

**TOWN OF DERRY**  
**ZONING BOARD OF ADJUSTMENT MINUTES**  
**September 21, 2023**

**Members Present**

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

**Members Absent**

**Alternates Present**

James Dietzel

**Alternates Absent**

Michael Donlon  
Gaspar Obimba

**Code Enforcement**

Robert Wentworth, Assistant Building Inspector

Mr. Perkins called the meeting to order at 7:00 p.m. with the salute to the flag. 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](http://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](mailto: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.

The Board members introduced themselves.

**23-126            Scott Hammond**  
**Owner: Greatwoods, LLC/Nicholas Brunet**

**The applicant is requesting a variance to the terms of Article VI, Section 165-48.B.2 & 3 and Article III, Section 165-9 of the Town of Derry Zoning Ordinance and NH RSA 674:41 to allow the construction of a single family dwelling on the property which does not have frontage on a Town approved street at 97 Damren Road, Parcel ID 13023, Zoned LDR**

Scott & Janet Hammond, applicants. Mr. Hammond reviewed the require criteria for the record. He said that they were seeking to build a single family home and have been

searching for acreage for a long time and found this property which offers everything that they have been searching for.

### **Board Questions**

Mr. Perkins said that this property had been before the Board and received a prior approval in 2020 during the pandemic and that there were stipulations one being that the road access status needed to be resolved. Mr. Hammond said that the property has a 16 foot wide right-of-way to the property for access only not for utilities. He said that he has been working with the Gerry's with regard to additional easements but seeking variance first before getting to far into the other details.

Mr. Corbett said he recalled the utility access concerns and that was out of the Board's purview but also recalled that there was a DOT permit from 1972 that was also of concern.

Mr. Perkins said that in reviewing the meeting minutes it notes that the State allows 3 lots off the right-of-way. He asked if the utility access had been resolved. Mr. Hammond said not at this time but he has updated the State access permit.

Mr. Perkins said that the staff report submitted by Mr. Mackey states that a 16 foot right-of-way is required over 150'. Mr. Wentworth said that Derry requires 18' feet which includes shoulders and approval of access will need to meet Derry Fire Department's requirements.

Mr. Perkins asked if the driveway was existing. Mr. Hammond said that the current access goes to the property and he was aware of the requirement of a hammer-head and expansion of the existing right-of-way to meet the code requirements for Derry's Fire Department.

Mr. Wentworth said that would be Derry Fire Department's stipulation.

There was some discussion with regard to driveway access to the property. reviewed the information that Mr. Mackey had submitted for the record as follows:

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**

Lori Simonsen, Hidden Valley Campground, said that it sounds like the are looking for privacy and that is great but do not wish to have a home on top of their campground.

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**

Robert Gerry, 668 Haverhill Road, Chester, said that he owns the right-of-way and the property on the other side. He said that he has no objection as long as they follow the Chester Fire Chief's rules. Mr. Gerry said that they have also discussed some compensation matters with Mr. Hammond. They have no objection to build a home as long as they follow the rules from the Fire Chief of Chester.

Mr. Perkins said that the purchase of land is a private matter and not purview of the Board. He asked if access was solely in Chester and that the street number is Derry but access is via Chester. Mr. Gerry said yes.

Mr. Hammond said that they are in discussions with the Gerry's regarding the right-of-way and utility easements.

Mr. Corbett said that when structuring the motion it should be made plural.

Mr. Burgess asked if Derry and Chester would need to discuss the use. Mr. Wentworth said that Derry will have their regulations and Chester may also have additional requirements.

Mr. Tripp said that the Hammond's are under agreement with Gerry's but will this also require a utility easement. Mr. Perkins said that the applicant is aware of needing utility and driveway access and that the parties involved are in discussions.

Mr. Hammond asked what would the address be for the property. Mr. Wentworth said that the Fire Department 911 establishes the property addresses.

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 motion should be changed from Town to Town's.

Mr. Perkins said that other cases have come before the Board that have required other Town's input.

Mr. Wentworth said he believes that the last one was Auburn and it can be done.

Mr. Corbett said some concerns of prior case was valid permits for utility easements and driveway.

Mr. Perkins reviewed the conditions for the record.

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 #23-126 Scott Hammond, Owner: Greatwoods, LLC/Nicholas Brunet to Grant a variance to the terms of Article VI, Section 165-48.B.2 & 3 and Article III, Section 165-9 of the Town of Derry Zoning Ordinance and NH RSA 674:41 to allow the construction of a single family dwelling on the property which does not have frontage on a Town approved street at 97 Damren Road, Parcel ID 13023, Zoned LDR as presented with the following conditions:**

- 1. Subject to obtaining all State & both Town's permits and inspections.**
- 2. Waiver of Municipal Liability & Responsibility must be recorded with the deed prior to obtaining a building permit.**

**Seconded by Mr. Tripp**

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

- The property is located in the Low Density Residential Zoning District (LDR).**
- The property has no frontage on a road.**
- The parcel was granted a variance in 2020 that has expired.**

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

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

**#23-127        Jared Dumais  
                 Owner: Brian & Debra Dumais**

**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 operation of a Tree Service Business from the residence 120 By-Pass 28, Parcel ID 58001, Zoned MDR**

Jeff Moulton, Moulton Engineering, reviewed the required criteria and letter of explanation for the record.

### **Board Questions**

Mr. Perkins said that there was a letter in the file from Brian & Debra Dumais to allow Jared Dumais to present case and guess that Jared asked you to represent him. Mr. Moulton said yes.

Mr. Perkins said that references to case law in reviewing merits and asked if could explain a bit more. Mr. Moulton said that the location of this property is located on very busy roads being By-Pass 28 and the intersection of Scobie Pond and English Range Roads and across the street is the Derry Fire Department so the area is not unfamiliar with noise. Mr. Moulton said that Mr. Dumais is seeking to be able to park his commercial vehicles at night and that there is some splitting of wood in the winter and spring to keep his crew busy. There are no clients that come to the property as deliveries of cordwood are to clients homes.

Mr. Perkins said that this was a unique case as working on parents property and asked if he was on the mortgage or renting. Mr. Dumais said he was renting the property from his parents.

Mr. Perkins said that if come into a windfall and move out how would make sure not sell and create an automobile center as a variance is with the property. He said that the Board just does not rubber stamp property as commercial and maybe something that the Planning Board may review. Mr. Perkins reviewed Mr. Mackey's staff report on how the property came to be and asked if Mr. Wentworth could outline for the record.

Mr. Wentworth said he was unfamiliar with the court case.

Mr. Perkins said that there appears to be some sort of mediation agreement between the court and the Town. Mr. Dumais said that they did go to court and that it was determined that he would need to apply for a variance within 60 days.

Mr. Perkins said that the size of the business falls outside of the Special Exception guidelines and that he has concerns about granting a variance without a sundown condition.

Mr. Dumais said that he is in discussion with his parents in purchasing the property and that he has no plans to sell and would not be opposed to a sundown condition.

There was some discussion with regards to a sundown condition.

Mrs. Morin said that the applicant's business is listed in good standing.

Mr. Moulton said that he does have 4 letters from abutters supporting Mr. Dumais request. They are from the following abutters:

Jose F. Reyes, 139 By-Pass 28  
Eva Ruiz, 120 Scobie Pond Road  
Kendall Marsh, 118 By-Pass 28  
Normand Goulet, 127 By-Pass 28

Mr. Moulton said that the property has heavy screening of trees and shrubs.

Mr. Tripp asked if there were specific hours of operation. Mr. Dumais said that he typically leaves the property at 7:00 AM and comes back between 3 or 5:00 PM.

Mr. Tripp asked if typically off site except for splitting of wood. Mr. Dumais said it varies and only split wood in the spring and winter months. He said that they typically do about 30 to 40 cords a year.

Mr. Corbett asked if a condition of hours of 7:00 AM to 5:00 PM Monday - Friday be made. Mr. Dumais said yes but if emergency storm sometimes do need to work on weekends but very seldom.

Mr. Tripp asked if splitting of wood and delivery of firewood is part of the business. Mr. Dumais said yes.

Mr. Perkins said that guidelines are for enforcement purposes. Mr. Dumais said that he does not split firewood on the weekends and that if he does split firewood it is done by 3:00 PM.

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. Tripp motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Dietzel, Mr. Tripp, Mr. Corbett, Mr. Perkins.

### **Deliberative Session**

Mr. Perkins reviewed the conditions for the record.

Mr. Corbett said that a condition of the variance to expire if no longer exists.

There was some discussion with regards on sunset clause.

Mr. Corbett motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

**Mrs. Morin motioned on case #23-127 Jared Dumais Owner: Brian & Debra Dumais to Grant a variance to the terms of Article VI, Section 165-46.A of the Town of Derry Zoning Ordinance to allow the operation of a Tree Service business from the residence 120 By-Pass 28, Parcel ID 58001, Zoned MDR as presented with the following conditions:**

1. Subject to obtaining all State & Town permits and inspections.
2. Hours of operation 7:00 AM – 5:00 PM, Monday – Saturday
3. Variance dissolves when applicant vacates the premises or business ceases operation.

Seconded by Mr. Corbett.

Mr. Perkins reviewed the findings of fact as follows:

- The property is located in the Medium Density Residential Zoning District (MDR).
- The applicants request is to operate a tree service business in a residential zone.

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. Dietzel: Yes.  
Mr. Burgess: Yes.  
Mr. Tripp: Yes.  
Mr. Corbett: 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.

**Correspondence**

Mr. Perkins said that the Board has received a copy of Town & City

**Approval of Minutes**

motioned to approve the minutes of September 7, 2023 as written.

Seconded by Mr. Dietzel.

Vote: Unanimous.

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



## **Adjourn**

Mrs. Morin motioned to adjourn.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Adjourn at 7:54 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

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Lynn Perkins

Zoning Board Chairman

## **Approval of Minutes October 5, 2023**

Mr. Corbett motioned to approve the minutes of September 21, 2023 as written.

Seconded by Mr. Dietzel.

Vote: Unanimous.

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