

**TOWN OF DERRY**  
**ZONING BOARD OF ADJUSTMENT MINUTES**  
**February 16, 2023**

**Members Present**

Lynn Perkins, Chairman  
Craig Corbett, Vice Chair  
Crystal Morin, Secretary  
Allan Virr

**Members Absent**

Donald Burgess

**Alternates Present**

Richard Tripp  
James Dietzel

**Alternates Absent**

Michael Donlon  
Gaspar Obimba

**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 due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 this public body is authorized to meet now physically and also electronically. As such this meeting is being held and will also be providing public access to the meeting by telephone with additional 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 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. Mr. Perkins said that all votes taken are taken during this meeting shall be done by roll call vote.

The Board members introduced themselves.

It was noted that Mr. Tripp would sit for the following case.

**23-103            Peter Miller & Elizabeth Kwo**

**The applicants are requesting a variance to the terms of Article VI, Section 165-48.A of the Town of Derry Zoning Ordinance to allow the property/dwelling to be utilized for short term rentals at 67-69 Conley's Grove Road, Parcel ID 10652 & 16053, Zoned LDR**

Mr. Perkins informed the Board and Public that case #23-103 Peter Miller & Elizabeth Kwo have requested to be continued to the March 16, 2023, meeting due scheduling conflicts. He said that the abutters will need to be renoticed.

Mr. Corbett said that he did not like the two-month continuation but need the presence of the applicant and a bit unfair to abutters that may have shown up for the past two meetings. Mr. Corbett asked if the applicant would be continued to the next date or reapply.

Mr. Mackey said that the Board needs to make a decision to continue to March 16<sup>th</sup> and vote to no more continuance or need to reapply.

Mr. Virr said he agrees with Mr. Corbett that the applicant needs to be present.

Mrs. Morin said she also agrees with Mr. Corbett and feel for abutters that are present this evening.

Mr. Tripp said he did not disagree but how would abutters know to be here for the meeting.

Mr. Mackey said that he has had phone conversations with some of the abutters and that they were made aware of the request to continue.

Mr. Tripp said that if the abutters were made aware then he was comfortable with granting a continuance.

Mr. Perkins said that a continuation can only go on for so long. He is aware that some abutters have concerns and concur with Mr. Corbett that this is the last request for a continuance.

Mrs. Morin motioned on case #23-103, **Peter Miller & Elizabeth Kwo for a continuation to Grant a variance to the terms of Article VI, Section 165-48.A of the Town of Derry Zoning Ordinance to allow the property/dwelling to be utilized for short term rentals at 67-69 Conley's Grove Road, Parcel ID 10652 & 16053, Zoned LDR as presented with the following conditions:**

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

**Seconded by Mr. Virr.**

**Mr. Tripp motioned to amend the motion to solely continue case to March 16, 2023 not to the granting of the variance.**

**Seconded by Mr. Virr.**

**Vote: Unanimous.**

**Mr. Tripp, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins.**

Mr. Perkins informed the public that case #23-103 Peter Miller & Elizabeth Know will be heard on March 16, 2023.

It was noted for the record that Mr. Dietzel would sit for the following case.

**23-107            Lynne Caloggero  
                     Owner: Peak Premises, LLC**

**The applicant is requesting a variance to the terms of Article VI, Section 165-45.B.b & c of the Town of Derry Zoning Ordinance to allow the property to be subdivided into 2 lots, both of which will have less than the required frontage and lot width, for the purpose of building a single family home towards the rear of the new lot at 5 Mt. Pleasant Street, Parcel ID 32071, Zoned MHDR**

Lynne Caloggero, applicant, reviewed the required criteria for the record.

### **Board Questions**

Mr. Perkins asked if could explain a bit more to the hardship criteria. Mrs. Caloggero said that there were 25 homes in the area 13 of which were single family. She said that they originally purchased lot and had hopes of getting 6 unit building but heard from abutters and was not acceptable. Son has spoken to abutters and have requested support for 1 more single family structure to be built on a separate lot. Ms. Caloggero said that she feels it would blend with surrounding structures and that the concern with regard to traffic of a 6 unit will not be there as a single unit would have 1 family. She said that the 14' 6" frontage would be larger than others in the area.

Mr. Dietzel asked if according to the plan if the chain link fence is already there as the driveway is narrow. Mrs. Caloggero said that the fence was there when surveyed and that the fence belongs to the abutting property.

Mr. Corbett asked if the proposed driveway would be directly behind the home or in front. Mrs. Caloggero said it may be centered if need a lot of room.

## **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. One of the lots would contain the existing dwelling and the other would have a new single family dwelling constructed towards the rear of the property.
- The property is located in the Medium High Density Residential Zoning District (MHDR) which requires 10,000 sq. ft. per dwelling unit and 100 feet of frontage and lot width (measured at the 35' front building setback).
- The proposal would create two lots, both of which would contain sufficient area but insufficient frontage and lot width. The proposed lot containing the existing dwelling would be 10,000 + sq. ft. in area and have 71+/- of frontage and the new lot would have 18 feet of frontage and be approximately 24,000 sq. ft. in area. (Eighteen feet is the minimum width required for a driveway over 150 feet in length – 14 feet of travel surface and 2 foot clear width shoulders).
- If approved, Technical Review Committee (TRC) and Planning Board subdivision approval will be required.
- There are pictures in the file for review by the Board.

Mr. Perkins asked to clarify the conformity of the existing properties. Mr. Mackey said that the MHDR zone was put in around the late 1980's with the Town wide zoning change.

Mr. Perkins asked if were to be built back in the day would it have worked out. Mr. Mackey said yes.

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**

Mark Murabito, 8 Mt. Pleasant Street, said that the request is now to subdivide the lot into 2 parcels and that the applicant was aware of the frontage when purchased. He said that the previous owner had also tried to obtain a variance and was denied. Then here again for a 6 unit that was also denied. Mr. Murabito said that there is no hardship and that the applicant knows what they purchased. As for the structure to look and feel the same as other properties in the area he also did not feel that the proposed structure looks anything like the homes in the area. He said he is opposed to the request due to the lack of frontage and increase of traffic. Mr. Robie purchased the property specifically because of land locked. He said that the comment of being reasonable due to 25 homes 13 were single family with average street frontage of 55' that he feels is untrue as he took the time to measure frontages of the properties from Lenox to East Broadway and reviewed them for the record. Mr. Murabito said that he feels that the frontage request does not exist and also that there is a telephone on the property 16' from the fence that would also create an issue.

Mr. Perkins said if the applicants request were to be granted the location of the telephone would be with the utility company.

Mr. Murabito said that the applicant did recently side the home and have tenants currently there. He said that he has pictures of the property that clearly show absolute abuse of the property with trash etc. that the property is an eyesore.

Mrs. Morin said that the pictures were not necessary as frequently drive the area and agree the property needs to be cleaned up.

Mr. Perkins asked if vision shows frontages for lots. Mr. Mackey said no but have a measurement tool for rough measurements.

Mr. Tripp asked what was the current frontage and when subdivided what would it be. Mr. Mackey said it was 91' is currently and when subdivided the new lot would have 18' and existing would be 73'

Mr. Corbett said that there are 2 letters from the applicant. Mr. Mackey said that the original request was for 12' and contacted the applicant and discussed requirements so they resubmitted a letter to show the increase to 18' due to the length of the driveway.

Bruce Brown, 6 Hood Road, said that Mr. Mackey noted the zoning changes but that most homes in this area were built before zoning and Mt Pleasant Street was one of the last streets before Hood Farm closed. He said that Mr. Murabito stated that the rear of the property was never built and that is because the rear property is wetland as the water comes down from Lenox and flows down behind the properties and onto this rear portion of the property. Mr. Brown said that also there is no sidewalks along this area and that the road is very narrow there is a 3-way stop sign at Lenox but not where Mt. Pleasant comes into Lenox and Hood Road.

Bradford Ek, 2 Mt. Pleasant Street, said he has been in his home since 1963 and the proposed driveway will be difficult for sewer and water hook up due to ledge so there would be a potential of blasting and was concerned for foundations in the area as most were stone foundations. He knows that there is a lot of ledge on the property when he used to work with Mr. Robie. Mr. Ek said that he had not seen the proposed plans so they may need to get permission from Hood Road or apartment complex on East Broadway for utility hook ups.

### **Rebuttal**

Mrs. Caloggero said the assumption of what knew when purchasing the property that they carefully investigated and spoke with Mr. Mackey before purchasing. She said that the prior owner failed on area qualifications as wanted 4 units to the rear of the property and 3 in the front. Mrs. Caloggero said that they hired Promised Land and confirmed that the property would fit 6 units and the existing structure was proposed to be removed. Here today as heard that a single family structure would fit and that the proposed plan looks like existing structure except it has an attached garage. She said that they have not put money into the property as originally planned to raise and built a 6 unit and don't think anyone would put money into a home if were going to tear it down. They did put a new roof on in 2019 and recently sided the property. Mrs. Caloggero said that the tenants are disruptive and have been given notice to vacate for March 31<sup>st</sup> then will perform interior renovations and clean up the property. The comment made of frontages, I am a license real estate agent and not guessing on frontages as they are from the actual deeds and #14 is the only property that meets frontage. As for the wetlands they have been taken into consideration. The traffic would be for one single family and not fair to compare to the scenario for schools. Mrs. Caloggero said that this is the first step and that the plan still needs to go through the Planning Board process. They have spent money in engineering already so to presented something theoretical to the Board so as to be able to get to the next step. The question of size of home compared to others do not know as only pulled information for frontages and lot sizes but the proposed structure will be same size as the existing structure.

Mr. Perkins asked how many bedrooms were proposed. Mrs. Caloggero said 3 bedroom with 1 ½ baths.

Mr. Perkins asked what were the plans for the existing structure. Mrs. Caloggero said that it would have a complete reno if proposal is approved and then will be sold.

Mr. Perkins asked what the existing home consisted of. Mrs. Caloggero said it was currently a 2 bedroom structure with a studio accessory unit.

Mr. Perkins asked if the proposed structure would have a basement. Mrs. Caloggero said no as previous meeting were concerns for blasting so looked for a plan on a slab.

Mr. Corbett asked if the existing structure were to be removed could a multi-family be built. Mr. Mackey said that it would require a variance as multi-family requires 5,000 square feet per unit with 150' of frontage.

Mr. Tripp asked if the proposed lot would meet the lot size requirement. Mr. Mackey said yes.

Mr. Tripp asked if unable to install water and sewer what will happen. Mrs. Caloggero said if cost prohibit would not build.

Mr. Murabito said that the frontage of lower Mt. Pleasant is more than this unit would have. He said that the square footage of existing structures were between 1800 and 2900 square feet so feel the proposed structure would not be similar in design. The reference of farmhouse and new englander style home do not have the same characteristics.

Mrs. Caloggero said that the square footage of existing structure is 14,000 square feet on Zillow and a classic style farm house is what currently exists at 5 Mt. Pleasant.

There was some discussion with design and square footage of home and the hurdle of bringing water and sewer to the property.

Mr. Perkins asked fi there was a plan for sewer if run into ledge. Mrs. Caloggero said that they would need hire an expert for that question.

John MacMillan, 6 Mt. Pleasant Street, said if have to blast have concerns as most homes in the area are on fieldstone which could cause damage.

Mr. Perkins asked if need to blast what was the process. Mr. Mackey said that a blasting permit is issued from the Fire Department and that the blasting company typically perform a pre-blast inspections before any blasting is performed.

Mr. Dietzel motioned to go into deliberative session.

Seconded by Mr. Corbett.

Vote: Unanimous.

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

### **Deliberative Session**

Mr. Dietzel said he was sympathetic with abutter concerns and he has reviewed the criteria and feel that the first part he did not see where it would impact the area. The spirit is observed, value is nice new home do no feel would diminish neighborhood. Hardship feel a denial would be created as would not allow full use of property and understand neighbors concerns. Aesthetic nature is not concern of the Board.

Mr. Perkins said that hardship is to balance of extreme or reasonable and also feel would be a reasonable use. 2-4 cars per day would not be contrary to spirit of the ordinance.

Mrs. Morin said she struggles with hardship as elementary busses do go up road so there is a traffic concern.

Mr. Perkins said the question of extreme or reasonable use feel this request is more reasonable than prior request.

Mr. Virr said he did not see a problem with a single family structure verses a complex with multiple cars so do not feel this proposal would create a problem.

Mr. Corbett said he liked this proposal more than the prior request but concern as now stuck with creating 2 non-conforming lots as existing is currently usable and feel 2 non-conforming lots would be against spirit of the ordinance. Public interest compare to school and synagogue a single family would be less impact than prior request and not a negative impact and potential improvement to area.

Mrs. Morin said that original structure is not a single family home and would go against the spirit of ordinance as already usable.

Mr. Perkins said it currently has an ADU.

Mr. Perkins said Board needs to determine if request is reasonable or excessive. He said he feels that this request is more reasonable than prior as driveway impact with multiple vehicles was excessive in prior request was excessive to neighborhood. He said he feels that there would be no conflict with public interest as excess square footage on lot and motion is for single family structure. Understand hardship and whether prior owner purchased intent of the Robie's that they would not have developed is irrelevant. Can see hardship based on square footage and geography of lot.

Mr. Perkins reviewed the conditions for the record and asked if TRC or just Planning Board be made.

Mr. Mackey said just Planning Board approval.

Mr. Corbett motioned to come out of deliberative session.

Seconded by Mr. Dietzel.

Vote: Unanimous.

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

**Mrs. Morin motioned on case #23-107 Lynne Caloggero, Owner: Peak Premises, LLC to Grant a variance to the terms of Article VI, Section 165-45.B.b & c of the Town of Derry Zoning Ordinance to allow the property to be subdivided into 2 lots, both of which will have less than the required frontage and lot width, for the purpose of building a single family home towards the rear of the new lot at 5 Mt.**



**Pleasant Street, Parcel ID 32071, Zoned MHDR as presented with the following conditions:**

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Subject to Planning Board approval.**
- 3. Structure to be built as proposed design.**

**Seconded by Mr. Dietzel.**

**Mr. Dietzel: Yes.**

**Mr. Corbett: No. Do not believe the spirit and intent of the ordinance has been observed.**

**Mr. Virr: 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.**

**Mr. Perkins noted the findings of fact as follows for case #23-107:**

- **The applicant is seeking to subdivide the property into 2 lots.**
- **The parcel is zoned Medium High Density Residential (MHDR).**
- **The proposal would create 2 lots with insufficient frontage and lot width.**
- **18' is the minimum width required for a driveway over 150' in length – 14' of travel surface and 2' of clear width shoulders, the proposed driveway is 150' long.**
- **Technical Review Committee (TRC) and Planning Board subdivision approval is required.**
- **The application is reasonable.**
- **No diminution of value was found by the Board.**

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

### **Approval of Minutes**

**Mr. Corbett motioned to approve the minutes of January 19, 2023 as amended.**

**Seconded by Mr. Virr.**

**Vote: Unanimous.**

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

Mr. Corbett motioned to approve the minutes of February 2, 2023 as written.

Seconded by Mr. Virr.

Vote: Unanimous.

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

### **Correspondence**

Mr. Corbett said that the Board has received a Save the Date from the Business and Economic Affairs regarding the Planning & Zoning Spring 2023 Conference to be held April 29, 2023. He said that registration opens March 17, 2023 and urge all members to attend.

### **Adjourn**

Mr. Corbett motioned to adjourn.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Adjourn at 8:30 PM

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

### **Approval of Minutes March 16, 2023**

Mr. Corbett motioned to approve the minutes of February 16, 2023 as written.

Seconded by Mrs. Morin.

Vote: Unanimous.

Mr. Obimba, Mr. Dietzel, Mr. Tripp, Mr. Donlon, Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins.