

TOWN OF DERRY  
ZONING BOARD OF ADJUSTMENT MINUTES  
August 17, 2023

**Members Present**

Lynn Perkins, Chairman  
Craig Corbett, Vice Chairman  
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 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](https://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. Mr. Perkins said that all votes taken are taken during this meeting shall be done by roll call vote and that the meeting will end at 10:00 PM.

The Board members introduced themselves.

**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**

Thomas Saad, owner, said that the initial problem with their title had been resolved. He reviewed the required criteria for the record.

## **Board Questions**

Mr. Perkins asked why 168 and 174 properties were being referenced. Mr. Saad said that the two properties were similar in size and what they were seeking to also do with their property. He explained the map submitted for the record.

Mr. Perkins said that the zoning changes created in the Master Plan were used as a guide and that the answers to the required criteria are relying on precedence which is not a guaranteed relief from once case to the next. He said that the zoning changes in 2003 were to increase space to area in hopes to control overcrowding of areas.

Mr. Tripp said that the proposal is to subdivide the property and if there were any plans showing the proposal. Mr. Saad said that the plans were submitted with his application.

Mr. Corbett asked if the proposed plan could be explained. Mr. Saad reviewed the proposed plan for the record.

Mr. Tripp asked if the front lot would be 2 plus acres. Mr. Saad said that the front lot would be 1 acre and the new lot would be 6.1 acres.

Mrs. Saad said that the proposed lot is mostly wooded and goes all the way to a pond out back.

Mr. Tripp asked if there were any wetlands. Mr. Saad said he believes that there is some to the rear but new home would not be near the wetland. He said that the previous owner had subdivide the property to create 3 homes.

There was some discussion with regard to lot size and curb cut.

Mr. Donlon asked when the property had been subdivided. Mrs. Saad said she did not know when subdivision had been done.

## **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 property to be subdivided into 2 lots.
- The property is located in the Low Density Residential Zoning District (LDR) which requires a minimum of 3 acres and 200 feet of frontage for each lot.
- The proposal is to create 2 lots with the existing dwelling to be situated on a lot containing 1 acre and 148.53 feet of frontage. The new lot, for which a single family dwelling is proposed, will contain 40 feet of frontage and be 6.1 acres in size. Therefore, the variances are being requested.
- The new lot will be serviced by a private well and septic system.

- Island Pond Road is a State controlled road so the State will determine the driveway approvals.
- If the variance is granted, Planning Board subdivision approval will be required.
- There are pictures in the file for review by the Board.

Mr. Tripp said he had concerns as there was no information provided to show wet areas. Mr. Perkins said that the map shows no wet areas.

Mr. Tripp said that there were 3 areas he was concerned with if they could be explained. Mr. Saad said that the 75' setback was for a septic system and that the only wetlands were down by the water.

Mr. Perkins asked if the property was elevated. Mr. Saad said yes.

Mr. Mackey said that there were some prime wetlands on Ballard Pond. The 75' delineation on the plan shows for a septic system if were a wetland it would possibly be a 30' building setback.

Mrs. Saad said that they were seeking to move her parents into their existing home and build a new larger home to the rear of their property for their growing family.

Mr. Perkins said that abutting properties similar in size was not a free pass to create 2 non-conforming properties.

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**

Kimberly Young, 184 Island Pond Road, said that the Saad's were proposing to build a new home behind their existing home and they do not have enough frontage. She said her home was built in 2002 on 1.5 acres which she understands is not a president but that she supports the proposal to subdivide and build a new home so can stay in the community.

Joseph Chiccarelli, 163 Island Pond Road, said that the house numbers do not go in order. He said that he did not feel that there would be any impact to the area and that they have been outstanding neighbors and only seeking to keep family together. Mr. Chiccarelli said that Mr. Saad has totally renovated the property and also the property on Rockingham Road and has done a fantastic job and represent what Derry is all about with neighbors helping neighbors. He said that the property is a very wooded area and that need to walk downhill to get to the wetlands and if allowed to build feel that there would be a wonderful home and would have no adverse effect to the area.

Richard Graham, 186 Island Pond Road, said he has lived there 40 years and have watched the property subdivided and could argue that this makes since and share the eastern boarder to the property. There are lots of trails that go all through the area to the Gunther property and believe it would be a benefit to the area. It would help the Town

grow and would normally speak against this type of request as totally agree to the reason for low density but there are also cases that just fit and this proposal does that.

Evelyn Saad, 50 year Windham resident and have been married for 52 years and for the past few years have been babysitting their grandchildren at this property. Mrs. Saad said unfortunately their life is not as normal as it was and that they were getting older and need to make other arrangements as they have had some health issues. Mrs. Saad said that they want to stay together as a family and do not wish to live in a nursing home and that her son is willing to help out so would appreciate the approval of this 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**

No one spoke in opposition of this request.

Mr. Tripp asked considered an ADU if primary reason is to have parents closer. Mr. Saad said yes and that the existing home is a 1 level home and currently not conducive to add an ADU due to the current design. He said could tear down or build up but currently it is a one level open concept structure with one step up to the entry door which is ideal for a wheelchair if one is to be needed but do not want to ruin what is already functional as a single family.

Mr. Burgess asked if there would be a new driveway. Mr. Saad said yes and will need to install a special turn around for fire trucks.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mr. Tripp.

Vote: Unanimous.

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

### **Deliberative Session**

Mr. Burgess said that not a huge fan of taking one conforming lot and turn into 2 non-conforming lots but see some reasoning.

Mr. Perkins said that prior to 2003 the frontage was 125 feet per lot with 1 acre requirement.

Mr. Corbett said that the previous lots were prior to zoning changes and that the proposal will create 2 non-conforming lots. He said that the design of the property would make more fit and not seeking to subdivide excessively so can see some benefit to the request.

Mr. Perkins said hard to argue public interest as abutters are supportive of request. The spirit of ordinance was to slow down growth in the community and still does and that the community has stopped surging in 2008. Basis for argument is the request excessive or reasonable. Feel previous developer did not foresee zoning changes and left for future development.

Mr. Tripp said that the lot is larger and precedence created years later for ten houses. He said feel have responsibility and ordinance's are implemented for a reason and no desire to further subdivide and create 1 acre lots.

Mrs. Morin said that feel this use would close the door to future development and would remain as one lot.

Mr. Perkins asked if there is any hardship to the request.

Mr. Corbett said an ADU is the answer but see difficulty in creating due to design of the existing home.

Mrs. Morin said that an ADU is not for everyone and could build new in a big open area.

Mr. Perkins said that the Board could motion to table or vote on proposed request. He reviewed the conditions for the record.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mr. Tripp.

Vote: Unanimous.

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

**Mrs. Morin motioned on case #23-111 Thomas Saad to Grant 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 as presented with the following conditions:**

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

**Seconded by Mr. Burgess.**

**Mr. Corbett reviewed the findings of fact as follows:**

- **The property is located in the Low Density Residential Zoning District (LDR) which requires a minimum of 3 acres and 200 feet of frontage for each lot.**
- **The proposal is to create 2 lots:**
  - **1 will have 1 acre & 148.53' of frontage**
  - **1 will have 6.1 acres with 40' frontage**
- **The new lot will be serviced by a private well and septic system.**
- **Island Pond Road is a State controlled road; the State will determine driveway approval.**
- **Planning Board subdivision approval will be required if variance is granted.**

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

**Vote:**

**Mr. Burgess: Yes.**

**Mr. Tripp: No. Believe the request does not meet the spirit and intent of the ordinance and other options are available. Feel unnecessary hardship is being shown.**

**Mr. Corbett: Yes.**

**Mrs. Morin: Yes.**

**Mr. Perkins: Yes.**

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

**23-121 Dalpe Electric, LLC  
Owner: Dalpe Property Management, LLC**

**The applicant is requesting a variance to the terms of Article XII, Section 165-101.11.A of the Town of Derry Zoning Ordinance to allow the replacement of the existing 12" x 36" electronic message center sign (for which a variance was granted in 2018) with a 24" x 48" electronic message center sign at 12 Birch Street, Parcel ID 30180, Zoned CBD**

Kenneth Dalpe, owner, reviewed the required criteria for the record. He said that they have done a lot of improvements to the property and the current message board is outdated and limited to 3 or 4 words. Mr. Dalpe said the proposed request would allow him to have better word recognition than what is currently allowed.

## **Board Questions**

Mr. Perkins asked why not have requested a larger sign in 2018. Mr. Dalpe said at that time he had no experience and was unaware of pixel and wording fonts.

Mr. Perkins asked if Parkland was in the same zoning district. Mr. Mackey said no that Parkland was located in the Office Medical District and this is Central Business District.

Mr. Corbett said he remembered the original case and that only one abutter spoke with regard to lighting and flashing and agree that the current sign appears to be outdated.

Mr. Burgess asked if the sign would have restriction to road as the sign on Windham Road had a setback. Mr. Mackey said that the sign on Windham Road has a 10' setback requirement and if approved would need to meet setbacks.

Mr. Dietzel reviewed the ordinance for the record and asked if the lighting was adjustable. Mr. Dalpe said the sign has adjustable lighting.

Mr. Tripp asked if the electronic sign now was black and white. Mr. Dalpe said the current sign has 3 colors available. He said that the original variance had restrictions and willing to maintain the same 5 second change rule and will not be animated.

## **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 replacement of the existing 12" x 36" electronic message center sign with a 24" x 48" electronic message center sign.
- The property is located in the Central Business Zoning District (CBD) which does not allow this type of sign (currently, electronic message center signs are allowed in the GC, GCIV & IND IV districts).
- The applicant was granted a variance in 2018 in install the current 12" x 36" sign and is now requesting a variance to allow a larger replacement sign.
- If approved by the Board, it should be stipulated by the Board that the sign be operated in compliance with the conditions specified in Article XII, Section 165-101.11.A.
- There are pictures in the file for review by the Board.

Mrs. Morin asked if the 10:00 pm to 7:00 AM time would need to be adjusted. Mr. Dalpe said no that what was listed was fine.

Mr. Dietzel asked if seeking to replace the entire sign or just message board. Mr. Dalpe said that the message board will be larger. He said that they will also be doing some hardscape to the front of the property.

Mr. Obimba asked if approved what happens to the old variance. Mr. Corbett said the new variance would replace the previous variance.

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**

No one spoke in opposition of the request.

Mr. Corbett motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

### **Deliberative Session**

Mr. Perkins said he recalled the 2018 prior case and that the applicant is now seeking to increase the size and height of the existing sign which is noted in the application and that it does not appear to be over opposing the area.

Mr. Corbett said that the 2018 ordinance unable to see what changes with time and feel that the request is a fair proposal.

Mrs. Morin said that she agreed with Mr. Corbett that times change and that the applicants line of work needs to be able to keep up with the times.

Mr. Burgess said he reviewed the existing sign and agree that it needs to be updated.

Mr. Corbett reviewed the prior conditions and that the applicant has agreed to keep in line with the prior conditions.



Mr. Corbett motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

**Mrs. Morin motioned on case #23-121 Dalpe Electric, LLC, Owner: Dalpe Property Management, LLC to Grant a variance to the terms of Article XII, Section 165-101.11.A of the Town of Derry Zoning Ordinance to allow the replacement of the existing 12" x 36" electronic message center sign (for which a variance was granted in 2018) with a 24" x 48" electronic message center sign at 12 Birch Street, Parcel ID 30180, Zoned CBD as presented with the following conditions:**

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Sign to be operated within the parameters of the Town of Derry Zoning Ordinance Section 165-101.11.A .**
- 3. Sign shall not operate after 10:00 PM or before 7:00 AM.**

Seconded by Mr. Tripp.

**Mr. Corbett reviewed the findings of fact as follows:**

- The property is located in the Central Business District (CBD) which does not allow this type of sign.**
- The current sign was approved via the Zoning Board of Adjustment in 2018.**
- Electronic message center sign must be operated in compliance with the conditions specified in Article XII, Section 165-101.11.A.**

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

**Vote:**

<b>Mr. Tripp:</b>	<b>Yes.</b>
<b>Mrs. Morin:</b>	<b>Yes.</b>
<b>Mr. Burgess:</b>	<b>Yes.</b>
<b>Mr. Corbett:</b>	<b>Yes.</b>
<b>Mr. Perkins:</b>	<b>Yes.</b>

**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.**

The Board took a brief recess.

**The applicants are requesting a variance to the terms of Article VI, Section 165-46.C.1a, 2 & 3 of the Town of Derry Zoning Ordinance to allow the property to be subdivided into 3 lots with each of the proposed lots to contain less than the required 1 acre and one of the lots to have less than the required 125 feet of street frontage and lot width. 75 Fordway Ext, Parcel ID 21009, Zoned MDR**

Scott Boudreau, Boudreau Land Surveying, said he was also here with Liana Newcombe. Mr. Boudreau reviewed the required criteria and proposed plan for the record.

### **Board Questions**

Mr. Perkins asked if the lot was 1.97 acres. Mr. Boudreau said that it is actually 1.83 acres as just surveyed the property. He said that the average lots in the area are approximately ½ acre in size.

Mr. Perkins asked to explain how the property was to be divided up. Mr. Boudreau said that the existing home and the proposed lot on Fordway would match frontages along Fordway and that the proposed lot on Kendall would match the frontages on that side.

Mr. Burgess asked why proposing 3 lots. Mr. Boudreau said that he felt that it would match existing lots surrounding the area.

Mr. Corbett asked what was the angel for the lot creation. Ms. Newcombe said that they would be for single family homes on each proposed lot and generate income from the sale of the lots.

### **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 3 lots. One of the new lots will contain the existing dwelling and 2 new building lots are proposed to be created.
- The property is located in the Medium Density Residential District (MDR) which requires a minimum of 1 acre in area and 125 feet of street frontage.
- The proposed lots will all be less than one acre (.62 acres, .68 acres and .53 acres) and the new lot fronting on Fordway Ext. will have 100 feet of frontage.
- There are Town water & sewer mains located on Fordway Ext. and Town water line located on Kendall Pond Road.
- If approved, Planning Board approval will be required.
- There are pictures in the file for review by the Board.

Mr. Perkins said that the .92 frontage on the Kendall Pond Road side could potentially meet the lot size requirement for one lot. Mr. Boudreau said then the current lot would still require a variance as do not have 2 acres in total.

Mr. Perkins asked if 1 non-conforming lot and 1 conforming lot could be considered excessive or reasonable, to obtain one additional lot. Mr. Boudreau said that the Fordway lot would be better but more to develop.

Mr. Corbett said that he was struggling with 3 lots verses 2 as plan shows a fire pit and sheds on abutting lots encroachments. Ms. Newcombe said that they did not know where their property boundaries were until researched.

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**

Jeanne Rousseau, 2 Derryfield Road, said she moved here 46 years ago and was told by their Real Estate agent that the lot line went from Kendall Pond Road telephone pole into the woods. She said that Earl Warren owned the neighboring property and during the 46 years there have maintained the area and installed irrigation and replaced a metal shed in 1993 with a wood shed and had never been informed that was not their property.

Mr. Perkins said that a Realtor is not a licensed land surveyor and need to understand what had been said was not valid.

Ms. Rousseau said that she always assumed that the tree line was the lot line. She said that she did not understand the new owners announcing to build in this tree forest as have never been approached and told that her lawn and garden belongs to them.

Mr. Perkins informed Ms. Rousseau that the location of the shed and lawn etc. is a civil matter and not a dispute for the Board as only here for variance request.

Ms. Rousseau said that she has obtained a traffic report for Kendall Pond Road and in 2019 there were 91 hundred vehicles that traveled the road of which also includes large trucks etc. Captain Michelo informed her that the number of accidents on Kendall Pond Road in the past 5 years have been 18 accidents so have a concern with the increase of traffic. Also feel that the spirit of the ordinance will not be kept as will have an adverse impact to the area.

Glenn Beauregard, 4 Derryfield Road, said that he objects to the request as the owner has use of their property the way it currently is and subdividing would be a burden on surrounding properties and alter the character of the neighborhood. He said that he agrees with Ms. Rousseau that Kendall Pond Road is a very busy road and building another house there would be a hazard. There are currently 14 single family homes near here and the others are duplexes so another driveway on Kendall Pond Road would increase traffic.

### **Rebuttal**

Mr. Boudreau said that the intersection of Fordway and Kendall Pond Road is a 4 way stop sign so feel that there would not be any affect on traffic flow.

Mr. Perkins said that the area has grown and there is an industrial district a bit further down the roadway and that there is a 4 way stop intersection but not everyone stops as have witnessed that firsthand and site line is an engineering matter. Ms. Rousseau's concerns are unfortunately beyond the Board's purview.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mr. Tripp.

Vote: Unanimous.

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

### **Deliberative Session**

Mr. Corbett said that the area is very busy and finding a tough time with request to convert 1 conforming lot into 3 non-conforming lots and feel that 3 are to much. He said that when properties are surveyed tend to find things that would not normally realize.

Mr. Burgess said that he also agrees that creating 3 non-conforming lots out of one would not be in the best interest of the public and he did not see substantial justice. He said he lived in the mobile home park for several years and knows the area.

Mrs. Morin said that she was a strong supporter of lack of planning but feel that proposed use would be excessive for the area.

Mr. Perkins said that the 4 way stop sign can always tell who's not familiar with the area as it can be confusing at busy times.

Mr. Burgess said that he has always felt that who comes to the stop sign first proceeds first.

Mr. Tripp said that water and sewer is available for the Fordway lot is a plus for 1 lot but only water is available on Kendall Pond. Feel issue with undersized lots is not what the ordinance is intended and understand position to create revenue but ordinance is to prevent too much density to the area. He said that the stop signs are supposed to be stopped at but not everyone adheres to. Do not believe that a hardship has been established.

Mr. Perkins reviewed the conditions for the record.

Mr. Corbett motioned to come out of deliberative session.

Seconded by Mr. Tripp.

Vote: Unanimous.

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

**Mrs. Morin motioned on case #23-122 Scott D. Boudreau, Owner: Martin P. Paciorkowski & Liana J. Newcombe to Grant a variance to the terms of Article VI, Section 165-46.C.1a, 2 & 3 of the Town of Derry Zoning Ordinance to allow the property to be subdivided into 3 lots with each of the proposed lots to contain less than the required 1 acre and one of the lots to have less than the required 125 feet of street frontage and lot width. 75 Fordway Ext, Parcel ID 21009, Zoned MDR as presented with the following conditions:**

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

Seconded by Mr. Tripp.

Mr. Corbett reviewed the findings of fact as follows:

- **The property is located in the Medium Density Residential Zoning District (MDR) which requires a minimum of 1 acre in area and 125 feet of frontage for each lot.**
- **All 3 lots are less than the 1 acre requirement:**
  - **1 lot will have 0.62 acres**
  - **1 lot will have 0.68 acres**
  - **1 lot will have 0.52 acres**
- **The proposed Fordway lot will only have 100' of frontage where 125' is required.**
- **Planning Board subdivision approval will be required if variance is granted.**

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

**Vote:**

**Mr. Burgess:** No. Do not believe that the spirit of the ordinance would be observed as 3 lots out of 1 conforming lot would not be in line of ordinance.

**Mrs. Morin:** No. Feel excessive use of the property and creating own hardship.

**Mr. Tripp:** No. Do not believe spirit of ordinance is observed with creating 3 non-conforming lots out of 1 conforming lot.

**Mr. Corbett:** No. Spirit and intent of ordinance would not be met as would be creating 3 non-conforming lots. Feel other options available.

**Mr. Perkins:** No. Hardship is Feel hardship is self-created as property has reasonable use without creating 3 non-conforming lots and would be an excessive use of the property.

**The application was Granted by a vote of 0-5-0. 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.**

**22-123            James J. Yartz, III Rev. Trust  
James J. Yartz, III, Trustee**

**Re-Hearing Request to case #23-117 – The applicants are requesting a variance to the terms of Article VI, Section 165-47.B.1 of the Town of Derry Zoning Ordinance to allow the property to be subdivided into 2 lots with one of the lots containing 1.27 acres where 2.00 acres is required at 179 Hampstead Road, Parcel ID 10005, Zoned LMDR**

Mr. Corbett said that he has reviewed the request from the applicant and did not see any findings that would warrant a rehearing.

Mr. Perkins said that there was a signed letter of representation for the surveyor to present case and surveyor presented case based on knowledge with Mr. Yartz permission. Feel that Mr. Yartz should have been present during original hearing. He said that the Board needs to decide if there was any new material provided that would grant a rehearing.

Mr. Tripp said he did not believe any information had been provided that would change his decision.

Mr. Burgess said he agreed with Mr. Tripp that no information had been provided that would change his original vote.

Mrs. Morin said she also agrees with what the Board has stated and no new information has been provided.

Mr. Corbett said he did not see any new information provided other than the applicant raised hardship of growing family that had not been presented prior but otherwise no new evidence that would change original decision.

Mr. Perkins said that the applicant noting hardship pointed out is noted to geographic of area not to what was pointed out in the ordinance.

**Mrs. Morin motioned motion to Grant Re-Hearing of case #22-117 James J. Yarat, III Rev. Trust, James J. Yarat, III, Trustee - variance to the terms of Article VI, Section 165-47.B.1 of the Town of Derry Zoning Ordinance to allow the property to be subdivided into 2 lots with one of the lots containing 1.27 acres where 2.00 acres is required at 179 Hampstead Road, Parcel ID 10005, Zoned LMDR**

**Seconded by Mr. Tripp.**

**Mr. Perkins reviewed the findings of fact as follows:**

- **The applicant submitted a request for rehearing.**
- **The applicant had signed permission for legal representation.**
- **Applicant stated hardship was due to children having children.**
- **The Board established the stated hardship did not align with the statutes 5 criteria.**

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

**Vote:**

**Mr. Corbett: No. Do not see any new evidence presented that would warrant a rehearing of case.**

**Mrs. Morin: No. No new evidence has been presented.**

**Mr. Burgess: No. Did not see any new evidence.**

**Mr. Tripp: No. Letter submitted does not give any new information that had not been previously reviewed at the prior meeting that would warrant a rehearing.**

**Mr. Perkins: No. For the same reasons as stated by the Board. No new evidence has been provided that would warrant a rehearing.**

**The application was Denied by a vote of 0-5-0. 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.**

**Other Business**

**Mr. Corbett informed the Board that Cooper case was upheld in favor of Cooper. He asked the Board to review the information that had been received by the Court.**

### **Approval of Minutes**

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.

Mrs. Morin motioned to approve the minutes of July 20, 2023 as written.

Seconded by Mr. Donlon.

Vote: Unanimous.

Mr. Obimba, Mr. Dietzel, Mr. Donlon, Mr. Tripp, Mr. Burgess, Mrs. Morin, Mr. Corbett, 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 9:21 PM

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

### **Approval of Minutes September 7, 2023**

Mr. Tripp motioned to approve the minutes of August 17, 2023 as amended.

Seconded by Mr. Dietzel.

Vote: Unanimous.

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

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Lynn Perkins

Zoning Board Chairman