

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
March 18, 2021

Members Present

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

Members Absent

Alternates Present

Gaspar Obimba

Alternates Absent

Donald Burgess

Code Enforcement

Robert Mackey, Code Enforcement Director

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 646-558-865 or 312-626-6799 meeting ID: 323-909-140 or if anybody has a problem please call 603-845-5585 or email at: ginnryrioux@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.

Mr. Perkins informed the public that the following case was being recalled by the Board in order to clarify the motion and that it would be in the form of deliberative session with no public input.

Mr. Corbett motioned to recall case #21-103 Randall Coate, Owner: James L. Sullivan & Maureen Doherty, 17 Charlestown Place and go into deliberative session in order to clarify the vote on the motions.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Deliberative Session

Mr. Perkins said that the reason this case is being recalled as concerns of the first motion to build structure on a non-Town approved road was somehow merged with the second motion. He said that the case originally had two motions the second to allow the structure to encroach the setbacks. Mr. Perkins said that the applicant had signed a purchase and sales agreement to purchase 2 lots, the adjacent lot being on Tobacco Road, parcel 51017 was posted to have access off 51099. The Board voted 2-3 to build on a non-town approved road which now makes the lot non-buildable.

Mrs. Morin said that her reason of her vote of no was that she was reading the second part of the motion so also agree to having brought back in order to clarify the motion.

Mr. Virr said that he also voted no as he believed he was voting on the second motion.

Mr. Perkins said that the second motion was never spoken to and therefore the misunderstanding of building on a non-town approved road was what the vote was speaking to and that Mrs. Morin and Mr. Virr have acknowledged the error.

Mrs. Evans said that her original vote was directed to setbacks also and not to the private road.

Mr. Perkins said that during the previous meeting concerns were spoke to with regard to the following:

- The new proposed structure is now a 690' s/f footprint with a second story.
- The applicant indicated he may want to deed the well onto the tobacco rd. lot
- Brooks concerned about the well radius on the proposed lot from the Brooks leach field, there was discussion pertaining to leach fields which would affect the well on the applicant's lot. It was determined that A Waiver of Liability can be applied for by the applicant for the well radius.
- Abutter Brooks, opposed to the structure that would obstruct her view.

- The Proposed setback in the 2nd motion should be side setbacks 13.5 feet from both lot lines.
- The structure for the second motion is for a 23' x 30' structure footprint.
- 2nd motion would be for a setback from the road to be averaged with the other structures on the road as determined by a licensed surveyor with the front porch included.

Mr. Corbett said that there was some confusion with setbacks to the front of 16' and to be 1' off the side so he had concerns with side setbacks. He said that he appreciated that the applicant had scaled the size of the structure down but felt that it was still much larger than other homes in the area.

Mr. Virr said that he did not have a problem with structure of a home on a non-town approved road. His concern was with hardship as the area consisted of 50' x 100' camp lots that were not intended for year round homes. Mr. Virr said that he felt that it was a self-imposed hardship and that he agrees with Mr. Corbett that the proposed structure would be overpowering for the lot. He said that he has concerns of distances to how far apart houses are and not the applicant's fault that the neighbor's home is closer to the lot line.

Mrs. Evans said that she also agrees with Mr. Virr and Mr. Perkins that the applicant came into the agreement with a purchase and sales knowing what purchasing. She said that she also struggles with finding hardship being met.

Mrs. Morin said that she also agrees with the Board and that the hardship is a struggle as trying to find something to be similar.

Mr. Mackey reminded the Board that there are 2 motions to consider the first being the private road and the second to the setbacks.

Mr. Perkins reviewed the condition to the first motion for the record and also for the second motion for the record.

There was some discussion with regard to setbacks.

Mr. Perkins asked if a survey would be required. Mr. Mackey said yes that if approved a certified plan would be required.

Mr. Corbett motioned to come out of deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Mrs. Evans motioned on case #21-103 Randall Coate Owner: James L. Sullivan & Maureen Doherty to Grant a variance to the terms of Article III, Section 165-9 of the Town of Derry Zoning Ordinance to construct a single family dwelling on a lot without frontage on a Town approved street at 17 Charlestown Place, PID 51099, Zoned MDR as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Subject to a recording of Municipal Liability and Responsibility with the Rockingham County Registry of Deeds as required per N.H. RSA 674:41.**
- 3. Subject to extending and tying into Town sewer.**

Seconded by Mrs. Morin.

Vote:

Mr. Virr: Yes.
Mr. Corbett: Yes.
Mrs. Evans: 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.

Mrs. Evans motioned on case #21-103 Randall Coate Owner: James L. Sullivan & Maureen Doherty to Grant a variance to the terms of Article VI, Section 165-46.C of the Town of Derry Zoning Ordinance to allow the construction of a single family dwelling on the property which is located on a private road and which will have less than the required building setbacks at 17 Charlestown Place, PID 51099, Zoned MDR as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Subject to connecting into Town Municipal Sewer.**
- 3. Subject to obtaining a survey prepared by a licensed surveyor.**

Seconded by Mrs. Morin.

Vote:

Mr. Corbett: No. Feel hardship has been shown. Spirit of ordinance not meant to have homes that close together

Mr. Virr: No. Feel hardship is in own making with regard to all setbacks. MDR zoning distances to lot lines do not conform to overcrowding.

Mrs. Morin: No. Also feel hardship is self-created by the applicant.

Mrs. Evans: No. Feel hardship has not been shown. Also, not in keeping with character of the existing neighborhood.

Mr. Perkins: No. Struggle with spirit of the ordinance as self-imposed hardship. The applicant knew what was purchasing when signed the purchase and sales agreement.

The application was Denied by 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. Virr motioned to approve the minutes of February 18, 2021 as amended.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Adjourn

Mr. Corbett motioned to adjourn.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Adjourn at 7:39 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

Approval of Minutes on April 1, 2021

Mrs. Evans motioned to approve the minutes of March 18, 2021 as amended.

Seconded by Mrs. Morin.

Vote: Unanimous

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