

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
March 19, 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
Katherine Prudhomme-O'Brien

Alternates Absent

Michael Demeo
Daniel Taylor

Mr. Perkins called the meeting to order at 7:02 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.

It was noted for the record that Mrs. Hampton stepped down from the following case and that Mrs. Prudhomme-O'Brien would sit.

**15-105 Shawn Moreau
Owner: Cecelia Deschambault and Frances Sidley**

The applicant is requesting a Special Exception as provided in Article VI, Section 165-45D of the Town of Derry Zoning Ordinance to allow an in home office for a trucking business and the parking of a tractor trailer type truck on the property at 60 Fordway, Zoned MHDR, Parcel ID 24011

Shawn Moreau, owner, said that he had purchased the property two weeks ago and had informed the office that he was in the process of purchasing the property at the time the application was filed. Mr. Moreau read his application for the record. He said that he did not feel that he was breaking any laws and said that he is not running a business from his home and is only seeking to be allowed to park his truck on the property. Mr. Moreau said that the road is very busy and has commercial vehicles that travel the road daily and he did not feel he was breaking any laws with bringing his truck home. He said he owns two diesel trucks and feels that the F250 Lariat was louder than his work truck. Mr.

Moreau said that his vehicles have passed inspection and are registered. The large truck is 15' and the trailer is 20' and passes all Federal guidelines and inspections. Mr. Moreau said that he works in Boston Monday-Friday and typically starts his truck approximately fifteen minutes before he leaves in the morning and does not return home until 5-7pm at night. He said that as far as noise his truck did have a problem a few weeks ago and has since been repaired. Mr. Moreau said that the application he had to fill out did not apply to him as he was not operating a business from his home but told he had to fill out this form and answer the questions and does not have any type of office in his home.

Board Questions

Mr. Perkins said that the form is set up in one format and what you're explaining is that you were forced to set up an in home office. Mr. Moreau said yes and that he does not need an office that he only needs to park his truck which is how he gets to work to pay his bills.

Mrs. Evans asked if the truck has been parked there since August of 2014. Mr. Moreau said no he started parking it there in September when he moved there as he formally resided in a mobile home park down the street and could not park the truck there.

Mr. Coppolo asked if the neighboring properties could see the truck and if he was the. Mr. Moreau said that there was a 300 unit complex that was built across the street.

Mr. Coppolo asked if he was sole proprietor and a federal employee. Mr. Moreau said yes. he was the sole proprietor and is cleared through customs and has a Mass port ID. He said there was no other business being operated from the property only a truck parked in the driveway.

Mr. Burgess asked Mr. Mackey if commercial was not allowed in residential areas. Mr. Mackey said that there is nothing specific in the regulations and boils down to what is considered a normal accessory use and that did not feel that a truck with a trailer was a normal accessory.

There was some discussion with other similar vehicles in the area.

Mr. Coppolo asked Mr. Mackey if an RV was considered an accessory use. Mr. Mackey said if just parked typically a boat, RV, car can be parked and stored on the property but have had occasions where have had people reside in RV's that we have had to inform that an occupancy type use was not allowed.

Mr. Virr asked if the truck was 22' long and an additional 20' chassis. Mr. Moreau said yes.

Mr. Virr asked what was typically hauled and if anything was ever brought home. Mr. Moreau said he typically hauls sealed containers and does not generally know what is inside of them. He said that he has on occasion brought a container home but 9 times out of 10 he has an empty trailer.

Mr. Virr asked how old was the diesel truck. Mr. Moreau said it was a 2007 and pickup is a 2008 that they were new to him.

Mr. Perkins said that during initial statement it sounded as if the truck was brand new. Mr. Moreau said he didn't mean to sound deceitful to the Board but the trucks are new to him as he recently purchased the pickup and that the larger one he purchased new in 2007.

Mr. Burgess said that he understood about noise as he has a 1996 diesel F-350 and it is sometimes noisy and stinky.

Ms. Nauzers asked if he was a civilian W2 employee and how was the truck registered. Mr. Moreau said he receives a 1099C and that the truck was registered to him.

Ms. Nauzers said that he does have a business from home as she was a CPA Accountant and if applicant receives 1099C and files taxes they are operating a business.

There was some discussion with regard to self-employment and what may or may not be brought home in the trailer.

Mrs. Prudhomme-O'Brien said that the garage seemed larger than the average type and asked if the truck could be parked inside. Mr. Moreau said that the garage is 3-car and only single story. He said his truck was 12'6" and also has a stack so would not be able to park the truck inside.

Mrs. Prudhomme-O'Brien asked if the garage could be modified to accommodate the truck. Mr. Moreau said that could if given time but not today but it would be an added expense.

Mrs. Prudhomme-O'Brien asked if he had lived in the home for 3 years. Mr. Moreau said no that he just moved there in August 2014.

Code Enforcement

Mr. Mackey said the applicant is requesting approval to operate a trucking business from the residence which would include an office and the overnight parking of a 40' tractor/trailer rig in the driveway. The applicant was requested to apply for the Special Exception as it was determined that the parking of a tractor-trailer rig in a residential area is not a normal accessory use of a single family dwelling and, therefore, would not be permitted without zoning approval. This situation was brought to the attention of this office by a couple of residents of Bunker Estates that complained about the noise and sight of the truck. There are pictures of the property in the file for review by the Board.

Mr. Moreau said that he has lived in Derry for the past several years and have owned 4 properties that he has fixed up and always have obtained all permits and inspections and that he still own two of the four properties. He said that he has never tried to pull any

shenanigans and only seeking to be able to park his truck on his property so he could be able to go to work every day.

Favor

Richard Murphy, 2 Pinehurst Ave, said that he directly abuts the applicant as they share 150' lot line. He said that he originally had concerns when the truck was parked along Edgemont Street as it was blocking part of his driveway as Edgemont Street is very small street. Mr. Murphy said that since he relocated the truck into the driveway he has no objection and does not hear much noise as the truck is not that loud.

Opposed

John Moore, 65 Fordway, Chairman of Bunker Estates Condo Association, said that they never received any official notification as required by statute. He said that he found out there was a meeting tonight via the newspaper and website but as a direct abutter to the property they were supposed to be legally noticed via certified mail. He supplied his mailing address for the record.

Mr. Mackey said that the tax assessor records still lists JMJ as owner will need to be updated.

Mr. Coppolo asked when was the condo conversion made. Mr. Moore said that the association was established in December 2010 over the properties but not the townhouses. They have notified Police/Fire/Town Planner and they are on record as did have issues with regards to fencing and received notification due to that matter.

Mr. Perkins said that the Board could not proceed with this case due to improper notification and would entertain a motion to continue.

Mr. Virr motioned to Continue case #15-105 Shawn Moreau Owner: Cecelia Deschambault and Frances Sidley until the next available meeting.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mrs. Prudhomme-O'Brien, Mrs. Evans, Mr. Burgess, Mr. Virr, Mr. Perkins

The application was Continued to the next available meeting and new notices will be sent to abutters.

Mr. Moreau said that he did not understand the improper notification status as Mrs. Sidley was noticed and she no longer owns the property.

Mr. Virr said that unfortunately the Board could not proceed hearing the case as it was improperly notified and will re-notify all abutters and rehear case at the next available meeting.

There was some discussion of association notification requirements.
The Board took a short recess and reconvened at 8:03 pm.

15-106 Justin Arpino

The applicant is requesting a Special Exception as provided in Article VI, Section 165-46B of the Town of Derry Zoning Ordinance to allow the operation of a garage door installation business from the residence at 2 Heritage Lane, Zoned MDR, Parcel ID 11027-001

Justin Arpino, owner, read his application for the record. Mr. Arpino said that he was only seeking a small office in the home where his wife takes care of the record keeping and that he would like to utilize a portion of his garage for storage of supplies.

Board Questions

Mr. Coppolo asked if counting in the twenty five percent included the garage. Mr. Arpino said no as his home was 3,300 square feet and that he was allowed 824 square feet of which only utilizing a third and did not include the garage in his calculations.

Mr. Virr asked if would be keeping stock in the garage and how that would arrive. Mr. Arpino said that he would be keeping some stock in his garage of which he picks up from the manufacturer and does occasionally have a UPS delivery but no large trucks would be bringing in supplies.

Mr. Virr asked if he was a subcontractor for Sears. Mr. Arpino said yes and that he works at customer's homes no one comes to his residence.

Mrs. Hampton asked how many times a week would he be coming in and out with doors. Mr. Arpino said that he leaves his home in the morning and comes home in the evening. He has two trucks but only utilizing one.

Mr. Coppolo asked if there would be any manufacturing/industrial installation type being performed in garage. Mr. Arpino said no.

Mrs. Prudhomme-O'Brien asked if there would be any different noises vs the average when unloading material. Mr. Arpino said no.

Mr. Perkins asked if he could describe his daily routine. Mr. Arpino said that he typically loads his truck around 7am and leaves and returns home later that evening.

Mr. Burgess said that the doors are already manufactured and only required to be picked up and installed at customer's property using various drills etc. Mr. Arpino said yes.

Ms. Nauzers asked if a customer orders are performed at their location if there would still be a mass storage in the garage. Mr. Arpino said that he does have some stock in storage in his garage but still able to park his car inside.

Favor

Wendy Dorval, 29 Emerald Drive, said that she had a concern with drilling noise and banging. She said that she understands that Mr. Arpino just started his business and as long as he keeps the noise down she does not have an issue with his proposal.

Opposed

No one spoke in opposition of the application.

Mr. Burgess explained the process of how a typical garage door was installed.

Code Enforcement

Mr. Mackey said the applicant is requesting approval to operate a garage door business from the residence which will include an office inside the home and the use of the garage for storage of materials related to the business. The applicant is not proposing to have customers at the residence although there is a long driveway access that could fit several vehicles. No showroom is being proposed. It is unclear if a sign is being requested. If yes, then a sign permit will be required if the business is approved. There are pictures of the property in the file for review by the Board.

Mr. Virr said that a motion to include a sign so applicant would not need to come back to the Board if decide later that he would like to have one.

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. Burgess said that it was a typical home office and that he may have some storage in the garage but it would be inside. He said that he has installed garage doors on his own property and they typically come in a large box with hardware and there was not much noise.

Mr. Virr said that in terms of the application there was no question with criteria as no noise etc. and answers to questions were appropriate.

Albert Dimmock, High Street, called point of order, and questioned why applicant was still sitting at podium while in deliberative session as they are unable to speak.

Mr. Perkins advised applicant that he could not speak during the deliberative session.

Mr. Burgess said that he did not have any conditions other than as presented.

Mrs. Hampton motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Mr. Virr asked the applicant that if there was a possibility of having a sign as if don't request today will need to reapply. Mr. Arpino said he was fine with no sign.

Mr. Burgess motioned on case #15-106 Justin Arpino to Grant a Special Exception as provided in Article VI, Section 165-46B of the Town of Derry Zoning Ordinance to allow the operation of a garage door installation business from the residence at 2 Heritage Lane, Zoned MDR, Parcel ID 11027-001 as presented.

Seconded by Mr. Virr.

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.

The Board took a short recess and reconvened at 8:28 pm.

Mr. Perkins said that the following case is a DE novo case.

15-107 Promised Land Survey, LLC
Owner: New Wave Diversified, LLC

Rehearing of Case #15-100 - The applicant is requesting a 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, Zoned LMDR, Parcel ID 09081

Attorney John Cronin, Cronin & Associates, said he was representing the applicant and also present was Neil McCarthy from Promised Land Survey, along with Debbie Narco and Gail Peretz of New Wave, LLC. Attorney Cronin reviewed the application for the record. He said that he felt that his applicant has met the criteria needed in order to be granted a variance and would be happy to answer any questions that the Board may have.

Board Questions

Mrs. Evans asked when the applicant actually purchase the property in December of 2014 was it their intention then to subdivide. Attorney Cronin said yes that they believed the property to be sub dividable.

Mr. Coppolo said that he would like to Thank Attorney Cronin for his letter explaining his client's position. He said that if it was the basis as reasonable use to assume that according to subsection 5b that the proposal was the highest and best use of the property. Attorney Cronin said no basis to grant but public policy concept supports the proposal according to Simplex ruling.

There was some discussion with regard to Simplex relief statute.

Mr. Coppolo said that he felt no frontage for lot and only 60' of which trying to jam in a second lot. Attorney Cronin said that if the request was only for 20' would have a tough time getting around but 50' has significance as creates area for a public street. He said is it feasible, no, but does satisfy access requirements for a road but feel less impact would be to utilize as a driveway.

Mr. Burgess asked Mr. Mackey if built as a road would the Town have to accept. Mr. Mackey said that if it were built to Town standards and petitioned then felt the Town would have to accept.

Attorney Cronin said that they were not proposing to build a street but stating it is was an option.

Code Enforcement

Mr. Mackey said the applicant is requesting approval to subdivide (create) a lot with 54.02' of frontage in the Low Medium Density Residential Zone. This zone requires 150' of frontage and 150' of lot width. The lot area requirements will be met. Utilization of the existing driveway onto Hampstead Road is proposed as a common access to both lots. The Planning Board will need to grant a waiver to the LDCR 170-25.A.5. Hampstead Road is a State controlled road. If approved, Planning Board subdivision approval will be required. This case is a re-hearing of Case #15-100 heard by the Board on January 15, 2015 where the variance was denied by a 3-2-0 margin. There are pictures of the property in the file for review by the Board.

Favor

No one spoke in favor of the application.

Opposed

John Carvalho, 9 Candlestick Road, Sandown, own property at 167 Hampstead Road, said he was concerned with new home being built as lost water during construction of home next door and did not want to have that occur again as it was costly. He said that the applicant purchased the home for only \$130,000 and may require \$7,500 in repairs and seeking to subdivide and build a new dwelling to capitalize investment seems unreasonable as the property is currently available to be used reasonably without subdividing. Mr. said that the 200' frontage requirement is established for a reason and feel not right to give a variance on insufficient frontage.

Mr. Coppolo asked if the house built last year was the same applicant. Mr. Carvalho said no that people built a house last year had the proper setbacks and frontage but during that time of the construction of that new house had lost water to his property and did not wish to have that happen again. He said that he did believe that the person that purchased this home purchased just to subdivide.

Gregory Dutton, 160 Hampstead Road, said that Drew Woods was a condo development and not what is being proposed here. He said that he built his own home further back from the front of the property for privacy and that the proposed request is seeking to install a 65' driveway along his property line which would reduce his privacy as there would now be traffic driving by his home and headlights shining into his windows at night which would reduce his privacy and create noise in his back yard. He said it would offset the wildlife in the area which is now wooded. Mr. Dutton said that by granting the proposed request would be setting precedent to other people to sell off their property to create lots with insufficient frontage.

Herb Goodrich, 6 Penny Lane, said that the area was currently wooded which provides buffer between the homes. Mr. Goodrich said that he hears that the lot size supports subdivision requirements for septic and well but there is a need for green space. The

requirement of 150' frontage was established for a reason and not 50' feet as it would create overcrowding and that there is no reason that a home needs to be built there other than the applicant purchased with intent to subdivide. The 30' no cut buffer in a hardwood area is not a lot of a buffer. The applicant's statement of increase value to surrounding properties do not feel is true as feel it would reduce the sale ability of his home if ever wish to sell as currently have a pool in the back yard which will be visible to proposed new home so will need to install a privacy fence. He said that there is nothing wrong with having a larger lot as still needs green space.

John Milley, 169 Hampstead Road, said concerned with several points in the ordinance such as overcrowding, 165-47B.2 – 35' from road frontage to 150' this proposed lot will take 230' before achieves the 150' frontage requirement and then taking the existing driveway away which currently meets all the requirements. He said that the 3 houses that were spoken about were created before the ordinance was established. Mr. Milley said he felt it is an unnecessary hardship as the property was listed as a 5 acre property and did not say anything about subdividing.

Penny Goodrich, 6 Penny Lane, said that she was concerned with traffic and would like to see no increase in traffic. She said that the applicant stated that there would be no burden in traffic and safety.

Mr. Perkins said that the applicant is not adding an additional driveway but utilizing the existing driveway so may have a few more vehicles exiting.

Mr. Virr said that traffic has increased over the years and have never seen an accident at the driveway location but have seen several at Olesen Road.

Mrs. Goodrich said that there was a blind area and also a knoll that makes it difficult exit Olesen Road.

Mr. Perkins said that the applicant could fix up the property and sell to a family that could potentially have four vehicles.

Mrs. Goodrich said that if build a new home they could possibly double that to create a road which would also require a turn around. She said that they had made reference to Drew Woods which is not located in the area and also is not accepted as a road. Mrs. Goodrich said that the installation of a septic system and home would require to clear trees which will be able to be seen from her back yard.

Mr. Perkins said that he understands her concerns and that they could make recommendations to the Planning Board but will need to address the Planning Board with concerns about traffic and buffers as the matter before the Board's review is to allow the applicant to subdivide a lot with only 54' of frontage.

James Kelley, 7 Penny Lane, asked if the 54' shared driveway would mean that 27' each if shared. He said that the he did not feel it was fair to disturb a 5 acre lot just to put a new house on the property.

Mr. Mackey explained the 54' frontage with a shared driveway would be access to the proposed 3 acre parcel.

Stephanie Grants, 265 Hampstead Road, said that the 5 acre property was available to purchase and the abutters could have easily purchased the property themselves. She said that her property was formally a daycare and that she did not use the property as a daycare so there was a decrease there of traffic. She said that she understands the abutters concerns but people cannot judge what another person does with their own property.

Mr. Virr motioned to continue the meeting to 10:10pm.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Rebuttal

Attorney Cronin said that he acknowledges frontage lot width and that ownership and length of a driveway has no bearing on case. All property owners have equal rights to water wells and that his client is not insensitive to trees and that the Board has no right to dictate what one can or cannot do with their property. Attorney Cronin said that traffic matters are Planning Board purview. He said that he believes that they have met the criteria and that he has spoken with his clients with regard to the abutters concerns of preservation of green space and that the owners are willing to put covenants in but will come with a price and that the abutters can contact him for further information with that regard.

Mr. Perkins asked if the abutters have been approached. Attorney Cronin said not at this time and gave his name and number for the record.

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 unable to expect abutters to be thrilled with the request and that the nearest house in his own neighborhood was 30' away. He said that he felt that the spirit was still maintained as no overcrowding as density of 300' feel house would not be visible. Mr. Virr said that there was no ordinance with regard to shared driveways and

that no relief would do any justice and that the traffic would have no overall effect to the area as it is already a busy street.

Mrs. Hampton said that she felt that the reasonable test had been past and the Simplex hardship was proof as the property has a unique setting.

Mrs. Evans said that she feels that the hardship had not been met but questioned the reasonable use. The applicant is a developer and she said she was hung up on the recent purchase of the property.

Mr. Perkins said that he was also stuck on the hardship portion as to where does grandfathering begin or end.

Mr. Burgess said that he has a concern with prong of questions stating not to grant would be contrary to public interest. He said that usually a person comes before the Board with a purchase and sales agreement seeking to see if proposal can be done and this is after the fact.

Mr. Virr called point of order to make a motion to continue the meeting for ten more minutes.

Seconded by Mrs. Hampton.

Vote: Unanimous.

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

Mr. Burgess said that 54' is one third of the required road frontage and having a problem getting around substantial justice prong.

Mr. Perkins said that he felt that substantial justice is emotional and that he had several concerns with hardship and spirit as to why the applicant purchased the property without first researching the facts.

Mr. Burgess said that the concerns of decreased or increased property values are people's opinions and that they are just opinions and everyone has one.

Mr. Perkins reviewed the following conditions to be made as part of the motion:

1. Subject to obtaining all Town & State permits and inspections.
2. Subject to Planning Board approval.
3. Recommend Planning Board increase buffer requirement.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Mr. Virr informed the Board that motions are always made in the affirmative.

Mrs. Evans motioned on case 15-107 Promised Land Survey, LLC, Owner: New Wave Diversified, LLC to Grant a 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, Zoned LMDR, Parcel ID 09081 as presented with the following conditions:

- 1. Subject to obtaining all Town & State permits and inspections.**
- 2. Subject to Planning Board approval.**
- 3. Recommend Planning Board increase buffer requirement.**

Seconded by Mr. Burgess.

Vote:

Mr. Virr: Yes.

Mrs. Evans: Yes.

Mrs. Hampton: Yes.

Mr. Burgess: Yes.

Mr. Perkins: No. Do not feel substantial justice will be done as hardship not shown.

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.

Approval of Minutes

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

Seconded by Mrs. Evans

Vote: Unanimous.

Mrs. Prudhomme-O'Brien, Ms. Nauerz, Mr. Coppolo, 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.

There was some discussion as to what classes to attend.

Mr. Perkins said that he would like to wish Mr. Virr a "Happy Birthday"

Adjourn

Mrs. Evans motioned to adjourn.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Adjourn at 10:22 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes April 2, 2015

Mr. Virr said that he had concern with page 9 paragraph 2 as it was missing the person's name.

Mr. Burgess motioned to accept the minutes of March 19, 2015 as amended.

Seconded by Mr. Virr.

Vote: Unanimous.

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