

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
June 18, 2015

Members Present

Lynn Perkins, Chairman
Allan Virr, Vice Chairman
Stephen Coppolo

Members Absent

Heather Evans
Teresa Hampton

Alternates Present

Dana Nauerz
Katherine Prudhomme-O'Brien

Alternates Absent

Michael Demeo

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 Ms. Nauerz and Mrs. Prudhomme-O'Brien would sit for the following case.

15-111 Sam Chakarian

The applicant is requesting a variance to the terms of Article III, Section 165-9 and Article VI, Section 165-48.B.2 of the Town of Derry Zoning Ordinance to allow the construction of a single family home on an unapproved street that has 100 feet of frontage where the ordinance requires 200 feet of frontage. The applicant is also seeking relief from RSA 674:41-II 406 Collette's Grove Road, Parcel ID 19044, Zoned LDR

Attorney Bernard Campbell, Beaumont & Campbell Professional Association, said that he was representing Mr. Chakarian who is also present this evening. Attorney Campbell the application request for the record. He said that the best access to the property is Sanborn Road which was recently paved. Attorney Campbell explained that the road was maintained by the Town even though it is not a Town approved road due to the location as the Town plows Collette's Grove Road and continues through lane 4 so they did not have to back up and turn around. They were present this evening to request a variance as Mr. Mackey said that lane 4 was not a Town approved road. Attorney Campbell said that the lot next door was recently developed with a new home and inspected by the Town and there are currently other year round homes in the area. He explained reasons

requesting relief from RSA 674:41-II and that he feels that his client meets the criteria in order to be granted a variance.

Board Questions

Mr. Virr said that Collette's Grove has been there for a number of years and believe there is a 1969 plan recorded. He said that the Board had a previous case on Chase's Grove in which the Board denied and it was taken to Supreme Court where the Town did not prevail. He said that the Board needs to review the information carefully.

Attorney Campbell said that the property does have an approved State Septic approval and that the lot is clear and flat and feel suitable for the proposed use.

Mr. Virr asked if the home was being built for the applicant. Mr. Chakarian said it was a possibility.

Mr. Perkins asked if the property had been subdivided off the lot next door and if a home had ever been on the lot. Attorney Campbell said that he had researched the property and that he found it had formally been owned by Mariano and deeded by Tax deed and was unaware if there had ever been a home on the lot prior.

Mr. Coppolo said that the lot appears to be recently cleared. Mr. Chakarian said that he had removed some trees.

Mr. Perkins asked when cleared. Mr. Chakarian said it was over the winter months.

Mr. Coppolo asked if the lot was separate since ordinance existence. Attorney Campbell said that he had did some deed research and believe that the lot was a separate lot since 1967 and sees some indication in 1964 but unsure when the lot was actually created.

Mr. Coppolo asked if there was anything that could be done reasonable if request was denied. Attorney Campbell said in the spirit truth to form could merge with home next door and put a garage on it or merge with property on the left but need to consider that the right side property is a co-ownership and the left side is sole owner.

Mr. Coppolo said that he felt it was close to unnecessary hardship.

Mr. Virr said other lots in the area are smaller and this lot is a lot of record and if this lot was created before zoning then it was considered grandfathered.

There was some discussion with regard to previous case on Chases Grove that went to Supreme Court.

Ms. Nauerz asked if the applicant owned lot 43 & 45. Attorney Campbell said yes he said that 043 originally Collette's Grove lot and in 1969 subdivision where a mall triangular piece of the lot was added to 045 but it did not effect this parcel. Attorney Campbell said that he had a map showing the area for the Board if they wished to review.

Mr. Perkins said typically information needed to be submitted 10 days prior and will accept a motion to accept the new material.

Mr. Virr motioned to accept material.

Seconded by Mrs. Prudhomme-O'Brien.

Vote: Unanimous.

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

Ms. Nauerz asked if there was any intention to subdivide 043. Attorney Campbell said no as there was frontage limits.

Mr. Perkins asked how long applicant has owned property. Attorney Campbell said he purchased August 23, 2014.

Code Enforcement

Mr. Wentworth said the applicant is requesting approval to construct a single family, two bedroom dwelling with insufficient frontage on an unapproved street. The neighboring property, 408 Collette's Grove, with similar width and located on Lane 4, was issued a building permit on Nov. 11, 2014 to erect a two bedroom dwelling in place of a cottage. All setback requirements for zoning district LDR shall be met. All requirements for RSA 674:41(II) must be met:

To grant the exception and allow the building to be erected, the ZBA must find all of the following:

1. That the enforcement of the minimum frontage requirements in RSA 674:41 would "entail practical difficulty or unnecessary hardship;" and
2. That the circumstances of the case do not require the building, structure or part thereof to be related to existing or proposed streets; and
3. That the erection of the building will not tend to distort the official map or increase the difficulty of carrying out the master plan; and
4. That the erection of the building will not cause hardship to future purchasers or undue financial impact on the municipality.

Mr. Perkins asked what was the required frontage. Mr. Wentworth said 200' but property only has 100'.

Mr. Coppolo asked when was zoning enacted. Mr. Wentworth said he believed 1963.

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 Mr. Coppolo.

Vote: Unanimous.

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

Deliberative Session

Mr. Virr said that the lot is not a Town accepted road so will require municipal waiver of liability recorded with the registry as it is not officially maintained by the Town.

Mr. Virr asked to break deliberative session to ask the applicant another question. Mr. Perkins said ok.

Mr. Virr asked if there was a road association in place. Mr. Chakarian said yes there was it is Collette's Grove Road Association and they maintain all roads in the area.

Mr. Coppolo said that he had visited site and all cases seen since on the Board this lot is actually what is there. He said that in his thinking before this is as much of a hardship as seen prior and he felt it meets the unnecessary hardship.

Mr. Perkins said he did not recall the Chase's Grove case and do not recall ever having a request where the applicant owns lots adjacent to the property in question. He said that he had concerns where the applicant only had purchased a year ago and had no structure prior.

Mr. Virr said original lot recorded at the Rockingham County Registry of Deeds and is a lot of record regardless of ever having a structure prior is irrelevant.

Mr. Perkins said that he felt it was a significant factor as applicant owns adjacent lots and now trying to develop as property is now zoned LDR.

Mr. Virr said no mandatory rules apply as could have built on the lot prior as area was camp lots and unable to conform to zoning change as unable to make lots to 3 acres.

Mr. Coppolo said the legal status is legitimate.

Mr. Perkins asked if there was a legal build status. Mr. Wentworth said if destroyed by fire something needs to start within 6 months and completed within a year.

Mr. Perkins said there appears the need for more input from the applicant and will take a motion to come out of deliberative session.

Mr. Coppolo motioned to come out of deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Board Questions

Attorney Campbell said that the property was purchased in 2014. Lot 043 was not same deed and the applicant purchased this and the other lot where the new house is currently located. Attorney Campbell said that he heard discussion of merging by force with 043 and informed the Board to consider carefully as State laws state it is unlawful for Town's to force mergers as now have created statute to unmerge. Attorney Campbell cited Roberts vs Town of Windham where gets into voluntary merger and believes it is illegal to mandate merger. Attorney Campbell said that the Board has option to deny variance request or can table to consult with Town Counsel to get legal opinion.

Mr. Virr said that the Patrick vs. Town of Derry case was a similar issue of an undersized lot but the well was unable to be located on same lot so the well location was to be located on a lot across the street. The Town of Derry lost case in court and applicant has built his home.

Mr. Perkins said trying to establish if there was ever a house on the property as the right to rebuild would be lost if tore down more than a year ago.

Mr. Virr said that the property is a building lot of record when purchased and always will be a lot of record.

Mr. Coppolo said that he agrees with Mr. Virr and grandfathering usually deals with size and feel that the reason for the LDR district is with regard to larger acreage properties seeking to subdivide. He said that the applicant is here for a variance and not exerting persisting use as could do if had lot size and they are not seeking to build a gas station.

Mr. Virr said that he felt LDR zoning would apply to new subdivisions.

Mr. Coppolo asked if lot 043 was also owned by Mr. Chakarian. Attorney Campbell said yes but 045 is co-owned and not sole owner so not full interest.

Attorney Campbell said that there was concern of self-created hardship and believe Supreme Court has dealt with similar situation with Chester Rod & Gun where had purchased prior to requesting use.

Mr. Perkins said not trying to force merger. Attorney Campbell said believe still need to come before the Board to build as undersized lot.

Mr. Wentworth said that here due to lot frontage and non-Town approved road only.

Ms. Nauerz asked if there was a road association. Attorney Campbell said yes as they maintain other roads in the area.

Mr. Coppolo said that he researched the case of Roberts vs Town of Windham and it appears that requesting to make voluntary merger is illegal. Attorney Campbell said not entirely but if the Board were to deny variance due to the sole fact that the applicant owned other lot it could be as unable to hold against and is unable to be considered relevant for denial as would be taking away rights.

Favor

Donald Burgess, High Street, said that the Board has had a couple of cases prior one off Gill Road and another off Route 102 that were seeking to subdivide and were denied as not enough land. However, this property is an existing lot and not seeking to subdivide feel that it meets the criteria.

Mr. Virr asked if Mr. Burgess was a direct abutter. Mr. Burgess said no.

Mr. Virr said that Mr. Burgess did not have standing.

Mr. Virr motioned to go back into deliberative session.

Seconded by Ms. Nauerz.

Vote: Unanimous.

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

Deliberative Session

Mr. Virr said that conditions on motion should be made as follows:

1. Subject to new waiver of municipal liability to be recorded with the Rockingham County Registry of Deeds.
2. Subject to obtaining all State & Town permits and inspections.
3. Subject to provide copy of Road Association agreement to Town.

Mr. Perkins asked if Ms. Nauerz would read motion for record. Ms. Nauerz said she would.

Mr. Coppolo said that he felt that ownership of lots does not play part in decision as the applicant purchased separate and variances run with the land. He said it would be no different if a Mr. Smith came in and requested the same the Board needs to determine if the request meets criteria in order to be granted a variance.

Ms. Nauerz said that she felt the same.

Mr. Wentworth said that variances were only for 2 years with State.

Mr. Virr said that he believed that one extension could be requested. Mr. Wentworth said he believed that was correct.

Mr. Virr motioned to come out of deliberative session.

Seconded by Mr. Coppolo.

Vote: Unanimous.

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

Ms. Nauerz motioned on case #15-111, Sam Chakarian to Grant a variance to the terms of Article III, Section 165-9 and Article VI, Section 165-48.B.2 of the Town of Derry Zoning Ordinance to allow the construction of a single family home on an unapproved street that has 100 feet of frontage where the ordinance requires 200 feet of frontage. The applicant is also seeking relief from RSA 674:41-II 406 Collette's Grove Road, Parcel ID 19044, Zoned LDR as presented with the following conditions:

- 1. Subject to new waiver of municipal liability to be recorded with the Rockingham County Registry of Deeds.**
- 2. Subject to obtaining all State & Town permits and inspections.**
- 3. Subject to provide copy of Road Association agreement to Town.**

Seconded by Mr. Virr.

Vote:

Mr. Coppolo:	Yes.
Mr. Virr:	Yes.
Mrs. Prudhomme-O'Brien:	Yes.
Ms. Nauerz:	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

Approval of Minutes

Mr. Coppolo motioned to accept the minutes of June 18, 2015.

Seconded by Mrs. Prudhomme-O'Brien.

Vote: Unanimous.

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

Adjourn

Mr. Virr motioned to adjourn.

Seconded by Ms. Nauerz.

Vote: Unanimous.

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

Adjourn at 7:59 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes July 16, 2015

Mrs. Evans said that she would like to make a change to page 7 as she was not present at the meeting to make motion on case.

Mr. Coppolo also noted that on page 5 paragraph that he spoke with regard to grandfathering should read as deals and not speaks.

Mr. Perkins said that the changes were duly noted and will be made and would accept a motion to approve minutes as amended.

Mr. Virr motioned to approve the minutes of June 18, 2015 as amended.

Seconded by Mrs. Prudhomme-O'Brien.

Vote: Unanimous.

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