

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
October 5, 2023

Members Present

Lynn Perkins, Chairman
Craig Corbett, Vice Chair

Members Absent

Crystal Morin
Donald Burgess
Richard Tripp

Alternates Present

James Dietzel
Michael Donlon
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. 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.

The Board members introduced themselves.

It was noted for the record that Mr. Dietzel, Mr. Donlon and Mr. Obimba would be sitting on each case on the agenda.

23-128 Ryan M. Thomas & Jennifer L. Tripp

The applicant is requesting a variance to the terms of Article VI, Section 165-46.C.4 of the Town of Derry Zoning Ordinance to allow the construction of a 20' x 34' addition to be located less than 15 feet from the side property line and less than 35' from the front property line at 14 Jenney Dickey Hill Road, Parcel ID 52032, Zoned MDR

Ryan Thomas, owner, reviewed his application criteria and letter of explanation for the record.

Board Questions

Mr. Perkins said that 851 square feet is a tight fit for a family of 4. Mr. Thomas said it yes it was.

Mr. Donlon said that he has reviewed the plan and is a very tight fit but not as grievous as it appears and very well thought out plan. He said that it appears the neighbor did not have any concerns at this time.

Mr. Obimba asked what would be the number of bedrooms after if approved. Mr. Thomas explained the floor layout of the existing home and said after there would be 3 bedrooms.

Mr. Obimba asked how many parking spaces would there be. Mr. Thomas said that the parking would not change except that there would be a garage where his wife would park her car.

Mr. Obimba said that the lot it self was a tight fit and clearly need bedrooms. He asked if the parking spaces per number of bedrooms applied. Mr. Mackey said no, that it applies to a multi-family and would be determined per site plan and not so much on a single family dwelling.

Mr. Perkins said that the plan says Freddy Lane. Mr. Thomas said that originally laid out as Freddy but was changed to Jenney Dickey Hill.

Mr. Perkins asked if marked up plan lot was now number 14. Mr. Thomas described the street for the record and former lot numbers on the plan.

Mr. Corbett said he was curious of lot one. Mr. Thomas said that 14 Jenney Dickey Hill was the old ticket booth in the late 30's and 40's and that was the reason that they have not torn it down.

Code Enforcement

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

- The applicants are requesting approval to construct a 2-story addition to the right side of the home. The addition is proposed to be located approximately 3 feet from the side property line at its closest point.
- The proposal is to add a 1 stall garage on the lower level and 2 bedrooms on the upper level.
- The home is serviced by municipal sewer and a private well.

- The property is located in close proximity to Beaver Lake in an area of small, non-conforming lots of record.
- Although not waterfront property, the lot is within 250 feet of Beaver Lake and should the variance be approved, State Shoreland permitting would also be required.
- There are pictures in the file for review by the Board.

Mr. Obimba asked if the driveway encroachment would need to be part of the variance. Mr. Perkins said no.

Mr. Dietzel asked if the elevation and location to Beaver Lake would be of a concern. Mr. Mackey said that the State rule is that if the property were located within 250 feet of the high water mark it would require a separate permit from their agency.

Mr. Dietzel said that if the Board grants the request, they may still have another step in order to be able to do what they are seeking. Mr. Mackey said that was correct.

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

Jason Mattia, owner of 16 Jenney Dickey Hill Road, said that he was in support and wrote a letter in favor of the request. He said that the impact setback is driveway area and that would be leveled out and make better. Mr. Mattia said that the history of the building is great and that the craftsmanship was beautiful and that he did not feel that there would be any ill effects to his property.

Mr. Perkins said that there was a letter in favor noted for the record in the file.

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. Obimba.

Vote: Unanimous.

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

Deliberative Session

Mr. Dietzel said that he felt that the application was well presented and did not see any issues with granting the request. He said he felt it was a straightforward case and that substantial justice has been shown due to the lack of room and feel will provide justice to the area.

Mr. Donlon said in reviewing the surrounding properties it meets the general character of the neighborhood and that the existing home was not very large and the applicant needs the room.

Mr. Corbett said that the request was not oversized in nature and that the area existed of prior camp properties that have been converted over the years. He said that the request would be in keeping with the neighborhood and would be of benefit to the applicant.

Mr. Perkins said that the lot was created prior to zoning and feel that hardship has been proven and that the request meets the required criteria. He reviewed the conditions for the record.

Mr. Corbett motioned to come out of deliberative session.

Seconded by Mr. Donlon.

Vote: Unanimous.

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

Mr. Donlon motioned on case #23-128 Ryan M. Thomas & Jennifer L. Tripp to Grant a variance to the terms of Article VI, Section 165-46.C.4 of the Town of Derry Zoning Ordinance to allow the construction of a 20' x 34' addition to be located less than 15 feet from the side property line and less than 35' from the front property line at 14 Jenney Dickey Hill Road, Parcel ID 52032, Zoned MDR as presented with the following conditions:

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

Seconded by Mr. Obimba.

Mr. Corbett reviewed the findings of fact as follows:

- The applicants are requesting to construct a 2-story addition to be 3 feet from the side property line where 15 feet is required.**

- The property is located in the Medium Density Residential Zoning District (MDR).
- The proposal is for a single stall attached garage with 2 bedrooms over.
- Property is not waterfront, but a State Shoreland permit will be required.

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: Yes.
 Mr. Donlon: Yes.
 Mr. Obimba: Yes.
 Mr. Dietzel: Yes.
 Mr. Perkins: Yes.

The application was Granted by a vote 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.

23-129 Scott D. Boudreau
Owner: Martin P. Paciorkowski & Liana J. Newcombe

The applicants are requesting a variance to the terms of Article VI, Section 165-46.C.1a, C 2 & C 3 of the Town of Derry Zoning Ordinance to allow the property to be subdivided into 2 lots with the new lot proposed to contain .53 acres and 100 feet of street frontage and lot width (where a minimum of 1 acre and 125 feet of frontage and lot width are required) at 75 Fordway Ext, Parcel ID 21009, Zoned MDR

Scott Boudreau, applicant, reviewed the required criteria and letter of explanation for the record.

Board Questions

Mr. Obimba asked to explain #5 explanation of if not granted would be unable to sell land for additional income. Ms. Newcombe said that they currently were not utilizing the property and that they really could use the extra income from the sale in order to stay in their home.

Mr. Perkins asked if the oversized parcel was seeking to defer the hardship. Mr. Boudreau said that there is a need for additional housing. He said that in the 60's

properties were a half acre or less in size so proposal would match the surrounding area and provide the owners with some additional income from sale of the property.

Mr. Perkins said that the aspect would be safe to say that the oversized lot being subdivided would be so others would benefit. Ms. Newcombe said yes.

Mr. Corbett asked if parcel A design could be reviewed for the record. Mr. Boudreau said that the lot proposal is to provide a lot line adjustment with the owner of 2 Derryfield Road to resolve a property encroachment.

Mr. Corbett asked if the swing set etc. would stay on the lot. Mr. Boudreau said if approved items would then be on their own property.

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 2 lots.
- The proposal is to do a lot line adjustment between parcel 21009 (75 Fordway Ext) and parcel 2010 (2 Derryfield Rd) to address the encroachments and then subdivide 75 Fordway Ext into 2 lots. The parent lot containing the home will remain a 1 acre conforming lot and the new lot is proposed to contain .53 acres and 100 feet of frontage where 1 acre and 125 feet of frontage is required.
- As the Board will remember, a proposal to subdivide this property into 3 lots was denied by the Board on August 17, 2023.
- It appears that Town water and sewer are available to service the new lot if the subdivision is approved.
- If approved, Planning Board approval will be required.
- 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

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

Glenn Beauregard, 4 Derryfield Road, said that he lives behind proposed lot and he believes that they have current reasonable use of their property and granting would create a hardship with increased traffic and alter the existing character of the neighborhood. Mr. Beauregard said that he did not want to see the lot chopped into 3 pieces.

Mr. Perkins said that the applicant was now seeking 2 lots.

Mr. Perkins asked what was the zoning in 1960. Mr. Mackey said it was general residential.

Mr. Perkins said that essentially it could be considered a taking when unknown alternatives when master plans are implemented one does not have a way to see into the future and to what might be in store for larger properties.

Rebuttal

Ms. Newcombe said that she did not feel that their proposal of adding one single family home would increase more traffic to the area and that it was a flat level area that would have ample visibility.

Mr. Boudreau said that the proposed lot would have access to Town water and sewer.

Mr. Dietzel motioned to go into deliberative session.

Seconded by Mr. Donlon.

Vote: Unanimous.

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

Deliberative Session

Mr. Dietzel said that he lived in the Derryfield area for 13 years and there has been a lot of changes to the area such as the expansion of 93 and the large wall. He said as far as the criteria the variance he felt would not be contrary to the public interest because change happens. The spirit and intent he did not feel it would be detrimental to the area for one new single family home to be constructed. Hardship he feels that the owners unable to maximize the use of their property creates a hardship so based on criteria he said he feels it meets all aspects.

Mr. Donlon said he agreed with testimony and that the spirit of the ordinance would be observed based on lot sizes of surrounding area.

Mr. Obimba said he also agrees and that the regulations outlined in the Master Plan and needs lead to hardship and he did not feel that the request was excessive.

Mr. Corbett said that he did not see the absolute need for the subdivision but opportunity to clean up area of misunderstanding is a nice aspect. He said that he was not opposed to proposal but don't love it and feel that this proposal is better than prior request.

Mr. Perkins said excessive verses reasonable comes into play and see a balance as zoning changes and sometimes one can get caught off guard. He reviewed the conditions for the record.

Mr. Obimba motioned to come out of deliberative session.

Seconded by Mr. Dietzel.

Vote: Unanimous.

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

Mr. Donlon motioned on case #23-129 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, C 2 & C 3 of the Town of Derry Zoning Ordinance to allow the property to be subdivided into 2 lots with the new lot proposed to contain .53 acres and 100 feet of street frontage and lot width (where a minimum of 1 acre and 125 feet of frontage and lot width are required) at 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. Obimba.

Mr. Corbett reviewed the findings of fact as follows:

- **The applicants are requesting a variance to allow the property to be subdivided into 2 lots.**
- **The proposal is to do a lot line adjustment between parcel 21009 & 2010 to address encroachments.**
- **Legacy lot is conforming, new lot will contain .53 acres and 100 feet of frontage where 1 acre and 125 feet of frontage is required.**
- **The property is located in the Medium Density Residential Zoning District (MDR).**
- **Planning Board subdivision approval will also be required.**

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. Corbett: Yes.
Mr. Obimba: Yes.
Mr. Donlon: Yes.
Mr. Perkins: Yes.

The application was Granted by a vote 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.

Other Business

Mr. Mackey said that the office has received 2 cases for the next meeting and a request for a variance extension.

Approval of Minutes

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.

Adjourn

Mr. Obimba motioned to adjourn.

Seconded by Mr. Corbett.

Vote: Unanimous.

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

Adjourn at 7:54 pm

Minutes transcribed from notes & tape:
Ginny Rioux
Recording Clerk

Lynn Perkins
Zoning Board Chairman

Approval of Minutes October 19, 2023

Mr. Corbett motioned to approve the minutes of October 5, 2023 as amended.

Seconded by Mr. Donlon.

Vote: 7-0-1

Yes: Mr. Perkins, Mr. Corbett, Mrs. Morin, Mr. Burgess, Mr. Donlon, Mr. Dietzel, Mr. Obimba

Abstain: Mr. Tripp