

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
October 17, 2013

Members Present

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

Members Absent

Alternates Present

Tyler Whitehorn
David Thompson

Alternates Absent

Ann Marie Chase
Heather Evans

Code Enforcement

Robert Mackey

Mr. Virr called the meeting to order at 7:04 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.

The Board introduced themselves for the record.

13-121 John T. O'Connor
Owner: Yvon Cormier Construction Corp

Applicant is requesting an Appeal of an Administrative Decision as follows: “to show that the Planning Board’s decision of August 21, 2013 relative to site plan approval of the property located at 41 Ashleigh Drive, was in error and the Board made an unlawful decision when it determined that Accurate Transport, Inc. falls under Article VI, Section 165-41, Industrial District III, Section A: Permitted Uses as a “Contractors Yard”, Parcel 08017.

Mr. Virr informed the public that this meeting was being postponed to the next meeting and that the meeting was still considered timely as the Board has granted continuance and that the August 21, 2013 Planning Board meeting is still preserved.

Mr. Virr motioned to continue the meeting to the November 3, 2013 hearing.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Mr. Virr informed Mr. O'Connor that his request to postpone to the November 3, 2013 meeting had been granted.

Mr. O'Connor asked if he still had the 10 day window to submit any information. Mr. Virr said yes.

Mr. O'Connor said that he had requested the same information that the Board had received and had noted that the TRC copies and that there were discrepancies as Brenda Wilson had not been part of the process.

Mr. Virr said that he had asked Town Council and was informed that the Board did not need the TRC copies.

Mr. Perkins asked if he was telling us that the TRC report was not accurate and that the Planning Board only utilizes it as advice. Mr. O'Connor said that he felt that the TRC has information pertinent to the case.

Mr. Virr said that the Board is not hearing the case this evening and that there is a lot of material to read over.

Mr. O'Connor thanked the Board for the postponement.

It was noted for the record Mr. Perkins stepped down for the following case and that Mr. Virr appointed Mr. Thompson to sit.

13-120 Andrew & Donnalee Panos

Applicant requests a variance to the terms of Article VI, Section 165-45.B.(i) of the Town of Derry Zoning Ordinance to allow a lot line adjustment to occur between two non-conforming lots which predate zoning at 13 & 15 Manchester Ave., Parcel ID 35041 & 35042-001, Zoned MHDR.

Dan Mullen, Richard Bartlett Associates, Concord, NH, said that he was representing the applicant and that they wished to obtain a variance to allow a lot line adjustment between the two properties that Mr. Panos owns. He said that the lots were created in 1908 which predate zoning and the reason before the Board this evening is during a survey of the

properties it was noted that #13 currently straddles the lot line and is in the need of being corrected. He read the application for the Board.

Board Questions

Mr. Virr said that it was clear that something needs to be done and that it also appears that it would be an equal split as the buildings would still be there. Mr. Mullen said yes and that the proposal is to move the lot line approximately 20' to the left as the house the way it currently is the lot line is through the structure. At the present time the lot would be unable to sell with the lot line the way it is.

Mrs. Hampton asked how this happened if it was due to needing to build for family. Mr. Panos said that he had purchased it that way and had paid off the original mortgage and when he went to get another mortgage he was unable to obtain another one as found the lot line discrepancy.

Mrs. Hampton said that there might be some recourse from the prior owner and real estate broker.

Mr. Virr said that in 2002 not every bank required appraisals as they do now as he had purchased his home in 1970 and it was not required.

Mr. Thompson asked if he currently owned both properties and that the letter from Bartlett Associates was not signed if that could be done. Mr. Panos said that he owned both lots currently and signed the letter of authorizing Bartlett Associates to represent him this evening.

Mr. Whitehorn asked if anything would affect the parking. Mr. Mullen said that the residents of #15 would park near the carport and the other property would continue parking as they do now. They will create an easement for parking with the properties.

Mr. Burgess asked if the bank would allow an easement. Mr. Panos said that the bank would be ecstatic.

Mr. Burgess asked when the property was built. Mr. Panos said 1947.

Mrs. Hampton asked if the mortgage was going with the same company. Mr. Panos said no as he went to purchase another property and was utilizing this property as collateral and found the error.

Mrs. Hampton asked if the new mortgage found the error and that she had been a broker for many years and have never seen this issue. Mr. Panos said no that he was aware of the issue prior to trying to refinance and was unsure of why previous broker did not know of the issue when he purchased the properties.

Mr. Virr said that the lot lines have not always been known and that certified plot plans were not a requirement before and asked when the requirement of plot plans started. Mr. Mackey said that it was a new concern and that the office started requiring certified plot plans on new construction in the late 80's.

Mr. Thompson asked Mr. Mackey if where the two houses were located on the corner if the matter goes right down to the next. Mr. Mackey said that this was an old neighborhood and that this matter was between these two lots and not a continuous situation that he was aware of.

Mr. Thompson asked if the lot lines were affected down the street. Mr. Mullen said that the lots were from 1908 and divided into 100 x 50' lots and that he has not gone down the street as he had picked up boundary monuments within #13 & 15 and also found to the west of #15 was good.

Code Enforcement

Mr. Mackey said that the applicant is proposing a lot line adjustment between the 2 properties, which predate zoning regulations, in order for each dwelling to be completely on its own lot, the dwelling on 13 Manchester Ave. is located mostly on the abutting property. Although this would appear to improve the existing situation, the lots will still not be able to meet current setbacks, lot areas and frontage, so the variance(s) are still required. If approved by the Board, Planning Board review and approval will be required. There are pictures in the file for the review by the Board.

Favor

No one spoke in favor of the application.

Opposition

No one spoke in opposition of the application.

Mr. Carnevale motioned to go into deliberative session.

Seconded by Mr. Thompson.

Vote: Unanimous.

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

Deliberative Session

Mr. Virr said that the case was straight forward.

Mr. Burgess said that the only other option would be to relocate the building.

Mr. Virr asked if Mr. Mackey if any other conditions need to be made other than subject to Planning Board approval and relocate the shed to #15.

Mr. Mackey said no as it was also noted on the plan that the shed was to be relocated. Mr. Burgess asked if the applicant could be asked where the shed was going to be located.

Mr. Virr asked if Mr. Panos could indicate which lot the shed would be placed. Mr. Panos said that it was going to be located at #15.

Mr. Virr said that the conditions should be that the shed be relocated onto #15 and subject to Planning Board approval.

Mrs. Hampton said that the applicant may have some recourse as the deed is a warrantee deed.

Mr. Virr said he agreed that it was noted that there was a warrantee deed and may have some recourse with the engineering fees etc. that have been accrued due to this error not being found until now.

Mr. Burgess reviewed the following conditions for the motion:

1. Subject to Planning Board approval.
2. Shed to be relocated onto #15 and observing lot line setback requirements.

Mr. Carnevale motioned to come out of deliberative session.

Seconded by Mr. Thompson.

Vote: Unanimous.

Mr. Thompson, Mr. Carnavale, Mrs. Hampton, Mr. Burgess, Mr. Virr

Mr. Burgess motioned on case #13-120, Andrew & Donnalee Panos to Grant a variance to the terms of Article VI, Section 165-45.B.(i) of the Town of Derry Zoning Ordinance to allow a lot line adjustment to occur between two non-conforming lots which predate zoning at 13 & 15 Manchester Ave., Parcel ID 35041 & 35042-001, Zoned MHDR, as presented with the following conditions:

- 1. Subject to Planning Board approval.**
- 2. Shed to be relocated onto #15 and observing lot line setback requirements.**

Seconded by Mr. Thompson.

Vote:

Mr. Carnevale: Yes.
Mr. Thompson: Yes.
Mrs. Hampton: Yes.
Mr. Burgess: Yes.
Mr. Virr: 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.

Approval of Minutes

Mr. Carnevale motioned to approve the minutes of October 3, 2013 as amended.

Seconded by Mr. Burgess.

Vote: Unanimous

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

Other Business

Mr. Whitehorn said that he had concern with regard to one of the new alternates that were appointed to the Zoning Board that one was a direct abutter to one of the cases and asked what the procedure was for that. Mr. Virr said that the abutter would be required to recuse themselves from the case.

Mr. Virr said that the previous reading of changes that need to be made to the ZBA Policy & Procedures that became effective August 31, 2013 amending RSA 637:15 need to be revised to the following and stated that the following changes would be considered as the second reading:

5. The following time limits shall apply to appeals to the Board of Adjustment and requests for rehearing:
 - a. Any appeal of a decision of the administrative decision taken under RSA 676:5,I, shall be filed with the ZBA within twenty (20) days from the date of the decision and shall specify the alleged error or errors in such order, requirement, decision, or determination. The officer shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken.
 - b. Any appeal of a Planning Board decision taken under RSA 676:5, III, shall be filed with the ZBA within thirty (30) days from the date of the Planning Board approved or disapproved the application and shall

specify the alleged error or errors in such order, requirement decision or determination. The Board shall forthwith transmit to the Zoning Board all the papers constituting the record upon which the action appealed from was taken.

Mr. Virr motioned to accept the changes to the “Zoning Board’s Policy and Procedures” as this was the second reading.

Seconded by Mr. Carnevale.

Vote: Unanimous.

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

Correspondence

Mr. Virr said that the Town Council had appointed 3 new members appointed to the Board by Town Council that may still need to be sworn in but would like to welcome Ann Marie Chase, Heather Evans and Susan Kopetz to the Board. He was unsure if they had been sworn at this time and urged them to see Denise Neale, Town Clerk in order to have that done.

Mr. Virr informed the Board that Susan Kopetz has submitted a letter of resignation to Mr. Budreau.

Mr. Perkins said that he appreciated the letter and that there are people out there stepping up to sit on the Board and welcomed others to do the same.

Adjourn

Mr. Burgess motioned to adjourn.

Seconded by Mr. Perkins.

Vote: Unanimous.

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

Adjourn at 7.55 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk