

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
June 1, 2023

Members Present

Lynn Perkins, Chairman
Crystal Morin, Secretary
Donald Burgess

Members Absent

Craig Corbett
Richard Tripp

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.

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

23-115 Cronin, Bisson & Zalinsky, P.C. on behalf of Ashley Snell
Owner: Charles C. Snell 2012 Rev. Trust
Charles C. & Ashley J. Snell Trustees

The applicants are appealing the decision of the Code Enforcement Department's determination that they use their property as a short-term rental unit in violation of the Town of Derry Zoning Ordinance at 81 Conley's Grove Road, Parcel ID 16045, Zoned LDR

Attorney John Bisson, Cronin, Bisson & Zalinsky, P.C., said he was representing the owner and that Ashley Snell was also present this evening. Attorney said that Ms. Snell received a letter from the Code Enforcement Officer to cease and desist the rental of their property as was currently in violation of the Town of Derry Zoning Ordinance. Attorney Bisson reviewed the paperwork submitted regarding their appeal.

Board Questions

Mr. Burgess said that online shows listing for less than the 14 days. Attorney Bisson said that was prior to receiving the letter and have since changed limit to 2 week rental use as defined in ordinance and will comply with statute.

Mr. Burgess said so previously utilized as a short term rental. Attorney Bisson said they were not here for a variance request and here saying will fully comply with ordinance as will exceed 14 day rental status and he reviewed the ordinance for the record.

Mr. Burgess said that he felt that a bed and breakfast was a short term rental so essentially the same. Attorney Bisson said that the Town ordinance does not define short term rental and that would benefit for more clarity with a simple amendment so where the ordinance does not say use unable to imply short term rental status.

Mr. Perkins said he understands that here for an administrative appeal to the Code Enforcement ruling of operating as a Air B&B and short term rental. As Mr. Burgess pointed out the property was currently utilizing as such. Mr. Perkins said as currently hearing that there is no desire to rent under the 14 days so as to comply moving forward and that a variance would not be warranted as would comply with definition of 14 days. He asked how would verify 14 day rental status. Attorney Bisson said that would be no difference as if don't comply a cease and desist order would be then issued.

Attorney Bisson said he agrees that she did utilize as a short term rental but have since changed the listing since receiving Mr. Mackey's letter.

Mr. Perkins asked how would one verify the 14 days. Attorney Bisson said it would be no difference as if don't comply with ordinance then would fall under cease and desist. He said that Code Enforcement became aware due to an anonymous tip stating non-compliance so feel that would verify to conditions.

Mr. Perkins said that given the situation stating no right to say who is there renting as long as stay is 14 days. Attorney Bisson said correct as where does it give authority to stipulate length of stay. Here seeking forgiveness from Town as currently do not have ordinance stating full definition and disagree with analysis if providing can do with more than 14 day rental.

There was some discussion with regarding the ordinance wording and the letter from the Code Enforcement Office.

Code Enforcement

It was noted that Mr. Mackey provided the following information with regard to the property for the record.

- The applicants are appealing the decision of the Code Enforcement Office that the property is being utilized as a short-term rental unit in violation of the Town of Derry Zoning Ordinance.
- After being provided relative information, it was determined by the Code Enforcement Office that the property was being utilized as a short-term rental which we contend is not an allowed use. A letter was sent notifying the owners that this use was not permitted. (see attached letter and posting on Airbnb).
- The applicants are appealing that determination.
- The Board will need to hear the evidence and make a determination.
- I have provided some general information in your packets dealing with short-term rentals.
- There are pictures in the file for review by the Board.

Mr. Perkins said that Attorney Bisson's comment is that the definition of Bed & Breakfast context of wording is not grasped.

Mr. Burgess asked if RSA 48A outlined correctly. Mr. Mackey said that is the housing statute with regards to rental properties.

Mr. Burgess asked if short term rental is not defined and original definition falls into Boarding House would fall under this. Mr. Mackey said the office had received a complaint so sent letter to Ms. Snell. Ms. Snell then contacted the office and said that she would no longer do rentals less than 14 days so as to comply with the ordinance.

Mr. Perkins said that permissive ordinances allows listed uses but if not listed it was not allowed and hearing that ordinance reads 14 days or less is not allowed. Mr. Mackey said an area of bed and breakfast or tourist home states 14 days or more fall under a B&B or tourist use.

Mr. Donlon said that the debate is not whether your clients case falls under the rules of a Bed & Breakfast, as located in the LDR zoning district, which is not a permitted use but that it is not going to be utilized as a Bed & Breakfast. Attorney Bisson said that the property is not being utilized as a B&B but falls under the similar use of a Bed & Breakfast which is not permitted in the ordinance.

Mr. Donlon said that a 15 day stay considered a transitional stay. Attorney Bisson said he could not answer that question, though common uses are by traveling nurses as typically

stay a month of 29 days or more and definition is important when trying to comply but do not feel fall under typical transitional stay.

There was some discussion with regard to permissive uses and wording in ordinance.

Mr. Perkins said not a variance request but request of appeal to have wording removed and what happens if uphold Code Enforcement. Attorney Bisson said that they would have the right to appeal to the Housing Appeals Board for determination.

Mr. Perkins asked as Mr. Donlon pointed out if not a variance and if agree uses fall under RSA 48A as a short term rental the Ms. Snell would be in violation of appeal. Mr. Mackey said that would depend on how the Planning Board determines what is or isn't allowed. If upheld as long as renting 14 days or more then allowed. He said that a permissive ordinance states can do it but if it does not state can not do so if renting for 14 days falls under the ordinance of boarding house and would go away but still struggle with the issue of short term rental.

Mr. Obimba asked if appeal prevents rent of 14 days then what happens to Ms. Snell's request and Planning Board decides not could she still utilize. Mr. Mackey said that Ms. Snell then would fall under the pre-existing use which would possibly be grandfathered. Mr. Mackey reviewed the RSA 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

Linda Waites, 74 Conley's Grove Road, said that have lived across the street for 28 years and in favor of the rental use that Ashley is doing and have been acting as her property manager. She said that whenever the property is rented that she goes over and introduces herself so that the people know that they are being watched. Ms. Waites said that there have been no issues with the 5 rentals that have been there.

Michael Buckley, 83 Conley's Grove Road, said he was in support of the request to amend the letter. Mr. Buckley said he was a landlord and owned 4 properties and have been approached by real estate agents who offered \$4,000 for a 30 day stay to utilize as short-term rentals as there is a great need as a Parkland surgeon needed for a 3 week stay. He said that Linlew and Fairways lease is a year so feel need to balance and allow short term rentals.

Mr. Perkins asked if there had been any ruling with courts. Mr. Mackey said it was still in process.

Mr. Perkins said that it has become a common problem Statewide and currently dealing with matter in hand.

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.

Attorney Bisson said that they are here addressing an appeal to the letter received and only seeking to say if right or wrong. He said they wish to have the letter edited that if rented for more than 14 days the use is then in accordance with ordinance.

Mr. Perkins asked if need to clarify or vote yes or no. Mr. Mackey said he would prefer if the Board provide clarification as letter leaves open ended but could still be considered as a short term rental. If based on todays definition, then would not be considered as a short term rental and have a time limit.

Mr. Perkins asked if rescind letter or uphold letter or could this possibly be a deeper matter and may need to consult legal council. Mr. Mackey said if going to vote then vote on letter then see what the Planning Board does.

Ms. Snell said that she was not trying to do anything other than keep her father's property as he passed away in 2012 and she named the property "Charlie's Place. She said that she has changed her listing to a 14 day rental as want to be in compliance so if the Planning Board reviews and changes the wording to 30 days then she will also change her listing. She said she lives in Town and that she feels that her property is different than the previous applicant.

Mr. Burgess said still feel rental of 14 days is a rental as can stay in a hotel for 2 weeks and is still a motel/hotel.

Mr. Perkins asked if rule of building code and ordinance being more stringent which would apply. Mr. Mackey said the more stringent ruling would apply,

Mr. Dietzel motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Deliberative Session

Mr. Perkins said that the Board is reviewing a motion to appeal an administrative decision and as such the 5 criteria does not apply.

Mr. Dietzel said that he was reluctant to go against a Code Enforcement decision but after listening to the applicant feel that they are trying to comply.

Mrs. Morin asked if voting on what has happened or what seeking.

Mr. Perkins said that the Board needs to uphold the Code Enforcement findings or rescind the letter.

Mr. Donlon said that he agreed with the Attorney findings that rental of 14 days no longer falls under the Air B&B.

Mr. Perkins said that he understands Ms. Snell's reasons and share with other factors that Planning Board is reviewing.

Mr. Dietzel said that he struggles with wording of ordinance and as such lean towards applicants use of their property and that whoever is creating wording needs to make clear specified use. He said that he understands that if not specifically stated than prohibited but has reviewed ordinance and it still was not clear.

Mr. Perkins said that the ordinance was written in 2003 so definition was not in the full spectrum at the time as Air B&B's are approximately 2 years or a bit longer old. Unable to keep up with society and culture and that the Planning Board has begun the process which is more involved and takes time.

Mr. Burgess said that he also feels that where it is not written that it was also not permissible.

Mr. Donlon said that he has reviewed the ordinance and it is unclear.

Mr. Perkins said that testimony has been given by Attorney Bisson and Mr. Mackey has stated his reasons for writing the letter and that the Board needs to determine if Code Enforcement decision is right or if the applicant is right with appeal.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mr. Donlon.

Vote: Unanimous.

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

Mr. Dietzel asked if a yes vote would be for Code Enforcement or for the applicant.

Mr. Perkins said that the structure of the motion is always in the affirmative so grant decision would be a yes vote to uphold Code Enforcement and a no vote would be for the applicant.

Mrs. Morin motioned on case #23-115 Cronin, Bisson & Zalinsky, P.C. on behalf of Ashley Snell, Owner: Charles C. Snell 2012 Rev. Trust, Charles C. & Ashley J. Snell Trustees to Grant appeal of the decision of the Code Enforcement Department's determination that they use their property as a short-term rental unit in violation of the Town of Derry Zoning Ordinance at 81 Conley's Grove Road, Parcel ID 16045, Zoned LDR

Mr. Burgess asked if a yes vote would grant applicant appeal.

Mrs. Morin rescinded motion. Seconded by Mr. Donlon.

Mr. Perkins revised motion on case #23-115 to read as Appeal Administrative Decision of the Code Enforcement Officer with regarding wording of Bed & Breakfast as written in letter to owners use of property being utilized as a short-term rental unit in violation of the Town of Derry Zoning Ordinance at 81 Conley's Grove Road, Parcel ID 16045, Zoned LDR

Mrs. Morin motioned to move the motion as read by Mr. Perkins.

Seconded by Mr. Burgess.

Mr. Mackey said if the Chair was aware that the motion is now opposite as a yes vote will now uphold Code Enforcement and a no vote will grant the appeal to the applicant.

Mr. Perkins said he was aware of that.

Vote:

Mr. Burgess: Yes. Believe with Code Enforcement's decision.

Mrs. Morin: Yes. Believe with Code Enforcement's findings.

Mr. Dietzel: No. Ambiguity of ordinance is unclear so have right to rent property.

Mr. Donlon: No. Feel if renting of 14 days or longer complies with ordinance.

Mr. Perkins: No. Also agree if keeping rentals of 14 days or longer complies with ordinance.

The appeal request was Granted by a vote of 2-3-0. The Code Enforcement Letter is rescinded.

Approval of Minutes

Mrs. Morin motioned to approve the minutes of May 18, 2023 as amended.

Seconded by Mr. Obimba.

Vote: Unanimous.

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

Other Business

Mr. Mackey said that there is one case scheduled for the June 15th meeting.

Mr. Perkins said that the Board needed to set their summer schedule and typically only meet the third Thursdays during the months of July and August. Those dates are July 20, 2023 and August 17, 2023 and need to vote.

Mrs. Morin motioned to accept the following dates for the Zoning Board Summer Schedule of July 20, 2023 and August 17, 2023.

Seconded by Mr. Donlon.

Vote: Unanimous.

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

Adjourn

Mr. Burgess motioned to adjourn.

Seconded by Mr. Donlon.

Vote: Unanimous.

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

Adjourn at 8:12 PM

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

Lynn Perkins

Zoning Board Chairman

APPROVAL OF MINUTES July 20, 2023

Mr. Obimba motioned to approve the minutes of June 1, 2023 as amended.

Seconded by Mr. Corbett.

Vote: Unanimous.

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