

**TOWN OF DERRY**  
**ZONING BOARD OF ADJUSTMENT MINUTES**  
**September 15, 2022**

**Members Present**

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

**Members Absent**

**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.

**22-141            Promised Land Survey, LLC  
Owner: Peak Premises, LLC**

**The applicants are requesting a variance to the terms of Article VI, Section 165-45.B.2.b & c of the Town of Derry Zoning Ordinance to redevelop the property by removing the existing structures and replacing them with a 6-unit condominium at 5 Mt. Pleasant Street, Parcel ID 32071, Zoned MHDR**

Timothy Peloquin, Promised Land Survey, LLC, said he was representing the applicants who were also present this evening. Mr. Peloquin reviewed the letter of explanation and required criteria for the record.

**Board Questions**

Mr. Virr asked if variance request was for the relief of frontage. Mr. Peloquin said yes as the property is zoned for the use and calculations have been performed.

Mr. Virr said he was present for the 2005 request and recalls was denied. Mr. Peloquin said this is a different request than the prior 2005 request.

Mr. Burgess asked what the size of the rear portion of the property with regard to the boundaries was. Mr. Peloquin described the lot for the record.

Mr. Burgess asked if location of proposed structure was 75' from wetland. Mr. Peloquin said the area of wetland was less than one acre in size therefore only a 30' requirement.

Mr. Virr said this was a frontage variance request. Mr. Peloquin said yes, number 9 note on the plan lists the square footage of tract and number of units allowed. He said that the surrounding area lots have less than 150' frontage.

Mr. Perkins asked when was the MHDR zone implementation. Mr. Mackey said he believes the late 80's or early 90's.

Mr. Perkins asked if the lot square footage was unusual for the neighborhood. Mr. Peloquin said the lot is larger than most lots in the area and that MHDR stands for Medium High Density which allows for multi-family dwellings.

**Code Enforcement**

Mr. Mackey provided the following information with regard to the property in the Board's folders for the record.

- The applicants are requesting a variance to allow the redevelopment of the property by removing the existing structure (a 2 unit dwelling and a detached garage) and replacing them with a 6 unit condominium, (Townhouse style) towards the rear of the property.

- The property is zoned Medium High Density Residential (MHDR) which allows for the construction of multi-family structures provided lot frontage and lot area requirements are met.
- In this case, the lot has sufficient area for 6 units (at 5,000 sq. ft. per dwelling) however it does not have the required 150 feet of frontage (89.6' provided). Therefore, a variance is being requested. It appears that the other zoning requirements – setbacks, etc. would be met.
- A previous request by a former owner to redevelop the property as multi-family was denied by the Board in 2005. (This request included the conversion of the existing dwelling to 3 units and the construction of a 4 unit building in the rear of the property).
- If the variance is approved, site plan review by the TRC and Planning board will be required where issues such as parking, lighting and buffer installation will be addressed.
- There are pictures in the file for review by the Board.

Mr. Corbett asked if 5,000 square feet was after wetlands or all encompassed. Mr. Mackey said that was raw area of land that determines the number of spaces could effect size of unit.

Mr. Perkins said that the proposed structure would be connected to Town water and sewer so there would be no onsite well or septic.

Mr. Perkins asked if Town services were a requirement for multi-family. Mr. Mackey said yes that a multi-family requirement according to the Town regulations must have town services.

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 comment of the condo complex on East Broadway was the same is untrue as that multi-family has access on Broadway and this property only access is Mt. Pleasant Street. He said that the area is a 200 year plus neighborhood and feel this type of structure would destroy face and historical values.

Mr. Murabito said that the road is only 18' and is difficult for 2 cars to negotiate at times and in the winter the road decreases 4 to 5 feet due to snow and have to pull over to allow bus to pass. He said that there is no sidewalks and kids walk to school and the road is also used as a bus run. Mr. Murabito said he feels that the increase in traffic would create a congestion to the area if a 6-unit condo was allowed and does not feel that it will enhance the property values. The statement of hardship is self created as the owners have not maintained the property in the past 3 ½ years and is currently a rental property and hardly mows the yard so only feel is a money value for the owner. Curb appeal stating that the units would be located to the back of the property will still create an increase in traffic to an already narrow roadway. Mr. Murabito said that he feels that there are other properties that could accommodate this type of structure more than this neighborhood.

Mr. Perkins asked if knew the length of ownership. Mr. Murabito said that the property was formerly Mr. Robie who purchased the rear portion of the property from the Town of Derry with the understanding that it was unable to be built on.

Mr. Perkins asked if there was another area 6-7 years ago requesting to be redeveloped in the area. Mr. Murabito said he was not sure of where located.

Mr. Mackey said he believes not on this street but Pleasant Street for a frontage request.

Mr. Virr said he believes that was denied by the Board.

Bruce Brown, 6 Hood Road, said he was a 65 year resident of the neighborhood and concern was that this property was here before the Board 6 years ago by Mr. LaPlante and was denied. He said that the area has a 3-way stop sign on Lenox and Mt. Pleasant and there is also a traffic concern as this area has churches, schools and streets with no parking such as Hood Road. Mr. Brown said that he believes the area will require drainage as there is ledge on the property. and that on the northeast corner of the property is a 1846 stonewall that he believes can not be removed without abutter approvals. He said when his father built their home in 1959 was unable to connect to Town sewage due to ledge so knows that there is ledge in the area. Mr. Brown said that the Town brought water and sewage to Dr. Banister's home on 4 Hood Road.

Mr. Perkins asked if this was the same property as in 2016. Mr. Mackey said that was correct and the applicant was Mr. LaPlante.

Mr. Perkins said he recalls that the density of the neighborhood was discussed then with similar clarity.

Mr. Murabito said that during motorcycle riding season there are multiple cars parked on the street at 5 Mt. Pleasant and sometimes unable to get in or out of his own driveway as unable to make the turn.

Mr. Tripp asked if the street was only 12' wide. Mr. Murabito said no that the road is 18' wide but in the winter it is only 12' wide as lose 3' on each side due to snow.

There was some discussion with on street parking.

Bradford Ek, 2 Mt. Pleasant Street, said he has resided there since 1963 and remember that this property had been before the Board and was denied. He said he was concerned of possible blasting as there was ledge to the rear portion of the property and what effect blasting would do to his home that was built in 1896. Mr. Ek said that there was no sidewalk and feel that there would be an increase in traffic so also concern with that and wanted to know if there had been a traffic study. He said that the person next door to this property recently purchased so may be unaware of proposal. Mr. Ek said that there are better areas suited for this type of building other than this property.

Thomas, said he has concerns about density and adding 18 more cars to the area beyond the buses and increase of parents driving their children to school due to Covid concerns.

Mr. Murabito said he believes the area should be in the historic books as his home was built in 1842 and was the original carriage house to the Hood Estate.

Mr. Tripp asked if the area has some original buildings in the historic district. Mr. Murabito said he was unsure but they should be.

Mr. Tripp asked if parking was allowed on both sides of the street. Mr. Murabito said yes and that 5 Mt. Pleasant typically parks on the street verses the driveway.

Mr. Tripp asked if Fire trucks and ambulances can pass. Mr. Murabito said that buses can barely pass by if they were parked on the street and unsure about fire or ambulance but if go low speed possibly pass but difficult.

Mr. Ek asked if they will be blasting as know there is ledge there and feel will need to blast and concerned as his home is across the street and only 100' from where building. Mr. Mackey said he was unaware if need to blast and that the applicant could possibly answer if primarily test pits have been done.

### **Rebuttal**

Mr. Peloquin answered the concerns as follows:

- Historic value - question brought up by number 8 Mt. Pleasant he has no knowledge of from his deed research.
- Property value - He said that this property has gone down hill over the years and needs a redo or tear down.
- Traffic concerns - This is the first step before going to Technical Review and Planning Board where they will address traffic concerns and if will request traffic report if needed.
- Curb appeal - The neighbors have stated that the property needs updating and tearing down existing structures and building new will provide a nice entrance to the from with a beautiful new building to the rear.
- Not buildable - The question raised that the original owner purchased the rear property with a no build deed research has found no restrictions.

- Wetland concern - The wetland concerns will be addressed with site plan will require a storm water report and any drainage will need to be quarantined so no impact to abutters.
- Stonewalls – The center line of a stonewall is actual property line as stated by Robert Frost and is why unable to be disturbed.
- Ledge – Possibly there or may be large boulders will also be part of the Planning Board approval process. Could possibly have building sit on a slab.
- Blasting – If needed in any way shape or form the blasting company reviews all properties beforehand as regulated by law.
- Parking – out cry of on street parking developing this parcel will be creating ample parking on the lot so there will be no need for on street parking. Will also be reviewed by TRC and Highway committee.

Mr. Peloquin said he feels that the request meets the criteria and will be serviced by Town water and Town sewer and will be a betterment to the neighborhood. He said this plan will be under the Planning Board approval process and only here due to insufficient frontage as all other criteria are met.

Mr. Perkins said he believes water plans are more strict. Mr. Peloquin said yes and has had a discussion with Mark L'Heureux.

Mr. Perkins said that there are blasting alternatives possible jackhammering. Mr. Peloquin said yes and will be sought after if possible.

Mr. Burgess said that if blasting know that they have to go out to individual homes before and after and take pictures of foundations before blast. Mr. Peloquin said yes to protect both parties.

Mr. Murabito said that the applicant can say there will be no on street parking but no way to make assurance and there is no reason they can not replace with another single family home if truly concern for neighborhood.

Mr. Peloquin said that it is true that unable to actually guarantee no on street parking but building will be to the rear of the property with parking area. He said that they have no problem with placing no parking signs along the frontage. Mr. Peloquin said that the neighborhood consists of single and multi-family homes. He understands the structure is proposed for 6 units and no knowledge of sale or rental property but there is a need for housing so if asking price is not affordable what was the point.

Mr. Perkins stated that the Board is unable to control parking requirements and that the Town may discuss at a different level. He also stated that that rental or condo was not part of the Board's preview.

Mr. Virr said that the request is for frontage only not the number of units and belief frontage was before the Board previously and was declined regardless of owner.

Mr. Ek said that the existing sidewalk only goes up to the first home on Mt. Pleasant Street that currently is utilized by 6 kids and even if build sidewalks past the home there still would be a safety issue due to the narrow street.

Mr. Peloquin said that condo or rental concern does not pertain to what applicant is requesting but if chose to rent or sell have the right either way and never stated affordable but may be what someone looking for. He said he was unfamiliar with prior case as did not present but this structure will be coming down and another constructed in different location. As for wetland concern they will need to be looked at and mapped and required to be noted on plans to be submitted to the Planning Board for their review and only here for insufficient frontage as the proposal meets all other requirements.

Mr. Corbett motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

### **Deliberative Session**

Mr. Virr said that he recalls the previous case and remembers that it was denied. He feels concern was also with density and this proposal is with a different concept. The relief requested is from frontage and other Boards will be involved and will be under scrutiny for other aspects beyond this Boards purview.

Mr. Corbett that there is no other way to obtain frontage and struggle with criteria as feel will change the character of the neighborhood as seeking to add 6 units on a small residential street.

Mr. Burgess said he struggles with the same concerns as street is very narrow. He said also concerns of blasting or large rig jackhammering will still cause vibration.

Mrs. Morin said that the area allows for multi-family and the request was for frontage requirement but also feel will impact the neighborhood.

Mr. Perkins said that the images that have been displayed on the screen of the neighborhood and surrounding properties. Mr. Perkins reviewed the conditions for the record and reviewed Findings of Fact as followed:

The property is zoned MHDR

The property was recently conveyed to the new owner

The property has a 2-family residential in existence and was seeking relief from the ordinance(s) for frontage and lot width and to build a six family on it after Razing the existing structure.

Multiple abutters have spoken in opposition to this application

This property has been before the ZBA before for similar relief, but the request was different.

The street was found to be unusually narrow.

The lot was larger in size than some of the surrounding lots in the neighborhood.

The board found that the proposed project would change the character of the neighborhood and that the request would be outside of the spirit of the ordinance.

The density of the project would be outside of the public interest.

The project would diminish the value of the surrounding property. Encroaching into the back of the neighbor's house.

Therefore, substantial justice would apply.

Public safety came into question as the neighborhood has an elementary and middle school in it with walking students affected by increased traffic.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mrs. Morin.

Vote: Unanimous.

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

**Mrs. Morin motioned on case # 22-141 Promised Land Survey, LLC, Owner: Peak Premises, LLC to grant a variance to the terms of Article VI, Section 165-45.B.2.b & c of the Town of Derry Zoning Ordinance to redevelop the property by removing the existing structures and replacing them with a 6-unit condominium 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 Site Plan Review.**

Seconded by Mr. Burgess.

**Vote:**

**Mr. Corbett: No. Due to the lack of frontage and pertaining to the public interest.**

**Mr. Burgess: No. Feel the request is not in the public interest due to safety issues. Concern of crowding and increase of traffic on a very narrow street. Also, feel property will decrease property values of surrounding properties.**

**Mr. Virr: No. Concern of road and crowding of the area as will create an increase in traffic. It is not just about frontage but what will be built there and add traffic to a very narrow street.**

**Mrs. Morin: No. Believe will be in contrary with public interest because of the lack of frontage and what they are seeking to replace with.**



**Mr. Perkins: No. As stated in deliberative session feel the concern of property value diminishment and will be contrary to public interest in overall scope of proposed project.**

**The application was Denied by a vote of 0-5-0. Anyone aggrieved by a decision of the Board has 30 days to request a rehearing. After that the recourse would be to appeal to Superior Court.**

The Board took a brief recess and reconvened at 8:40 PM.

It was noted that Mr. Corbett would step down and that Mr. Obimba would sit for the following case.

**22-142                      Promised Land Survey, LLC  
Owner: Cheryl C. O'Connell Revocable Trust**

**The applicants are requesting a variance to the terms of Article VI, Section 165-48.B. 2 & 3 of the Town of Derry Zoning Ordinance to allow a 2 lot subdivision of the property with one of the proposed lots to have less than 200 feet of frontage and lot width at 175 Warner Hill Road Parcel ID 07013, Zoned LDR, (A previous request for this variance was granted on February 6, 2020 and has expired)**

Timothy Peloquin, Promised Land Survey, LLC, said he was representing the applicants and reviewed the letter of explanation and required criteria for the record. He said that there is no intent to develop at this time but to settle some estate affairs.

### **Board Questions**

Mr. Virr said that he drove by the area and found it to be very beautiful and asked if there was a cemetery on the property. Mr. Peloquin said yes that it was a private family cemetery.

Mrs. Morin said that she believed that the property across the street also had been owned by Cheryl O'Connell.

Mr. Virr asked if the property was in current use. Mr. Peloquin said yes and will remain in current use.

### **Code Enforcement**

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

- The applicants are requesting a variance renewal to allow the subdivision of the 30 acre parcel into 2 lots. One of the proposed lots will have 125 feet of frontage on Warner Hill Road (where 200 ft. is required) and the other lot will have compliant frontage on Island Pond Road.
- As the proposed frontage for the lot on Warner Hill Road is less than 200 ft., a variance is being requested.
- This same request was approved by the Board on February 6, 2020 but as it was not exercised within 2 years (no plans have been submitted for TRC and Planning Board review) per N.H. RSA 674:33, the variance has expired.
- As the variance has expired, the applicants are requesting a new variance (as opposed to a request for an extension of the variance which is appropriate if the variance has not yet expired).
- If approved, Planning Board subdivision approval will be required which will include TRC review.
- There are pictures in the file for review by the Board.

Mr. Perkins asked if over 2 years and not built what happens. Mr. Mackey said that the applicant needs to exercise the request within 2 years or will need to be back for the same matter again but if make submittal to the Planning Board it will stop the clock.

Mr. Peloquin said that the plan is already to go and will file with the Planning Board and then forward to registry to be recorded.

Mr. Perkins asked if approved subdivision would the property then be all set. Mr. Mackey said yes.

Mr. Virr asked if can still sell out a portion and still remain in current use. Mr. Mackey said that the ordinance allows for 3 acres to be built on and still remain in current use so can create a buildable lot.

Mr. Burgess asked if the intent was to subdivide the property. Mr. Peloquin said yes but into 2 separate lots to settle Mrs. O'Connell's estate.

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 of the request.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

## **Deliberative Session**

Mr. Perkins said that this is a repeat request from 2 years ago with some slight changes as noted. He said that he felt that it was a reasonable request and will be kept in the family and not being sold. He reviewed the conditions for the record.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

**Mrs. Morin motioned on case #22-142, Promised Land Survey, LLC, Owner: Cheryl C. O'Connell Revocable Trust to Grant a variance to the terms of Article VI, Section 165-48.B. 2 & 3 of the Town of Derry Zoning Ordinance to allow a 2 lot subdivision of the property with one of the proposed lots to have less than 200 feet of frontage and lot width at 175 Warner Hill Road, Parcel ID 07013, Zoned LDR (A previous request for this variance was granted on February 6, 2020 and has expired) as presented with the following conditions:**

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Subject to Planning Board and TRC review.**

**Seconded by Mr. Obimba.**

## **Vote:**

**Mr. Virr: Yes.**

**Mr. Burgess: Yes.**

**Mr. Obimba: Yes.**

**Mrs. Morin: 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 request a rehearing. After that the recourse would be to appeal to Superior Court.**

### **Other Business**

Mr. Perkins said that the Board has a Request for Extension of variance granted of Case #20-140, 46 Crystal Ave, Parcel ID 31072.

Morgan Benson said she was here on behalf of Nobis to request an extension for the variance for Bangor Bank.

Mr. Perkins asked to explain the request of Nobis on behalf of CJ Developers. Ms. Benson said that Nobis is the firm representing CJ Developers on behalf of Bangor Bank.

There was some discussion with regard to the property and permissions to represent.

Ms. Benson said she was a Civil Engineer with Nobis requesting an extension of variance 20-140 to replace the existing building with a new one and will conform to the setbacks. She said that the delays were due to COVID-19.

Mr. Perkins said that there was no plan submitted. Mr. Mackey said that this case does not have a formal submission like the previous case as here to request an extension of existing variance that has not yet expired.

Mr. Perkins asked if extension would fall under the 2 year statute. Mr. Mackey said that it was up to the Board.

Ms. Morgan said she would like a 2 year extension as allowed per statute.

**Mr. Virr motioned to grant a 2 year extension for case #20-140, 46 Crystal Ave, Parcel ID 31072.**

**Seconded by Mrs. Morin.**

**Vote: Unanimous.**

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

### **Approval of Minutes**

Mr. Corbett motioned to approve the minutes of September 1, 2022 as amended.

Seconded by Mr. Virr.

Vote: Unanimous.

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

### **Adjourn**

Mr. Dietzel motioned to adjourn.

Seconded by Mr. Corbett.

Vote: Unanimous.

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

Adjourn at 9:08 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

### **APPROVAL OF MINUTES OCTOBER 6, 2022**

Mr. Corbett motioned to approve the minutes of September 15, 2022, as written.

Seconded by Mr. Virr.

Vote: Unanimous.

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