

**TOWN OF DERRY**  
**ZONING BOARD OF ADJUSTMENT MINUTES**  
**March 16, 2023**

**Members Present**

Lynn Perkins, Chairman  
Craig Corbett, Vice Chair  
Crystal Morin, Secretary  
Allan Virr  
Donald Burgess

**Members Absent**

**Alternates Present**

Michael Donlon  
Richard Tripp  
James Dietzel  
Gaspar Obimba

**Alternates Absent**

**Code Enforcement**

Robert Mackey, Code Enforcement Director

Mr. Perkins called the meeting to order at 7:00 p.m. with the salute to the flag. Mr. Perkins stated that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 this public body is authorized to meet now physically and also electronically. As such this meeting is being held and will also be providing public access to the meeting by telephone with additional access possibilities by video utilizing the ZOOM app for the electronic meeting. To participate in this meeting, you can be present or by dialing 323-909-140 or by clicking on the website address: [derrycam.org/TuneIn](http://derrycam.org/TuneIn) the phone numbers are 646-558-8656 or 312-626-6799 meeting ID: 323-909-140 or if anybody has a problem, please call 603-845-5585 or email at: [ginnyrioux@derrynh.org](mailto:ginnyrioux@derrynh.org). In the event that the public is unable to access the meeting, the meeting will be adjourned and rescheduled otherwise the meeting will end at 10:00 PM. Mr. Perkins said that all votes taken are taken during this meeting shall be done by roll call vote.

The Board members introduced themselves.

It was noted that Mrs. Morin would step down and Mr. Tripp would sit for the following case.

**23-103            Peter Miller & Elizabeth Kwo**

**The applicants are requesting a variance to the terms of Article VI, Section 165-48.A of the Town of Derry Zoning Ordinance to allow the property/dwelling to be utilized for short term rentals at 67-69 Conley's Grove Road, Parcel ID 10652 & 16053, Zoned LDR**

Mr. Perkins informed the Board and Public that this case was a continuation from January 19, 2023 and was at the point of hearing from abutters but will allow the applicant to refresh the testimony previously received.

Peter Miller, owner, said that this case was previously presented by his wife who was unable to attend tonight. Mr. Miller said that he would like to apologize for the delays in the hearing of the case and that he appreciated that the Board granted the delays. He said that as his wife had previously stated he believes that granting the request would bring value to surrounding properties as short-term rentals are observed in the Town's ordinance and that the spirit and intent is being observed. Mr. Miller said that he believes the hardship criteria is observed as they have invested a large amount of money when they purchased the property so feel that they are committed to the property is not a question. The short-term rental provides them a second form of income and that there are currently 4 other properties on Island Pond listed as Air B&B's that have not been required to obtain a variance. Mr. Miller said that he feels that they meet the required criteria and are justified for a variance.

**Board Questions**

Mr. Perkins said that the point of other communities having Air B&B's has no bearings on this request and that the intention for type of zoning for visitors or just passing through. Mr. Miller said that Cambridge has Air B&B's of a different venue and was just stating for clarity.

Mrs. Morin said that she searched for the 4 other Air B&B's and they are not on Island Pond but are in the Beaver Lake area. Mr. Miller said that they are there and could show the Board. He said that search for short term rentals for Derry and it will show a property east of their property with availability for weekends through March to May.

Mr. Perkins said reason here is due to a disturbance and not the quoted 820 others have been brought before the Board. He said that he understands reason is due to enforcement concern but also has a judicial side too. Mr. Miller said that this was a new experience to process and consideration be given to reach out to the community to find others that have established an outline so they can allow them to supplement their income before deciding not to allow use due to not having an ordinance.

Mrs. Morin said that she rechecked the search for Air B&B's with no filters and did find that Derry does have a lot of Air B&B's listed in various areas.

Mrs. Morin asked how are the renters vetted. Mr. Miller said that they go through Air B&B process which does background checks to renters. They do not allow potential renters to have criminal records or disturbances. He said that the created price point where limited guests typically apply.

Mrs. Morin asked the price of a hotel/motel typically has someone there upon check out and if there when guest check out. Mr. Miller said no.

Mr. Perkins asked what if someone does commit a foul to the agreement does one file a specific legality or such unaware. Mr. Miller said that the Air B&B process requires a credit card be placed on file and that they also carry a separate insurance if any damage occurs. He said it would be no different than if friends utilized the property is no different than vetting as allowing someone to stay at the property.

Mr. Tripp asked if the Air B&B process reviewed local ordinances before allowing rental use. Mr. Miller said not to his knowledge and that he was under the impression when he purchased the property the real estate agent stated could rent the property.

There was some discussion with regard to Air B&B rentals in the area.

Mr. Perkins said that the point is accurate as is approval is not setting precedence if granting possibly stepping ahead of Planning Board before properly vetted. He said a variance relates to law issues that will be addressed by many communities. Not to be considerate to what may or may not be outlined later and that the geographic make up use of the property listed for intended use.

Mr. Corbett said that the ordinance states what is allowed where and specifically states what not allowed.

Mr. Corbett informed the public that now would be the time to call in favor of the proposed request. He said if wish to speak press star 9 and someone will answer your call.

### **Favor**

No one spoke in favor of the request.

Mr. Corbett informed the public that now would be the time to call in opposition of the proposed request. He said if wish to speak press star 9 and someone will answer your call.

## **Opposed**

Kenneth & Jackie Hepworth, 71 Conley's Grove Road. Mr. Hepworth said that he was a direct abutter to 69 Conley's Grove and their property is only separated by 13' so makes for a special type of neighbor. He said if you break down the yearly number of people to use the property as a short term rental for 2 nights a week would be 3 now multiply that times 52 weeks would be 156 times rented and go further to the number of occupants of 156 x 10 people would be 1,560 different people staying next door to their home in the course of a year. Mr. Hepworth said he realizes that the numbers could be less but that does not even go into the fact of the number of vehicles on a very narrow roadway. He described the area for the record. Mr. Hepworth said that feel homes are to close and that the use will diminish property values as property is located in the LDR district and not versed but believe will impact the neighborhood. Mr. Hepworth said that the short term rental operates without an onsite manager or supervisor. He said as a long term residential buyer would not wish to have neighbors who did not know or trust. He said that they have coped with the situation until rental started in August. Hardship criteria there is no hardship as the property is a residence. Substantial justice would not be done due to adverse impact to the Hepworth's if granted and feel that the harm done to the Miller's/Kwo income loss does not outway the direct impact to the Hepworth's. Mr. Miller stated that the renters would be vetted but suspect that the only person that would be vetted would be the one who's credit card would be on file not the other 9 guests. To date they already have violated their own hours to the stated quiet times. Mr. Hepworth stated that granting this variance would be in direct contrary to the LDR zone which provides a quiet living environment where homes are separated by substantial distances not 13' that currently exists between their existing homes.

Mr. Perkins stated that the Kwo/Miller's could sell their home and then would not know the neighbors as it not the same as it was 40-50 years ago. Mr. Hepworth said that you get to know your neighbors in your neighborhood as you get to know each other over time.

Mr. Tripp asked if Conley's Grove Road was a private community. Mr. Mackey said a portion of the road is public it turns to a private area at Escumbuit Road. The Town maintains Conley's Grove and a portion of Escumbuit but not an accepted Town approved road. He said that Conley's Grove Road is a Town road with separate lots where they consider themselves a community.

There was some discussion with regard to sizes of property's and white noise.

Mr. Hepworth said that at the January 19<sup>th</sup> meeting there was some discussion with regard to hotels and that a short term rental should be treated like a hotel and not allowed in the LDR zoning district.

The Board took a brief recess.

Jane & Douglas Allen, 65 Conley's Grove Road. Mrs. Allen said that they live next door and have a direct view to the door and master bedroom. She said that in 2022 there have been 17 different renters and only 7 have had less than 12 people and feel that the property being utilized like this is draining the resources to the area as they fill and empty the hot tub and master bath several times which creates a tax on the water recovery. Mrs. Allen said that they currently had to spend over \$600 to have their well evaluated and more to have their pump lowered. There have been numerous safety concerns as the drilled a new well and have a water purifier installed and that the septic system is currently located where vehicles park and that it has not been inspected in over a year. She said that she has witnessed tenants blocking roadway and have incurred damage to their vehicle, tenants do not abide by the laws and smoke recreational drugs and have seen people go to the bathroom outside on numerous occasions. The roadway is posted to 20mph but go faster, they feed the ducks, utilize the kayaks while intoxicated. She said that feel their property value is diminished and that would impact any potential sale if were to put their home up for sale.

Mrs. Allen said that she has a letter from the Wilkins that have a deeded right-of-way to access the water for the record and wish to read it for the record.

Mr. Perkins said that they are not listed as an abutter but will take the letter and review.

Mr. Burgess asked what was a deeded rights as to an abutter. Mr. Mackey said it was a right to use an area but do not own.

Mr. Tripp asked if there was a common well. Mrs. Allen said that they have their own well about 50' away.

Mr. Corbett said that the letter states there is easement rights across 67 Conley's Grove Road as a right-of-way and have dock rights and that the existing fence does appear to block access.

Mrs. Morin reviewed a letter from Kelly Redmond, 70 Conley's Grove Road expressing concerns to safety and increase of traffic for the record.

Michael Buckley, 83 Conley's Grove Road, said that testimony was provided that the spirit and intent of the ordinance was observed and do not agree with that statement. The comment that would not diminish property values not true as do not see where it would help other property value with respect to the area. Mr. Buckley said that short term rental is not allowed and that feel that the neighborhood has been more than generous with dealing with it over the past several months. He said he also has a question that when the dam opens and water lowers back 10 to 12 plus feet back in front of the property exposed land that share holders should have notification made to Big Island Pond Club.

Mr. Perkins said that he felt that a receded line to other properties did not follow consistancy of direct abutters. He said that DES and Fish & Game possibly but the Board has been consistent with its policy but may be a question for an Attorney.

Mrs. Morin said that the Board has reviewed the by-laws and has taken the information into consideration.

### **Rebuttal**

Mr. Miller said that with regard to the Redmond letter, there is no ill will as purchased with intent to utilize as much as possible and that they do not have any ill will to their neighbors. He said that short term rentals questions raised by the neighbors he would try to address the key points:

- The question of short term rental creates hardship issues not specific to specific use as all issues that have been brought up have also been there in the past as former owner had police activity, foul language, etc.
- Rentors with bad behaviour – could also be someone that lived there all the time.
- Disturbance of noise etc . – have 3 children so could also have screaming, etc.
- Parties – could potentially be there and have a party every weekend and smoke marijuana and get drunk.
- Not want to buy property – no proof provided that the use would change the property value. Changes occur all the time due to higher interest rates etc.
- Second floor rental – not part of the their plan at the moment and the number of bedrooms would not change the number of people rented to.
- The public safety concern – not aware of any accidents or fire due to short term rental use.
- The road is a public road so any one has access so not against the law to drive down road.
- Hard to define economic hardship and it is not relevant to case.

Mr. Miller said that he understands that they are new comers to the community but the conjecture that Air B&B's lead to more crime and accidents has no bearing. He said that there are already Air B&B's in Derry. He said that he believes that they have implemented policy to safeguard the home and surrounding area and that feel that the question of who lives on the property is not purview as they could move to Florida and rent the home to someone.

Mr. Tripp asked if there was a reason that there was not a local property manager. Mr. Miller said that they do have a person that lives in the area that takes out the trash and does snow removal and would be no different if went out of Town as would be same issue.

Mr. Tripp asked if the neighbors know who to contact if problem occurs. Mr. Miller said he was unsure. He said that they have rental rules that limit activities etc. Only made aware that there was an issue due to an incident that occurred on December 3<sup>rd</sup> and that they have tried to get documentation but unable to. Mr. Miller said that if he had had the party then the neighbors could have spoken to him or called the police. The rules that they have implemented are 10 people or less and quiet by 10 pm and understand that sometimes things happen but this was the first time any of these concerns.

Mr. Perkins said that have made some good points and that Mr. Hepworth's property is only 13' away and that merits reflect on testimony provided.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unimous.

Mr. Tripp, Mr. Burgess, Mr. Virr, Mr. Corbett, Mr. Perkins

### **Deliberative Session**

Mr. Virr said that stated initially that no where in the ordinance states rules or regulations for an Air B&B.

Mr. Corbett said that if look at the Zoning Ordinance where written definitions for LDR and LMDR lists single family homes and no mention of hotels or motels. Can not fault ordinance of potential future changes.

There was discussion of rental use allowance.

Mr. Burgess said that could potentially have a buss bring in 10 people that could infringe on neighborhood. Traffic concern over time on a small road could be a potential issue.

Mr. Tripp said that request is a non-permitted use and that uses permitted have rules and regulations. He said that as stated by Mr. Virr the Planning Board is aware and that future may have an ordinance to outline use. If approve today would need to implement rules to protect owner and abutters.

There was some discussion with regard to ordinance and setting prescedence.

Mr. Perkins said that need to address 5 criteria. The arguments to public interest, spirit and intent, substantial justice and hardship need to formulate decision to criteria points.

Mr. Burgess said that he did not feel it meets the public interest or spirit of the ordinance and did not see substantial justice was just not shown.

Mr. Perkins said that Mr. Miller said that diminish of property value was speculation and feel use supports each other.

Mr. Burgess said that could see value to their property but do not see where it helps neighbor value.

Mr. Tripp said that most of the problem with short term rental is not managed properly and lack of ruls and regulations. Maybe if better management would eliminate issues. If approve would need to set rules to help issues with abutter concerns.

Mr. Perkins reviewed the conditions outlined and asked if there were any other conditions to establish.

Mr. Virr said that if approve subject to present conditions not new rules that may happen. Possible fines of future violations may need to be implemented.

Mr. Perkins said that conditions need to protect abutters and establish something that Code Enforcement could address.

Mr. Corbett said maybe conditions of hours of quiet be 10pm to 8am, no on street parking, limit to no more than 10 people and if do not adhere to then variance is void.

Mr. Tripp said maybe require a local property manager to possibly help enforce rules.

Mr. Corbett said that neighborly contact possibly share numbers and limit to 5 vehicles.

There was dissusion with regard to parking.

Mr. Tripp said that violations would be for neighbors to contact police.

Mr. Perkins said time establish rules for recourse.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mr. Tripp.

Vote: Unanimous

Mr. Tripp, Mr. Burgess, Mr. Virr, Mr. Corbett, Mr. Perkins

Mr. Corbett motioned to extend the meeting and additional 10 minutes.

Seconded by Mr. Virr.

Vote: Unanimous.

Mr. Tripp, Mr. Burgess, Mr. Virr, Mr. Corbett, Mr. Perkins

**Mrs. Morin motioned on case #23-103 Peter Miller & Elizabeth Kwo to Grant a variance to the terms of Article VI, Section 165-48.A of the Town of Derry Zoning Ordinance to allow the property/dwelling to be utilized for short term rentals at 67-69 Conley's Grove Road, Parcel ID 16052 & 16053, Zoned LDR as presented with the following conditions:**

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Quite hours 10:00 PM to 8:00 AM**
- 3. Limit to no more than 10 people and 5 vehicles at a time.**



**Seconded by Mr. Corbett.**

**VOTE:**

**Mr. Corbett:** No. Do not believe it meets the spirit and intent of the ordinance. No hardship has been shown as there are other uses available.

**Mr. Virr:** Yes.

**Mr. Burgess:** No. Do not believe it is in the public interest and is against the spirit and intent of the ordinance.

**Mr. Tripp:** No. Not listed as a use in the zoning district where property is located. Also, is contrary to the public interest.

**Mr. Perkins:** No. Believe would be against the public interest of the ordinance as having transient occupants potentially difficult to approach. Concern with hardship as neighborhood is residential and homes are close together so having an Air B N B turns to a commercial atmosphere. Discussed public safety as was a concern with the neighbors.

The application was Denied by a vote of 1-4-0. 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.

**Mr. Perkins noted the findings of fact as follows for case #23-103:**

- The parcel is zoned low density residential (LDR).
- The application is for short term rentals less than 6 months.
- Short term rentals are currently allowed in the central business district and office business district.
- The applicant noted that this was not their primary residence.
- Neighbors expressed safety concerns and testimony of safety and preservation of property have been noted.

The Board also includes all facts found in the meeting minutes for this application and incorporates all meeting minutes into its finding of fact and decision.

**Approval of Minutes**

Mr. Corbett motioned to approve the minutes of February 16, 2023 as amended.

Seconded by Mrs. Morin.

Vote: Unanimous.

Mr. Dietzel, Mr. Burgess, Mr. Tripp, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins.

## **Correspondence**

Mr. Corbett reminded the Board of the upcoming workshop on April 6, 2023 to attend.

## **Adjourn**

Mr. Burgess motioned to adjourn.

Seconded by Mrs. Morin.

Vote: Unanimous.

Mr. Dietzel, Mr. Obimba, Mr. Donlon, Mr. Tripp, Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins

Adjourn at 10:10 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

## **Approval of Minutes April 6, 2023**

Mr. Tripp motioned to approve the minutes of March 16, 2023 as amended.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Obimba, Mr. Dietzel, Mr. Tripp, Mr. Donlon, Mr. Burgess, Mrs. Morin, Mr. Perkins.