

`TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
March 3, 2022

Members Present

Lynn Perkins, Chairman
Heather Evans –Remote
Crystal Morin
Allan Virr

Members Absent

Craig Corbett

Alternates Present

Michael Donlon

Alternates Absent

Donald Burgess
Gaspar Obimba
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 for the record that Mr. Donlon would sit for the following cases.

22-119 Accurate Dimensions, LLC
Owners: Terri & David Chapple

The applicants are requesting a variance to the terms of Article VI, Section 165-46.C.4 of the Town of Derry Zoning Ordinance to allow the replacement of the existing 2nd floor with a taller structure thus increasing the current non-conforming setback encroachments at 58 Beaver Lake Ave, Parcel ID 51077, Zoned MDR

Luke Vasconcelos, Accurate Dimensions, LLC, said he was representing Terri & David Chapple. Mr. Vasconcelos read the required criteria for the record.

Board Questions

Mr. Virr said in reviewing the records and map it appears that there is a co-owner of Vincent Dawson who is listed and has not signed off representation. He said that he felt that needs to be cleared before proceeding. Mr. Vasconcelos said that Mr. Dawson was Terri Chapple's ex-husband and was no longer a co-owner.

Mr. Perkins asked when did the transfer occur. Mr. Vasconcelos said he did not know.

Mr. Mackey said the quit claim only lists the Chapple's as being the owners of the property.

There was some discussion with regard to ownership of deed.

Mr. Perkins asked if possible, to make a condition in motion and proceed. Mr. Mackey said that there was no mention of Mr. Dawson being a co-owner and that the Board could make a condition to provide a clear deed of ownership or table to the next meeting.

Mrs. Evans motioned to proceed with making a condition of Vincent Dawson's ownership.

Seconded by Mrs. Morin.

Vote: Unanimous.

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

Mr. Vasconcelos reviewed floor layout for the record.

Mr. Perkins asked if a ranch style home. Mr. Vasconcelos said it would have a second floor with knee walls so not full head room.

Mr. Virr said that trusses allow for additional headroom. Mr. Vasconcelos said that there would be a 7' 6" clearance with cathedral ceilings.

Mr. Virr asked if dormers were proposed. Mr. Vasconcelos said no.

Mr. Perkins said the applicant is seeking a single-story structure with half walls to add additional living space and not seeking to expand footprint.

Mr. Donlon asked if it would be a 7' knee wall. Mr. Vasconcelos said proposed is a 7'6" and not to raise ridge height.

Mr. Perkins asked if the chimney would stay or go. Mr. Vasconcelos said it would go.

Code Enforcement

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

- The applicants are requesting approval to remove and then rebuild the 2nd floor of the home.
- The existing structure is located less than 15 feet from the right side (looking from the street) property line and is considered legal, pre-existing, non-conforming.
- The rebuilt 2nd floor will add some additional living space (volume) within this setback which is considered an increase in the non-conformity. Therefore, a variance is being requested.
- If approved, appropriate permits and inspections will be required. The applicants will also need to obtain any required State Shoreland permitting.
- There are pictures in the file for review 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 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.

Mrs. Evans motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Deliberative Session

Mr. Perkins said he felt that this was a simple project to expand the home with no increase in footprint.

Mr. Donlon said he agrees that there was minimal impact.

Mr. Virr said that he agreed with Mr. Donlon as the applicant was not seeking a full second story.

Mrs. Evans said that she agrees that it would be an improvement to the existing structure and also agrees with Mr. Virr.

Mrs. Morin said she agrees that it would be an improvement to the surrounding area.

Mr. Perkins reviewed the condition for the record.

Mr. Virr said he would like to also make a condition to provide proof that Mr. Dawson no longer has ownership.

Mr. Virr motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Mrs. Morin motioned on case #22-119, Accurate Dimensions, LLC, Owners: Terri & David Chapple to Grant a variance to the terms of Article VI, Section 165-46.C.4 of the Town of Derry Zoning Ordinance to allow the replacement of the existing 2nd floor with a taller structure thus increasing the current non-conforming setback encroachments at 58 Beaver Lake Ave, Parcel ID 51077, Zoned MDR as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Submit proof of Vincent Dawson's discontinued ownership.**

Seconded by Mrs. Evans.

Vote:

Mrs. Evans: Yes.

Mrs. Morin: Yes.

Mr. Virr: Yes.

Mr. Donlon: 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.

22-120 Jennifer Gagnon & Jonathan Hernandez

The applicants are 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 a trucking business (parking of one dump truck) at the property at 45 Damren Road, Parcel ID 13016-006, Zoned LDR

Jennifer Gagnon & Jonathan Hernandez, owners, were present. Ms. Gagnon reviewed the required criteria for the record.

Board Questions

Mr. Perkins asked that item number 4 states no more than 25% of living space but no office listed. He asked what was being utilized. Ms. Gagnon said that they were seeking to allow the parking of a commercial vehicle on their property.

Mr. Perkins asked if typically leave at 6:00 AM and back at 4:00 PM. Ms. Gagnon said yes.

Mrs. Evans asked how many vehicles were being requested. Ms. Gagnon said only one.

Mr. Perkins asked if this was the primary vehicle and if there were any other vehicles. Mr. Hernandez said that this was his primary vehicle and his wife's vehicle.

Mr. Donlon asked if only truck and if owner operator. Mr. Hernandez said yes.

Mr. Virr asked what the size of the lot and frontage was. Ms. Gagnon said they have an acre and a quarter but did not know the frontage.

Mr. Mackey said the frontage was 125'.

Mr. Virr asked if single driveway. Mr. Hernandez said that they just installed a second driveway for the truck.

Mr. Virr asked if there were any employees. Mr. Hernandez said no.

Mr. Virr asked if only the one truck as also see a bobcat how that was moved. Mr. Hernandez said it does not work at this time.

Mr. Perkins asked if the skid steer was utilized for work. Mr. Hernandez said no.

Mr. Virr asked what was transported in the truck. Mr. Hernandez said asphalt and dirt. There was some discussion with regard to why before the Board.

Code Enforcement

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

- The applicants are requesting approval to operate a trucking business, primarily parking of a large dump truck, at the property.
- About a year ago, the Code Enforcement Office started receiving complaints from the abutter regarding the parking of the vehicle. It was subsequently determined by this office that this activity constituted a business and would require approval from the Zoning Board.
- Over the past year, the applicants were sent notices, including the last from the Town's Attorney advising them to cease the business/parking of the truck or apply to the Zoning Board to request approval. They are now seeking to obtain a Special Exception to allow the business/dump truck to remain at the property.
- The business – H.D. Trucking, LLC – is registered with the N.H. Secretary of State's Office with a principal business address of 45 Damren Road.
- A driveway permit was recently approved by the Public Works Office for the driveway created for the truck.
- There are pictures in the file for review 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 someone will answer your call.

Favor

Erica Gintof, 46 Damren Road, said that the road was very busy as they live across from the golf course. She said that they have never had any issues with their truck.

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

Terence Doyle, 48 Damren Road, said that he lived directly across the street from the applicant and that he did not feel the use meets the required criteria. He said that the truck causes fumes, noise and that a tri-axle dump truck holds approximately 200 gallons of diesel fuel and was currently parked on a dirt driveway. Mr. Doyle said that they live on Cole marsh watershed, so he was also concerned about environmental hazards if the truck leaked fuel or oil. He said that there was also a safety concern as there was a bus stop located near there and has a poor line of site.

Mr. Perkins asked if live across from the golf course. Mr. Doyle said yes.

Mr. Perkins asked if the site distance was 200' requirement. Mr. Mackey said yes.

There was some discussion with regard to visibility.

Mr. Doyle said that the truck leaves at 6:00 AM and seen coming and going all hours of the day. The headlights from the truck shine in bedroom windows and the back up alarm is very loud. He said they have washed the truck down on multiple occasions and believe that it should be parked on pavement and have some type of hazardous containment area provided. Mr. Doyle said that in the winter months the road is also posted for weight limits. He said that this type of use is in direct violation of the residential use of the property and does not meet the residential character of the neighborhood and should not be allowed.

Alan & Patricia Mosier, 43 Damren Road. Mrs. Mosier said that the truck is 29,000 pounds empty with diesel fuel, leaves at 6:00 am and comes back in at 3:00 pm and is parked 15 feet from the property line. She said the truck has obnoxious fumes when running and causes dust and vibration, loud noises from backup alarm. She said that she has safety concerns as there are no streetlights on the road and is near a bus stop where kids are sometimes there in the dark waiting for the bus. Mrs. Mosier said that it does not fit in the residential character of the neighborhood and that they also have a Ford pickup.

Mr. Perkins asked if the pictures that the Board received were from them. Mrs. Mosier said yes.

Mr. Mosier said that they typically spray dump beds with diesel fuel so hot top did not stick to the sides so when they pressure wash the truck where does that go.

The Board reviewed the pictures received for the record.

Chuck Matthews, 41 Damren Road, (remote) said that he also was opposed to having the truck there for the same reasons as stated by his neighbors.

Kathryn Delpelau, 49 Damren Road, said she was also opposed as their neighborhood was pure residential and that a truck of that size would devalue the property values. She said that she was also concerned with safety as the area is family oriented and a truck of that size coming in and out is not in keeping with the character of the neighborhood. Mrs. Delpelau said that there are kids at the bus stop in the dark and hopes that the Board hears their concerns and denies the request.

Lynn Falzarano, 52 Damren Road, said she was opposed also as it does not belong in a residential neighborhood as a dump truck of that size is not in keeping with the residential character of the neighborhood.

Rebuttal

Ms. Gagnon said that there are several neighbors who are also not in keeping with the residential character of the neighborhood as one has a vehicle lift in their driveway and works on vehicles at all times of day and night, another has a camper on their front lawn, as for the safety concerns others fly in and out of the road at high speeds and as for the

bus stop concern and not seeing the children is a non-issue as have 3 kids of their own so understand the safety concerns. Ms. Gagnon said that they have done a number of esthetics to their home for improvements since they purchased.

Mr. Hernandez said that the truck was 26 thousand pounds and that it was illegal to spray diesel fuel in the body of the truck. He said that other neighbors park in the roadway, so cars have to go around them. Mr. Hernandez said that the other truck had been there for a few days, but it has been relocated to Massachusetts.

Mr. Perkins said that there were some safety of size context and continents from truck. He asked what was the truck sprayed with. Mr. Hernandez said that they use soap as they are not allowed to utilize diesel and his truck is inspected on site.

Mr. Donlon said the complaints of backup alarm understand annoying but is a safety feature.

Mr. Virr said this was in a residential neighborhood and a tri axle dumb truck and had a similar situation in his own neighborhood. He said that he did not feel it belongs in a residential.

Mrs. Morin said that the applicant was registered with the State and holds a Class A License and is DOT registered.

Mrs. Evans said that she was familiar with dump trucks as see them on her road and that the drivers are very safety oriented.

Mr. Perkins said that close to neighbor and a camper and others collecting various items and that there is a certain limit to new neighbor. He said that he feels that there is a direct affect of noise, fumes and vibration and new driveway close to other property is not just a camper that is used occasionally and listening to idling and back up noise on a regular basis disturbing.

Mr. Donlon said that he agrees with the chair and feel that there are other things occurring and understand also have to eat.

Mr. Perkins said that he understands concerns and also need to understand considerations.

Ms. Gagnon said that their neighbors have similar issues occurring at their properties and they have not complained about them. She said she feels that they are being singled out.

Mr. Mackey said that the applicant is here as complaint driven and that the Board has had a prior case granted for a similar situation.

There was some discussion with regard to the shed relocation and truck distances to abutters home.

Mrs. Evans motioned to go into deliberative session.

Seconded by Mrs. Morin.

Vote: Unanimous.

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

Deliberative Session

Mr. Perkins said a condition of hours of operation be 6:00 AM and between 1:00 PM to 6:00 PM return. Applicant testimony that use as primary vehicle what if applicant not able to return until 7:00 PM would he not be able to bring home. Mr. Perkins said that merits need to justify request.

Mr. Virr said that he felt that hours would be unenforceable. He said that feel need to focus on what hearing from abutters about odor, fumes and noise. Mr. Virr said that he also feels that it changes the character of the neighborhood.

Mr. Donlon said that he agreed with Mr. Virr as to what happens if got hung up on a job or traffic that hours are unable to control.

Mr. Perkins asked if hours of operation needs to be addressed or could hours be by passed.

Mrs. Evans said that she said her concern was for the abutters but see where could not work.

Mr. Perkins reviewed the condition of State and Town permits only or do we need to list hours of operation as Mrs. Evans has suggested or stipulate no operation of dump truck on weekends.

Mr. Virr said a condition of no washing of truck on site.

Mr. Donlon said that also no trailer hauling and no more than 1 dump truck.

Mrs. Evans said no materials brought to site.

There was some discussion with conditions.

Mr. Perkins reviewed the conditions for the record.

Mrs. Evans motioned to come out of deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Mrs. Morin motioned on case #22-120 Jennifer Gagnon & Jonathan Hernandez 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 a trucking business (parking of one dump truck) at the property at 45 Damren Road, Parcel ID 13016-006, Zoned LDR as presented with the following condition:

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

Seconded by Mrs. Evans.

Vote:

Mr. Virr: No. Concern of neighbor's testimony. Feel would contrary to criteria 3 as would be injurious, noxious and offensive to the residential neighborhood.

Mrs. Evans: Yes.

Mrs. Morin: No. For the same reasons as stated by Mr. Virr.

Mr. Donlon: Yes.

Mr. Perkins: No. For the expressed concerns from abutters during testimony and feel a triaxle is contrary to a residential neighborhood.

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.

**22-121 SFC Engineering Partnership, Inc.
Owner: BC Industries, LLC**

The applicants are requesting a variance to the terms of Article VI, Section 165.32.3.A.1 of the Town of Derry Zoning Ordinance to allow contractor use of a new 12, 000 sq. ft. building to be constructed on the property at 253 Rockingham Road, Parcel ID 03034, Zoned GC IV

Daniel Flores, SFC Engineering, reviewed the required criteria and proposed plan for the record. He said that they were not seeking to have a contractor yard just contractor use.

Board Questions

Mr. Virr asked what was involved with contractor use. Mr. Flores said that it has multiple uses.

Mr. Virr asked if the structure would be divided into units and have garage doors. Mr. Flores said yes that there would be 6 units and each would have garage doors.

Mrs. Evans said that she had concerns with parking. Mr. Flores said that would be reviewed with the Planning Board level but they are looking to have 25 spaces.

Mr. Perkins said that the this plan would be required to go before the Planning Board for approval.

Mr. Virr asked if there would be floor drains. Mr. Flores said no.

Mr. Donlon asked if owned the building. Mr. Fowler said that he owned the building.

Code Enforcement

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

- The applicants are requesting approval to allow “contractor” use of a new 12,000 sq. ft. building that is proposed to be constructed on the property.
- As proposed the new building will conform to the required setbacks and the only variance being requested is for the use.
- The property is located in the General Commercial IV (GCIV) Zoning District. This district allows for a broad range of commercial uses but does not specifically list “contractor” under the list of permitted uses. Therefore, a variance to allow for this particular use is being requested.
- The new building will require Planning Board site plan approval and is proposed to be serviced by a new septic system and municipal water.
- The existing building utilized for truck repair will remain.
- There are pictures in the file for review by the Board.

Mr. Virr asked how many contractors would there be. Mr. Flores said it was unknown at this time.

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.

Mrs. Evans motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Deliberative Session

Mr. Virr said that he thought the proposal was ambitious and well thought out plan.

Mr. Perkins said he agreed and feel that the word “Contractor Yard” will be a permitted use in the future.

Mr. Donlan said he agreed with Mr. Virr.

Mr. Perkins reviewed the conditions for the record.

Mr. Virr motioned to come out of deliberative session.

Seconded by Mrs. Morin.

Vote: Unanimous.

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

Mrs. Morin motioned on case #22-121 SFC Engineering Partnership, Inc., Owner: BC Industries, LLC to Grant a variance to the terms of Article VI, Section 165.32.3.A.1 of the Town of Derry Zoning Ordinance to allow contractor use of a new 12, 000 sq. ft. building to be constructed on the property at 253 Rockingham Road, Parcel ID 03034, Zoned GC IV as presented with the following conditions:

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

Seconded by Mr. Virr.

Vote:

Mrs. Morin: Yes.

Mr. Virr: Yes.

Mr. Donlon: Yes.
Mrs. Evans: 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.

Approval of Minutes

Mr. Virr motioned to approve the minutes of January 20, 2022 as written.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Mr. Virr motioned to approve the minutes of February 3, 2022 as written.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Mr. Virr motioned to approve the minutes of February 17, 2022 as written.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Other Business

Mr. Virr said that he would like to express to the Board to familiarize themselves with the Housing Appeal Board as it is appears that the Board has recently had a case filed with the Housing Appeal Board.

Mr. Mackey informed the Board that there was one case filed for the March 17, 2022 meeting and that Town Council has scheduled a workshop for April 21, 2022 so there would not be a meeting scheduled for that date unless something of a time sensitive matter came up.

Adjourn

Mrs. Morin motioned to adjourn.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Adjourn at 9:32 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

Approval of Minutes – April 7, 2022

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