

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
April 6, 2023

Members Present

Lynn Perkins, Chairman
Crystal Morin, Secretary
Donald Burgess
Richard Tripp

Members Absent

Craig Corbett

Alternates Present

Michael Donlon
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 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: ginnryrioux@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.

Mr. Perkins said that typically the first meeting in April is the Election of Officers but would like to have a motion to table due to the absence of Mr. Corbett.

Mr. Tripp motioned to table the Election of Officers to the next meeting.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Tripp, Mr. Burgess, Mrs. Morin, Mr. Perkins

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

23-108 71 Birch Street, LLC

The applicant is requesting a variance to the terms of Article VI, Section 165-35.D.2 & 3 of the Town of Derry Zoning Ordinance to allow the property to be subdivided into 2 lots with the newly created lot having less than the required frontage and lot width on Eden Street. A single family dwelling is proposed to be constructed on the new lot. - 71 Birch Street, Parcel ID 28001, Zoned OMB

Joseph Maynard, Benchmark Engineering, said he was representing the applicant who was also present. Mr. Maynard reviewed the required criteria and plans presented for the record.

Board Questions

Mrs. Morin said that in reading the October 2022 minutes it was asked if there would be building there and was told no. Mr. Benedict said that the question that was asked was if there would be a business entrance or exit there and that answer was no.

Mr. Perkins said that the variance was granted due to the limited use of the property and now changed as former had deed restrictions that have been cleared.

Mrs. Morin asked if there was a new copy of the deed available. Daniel Floyd said not at this time as still working on language but have confirmation from Exxon Mobile in rewriting of the deed as do not want to be sued and so far they are satisfied with proposal of redline version and currently under agreement and working on language which should be resolved in 2-3 weeks.

Mr. Perkins asked if it was so not as to be held liable. Mr. Floyd said it was due to a law suit in New Hampshire of oil companies and MBTE suit so they are careful with properties that they own. They are currently speaking with the lawyers as the items are boiler plate notes in order to prevent potential lawsuits. Will be having a full environmental study done and clean property.

Mr. Perkins said that there was a point raised restricted from residential use and if that was still an argument. Mr. Benedict said that the residential home wording was more to

front lot not pertaining to this area. After purchasing reviewed and feel could subdivide and create a beautiful home that would complement the area.

There was some discussion with regard to previous meeting and proposed lot.

Mr. Dietzel asked who was 71 Birch Street and if member was in good standing with secretary of state. Mr. Benedict said it was a new entity and he was the primary member of the LLC and in good standing with the secretary of state.

Mr. Donlon said that previous case discussed clean up so feel substantial justice has been made.

Mr. Burgess asked what the wetland distances were. Mr. Benedict said that he did not know exact distances but know all setbacks will be met.

There was some discussion with regard to the possibility of Town water and sewer access and connections.

Mr. Perkins asked if possibility of connecting to Town sewer. Mr. Benedict said yes as there is currently a dry line in front that goes no where and if possible would need to boar under Birch Street to create tie in so will possibly be installing a septic system.

Code Enforcement

Mr. Mackey provided the following information with regard to the property for the record.

- The applicants are requesting a variance to allow the property to be subdivided into 2 lots.
- The property which is about 4 acres in size, is located in the Office Medical Business Zoning District (OMB) which requires a minimum of 1 acre and 125 feet of frontage and lot width for properties serviced by on-site septic system and private wells.
- The new lot is proposed to be 1.29 acres and have 55 feet of frontage on Eden Street. Therefore, a variance is being requested for the frontage and lot width requirements. Eden Street is a Town approved street in this location and has approximately 16 feet of pavement width.
- A single family dwelling is being proposed to be constructed on the new lot which is a permitted use in the district. The parent lot is slated for future commercial development. The Board may recall that a variance was granted last October for this property to allow the construction of a commercial building less than 75' from a wetland.
- If approved, and Planning Board subdivision approval will be required.
- There are pictures in the file for review by the Board.

Mr. Tripp asked if the proposed new lot would meet all the setbacks. Mr. Maynard said yes and described proposal for the record.

Mr. Perkins 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. Perkins 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

No one spoke in opposition of the request.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mr. Donlon.

Vote: Unanimous.

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

Deliberative Session

Mr. Donlon said he believes that the restriction aspect of making it residential from now on would be a benefit to the neighborhood and that it would satisfy meeting the public interest.

Mr. Tripp said he believes that the request meets the five criteria and would not be contrary to the public interest and that the spirit and intent would be observed. It currently is a long strip of land and allowing a residential structure would be good use of the area in the residential district.

Mrs. Morin said that she agreed and that a 3 bedroom home is not overly sized for the area. She said that a note that the deed restrictions be resolved before going forward.

Mr. Perkins said that the testimony given and the land mass appears that this proposal would be a good use for the area. Other homes in the area create hardship as area was subdivided a hundred years ago.

Mr. Burgess said that he agrees as other lots have small frontages so would be similar to area with regard to frontage. Today's zoning for new developments help with overcrowding.

Mr. Perkins said that as with older neighborhood's understand the hardships. He said that he understands corporate aspect but not deed language and feel that Code Enforcement or Planning Board will not move forward until resolved.

Mr. Tripp said that the number of permitted uses for this area feel that a residential use would be the best fit for the area versus a bank. He said he would like a condition of residential use only.

Mr. Perkins said that the request is for residential use and if a bank would need to come back before the Board.

Mr. Tripp motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Mrs. Morin motioned on case #23-108 71 Birch Street, LLC to Grant a variance to the terms of Article VI, Section 165-35.D.2 & 3 of the Town of Derry Zoning Ordinance to allow the property to be subdivided into 2 lots with the newly created lot having less than the required frontage and lot width on Eden Street. A single family dwelling is proposed to be constructed on the new lot. - 71 Birch Street, Parcel ID 28001, Zoned OMB as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Planning Board subdivision approval required.**

Seconded by Mr. Burgess.

Vote:

Mr. Burgess: Yes.

Mr. Donlon: Yes.

Mr. Tripp: Yes.

Mrs. Morin: 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.

Mr. Perkins noted the findings of fact as follows for case #23-108:

- **The applicant is seeking to subdivide the property into 2 lots.**
- **The variance request is an appeal for frontage and lot width.**
- **The parcel is zoned Office Medical Business district (OMB).**
- **Eden Street already has permitted residential homes.**
-

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.

It was noted for the record that Mr. Burgess would step down and that Mr. Dietzel and Mr. Obimba would sit for the following case.

23-109 Yoann Hispa

The applicant is requesting a variance to the terms of Article III, Section 165-7 and Article VI, Section 165-48.B.2 & 3 of the Town of Derry Zoning Ordinance to allow the construction of a single family dwelling on the property which has less than the required frontage and lot width at 4 Gill Road, Parcel ID 07023, Zoned LDR.

Barry Gier, P.E., Jones & Beach Engineers, Inc. said he was representing the applicant. Mr. Gier reviewed the required criteria for the record.

Board Questions

Mr. Perkins asked if the property had 60 feet of frontage along Warner Hill Road and when purchased. Mr. Gier said yes and that the applicant purchased the property approximately 2 months ago.

Mr. Perkins said that it was an odd plan access off Gill Road. Mr. Gier said that the applicant owns the front portion of the road and that there is a separate owner to the other part of the access but have easement access in deed.

Mr. Perkins asked if the road was private. Mr. Gier said yes.

Mr. Tripp asked if other lots have access to Gill Road. Mr. Gier said yes deeds show the same easement.

Mr. Perkins asked who was responsible for maintaining the road. Mr. Gier said unsure but possible that each abutter shares responsibility of maintenance.

Mr. Tripp asked if there were other lots built on the road. Mr. Gier said yes that there were other homes built on the road.

Code Enforcement

Mr. Mackey provided the following information with regard to the property for the record.

- The applicant is requesting a variance to allow the construction of a single family dwelling on the property.
- The property is located in the Low Density Residential Zoning District (LDR) which requires a minimum of 200 feet of frontage and lot width. The property contains approximately 34.3 acres including some prime wetland.
- The property has some 60+/- frontage on Warner Hill road which is part of Gill Road. Gill Road is a private road not maintained by the Town. It appears that a portion of Gill Road fronting on Warner Hill Road is part of this property and the lower portion belongs to 173 Warner Hill Road.
- This dwelling is proposed to have a driveway access from the lower portion of Gill Road.
- The current dwelling location on the plan submitted may require additional zoning relief with regard to the wetland setback so that location may change.
- As this is a private road, prior to the issuance of a building permit, a notice of Municipal Liability and Responsibility will need to be recorded with the deed. The current width of Gill Road is between 10-12' and may require upgrading per Fire Department regulations.
- There are pictures in the file for review by the Board.

Mr. Tripp asked if the Fire Department would require road to be upgraded. Mr. Mackey said that if granted would need to meet Fire Department access and driveway regulations.

Mr. Perkins asked if would require Planning Board review. Mr. Mackey said no.

Mrs. Morin asked if would be owner occupied. Mr. Gier said that the applicant is relocating from Denver.

Mr. Tripp said that Gill Road goes over several properties and bringing the road up to standards is a lot of work.

Mrs. Morin said the property would be subject to waivers.

Mr. Perkins asked if the other properties had waivers. Mr. Mackey said yes. This lot does have frontage on a Town road but access would be off of a non-town approved road so would require a waiver.

Mr. Perkins 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. Perkins 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

Shirley Goodwin, 161 Warner Hill Road, said she was concerned where the proposed home would be located as was under the impression that it would possibly be built behind her home. She said that she had previously seen plan for 9 homes and was concerned with wetlands and quality of the wildlife in the area.

Mr. Perkins explained where the proposed home would be located and she reviewed the proposed layout of the property.

Jean Driggers, 155 Warner Hill Road, said that Gill Road abuts her property and that she was not opposed to home being built on the property so much as this is now the 3rd home to be built in the area and her property borders the roadway that has recently been raised so now have run-off onto her property to where her septic system is located. Ms. Driggers said that there also is a culvert that is blocked so her property is even more impacted as wetlands are now flooding the rear of her property.

Mr. Perkins said that was unfortunately not something that was of the Board's purview or Town involvement and suggest that remedy would be to contact the parties involved and work something out together to resolve the matter. The only matter that the Board can address is the 5 criteria and that the applicant has a legal right to pass along the private road.

Shawn Brennan, 159 Warner Hill Road, said that he was concerned about the size of the proposed home being 7 bedrooms and that it would have a negative effect to the area. He asked if there were to be more than one home built would they be required to come back. Mr. Mackey said yes as would require subdivision approval and that the road would need to be constructed to Town specifications. He said that the Planning Board has a 200' radius of property notification for subdivision approvals.

Mr. Perkins said any future development would be notified and that the road may need to be structured differently.

Michael & Emily Brindamore, 10 Gill Road, said that they purchased in December 2022 and have a concern of impact with additional traffic with large equipment as currently it is a dirt road and maintenance is shared by self and other owner.

There was some discussion with regard to access.

Joanne Gill, 8 Gill Road, said that they built their home 14 years ago and that 2 people live on the road and maintain it and have spent 4 to 6 thousand dollars to maintain the potholes and grade the roadway. She said that she also has a concern with heavy equipment as do not want damage to the roadway. She said that the applicant needs to take care of the road as a private way.

Rebuttal

Mr. Gier, said he was not an attorney just an engineer. He said that the new owner wants to be a good neighbor and will contact to share maintenance of the roadway.

Mr. Tripp motioned to go into deliberative session.

Seconded by Mrs. Morin.

Vote: Unanimous.

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

Deliberative Session

Mr. Tripp said that it was a large property for one home.

Mrs. Morin said proposal is for a 7 bedroom home and feel that the applicant will take care of surrounding area.

Mr. Dietzel said that he feels that the applicant has met the criteria and does not see any diminish to property values. Proposing a single family home on 34 acres would not be in contrary to the surrounding area.

Mr. Obimba said that he feels the applicant meets the 5 criteria given the size and shape of the property. He said that he could see some hardship if were to place somewhere else on the lot.

Mr. Perkins said that the plan may need to come back depending on the wetlands.

Mr. Mackey said that Ballard Pond is a prime wetland and that Engineer Gier has noted that the prime area stops further up and the proposal would not be located in the 150' buffer setback.

Mr. Perkins said that the property is 34 acres with proposal of a 7 bedroom home. Lot size creates substantial justice and repetitive effect as to location. Exceeds spirit of ordinance and a shared driveway is not purview of the Board. He reviewed the conditions for the record.

Mr. Dietzel motioned to come out of deliberative session.

Seconded by Mr. Obimba.

Vote: Unanimous.

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

Mrs. Morin motioned on case #23-109 Yoann Hispa to Grant a variance to the terms of Article III, Section 165-7 and Article VI, Section 165-48.B.2 & 3 of the Town of Derry Zoning Ordinance to allow the construction of a single family dwelling on the property which has less than the required frontage and lot width at 4 Gill Road, Parcel ID 07023, Zoned LDR as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Waiver of Municipal Liability and Responsibility must be recorded with the deed.**

Seconded by Mr. Burgess.

Vote:

Mr. Obimba: Yes.

Mr. Tripp: Yes.

Mr. Dietzel: Yes.

Mrs. Morin: 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.

Mr. Perkins noted the findings of fact as follows for case #23-109:

- The applicant is seeking request for a single family dwelling.**
- The parcel is zoned Low Density Residential (LDR).**
- The parcel lacks the required frontage on a town maintained or approved road.**

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.

Other Business

Mr. Perkins said that due to a conflict of Town Council's budget workshop the Board needs to reschedule the April 20th meeting to May 4th.

Mr. Perkins said Allan Virr has decided not to return to the Board and has decided to officially retire. He said wishes him a happy retirement. He said that Mr. Virr has served 20 years on the Zoning Board and other committees and Town aspects and brought a lot of good influence to the Board over the years and will be greatly missed.

Approval of Minutes

Mrs. Morin said she has one change that she would like to be added into the minutes.

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

Seconded by Mrs. Morin.

Vote: Unanimous.

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

Adjourn

Mr. Burgess motioned to adjourn.

Seconded by Mr. Obimba.

Vote: Unanimous.

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

Adjourn at 8:47 PM

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

Approval of Minutes May 4, 2023

Mr. Tripp motioned to approve the minutes of April 6, 2023 as written.

Seconded by Mr. Burgess.

Vote: Unanimous.

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