

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
April 7, 2016

Members Present

Lynn Perkins, Chairman
Allan Virr, Vice Chairman
Heather Evans, Secretary
Stephen Coppolo

Members Absent

Teresa Hampton

Alternates Present

Donald Burgess
Randall Kelley

Alternates Absent

Dana Nauerz

Code Enforcement

Robert Mackey

Mr. Perkins called the meeting to order at 7:04 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. Burges would sit on the following case.

16-107 Dale & Cheryl Stancik

The applicant is requesting a variance to the terms of Article VI, Section 165-46.C.4 of the Town of Derry Zoning Ordinance to allow the completion of the construction of a 15' x 17' garage less than 35 feet from the front lot line. 14 Briarwood Street, Parcel ID 25084 Zoned MDR

Dale Stancik, owner, read his application and letter of explanation for the record. Mr. Stancik said that he hoped he answered the questions correctly as he did the best he could. He said that the reason of building the garage was that he had purchased a new motorcycle and that it would not fit in the space where he used to park his old motorcycle. Mr. Stancik said that he had gone to the Code Enforcement Office to obtain a building permit and was told that in order to obtain a permit he needed to be 35' from the road and 15' from his neighbor's property. He needed to build a shed large enough to fit 6 motorcycles so he had gone home and measured from the road to the house and

placed a stake in the ground for a 15' x 17' garage and filled out the application and obtained a building permit. When he called for an inspection the Code Enforcement reviewed and received a stop work notice due to property setbacks. Mr. Stancik said that he was then told at this time that the setback was not the road edge. Mr. Stancik explained the drawings that he submitted to the Board showing his property and setbacks. He said that he had hired Promised Land Survey and that the stake shown in the picture was the property line.

Board Questions:

Mr. Virr asked if Promised Land provided him a survey map. Mr. Stancik said no that he only placed markers and had not given him a drawing. He said that the stake does say northeast marker. He said that it cost him \$700 just to have stakes set. He said that he had his wife take pictures of the stake to show where it was located and he has since installed a 1" solid bar into the ground himself. The pictures show that the garage is 35' to the road.

Mr. Perkins said that he believes intentions are in the right place and asked if here for forgiveness and not permission. Mr. Stancik said yes as he really did try to be legal.

Code Enforcement

Mr. Mackey provided the Board with the following reference for the Board:

- The applicant is requesting a variance to allow the completion of the construction of a 15' x 17', single stall attached garage in the front of the property approximately 24' 8" from the front property line.
- A building permit was issued on June 10, 2015 for the construction of the garage. At that time, it appears there was a misinterpretation/miscommunication by the applicant with regard to the location of the front setback and he assumed that the setback was measured to the edge of the street pavement rather than the actual front property line.
- When the applicant requested a foundation inspection it was determined that the foundation was too close to the front property line and the applicant was advised that he would need to apply for a variance and be approved in order to complete the construction.
- As the construction is not considered "substantially complete" (at the foundation stage), the applicant is requesting a variance rather than an equitable waiver.
- There are pictures of the property in the file for review by the Board.

Mr. Virr asked what was the width of the garage. Mr. Stancik said 15' as it was just for motorcycles.

Mr. Virr said that he has concerns with regard to question #1 and the part of enhancing the property values as he finds it unconventional in the positioning of the garage door as a

future buyer may not want to use for motorcycles. Mr. Stancik said that motorcycles tend to be backed into a garage and do not plan to move or sell the property.

Mr. Virr asked when was the home built. Mr. Stancik said approximately 1962.

Mr. Virr asked when did setback requirements come into effect. Mr. Mackey said unsure when the actual front setback was established but sometime in the 1960's.

There was some discussion with regard to the location of the garage location and property values.

Mr. Coppolo asked if Briarwood was a public road and who owns the 10' strip of land. Mr. Stancik said Briarwood was a public road and Promised Land said that the area along the road was 10' 6".

Mr. Mackey said that he believes that would be the Town Easement as a new subdivision requires a 50' right-of-way which consists of 12' of pavement with roadside easements. But do not believe that Briarwood was a 50' road area.

Mr. Coppolo said that he asked as it seems significant that not slicing off 10' from the abutter but encroaching on Town easement so he felt it was less likely to be a conflict of interest.

Mr. Kelley said that he agrees with putting on the front but felt better if placed in the rear of the property but see reasons due to location of septic and well. Mr. Stancik said that the septic was in back and not sure of which way the leach field was located. He said that he purchased the home from his brother and promised himself that that he was never moving again.

Mr. Coppolo said that he did not feel that there was a need to prove increase in property value but only to prove that not to decrease other values and did not see any question that there would be an issue.

Mr. Virr said that he had studied real estate appraising and did not feel it would be cost effective in property value increase. Mr. Stancik said that the neighbor next door and his property with the addition would be a mirror image so did not feel that there would be any issue.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mrs. Evans.

Motion withdrawn.

Favor

No one spoke in favor of the request.

Opposed

No one spoke in opposition to the request.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Deliberative Session

Mr. Virr said that the property is what it is and that the applicant misunderstood the 35' setback to be to the road. He said that he did feel that there would be a problem in granting the applicants request.

Mr. Burgess said that he felt the same. He said people assume meaning is one thing when it actually means something else.

Mr. Coppolo said he agrees. The spirit of the ordinance is observed as he believes that the point of the ordinance is for open space and to keep distances from neighbors. He said that how far from the road verses how far from the boundry is not 100% excusable but feels it is an honest mistake.

Mrs. Evans said that she agrees with Mr. Coppolo. Believes is was a miscommunication and an honest mistake.

Mr. Perkins said that a condition of being subject to obtaining all State and Town permits and inspections be made.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mrs. Evans

Vote: Unanimous.

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

Mrs. Evans motioned on case # 16-107, Dale & Cheryl Stancik to Grant a variance to the terms of Article VI, Section 165-46.C.4 of the Town of Derry Zoning Ordinance to allow the completion of the construction of a 15' x 17' garage less than 35 feet from the front lot line. 14 Briarwood Street, Parcel ID 25084 Zoned MDR as presented with the following conditions:

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

Seconded by Mr. Virr.

Vote:

**Mr. Coppolo: Yes.
Mrs. Evans: Yes.
Mr. Virr: Yes.
Mr. Burgess: Yes.
Mr. Perkins: Yes.**

The application was Granted by 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.

Election of Officers

Mr. Perkins informed the Board that the Election of Officers will be held at the next meeting as missing a primary member.

Other Business

Mr. Mackey said that the annual Spring Planning & Zoning Conference was scheduled for June 4th in Concord. He said that the office will forward out the information for online registration.

Mr. Perkins asked if there was a list of the topics. Mr. Mackey said he believed it was a refresher in Zoning, Legal and Planning uses.

Approval of Minutes

Mr. Virr motioned to approve the minutes of March 17, 2016 as amended.

Seconded by Mrs. Evans.

Vote: Unanimous.
Mr. Coppolo, Mrs. Evans, Mr. Virr, Mr. Perkins.

Adjourn

Mr. Burgess motioned to adjourn.

Seconded by Mr. Coppolo.

Vote: Unanimous.

Mr. Kelley, Mr. Burgess, Mr. Coppolo, Mrs. Evans, Mr. Virr, Mr. Perkins

Adjourn at 7:50 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

APPROVAL OF MINUTES April 21, 2016

Mrs. Hampton motioned to approve the minutes of April 7, 2016 as amended.

Seconded by Mrs. Evans.

Vote: Unanimous.

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