

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
June 2, 2022

Members Present

Lynn Perkins, Chairman
Crystal Morin @ 7:15pm
Allan Virr
Donald Burgess

Members Absent

Craig Corbett

Alternates Present

Gaspar Obimba

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 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.

It was noted that Mr. Obimba would sit for the following case.

Mr. Perkins said that the Board has received a request from case #22-131 Family Promises of New Hampshire, Inc. Owner: Roman Catholic Bishop of Manchester to be tabled to the next meeting due to a conflict with schedule.

Mr. Virr motioned to table case #22-131 Family Promises of New Hampshire, Inc. Owner: Roman Catholic Bishop of Manchester to the meeting of June 16, 2022.

Seconded by Mrs. Morin.

Vote: Unanimous.

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

It was noted for the record that there were some audio difficulties so there was a 5 minute break and reconvened at 7:15 pm.

It was noted that Mr. Obimba would sit for the following case:

22-134 John Maravelis & Matthew Maravelis

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 single family dwelling on the property which does not have frontage on a Town approved street at 17.5 LedgeWood Road, Parcel ID 14021, Zoned LMDR

John Maravelis, applicant said he was present remotely. Mr. Maravelis said that the property was landlocked and the only access to the property was from Auburn.

Mr. Perkins asked the applicant to read the required criteria for the record. Mr. Marvavelis said he unfortunately did not have the first page available.

Mr. Perkins said that Mr. Virr has offered to read the criteria submitted for the record if grant permission. Mr. Maravelis said he would greatly appreciate Mr. Virr reading the criteria for him.

Mr. Virr read the applicants submitted criteria for the record and asked Mr. Maravelis if what he had just read was correct. Mr. Maravelis said yes except as addendum to criteria #5 and he reviewed for the record and also reviewed his letter of explanation for the record.

Board Questions

Mr. Perkins asked if could explain what was seeking to be achieved. Mr. Maravelis said that they were seeking to build a single-family home and have an approved septic system design and plan showing driveway with turnaround for emergency vehicles.

Mr. Perkins asked if the property would be in conjunction with the Kenyon lot. Mr. Maravelis said they would be installing a gravel driveway along the right-of-way.

Mr. Mackey described the two plans submitted for the record and described the access point to the property.

Mr. Perkins asked if a different owner was for lot 020. Mr. Mackey said that was correct and that lot had been before the Board for a variance and was denied and subsequently went to court and was granted to build a 500 foot class VI road and transfer some of the property into conservation but was never built. He said that the applicants property does not have access or right of way to his property from 020.

Code Enforcement

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

- The applicants are requesting a variance to allow the construction of a single family dwelling on the property which has no frontage on a town approved street.
- The only access to the 12.3 acre parcel is from a right-of-way off Boxwood road in Auburn. Therefore, the access/driveway must be approved by the Town of Auburn Planning Board prior to issuance of a building permit (see letter in the file from the Town of Auburn Building Official).
- Prior to issuance of a building permit, documentation must be provided by the applicant regarding how school drop off/pickup will be addressed.
- Prior to issuance of a building permit, documentation must be provided by the applicants regarding how emergency services will be addressed and whether the street number will be changed.
- If approved, a notice of waiver of municipal liability and responsibility must be recorded with the deed.
- The dwelling is proposed to be serviced by a private well and septic system.
- There are pictures in the file for review by the Board.

Mr. Perkins asked if the request was similar to Spruce Pond scenario. Mr. Mackey said correct as with Spruce Pond access was in Windham and a mutual aide agreement had to be drawn out. He said that this request still has some items that need to be worked out.

Mr. Maravelis said that they have been in correspondence with Auburn Building Inspector and Mr. Eastman with Derry Fire and seeking to work out all details. He said that they have already obtained an approved septic design.

Mr. Perkins asked if the request was for one home. Mr. Maravelis said yes.

Mr. Virr said that there were a lot of items that still need to be met and that the criteria items need to be addressed.

Mr. Perkins asked when purchased the property was there an understanding of what dealing with. Mr. Maravelis said that they have been speaking with Mr. Mackey and were told that it would not be an easy lot but really like the area and are attempting to make it work.

Mr. Perkins asked if were told property needed a variance would be required in order to build. Mr. Maravelis said yes.

Mr. Perkins said he feels there may be a conflict with public interest with disturbance of other lots. Mr. Maravelis said they were not seeking to build a multi-family unit and the property has already had trees cleared so not see how there would be any disturbance to other properties.

Mr. Perkins asked if Kenyon Lawn business was in Derry. Mr. Mackey said that was in Auburn and there was no sign of a business being operated from the property.

Mr. Maravelis said that it was a registered business to the address but no longer there as they moved to a commercial site.

Mr. Mackey said that Boxwood Road has substantial homes consisting of 5 or 6 homes that the road currently leads to a dead end.

Mr. Perkins said substantial justice portion of the criteria is the property consists of 12.3 acres so potentially could have 4 homes. Mr. Mackey said yes as the property was in the LMDR district which would require 2 acres per lot.

Mr. Perkins said he felt 1 home verses 4 was a better trade. Mr. Maravelis said he understood the lot and wish to only have 1 home.

Mr. Perkins said the parcel is landlocked which creates a hardship, substantial justice trade off value of homes would not be diminished by one home. Mr. Maravelis said that the square footage of proposed home would be similar to what is already existing to surrounding area.

Mr. Virr asked if access off the right-of way has been acquired. Mr. Maravelis said the right-of-way has been granted and recorded with the Town.

There was some discussion with regard to the right-of-way and access.

Mrs. Morin asked if a right-of-way could be utilized for 2 or more houses. Mr. Mackey said he was unsure if there was any type of limit.

Mr. Obimba asked said that the septic design was for a 4 bedroom system what would be the arrangement and family size and if appropriate for proposed use. Mr. Mackey said that he was not familiar with arrangement with the brother and the request is for a single family structure as a 2-family would be a different request.

Mr. Virr said that he understands case but unsure how to handle with Auburn Planning Board.

Mr. Perkins said that the Board has a pre-structured motion and questioned if waiver of liability could be with schools, etc. Mr. Mackey said that the waiver is a sign off from fire and unable to answer if with school. There are items that need to be worked out and a building permit would not be issued until all matters are resolved.

Mr. Perkins said that conditions can be made and a building permit is not issued until all conditions are met but the Board also has the authority to table the case until all other items are resolved. He said that if granted tonight would allow the applicant to proceed with other aspects of the property.

There was some discussion with regard to conditions.

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 someone will answer your call.

Favor

Ann Marie Kenyon, 47 Boxwood Drive, Auburn, said that the welcome Mr. Maravelis to the neighborhood and if they build their home they would never see them as property is located a good distance from their home. She said the question of Kenyon Lawn is her sons business and registered at their property but not working from there. Mrs. Kenyon said that the right-of-way is currently owned by Ross Sargent and they had to sign an agreement to utilize the right-of-way. She said that she has some concerns about flooding as wetlands are on both sides as when the trees were removed there had been some prior flooding of the area. Mrs. Kenyon described property for the record as she was also concerned of where the utilities would come from and if it would cause any impact to their property.

Mr. Perkins asked if the utilities were overhead. Mrs. Kenyon said no they were all underground.

There was some discussion with regard to utility access.

Michael Garbardi, 15.5 Ledge wood Drive, said the deed for 14021 has no restriction with the number of homes that could be constructed there so was concerned if a future owner could build additional homes.

Mr. Perkins said the applicant is seeking one home. Mr. Garbardi said that their deed did not restrict so hope no future subdivision of the property occurs.

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 someone 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. Obimba, Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Perkins

Deliberative Session

Mr. Virr said his questions were answered and that the property still has to go for Auburn Planning Board and record a waiver so feel will be overseen.

Mr. Perkins said that he felt that the Town agencies would oversee all criteria would be met. Parcel is blocked without opportunity to build without a variance and request is for one house on a 12 acre parcel.

Mrs. Morin said she was familiar with the area and it is a quite neighborhood.

Mr. Burgess said he had no concern with one home but has some concerns with address and such.

Mr. Mackey said the property address would be contingent with the Fire Department as Auburn's memo states that they already have a Ledgewood Drive in Auburn so the 17.5 number may change.

Mr. Perkins reviewed the condition for the record.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mr. Obimba.

Vote: Unanimous.

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

Mrs. Morin motioned on case #22-134 John Maravelis & Matthew Maravelis 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 single family dwelling on the property which does not have frontage on a Town approved street at 17.5 Ledgewood Road, Parcel ID 14021, Zoned LMDR as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Access/driveway must be approved by the Town of Auburn Planning Board prior to issuance of a building permit**
- 3. Waiver of Municipal Liability and Responsibility must be recorded with the deed.**

Seconded by Mr. Virr.

Vote:

Mr. Burgess: **Yes.**
Mr. Virr: **Yes.**
Mrs. Morin: **Yes.**
Mr. Obimba: **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.

22-135 Victor Hart

The applicant is requesting a variance to the terms of Article X, Section 165-79.D.2 and Section 165-80.A.5 of the Town of Derry Zoning Ordinance to allow the existing dwelling to be relocated 22 feet closer to the edge of the Prime Wetland and to allow the construction of a new septic system and well within the Prime Wetland buffer at 17 Collettes Grove Road, Parcel ID 20021, Zoned LDR

Victor Hart, owner, reviewed the required criteria for the record.

Board Questions

Mr. Perkins asked if the conditions of the property made it difficult. Mr. Hart said yes, and described the plans submitted for the record.

Mr. Perkins asked how far back was proposed home to be. Mr. Hart said he was seeking to move the home back 22 feet.

Mr. Perkins asked if he had submitted application to DES and where did his water source come from. Mr. Hart said he has made application to DES and that he has an existing driven well. His home is currently on piers and proposed will be on a 4' frost wall.

Code Enforcement

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

- The applicant is requesting a variance to allow existing dwelling to be relocated 22 feet closer to the edge of the prime wetland located to the rear of the property. This will result in the dwelling being 50 feet from the edge of the wetland.
- The entire property appears to be located within the 150-foot prime wetland buffer.

- There are provisions in the Prime Wetlands regulations that allow for modifications to pre-existing dwellings but only if they don't result in further encroachment towards the wetland. Therefore, the applicant is seeking a variance as he is seeking to install a new septic system in the front of the property. A new well is also being proposed. (This is not a request to utilize the outermost 75 feet of the buffer that requires a joint meeting).
- If approved, permits and inspections will be required and appropriate erosion control must be installed prior to construction.
- There are pictures in the file for review by the Board.

Mr. Virr said that the septic design is proposed 2 bedroom enviro septic. His concern is that the existing structure was to be raised or moved back. Mr. Hart said his original intention was to tear down and rebuild but now only relocating.

Mr. Mackey said the applicant proposed to remove the existing structure and rebuild 22' closer to the rear property line but as long as it remains a 2 bedroom there would be no concern if new structure or relocated structure.

Mr. Virr said that the deed was incomplete as only showing page one of 2 but it is recorded. He would like to request that page 2 be submitted as part of the motion.

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 someone 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 someone 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. Obimba, Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Perkins

Deliberative Session

Mr. Burgess said that he felt that the proposed location of the septic system was better for the environment and did not see any concerns with the request.

Mrs. Morin said she agreed with Mr. Burgess.

Mr. Perkins reviewed the conditions for the record.

Mr. Obimba motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Mrs. Morin motioned on case #22-135 Victor Hart to grant a variance to the terms of Article X, Section 165-79.D.2 and Section 165-80.A.5 of the Town of Derry Zoning Ordinance to allow the existing dwelling to be relocated 22 feet closer to the edge of the Prime Wetland and to allow the construction of a new septic system and well within the Prime Wetland buffer at 17 Collettes Grove Road, Parcel ID 20021, Zoned LDR as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Must provide complete copy of deed for record.**

Seconded by Mr. Obimba.

Vote:

Mr. Obimba: Yes.
Mr. Burgess: 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.

Other Business

Mr. Perkins said that a request for an extension was filed for case # 20-123, Stephen & Shannon Vadney, for variance granted on June 4, 2020 for 5 Ferland Drive, parcel ID 31017-001.

Mr. Mackey said that he had been contacted by Timothy Peloquin, Promised Land Survey who had originally presented the plan to the Board. Mr. Peloquin outlined various reasons for why the project has not been started as outlined in his attached letter. Mr. Mackey said that they had met with TRC a few months ago but unfortunately not enough to stop State statue 674:33 and a copy of the RSA is provided in your packet. He said the Planning Board sometimes conditions are not met and the applicant can request an extension so thought could be done with similar process and reviewed the State statue for the record.

Mr. Virr said that for the past 2 years with pandemic and trying to get things done postponed due to Covid 19 as it affected a lot with the aspects of life. He said that he felt it was a reasonable request for an extension.

Mr. Burgess said he also agreed.

Mrs. Morin said she also agreed that the past 2 years have been difficult for everyone.

Mr. Perkins said that he also believed best intentions to move forward with the project and also agrees with Mr. Virr's thoughts.

Mrs. Morin motioned to grant extension for case #20-123, Stephen & Shannon Vadney, for variance granted on June 4, 2020 for 5 Ferland Drive, parcel ID 31017-001 as presented with the following condition:

1. **Condition to be for 2 years only and expire on June, 4, 2024.**

Seconded by Mr. Obimba.

Vote:

Mr. Obimba:	Yes.
Mr. Virr:	Yes.
Mr. Burgess:	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. Mackey said that no new cases were filed for the next meeting so only have case #22-131 Family Promises on the agenda.

Approval of Minutes

Mrs. Morin motioned to table the minutes of May 5, 2022, and May 18, 2022, to the next meeting.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Adjourn

Mr. Virr motioned to adjourn.

Seconded by Mrs. Morin.

Vote: Unanimous.

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

Adjourn at 8:55 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

Approval of Minutes June 16, 2022

Mr. Corbett motioned to approve the minutes of June 2, 2022 as amended.

Seconded by Mr. Virr.

Vote: Unanimous.

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