

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
May 4, 2023

Members Present

Lynn Perkins, Chairman
Craig Corbett, Vice Chair
Crystal Morin, Secretary
Donald Burgess
Richard Tripp

Members Absent

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: 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.

Mr. Perkins said the first order of business was the election of officers.

Position of Chairman

Mr. Corbett nominated Mr. Perkins for the position of Chair.

Seconded by Mr. Tripp.

Vote: Unanimous.

Mr. Tripp, Mr. Burgess, Mrs. Morin, Mr. Corbett

Position of Vice Chair

Mr. Perkins nominated Mr. Corbett for the position of Vice Chair.

Seconded by Mr. Tripp.

Vote: Unanimous.

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

Position of Secretary

Mr. Perkins nominated Mrs. Morin for the position of Secretary.

Seconded by Mr. Corbett.

Vote: Unanimous.

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

It was noted that Mr. Dietzel would recuse himself from the following case.

23-110 Hoyadocs, LLC

The applicants are requesting a variance to the terms of Article III, Section 165-20.a of the Town of Derry Zoning Ordinance to allow the construction of a building addition 10.2 feet from a wetland where 30 feet is required at 32 Pinkerton Street, Parcel ID 36026, Zoned MHDR

Attorney Brian Germaine, Germaine & Blaszk, P.A, said he was representing Dr. Shawn Nichols, Hoyadocs, LLC and that John Ahern who is a member of Hoyadocs was also present. Attorney Germaine reviewed the required criteria and plans presented for the record. He said that the Conservation Commission has already walked the site and DES application has been made and wetland impact has been noted on the plan.

Board Questions

Mr. Burgess asked where additional parking would be located. Dr. Nichols said that they currently have 60 spaces and will be proposing 20 more parking spaces.

Mr. Tripp asked if the proposed building was to be 10 feet from the wetland. Attorney Germaine said yes, the proposed building would be within 10 feet and some parking that they are working with the Army Core of Engineers and reviewing mitigation.

Mr. Tripp asked if the variance was for the building not the parking or walkway. Attorney Germaine said that was correct and that any approval will be subject to conditions and that the walkway is proposed to be a gravel type walkway.

Dr. Nichols said that there is proposed to be 2 gravel walkways designed to enter to the side of the proposed building.

Mr. Perkins asked is the swampy area ran along side of the property. Mr. Mackey described the wet area for the record.

Mrs. Morin said that she would when she drives by the property the parking lot is always full.

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 930 square foot addition in the rear of the property and which will be located less than 30 feet from a wetland less than 1 acre in size.
- The wetland in question is not a designated prime wetland and is less than 1 acres. Therefore, Article III, Section 20a applies which requires that buildings be located a minimum of 30 feet from the edge of the wetland. This setback does not apply to pavement or walkways.
- Plans indicate that the addition will be located 10.2 feet from the wetland.
- If the variance is approved, proper erosion controls must be installed prior to undertaking construction.
- There are pictures in the file for review by the Board.

Mr. Perkins asked what the mitigation of the area entailed. Attorney Germaine said that there was a remediation fund which requires a financial demand to be paid which funds other projects in other areas.

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

Doug Stevens, 28 Pinkerton Street, said that he was in favor of the proposed project as they have been good neighbors and support the project.

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

No one spoke in opposition of the request.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mr. Corbett.

Vote: Unanimous.

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

Deliberative Session

Mr. Corbett said that he drives by the property daily and agree with the comment that it is a small business that is seeking to grow.

Mrs. Morin said that she also agrees with Mr. Corbett and also that DES and Conservation are involved so feel confident that will be handled appropriately.

Mr. Tripp said that he felt it was a minor impact and did not see a problem with the proposal.

Mr. Burgess said that he felt that the mitigation proposed was minor and also feels that the proposal was good for the area.

Mr. Perkins reviewed the condition for the record.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mr. Corbett.

Vote: Unanimous.

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

Mrs. Morin motioned on case #23-110 Hoyadocs, LLC to Grant a variance to the terms of Article III, Section 165-20.a of the Town of Derry Zoning Ordinance to allow the construction of a building addition 10.2 feet from a wetland where 30 feet is required at 32 Pinkerton Street, Parcel ID 36026, Zoned MHDR, as presented with the following conditions:

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

Seconded by Mr. Burgess.

Mr. Perkins noted the findings of fact as follows for case #23-110:

- The applicant is seeking build an addition 10.2 feet from a wetland where 30 feet is required.**
- Relief is being sought to encroach on wetland less than 1 acre.**
- The parcel is zoned Medium High Density Residential (MHDR).**

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.

Vote:

Mr. Corbett: Yes.

Mrs. Morin: Yes.

Mr. Tripp: Yes.

Mr. Burgess: 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.

23-111 Thomas Saad

The applicant is requesting a variance to the terms of Article VI, Section 165-48.B.2 & 3 of the Town of Derry Zoning Ordinance to allow the property to be subdivided into 2 lots with each lot proposed to have less than the required frontage and lot width. A single family dwelling is proposed to be constructed on the new lot at 182 Island Pond Road, Parcel ID 06035, Zoned LDR

Mr. Perkins said that the Board has received a document with regard to a conflict with titles. Mr. Saad said yes, that they found that there is an acreage discrepancy as deed shows 1.2 acres and have over 7 acres. He said that they are working with Granite State Mortgage and they have reached out to their Attorneys to resolve.

Mr. Perkins said that feeling that the Board may need to table as seeking relief for area but not showing accuracy. Feel could be contested with what seeking to be accomplished may need to have the deed elevated before proceeding.

Mr. Burgess said that he agreed and feel should postpone until deed is resolved.

Mr. Tripp said he also agreed.

Mrs. Morin said she also agreed.

Mr. Corbett said that he has concerns with possible granting and not having a clear title and would like to postpone until title matter gets ironed out.

Mr. Perkins asked if would require re-noticing. Mr. Mackey said that if the Board tables to a date certain then no but if no date is given then would need to be re- noticed.

Mr. Saad said that he has been paying taxes for over 7 years on the property. Mr. Perkins said that the Board feels that unfortunately unable to continue until accurate documentation is provided.

There was some discussion with regard to tabling the case.

Mr. Saad said that he has several neighbors here this evening to speak in favor of the proposal and would like to present the case and then the Board could vote when cleared up. Mr. Perkins said that the Board could not do that as there is no date specific as to when the title matter would be cleared up so the case requires to be tabled.

Mr. Tripp motioned to table case #23-111 Thomas Saad until the deed discrepancy is resolved and the new deed is resubmitted to the Board.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Other Business

Mr. Mackey informed the Board that there have been 3 cases submitted for the May 18, 2023 meeting.

Approval of Minutes

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.

Adjourn

Mr. Corbett motioned to adjourn.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Adjourn at 7:41 PM

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

Approval of Minutes May 18, 2023

Mr. Corbett motioned to approve the minutes of May 4, 2023 as amended.

Seconded by Mr. Donlon.

Vote: Unanimous.

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