

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
June 4, 2015

Members Present

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

Members Absent

Donald Burgess

Alternates Present

Stephen Coppolo
Katherine Prudhomme-O'Brien

Alternates Absent

Dana Nauerz
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.

It was noted for the record that Mr. Coppolo would sit for the following case.

15-110 Benchmark Engineering, Inc.
Owner: H & B Homes Corp.

Variance to the terms of Article VI, Sections 165-47.B.1, 2 & 3 of the Town of Derry Zoning Ordinance to allow the subdivision of the property into three lots each having less than the required lot area, lot frontage, and lot width, 7 Linda Road, Zoned LMDR, Parcel ID 03039

Joseph Maynard, Benchmark Engineering, said he was representing H&B Homes and also Attorney Bronstein was also present to answer any questions that the Board may have with regard to the proposal. Mr. Maynard read the application request for the record. He said that the property is known as 7 Linda Ave which is an odd shaped lot and is left over from a 1960's subdivision in which left a 50' stub between 2 Diana Road and 2 Linda Road for access. He described the 50' access as having a steep sloping grade and went on to describe the proposed subdivision plan that felt best suited the property.

Board Questions

Mr. Coppolo said he had concerns on area of unnecessary hardship aspect as what was the way of thinking. Mr. Maynard said that the property is unique as access from Derry is impossible and the road from the Windham side could have been extended further which would have required more maintenance. He said that in the planning process it was agreed that Windham would maintain and that is recorded at the registry.

Mr. Coppolo said that 2 years prior there was a gray area with regard to response for safety with Fire or Police response. Mr. Maynard said during the Planning Board stage there was no issue with Police or Fire response. He said that they were not here 2 years ago for this plan. He said that the applicant has worked hard with Planning Board and has worked on drainage issues and has also addressed Derry's concerns. He said that they have since built the road and here with a conceptual concept which he felt suited the area.

Mr. Virr asked if there was a copy of the agreement in the file. Mr. Maynard said that he apologizes as he did not include a copy in the submission for the variance request but he said it was recorded at the registry. He said he was unaware it would be needed.

Mr. Virr said if it is of his understanding that the 3 lots match size and configuration of what is built in Windham but do not meet Derry's standards and wanted to know where the children would go to school. Mr. Maynard said that was correct and that the children would attend Derry schools and that there is a letter in the Planning Board process drafting agreement.

Mrs. Prudhomme-O'Brien asked if the bus route for Linda Road to the proposed lots in Windham how long of a commute. Mr. Maynard said approximately 3-4 minutes.

Mr. Virr said that would be 3 buses through Windham and Derry in the AM and then again in the PM.

Mr. Perkins said that the request is for the 3rd lot as per criteria 2 lots would be allowed. Mr. Maynard said that was correct as could make 2 lots without zoning approval.

Mr. Coppolo said can see the point but also feel request is for profit and agree that Diana Road lots are small and asked what was on the other side. Mr. Maynard described the properties surrounding the proposal

Mrs. Hampton said that several buses come down to her road through Atkinson which can have narrow roads to Escumbuit and feel that this is a similar situation.

Mr. Virr said that treat as MHDR district just for this proposal as does not meet the LMD rules.

Mr. Perkins said that they are not here for a zoning change.

Mr. Maynard said that the Mead property is sort of industrial also a lot of the property is located in Windham.

Mr. Coppolo asked if lot 39 is the garage. Mr. Maynard said yes which has large excavators, etc. on the property. There is also J&J Auto Body Shop at the end of Rte. 28.

Code Enforcement

Mr. Wentworth said that the applicant is requesting approval to subdivide the property into 3 lots with less than the required area, frontage and lot width. The property is located at the end of a cul-de-sac, half of which is located in Derry. A legal agreement has been approved by the Town of Derry and the Town of Windham requiring that the Town of Windham be responsible for maintenance of the portion of the roadway located in Derry. There was a previous variance request on 4-7-13 where the Board voted to deny jurisdiction as the roadway had not been constructed and there was no approved street. Since that time, the road has been constructed and several homes are being built on the Windham section. The lot area requirements for the Town of Windham are less than the area requirements for the lots being proposed in Derry. If approved, Planning Board subdivision approval will be required. There are pictures of the property in the file for review by the Board.

Mr. Virr said that in reviewing the pictures it appears that a lot of work has been done to the home. Mr. Ward said that he was trying.

Favor

No one spoke in favor of the application.

Opposed

Albert Dimmock, Derry, NH said that he felt the only hardship is the amount of money they would make on property as lots in Derry are one size and Windham are another size. He said that they originally proposed to bring in road from Linda and were told that in order to do they needed agreement between Town in which they have received and now coming here with 3 lots which they can easily have 2. He said the request should be denied as have not shown hardship.

Mr. Virr said that originally before Board they were denied jurisdiction and it was proposed for 3 lots.

Mr. Coppolo asked if Diana Road is also LMDR zoning. Mr. Wentworth said that previous zone was 1 acre.

Mr. Perkins said that it was complicated with 2 different Town ordinances.

Rebuttal

Mr. Maynard said that they were seeking variance request for the 3 lots and that there was no impact on Health or Safety matters. The request meets Town requirements with regard to separation and setbacks in general feel that the request is a reasonable use of the land considering what surrounds it.

Mrs. Evans asked why 3 lots and not 2. Mr. Maynard said that he originally started working with the developer in 2000 with Spruce Pond Estates. Master plan concept always had 3 lots which felt was a worthwhile request as proposal was still twice the size of Derry lots. He said that they had tried attempt 2 years ago but nothing was built so Board did not take jurisdiction.

Mrs. Evans asked if Planning Board was okay with the 3 lots. Mr. Maynard said that they did not have variance presented lot and built road and have since built road so now here to request variance.

Mrs. Hampton motioned to go into deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Deliberative Session

Mr. Virr said that he recalled the original plan and would not address variance at time for 3 lots due to road situation not there. He said that he would like to read the agreement. He said that in reviewing lots nothing in Derry compares to these lots. Mr. Virr said that he has concerns with emergency responses and school buses going into Windham.

Mrs. Hampton said feel can be hardship on safety issues as whether Derry or Windham matter as she currently resides in a similar situation as have to come through Atkinson to get to her property.

Mrs. Evans said she sees monetary gain which feel is not a hardship matter.

Mr. Coppolo said that hardship as special meaning and reviewed for Board. He said that the property has unique surroundings such as gas station etc. on Windham side and with very small lots on the Derry side.

Mr. Perkins said that the property is a large diamond shaped lot that could potentially become useless but can create 3 lots and utilize property fairly.

Mr. Coppolo said that he was concerned with frontage requirements.

There was some discussion with regard to frontage requirements between the different zones.

Mr. Virr said that the LMDR zone width is 150' at the 35' setback which proposal does have.

Mrs. Evans asked if dwellings could be located within well radius.

Mr. Perkins said yes and that the Board needs to structure motion. He said that conditions should be subject to obtaining all Town and State permits and inspections.

Mr. Virr said it should be subject to Planning Board approval.

Mr. Coppolo said that it should also be subject to Intermunicipal agreement with Windham and Derry.

Mrs. Evans reviewed the conditions as follows for the Board:

1. Subject to Planning Board approval.
2. Subject to obtaining all State & Town permits and inspections.
3. Subject to intermunicipal agreement with the Town of Windham.

Mrs. Hampton motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Mrs. Evans motioned on case #15-111, Benchmark Engineering, Inc., Owner: H & B Homes Corp. to Grant a Variance to the terms of Article VI, Sections 165-47.B.1, 2 & 3 of the Town of Derry Zoning Ordinance to allow the subdivision of the property into three lots each having less than the required lot area, lot frontage, and lot width, 7 Linda Road, Zoned LMDR, Parcel ID 03039 as presented with the following conditions:

- 1. Subject to Planning Board approval.**
- 2. Subject to obtaining all State & Town permits and inspections.**
- 3. Subject to intermunicipal agreement with the Town of Windham.**

Seconded by Mr. Virr.

Vote:

Mrs. Hampton: No. Do not believe fair or substantial justice has been met with regards to
Mr. Coppolo: Yes.
Mrs. Evans: No. No fair and substantial justice noted as can create 2 lots without variance.
Mr. Virr: Yes.
Mr. Perkins: No. Feel a boarder and boundary issues. Hardship not justified as can easily create 2 lots.

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

**15-109 Promised Land Survey
Owners: Craig & Linda Boulanger**

Re-Hearing Request of Variance to the terms of Article III, Section 165-9 and Article VI, Section 165-48.B.1 of the Town of Derry Zoning Ordinance and relief under NH RSA 674:41 (ii), to allow the subdivision of the property to create two undersized lots on a private road at 10 Gill Road, Parcel ID 07026, Zoned LDR.

Mr. Virr said that he had reviewed the information submitted and did not feel that the Board had made an error in law or judgement. He said that the Board had discussed when the applicant first appeared to build on the lot and was told at that time no further subdivision could occur.

Mrs. Evans said that she felt the same as Mr. Virr.

Mr. Coppolo said agree no new relevant or significant evidence presented to warrant rehearing request. See letter from 2005 from Fire Department with regard to access but still does not meet criteria.

Mr. Virr said that the 2015 letter from the Fire Department only stated support but not say inspected the area.

Mrs. Hampton said originally voted yes as heard from 2 family's 1 who wished to stay in Derry and has a special needs daughter and that person went ahead and built road to make accessible. Now have had a falling out between parties involved possibly not seen all aspects and feel should be granted rehearing.

Mr. Perkins asked if any new information seen to grant a rehearing.

Mrs. Hampton said would love to rehear case as feel emotions got involved.

Mr. Perkins said that he did not see any new evidence presented. He said that he felt that the Board made a fair decision with regard to the property.

Mr. Virr motioned to Grant Re-Hearing Request of case #15-109, Promised Land Survey, Owners: Craig & Linda Boulanger to Grant a variance to the terms of Article III, Section 165-9 and Article VI, Section 165-48.B.1 of the Town of Derry Zoning Ordinance and relief under NH RSA 674:41 (ii), to allow the subdivision of the property to create two undersized lots on a private road at 10 Gill Road, Parcel ID 07026, Zoned LDR.

Seconded by Mrs. Hampton.

Mr. Coppolo called point of order and asked if an alternate needed to be appointed to sit before a vote was taken.

Mr. Perkins said no as Mr. Coppolo had sat on the original case.

Vote:

Mr. Virr:	No. Do not feel any errors of law or judgement were made.
Mrs. Evans:	No. Agree also with Mr. Virr.
Mrs. Hampton:	Yes.
Mr. Coppolo:	No. No new evidence presented to warrant rehearing request.
Mr. Perkins:	No. Feel Board reviewed evidence presented and no error of law was made.

The re-hearing request was Denied by a vote of 1-4-0. Recourse would be to appeal to Superior Court.

Approval of Minutes

Mr. Virr motioned to accept the minutes of May 7, 2015 as amended.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Other Business

Mr. Perkins informed the Board that Mr. Burgess has officially stepped down from the Board. He said that he would like to extend a thank you to Mr. Burgess for his time of service on the Board.

Mr. Perkins said that he would also like to welcome Mr. Coppolo on his newly appointed position of full member to the Board. He said that he had not sat on tonight's meeting as a full member as he is currently waiting being sworn in as a full member.

Mr. Perkins said that he would like to say for the record that he had made an error on a previous case in the fact that Mr. Virr had stated that the applicant had not correctly filled out criteria section. Mr. Perkins said that the Board has every right to interject and make corrections on motions and for that he stands corrected and apologizes to the Board.

Adjourn

Mr. Virr motioned to adjourn.

Seconded by Mrs. Hampton.

Vote: Unanimous.

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

Adjourn at 8:07 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes June 18, 2015

Mr. Coppolo motioned to accept the minutes of June 4, 2015.

Seconded by Mrs. Prudhomme-O'Brien.

Vote: Unanimous.

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