

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
September 5, 2013

Members Present

Allan Virr, Chairman
Lynn Perkins, Vice Chairman
Donald Burgess, Secretary
Joseph Carnevale
Teresa Hampton

Members Absent

Alternates Present

David Thompson
Tyler Whitehorn

Alternates Absent

Code Enforcement

Robert Mackey

Mr. Virr called the meeting to order at 7:02 p.m. with the salute to the flag, and notice of fire and handicap exits and that this and all Zoning Board meetings are videotaped.

Mr. Virr informed the public that the following case was continued from 8/15/2013.

13-116 Paul George
Owner: Donahue Family LLC

Variance to the terms of Article VI, Section 165- 48.B.2 of the Derry Zoning Ordinance to allow the creation of a new building lot with less than the required 200 feet of frontage at 2 Beaver Lake Road, Parcel ID 09045, Zoned LDR

Tim Peloquin, Promised Land Survey, said that he was representing applicant Paul George who was also present this evening. Mr. Peloquin said that the property was also known as the former Matteuzzi Farm. He read the application for the Board. Mr. Peloquin said that the parcel consisted of 38 acres and could construct a road with a cul-de-sac but have chosen this design as feel it would be best suited. He said that Mr. George has had several conversations with Conservation with regard to different possibilities. Manter Brook runs along the westerly edge of the property to Beaver Lake. Mr. Peloquin said that lot #8 consisted of 15.75 acre parcel that was not intended to be a

buildable lot and would not be opposed to a restriction imposed on the lot as it is intended to be for conservation or farming purposes. Lots 4 and 8 could be combined to create one lot. The request is for lot #4 for a twenty-five foot strip of land that is suitable for a driveway to be constructed.

Mr. Perkins asked if the access for the lot could be described. Mr. Peloquin described the plans for the Board.

Mr. Perkins said that the 15.75 acre parcel is lot 8 to have no home constructed on it. Mr. Peloquin said yes.

Mr. Virr said agenda states building lot. Mr. Peloquin said the request is a variance for lot 4 and explained reason for request as lot 4 will have insufficient road frontage.

There was some discussion with regard to wetlands and lot lines.

Code Enforcement

Mr. Mackey said that as part of a new, 8 lot subdivision, the applicant is requesting approval to create a back lot with 25.84 feet of frontage. 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 a new lot. All lots are proposed to have frontage on existing approved roads i.e. Beaver Lake Road and Old Chester Road. A portion of the property (lot #8, 15.75 acres) is proposed to remain undeveloped. If approved, Planning Board subdivision approval will be required. There are pictures in the file for the review by the Board.

Mr. Perkins asked if a municipal waiver would be necessary. Mr. Mackey said no as property would have frontage on a Town approved road.

Mr. Virr said 200' required where only 25' which would be minimum access to Town approved road will be private driveway or private right-of-way. Mr. Peloquin said that was correct.

Mr. Burgess asked if what is proposing that if the variance for lot 4 was not granted then would combine lots 4 & 8 to create building lots. Mr. Peloquin said that would be the next step as the 8th lot is intended for conservation and/or farming purposes and not a buildable lot.

Favor

Mr. Virr asked if there was any abutters that would like to review the plans could come up and do so and that Mr. Peloquin would be able to address any concerns that they may have.

Opposed

George Mayernick, 74 Old Chester Road, said that he has lived in Derry for 26 years on lot 46 which is adjacent abutter to where the proposed driveway will be along his property line of which is the side of his living room and deck.

Mr. Perkins asked how far was the deck from the lot line. Mr. Mayernick said that the deck was approximately 45' from the lot line but feel the proposal is an immediate impact. He read the ordinance for the record and said that he felt that the ordinance was also to protect the area and that he knew that the area would also someday be developed but did not know that he would have a corner lot. Mr. Mayernick felt that the lot could be donated to conservation without adding this lot. He strongly believes that his property value would be diminished and will impact the lack of privacy that he has currently. He said that there are other alternatives to access the lot possibly between lots 5 & 6 so as to have less of an impact on his property.

Mr. Whitehorn asked if a driveway could run along a lot line. Mr. Virr said yes.

Mr. Perkins asked what were the conditions from the home in the 45' area to the proposed driveway. Mr. Mayernick said that the area was grassy and flat and that his concerns were that the applicant was only trying to achieve additional lot. Also that during winter months snow would be plowed onto his property.

Mr. Perkins asked if the Matteuzzi farm house could be seen from his property. Mr. Mayernick said no as the house was further away and that the property behind was farm land that his concerns were that the applicant was proposing a driveway 45' to his home.

Mr. Virr said that there still could be a home constructed next to his property. Mr. Mayernick said that he understood that someday would be a home next to his property but not a driveway.

David Nelson, 72 Old Chester Road, said that he was here to support his neighbor and was not a direct abutter. He said that he felt Mr. Peloquin described the proposal eloquently but feel there are other alternatives to gain access and know that they require access to the lot and that the engineer could make the access between other lots where they will have more frontage and that the proposal is a self-created hardship. Mr. Nelson said that he felt that the proposal was not in the public interest and would like to request that it be denied as currently requested.

Rebuttal

Mr. Peloquin said that Mr. Nelson stated that the design could be done differently and that they have drawn out designs several different ways and that the proposal is the best suited.

Paul George, applicant, said that he wants to let the Board know that this lot is not being deeded to conservation at this time. The intent is to keep it available until sort out all

details. He said that J&F Farms currently is farming the property. The 8th lot will be unbuildable so as to allow entities such as Southern NH Land Trust, Conservation or J&F Farms to decide what plans are best suited for their needs but no such contract has been formed with any of them at this time. Mr. George said that if they were to come through any other lots it would cut into the wetlands and that they were not trying to impact the wetlands more than necessary. He said that if the only issue with the abutter is the roadway up against his property line that would be willing to plant trees along the lot line as want to be good neighbors. Mr. George said that it was also stated several times that the property was stated that the lot was to be deeded to conservation and do not want to make the Board think that the property belongs to the Conservation Commission and that is what would like to happen but have not reached an agreement at this time and a contract has not been signed. Also not trying to squeeze in another lot but just seeking to create lot for unbuildable purposes.

There was some discussion with regard to house, septic and well placements and roadway requirements.

Mr. Mayernick said that if viewing the map shows that the houses are far apart and wooded but they are closer than it appears and that there is not a large amount of woods and that he felt that if granted that it would be against the spirit and intent of the ordinance as felt that the large frontage requirements of today's standards was created so not to have homes close together.

Mr. Virr asked if according to the plan that the square box represented where the proposed home would be located. Mr. George said yes but it did not have to be set there.

Mr. Virr asked approximately how far from lot line was the proposed structure. Mr. George said that the home would be approximately 75' from the lot line at the closest point from the applicant.

Mr. Virr asked what was the frontage requirement per lot. Mr. Mackey said that the required frontage for each lot in the Low Density District was 200' per lot.

There was some discussion with regard to reducing frontages on lots to meet the requirements for frontage for each lot.

Mr. Nelson said that the basis of hardship of the creation of 8th lot as not buildable and would like to know the status of use applicant states as not known at this time. Mrs. Hampton said that the lot is being understood initially that the lot is being described as unbuildable and that Mr. Peloquin said that they would entertain a restriction imposed of not being buildable.

Mr. Nelson said that NH Law requires legal status of notations on plans. Mr. Perkins said that the plan would still be required to go to the Planning Board for approvals.

Mr. Virr said that the only reason for the request for a variance is for lot 4 not the remainder of the property.

Mr. Nelson said then the questions are possible Planning Board matters to take up.

Mr. Carnevale motioned into deliberative session.

Seconded by Mr. Perkins.

Vote: Unanimous.

Mrs. Hampton, Mr. Carnevale, Mr. Burgess, Mr. Perkins, Mr. Virr.

Deliberative Session

Mr. Perkins said that he felt that the request was a decent trade off as a lot of land will be untouched. He said that Mr. George stated that they would be willing to create a buffer along the driveway and that Mr. Mayernick was used to seeing a farm house. He felt that a motion to have a tree line added along the driveway needed to be considered as heard testimony that even reconfiguring lots and shifting lot lines could still allow for a driveway to be in the same area.

Mr. Virr said that he felt that Board is unable to tell the developer that they needed to change their plans. The Board needs to address lot 4 not what happens to lot 8 and that the Board has turned down variances for far more frontage than this. He reviewed the criteria for the Board.

Mrs. Hampton said that she understood the abutters concerns.

Mr. Burgess asked if there were setbacks from road requirement to install a road. Mr. Mackey said that there were differences for driveways and roads. He said that there were no setbacks for driveways from lot lines for residential and do advise not on lot lines but there are no actual setbacks for a driveway.

There was some discussion with reconfiguring lot lines.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mr. Carnevale.

Vote: Unanimous.

Mrs. Hampton, Mr. Carnevale, Mr. Burgess, Mr. Perkins, Mr. Virr.

Mr. Virr motioned on case #13-116, Paul George, Owner: Donahue Family LLC, to Grant a Variance to the terms of Article VI, Section 165- 48.B.2 of the Derry Zoning Ordinance to allow the creation of a new building lot with less than the required 200 feet of frontage at 2 Beaver Lake Road, Parcel ID 09045, Zoned LDR as presented with the following conditions:

1. Subject to obtaining all State & Town permits and inspections.
2. Subject to Planning Board approval.
3. Recommend that the Planning Board to have a buffer installed along driveway access for lot #4.

Seconded by Mr. Perkins.

Vote:

Mr. Carnevale:	No. Do not feel hardship has been met.
Mr. Burgess:	Yes.
Mrs. Hampton:	Yes.
Mr. Perkins:	Yes.
Mr. Virr:	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.

13-117 Kastorian Realty Trust III

Applicant is requesting a second extension of a variance granted on September 17, 2009 to the terms of Article VI, Sections 165-49.C.1 and Section 165-49.G.1.b of the Town of Derry Zoning Ordinance to construct a second story to an existing structure and to construct a two-story addition on an undersized lot which lacks required off street parking.

Tamara Lampes, owner, said that originally approached Board to make changes but unable to implement due to hard economic times so seeking an additional extension for more time in order to put pieces together. Mrs. Lampes read the application for the Board.

Board Questions

Mr. Virr said that the original request was in 2009 and subject to conditions and granted an extension in 2011 with the same conditions and asked if any progress had been made. Mrs. Lampes said that due to the economic climate of the area downtown that they have been unable to implement their plans. She said that there were a lot of empty store fronts along Broadway.

Mr. Virr said that he did not see a recovery any time soon and that the Board has been given changes to RSA 674.33 effective 8/13/2013 which limits time frames to grant a variance. He said that 2015 may not see much of a change in infrastructure, traffic and crosswalks, etc. Mrs. Lampes said that they have been in the area for over 20 years and opened Sundae Delights. They have had architect drawings done and that the Town

installed a municipal parking lot across the street. She said that she felt another 2-4 years would be of best interest to proceed with their request.

Mr. Virr asked if any plans have been before the Planning Board. Mrs. Lampes said no.

Mr. Perkins asked what the plans for the 2nd story use were. Mrs. Lampes said that they were looking at office space with come and go traffic and that the 3rd level would have a green garden on the roof.

Mr. Perkins asked what the parking plans were. Mrs. Lampes said that there was a municipal lot across the street and on street parking was available.

Mr. Perkins asked if consider no request an extension and come back when ready where if granted 2 years maybe better served. Mrs. Lampes said she felt that approval helps and would prefer to go forward with approval as helps if bring back would need to start from square one over again.

Mr. Virr said that would still need to go to Planning Board for technical review. Mrs. Lampes said that she felt would still need a variance to present to the Planning Board.

Mr. Burgess said that the new law states that substantial be started of project with a 2 year limit.

Mrs. Hampton asked if the economic hardship was cause for delay. Mrs. Lampes said that the area is tough and a difficult task due to the surrounding counterparts in the area of empty store fronts and buildings. She said that they maintain a grassy area and pick up trash continuously to keep the area looking nice.

Mr. Virr said that the hardship would be to pay fees and abutter notification when ready to proceed as unable to keep putting 2 year conditions. Mrs. Lampes said that she has walked downtown and no changes have been done to any of the empty buildings or store fronts. She said that these are difficult times but optimistic that things will change and would like to continue with their proposal.

Mr. Perkins said that the request for a variance to continue or take off the table and come back when more suitable to request could be considered. Mrs. Lampes said that she would like to be granted an extension to her variance request.

Code Enforcement

Mr. Mackey said that the applicants request for hardship under the original request was established and that the Board needs to decide if still reasonable. If the request is taken off the table there is no guarantee that another Board would grant another request. He said that RSA 674.22 changes the regulations to expirations of approvals in 2 years but feel the Board has the right to renew requests.

Mr. Virr asked if there was a limit of 2 years or could the Board say 6 months. Mr. Mackey said that he felt that the Board could stipulate but it would conflict with the State regulation so may need a legal opinion.

Favor

Albert Dimmock, High Street, said that he was not here as a Town Council representative but as a concerned citizen. He said that he felt that the applicant was fighting economic times and the conditions of the existing neighborhood. That the banks were unfriendly to lend money if there was nothing going forward. He said that he did not feel that the Board was in any position to give advice to what to do but mission is to decide to grant another 2 years. He said that he believes that the applicant is entitled to be granted the request for extension.

Mr. Perkins said that not trying to discourage the applicant but enlighten them to the new RSA that the Board has been given to enforce.

Mr. Perkins motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mrs. Hampton, Mr. Carnevale, Mr. Burgess, Mr. Perkins, Mr. Virr.

Deliberative Session

Mr. Virr said that the request was for another 2 year extension and that there was a new law and that he was not 100% sure if can allow additional continuations.

Mr. Perkins said that he recalled the request from 2 years ago and suggested that the Board give 3 years but only had granted 2 as that was what the Board had history of granting. He said that the economy has not changed and unsure what it will do in another 2 years if grant another extension.

Mr. Burgess said that the State has a strict law on extensions and unless substantial completion has been made may not be able to grant another request.

Mr. Perkins asked if a stipulation can be made that it was continued subject to Planning Board technical review process be started before any additional extensions be granted.

Mr. Virr said that if Planning Board approves will be subject to obtaining a variance.

Mr. Mackey said that a site plan has a 4 year protection if substantial completion has been performed but no guarantees would be granted.

Mrs. Hampton asked if the request could be made longer than 2 years.

Mr. Virr said no as the Board was mandated by the State RSA. He said that the Board recently came across a case that ran out of time while in the Planning Board review process and required an additional renewal. He said that he felt conditions of evidence of construction or in the process of Planning Board review be made as part of the conditions.

Mr. Mackey reviewed RSA 674.33 for the Board.

There was some discussion with regard to the conditions for the request.

Mr. Perkins motioned to come out of deliberative session.

Seconded by Mr. Carnevale.

Vote: Unanimous.

Mrs. Hampton, Mr. Carnevale, Mr. Burgess, Mr. Perkins, Mr. Virr

Mr. Virr motioned on case #13-117, Kastorian Realty Trust III to Grant a second extension of a variance granted on September 17, 2009 to the terms of Article VI, Sections 165-49.C.1 and Section 165-49.G.1.b of the Town of Derry Zoning Ordinance to construct a second story to an existing structure and to construct a two-story addition on an undersized lot which lacks required off street parking as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Subject to Planning Board approval.**
- 3. Recommend that the Planning Board to have a buffer installed along driveway access for lot #4.**

Seconded by Mr. Perkins.

Vote:

Mr. Perkins: Yes.

Mrs. Hampton: Yes.

Mr. Carnevale: Yes.

Mr. Burgess: Yes.

Mr. Virr: No. Due to that has had 2nd renewal has been give and no construction or Planning Board process has taken place.

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.

Approval of Minutes

Mr. Virr motioned to table the minutes of August 15, 2013.

Seconded by Mrs. Hampton.

Vote: Unanimous

Mr. Carnevale, Ms. Hampton, Mr. Burgess, Mr. Perkins, Mr. Virr

Adjourn

Mr. Perkins motioned to adjourn.

Seconded by Mr. Carnevale.

Vote: Unanimous.

Mr. Whitehorn, Mr. Thompson, Mrs. Hampton, Mr. Carnvale, Mr. Burgess, Mr. Perkins, Mr. Virr

Adjourn at 9:00 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes September 19, 2013

Mr. Carnevale motioned to approve the minutes of September 5, 2013 as amended.

Seconded by Mrs. Hampton.

Vote: Unanimous

Mr. Carnevale, Mrs. Hampton, Mr. Burgess, Mr. Perkins, Mr. Virr