

`TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
May 18, 2022

Members Present

Lynn Perkins, Chairman
Craig Corbett
Crystal Morin @ 7:38pm
Allan Virr
Donald Burgess

Members Absent

Alternates Present

Michael Donlon
Richard Tripp

Alternates Absent

Gaspar Obimba

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.

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. Burgess motioned to table case #22-131 Family Promises of New Hampshire, Inc. Owner: Roman Catholic Bishop of Manchester to the meeting of June 2, 2022.

Seconded by Mr. Tripp.

Vote: Unanimous.

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

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

22-132 George Chadwick

The applicant is 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 23.5' x 34' addition to be located 38' from a wetland greater than one acre in size where 75' is required at 116 Old Chester Road, Parcel ID 12120-007, Zoned LDR

George Chadwick, 116 Old Chester Road, said that this case was previously submitted in 2018 and was not implemented so here to resubmit as his mother-in-law was moving in with them from Florida. Mr. Chadwick reviewed the required criteria for the record.

Board Questions

Mr. Virr asked if the driveway would be expanded and how would run-off be taken care of. Mr. Chadwick said the driveway would be expanded slightly and that they will grade the area to make sure that there was a smooth transition before it meets the water.

Mr. Virr asked where the septic system was located. Mr. Chadwick said it was to the right of the home.

Mr. Chadwick said that the original submission showed the wetland further away but the plan provided is what was actually voted on.

Code Enforcement

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

- The applicant is requesting a variance to allow the construction of a 23.5' x 34' addition to the left side of the home less than 75' from a wetland (approx.. 38' at the closest point).

- The intended use of the addition is for an accessory dwelling unit (ADU).
- The wetland is not classified as a Prime Wetland, therefore, only the provisions of Article III, Section 165-20.a apply.
- If approved, permits and inspections will be required and the septic design must be updated to reflect the added use.
- If approved, erosion control measures must be installed prior to the beginning of construction.
- There are pictures in the file for review by the Board.

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 someone 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 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. Corbett motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Deliberative Session

Mr. Perkins said that the application was not unique to the Board and had previously been granted but has since expired so applicant is seeking to proceed with his original request.

Mr. Corbett said he remembered the plan and feel a simple request.

Mr. Tripp said he agreed that it was a straight forward case and the property was already located in the setback.

Mr. Perkins reviewed the condition for the record.

Mr. Corbett motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Mr. Corbett motioned on case #22-132 George Chadwick 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 23.5' x 34' addition to be located 38' from a wetland greater than one acre in size where 75' is required at 116 Old Chester Road, Parcel ID 12120-007, Zoned LDR 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.

Mr. Burgess

Mr. Tripp: 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 explained that this was a joint meeting which requires the Zoning Board, Planning Board and Conservation Commission to review and discuss the application and that the Zoning Board will make the final decision but the meeting will be chaired by the Planning Board Vice Chairman Mr. MacEachern.

Mr. MacEachern explained the meeting proceedings and cautioned the Planning Board members to keep to the facts as the plan would be also coming to the Planning Board and that they did not want to prejudice themselves on the case.

It was noted Mr. Donlon to sit on the following case.

Planning Board Members

Jim MacEachern, Vice Chair
Mark Connors
Joe Tremper
Richard Malaby
Chris Feinauer

Conservation Commission

Riccardo Buzzanga, Vice Chair
Eileen Chabot
William Lowenthal

The applicants are requesting a Special Exception as provided in Article X, Section 165-80.A.4 of the Town of Derry Zoning Ordinance to allow grading and drainage/storm water management activities associated with a proposed mixed use development to occur within the outermost 75 feet of the Prime Wetlands buffer at 74 Rockingham Road, Parcel ID 05039, Zoned WRB.

Timothy Peloquin, Promised Land Survey, LLC, said he was present this evening along with Mark West, Wetland Scientist, Jordan Young, Civil Engineer, Robert McCormick, Keystone Derry, LLC and Attorney Charles Cleary. Mr. Peloquin reviewed the required criteria for the record and explained that the plan was similar to a project in Salem, NH – Rain More Woods consisting of a mixed use. He said that the area has a lot of wetlands and that the proposed design is located within 5.5 acres and that 58% of the land will be undisturbed. Mr. McCormick purchased the property last summer and during the fall engineering was started and met with the Planning Board for discussion with preliminary designs and submitted application to DES for alterations to terrain. Mr. Peloquin described the plans submitted and that Conservation Commission performed a site walk and are currently addressing TRC review comments.

Zoning Board Questions

Mr. Perkins asked if could explain were to look on the plans submitted. Mr. Peloquin said page 6 shows prime wetland buffer restoration and described for the record.

Mr. Tripp asked why 3 retention ponds but shows 5. Mr. Peloquin said the other 2 ponds are not in the prime wetland buffer.

Jordan Young explained the proposed plan for the record.

Mr. Tripp asked if the intention was to protect from runoff. Mr. Young said yes, that they will be built according to DES requirements as have to follow storm water pollution plan.

There was some discussion with regard to the proposed retention ponds.

Conservation Commission Questions

Riccardo Buzzanga, Vice Chair of the Conservation Commission, said that they will be working with Mr. Peloquin throughout the proposed project. He said that they have conducted a site walk and have discussed with him some concerns to the locations and how will be constructed without disturbing more area. Mr. Buzzanga said the east retention pond would like to some sort of vegetation buffer. He said that the initial plan design is a good starting point and that the proposed road area they would like to see some more reference. Mr. Buzzanga said that the area had been previously logged and

was difficult to navigate but will be performing additional site walks as the project progresses.

William Lowenthal, Conservation Commission, said that the proposed parking area appears to be in the 150' buffer and wished to know proposed impact.

Conservation Rebuttal

Mr. Peloquin said that the Conservation Commission has some great comments and have no issues addressing concerns. He said that the 2 small areas are for parking for community center and that TRC is looking for more parking but area is very tight. They propose to do lots of plantings to protect the area and that there is 75' of undisturbed area.

Mr. MacEachern said that the project needs to follow the LDCR requirements and other items are being worked on.

Mr. Perkins asked if building 2 could be shortened up to reduce the parking infringement. Mr. Peloquin said that the architectural plans have been done and to shorten the building at this point would create a financial issue on an already huge investment for the applicant.

Mr. Perkins said that the criteria draws to certain aspects to grant relief. Mr. Peloquin said that if have to nix parking will find a way but they are seeking to disturb a very small area.

Mr. West said that the retention ponds added to the plan will be collecting run off follow the DES guidelines. The heavy equipment work along the buffer area will be heavily flagged so any disturbances will be just like it was a property line.

Planning Board

Mr. MacEachern said that he would like to again caution the Board to stay within the perimeters of the case and to keep to the facts as the plan would be also coming to the Planning Board and that they did not want to prejudice themselves on the case.

Mark Connors, Planning Board Member, said the property is well known for its conservation corridors. He asked if building 2, community center parking area was asked if could be less parking. Mr. Peloquin said it was needed to be added to be within the WRB guidelines if eliminate would be creating a financial situation for the applicant. He said that the 4 parking areas have been designed and a traffic report will be for the Planning Board level.

Mr. Connors asked if the Town had already dictated design. Mr. Peloquin said that there is a sewer line that already currently impacts the area.

Mr. MacEachern asked if the pond has a storm release mitigation system. Mr. Peloquin said yes as it is a mixed use area.

Mr. MacEachern asked if the plan reason for design was due to the WRB district zoning. Mr. Peloquin said not strictly financial restrained due to wetlands, parking restraints, elevators, etc. If were located in a different zone then yes the design would be different.

Mr. Connors said that the plan is not before the Planning Board yet so it is still in conceptual design so asking to develop plans and obtained green light with wetland impacts so concern if this design is the only option or if architectural financial impact reason to grant a variance. He asked if the design would require a turn lane as could possibly impact wetland due the requirement and if any other changes possibly coming that not seeing. Mr. Peloquin said he did not feel that there would be other environmental impacts than what is proposed. He said that the property is shoe horned and this design is the best solution for consideration of what the WRB district is seeking to achieve. Mr. Peloquin said that conservation will possibly conducting more site walks and items will be ironed out as the project progresses.

Code Enforcement

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

- The applicants are requesting a Special Exception to allow some site grading and drainage/storm water management activities to occur within the outermost 75 feet of the Prime Wetland buffer. This work is associated with a mixed-use development being proposed for this parcel.
- Prime wetland regulations, as stipulated in Article X, Section 165-80 of the Zoning Ordinance, require a 150-foot natural buffer. Section 165-80.A.4 allows for uses in the outermost 75 feet of the buffer provided the Zoning Board finds that all of the items listed under 165-80.A.4 (1-8) are found to exist.
- The hearing for the Special Exception requires joint meeting of the ZBA, the Planning Board and the Conservation Commission and is chaired by the Planning Board Chairman. After taking input from the other Boards, it is the Zoning Board that will vote whether or not to grant the Special Exception.
- The project involved will require additional Technical Review Committee (TRC) review and Planning Board Site Plan approval where all the other aspects of the project will be reviewed.

Zoning Board

Mr. Tripp said there was some discussion with regard to the community center if that was building 4 and if the inlet and outlet areas showed the retention sites what would their function be. Mr. Peloquin said yes and that they are in the preliminary stages but their function would be that whatever discharge that comes out will be clean before reaching the pond as required by DES.

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 someone 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 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. Corbett asked if the parking area would be 50' area. Mr. Peloquin said that is under review and that there is a huge housing need and feel that the style and proposed layout will be well received by the community.

Mr. MacEachern said that he appreciated the calculations.

Mr. Donlon asked why the catch basins designed closer. Mr. Peloquin said that they were designed the same way but will utilize extreme care as to mitigate buffer area.

Mr. Tripp asked how many condos would be in each building. Mr. Peloquin said there would be 114 units total and commercial use and a community center.

Mr. Tripp asked if the 114 units would be work force housing. Mr. Peloquin said no.

Mr. MacEachern said that he appreciated the Conservation Commission and Planning Board members attending this evening and that there are several more meetings that will be held with Planning Board, TRC and Conservation. He said that the members of the Planning Board and Conservation were welcome to stay for the rest of the proceedings but was not required to do so.

Mr. Perkins said that the next phase is to review the zoning provisions as outlined in 165-80.A.4 for the Zoning Board members to review the guidelines. He said that the Planning Board and Conservation members were welcome to stay.

Mr. Perkins asked if the demographics of the townhouses could be described. Mr. Peloquin said they would consist of a mixed use of 1 and 2 bedroom units.

Mr. Corbett asked what percentage were for 1 or 2 bedrooms. Mr. McCormick said there would be 56 units in one building consisting of 16 one-bedroom and 40 two-bedroom the second building would consist of 12 one-bedroom and 36 two-bedroom units.

Mr. MacEachern said he was going to turn the meeting back over to the Zoning Board for deliberations to review 165-80.4 criteria and that if voting no need to explain reason for no vote.

Mr. Tripp said that the Conservation Commission had some concerns about the 75 foot setback and asked if they were sure that they would be able to build the swale without disturbance to the area. Mr. Peloquin said yes as the area will be clearly marked and closely monitored.

Mr. Perkins asked if there were any additional questions from the Zoning Board members wish to have clarification before go into deliberative session.

Mr. Corbett motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Deliberative Session

Mr. Corbett said that in reviewing the criteria he had concerns with #2 & #8 which the applicant had answered and believe the covered the required criteria.

Mr. Donlon said that in reviewing the criteria and seeing the natural slope of the property that from an economic standpoint that appears that the applicant will be cleaning up a small area and that the retention ponds will collect the run-off and clean up before it reaches the prime wetlands. He said that he felt that the property would be in better shape with proper drainage in place.

Mr. Virr said that he has concerns about traffic and if a provision will be made for all vehicle traffic.

Mr. Burgess said that he felt that the applicant covered all the requirements and feel good about the proposed plan.

Mr. Perkins asked if the traffic study would be under the Planning Board review. Mr. Mackey said yes.

Mr. Perkins said that the applicant eluded to economic advantage. He said he knew of the property to be of a shoehorn shape which leads to a challenge of itself. Mr. Perkins said that he felt that the applicant has left a fair amount of green space which eases the effect of section 165-80.

Mr. Perkins said that the Planning Board and Conservation pointed out the parking area will be well noted and up to the Planning Board's discretion to alter the design. Mr.

Mackey said yes, and things are subject to change depending on significance where they could be back before the Board for additional variance items.

Mr. Perkins reviewed the conditions for the record.

Mr. Corbett said he reviewed the conditions and concern with #3 as possible require conservation approval. Mr. Mackey said that the plan requires a sign off from the Conservation Commission before the Planning Board approves the plan.

Mr. Corbett motioned to come out of deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Mr. motioned on case #22-133, Promised Land Survey, LLC, Owner: Keystone Derry, LLC to grant a Special Exception as provided in Article X, Section 165-80.A.4 of the Town of Derry Zoning Ordinance to allow grading and drainage/storm water management activities associated with a proposed mixed use development to occur within the outermost 75 feet of the Prime Wetlands buffer at 74 Rockingham Road, Parcel ID 05039, Zoned WRB as presented with the following condition:

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

Duly noted that this request required a joint meeting of the Zoning Board of Adjustment, the Planning Board and the Conservation Commission.

Seconded by Mr. Virr.

Vote:

Mr. Corbett: Yes.

Mr. Virr: Yes.

Mr. Donlon: Yes.

Mr. Burgess: 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 said the following case was a request for a rehearing and that the primary Board members would be voting.

Re-Hearing Request of variance denied on April 7, 2022 case #22-124 to the terms of Article VI, Section 165-49.C.4 of the Town of Derry Zoning Ordinance to allow the proposed 3 unit condominium to be located more than zero feet from the front property line and more than 5 feet from the side property line at 16 Franklin Street, Parcel ID 30070, Zoned TBOD

Mr. Perkins informed the Board that they needed to review the information submitted by the applicant and determine if there was any new evidence that had not been discussed that would warrant a rehearing of the case.

Mr. Corbett said that he felt the letter submitted was good but did not find any new information submitted that would warrant a rehearing.

Mr. Virr said that he agreed with Mr. Corbett and also did not find any new information that would warrant a rehearing.

Mr. Burgess said that he believed the Board discussed the case thoroughly and he also did not see any new information presented that would warrant a rehearing.

Mrs. Morin said she agreed with the Board.

Mr. Perkins said he also agrees that no new evidence had been presented to warrant a rehearing.

Mrs. Morin motioned to grant a Re-Hearing Request on case #22-124 Franklin Street, LLC, c/o Muhammad Asim Ghani of variance denied on April 7, 2022 case #22-124 to the terms of Article VI, Section 165-49.C.4 of the Town of Derry Zoning Ordinance to allow the proposed 3 unit condominium to be located more than zero feet from the front property line and more than 5 feet from the side property line at 16 Franklin Street, Parcel ID 30070, Zoned TBOD.

Seconded by Mr. Burgess.

Vote:

Mr. Corbett: No. As stated no new evidence was presented that would warrant a rehearing.

Mrs. Morin: No. For the same reason as stated by Mr. Corbett.

Mr. Virr: No. Feel there was full discussion and review of the application and no new evidence was provided.

Mr. Burgess: No. Feel the Board made no error in law.

Mr. Perkins: No. For the same reasons as stated.

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

Approval of Minutes

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

Seconded by Mr. Virr.

Vote: Unanimous.

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

Adjourn

Mrs. Morin motioned to adjourn.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Adjourn at 9:32 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

Approval of Minutes June 16, 2022

Mr. Virr motioned to approve the minutes of June 16, 2022 as amended.

Seconded by Mr. Corbett.

Vote: Unanimous.

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