

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
March 5, 2015

Members Present

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

Members Absent

Alternates Present

Stephen Coppolo
Dana Nauerz

Alternates Absent

Katherine Prudhomme-O'Brien
Michael Demeo
Daniel Taylor

Mr. Perkins called the meeting to order at 7:03 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.

15-103 Meisner Brem Corporation
Owner: Craig & Snow Bonneau

Applicant is requesting a Variance to the terms of Article VI, Section 165-48B.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 20 Gulf Road, Parcel ID 04061, Zoned LDR

Robert Balquist, employee of Meisner Brem Corporation said that he was representing the applicants Craig & Snow Bonneau. Mr. Balquist read request for the record and stated that the owners wished to be granted a variance in order to create a new building lot with less than the required frontage in the Low Density Residential zone. He said that he felt that the ordinance was created in order to prevent overcrowding. Mr. Balquist explained that the proposal was to create a 6.5 acre lot in which the home would be located approximately 600 feet from the road and approximately 500 feet from any other dwelling.

Board Questions

Mr. Virr asked what will be the frontage for the existing lot. Mr. Balquist said that the total frontage is 204 feet of frontage.

Mrs. Evans asked if the frontage proposed was 116 feet. Mr. Balquist said yes.

Mr. Perkins asked why there were two plans. Mr. Balquist said the 2009 plan is the one that shows the property as it was proposed of which is now constructed the second plan shows the proposed subdivision of the property.

Mr. Coppolo asked if the lot was a wooded lot with a long driveway and if the structure would be visible from the street. Mr. Balquist said that the property was wooded and the proposed home would not be visible from the street.

Mrs. Hampton asked if there could be any concern for fire or police issued locating the property in the event of an emergency. Mr. Balquist said that the question was of a Planning Board matter and would be dealt with at the subdivision level.

Mr. Perkins asked Mr. Mackey if this was the same property that had come before them for the in-home bakery. Mr. Mackey said yes.

Mr. Virr said that he felt that the property being five to six hundred feet from the road would be no concern of congestion issues.

Mr. Coppolo asked if a review of traffic on Gulf Road had any concerns with possible subdivision and if there had been any accidents in that area. Mr. Balquist said that the proposed plan does meet the Public Works site distance requirements but unaware of any accidents in the area.

Code Enforcement

Mr. Mackey said that the applicant is requesting a variance to allow the subdivision of the existing 11.74 parcel into 2 lots. The new building lot will contain 6.55 acres and have 116.59 feet of frontage. The remaining lot, which has an existing single family dwelling, will meet the district requirements. The property is located in the Low Density Residential Zoning District (LDR) which requires 3 acres per lot and 200 feet of frontage and lot width. The new lot is proposed to be serviced by a private well and septic system. If approved, Planning Board subdivision approval will be required and the proposed driveway must meet the requirements for site distance and be certified by the surveyor/engineer. There are pictures of the property in the file for review by the Board.

Mr. Perkins asked if the property would require automatic sprinkler system. Mr. Mackey said yes and that the Planning Board and Fire Departments would need to sign off before an occupancy permit would be issued.

Favor

Kalicharan Vinay Durgampudi, 24 Gulf Road, said that he wanted to know his rights as far as the proposed driveway was concerned as the area was not as wooded as the Board may think. He said his driveway was very close to the lot line and if they cut down trees to install the proposed driveway it was a major concern of his as he felt it would impact his property as it appears to be very close to lot line.

Mr. Virr asked how far was his driveway from property line. Mr. Durgampudi said that his driveway was next to the lot line.

Mr. Coppolo asked Mr. Mackey if it appears that the proposed driveway is 5-10' from lot line. Mr. Mackey said that the plan at the 35' setback line being 92' wide shows centered driveway.

Mr. Burgess said that it appears that the existing driveway for 24 Gulf Road appears to be 15' from the lot line and the proposed driveway looks to be approximately 40' to the lot line if it was a standard 12' driveway.

Mr. Perkins said that there appeared to be 92' of frontage. Mr. Mackey said at the flare portion of the proposed lot the frontage would be 116.59'.

Mr. Virr asked what the width of a road would be required. Mr. Mackey said that a road was required to be 50' right-of-way with 24' of pavement. In theory they could install a road but it would not be economical.

Mr. Coppolo said that this is the first step for the applicant as they require a variance for insufficient frontage and if the Board grants their request then they still need to go before the Planning Board for subdivision approval where concerns of location of driveway and buffers could be addressed.

Opposed

Donald Kirkland, 18 Gulf Road, said that he had served on the Zoning Board for 12 years and that a variance is permanent and that this is a self-created hardship. Mr. Kirkland explained to the Board that the applicant was aware of what he had purchased originally as he had tried to convince him that the wall was installed wrong and wanted to persuade him to straighten it. The applicant built his home and then subdivided it and now here to seek a variance for a third lot. The street is zoned LDR and requires 200' frontage per lot and he is seeking approval for a lot with 70 percent less than the required frontage. There are properties along Gulf Road that currently that do not conform to today's requirements but they were pre-zoning change. Mr. Kirkland said that his son recently built a home and has adhered to zoning requirements and do not feel fair to allow this request as it is a self-created hardship.

There was some discussion with regard to frontage.

Rebuttal

Mr. Balquist said that the proposed driveway was not etched in stone and may be moved.

Mr. Burgess asked if there were plans of removing the trees. Mr. Balquist said that they were going to try to leave as much as possible.

Mr. Perkins said that the existing lot was not measures at immediate frontage. Mr. Balquist said that the variance speaks to two items and explained in the letter of intent dated February 3, 2015.

Mr. Mackey said that Article 165-48B.2 & 3 does speak to frontage and lot width.

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 it was a simple analysis as a driveway only requires 12' or have a road installed of 50' with two houses as there is 17 acres with sufficient amount of frontage for a road to be installed.

Mr. Burgess said that the lot currently consisted of 11 acres of which proposing 1 lot to have 5.19 acres and the other to have 6.55. He asked when the LDR zoning became effective.

Mr. Mackey said that the Low Density Zoning was created in 1997.

Mrs. Hampton said that she did not feel that there would be overcrowding of having a 6 acre lot with one house and do feel however need to protect abutter with a tree buffer if possible.

Mr. Burgess said that he was concerned of abutter with the regard to the location of the driveway and may want to establish a condition that the driveway be located away from property line and a sufficient vegetation buffer requirement be made.

Mrs. Evans said that she agreed with Mrs. Hampton as the area is very rural and that the applicant purchased in 2001 that it didn't appear trying to maximize profit off it. She asked if it would be possible to further subdivide the property.

Mr. Virr said that the property could possibly get 2-3 lots if they installed a road.

Mr. Burgess reviewed the conditions as follows:

1. Subject to obtaining all Town & State permits and inspections.
2. Subject to Planning Board approval.
3. Recommend to Planning Board to keep vegetation at a maximum.

Mr. Virr motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Mrs. Burgess motioned on case 15-103, Meisner Brem Corporation Owner: Craig and Snow Bonneau to Grant a Variance to the terms of Article VI, Section 165-48B.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 20 Gulf Road, Parcel ID 04061, Zoned LDR as presented with the following conditions:

1. Subject to obtaining all Town & State permits and inspections.
2. Subject to Planning Board approval.
3. Recommend to Planning Board to keep vegetation at a maximum.

Seconded by Mr. Virr.

Vote:

Mrs. Hampton: Yes.

Mrs. Evans: Yes.

Mr. Burgess: Yes.

Mr. Virr: 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.

The Board took a short recess and reconvened at 8:03 pm.

Mr. Perkins informed the Board that the following case was a joint meeting with the Planning Board and Conservation Commission.

Planning Board

John O'Connor
Mark Flattes
Robert Jean

Conservation Commission

Margaret Ives
James Arruda
Paul Dionne

**15-104 The Valentine Group
Owner: Kachanian Two Realty Trust**

Applicant is requesting a Special Exception as provided in Article VIII, Section 165-67 of the Town of Derry Zoning Ordinance to allow the operation of a powder coating business in the Groundwater Resource Conservation District (GRCD). This requires a joint hearing of the Zoning Board of Adjustment, Planning Board and Conservation Commission. 8 Tinkham Avenue, Parcel ID 35015-011, Zoned Industrial IV

Ralph Valentine, The Valentine Group said he was here representing the applicant Ray Laplume of Tayna Finishes.

Mr. LaPlume was also present and informed the Board that Mr. Valentine could speak on his behalf.

Code Enforcement

Mr. Mackey said that the applicant is seeking a Special Exception as provided in Article VIII, Section 165-67 of the Derry Zoning Ordinance because of the nature the business (painting/powder coating) and the fact that the property is located in the Ground Water Conservation District (GRCD). The proposed use is allowed in the Industrial IV Zoning District. The hearing requires attendance of the Planning Board and Conservation Commission to offer advice & comment to the Board. In order to be granted, the Board must find that the four criteria under Section 165-67B have been satisfied (see attached section of the Zoning Ordinance). The proposed business (N.E. Tanya Finishes, Inc.) was previously located at 35 Maple Street but was displaced when the building was destroyed by fire last September. A Technical Review Committee (TRC) Meeting was held on February 27, 2015 with the business owner's agent (Ralph Valentine). At that time, there were several environmental/operating issues raised that will need to be addressed to the satisfaction of the Town Staff should the Board grant the request and prior to the operation of the business. There are pictures of the property in the file for review by the Board.

Mr. Valentine reviewed criteria for the Board and said that he had attended a Technical Review meeting on February 27, 2015 and that Craig Durrett, Derry's Environmental Coordinator had provided him with two pages of comments and also James Kersten,

Derry's Fire Prevention had also provided him with one page of comments. Mr. Valentine said that he had copies for the Board if they wished to review and that Mr. Laplume was prepared to meet the suggested criteria.

Mr. Valentine reviewed some of the suggested recommendations for the Board such as sprinkler requirements and location of hazardous waste and containment. He said that there will be spill dyke kits kept at the loading dock and one at the fire cabinet of which will also have spill barriers around the cabinet. He said that Mr. Durrett was concerned that Fire Department be made aware of the floor layout and that the Water Department have access for testing measures if required. Mr. Valentine reviewed the TRC recommendations for the Board.

Board Questions

Mrs. Ives said that she would like to review Craig Durrett's comments and answers. Mr. Valentine said that they we provided with Craig Durrett's recommendations at the TRC meeting and did not have the answers to the comments that Mr. Durrett had made but do have now and can summarize the responses at this time.

Ms. Ives asked if there would be training for the staff for solvent spills. Mr. Laplume said there was no special training but the manager on site will be trained and do have meetings if something new comes in.

There was some discussion with regard to Craig Durrett's recommendations and how will be implementing.

John O'Connor, Derry Planning Board, explained the designation outline of the aquifer in the area for the Board. He explained that MS4 is mandated by the EPA and that most southern areas are being closely watched for MS4 contamination. He said that if Craig Durrett has reviewed the applicant's proposal at the TRC and is comfortable with their responses to his concerns then he felt that a condition should be made that the applicant adheres to the recommendations made by Craig Durrett. Mr. O'Connor asked if there were any issues from fire that needed to be addressed. Mr. Valentine said that the only issues over the years that Mr. Laplume had had at his previous location was not reporting in a timely fashion of which Mr. Durrett noted that paperwork was not an issue as were not spill related.

Mark Flattes, Derry Planning Board, asked if venting of spray booths would allow for any release of dry chemical particles to be omitted. Mr. Laplume said powder will not get sucked out to vent outside as go through filters. Mr. Laplume explained how his duck work exhaust system worked.

Robert Jean, Derry Planning Board, said he was concerned with the powder coating as it may contain lead or mercury. Mr. Laplume said that the boxes state zero chemical hazards.

Ms. Ives said she was concerned how the applicant would handle a spill situation. Mr. Valentine said that the applicant would utilize a spill dyke kit which would be readily

available if it were ever needed. Mr. Valentine explained what the kits consisted of for the Board.

Mr. Coppolo said that it appears that the building is currently close to the lot line. Mr. Mackey said that the existing structure was built in the 1970's and location does not prevent structure from being occupied.

There was some discussion with regard to "Pig Mats" and their containment factors.

Favor

No one spoke in favor of the application.

Opposed

No one spoke in opposition of the application.

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. Perkins said that the Board needs to review the 4 criteria and take into consideration the concerns from Planning Board and Conservation Commission members when crafting the motion.

Mr. Valentine said that he has made copies of Craig Durrett's recommendations available for the Board if he could present them.

Mr. Laplume said he wishes to stay located in Derry and will do what is requested of the Board.

Mr. Perkins asked if the Board was acceptable to receiving Craig Durrett's recommendation as written findings.

Mr. Perkins motioned to accept additional criteria being submitted from Mr. Valentine.

Seconded by Mr. Virr.

Vote: Unanimous

Mr. Perkins reviewed the following 4 criteria and responses as follows:

1. Detrimental effect – written documentation and testimony by Mr. Laplume.
2. Not cause significant reduction in long-term volume of water contained in aquifer – favor Mr. Durrett’s recommendations.
3. No discharge of wastewater on site – favor of Mr. Durrett’s recommendations.
4. Proposal complies with all other applicable sections – written documentation and testimony from applicant.

Mr. Flattes said he would also like parking to be addressed as outlined by Elizabeth Robidoux during the TRC meeting as part of a condition.

Mr. Valentine said that Ms. Robidoux recommendation will be addressed and will have proper parking.

Mr. Virr motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Mr. Burgess motioned on case #15-104, The Valentine Group, Owner: Kachanian Two Realty Trust to Grant a Special Exception as provided in Article VIII, Section 165-67 of the Town of Derry Zoning Ordinance to allow the operation of a powder coating business in the Groundwater Resource Conservation District (GRCD). This requires a joint hearing of the Zoning Board of Adjustment, Planning Board and Conservation Commission. 8 Tinkham Avenue, Parcel ID 35015-011, Zoned Industrial IV as presented with the following conditions:

- 1. Subject to all State & Town permits and inspections.**
- 2. Response to written comments from Craig Durrett, Derry Environmental Coordinator (attached).**
- 3. Change of use subject to occupancy permit being issued.**
- 4. Written document of Policy & Procedures manual to be developed for safety handling.**

Seconded by Mr. Virr.

Vote:

Mr. Virr: Yes.

Mr. Burgess: Yes.

Mrs. Evans: Yes.

Mrs. Hampton: No. Because it is located in the Groundwater Resource Conservation District.

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.

Approval of Minutes

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

Seconded by Mr. Virr.

Vote: Unanimous.

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

Other Business

Mr. Perkins informed the Board that the annual OEP meetings were starting to get underway and everyone should have a copy of the registration form. If planning on attending please return completed form back to Code Enforcement Office by the first week in April.

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 9:37 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes March 19, 2015

Mrs. Hampton motioned to approve the minutes of March 5, 2015 as written.

Seconded by Mrs. Evans

Vote: Unanimous.

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