

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
June 15, 2023

Members Present

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

Members Absent

Donald Burgess

Alternates Present

Michael Donlon
James Dietzel

Alternates Absent

Gaspar Obimba

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 would sit for the following case.

The applicant is requesting a variance to the terms of Article VI, Section 165-46.A of the Town of Derry Zoning Ordinance to allow the existing 2nd living unit, installed above the existing garage, to remain resulting in the creation of a two-family dwelling at 119 By-Pass 28, Parcel ID 08161, Zoned MDR

Daniel Lavalliere, owner, reviewed the required criteria for the record.

Board Questions

Mr. Perkins asked what was the definition of Medium Density Residential. Mr. Mackey said that the MDR zone requires 1 acre with 125 feet of frontage and is restricted to single family dwellings. He said that this also allows for an accessory dwelling with a limitation of 800 square feet. Mr. Mackey said that the garage area exceeds the allowed limit so hence a variance is being requested.

Mr. Perkins asked if it was on town water and sewer. Mr. Mackey said no it was serviced by a private well and septic. He said that the septic system would need to be reviewed to see if large enough for an in-law.

Mr. Corbett asked if purview is for a second living unit with accessory. Mr. Mackey said that the permit records show a permit for the garage in 2013. He said that the request is for both levels to be used as a second living unit. Mr. Mackey said that at some point the garage was converted into living space by a different owner but no permits on file. The request is to reclassify to a 2 family and remove the mobile home portion for insurance purposes of which is not purview of the Board. The mobile home was installed years ago and expanded on over the years. If successful in obtaining a variance the assessor needs to review and change the mobile home status.

Mr. Lavalliere said that the home is on a full foundation and done to BOCA standards.

Mr. Perkins asked if seeking to increase the value of the home. Mr. Lavalliere said that insurance for mobile home only minimal and seeking for different insurance ruling with the variance request.

There was some discussion with regard to purchase and insurance.

Mr. Tripp asked if seeking to have the property classified as a duplex and if there were other duplexes in the area. Mr. Lavalliere said yes and that there were several other duplexes in the area.

Mr. Tripp asked if the second residence would require an occupancy permit. Mr. Mackey said yes as currently does not have so will need approval from the Board and the applicant will need to obtain an after the fact permit and the Code Enforcement Office and Fire Department will perform inspections when meet the requirements they will receive an occupancy permit.

Mr. Tripp asked if duplex/condex the property could potentially sell off and split the property. Mr. Mackey said he did not know the applicants intentions but can condex but only one lot but have separate owners for the structure.

Mr. Dietzel said a house needs heat and asked what type of heating system served the home. Mr. Lavalliere said that the mobile home side has electric heat and a pellet stove and the garage area will have mini splits installed.

Mr. Perkins said that the mobile home was installed 30 years ago and addition if addition would have an occupancy. Mr. Mackey said that there is no occupancy for the mobile home but the addition would receive an occupancy once all the requirements were met. He said that a 2-family on a private septic system will require to have a new septic system installed.

Mr. Perkins asked what size was the lot. Mr. Mackey said it was 3/4 acre lot.

Mr. Perkins said if trying to insure the property and if unable to condex garage would it be back to square one. Mr. Lavalliere said yes but if granted as a multi-family could obtain a business owner policy.

There was some discussion with regard to classification of structure and size.

Mr. Tripp asked if detached condo. Mr. Lavalliere said it is an accessory and is attached by a breezeway.

Mr. Tripp said that residence is currently Donald Street and asked if planning on living here. Mr. Lavalliere said it was a possibility.

Mr. Donlon asked if the breezeway attached the other dwelling how would the garage not be considered just additional bedrooms. Mr. Mackey said that the garage has it's own entry, a full kitchen and bedrooms.

Mr. Donlon asked if there were signs of occupancy. Mr. Mackey said yes.

Mr. Perkins asked how was the property marketed. Mr. Lavalliere said it was an auction and listed as single with in-law.

Mrs. Morin said she believed it was listed as a mobile home with extras.

There was some discussion with regards to the conditions of the garage.

Mr. Perkins said that the garage was 24' x 40' and asked if the problem would go away if mobile home was removed. Mr. Lavalliere said possibly but it would be a loss.

Mr. Tripp asked if the mobile home was on a slab. Mr. Lavalliere said no that it has a full foundation.

Mr. Perkins asked what were the permits listed since 2013. Mr. Mackey reviewed the building file for the record.

Mrs. Morin asked where the property was under an acre if an additional variance would be required to reclassify. Mr. Mackey said he did not believe so as there is not lot size if variance is granted but will need to have a licensed septic designer to review and submit a plan to approved by the State.

Mr. Tripp asked how many bedrooms were in the trailer. Mr. Lavalliere said that there were 3 in the trailer and 2 in the garage.

Mr. Mackey said that a septic system would need to be allocated for 5 bedroom with other accountability with loading on the septic system.

Code Enforcement

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

- The applicants is requesting a variance to allow the existing, second living unit to remain as is.
- Building Department records indicate that several permit have been issued over the years to former owners of this property, including a permit to build a garage and a subsequent permit to add an addition to the garage. There are no permits in the file that were issued to create a second living unit in the garage.
- The applicant purchased this property in February of this year with the existing second living unit.
- The square footage of the unit exceeds the square footage allowed for an accessory dwelling unit (ADU) which is 800 square feet. Therefore, the applicant is requesting a variance to allow the property to be considered a two-family dwelling.
- It should be noted that it is not withing the purview of the Zoning Board to reclassify the home by removing the reference to a manufactured home. That would be up to the Tax Assessor's Office.
- If approved, appropriate permits and inspections will be required as well as an inspection of the work.
- There are pictures in the file for review by the Board.

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

Edward Pug, friend of the owner, said that the he was there when the property was purchased and clean up has taken 8 to 9 loads in a large box truck to the dump and 10 loads of garbage. He said that they have removed the carpet and have painted and installed new tile and baseboard in the mobile home. Mr. Pug said that the person that was previously living there showed them the home and stated that there had been no issues

with the septic system and that he had replaced the well pump and that the septic had been reviewed and was told it was in good condition. He described the property for the record.

Mr. Perkins said that it sounds like the building is structurally sound but it is not about the quality of the trailer. If grant approval a licensed designer will need to design a septic system to accommodate the use and that the land needs to be able to meet the load requirements as its not just adding bedrooms as much as additional living space. Mr. Mackey said that the septic tank will possibly need to be 1250 gallon or larger.

Mr. Perkins asked who was currently living there. Mr. Pug said no one at the moment as doing a full clean up.

Mr. Tripp asked if no zoning allowance for 2-family. Mr. Mackey said only districts that allow would be MHDR serviced by Town water and sewer, multi-family would be fairways etc.

Mr. Tripp asked how fit 2-family. Mr. Mackey said by zoning not allowed. Previously was allowed but the zoning changed.

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. Corbett motioned to go into deliberative session.

Seconded by Mrs. Morin.

Vote: Unanimous.

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

Deliberative Session

Mr. Donlon said that the request was unique as person seeking relief not the one that did the injustice. He said that he does not see the hardship as the lack of due diligence being made by the applicant even though not person that created the issue but sometimes need to learn not to touch the stove.

Mr. Corbett said he agreed with Mr. Donlon and it a tough case and sympathetic to applicant as seeking to protect his investment. The assessment will correct itself next year.

Mr. Perkins said he understands as purchased the property as investment and feel did not do due diligence in property research. Not primary residence and seeking request so able to obtain insurance on the property.

Mr. Tripp said he also agrees that the applicant purchased hoping to correct deficiency. Believe aware that the in-law was not approved and aware that the zoning is single family but seeking for changes and not familiar with New Hampshire zoning rules. Feel that the request does not fit in the neighborhood and there are to many outstanding items to make compliant.

Mr. Perkins said that they are seeking to create a 2-family on a lot that may not be able to accommodate an adequate septic system.

Mr. Tripp said that he feels that the property is marginally compliant for a 3 bedroom home as he feels that $\frac{3}{4}$ of an acre is not enough land available for a larger septic system.

Mr. Perkins said that there is significant area to the rear yard for a septic system but if unable to get design approval then only have what would allow.

Mrs. Morin said that all the papers say mobile home with an unfinished garage.

Mr. Donlon said that he was not an insurance agent and not sure if this would solve the problem as what happened to resale for the next owner.

Mr. Corbett said that the request is for a second living unit.

Mr. Perkins reviewed the conditions for the record and asked if there would be any other conditions to consider for the motion.

Mr. Corbett said that the reading of the motion for a second living unit contradicts each other.

Mr. Perkins said that the request is to allow the second living unit to give insurance protection.

There was some discussion with regard to the mobile home portion of the structure as unable to remove the wording as beyond the Board's purview.

Mr. Perkins asked how many bedrooms were located in the garage. Mr. Mackey said 2.

Mr. Tripp said that the property would then be a 5 bedroom home and what prevents someone to add 2 more bedrooms.

Mr. Perkins said that this was the third or fourth property in the area seeking relief for similar scenarios.

Mr. Corbett said that they should not allow closings to occur without verifying the property.

Mrs. Morin motioned to come out of deliberative session.

Seconded by Mr. Donlon.

Vote: Unanimous.

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

Mrs. Morin motioned on case # Case # 23-116 Daniel P. Lavalliere to Grant a variance to the terms of Article VI, Section 165-46.A of the Town of Derry Zoning Ordinance to allow the existing 2nd living unit, installed in the existing garage, to remain resulting in the creation of a two-family dwelling at 119 By-Pass 28, Parcel ID 08161, Zoned MDR, as presented with the following conditions:

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

Seconded by Mr. Tripp

Mr. Corbett noted the findings of fact as follows for case #23-116:

- **The property is zoned Medium Density Residential (MDR).**
- **The request is to allow the existing, second living unit to remain.**
- **No building permits were on file for the creation of second living unit.**
- **Property is listed as a 3 bedroom structure.**
- **Previous permits do not show conversion of garage to additional living space.**
- **Square footage of requested second living unit exceeds the square footage allowed for an accessory dwelling unit.**

Vote:

Mr. Corbett: Yes.

Mr. Tripp: No. Do not believe the property is feasible for multi-family.

Mr. Donlon: Yes.

Mrs. Morin: No. Do not feel hardship criteria has been shown.

Mr. Perkins: No. Do not see hardship criteria has been proven and the spirit and intent of ordinance has not been met. Feel due diligence was not performed by the applicant at time of purchase. Concern that property may not meet septic criteria for 5-bedroom structure.

The application was Denied by a vote of 2-3-0. 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.

Approval of Minutes

Mrs. Morin motioned to approve the minutes of June 1, 2023 to the next meeting.

Seconded by Mr. Donlon.

Vote: Unanimous.

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

Other Business

Mr. Perkins said that as a point of order that any applicant or abutter has any grievance with the Board's decision there are proper avenues to request a rehearing.

Mr. Perkins said that next meeting would be July 20, 2023 and if there were any cases filed yet. Mr. Mackey said that so far no cases have been filed but have spoken to a few people.

Adjourn

Mr. Dietzel motioned to adjourn.

Seconded by Mr. Corbett.

Vote: Unanimous.

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

Adjourn at 8:11 PM

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

Lynn Perkins

Zoning Board Chair

Approval of Minutes August 17, 2023

Mr. Obimba motioned to approve the minutes of June 15, 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.