

`TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
January 6, 2022

Members Present

Lynn Perkins, Chairman
Craig Corbett – Vice Chair - Remote
Heather Evans
Crystal Morin
Allan Virr

Members Absent

Alternates Present

Donald Burgess
Gaspar Obimba
Richard Tripp @ 8:28 pm

Alternates Absent

Michael Donlon

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. 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 stated that in keeping with the mask mandate it has been reviewed that if all parties can maintain 6' distances then do not require to wear, however, if more comfortable to wearing then also have that option.

The Board members introduced themselves.

22-101 James M. Lavelle, LLS
Owner: Lisa & Scott Coggins

The applicants are requesting a variance to the terms of Article VI, Section 165-48.B.4 of the Town of Derry Zoning Ordinance to allow the existing dwelling to remain 3.93 feet from the side property line after reestablishment of an abutting lot involuntary merged for tax purposes at 15 Escumbuit Road, Parcel ID 16018, Zoned LDR

Mr. Perkins asked if anyone was present from Mr. Lavelle's office to represent the case this evening. It was noted no one was present.

Scott Coggins, owner, said he was via remote, and that Mr. Lavelle was supposed to be representing them this evening.

Mr. Perkins asked if he was able to read the application that had been submitted. Mr. Coggins said he was not.

Mr. Perkins said that the Board unfortunately would be unable to move forward with this case and could table to the next meeting. Mr. Coggins said that was acceptable.

Mr. Virr motioned table case #22-101 James M. Lavelle, LLS, Owner, Lisa & Scott Coggins to the next meeting.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

22-102 Jeffrey Moulton
Owner: Laurie & Scott Burke

The applicants are requesting a variance to the terms of Article III, Section 165-9 of the Town of Derry Zoning Ordinance and NH RSA 674:41 to allow the construction of a seasonal home on the property which is located on a private road at 9 Germantown Road, Parcel ID 19102, Zoned LDR

Jeffrey Moulton, Moulton Engineering, said he was representing Laurie & Scott Burke. Mr. Moulton read the application criteria for the record. He said he would like to point out that the property has been fully transferred to the Burke's over a number of years and deed has been submitted for the record. Mr. Moulton said that in 2014 Alice Ward passed away and property was shared 50% to Thomas Ward and 50% to Laurie Burke and over the past 4 years Mr. Ward has gifted his share to his sister Laurie Burke. Mr. Moulton said that a Shoreland permit would be required and has been submitted and the septic system would be located on the adjacent lot and reviewed the photos submitted for the record.

Board Questions

Mr. Virr asked where the septic system was proposed to be on the adjacent lot if property was also owned by the applicant and where was the well located. Mr. Moulton said that Mrs. Burke owns the adjacent property and that the well location is shown on the map.

Mrs. Evans asked when did the Fire Department determine that the road was unable to be passed over. Mr. Moulton said he did not know and that the bridge was reconstructed 10 years ago, and someone has been brought in from the State to certify that the bridge is passable.

Mrs. Evans asked who maintains the road. Mr. Moulton said that there is no formal association, but they all maintain the road.

Code Enforcement

Mr. Perkins noted that a staff report was on file from Mr. Mackey's information with regard to the property for the record.

- The applicants are seeking approval to construct a seasonal camp on the property.
- The property is located on Germantown Road which is a private road. Therefore, they are seeking a variance to construct a dwelling on a non-town approved street (and also relief from NH RSA 647:41).
- If approved, a waiver of municipal liability and responsibility must be recorded with the deed. It should be noted that the Fire Department has currently determined that the bridge on Germantown Road is unsafe for fire apparatus, and they will also require that a waiver be recorded.
- As this property is located within 250 feet of Big Island Pond, a State Shoreland permit is required.
- The Board will recall that a variance was granted by the Board on August 19, 2021, to the same applicant to allow the replacement of two structures located on the waterfront lot across the street.
- The septic system serving the waterfront property is located on the lot behind this parcel (on lot 19104).
- There are pictures of the property in the file for review by the Board.

Mr. Burgess said that Mr. Mackey has stated that a waiver would be required. Mr. Moulton said that a waiver would be recorded, and he was unsure of how the fire department has determined the bridge unsafe. If the fire department chooses not to come down will have a waiver in place as required by the Town.

Mrs. Evans asked if the road was maintained year-round. Mr. Moulton said yes by the people that own properties in the area.

Mr. Wentworth said that the Fire Department does not want their new truck to utilize the bridge at this time and a waiver is being requested to be recorded with the Rockingham County Registry of Deeds.

Mrs. Morin informed the public that now would be the time to call in favor of the proposed request. She said if wish to speak press star 9 and will answer your call.

Favor

No one spoke in favor of the request.

Mrs. Morin informed the public that now would be the time to call in favor of the proposed request. She said if wish to speak press star 9 and will answer your call.

Opposed

No one spoke in opposition of the request.

Mrs. Evans motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Deliberative Session

Mr. Perkins said that there are four requirements for the motion and case is similar of the August case for the same owner who is now seeking a seasonal cottage. He reviewed the conditions for the record.

Mrs. Evans motioned to come out of deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Mrs. Evans motioned on case #22-102 Jeffrey Moulton, Owner: Laurie & Scott Burke to Grant a variance to the terms of Article III, Section 165-9 of the Town of Derry Zoning Ordinance and NH RSA 674:41 to allow the construction of a

seasonal home on the property which is located on a private road at 9 Germantown Road, Parcel ID 19102, Zoned LDR as presented with the following conditions:

1. Subject to obtaining all State & Town permits and inspections.
2. Subject to obtaining N.H. DES State Shoreland permit.
3. Subject to recording of Release of Municipal Liability with the NH Rockingham County Registry of Deeds.
4. Subject to filing flood elevation certificate to the Code Enforcement office

Seconded by Mrs. Morin.

Vote:

Mr. Corbett: Yes.
Mrs. Evans: Yes.
Mrs. Morin: 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.

22-103 Douglas & Paula Prittie

The applicants are 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 16 foot by 24 foot shed less than 75 feet from a wetland greater than 1 acre in size at 101 Island Pond Road, Parcel ID 06044, Zoned LDR

Douglas Prittie, owner, said that they have resided at the property for the past 17 years and are looking to place a shed on their property. Mr. Prittie read his application criteria for the record.

Board Questions

Mr. Perkins said that he would like to state that this case presentation was beautiful and asked if Mr. Peloquin helped him prepare the presentation. Mr. Prittie said that Mr. Peloquin only did the survey and that he himself had it enlarged and laid out the features on the property the best he could.

Mr. Perkins asked if the 75' area inclined. Mr. Prittie said yes that the proposed shed would be slightly in the wetland buffer but only flat area of the lot where there would not be tree removal.

Mr. Corbett said that his question had just been answered as to why the shed could not be located somewhere else.

Mrs. Evans asked if there is always standing water. Mr. Prittie said it is in the spring but not typically year-round.

Code Enforcement

Mr. Perkins said that the staff report submitted by Mr. Mackey and the diagram of the property are self-explanatory. Mr. Perkins noted that a staff report was on file from Mr. Mackey's information with regard to the property for the record.

- The applicant is requesting approval to construct a 16' x 24' shed 45 feet from a wetland where 75 feet is required as the wetland has been determined to be greater than 1 acre in size.
- The wetland is a forested wetland and is not classified as a Prime Wetland.
- If approved, a building permit will be required.
- There are pictures of the property in the file for review by the Board.

Mrs. Morin informed the public that now would be the time to call in favor of the proposed request. She said if wish to speak press star 9 and will answer your call.

Favor

No one spoke in favor of the request.

Mrs. Morin informed the public that now would be the time to call in favor of the proposed request. She said if wish to speak press star 9 and will answer your call.

Opposed

No one spoke in opposition of the request.

Mrs. Evans motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Deliberative Session

Mr. Virr said he agrees that it is nice to see a plan so detailed in showing the property layout.

Mr. Perkins reviewed the conditions for the record.

Mr. Virr motioned to come out of deliberative session.

Seconded by Mrs. Morin Virr.

Vote: Unanimous.

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

Mrs. Evans motioned on case #22-103 Douglas & Paula Prittie 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 16 foot by 24 foot shed less than 75 feet from a wetland greater than 1 acre in size at 101 Island Pond Road, Parcel ID 06044, Zoned LDR as presented with the following conditions:

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

Seconded by Mrs. Morin.

Vote:

Mr. Virr: Yes.

Mrs. Evans: 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.

22-104 Anthony Cristallo

The applicant is requesting a Special Exception as provided in Article VI, Section 165-48.A.1 of the Town of Derry Zoning Ordinance to allow the operation of an auto wholesale business from the residence at 2 Westview Drive, Parcel ID 03152-002, Zoned LDR

Anthony Cristallo, owner, read the application criteria for the record. Mr. Cristallo described his property and said that he has parking enough for 10 vehicles but that was not his intention to keep that many cars. He said that the property would look no different to what it currently does.

Board Questions

Mr. Perkins asked what was the square footage of the house. Mr. Cristallo said it was 3,152 square feet and he is utilizing less than 25% for his office.

Mr. Burgess asked if sales on site. Mr. Cristallo said not with wholesale license and needs license so he can move cars.

Mrs. Morin said that the State will require a sign.

Mr. Perkins said that the Town can make a stipulation for requirement. Mr. Wentworth said that if required it can not be more than 3 square feet in size.

Mr. Cristallo said that he currently owns and operates a restaurant but not getting paid so looking to make some income purchasing and selling cars at auction. He said that the State requires a bathroom and office area for retail sales and he would be a wholesaler and purchase vehicles at auctions and sell to other wholesalers.

Mr. Virr asked if there would be online sales. Mr. Cristallo said he could only sell to other wholesalers.

Mr. Virr asked if the restaurant was in Derry. Mr. Cristallo said yes that it was across the street.

Mrs. Evans said no repairs would be performed on the property. Mr. Cristallo said that was correct.

Mrs. Morin said she believes need to be open for 37 hours. Mr. Cristallo said he did not believe that was the requirement for wholesale.

Mrs. Evans asked how many vehicles would there be at any given time. Mr. Cristallo said maybe 3 or 4.

Mr. Burgess asked how many unregistered vehicles could be on a property. Mr. Wentworth said one but an auto wholesaler may be different.

Mr. Perkins asked how work dealership to dealership. Mr. Cristallo said it was different day to day as may purchase in Maine and sell in Londonderry or could sit for a few days.

Mr. Burgess asked if could sell to Birch Street. Mr. Cristallo said yes and that typically purchase and sell the same day. He said it is basically purchasing and delivering to a different party.

Mr. Perkins asked if the number of vehicles on the property could be limited to 2. Mr. Cristallo said that would be okay.

Code Enforcement

Mr. Perkins noted that a staff report was on file from Mr. Mackey's information with regard to the property for the record.

- The applicant is requesting approval to operate an auto wholesale (office) from his residence.
- This approval is needed in order for the applicant to apply with the State of N.H. Department of Motor Vehicles for a wholesale dealer's license.
- The wholesale license does not allow for direct retail sale to customers.
- If approved, I would request that a condition be added that limits the number of vehicles that can be stored on site at any one time.
- There are pictures of the property in the file for review by the Board.

Mrs. Morin informed the public that now would be the time to call in favor of the proposed request. She said if wish to speak press star 9 and will answer your call.

Favor

No one spoke in favor of the request.

Mrs. Morin informed the public that now would be the time to call in favor of the proposed request. She said if wish to speak press star 9 and will answer your call.

Opposed

No one spoke in opposition of the request.

Mrs. Evans motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Deliberative Session

Mr. Perkins reviewed the conditions for the record.

Mr. Virr said that the size of the sign be limited to 3 square feet.

Mrs. Morin said that the State may require the standard size requirement.

Mr. Perkins said that in the past the Town can stipulate and if the State requires different would need to come back for a modification.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Corbett.

Vote: Unanimous.

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

Mrs. Evans motioned on case #22-104 Anthony Cristallo to Grant a Special Exception as provided in Article VI, Section 165-48.A.1 of the Town of Derry Zoning Ordinance to allow the operation of an auto wholesale business from the residence at 2 Westview Drive, Parcel ID 03152-002, Zoned LDR as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Number of vehicles allowed onsite not to exceed 2.**
- 3. Sign not to exceed 3 square feet and not to be internally illuminated.**

Seconded by Mrs. Morin.

Vote:

Mr. Corbett: Yes.

Mrs. Evans: Yes.

Mr. Virr: 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.

Mr. Perkins informed that the Board would be taking a brief recess so that Mr. Tripp could attend the meeting as he had a prior commitment at the State House.

The Board reconvened at 8:28 pm.

Mr. Perkins said that the Board has received a rehearing consideration of Promised Land and Cooper Homes from Attorney Sullivan. Mr. Perkins said that during that Mr. Virr had recused himself and that the sitting members for the case were Mr. Tripp, Mrs. Morin, Mrs. Evans, Mr. Corbett, and himself.

22-105 Promised Land Survey
Owner: John Cooper & Estate of Edward Cooper

Re-Hearing Request of case #21-113 of a variance Denied to Article VI, Section 165-47.B.2 & 3 of the Town of Derry Zoning Ordinance to allow the construction of a single family dwelling on the property which will have 31.14 feet of frontage at 26.5 Ballard Road, Parcel ID 06103A, Zoned LMDR

Mr. Perkins said that the agenda the case was presented as 31.14 feet but during the hearing it was amended to longer but still not sufficient frontage. He said that the case presented was to remove the cul-de-sac and release servitude and a new driveway would be installed to new home and abutting property. Mr. Perkins said the Board needs to discuss relevance to submittal of information provided by Attorney Sullivan of any new information that would warrant to rehear the case.

Mr. Perkins said that the motion was 3 denials and 2 yes votes. He said the no votes were Mrs. Morin, Mrs. Evans and Mr. Perkins and the yes votes were Mr. Corbett and Mr. Tripp.

Mr. Corbett said that he had reviewed the large document submitted by Attorney Sullivan but has seen no information introduced that had not been reviewed at the original hearing. He said that Attorney Sullivan has only stated new case law introduced in his information but no new evidence that would warrant a rehearing.

Mr. Perkins said that the procedures for the Board is to determine if new evidence presented that would warrant a rehearing of the case.

Mr. Tripp said that he did not read the material provided but believe the 5 criteria had been presented and that he originally voted yes. He said it was a tough case and does not believe he would change his mind.

Mr. Perkins asked if there was any reason to rehear the case. Mr. Tripp said no.

Mrs. Morin said she reviewed the information submitted by Attorney Sullivan and did not see any new information that would warrant a rehearing of the case.

Mrs. Evans said that she also reviewed the information submitted and that Attorney Sullivan was very descriptive in his review. She said that she had voted no due to the

spirit and intent of the ordinance. She said that the abutter comments were not hearsay and believe that there 1982 plan was designed showing a well lot and that in 2003 denied a variance as abutters were present and were told that the lot was designed for a well lot and not as a residential lot.

Mr. Perkins said that in the consideration request enclosed was a letter from Andrew White showing off set of property value. He said his no vote was that it would diminish property values and that realtor letters submitted typically prepare for market analysis as an opinion and that Andrew White's comparison of a new property among older properties. Mr. Perkins said that the driveway would be 25 feet from one abutter and other abutter similar issues so can not say not affected as currently have woods verses a new driveway along the whole length of their property. Mr. Perkins said that the hearsay aspect told by agents not ever a house lot relevance being 20 years earlier case presented and denied and not pursued further. He said that Mr. Cooper stated himself at the meeting that he did not care after hearing the opposition of the abutters. CMA Attorney presented 20 years earlier and did not pursue so do not believe was hearsay and in 2009 believe people had expectations of what they originally were purchasing. Mr. Perkins said that he expressed his concerns during case deliberation and looked at the abutters being directly affected.

Mrs. Morin said that she voted no as she said the proposal was contrary to the public interest. She said that the property lacked adequate frontage and not contrary to public interest.

Mrs. Evans motioned to Grant a Rehearing of case #21-113 to Promised Land Survey, Owner: John Cooper & Estate of Edward Cooper of variance Denied on 9/2/2021 to Article VI, Section 165-47.B.2 & 3 of the Town of Derry Zoning Ordinance to allow the construction of a single-family dwelling on the property which will have 108 feet of frontage at 26.5 Ballard Road, Parcel ID 06103A, Zoned LMDR.

Seconded by Mr. Tripp.

Vote:

Mr. Corbett: No. Do not feel any new evidence presented.

Mrs. Evans: No. Believe original decision was accurate and no error made. No new evidence presented.

Mr. Tripp: No. Still certain that his original vote would not change.

Mrs. Morin: No. No new evidence presented.

Mr. Perkins: No. For the reasons discussed during hearings. No new evidence presented that would warrant a rehearing of case.

The rehearing request was Denied by a vote of 5-0-0. Recourse would be to appeal to Superior Court.

Approval of Minutes

Mrs. Evans motioned to approve the minutes of December 2, 2021, as written.

Seconded by Mr. Tripp.

Vote: Unanimous.

Mr. Tripp, Mr. Obimba, Mr. Burgess, Mr. Virr, Mrs. Morin, Mrs. Evans, Mr. Corbett, Mr. Perkins

Mrs. Evans motioned to table the minutes of December 16, 2021, to the next meeting.

Seconded by Mr. Tripp.

Vote: Unanimous.

Mr. Tripp, Mr. Obimba, Mr. Burgess, Mr. Virr, Mrs. Morin, Mrs. Evans, Mr. Corbett, Mr. Perkins

Adjourn

Mr. Tripp motioned to adjourn.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Tripp, Mr. Donlon, Mr. Obimba, Mr. Burgess, Mr. Virr, Mr. Corbett, Mr. Perkins

Adjourn at 8:49 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

Approval of Minutes – January 20, 2022

Mr. Corbett motioned to approve the minutes of January 6, 2021 as amended.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mr. Donlon, Mr. Tripp, Mr. Obimba, Mr. Virr, Mrs. Morin, Mrs. Evans, Mr. Corbett, Mr. Perkins