

**TOWN OF DERRY**  
**ZONING BOARD OF ADJUSTMENT MINUTES**  
**November 17, 2022**

**Members Present**

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

**Members Absent**

Donald Burgess

**Alternates Present**

Michael Donlon  
Gaspar Obimba  
Richard Tripp  
James Dietzel

**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. 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](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. 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 for the record that Mr. Donlon would sit for the following request.

**22-149            Troy Mifsud**

**The applicant is requesting a variance to the terms of Article VI, Section 165-1.A and Article XIII, Section 165-108.A of the Town of Derry Zoning Ordinance to allow the creation of an additional living unit (from 3 units to 4) at the property at 14 Oak Street, Parcel ID 30198, Zoned MHDR II**

Troy Mifsud, owner, reviewed the required criteria and described what they were seeking to do for the record.

**Board Questions**

Mr. Perkins said that the letter of explanation shows that wish to convert the existing garage into an additional unit. Mr. Mifsud said that the attached garage is constructed of a wooden frame and not on a slab so placing a vehicle inside this area does not make sense as it will not support the weight.

Mr. Perkins said that seeking to construct a 1 bedroom apartment. Mr. Mifsud said yes.

There was some discussion with regard to the layout of the existing structure.

Mr. Tripp said that the conversion would be taking the existing 3 bedroom apartment and converting it into one 2 bedroom and one 1 bedroom apartment. Mr. Mifsud said yes.

**Code Enforcement**

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

- The applicant is requesting a variance to allow an additional living unit to be created inside the existing structure.
- The current building contains 3 dwelling units whose existence pre-dates the current zoning designation.
- The property is in the Medium High Density Residential II (MHDR II) zoning district which only permits single family dwellings. Therefore, the current use as a 3-family is considered a legal, pre-existing, non-conforming use.
- Therefore, a variance is being requested to add a fourth unit (within the existing structure).
- If approved, appropriate permits and inspections will be required for the renovations.
- There are pictures in the file for review by the Board.

Mr. Virr said that the plans provided do not show the second floor. Mr. Mifsud said that there were no changes being made to the second floor.

Mr. Virr asked if the 3<sup>rd</sup> floor potentially be a bedroom. Mr. Mifsud said it was part of the second floor units living space.

Mr. Virr said he had concerns of parking. Mr. Mifsud said that not changing the number of bedrooms and that there was sufficient parking for 8 vehicles.

Mr. Mackey informed the Board that multi-family requirements were 1.5 spaces per bedroom.

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 to the request.

Mr. Mifsud said that the neighborhood consisted of numerous multi-family structures and up the street was an 8 to 10 unit building.

Mr. Corbett motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

### **Deliberative Session**

Mr. Corbett said that the floor plan presented and applicants description of proposed use did not feel that it was an excessive request and would fit with the character of the neighborhood.

Mr. Virr said that he has concerns about parking as there is a no on-street parking ban in the winter months.

Mr. Donlon said that he also has concerns of parking and at first was apprehensive of further non-compliance but the request is not expanding on the lot or adding additional bedrooms.

Mrs. Morin said that she agrees with the Board and said that a possible condition of no increase in the total number of bedrooms be made.

Mr. Perkins said that he felt that parking could be an issue as 1 unit with 3 bedrooms could potentially have 6 people. It is an older neighborhood and non-compliance overall fits with current ordinance and aligns with what seeking to do and feel the request is a reasonable one.

Mrs. Morin asked Mr. Mackey if a condition of add 1 bedroom unit only.

Mr. Mackey said possibly a condition of no increase on total number of bedrooms for the existing structure.

Mr. Perkins reviewed the Findings of Fact for Case #22-149 as follows:

- The property is zoned Medium High Density Residential II (MHDR II)
- The current building has three dwelling units from prior to the current zoning district change.
- The applicant is seeking a variance for a fourth dwelling unit.

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.

Mr. Corbett motioned to come out of deliberative session.

Seconded by Mr. Donlon.

Vote: Unanimous.

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

**Mrs. Morin motioned on case #22-149 Troy Mifsud to Grant The applicant is requesting a variance to the terms of Article VI, Section 165-1.A and Article XIII, Section 165-108.A of the Town of Derry Zoning Ordinance to allow the creation of an additional living unit (from 3 units to 4) at the property at 14 Oak Street, Parcel ID 30198, Zoned MHDR II as presented with the following conditions:**

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. No increase in the total number of bedrooms for the existing structure.**

**Seconded by Mr. Corbett.**

**Vote:**

**Mr. Virr:        Yes.**  
**Mrs. Morin:    Yes.**  
**Mr. Donlon:    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.**

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

**22-150            Lewis Arch**  
**Owner: Albert & Judy Prescott**

**The applicants are requesting a variance to the terms of 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 has frontage on a Class VI Road at 3 Poor Farm Road, Parcel ID 22012-003001, Zoned MDR**

Lewis Arch, applicant, reviewed the required criteria and the letter of explanation for the record. He said that they have recently put their home up for sale and it is currently under contract. Mr. Arch said that he has designed an energy efficient home and was seeking to build his dream home on this property.

**Board Questions**

Mr. Perkins asked if this property was off Strawberry Hill Road. Mr. Arch said yes and described the area for the record.

Mr. Perkins asked if this was also off Bowers Road. Mr. Arch said he was uncertain and that the current dirt path to the property will be creating a more accessible area to the property. The road goes along an existing dirt path and that they would be creating a driveway off that.

Mr. Tripp asked if it was an existing Town approved path. Mr. Arch said it was a Class VI path.

Mr. Perkins asked what was a Class VI road. Mr. Mackey said that the area is maintained but abandoned but subject to gates and bars.

Mr. Perkins asked how does 300' of Poor Farm Road get addressed. Mr. Mackey said it would be addressed through the Public Works and Derry Fire Departments and subject to the driveway regulations.

Mr. Perkins said that there were two submittals in packet and that the Board does not override the Town driveway specifications. Mr. Arch said he had filled out the form before speaking with Mr. Mackey and have since received the driveway requirements.

Mr. Tripp asked who would be responsible for upgrade of the dirt path. Mr. Mackey said it would be up to the applicant to make improvements if approved by the Board a condition of Municipal waiver of liability would need to be recorded. The area would still be open to the public and subject to gates and bars but the driveway would be private property.

Mr. Tripp asked if it would be the responsibility of the owner to keep clear in the winter. Mr. Mackey said yes.

Mr. Obimba asked how far would the structure be from Blueberry Road. Mr. Arch said approximately 500 feet.

Mr. Virr asked if the lot size was 20 plus acres being purchased. Mr. Arch said yes.

### **Code Enforcement**

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

- The applicant is seeking a variance to allow the construction of a single family dwelling on the 20+ acre parcel.
- The property only has frontage on a Class VI road which, although still a public way, is not maintained by the Town and not considered an "approved street" for zoning purposes. Therefore, a variance is being requested.
- The property is zoned Medium Density Residential (MDR) which requires a minimum of 1 acre and 125 feet of frontage.
- The proposed dwelling would be serviced by a private well and septic system.
- The access/driveway would need to be constructed to driveway standards for driveways over 150 feet in length and approved by the Public Works and Fire Departments.
- Per NH RSA 674:41, if approved, a waiver of municipal liability and responsibility must be recorded with the deed prior to issuance of a building permit.
- It should be noted that there appears to be a discrepancy between what is shown on the GIS map and the actual recorded plan. This must be straightened out with the Assessing and IT Departments.
- There are pictures in the file for review by the Board.

Mr. Virr said that it appears that Poor Farm has several lots developed. Mr. Arch described the area for the record and said that one lot is undeveloped and other labeled conservation. He said that he wishes to build a geothermal home on the property.

Mr. Virr said that he has been hearing that there is difficulty to connect to the grid. Mr. Arch said that there is an approximate 6 week back lot to get connected.

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**

Glenn McCabe, 1 Poor Farm Road, said he was glad to see a single home and not a development.

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**

Leigh Ann Panorelli, 13 Blackberry Road, said she was concerned about how it will effect the area as is a great recreational area. She said that she also has concerns with how it would affect the water and sewer in the area and if there would be any drilling or blasting.

Mr. Perkins said that the area is adjacent to a Class VI road and is private property.

Mr. Arch said that he has noticed that the property currently has dirt bike trails etc. that will be closed off so anything to the right side of the roadway is private property.

Mr. Mackey said that the area would be serviced by a private well and septic system. He said it is hard to determine what the water situation is in the area and that there possibly be some drilling or blasting in the area for the initial building portion.

Mr. Arch said that he hopes to avoid blasting due to the expense and will only blast as a last resort.

Mr. Obimba motioned to go into deliberative session.

Seconded by Mr. Corbett.

Vote: Unanimous.

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

## **Deliberative Session**

Mr. Corbett said that the application was an ambitious proposal and is a lot of property.

Mrs. Morin said that feels is a reasonable use given the size of the property.

Mr. Obimba said it is an ambitious request and feel it meets the spirit of the ordinance and criteria.

Mr. Virr said that he also agreed that it is an ambitious project and wish the applicant luck in his endeavor.

Mr. Perkins reviewed the conditions for the record and reviewed the Findings of Fact for Case #22-150 as follows:

- The property is zoned Medium Density Residential (MDR)
- The zone requirements require 125' of frontage and a 1-acre lot.
- The applicant is seeking a variance for a single-family residence.
- The parcel exists on a class VI road not an approved street.
- A discrepancy exists between the GIS map and the recorded plan.
- A variance was granted for Cell Tower use which currently exists.

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.

Mr. Corbett said that he questions the findings of fact and a condition that the driveway to be built to town specifications.

Mr. Perkins said that would fall under the Town permits and inspections.

Mr. Corbett asked if there is any concern of the GIS discrepancy.

Mr. Virr said a condition a survey being done and submit a certified plot plan.

Mr. Corbett motioned to go come out of deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

**Mrs. Morin motioned on case #22-150 Lewis Arch, Owner Albert & Judy Prescott to Grant a variance to the terms of variance to the terms of 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 has frontage on a Class VI Road at 3 Poor Farm Road, Parcel ID 22012-003001, Zoned MDR as presented with the following conditions:**



1. Subject to obtaining all State & Town permits and inspections.
2. A waiver of Municipal Liability and Responsibility must be recorded with the deed prior to obtaining a building permit.
3. Certified plot plan required.

Seconded by Mr. Corbett.

**Vote:**

Mrs. Morin: Yes.  
Mr. Virr: Yes.  
Mr. Obimba: 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.

**Other Business**

Mr. Corbett said the Board received their copy of the November/December issue of New Hampshire Town and City.

**Approval of Minutes**

Mr. Corbett motioned to approve the minutes of October 6, 2022 as written.

Seconded by Mrs. Morin.

Vote: Unanimous.

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

Mr. Donlon motioned to approve the minutes of October 20, 2022 as amended.

Seconded by Mr. Tripp

Vote: Unanimous.

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

Mrs. Morin motioned to go into non-public session.

Seconded by Mr. Tripp.

Vote: Unanimous.

Mr. Dietzel, Mr. Obimba, Mr. Tripp, Mr. Donlon, Mrs. Morin, Mr. Perkins

Mr. Tripp motioned to come out of non-public session.

Seconded by Mr. Obimba.

Vote: Unanimous.

Mr. Dietzel, Mr. Obimba, Mr. Tripp, Mr. Donlon, Mrs. Morin, Mr. Perkins

### **Adjourn**

Mr. Tripp motioned to adjourn.

Seconded by Mr. Corbett.

Vote: Unanimous.

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

Adjourn at 8:11 PM

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

### **APPROVAL OF MINUTES December 15, 2022**

Mrs. Morin motioned to approve the minutes of November 17, 2022 as amended.

Seconded by Mr. Virr.

Vote: Unanimous.

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