

**TOWN OF DERRY  
ZONING BOARD OF ADJUSTMENT MINUTES  
February 19, 2015**

**Members Present**

Lynn Perkins, Chairman  
Allan Virr, Vice Chairman  
Donald Burgess, Secretary  
Teresa Hampton  
Heather Evans

**Members Absent**

**Alternates Present**

Stephen Coppolo  
Katherine Prudhomme-O'Brien  
Dana Nauzers

**Alternates Absent**

Michael Demeo  
Daniel Taylor

Mr. Perkins 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.

The Board introduced themselves for the record.

**15-101          Philip Clater**

**Applicant is requesting a Variance to the terms of Article III, Section 165-25.e of the Town of Derry Zoning Ordinance to construct an accessory apartment greater than 600 square feet, 5 Boyd Road, Parcel ID 32102, Zoned MHDR**

Philip Clater, owner, read his application request and letter of explanation for the Board. He said that he was here with his builder that could assist with answering any questions that the Board may have with regard to his application.

**Board Questions**

Mrs. Evans asked if the existing driveway was adequate for the additional living space. Mr. Clater said that his proposal is to add another driveway to the property for his in-laws.

Mrs. Evans asked if the property was serviced by Town sewer or on its own septic. Mr. Clater said he had Town sewer and water.

Mrs. Hampton asked if the new entrance would be located on the right side of the home. Mr. Clater explained his drawings that he submitted to the Board with regard to his proposal.

Mr. Virr asked when the project was completed the only thing different that would be seen would be an additional driveway and walkway. Mr. Clater said yes.

Mr. Coppolo asked Mr. Mackey if the accessory use was not just limited to relatives. Mr. Mackey said that was correct.

Mr. Coppolo said that he was concerned with future possible sale and the already burdened school system. He said that the area is tightly packed and that the applicant has the right for a 600 square foot accessory unit and that 975 square feet is more than half of the allowed use but the applicant has an understandable endeavor. Mr. Clater said that he has no thoughts of selling his home.

Mr. Perkins said that the area in which the home is currently located allows multi-family dwellings.

Mr. Burgess asked Mr. Mackey if the applicant has to return to the Board for the right to rent the property. Mr. Mackey said no as the ordinance states it as an accessory use and not restricting it to just in-law. He reviewed the ordinance for the Board.

### **Code Enforcement**

Mr. Mackey said that the applicant is requesting approval to construct a 975 sq. ft. accessory apartment in the basement level of the existing home. Currently, the maximum living area permitted for an accessory apartment is 600 sq. ft. The lot is located in the Medium High Density Residential Zone (MHDR) which permits accessory apartments as well as two-family dwellings. As the property cannot meet the lot requirements for a 2-family dwelling, the applicant is seeking relief from the size restriction for accessory apartments. The applicant is proposing to meet the other requirements for the installation of the accessory apartment and only 1 bedroom allowed. If approved, appropriate permits and inspections must be obtained from the Code Enforcement Office. A driveway permit & approval will need to be obtained from the Derry Public Works Office. There are pictures of the property in the file for review by the Board.

Mr. Perkins asked if the condition for a driveway permit be listed as a requirement. Mr. Mackey said it could but it would be required anyway.

Mr. Burgess asked if there were any State requirements. Mr. Mackey said no.

Mr. Coppolo asked if made a conscious choice of accessory vs duplex. Mr. Coppolo said that he only thought of the accessory use until Mr. Mackey had informed him that a multi-family was allowable but is comfortable with just the accessory use.

Mr. Perkins asked if a condition of no duplex be allowed. Mr. Mackey said that the applicant would require a variance to turn the property into a duplex as he did not have the required lot size. Mr. Mackey reviewed the requirements for the Board.

Mr. Coppolo asked if in the future if condensing could be allowed. Mr. Mackey said that under the accessory guidelines have restrictions and condensing is not allowed.

Mr. Burgess asked if water and sewer permits are separate and need to be made as part of the conditions. Mr. Mackey said they will follow up under general permits and inspections.

### **Favor**

No one spoke in favor of the application.

### **Opposed**

No one spoke in opposition of the application.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mr. Virr

Vote: Unanimous.

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

### **Deliberative Session**

Mr. Virr said that he felt that there would be no noticeable difference to the home other than the additional driveway. Feel condition of obtaining all Town permits and inspections is all that would be necessary.

Mr. Perkins said that the existing home fits into the existing neighborhood and there would be no effect on surrounding properties. The only item that it does not fit is meeting the current zoning restrictions with the allowed size for accessory of which they are seeking a variance.

Mr. Burgess said that the only condition that he has noted for the motion is to obtain all Town permits and inspections.

Mrs. Burgess motioned to come out of deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

**Mrs. Burgess motioned on case #15-101, Philip Clater to Grant a Variance to the terms of Article III, Section 165-25.e of the Town of Derry Zoning Ordinance to construct an accessory apartment greater than 600 square feet, 5 Boyd Road, Parcel ID 32102, Zoned MHDR as presented with the following conditions:**

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

Seconded by Mrs. Hampton.

**Vote:**

**Mrs. Hampton: Yes.**

**Mr. Burgess: Yes.**

**Mr. Virr: 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.**

Mr. Perkins informed the Board that the following case is requesting a rehearing.

**15-100            Promised Land Survey, LLC  
                    Owner: New Wave Diversified, LLC**

**Request for Re-Hearing to Variance to the terms of Article VI, Section 165-47.B.2 & 3 of the Town of Derry Zoning Ordinance to allow the subdivision of the existing property to create a new building lot with less than the required frontage and lot width at 154 Hampstead Road, Parcel ID 09081, Zoned LMDR**

Mr. Perkins asked if everyone had read the letter from Attorney Cronin and if not to take a few moments to review.

There was some discussion with regard to the Boards procedure in hearing the case and not articulating clearly their reasons for denial.

Mr. Coppolo said that he has reviewed the letter from Attorney Cronin and personally feel seeking to hold the Board to case law and how to operate. Attorney Cronin's letter is good and if Board is considerable would like to have Town Council review.

Mrs. Hampton said that feel it is always good practice to do our best and feel that the Board did their best.

Mrs. Evans said that she appreciated the updated plans and agree that the procedures and vagueness of the Board's reason for denial were not clear but also do not see any new evidence pertaining to hardship.

Mr. Perkins said he agreed as defining hardship was not articulated well. He does feel that a person purchasing a property knows what they are purchasing and should have done research prior to purchase. Mr. Perkins said that the spirit is tied in with ordinance and do not agree with Attorney Cronin as feel his vote was conveyed clearly. As for any new information as applicant could put in a road instead of common driveway is that warrant rehearing.

Mr. Virr motioned to go into deliberative session.

Seconded by Mrs. Hampton.

Vote: Unanimous.

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

### **Deliberative Session**

Mr. Virr said that it does appear that the Board could have done better with articulating its reasons for denial but the owner should have known property as it was subdivided in 2006. He feels however the applicant should be granted a rehearing as there are several areas identified by Attorney Cronin that the Board should rehear.

Mr. Burgess said that he felt it was beyond the scope of the ordinance and did not feel granting would be in the spirit and intent of the ordinance as need 150' of frontage and 54' is just not enough.

Mr. Virr said that is the full intent of the applicant's request as they are seeking relief from the frontage requirement. The Board needs to establish if reasonable evidence has been provided to grant a rehearing.

There was some discussion with regard to the applicant's possibility of installing a road to access the property.

Mrs. Evans said that she was still stuck on the hardship as the applicant already purchased the property with an existing home. Do feel after reading information with regards to a road and having the updated plans may warrant a rehearing.

Mrs. Burgess motioned to come out of deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

**Mr. Virr motioned to Grant Re-Hearing to case #15-100, Promised Land Survey, LLC, Owner: New Wave Diversified, LLC to Variance to the terms of Article VI, Section 165-47.B.2 & 3 of the Town of Derry Zoning Ordinance to allow the subdivision of the existing property to create a new building lot with less than the required frontage and lot width at 154 Hampstead Road, Parcel ID 09081, Zoned LMDR.**

Seconded by Mr. Burgess.

**Mr. Perkins informed the Board that a yes vote will grant a rehearing.**

Vote:

**Mrs. Hampton: Yes.**

**Mr. Virr: Yes.**

**Mrs. Evans: Yes.**

**Mr. Burgess: No. Feel that got right the first time as 54' is insufficient frontage.**

**Mr. Perkins: Yes.**

**The Request for Re-Hearing 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.**

### **Other Business**

Mr. Virr read page 9 item number 4 as follows to be considered as the second reading to change the existing Policy & Procedures:

4. The Board shall decide all cases within thirty (30) days of the close of the public hearing, provided all evidence has been submitted to the satisfaction of the Board. All findings of the Board shall be in the form of a motion. The decision shall be made on a form provided by the Board and shall be sent to the applicant and building inspector. The written decision of the Board shall be placed on file and made available for public inspection within 5 business days after the decision is made.

Mr. Virr said that it would be changing the section which currently reads 72 hours to 5 business days.

Mr. Virr motioned to approve the changes to the Policy and Procedures.

Seconded by Mr. Burgess.

Vote: Unanimous.

Ms. Nauzers, Mrs. Prudhomme-O'Brien, Mr. Coppolo, Mrs. Evans, Mrs. Hampton, Mr. Burgess, Mr. Virr, Mr. Perkins

Mr. Perkins said that a letter has gone to the Planning Board with regard to the changes to the Zoning Ordinance regarding the deletion of item #10 on the Exception Request regarding covenants.

Mr. Mackey said that there is a workshop scheduled for March 4, 2015 and that the home occupation is listed in 3 areas of the Zoning Ordinance. The first steps are that it has to go to the Planning Board for a workshop then a Public Hearing. He said that anyone is welcome to attend the workshop.

Mr. Perkins noted that it is that time of year again where Member and Alternate Memberships expire and if you are one of those people and wish to continue with the Board you need to fill out your intent and get it back in to the for Council to review and approve reappointment.

Mr. Virr said that Councilor Albert Dimmock was scheduled for a procedure and wished him a safe and speedy recovery.

### **Approval of Minutes**

Mr. Burgess motioned to approve the minutes of January 15, 2015 as amended.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

### **Adjourn**

Mr. Burgess motioned to adjourn.

Seconded by Mrs. Evans.

Vote: Unanimous.

Ms. Nauzers, Mrs. Prudhomme-O'Brien, Mr. Coppolo, Mrs. Evans, Mrs. Hampton, Mr. Burgess, Mr. Virr, Mr. Perkins

Adjourn at 8:00 pm

Minutes transcribed by:  
Ginny Rioux  
Recording Clerk

**Approval of Minutes March 5, 2015**

Mr. Perkins motioned to approve the minutes of February 19, 2015.

Seconded by Mr. Virr

Vote: Unanimous.

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