkins said that the safety concerns are still there and proposal is still 3 – 3-bedroom units of which he feels is outside of the ordinance intentions.

Mrs. Morin said she feels that the applicant has not addressed the public interest criteria and creating their own hardship.

Mr. Burgess said he had concerns in November with parking and building setback from the property as Franklin Street was very narrow. He said he feels better situation of 48' to building was better and parking better and 3 units on a very small area was going to be a tight fit.

Mr. Virr said that the proposal is a lot safer than prior proposal as he had concerns with backing out onto Franklin Street and rear parking. He said that 48' from road would be out of character of the neighborhood but building would be new.

Mr. Perkins said this was a non-conformity request and reviewed conditions for the record. He asked if should be approved to TRC review.

Mr. Burgess said that the proposal was more non-conforming but felt it was more in conforming with proposal as this was a difficult street to navigate and feel better design for the area.

Mr. Corbett said that would have preferred if this proposal was presented the first time but still feel that the hardship criteria has not been achieved.

Mr. Corbett motioned to come out of deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins.

Mrs. Morin motioned on case #22-124 Franklin Street, LLC, c/o Muhammad Asim Ghani to Grant a variance to the terms of Article VI, Section 165-49.C.4 of the Town of Derry Zoning Ordinance to allow the proposed 3 unit condominium to be located more than zero feet from the front property line and more than 5 feet from the side property line at 16 Franklin Street, Parcel ID 30070, Zoned TBOD as presented with the following conditions:

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

Seconded by Mr. Corbett.

Vote:

Mr. Burgess: Yes.

Mrs. Morin: No. For the public interest would not be met.

Mr. Corbett: No. Hardship criteria not met as feel self-created.

Mr. Virr: Yes.

Mr. Perkins: No. Hardship not shown as this increases nonconformity to lot.
Also, public interest criteria not met.

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.

**22-125 Hood Commons BSD, LLC
c/o Madison Properties**

The applicant is requesting a variance to the terms of Article III, Section 165-20.a of the Town of Derry Zoning Ordinance to allow the construction of a drive-thru restaurant less than 75 feet from a wetland greater than 1 acre in size at 55 Crystal Ave, Parcel ID 36017, Zoned GC

David Fenstermacher, Senior Project Manager for Vanasse Hangen Brustlin, Inc., reviewed the required criteria for the record.

Board Questions

Mr. Corbett asked where the proposed parking would be located. Mr. Fenstermacher said that the proposed was for a drive-thru and would be utilizing the existing parking area.

Mr. Virr said that this location was once a gas station and asked if the ground had been tested. Mr. Fenstermacher said that the area had been tested and closed out. The have had Geo Tech and BP and both have closed out on the site.

Mr. Virr asked if parking would be expanded. Mr. Fenstermacher said the proposal was to utilize the main entrance to Hood Commons and described area for the record.

Mr. Burgess asked the plan shows an area with doors and asked what would utilization be. Mr. Fenstermacher said it was for dumpster.

Mr. Burgess asked if would be also utilizing the area off Crystal Ave. Mr. Fenstermacher said yes.

Mr. Burgess asked what was the size of the proposed building. Mr. Fenstermacher said it was approximately 40' x 65'.

Mr. Perkins said that the testimony given said that would benefit Pinkerton students but how would do that if it was a drive-thru. Mr. Fenstermacher said they would still be able to go inside.

Mr. Perkins asked if relief to wetland increase. Mr. Fenstermacher said no and area is defined by the slope.

Mr. Perkins asked how much encroachment was proposed. Mr. Fenstermacher said the concept was approximately 20' from the wetland.

Mr. Perkins said that wetland permits would look into containment system underground and asked how runoff control would be maintained. Mr. Fenstermacher said that new catch basins would be installed and would mitigate for increase flow with a structural treatment before discharge.

Code Enforcement

Mr. Mackey provided the following information with regard to the property for the record.

- The applicants are requesting approval to construct a drive-thru restaurant that will encroach into the 75 foot building setback from a wetland greater than 1 acre in size.
- The wetland in question is not classified as a Prime Wetland, therefore, the standard wetland setbacks per Article III, Section 165-20a apply.
- The building is proposed to be located in an area of the existing pavement..
- If approved, Planning Board site plan review will be required.
- by the Board.

Mr. Perkins 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 will answer your call.

Favor

No one spoke in favor of the request.

Mr. Perkins 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 will answer your call.

Opposed

No one spoke in opposition of the request.

Mr. Corbett motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins.

Deliberative Session

Mrs. Morin said that she currently waited 2 and a half hours at a new establishment so would love to have another new establishment to Derry to try.

Mr. Virr said that the area formerly was a root beer place so did not feel there would be much of an impact.

Mr. Corbett said that his concerns had been addressed by the applicant.

Mr. Burgess said that he felt that the proposal looked good.

Mr. Perkins reviewed the conditions for the record.

Mrs. Morin motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins.

Mrs. Morin motioned on case #22-125 Hood Commons BSD, LLC, c/o Madison Properties to Grant a variance to the terms of Article III, Section 165-20.a of the Town of Derry Zoning Ordinance to allow the construction of a drive-thru restaurant less than 75 feet from a wetland greater than 1 acre in size at 55 Crystal Ave, Parcel ID 36017, Zoned GC as presented with the following conditions:

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

Seconded by Mr. Virr.

Vote:

Mrs. Morin: Yes.

Mr. Corbett: Yes.

Mr. Virr: Yes.

Mr. Burgess: 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.

Mr. Perkins asked if would like to have the Board vote together. Mr. Keach said he would like to have them voted separately.

22-126 Horne's Pond Real Estate Group, LLC

The applicant is requesting a variance to the terms of Article III, Section 165-20.a of the Town of Derry Zoning Ordinance to allow the construction of a new commercial building which will be located less than 75 feet from a wetland greater than 1 acre in size and more than 8 feet from the front property line at 35 Maple Street, Parcel ID 29151, Zoned CBD

Steven Keach, Keach-Nordstrom Associates, Inc., said he was here representing Grant Benson, III who is the applicant. Mr. Keach reviewed the required criteria and proposed plans for the record.

Grant Benson, Owner, said that the storage garage is for product and vehicles to be kept under cover and would allow them to secure their equipment.

Board Questions

Mr. Virr asked if Sport Wagon was still there. Mr. Benson said yes.

The Board took a brief recess at 8:10 pm due to technical difficulties and resumed at 8:19 pm.

Mr. Burgess asked if building on road near Rollins Street and what was proposed use of the existing building as appears to be adding and addition. Mr. Benson said that the Rollins Street side the elevation is steep so will construct to help with entry to structure and the proposed burnt building will be possibly squared off to improve use.

Mr. Perkins asked if here to request to reestablish expired variance. Mr. Benson said yes.

Mr. Corbett asked if the green area on the proposed plan could be explained. Mr. Keach described the area for the record. He said that the closest point would be 37' to the wetland. Mr. Keach said that the Board granted a variance in 2018 but was not implemented and Mr. Benson tried but previous engineer never pursued. He said that the Historical Society noted former use of the property in their history of Derry. Mr. Keach

said that the property has never been landscaped and that the existing conditions have a zero buffer and the proposed will now have a properly mitigated conditions.

Mr. Virr asked how this would be better. Mr. Keach said that they have been working with Planning Board to create proper drainage conditions.

Mr. Burgess said that he knows that HP Hood & Sons had ice cutting privileges.

Code Enforcement

Mr. Mackey provided the following information with regard to the property for the record.

- The applicants are requesting approval to construct a 60 ft. x 180 ft. commercial building on the property which will be partially located within the 75 foot building setback from a wetland greater than 1 acre (Article III, Section 165-20a) and more than 8 feet from the front property line (Article VI, Section 165-33.C.4).
- The wetland in question is not classified as a Prime Wetland.
- The property is located in the Central Business District (CBD) which stipulates a maximum front setback of 8 feet (rather than a minimum front setback)
- A previous variance was granted on April 5, 2018, to allow the construction of a 9,000 sq. ft. commercial/industrial building less than 75 ft. from the wetland. That variance has since expired.
- If approved, Planning Board site plan review will be required.
- by the Board.

Mr. Perkins 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 will answer your call.

Favor

No one spoke in favor of the request.

Mr. Perkins 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 will answer your call.

Opposed

No one spoke in opposition of the request.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins.

Deliberative Session

Mr. Perkins said that the applicant had been before the Board in 2018 and here to reinstate the expired variance. He said it would be a clean up of the area. He reviewed the conditions for the record.

Mr. Corbett motioned to come out of deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins.

Mrs. Morin motioned on case #22-126 Horne's Pond Real Estate Group, LLC to Grant a variance to the terms of Article III, Section 165-20.a of the Town of Derry Zoning Ordinance to allow the construction of a new commercial building which will be located less than 75 feet from a wetland greater than 1 acre in size and more than 8 feet from the front property line at 35 Maple Street, Parcel ID 29151, Zoned CBD as presented with the following conditions:

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

Seconded by Mr. Burgess.

Vote:

Mr. Virr: Yes.

Mrs. Morin: Yes.

Mr. Corbett: Yes.

Mr. Burgess: 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.

The applicant is requesting a variance to the terms of Article VI, Section 165-33.C.4 of the Town of Derry Zoning Ordinance to allow the construction of a new commercial building which will be located less than 75 feet from a wetland greater than 1 acre in size and more than 8 feet from the front property line at 35 Maple Street, Parcel ID 29151, Zoned CBD

Mr. Keach said that reviewed the required criteria previously and that this section requests 8' minimum requirement to Rollins Street. He reviewed the proposed plan for the record. Mr. Keach said that he feels that they have met the requirements to be granted a variance and the hardship is due to the embankment on the westerly side and to bring the garage to be level with that side would be difficult due to the grade of the property.

Board Questions

Mr. Perkins asked if the lot angle and grade prevents meeting requirement. Mr. Keach said yes and relation to Rollins and Maple Streets.

Mr. Virr asked if the building would be higher. Mr. Keach said due to the existing grand the building would be slightly higher.

Mr. Virr asked how would enter from Rollins Street. Mr. Keach said a stairway would be installed.

There was some discussion with regard to grade of the property.

Code Enforcement

Mr. Mackey said that the request was a variance to the setback but this pertains to a maximum setback verses a minimum setback.

Mr. Perkins asked if the building was the primary issue. Mr. Mackey said yes as described by Mr. Keach the grade of the property is steep.

Mr. Corbett asked if the applicant would still have had to come back to rebuild the existing structure. Mr. Mackey said that once voluntarily take down would have to comply with setbacks.

Mr. Perkins 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 will answer your call.

Favor

No one spoke in favor of the request.

Mr. Perkins 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 will answer your call.

Opposed

No one spoke in opposition of the request.

Mr. Corbett motioned to go into deliberative session.

Seconded by Mrs. Morin.

Vote: Unanimous.

Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins.

Deliberative Session

Mr. Perkins said that he felt that the proposed request would be an improvement to the area.

Mr. Corbett said he liked this proposal better than the prior case as it has better curb appeal.

Mr. Virr said any improvement to the area would be wonderful.

Mrs. Morin said she agreed with the Board.

Mr. Corbett motioned to come out of deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins.

Mrs. Morin motioned on case #22-126 Horne's Pond Real Estate Group, LLC to Grant a variance to the terms of Article VI, Section 165-33.C.4 of the Town of Derry Zoning Ordinance to allow the construction of a new commercial building which

will be located less than 75 feet from a wetland greater than 1 acre in size and more than 8 feet from the front property line at 35 Maple Street, Parcel ID 29151, Zoned CBD as presented with the following conditions:

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

Seconded by Mr. Corbett.

Vote:

Mr. Burgess: Yes.
Mr. Virr: Yes.
Mrs. Morin: Yes.
Mr. Corbett: 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.

26-127 Grant G. Benson, III

The applicant is requesting a variance to the terms of Article VI, Section 165-46.C.2 & 3 of the Town of Derry Zoning Ordinance to allow the subdivision of the property into 3 lots with each lot having less than the required frontage and lot width at 33.5 East Derry Road (off Schurman Drive), Parcel ID 09001, Zoned MDR

Steven Keach, Keach-Nordstrom Associates, Inc., said he was here representing Grant Benson, III who is the applicant. Mr. Keach reviewed the required criteria and proposed plans for the record. He said that the proposed use is the lowest density for the property and the best use. Mr. Keach said that the 50' right-of way would allow for potentially a 10 lot subdivision or a 15 unit condo development.

Board Questions

Mr. Perkins asked what width of proposed access was. Mr. Keach said approximately 50' which could be a proposed road but is projected to be utilized as a common driveway split to 3 driveways and be serviced by Town water and sewer. He said that he felt that less is more in this case.

Mr. Perkins said that Town sewer and water would come down the common driveway. Mr. Keach said yes.

Mr. Burgess asked what was the proposed driveway length. Mr. Keach said 400'

Mr. Virr asked what was the area off lot #3 shown on the plan. Mr. Keach said that due to the length of the driveway it requires a turn around for emergency access.

Mr. Virr asked what was the proposed width. Mr. Keach said that was to be determined but common is 20 feet but will be subject to NFPA 1 standards.

Mr. Burgess asked how maintenance etc. would be handled. Mr. Keach said covenants and easements would be recorded with deeds.

Mr. Perkins asked what was Heidi Lane. Mr. Keach said that was an earlier proposal but after discussions with clients they did not want to impact the area that way.

Mr. Corbett said that he believed that multi-family was not allowed in the single family zoning district. Mr. Keach said that the ordinance allows for a 55 plus age restrictive development.

There was some discussion with regard to the proposed shared driveway.

Mrs. Morin said that the deed describes the area and is from 1980.

Code Enforcement

Mr. Mackey provided the following information with regard to the property for the record.

- The applicant is requesting approval to allow the property to be subdivided into 3 single family building lots with less than the required frontage for each lot.
- The property is located in the Medium Density Residential District (MDR) which requires a minimum of 1 acre of land and 125 feet of frontage on an approved street.
- The lot has a narrow access from Schurman Drive. Therefore, the applicant is proposing the lots to have 29.91 ft, 13.90 ft, and 27.95 ft of frontage respectively. A common driveway would provide access into the lots. This will require a waiver from the Planning Board per the Land Development Regulations.
- The lots are proposed to be serviced by Town water and sewer.
- If approved, Planning Board site plan review will be required.
- by the Board.

Mr. Corbett said he was hung up on the condo aspect and asked where does the age restriction fall. Mr. Mackey reviewed the section in the ordinance for the record.

Mr. Burgess asked if would require to have hydrants. Mr. Mackey said no but would be subject to installation of sprinklers requirements.

Mr. Perkins asked on the maximum side how many on lot. Mr. Keach said exhibit #1 shows 10-12 lots.

Mr. Perkins 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 will answer your call.

Favor

Rebecca & David Zbieg, 17 Schurman Drive. Mrs. Zbieg said she was in favor of the 3 lot proposal only. Mr. Benson has been very open to answering any questions they have had and feel that the 3 home proposal will keep in with the character of the neighborhood.

Mr. Zbieg said that the water flow comes down onto their property and has caused flooding.

Mrs. Zbieg said that the catch basins have not been capable of handling the waterflow as have had 3 floodings since they have owned their home.

Rick Hampton, 3 Westerly Drive, said that he viewed all the options and agree that the 3 lots were the best match. He said that he has concerns about water drainage but feel would be more impacted if the other plans were developed.

Sara Brooks & Ben Dwyer, 2 Westerly Drive, said that the area is all woods now and would like to keep and appreciate the opportunity to see proposals and would like to keep with the 3 lot proposal verses the other designs.

Mr. Perkins 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 will answer your call.

Opposed

Ryan Sauls, 24 Schurman Drive, asked if 1 lot or 3 separate lots. Mr. Virr said 3 lots.

Mr. Sauls said that he feels there was not enough frontage for 1 lot let alone 3 lots and makes no sense. He said he has videos of water gushing onto his property from this area and now seeking to remove trees an disturb terrain of which will cause more flooding to his property.

Mr. Perkins said that the road frontage and land mass is taken into consideration for potential subdivision.

Mr. Sauls said that until road built and drainage installed feel that flooding will be worse.

Mr. Burgess said that the proposal is less of an impact than what could be there. Mr. Sauls said that he felt that this was an extreme request.

Mr. Perkins said the proposal was less of an impact as could have 10 houses. Mr. Saul said still have same argument with slope of property and run off concerns.

Mr. Corbett said that Heidi Lane proposal is allowed by right but this proposal is less of an impact and he understands abutters concerns.

Ahren Thilker, 9 Cemetery Road, said he echoes concerns of previous abutter and has questions of sight lines of homes as would not want to have neighbors looking into windows. He said that they have issues with Town water and know that drainage from Cemetery Road goes to the property and may be some of the reasons for excess water drainage concerns.

Matthew Staples, 19 Schurman Drive, asked if they could build multi-family or duplexes. Mr. Mackey said they are proposed to be single family structures if change they would need to come back to the Board for change.

Mr. Staples said he likes the woods there and would prefer to keep. He said that he has concerns of water as have had to spend money due to hydrostatic levels.

Rebuttal

Mr. Keach said that drainage concerns will be addressed at Planning Board and will be according to the Land Control Development Regulations adopted by the Town. As to Mr. Staples concerns of neighborhood impact and agree that the drainage is the biggest challenge and the parcel has had water dumped on due to the development of surrounding properties. He described the proposed plan for water run-off and said that they will need to mitigate water as required by the Planning Board regulations and feel that the proposed design will improve the existing situation. Mr. Keach said that he feels that the request meets the 5 criteria for a variance and will ultimately need Planning Board approval where further discussions will be addressed.

Mrs. Morin asked if the piece proposed to donate abuts Humphrey Field. Mr. Benson said yes.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mr. Corbett.

Vote: Unanimous.

Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins.

Deliberative Session

Mr. Corbett said in viewing the Heidi Lane proposal he was not in favor but love the 3 house proposal.

Mr. Virr said that he feels impact of 12 houses could be built there without approval and that the 3 house proposal is admirable.

Mrs. Morin said that she agreed with Mr. Corbett and Mr. Virr and understand that the applicant has other options. She said that she feels this proposal would best suit the neighborhood.

Mr. Burgess said other proposals would not have to be here as have a right to build. He said that he also felt that this was the best of the 3 options.

Mr. Perkins said he understands Mr. Staples point as lower of the equation with traffic and he feels Mr. Sauls and Mr. Staples concerns will be reviewed at the Planning Board level. He said that he also likes the proposed plan and that the applicant could easily installed a road and feel applicant has made a reasonable request. He reviewed the conditions for the record.

Mr. Corbett motioned to come out of deliberative session.

Seconded by Mrs. Morin.

Vote: Unanimous.

Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins.

Mrs. Morin motioned on case #26-127 Grant G. Benson, III to Grant a variance to the terms of Article VI, Section 165-46.C.2 & 3 of the Town of Derry Zoning Ordinance to allow the subdivision of the property into 3 lots with each lot having less than the required frontage and lot width at 33.5 East Derry Road (off Schurman Drive), Parcel ID 09001, Zoned MDR as presented with the following conditions:

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

Seconded by Mr. Corbett.

Vote:

Mr. Burgess: Yes.

Mr. Virr: Yes.

Mr. Corbett: Yes.

Mrs. Morin: 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.

Other Business

Mr. Corbett reminded the Board that the annual Spring Conference would be held remotely this year but still need to register.

Mr. Mackey reminded the Board that there would be no meeting for April 21, 2022 due to a scheduling conflict with Town Council.

Approval of Minutes

Mrs. Morin motioned to approve the minutes of March 3, 2022 as written.

Seconded by Mr. Virr.

Vote: Unanimous.

Mr. Burgess, Mr. Virr, Mrs. Morin, Mrs. Evans, Mr. Perkins

Mr. Corbett motioned to approve the minutes of March 17, 2022 as written.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins

Adjourn

Mrs. Morin motioned to adjourn.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins

Adjourn at 9:49 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

Approval of Minutes – May 5, 2022

Mr. Burgess motioned to approve the minutes of April 7, 2022 as written.

Seconded by Mr. Corbett.

Vote:

Yes - Mr. Donlon, Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Perkins

Abstain – Mr. Tripp