

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
May 16, 2013

Members Present

Allan Virr, Chairman
Lynn Perkins, Vice Chairman
Donald Burgess, Secretary
Teresa Hampton
Joseph Carnvale

Members Absent

Alternates Present

David Thompson

Alternates Absent

Louis Serrecchia

Mr. Virr called the meeting to order at 7:00 p.m. with the salute to the flag, and notice of fire and handicap exits and that this and all Zoning Board meetings are videotaped.

Mr. Virr said informed the public that case #13-105 has been withdrawn and will not be heard this evening.

It was noted for the record that Mr. Thompson recused himself from the following case.

#13-104 Derek Moniz

Variance to the terms of Article VI, Section 165-45B.1.d.ii of the Derry Zoning Ordinance to allow the construction of a 240 sq. ft. shed less than 15 feet from the side and rear property lines. Parcel ID 29074, 16 Jefferson Street, Zoned MHDR.

Derek Moniz, owner, read his application for the Board.

Board Questions

Mr. Burgess asked why the proposed shed could not be located 15' from the lot line. Mr. Moniz said that his property was less than a half-acre in size and has staked out where 15' from lot lines and that the shed would take up most of the area. He said that he previously had a dog kennel that he has removed in the proposed area that he was seeking to place the shed. He had his property surveyed last year and have spoken to the neighbor who is unopposed of the placement.

Mrs. Hampton asked if the shed could be repositioned and if his property encroached on his neighbor's property after the survey he had ordered and been drawn up. . Mr. Moniz said no and 5' from the rear and side lot line is the best area and the rear portion of the property does not have a home directly in site of the shed as it is full of over growth and poison ivy.

Mr. Perkins asked if the rear portion has water runoff. Mr. Moniz said that the opposite side of the lot is a lower section that has an abundance of water runoff and is a wet area.

Mr. Carnevale asked if the shed was a permanent structure. Mr. Moniz said that the shed would be on blocks and has no intention of moving it once placed. He said that the company where the shed was purchased delivers and sets up in place.

Mr. Burgess said that he also resides in the area on High Street and the property does slop down and so does the neighboring property so believes that would be unable to build there without considerable costs involved with bringing in fill etc.

Mr. Virr said that the property consists of only a quarter of an acre and there are sheds all over the Town of Derry that are located on the lot lines. Mr. Moniz said that he was only seeking to do the right thing and request a variance for the proposed location of the shed.

Favor

Kevin Barrett, 13 Jefferson Street, said that he lives across from the applicant and that the property was small and that there was no place to put the shed other than the proposed location. He said that Mr. Moniz keeps his property well maintained and feel that he would do the same with the shed so he has no problem with the variance being granted.

Albert Dimmock, High Street, said that he was not an abutter but knew that the Board has approved structures within 3' of the lot line. He said that he felt that this applicant is being generous in seeking to place a structure 5' from his lot line and that the request should be granted.

Opposition

Carolyn Johnson, owns 14 Jefferson Street and 32 Hillside, said that she abuts 2 sides of the applicant and felt that the request of 5' was not reasonable and that he could relocate the shed to meet the setback requirement. She presented the Board with a copy of the applicants plot plan and a small piece of pink paper of which she explained to the Board that she had drawn on it the 15' setback and that if they took the small piece of pink paper and placed it on the drawing anywhere inside the areas is where the proposed shed could be located without requiring a variance.

Mr. Virr asked where she obtained the drawing. Ms. Johnson said it was part of the applicant's submission. She said that she whited out the area where he proposed the shed

placement and provided the Board with a 3/8 x 5/8 piece of pink paper which represented the proposed shed. She explained her submission for the Board.

Mr. Burgess asked why there were only 2 lines drawn. Ms. Johnson said that the Mr. Moniz stated that the abutter on parcel 29-75 did not object and that she was not here to make a statement for others only to show that the proposed shed can be located within the required setback limits and felt that a 240 square foot structure was not contrary to the public interest as there are no special conditions on the property. She said that the lot size was no different than other lots in the neighborhood and that the wet area is an area of slow draining soils and does not have flood like conditions. She also felt that if the shed was placed within the 5' setback that other items such as wood, gasoline, etc. could be placed outside of the shed which would further encroach on the lot line and then would only leave approximately 2-2 ½ feet of an area for a walkway which would allow for possible trespass which is a NH Criminal violation. Ms. Johnson said that a variance is permanent and that this applicant may be cautious of trespass but others may not and felt that granting would be a substantial injustice.

Mr. Virr asked if the shed proposal offended from a view point. Ms. Johnson said no just placement 5' from lot line.

Mr. Virr said that it was the function of the Zoning Board to not only uphold the ordinance but to allow relief of which the applicant is requesting and that having only a ¼ acre lot would place a proposed shed in the center of his lot. Ms. Johnson said that she felt that if the shed was 10' from the lot lines would be a more reasonable request and there would be no objection.

Mr. Carnevale asked what difference is made when the garage on lot 29073 was located only 7' from the lot line. Ms. Johnson said that she purchased the property with the garage that she did not construct it there.

There was some discussion with regard to the proposed placement of the shed.

Rebuttal

Mr. Moniz said that he had his property surveyed last year as had previous issues with abutter's tenants. He said that he had walked the property with Ms. Johnson and recalls mentioning the shed and fence as far as the setbacks were concerned. He said that abutter's garage is 7' from the lot line and that he had no intention of trespassing onto her property or stockpiling any material behind the shed as the area is engulfed with poison ivy. Mr. Moniz said that placing the shed anywhere else on his property would require an expense as he would be required to bring in fill if placed in any other location. He said that he did not feel that the shed would affect her in any way as it would not be visible and it was not his plan of infringing on her property.

Mr. Virr asked if the shed could be reoriented for the 12' section could be placed the other way. Mr. Moniz said that he felt that the proposed placement was more esthetically pleasing.

Mr. Perkins asked when was the kennel removed and where was it placed. Mr. Moniz said that he removed the kennel 2 weeks ago as his dog had passed away and it was on the lot line.

Mr. Perkins asked Ms. Johnson if the garage which is a pre-existing structure that is located within 7' of the lot line burnt if it would be rebuilt and how often did she go behind the garage. Ms. Johnson said that she really did not go behind the garage as there was no reason to and that if it was destroyed that she would not rebuild the garage.

Mr. Carnevale asked if in the driveway shown over the lot line belonged to Ms. Johnson. Ms. Johnson said yes and that there was some discussion with Mr. Moniz in the possible purchase of the area.

Katherine Johnson, 32 Hillside Ave, said that she resides next to the proposed location of the shed and that it was proposed that it would not directly affect as it would not be visible and said that she had moved in in July and that the brambles in that area are in the process of being cleared and when they are that the shed would be directly visible to the property.

Mr. Carnevale motioned to go into deliberative session.

Seconded by Mrs. Hampton.

Vote: Unanimous.

Mr. Carnevale, Mrs. Hampton, Mr. Burgess, Mr. Perkins, Mr. Virr.

Deliberative Session

Mr. Perkins said that there was a personal conflict between abutters.

Mr. Virr said that if you drive around Town that it appears that 90% of sheds are located on property lines.

Mrs. Hampton said that she felt that the applicant could have dug up the driveway encroachment and appears to be neighborly in allowing it to remain there.

Mr. Virr said that the applicant needs to meet the 5 points of the criteria. He said that with regard to contrary use he felt it was hard to define on a shed. Spirit and Intent he said that he disagreed with language as is to protect from unsightly structures in setbacks but sheds are everywhere. Substantial justice he felt has been met as size of lot. He said that not here to force reorient and land has restrictions as applicant claims wet area. He said that it was the Board's position is to the allowance of a shed to be placed within 5' of the lot line.

Mr. Burgess said that he felt that the applicant does have room to meet the rear setback and the other neighbor is not concerned with the encroachment.

Mr. Virr said that the applicant stated that the proposed location was the best placement.

Mr. Carnevale asked if the property was serviced by septic or Town services. The applicant stated the property was on Town services.

Mr. Virr said that a condition be placed that it be subject to obtaining all permits and inspections.

Mr. Carnevale motioned to come out of deliberative session.

Seconded by Mrs. Hampton.

Vote: Unanimous.

Mr. Carnavale, Mrs. Hampton, Mr. Burgess, Mr. Perkins, Mr. Virr

Mr. Burgess motioned on case #13-104, Derek Moniz, to Grant a variance to the terms of Article VI, Section 165-45B.1.d.ii of the Derry Zoning Ordinance to allow the construction of a 240 sq. ft. shed less than 15 feet from the side and rear property lines. Parcel ID 29074, 16 Jefferson Street, Zoned MHDR as presented with the following conditions:

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

Seconded by Mr. Carnvale.

Vote:

Mr. Perkins: No. Direct abutter with conflict of interest.

Mr. Burgess: No. Feel that there are other options that could be achieved.

Mr. Carnvale: Yes.

Mrs. Hampton: Yes.

Mr. Virr: Yes.

The application was Granted by a vote of 3-2-0. 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.

The Board took a short recess and reconvened at 8:05pm

Variance to the terms of Article III, Section 165-9 of the Derry Zoning Ordinance to allow the subdivision of the property into 3 lots without frontage on a Town approved road. Parcel ID 08041-039, 35.5 Scenic Drive, Zoned MDR.

Louis Saab, Owner, said he was here with his son-in-law, who will assist is presenting his application. Shawn Sullivan, 16 Linlew Drive said that he was the applicant's son-in-law and read the application for the Board.

Mr. Saab said that he was quoted \$300,000 to build a road into the property which would nullify the need for a variance but the cost to build the road was substantial.

Mr. Virr asked how long was the proposed road. Mr. Saab said that the road was approximately 775' with a cul-de-sac of approximately 250' and was quoted \$300.00 per foot would be needed for road.

Mr. Perkins asked if the drawings that were submitted could be explained. Mr. Saab said that had several plans drawn in the past as was going to implement but the cost was too great.

Mr. Sullivan said that they were seeking to put in a driveway in and break out the lots with a shared driveway.

Mr. Perkins asked if the drawings show the lots. Mr. Saab said yes and that he had spoken with Mr. Mackey with regard to the installation of a driveway to serve the lots.

Mr. Perkins asked what was the width of the driveway. Mr. Saab said that he owns 50' on Scenic Drive that accesses the property and the requirement for a driveway was 12'.

Mr. Virr asked if the Fire Department had been contacted. Mr. Sullivan said that they have tried to contact the Fire Department but have not been able to reach at this time.

Mr. Burgess asked what type of driveway was being proposed. Mr. Sullivan said that it depended on cost but would have a good crushed gravel base.

Mr. Carnevale asked if it was the intent to build 3 homes on the property. Mr. Saab said that one would be built now then possibly 2 others for his other children.

Mr. Sullivan said that they were seeking a driveway into the property and then split the property for Mr. Saab's other children as due to cost of road construction is too costly at this time. Plan is for his children and not for outside sales.

Mr. Virr said that typically a right-of-way required frontage on a Town approved road and that there appears to be only 50' of frontage. Mr. Saab said that a driveway is only 20' and will not be a Town approved road but a driveway.

Mr. Sullivan said that they have met with Mr. Mackey and that the 50' area is size approved for a Town approved road but they were not seeking the installation of a road but only access for a driveway which only requires 12'.

There was some discussion with regard to usage and number of lots.

Favor

No one spoke in favor of the application.

Opposed

Steven Millette, 35 Scenic Drive, said that he owns a duplex next to the proposed area and have a young family with children on the left side that their yard area runs adjacent to the property in question. He said that he has concern with the property value changing if 3 single family homes were to be constructed behind as the yard where the children now play would be the rear area to where a driveway would be located which is unacceptable.

Mr. Virr said that it was hard to speculate the effect of what homes would do to property values. Mr. Millette said that his tenants have concerns for their children and are looking for another place to live to due to potential impact.

Mr. Carnevale asked what would he like seen done. Mr. Millette said would not want a road access next to his property.

Albert Dimmock, High Street, said that he felt that the question of a 50' frontage and creating 3 lots, legal lots or proposed and asking permission for the 3 lots would require Planning Board approval first. Mr. Virr said that first part requires a granted variance before bringing the proposal to the Planning Board.

Peter Mach, 31 Scenic Drive, said that he would like to see better plans of the proposal. Mr. Virr said issues of Planning Board approval would be made at a separate meeting where a full set of plans would be required to be submitted. He said that the property consists of 14 acres which is a large lot with 50' of frontage where 125' was required so needs variance before Planning Board approval.

Rebuttal

Mr. Saab said that he has spoken with John Verani for sale of property of which will implement a road and possibly more homes than what is being requested. He said that he is reluctant to sell and not a builder only seeking to provide homes for his family.

Mr. Perkins asked what was the cost to construct a road. Mr. Saab said that he was quoted \$235,000 and that Mr. Verani would propose a development with something through the power lines which would have a greater impact and there is a house for sale below that could be purchased that would allow further access to the property.

Mr. Burgess asked if there was property under the power lines. Mr. Saab said yes approximately 4 acres.

There was some discussion with future construction of road and possible usage of other area for more homes.

Mr. Carnevale motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Carnvale, Mrs. Hampton, Mr. Burgess, Mr. Perkins, Mr. Virr

Deliberative Session

Mr. Virr said that the request goes back to access to the lot and the applicant is seeking the allowance to create 3 lots on a 50' right-of-way. He said that he felt that future owners of the homes would seek aid from the Town to take over and pave and provide maintenance to the area. He said that the 125' frontage requirement was implemented to provide sufficient spacing of homes from each other. See continuously where the Town has ultimately become responsible for maintaining private roadways.

Mr. Burgess said that he believed that the Board would be setting precedence for future problems as later on someone other than family will purchase and then seek Town to approve the road for maintenance and paving so eventually would fall onto the Town of Derry to maintain and construct the road.

Mr. Perkins said that only time where he has seen something like this approved is where a parent has sought a variance for a shared driveway for 1 other house not 3. Feel very specific rules would be set forth if proceeded.

Mrs. Hampton said that she felt as a Real Estate Broker in another State, that the request was out of the Board's purview as Real Estate Law is Real Estate Law and felt that the Board did not have the rules and regulations as real estate professionals to make the best use decisions for this sub-division based upon our knowledge.

Mr. Virr said that the conditions on the motions should be as follows:

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

Mr. Virr motioned to go come out of deliberative session.

Seconded by Mr. Carnvale.

Vote: Unanimous.

Mr. Carnvale, Mrs. Hampton, Mr. Burgess, Mr. Perkins, Mr. Virr

Mr. Burgess motioned case #13-106, Louis Saab, to Grant a variance to the terms of Article III, Section 165-9 of the Derry Zoning Ordinance to allow the subdivision of the property into 3 lots without frontage on a Town approved road. Parcel ID 08041-039, 35.5 Scenic Drive, zoned MDR as presented with the following conditions:

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

Seconded by Mr. Perkins.

Vote:

Mrs. Hampton: No. Feel not enough frontage on a Town approved road.

Mr. Carnevale: No. No frontage and feel driveway would be an issue later on to the taxpayers.

Mr. Burgess: No. Feel frontage and driveway would be a future problem to the taxpayers.

Mr. Perkins: No. Inadequacy of design.

Mr. Virr: No. Do not feel it is in the public interest or intent of ordinance. The idea of frontage on a Town approved road is so not to be heavily impacted on one's neighbor.

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 March 7, as written.

Seconded by Mr. Carnevale.

Vote: Unanimous

Mr. Carnevale, Mrs. Hampton, Mr. Burgess, Mr. Perkins, Mr. Virr

Other Business

Mr. Virr said that Mr. Perkins has asked that the Board amend its Policy & Procedures with regard to the election of officers. He said that he felt that the initial draft of what is being requested is unclear and felt that it should be reviewed a bit more.

Mrs. Hampton said that during the previous meeting she was a bit lost and feels that it would be a benefit to the Board to have all members know what is happening before it is actually voted on. She said that during the voting she thought the initial part of the election was the installation of officers not the actual election and felt that the procedures need to be reviewed. She said that she would also feel that private voting by ballot would be a benefit.

Mr. Thompson said that he did not believe that private ballots were allowed under 91A.

Mr. Perkins said that the draft is a thought process. He said that he felt that the first step should be nominations to give all persons nominated a chance for consideration of position then go back through and poll the Board for a vote on who should be elected for what position. He said that he felt that an established procedure needed to be established.

There was some discussion on how the Board currently elected its officers.

Mr. Virr asked if this could be worked on a bit more and clarified.

Mr. Thompson said that he felt that it would be a good idea to table the matter to a later date. He offered to work with Mr. Perkins in order to revise and draft a policy and present it to the Board for review.

Mr. Virr motioned to table the amendment to the Policy & Procedures.

Seconded by Mr. Perkins.

Vote: Unanimous.

Mr. Thompson, Mr. Carnevale, Mrs. Hampton, Mr. Burgess, Mr. Perkins, Mr. Virr.

Adjourn

Mr. Carnevale motioned to adjourn.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Thompson, Mr. Carnevale, Mrs. Hampton, Mr. Burgess, Mr. Perkins, Mr. Virr

Adjourn at 9:15 pm

Minutes transcribed by:
Ginny Rioux
Recording Clerk

Approval of Minutes on June 6, 2013

Mrs. Hampton motioned to approve the minutes of May 16, 2013 as amended.

Seconded by Mr. Mr. Carnevale.

Vote: Unanimous

Mr. Carnevale, Mrs. Hampton, Mr. Burgess, Mr. Perkins, Mr. Virr