

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
July 18, 2013

Members Present

Allan Virr, Chairman
Lynn Perkins, Vice Chairman
Donald Burgess, Secretary
Teresa Hampton
Joseph Carnvale

Members Absent

Alternates Present

Tyler Whitehorn

Alternates Absent

David Thompson

Code Enforcement

Robert Mackey

Mr. Virr 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.

#13-110 Jayson & Kristina Saba

Variance to the terms of Article VI, Section 165-47B.4 of the Town of Derry Zoning Ordinance to allow the construction of a 24' x 24' detached garage to be located 18 feet from the front property line where 35 feet is required at 12 Blake Farm Road, Zoned LMDR, Parcel ID 09070-007

Jayson Saba, owner, read his application for the Board.

Board Questions

Mr. Burgess asked if the last question on the application could be answered with regard to hardship.

Mr. Mackey said that if the applicant addresses the first section then the second section does not require to be addressed.

Mr. Burgess said that it appears to have a steep drop off to the rear and asked if there would be fill brought in. Mr. Saba said that the property slopes from 3 ½ feet to 8 feet and felt that the best fit for the garage was in this location and do plan on filling in some for grade.

Mr. Virr said that the proposed garage was to be detached. Mr. Saba said that he was unable to go back due to grade so at this time it was planned for a detached garage.

Mr. Burgess said that when bringing in fill may want to allow for a turnaround area so would not need to back out onto road.

Mr. Perkins asked if building in a triangular shape was to reduce the amount of fill needed. Mr. Saba said it was not about the amount of fill but more about safety and a retaining wall.

Mr. Virr asked if it was the understanding that the proposed garage would be 18' from easement. Mr. Saba said yes and that was correct.

Mrs. Hampton asked if the second story was for a proposed in-law. Mr. Saba said no just a storage area.

Mr. Burgess asked if there would be electric. Mr. Saba said yes that there would be electric installed according to code.

Code Enforcement

Mr. Mackey said the applicant is proposing to construct a two-stall garage 18 feet from the front property line (35' required). The grade on the right side of the house drops significantly (see photos) which is the main basis for their request. If approved, the appropriate permits and inspections will be required by the Code Enforcement Office. The Board will need to address the 5 criteria for a variance in making its decision. There are pictures in the file for the review by the Board.

Favor

No one spoke in favor of the application.

Opposition

No one spoke in opposition of the application.

Mr. Carnevale motioned to go into deliberative session.

Seconded by Mr. Perkins.

Vote: Unanimous.

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

Deliberative Session

Mr. Virr said that he felt that the application was straight forward and well documented.

Mr. Burgess said that it appears that there were no neighbor concerns.

Mr. Virr said that a motion should be structured to include subject to obtaining all Town permits and inspections.

Mr. Carnevale motioned to come out of deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Mr. Burgess motioned on case #13-110, Jayson & Kristina Saba, to Grant a Variance to the terms of Article VI, Section 165-47B.4 of the Town of Derry Zoning Ordinance to allow the construction of a 24' x 24' detached garage to be located 18 feet from the front property line where 35 feet is required at 12 Blake Farm Road, Zoned LMDR, Parcel ID 09070-007, as presented with the following conditions:

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

Seconded by Mr. Carnevale.

Vote:

Mr. Carnvale: Yes.

Mrs. Hampton: Yes.

Mr. Burgess: Yes

Mr. Perkins: Yes.

Mr. Virr: 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.

Variance to the terms of Article VI, Section 165-48.B.4 of the Town of Derry Zoning Ordinance to allow the reconstruction of the dwelling less than 15 feet from the side property line at 31 Taylor Brook Lane, Zoned LDR, Parcel ID 18023

J. Drennan Lowell, owner, said that he also brought with him Vernon Dingman who is the surveyor of the property. Mr. Lowell read his application for the Board. He said that he currently lives on Dixon Lane and was seeking to downsize and relocate to this property next year. Mr. Lowell said that if you relocated a structure it requires a variance due to the lot size in the area.

Board Questions

Mr. Virr asked if the Board was considering case 13-111 which was 31 Taylor Brook Lane. Mr. Lowell said that was correct and that the structure would have limited windows on the side of the home that was tight on the lot line. He said that the deck on the south side was not currently in the spirit and intent of the ordinance and would be removing but the structure does have a porch that would like to keep.

Mr. Burgess said that he had seen a small deck on the side when he had driven out to the area. Mr. Lowell said that the property has a set of steps and a 4' x 4' landing as shown on the floor plan that was provided to the Board.

Mr. Perkins asked if it was the one facing the water and the landing was on the side. Mr. Lowell said that was correct.

Mr. Perkins said that he thought that sometimes a landing was not considered as part of the footprint.

Mr. Mackey said that if the applicant was proposing to build a full deck it would be subject to setback requirements but if only building a small landing it would be allowed.

Mr. Virr asked if it would be required to file elevations to FEMA.

Mr. Mackey said that the applicant would need to file the elevations to FEMA as flood maps show that the entire area is in flood plain. He said that as part of construction process the applicant will need to submit elevations certificate to verify meet flood elevations.

Mr. Virr asked if the area was part of the Shoreland Protection Act. Mr. Mackey said no but part of FEMA and Town regulations.

Mr. Virr asked if in flood plain if insurance would be required. Mr. Mackey said yes if the property was below flood levels.

Mr. Virr asked if Taylor Brook Lane was Town approved and if not would a municipal waiver be required. Mr. Mackey said that it would not hurt to include it as part of the motion. He said that traditionally a rebuild would be allowed without a waiver but the next case will require a waiver to be recorded and it will help the Town if ever petitioned to request maintenance.

Mr. Burgess asked if the home was considered a 1 ½ story or 2 story structure. Mr. Mackey said that it is considered a 1 1/2 story structure as it will not have a full 2nd story. The side will have a full dormer area and will be similar to other homes in the area.

Mr. Virr asked if the State Shoreland performs routine inspections. Mr. Mackey said that they are supposed to and have come down with regards to complaints on another location. The impact permit that the applicant filled out has 30 conditions listed that also relate to tree cutting and impervious soils.

Mr. Dingman said that the new septic system will be inspected by the State and also same with building and each department does speak to each other. Each property will have State inspections by subsurface bureau but unsure about the shoreland bureau.

Mrs. Hampton said that she saw that the application says that the Shoreland and septic system have been approved by D.E.S. Mr. Dingman said that was correct.

Code Enforcement

Mr. Mackey said that the applicant is requesting a variance to replace the structure on the property less than 15 feet from the side property lines. As the new structure is proposed to be slightly relocated and have the addition of a second story, current setback requirements apply. The proposed new structure will be several feet further from the shore of Big Island Pond. A Shoreland Impact Permit has been approved by the State DES for the reconstruction. A new 2 bedroom septic system has been approved by the State DES. The area in question consists of many small lots and non-conforming structures, some of which have been replaced over the years. If approved, appropriate permits and inspections will be required. The Board must consider whether the 5 criteria for a variance have been met in order to grant the variance. There are pictures in the file for the review by the Board.

Favor

No one spoke in favor of the application.

Opposition

No one spoke in opposition of the application.

Mr. Perkins motioned to go into deliberative session.

Seconded by Mr. Carnevale.

Vote: Unanimous.

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

Deliberative Session

Mr. Virr said that he felt that the case documentation was clear and well put together. Motion needs to include waiver of municipal liability recorded at the Registry of Deeds.

Mr. Mackey said the waiver is Release Municipal Liability and Responsibility.

Mr. Burgess said that the motion should also be subject to obtaining all Town & State permits and inspections. Subject to recording a Release of Municipal Liability & Responsibility with the Rockingham County Registry of Deeds.

Mr. Carnevale motioned to go into deliberative session.

Seconded by Mr. Perkins.

Vote: Unanimous.

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

Mr. Burgess motioned on case #13-111, J. Drennan Lowell, to Grant a Variance to the terms of Article VI, Section 165-48.B.4 of the Town of Derry Zoning Ordinance to allow the reconstruction of the dwelling less than 15 feet from the side property line at 31 Taylor Brook Lane, Zoned LDR, Parcel ID 18023 as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Subject to Waiver of Municipal Liability & Responsibility recorded at the Rockingham County Registry of Deeds.**

Seconded by Mrs. Hampton.

Vote:

Mr. Burgess: Yes

Mrs. Hampton: Yes.

Mr. Carnevale: Yes.

Mr. Perkins: Yes.

Mr. Virr: 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.

#13-112 J. Drennan Lowell

Variance to the terms of Article III, Section 165-9 and Article VI, Section 165-48.B.4 of the Town of Derry Zoning Ordinance to allow the construction of a garage with a 2nd floor living unit less than 15 feet from the side property line at 20 Taylor Brook Lane, Zoned LDR, Parcel ID 18023-001.

J. Drennan Lowell, owner, said he was present with Vernon Dingman who is the surveyor of the property. Mr. Lowell read his application for the Board. He presented the Board with a plan of the proposed building and said that the septic design had been changed and had only one plan that the Board could review if needed.

Vernon Dingman, surveyor and engineer, said that the septic system designed for the property was a proactive treatment system which is approved by DES. He said that the system is not a raw effluent system and does not dump into the property. Mr. Dingman described the septic system for the Board.

Board Questions

Mr. Virr asked if the system was a modification of the overboard treatment for the house and garage. Mr. Dingman said no that the system was designed for the house and has a chamber system application. This lot is smaller and DES wanted an active treatment system designed for the property. Both systems are designed to meet all DES standards. He said that Mr. Lowell does have a well serving the lot and was advised to get a well waiver.

Mr. Lowell said that they had changed the floor plan on the original house design as it had shown a window where they are now proposing a slider. Mr. Lowell said that the goal was to utilize the home as an overflow space so when his children came to visit they had a place to stay.

Mr. Perkins asked if the garage was proposed to have a one bedroom living structure over. Mr. Lowell said yes that he had purchased the two lots together but they are two separate lots.

Mr. Perkins asked how far from lot lines was the proposed building. Mr. Lowell said that the proposed structure would be approximately 9' from the right side and 15' from the left and 35' from Taylor Brook Lane.

Mr. Virr asked how far was the garage on the right side. Mr. Lowell said that he did not measure that but believed that there would be 15' between them and that they were the property that had asked to have the window relocated.

There was some discussion with regard to the construction of the proposed structure and relation to abutting properties.

Code Enforcement

Mr. Mackey said that in addition to requesting approval to reconstruct the dwelling located across the street, the applicant is requesting approval to construct a garage with a 1 bedroom living unit on the 2nd level on this property which is located directly across from #31. The proposed structure will be located less than 15 feet from the right side property line so a variance is required. In addition, because the applicant is proposing a living unit on a vacant parcel located on a private road (Taylor Brook Lane), a variance is also required, from Article III, Section 165-9 which requires that a building lot have frontage on a Town approved street. There are several properties in the area that have dwellings constructed on the lake side of Taylor Brook Lane with garages located across the street. The lot has a septic system design approved by the N.H. DES. The applicant is in the process of obtaining a Shoreland Permit by Notification as required by N.H. DES. In order to grant the variance the Board must find that the 5 criteria for a variance have been met. There are pictures in the file for the review by the Board.

Favor

No one spoke in favor of the application.

Opposition

Norma & Bob Ryan, 33 Taylor Brook Lane, said that they were abutters to the right of the property. Mr. Ryan said that he was concerned about drainage as in the spring the property has a channel located on the right side off the wall that goes into the lake and if this structure was allowed would like to know where the water would go. He said that he had no opposition to the request but concerned about where the water would be diverted to. Mr. Ryan said that he currently sees hay bales now and was concerned of having more water diverted onto his property.

Mr. Perkins asked if the property was considered a wetland or swamp. Mr. Ryan said he was unsure.

Mr. Burgess asked if bales of hay were required when any type of building is being performed. Mr. Mackey said that during construction hay bales and silt fencing during building remains until the grass area is established.

Rebuttal

Mr. Lowell said that the lots in the area during developing have been built up so water does tend to pond up in the rear portion of the lot and that the water also does also come across the roadway and across his property to go into lake. He said that the front property has a swale that goes under the property and needs to continue to allow the water to go to the lake but not directly as it will be properly designed. As for the installation of windows that there would be no windows on that side for privacy. The water buildup on the property used to go along the Ryan's home and when start building will see that to have the water flow down properly and not divert onto the Ryan's property. He said that during the months of April and May the area is seasonally wet and that he has not done a formal plan at this time but intend on doing one as will be living in the area also.

Mr. Dingman said that the area is grassy looking mostly consisting of a gravelly base. He said as part of the Shoreland permit the roof lines will have down spouts into proper drainage systems. The remaining portion of the lot will be lawn and water will trickle through and that there will no longer be surges of water coming across the property. The State is in approval of process and has addressed the runoff and made requirements. Mr. Dingman described for the Board the States approval process.

Mr. Perkins asked if there were designs available. Mr. Dingman said that that they should have been submitted at time of application but have a full scale plan available if the Board wished to view. He said that the hay bales are construction requirements in place to contain any sediment runoff.

Mr. Perkins said that the plan is qualified by DES can we accept into record. Mr. Mackey said that the Board could make a motion to be as presented on DES plan submission.

Mr. Perkins asked if building on a slab and the water was currently going under someone's home already is the water going to go anywhere else. Mr. Lowell said that the water was currently going his home and he was unsure of surrounding property drainage.

Mr. Perkins asked if the monolithic slab would not be sitting in water and subject to any deterioration. Mr. Dingman said that the slab would be above ground water elevations and will not be sitting in any groundwater.

Mr. Mackey said that monolithic slabs are typically done in 1 pour which are allowed for single story garages and that frost walls with slab are allowed for structures with 2 stories.

Mr. Carnevale motioned to go into deliberative session.

Seconded by Mr. Perkins.

Vote: Unanimous.

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

Deliberative Session

Mr. Virr said that the conditions should be made to include waiver of municipal liability and recorded at the registry of deeds. Subject to all State and Town permits and inspections. And also should include to adherence to erosion and sediment control plan approved by the DES.

Mr. Carnevale motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Mr. Burgess motioned on case #13-112, J. Drennan Lowell to Grant a Variance to the terms of Article III, Section 165-9 and Article VI, Section 165-48.B.4 of the Town of Derry Zoning Ordinance to allow the construction of a garage with a 2nd floor living unit less than 15 feet from the side property line at 20 Taylor Brook Lane, Zoned LDR, Parcel ID 18023-001, as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Subject to Waiver of Municipal Liability & Responsibility recorded at the Rockingham County Registry of Deeds.**
- 3. Must adhere to Erosion & Sediment Control Plan approved by the N.H. D.E.S.**

Seconded by Mr. Carnevale.

Vote:

Mrs. Hampton: Yes.

Mr. Burgess: Yes

Mr. Carnvale: Yes.

Mr. Perkins: Yes.

Mr. Virr: 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.

Other Business

Mr. Perkins said that he had drafted a revision to the Policy & Procedures and would like to move to have the second reading done for the record.

Mrs. Hampton motioned to consider the appendix to the Zoning Board's Policy & Procedures

Seconded by Mr. Carnevale.

Vote: Unanimous

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

Mr. Perkins said that in April he had crafted the original reading and read the revised version for the record as follows:

The Acting Chairman shall announce.

As this begins a new year for the ZBA, our first order of business shall be the appointment of officers.

The Acting Chair shall call for the first nomination to be made for the first officer position of Chairman.

Order of the vote:

The order of nomination and vote shall be the chairman first, Vice Chairman second and Secretary third. Each position shall have the nomination and vote on the nominee process completed before moving on to the next officer position.

The Nomination and vote process:

The members shall be polled twice. Once for the nomination and a second time to vote for the nominated candidate(s).

The process shall be repeated for each officer position.

Each officer position shall be nominated by the method of polling of all 5 full members. Once the nomination process is completed, only the full members shall vote on the nominated member(s) for that position.

The favored candidate will occur by majority of votes. Not by motions or seconds.

Mr. Virr said it should be include in the appendix section of the policy and procedures.

Approval of Minutes

Mr. Perkins motioned to approve the minutes of June 20, 2013 as amended.

Seconded by Mr. Carnevale.

Vote: Unanimous

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

Mr. Mackey said that the Office had received 1 case so far for the August 15th meeting.

Mr. Perkins said that he would like to welcome Mr. Whitehorn to the Board and welcomes other new members to join the Zoning Board of Adjustment.

Adjourn

Mr. Carnevale motioned to adjourn.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Thompson, Mr. Carnevale, Mrs. Hampton, Mr. Burgess, Mr. Perkins, Mr. Virr

Adjourn at 8:44 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes August 15, 2013

Mr. Carnevale motioned to approve the minutes of July 18, 2013 as amended.

Seconded by Mr. Burgess.

Vote: Unanimous

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