

`TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
March 4, 2021

Members Present

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

Members Absent

Alternates Present

Donald Burgess
Gaspar Obimba

Alternates Absent

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: 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.

The applicants are requesting a variance to terms of Article III, Section 165-8 of the Town of Derry Zoning Ordinance to allow the existing detached garage located on the property to be converted into 2 residential living units at 102 East Broadway, PID 32063, Zoned MHDR

Alexander & Evelyn Madden, 102 East Broadway, owners, were present to represent their case. Mr. Madden reviewed the required criteria and their letter of explanation for the record. He said that they were requesting to allow the area to be created but the structure that they are seeking to convert is not attached to their home. The area is in the detached garage which currently has existing plumbing, bathroom, heat, and a kitchenette.

Board Questions

Mr. Perkins asked if there is finished space over the garage. Mr. Madden said yes.

Mr. Corbett asked if there was any reason there could not be a third bedroom on the 2nd floor. Mr. Madden said that it could be done but would need to a wall to divide the area.

Mr. Corbett said that testimony was given that said could support 3 and asked why not requesting. Mrs. Madden said that they are comfortable with only 2 units and that the reason saying that the lot size could support 4 units.

There was some discussion with regard to the MHDR zoning and the size of the existing lot.

Mr. Virr asked if the utilities were metered separate. Mr. Mackey said that the applicant would work with the water/sewer department who may request that the services be separated.

Mr. Perkins asked if the floor plan could be explained. Mrs. Madden reviewed the proposed floor plan for the record.

Mr. Perkins asked if the first floor out building was attached. Mrs. Madden said yes.

Mr. Perkins asked if the driveway had ample space for vehicles. Mrs. Madden said yes and described the area for the record.

Mr. Virr asked how many vehicles could be parked at any one time. Mrs. Madden said 10.

Mr. Virr asked if the garage dormer windows on the third floor could potentially be expanded living space. Mrs. Madden said that was a cupola and did not have enough space to accommodate living area.

Code Enforcement

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

- The applicant is requesting a variance to allow the existing garage located on the property to be converted into 2 residential living units (apartments).
- The property is zoned Medium High Density Residential (MHDR) which allows for single and two-family dwellings and multi-family buildings (3 or more units in each building).
- Per Article VI, Section 165-8 of the zoning ordinance, only 1 residential unit is allowed on a lot unless they are part of a multi-family development and each building contains at least 3 dwelling units. Therefore, the applicants are requesting a variance that, if approved, would allow a single family dwelling and a 2 unit structure on the same property.
- The garage currently has a finished 2nd level and is serviced by Municipal water and sewer.
- If approved, appropriate permits and inspections would be required.
- There are pictures of the property 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 will answer your call.

Favor

No one spoke in favor of the request.

Mr. Corbett 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.

Opposed

Connie Martin, Treasure of Church of Transfiguration, said she was concerned with parking and was not necessarily opposed but wanted to know if Mr. Mackey thought it was realistic. Mr. Mackey said that the applicant commented could possibly park 10 vehicles. He reviewed the parking requirements for multi-family housing.

There was some discussion with regard to parking.

Mr. Corbett motioned to go into deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Deliberative Session

Mr. Perkins said that the property consisted of 2 structures on the lot and ADU requirements are restricted to 800 square feet and must be attached to the existing structure. He said lot size could accommodate 4 separate units according to space wise. Mr. Perkins said that he recalled Lenox Ave bears consideration as required to be attached.

Mr. Virr said that he recalled Lenox was due to scale of structure to be added was a 3-4 unit condo.

Mrs. Morin said that there were a lot of different variables to consider.

Mr. Perkins said that the applicant testified that there was already habitable living space on the first floor.

Mrs. Evans said that the property was nicely kept and felt it was a reasonable request.

Mr. Corbett said that the property is established as a single family in a multi-family zone and is struggling with request but would rather see this than 6 units.

Mr. Virr said that the detached garage matches existing home and exists and felt there would be no harm in granting the request.

Mr. Perkins reviewed the condition for the record.

Mrs. Evans motioned come out of deliberative session.

Seconded by Mrs. Morin.

Vote: Unanimous.

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

Mrs. Evans motioned on case #21-106 Alexander & Evelyn Madden to Grant a variance to terms of Article III, Section 165-8 of the Town of Derry Zoning Ordinance to allow the existing detached garage located on the property to be converted into 2 residential living units at 102 East Broadway, PID 32063, Zoned MHDR as presented with the following conditions:

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

Seconded by Mr. Virr.

Vote:

Mr. Corbett: Yes.
Mr. Virr: Yes.
Mrs. Morin: Yes.
Mrs. Evans: Yes.
Mr. Perkins: No. Fail to see the hardship criteria has been met.

The application was Granted by a vote of 4-1-0. 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 informed the Board that Timothy Peloquin of Promised Land Survey was going to Zoom in to present the following case and the applicant was present.

21-107 Kimberly Livesey
Owner: Heirs of Kathleen E. Chism

The applicant is requesting variance to the terms of Article VI, Section 165-32.2.A of the Town of Derry Zoning Ordinance to allow the development of the property as an event center with the ability to also provide a caretaker's residence, overnight accommodations and agritourism at 140 Rockingham Road, PID 03110, Zoned GCIII

Timothy Peloquin, Promised Land Survey, said he was presenting Kimberly Livesey's case remotely and that Ms. Livesey and Neal from his office were present if the Board had any additional questions. Mr. Peloquin reviewed the letter of explanation and required criteria for the record. He said that this request was Ms. Livesey's vision who currently has a purchase and sales agreement on the property. She has spoken with the neighboring properties and most are very supportive of her proposal.

Kim Livesey, applicant, shared her background for the record and her vision of the property. She said that she wished to name the property after one of Robert Frost's poems. Ms. Livesey reviewed her proposed layout for the record.

Board Questions

Mrs. Evans said that she was impressed with the plans and proposed designs submitted.

Mr. Burgess said that the drawings showed a 2 bedroom use and asked if there was another on the other side. Mr. Peloquin said there was only one 2 bedroom area proposed for a caretaker at this time.

Mr. Virr asked if currently operating venue on Jenkins Farm in Chester. Mrs. Livesey said no that her catering business is located in Massachusetts but she does have a home office in Chester.

Mr. Corbett asked if the plans were accurate dimensions. Mrs. Livesey said no that more detailed plans would be pending granting of a variance then a full design will be done for Planning Board submission.

Mr. Corbett asked if there would be a kitchen on site for weddings, etc. Mrs. Livesey said yes and that she has spoken to the Health Officer with regards to the requirements. She said that the food would be cooked on site in a full commercial kitchen.

Mr. Burgess asked with regard to parking how many people planning on attendance. Mrs. Livesey said looking for about 200 people so around 100 parking spaces with some overflow. She said that she is working with Mr. Peloquin to find the best locations for parking.

Mr. Virr asked if asking the Board to view conceptual design and if cost has been reviewed. Mrs. Livesey said yes that she has a complete business plan established with investors. She said that she had a purchase and sales agreement last year then COVID hit so now starting planning again to move forward.

Mr. Virr asked if realize that Rockingham Road is a highway. Mr. Peloquin said that fully understand State DOT process. He said the property has an existing residential driveway and that there is ample site distance and will be working with DOT possibly establish some gravel shoulders etc.

Mr. Perkins asked what the status of the existing structures would be. Mr. Peloquin said that they would be razed. Mrs. Livesey has been looking around the property for artifacts and hopes to keep the stone foundation but he was unsure if possible.

Mr. Perkins asked if able to salvage what intentions would the area be used for. Mrs. Livesey said she would like to create a ceremony space or a cocktail area. Her husband was a landscaper so he also has some ideas for the area as well.

Mr. Perkins asked if there would be concerts on the property. Mrs. Livesey said no that it would be for wedding venues, receptions, and meetings etc.

Mr. Perkins asked if the overnight accommodations could be explained. Mrs. Livesey said that she would like to possibly have a few cottages for overnight guests for bridal suite consisting of one or two nights or possible guests of the Robert Frost Farm where guests could state and visit for a few days.

Mr. Virr said that he was concerned with the cottages being a motel situation. Mr. Peloquin said that is not the applicant's intent now or in the future. Looking to complement the event center not motel look.

Mrs. Livesey said that the cottages would mimic the barn and not looking to be a motel. She said that she was seeking to have ability for a bridal party an area to stay and not have to drive 3 hours before their event.

Mr. Virr said that understand but residential structures and full service restraint is a concern. He said that the venue down the street does weddings but does not have residential use.

There was some discussion with regard to additional living accommodations.

Code Enforcement

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

- The applicant is requesting approval to allow the development of the property as an event center along with a caretaker's residence, overnight accommodations and agritourism.
- Per the Town's assessment records, the property contains 8 acres and currently has an old farmhouse on the property which has been uninhabited for several years.
- The property is zoned GCIII. This zoning district, was created in 2011 and is a limited use commercial district located in close proximity to the Robert Frost Farm. The purpose of the district is to regulate structures and uses in the district to ensure that they complement this historic site.
- If approved, Planning Board site plan review will be required.
- There are pictures of the property in the file for review by the Board.

Mr. Corbett asked if here to consider caretakers residence 2 separate requests. Mr. Mackey said the applicant is here to get concept approved and then will proceed to the Planning Board for site review.

Mr. Virr said that he was concerned with the presentation of a conceptual plan as if approve is as presented. He asked if when the site plan is available if it could come back before the Board before going to the Planning Board as he did not recall a situation of approving a conceptual plan and not an actual site plan. Mr. Mackey said typically only come back if something such as a setback or additional relief was required. He said that he would have to consult with legal counsel but not typical with a zoning case.

Mr. Perkins said that the applicant is seeking to move forward without spending more money. The Board could segregate the overnight accommodations and have come back. He said that the restraint is allowed and here due to the caretaker's lodge use is reason before the Board. Mr. Perkins said that a motion could be structured so that the applicant can proceed to the Planning Board.

Mr. Peloquin said that the points of concern are good and that the number of cottages if the Board chooses could be up to 5 one to two bedroom cottages and if more will have to come back for additional approvals. He said that he needs to figure out septic, parking, etc. and what Planning Board also will require of the applicant.

Mr. Perkins said that a condition of not do additional overnight accommodations at this time was asked and the applicant said it would not be a deal breaker. He said that the

primary aspect to grant or not with overnight accommodations need to make clear. Mr. Perkins said that the Board can grant with conditions of caretakers and venue for weddings and barn and the applicant could come back for additional overnight accommodations.

Mr. Perkins asked the applicant if this condition would be a deal breaker. Mrs. Livesey said that it would not make or break her agreement as her main goal is a wedding venue. She said that agritourism does allow for overnight accommodations. Mrs. Livesey said that she closes on the property in 7 days and here to be granted a variance so can proceed to the Planning Board level.

Mr. Perkins said that it is in the Boards purview to create motion with conditions so the applicant can be accommodated.

Mrs. Morin asked if the overnight cottages would have a kitchen. Mrs. Livesey said there would be no cooking appliances in the cottages. She said that there may be a coffee maker and mini fridge but no stove.

Mrs. Morin said that would like to make part of motion of no cooking facilities in the cottages.

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.

Opposed

Scott Davidson, 138 Rockingham Road, said he was opposed to the request as he would be the most affected by this request. He said that he had concerns the demolition of the home and the safety of his children. He also has concerns with the traffic as there have been numerous accidents in the area. Also concerned with noise, overnight accommodations, lighting, live music, etc. as would greatly affect their lives. The proposal sounds nice but he did not feel it was the right use for the area. Mr. Davidson said he was not opposed to a small winery but this proposed use would not fit and would completely change the rural nature of the area.

Hugh Lee, said he was the owner of lot 03110-001 which is the small corner off the Chism lot that was created 30 years ago and is located in a residential zone. He said that he likes the proposal and felt that the wedding event would complement the lot. Mr. Lee said that he has drafted serval conditions that he would like the Board to impose on the lot before it proceeds to the Planning Board.

Mr. Perkins asked for a motion to accept Mr. Lee's proposal.

Mr. Corbett motioned to accept information to be submitted from Mr. Lee.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Mr. Lee reviewed the information submitted for the record and requested the Board to impose as noted.

Thomas Mauzey, 146 Rockingham Road, said that he appreciated Mr. Virr's question with regard to the number of cottages. He said that he was a direct abutter to the property and wanted to know if traffic would be off Route 28 or off Featherbed Lane. Mr. Mauzey asked if there were any additional plans to develop access to Featherbed or the Smith property and was concerned with location of proposed cottages.

Mr. Corbett said that the proposal for traffic would be on Route 28.

Mr. Mackey reviewed Featherbed Lane status for the record.

Mr. Perkins said that the Board may or may not include cottages at this time and the concern with setbacks were not noted at this time.

Mr. Corbett 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

Jean Smith, 161 Rockingham Road, said that the Planning Board would be reviewing the lights, noise, etc. She said that she felt that this project would be very good for the GCIII district and that the designated proposal is spot on and would be perfect use for the property. Mrs. Smith said that the existing structure on the property is vacant and has been subject to vandalism over the years and she would love to see the property be brought back to life and having a caretaker there would be a bonus.

Beverly Donovan, Derry Economic, said she has been working with Mrs. Livesey for a good part of year on this project. She said that there have been other people who have viewed property such as car dealerships and landscaping outfits and this property could also support a large scale restaurant that opens at 10:00 am and close late. Ms. Donovan said this proposed venue is a lesser scale than what is currently allowed and feel it fits into the intent of the zoning. People come from all over to visit the Robert Frost Farm and feel that this proposal will complement the area.

Steve Trefethen, Broker, and owner of Sunview Realty, said that Mr. Chism is 3rd generation of the property and owned Chism Machinery on South Ave. He said that Mr. Lee purchased the lot on Featherbed Lane on foreclosure in July 2017. Mr. Trefethen said that he listed the property on Rockingham Road after Mr. Chism's mother had passed away. He said that there have been 6 to 7 buyers interested in the property and this applicant actually filled out a purchase and sales agreement then COVID hit and the idea was put aside. Mr. Trefethen said that the existing home on the property would require over \$7,000 or more in repair. This proposal is minor as to what other potential buyers could potentially do to the property.

David Chism, heir to Catherine Chism, said his parents purchased the property in 1952 and he was born in 1958. Mr. Chism said he was going to build his own home on the Featherbed lot but unfortunately that did not happen. His mother did not want to leave the property and stayed there until she passed in 2016. Mr. Chism said that he felt that this use would be something that his mother would have wanted for the property and that it would complement the Robert Frost Farm.

William Smith, Rockingham Road, said that he also felt that the proposed use was a good idea and would fit the area.

Rebuttal

Mr. Peloquin reviewed the concerns as follows:

- Demolition of the existing structure will follow the guidelines set forth by the Town.
- Buffer's requirements will be implemented by the Planning Board who will also mandate distances to property lines and types of trees planted.
- Lighting will also be addressed at the Planning Board level.
- Access concern would be only on Route 28 and no intention to open Featherbed Lane.
- Music not past 10:00 PM – mostly weekend events outdoors in summer months. Could move indoors 11:00 pm and would not affect neighboring properties.
- As pointed out by Mr. Trefethen there are other uses out there that are allowed that would not need approval from the Zoning Board. This is a conceptual plan with less impact for the area than what could potentially be located there.

Mrs. Livesey said that the residential neighbors will be taken into consideration and that the new barn would be fully insulated and that she was not looking to do outdoor tented weddings. She said that she was acceptable to stopping outdoor functions at 10:00 PM and bring indoors. As for lighting she was not looking to light up the world but ample for people to find their cars. Mrs. Livesey said that she is hoping to plant a lavender field, Christmas trees and apple trees. She said that an Applebee's would be an allowed use on the property and could have live music outdoors. She was seeking to create a very tasteful atmosphere where one could be comfortable and relax.

Mrs. Evans said that the agritourism aspect is meant to attract visitors or are seeking primary farm use. Mrs. Livesey said the event center is primary and that secondary use would be agritourism and will have farm usage. She said that she has spoken to the Town regarding agritourism usage. Mrs. Livesey said that she also has a letter in favor from the State in favor of her proposal.

Mr. Corbett read the letter from the State of N.H. for the record in favor of the proposed use.

There was some discussion with regard to the proposed cottages for overnight accommodations.

Mr. Corbett 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 asked if the Board wished to proceed as presented or exclude the additional overnight accommodations.

Mr. Corbett said that he loves the proposal but has concerns with the cottages. He said he would feel better if had to come back when have a better plan of what wished to have.

Mr. Virr said he didn't disagree but the cost factor and cottages for a wedding party would be a tremendous feature.

Mrs. Evans said she also agreed and that felt that it would be a Planning Board Site Plan determination to resolve.

Mr. Perkins said that during the testimony he asked the applicant if the cottages would make or break and she said no. Approach with or without architecture plans. The Board could make a condition to come back if propose to have cottages.

Mr. Virr said that the Planning Board plans show proposed cottages will vote accordingly. He said he would feel better if vote without proposed cottages and have to come back for additional approval. Mr. Virr said he would like to exclude the overnight accommodations.

Mrs. Morin said she felt that the plan was a nice idea.

Mr. Mackey said that the proposal is to also have a caretaker's unit.

Mr. Corbett said a condition to include the caretaker's residence excluding all other overnight accommodations.

There was some discussion with regard to overnight accommodations, noise, and hours of operation.

Mr. Corbett motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Mrs. Evans motioned on case #21-107 Kimberly Livesey, Owner: Heirs of Kathleen E. Chism to Grant a variance to the terms of Article VI, Section 165-32.2.A of the Town of Derry Zoning Ordinance to allow the development of the property as an event center with the ability to also provide a caretaker's residence, overnight accommodations and agritourism at 140 Rockingham Road, PID 03110, Zoned GCIII presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Subject to Planning Board Site Review.**
- 3. Excludes approval of additional overnight accommodations other than caretaker's residence.**
- 4. All outdoor functions to end by 10:00 PM.**

Seconded by Mr. Corbett.

Vote:

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

Other Business

Mr. Perkins informed the Board that registration for the annual Spring Conferences are being held remote this year. He said that the Board may wish to also schedule a workshop later when it was safe to do so.

Mrs. Morin said that she would like to bring back case #21-103 Randall Coate for reconsideration in order to restructure the motion.

Mrs. Evans said she agrees with Mrs. Morin that the Boards motion needs to be reviewed.

Mr. Perkins said that the point was 2 motions and appears the Board had a misunderstanding on the structure of the motion as they appeared to be combined.

Mr. Perkins said he needs a motion to bring back under deliberative session and review the first motion and clarify on vote.

Mrs. Evans motioned to bring case #21-103 Randall Coate 17 Charlestown Place in order to clarify the Board's decision.

Second by Mr. Corbett.

Vote: 4-1-0

Yes: Mrs. Morin, Mrs. Evan, Mr. Corbett, Mr. Perkins.

No. Mr. Virr.

Mr. Perkins said that this was not a rehearing but bringing back under deliberative session to restructure the vote.

Mr. Mackey said that a legal notice will be published and abutter notices will be sent out.

Approval of Minutes

Mr. Corbett motioned to table the minutes of February 18, 2021 to the next meeting.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Adjourn

Mr. Burgess motioned to adjourn.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Adjourn at 9:57 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 3, 2021 as written.

Seconded by Mr. Burgess.

Vote: Unanimous.

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