

**TOWN OF DERRY**  
**ZONING BOARD OF ADJUSTMENT MINUTES**  
**July 21, 2016**

**Members Present**

Lynn Perkins, Chairman  
Allan Virr, Vice Chairman  
Heather Evans, Secretary  
Stephen Coppolo

**Members Absent**

Teresa Hampton

**Alternates Present**

Donald Burgess  
Randall Kelley

**Alternates Absent**

**Code Enforcement**

Robert Wentworth

Mr. Perkins called the meeting to order at 7:00 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.

Mr. Perkins noted for the record that Mr. Burgess would sit for the following case.

**16-114          Peter J. Mack**

**The applicant is requesting a variance to the terms of Article VI, Section 165-46A of the Town of Derry Zoning Ordinance to allow the construction of a second floor for the purpose of creating a two family dwelling at the property. 31 Scenic Drive, Parcel ID 08040-010, Zoned MDR (Continued from June 16, 2016).**

Mr. Perkins informed the Board that this case was a continuation from June 16, 2016 meeting.

Mrs. Evans said that the Board was here to review information that was requested from the applicant during the June meeting as there was some questions with regard to the deed and that the Board also wished to review the building plans showing elevations and layout. She said that it appears that the applicant has submitted the requested documents.

## **Board Questions**

Mr. Virr said that he wished to see some sort of scale of the buildings dormers.

Mr. Perkins said that the equipment deck in the attic does not have habitable living space.

Mr. Mack said that the dormers were for aesthetic purposes.

Mr. Virr asked if the concerns with the deed that were pointed out by Mr. Virr and Mr. Coppolo answered.

Mr. Virr said that he reviewed the deed and said that it was properly recorded and did not see any issues.

Mr. Coppolo said that he felt the same.

Mr. Mack said that he wished to build the attached second living unit so as to allow his parents to maintain their independence and that they did not do stairs very well so they would be taking the downstairs and he would reside in the second level

## **Favor**

No one spoke in favor of the request.

## **Opposed**

No one spoke in opposition of the request.

Mr. Burgess asked what was the foundation for on the right side of the plan. Mr. Wentworth said that it was for a premanufactured footing for a deck.

Mr. Coppolo asked if Mr. Wentworth knew when the zoning change restricting duplexes was implemented. Mr. Wentworth said he was unsure.

Mr. Perkins said that he recalled that Mr. Mackey's testimony stating that the property had previously allowed for duplexes.

Mr. Wentworth said that #37 beyond are duplexes.

Mr. Virr said that if the property was located a little further down the road it would be in the MHDR II zoning district. He said that he was concerned that it could be converted to a 3 family dwelling.

Mrs. Evans asked if 3-family structures required sprinklers. Mr. Wentworth said yes that sprinklers were required for 3 or more units.

Mr. Coppolo asked what were the homes on the adjacent properties. Mr. Mack said that the properties adjacent to his were single family and then a bit up the road they were duplexes.

Mr. Coppolo motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Burgess, Mr. Coppolo, Mr. Virr, Mrs. Evans, Mr. Perkins.

### **Deliberative Session**

Mrs. Evans asked if there was any discussion of an accessory vs a 2-family.

Mr. Wentworth said that the accessory size was changing in July of 2017.

There was some discussion with regard to accessory dwelling vs a 2-family.

Mr. Coppolo said that he felt that a strong policy that 2-family dwellings were not allowed for a reason. He said that he also did not see a hardship with the property that would warrant granting a variance.

Mr. Perkins asked if there was a conflict of a 2-family vs an accessory dwelling. Mr. Wentworth said that he had not reviewed the plans for the proposed structure and that fire separation would be required.

Mr. Coppolo said that he remembers hearing on the news that a duplex had recently had a fire and that both sides of the home were damaged from the fire. He said that he was not favorable to a 2-family dwelling as he felt that it did not meet the criteria.

Mr. Burgess said that he felt the same as Mr. Coppolo and did not see a hardship.

Mr. Virr said that the lots further down the road have more area as were meant to be 2-family. He said that he felt that the property was being utilized fully as a single family and there was not sufficient area to be a 2-family as the lot was too small.

There was some discussion with regard to the size of the property.

Mrs. Evans said that a condition of being subject to all State and Town permits and inspections be made.

Mr. Burgess asked if the property was on town water and sewer.

Mr. Perkins said it was well and septic.

Mr. Burgess asked if the septic system was adequate for the proposed number of bedrooms.

Mr. Wentworth said that a design was required to be in place to cover the number of bedrooms in the event of a failure.

Mr. Virr asked if it would be subject to Planning Board review.

Mr. Wentworth said that Planning Board review was not relevant.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mr. Burgess, Mr. Coppolo, Mr. Virr, Mrs. Evans, Mr. Perkins.

**Mrs. Evans motioned on case #16-114 Peter J. Mack to Grant a variance to the terms of Article VI, Section 165-46A of the Town of Derry Zoning Ordinance to allow the construction of a second floor for the purpose of creating a two family dwelling at the property. 31 Scenic Drive, Parcel ID 08040-010, Zoned MDR as presented with the following conditions:**

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

Seconded by Mr. Burgess.

**Vote:**

**Mr. Virr: No. Do not feel unnecessary hardship as plan provided was recorded in and the applicant purchased in 1998. Feel size of lot was for a single family dwelling.**

**Mr. Coppolo: No. No unnecessary hardship shown and feel will be a negative impact to abutters.**

**Mr. Burgess: No. For the same reasons as stated by Mr. Coppolo.**

**Mrs. Evans: No. No hardship shown to warrant granting of a variance.**

**Mr. Perkins: No. No hardship shown to warrant 2 family structure.**

**The application was Denied a vote of 0-5-0. 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. Kelley would sit for the following case.

**16-115 Charles & Cheryl Stanion**

**The applicant is requesting a variance to the terms of Article VI, Section 165-45B.1.d.ii of the Town of Derry Zoning Ordinance to relocate an existing 7' x 11' shed to within 2 feet of the side property line where 15 feet is required. 5 Everett Street, Zoned MHDR, Parcel ID 29054.**

Mr. Coppolo noted that he has an attorney with dealings with the applicant so may be a possible conflict but feel that he could make an unbiased decision if the Board wished he would step down.

Mr. Virr motioned to find no conflict for Mr. Coppolo to sit on the following case.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mr. Kelley, Mrs. Evans, Mr. Virr, Mr. Perkins.

Charles Stanion, owner, read the application criteria for the record.

Cheryl Stanion, owner, said that they recently purchased the land from the Paquin Estate and have resided in the area since 1986. She said that she would like to relocate the shed to this area so they may utilize their yard. Mrs. Stanion said she started to remove the metal off the shed and realized it was going to be more of a project and has since splurged and purchased a new 6' x 7' shed from Reed's Ferry so the old shed will be totally disassembled.

**Board Questions**

Mr. Perkins asked what was on the other side of the property. Mrs. Stanion said that there was nothing currently directly no structures directly behind but the lot is currently for sale. She described the area for the record.

Mr. Burgess said that the house located behind the applicant is old and the owner has passed away but the existing structure is further away from where the proposed shed would be located. He said that he believes there is also an easement somewhere in the area that the applicant should be familiar with. Mrs. Stanion said that she is familiar with the easement and her proposed shed will not be of impact.

## **Code Enforcement**

Mr. Mackey supplied the following information in his absence for the record.

- The applicant is requesting a variance to relocate a 7' x 11' shed within 2' of the side property line.
- The applicant has recently purchased the parcel of land on which the shed is proposed to be located. This parcel has been merged with the existing lot (see attached).
- A previous variance was granted in 2012 to allow the construction of a screen porch, attached to an existing shed less than 15' to the opposite side property line. In addition, a variance was granted in 1992 to allow the existing structures including the house, to remain to close to the lot lines.
- If the shed is to be rebuilt, a building permit must be obtained.
- There are pictures of the property in the file for review by the Board.

## **Favor**

Albert Dimmock, High Street, said that he was in favor of the applicants request and feel is a unique situation as the property is a very small lot. He said that there is a 10' right-of-way that does run along the back of the property. He said that he feels the Board should grant the applicants request as have granted a variance to a property on Cemetery Road to have a garage to be located 2' from the lot line as the Board felt that there was sufficient hardship and he feels that this request also has sufficient hardship due to the size of the lot.

Mr. Virr asked if the new shed was 7' x 11'. Mrs. Stanion said no that the new shed was actually smaller 6' x 10'.

Mr. Virr asked if the shed required a building permit. Mr. Wentworth said that structures require building permit and a permit fee of \$35.00 would be charged.

Mr. Virr said that 15' from lot line requirements are not met as there are sheds located all over Town that do not meet the requirement.

## **Opposed**

No one spoke in opposition of the request.

Mr. Virr motioned to go into deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mr. Kelley, Mr. Coppolo, Mr. Virr, Mrs. Evans, Mr. Perkins

### **Deliberative Session**

Mr. Virr said that feel is what is and the property is small. He said Reeds Ferry sheds are very nice and some look as they could be lived in. He said a condition of being subject to obtaining all permits and inspections be made.

Mr. Perkins said that boundary maintained and did not feel that the Board would be setting precedence with granting of the applicant request.

Mrs. Evans said that she agreed with Mr. Perkins.

Mr. Coppolo motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mr. Kelley, Mr. Coppolo, Mr. Virr, Mrs. Evans, Mr. Perkins

**Mrs. Evans motioned on case # 16-115 Charles & Cheryl Stanion to Grant a variance to the terms of Article VI, Section 165-45B.1.d.ii of the Town of Derry Zoning Ordinance to relocate an existing 7' x 11' shed to within 2 feet of the side property line where 15 feet is required. 5 Everett Street, Zoned MHDR, Parcel ID 29054 as presented with the following conditions:**

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

**Seconded by Mr. Virr.**

### **Vote:**

**Mr. Coppolo: Yes.**

**Mrs. Evans: Yes.**

**Mr. Virr: Yes.**

**Mr. Kelley: 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. Burgess would sit for the following case.

**16-116                      Jiravee Bellavance  
                                 Owner: George and Susan Bellavance**

**The applicant is requesting a variance to the terms of Article VI, Section 165-46A of the Town of Derry Zoning Ordinance to allow the operation of a food truck business at the residence. 106 By-Pass 28, Zoned MDR, Parcel ID 11022**

Rob Bellavance, son of the applicant, read the criteria request for the record.

### **Board Questions**

Mrs. Evans asked why a variance was being requested and not a special exception.

Mr. Coppolo said that the applicant is not the owner of the property and possibly due to the fact that is outside of the premises.

Mrs. Bellavance said that she reapplied and obtained her a food service license about 5 weeks ago. She said that she had started in 2001 and stopped as was unable to work and do the food truck at the same time and then in 2007 she started to operate it again on a part-time basis. Mrs. Bellavance said that she does have a State license and a Town license but when she opened in front of her daughters house Mr. Mackey said that she was unable to operate here unless she obtained a variance.

Mr. Bellevance said that he felt his mother had the green light to open and operated 2 days then Mr. Mackey stopped by and said she could not continue to operate unless she obtained a variance. He said that he researched codes and was unable to find any code pertaining to mobile food trucks to where they could operate.

Mr. Perkins said that the ordinances have not caught up with mobile food trucks. He asked why was the business not being operated from 119 By-Pass 28. Mrs. Bellevance said that Mr. Mackey said she was unable to be on her own property.

Mr. Wentworth said that the business needed to be operated in a commercial zone.

There was some discussion with regards to location of the proposed business.

Mr. Perkins said that the request needs to meet the 5 criteria to be granted a variance and he finds it hard to grant a variance on someone else's property.

Mr. Coppolo said that a letter may need to be drafted as of some sort contract but may have legal issues.

Mr. Burgess said that a potential problem may arise if daughter sells home the next owner may not wish to have a food truck operating from the property.



Mr. Virr said that he has concerns of parking a food truck on Route 28 as it is a heavily traffic road.

Mr. Bellevance said that he had a better plan of the property showing that there was sufficient parking and ample room for turning around so vehicles would not be backing out onto the By-Pass.

There was some discussion with regard to parking and traffic.

Mr. Virr said that there was another similar business in front of the BP and they had relocated onto the BP property and believe rented space from them.

Mr. Bellavance said that they had looked into other businesses such as Shaw's, etc. and they were not in favor of another business on lot.

Mr. Coppolo said that he shares concerns of logistics of property but Derry does need businesses.

Mr. Bellavance asked if Derry would allow parking in the 2 hour parking areas as they were willing to relocate.

Mr. Virr said that unfortunately it would not be in the public interest to be located on a State highway.

There was some discussion with regards to mobile food carts.

### **Code Enforcement**

Mr. Mackey supplied the following information in his absence for the record.

- The applicant is requesting approval to operate a commercial business (food truck business) in the Medium Density Residential Zoning District.
- The applicants had applied for and received a Food Service License from the Health Department but mistakenly believed that they could park the food truck on the property at 106 By-Pass 28 and so began operating.
- When the business was discovered by this office, they were informed that they must cease operation and relocate to a commercially zoned property or attempt to obtain a variance.
- As By-Pass 28 is a State highway, if approved, the applicant's will need to check with the NHDOT for any additional approvals that may be necessary before resuming operation.
- There are pictures of the property in the file for review by the Board.

### **Favor**

No one spoke in favor of the request.

## **Opposed**

No one spoke in opposition of the request.

Mrs. Evans motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Burgess, Mr. Coppolo, Mr. Virr, Mrs. Evans, Mr. Perkins.

## **Deliberative Session**

Mr. Virr said that he feels that he made his concerns known and was unable to vote favorably until ordinance created pertaining to where food trucks could operate. He said that the State may also have concerns of parking of a mobile food truck on the roadside.

Mr. Coppolo said he was not concerned with the residential portion of the proposed use but the highway was of concern.

Mr. Burgess said that he remembers hearing a ruling with regards to flower carts where they have been removed from road sales as there may be something prohibiting by the State.

Mrs. Evans said she would have preferred a special exception.

Mr. Virr said special exceptions were run out of home.

Mr. Perkins asked to structure motion with being subject to obtaining all State and Town permits and inspections.

Mr. Virr asked if a sign permit would be required.

Mrs. Evans asked what would be the hours of operation.

Mr. Coppolo questioned if the request would also require Planning Board approval if not he would like to see a that the parking plan be reflected to show the 2<sup>nd</sup> plan that was submitted as it shows a clearer parking plan.

Mr. Perkins said that the Board was not of authority to say what is and is not safe.

Mr. Wentworth said that he felt the traffic aspect would be the States jurisdiction.

Mr. Burgess asked if the food truck requires permits.

Mr. Wentworth said that they would require a Town Health permit.

Mr. Virr said that he felt that the applicant has other alternatives as it is a mobile food truck that could be operated from other places.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mr. Burgess, Mr. Coppolo, Mr. Virr, Mrs. Evans, Mr. Perkins.

**Mrs. Evans motioned on case #16-116 Jiravee Bellavance, Owner: George and Susan Bellavance to Grant a variance to the terms of Article VI, Section 165-46A of the Town of Derry Zoning Ordinance to allow the operation of a food truck business at the residence. 106 By-Pass 28, Zoned MDR, Parcel ID 11022 as presented with the following conditions:**

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

Seconded by Mr. Burgess.

**Vote:**

**Mr. Burgess: No. Feel there are safety issues with highway.**

**Mr. Coppolo: No. Feel first criteria of element not met due to public interest. #5 hardship not met.**

**Mrs. Evans: No. Feel would be contrary to public interest and safety. #4 with regard to residential character feel it would change character of neighborhood. #5 feel hardship not met.**

**Mr. Virr: No. Same reasons as stated by Mr. Coppolo.**

**Mr. Perkins: No. Feel spirit and intent of ordinance not met.**

**The application was Denied a vote of 0-5-0. 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. Kelley would sit for the following case.

**16-117 Mary E. Morgan**

**The applicant is requesting a variance to the terms of Article VI, Section 165-48B.1 of the Town of Derry Zoning Ordinance to allow the creation of a 2.39 acre lot where 3 acres is required as part of a three lot subdivision. 7 Sheldon Road, Zoned LDR, Parcel ID 10073**

Attorney Brian Germaine, Germaine & Blaszkaw Law, said he was representing the applicant who was also present this evening. Attorney Germaine read the application criteria for the record. He said that his client's mother has been paying taxes on the property for over 60 years has deeded the property over to Ms. Morgan and that Ms. Morgan has just recently resolved a title issue this year. Attorney Germaine described the plans submitted to the Board for the record. Attorney Germaine said that Tim Peliquin from Promised Land Survey was also present to answer any questions that the Board may have with regards to the proposed plan.

### **Board Questions**

Mr. Virr asked where the building envelope was located on the property. Attorney Germaine explained the layout of the property.

Mr. Perkins asked how far back was the 30' buffer from the road and if the wetland setback was 120-150'. Mr. Peliquin said that it was approximately 250' and that the 30' setback was used as the wetland was less than an acre.

Mr. Perkins asked what was the approximate construction time frame of the properties across the street. Attorney Germaine said that he was unsure.

Mr. Coppolo said that he felt that it made sense to make the lot with the wetland the smaller lot. He said that he was familiar with Hampstead Road and has concerns with the increase of traffic but as a matter of right can develop two lots. Mr. Coppolo said that the applicant has 93% of what was required and the Board has seen a lot less in the past.

Mr. Virr said that the lack of area is to the rear of the lot and felt that the 3 acre requirement was to cut down on congestion. He said that the applicant has the frontage requirement and questioned how that would be considered congested.

Mr. Peliquin that they had utilized the northern part of the property as a benchmark and starting point. He said that Derry has high intensity soiling so when drawing out the plan that is how it was determined when the plan was drawn out.

There was some discussion with regard to construction location of driveway and size of possible homes.

Mr. Coppolo asked if the lots would be sold. Attorney Germaine said yes.

### **Favor**

No one spoke in favor of the request.

## **Opposed**

No one spoke in opposition to the request.

## **Code Enforcement**

Mr. Mackey supplied the following information in his absence for the record.

- The applicant is requesting a variance to allow the creation of a 2.39 acre lot in the Low Density Residential Zoning District which requires 3 acres. This lot would be created as part of a proposed 3 lot subdivision. The other 2 lots would meet the area requirements.
- Currently, there is a dilapidated structure on the property that needs to be removed.
- Lots are proposed to be serviced by private wells and septic systems. Lot loading calculations will need to be provided to the Planning Board.
- The proposed dwellings will require sprinkler systems or a cistern must be installed.
- If approved, Planning Board subdivision approval will be required.
- There are pictures of the property in the file for review by the Board.

Mr. Burgess said that there was a letter from an abutter in the file that needs to be read for the record.

Mrs. Evans read a letter dated July 17, 2017 from Charles & Cathleen Mitropoulos, 3 Sheldon Road in opposition and concerns of the request.

Mr. Peliquin said that with regard to the question of water service there was availability to be tied into Pennichuck Water Works at a substantial cost. He said that wells were a hit or miss and that it was not unusual to have a well of 200 feet or more and that unable to map the aquifer in the area to say if will draw off the same vein is hard to say. As for the road runoff it is required that subdivisions show zero drainage onto a public way on a subdivision plan.

Attorney Germaine said that they were here for a variance and as far as his client being an absentee landowner is irrelevant as have owned the property a number of years and with regard to the wildlife and deer runs that they do not feel that this subdivision will be a substantial impact on the wildlife in the area.

Mrs. Evans motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

Mr. Kelley, Mr. Coppolo, Mr. Virr, Mrs. Evans, Mr. Perkins.

## **Deliberative Session**

Mr. Coppolo said that he felt that the plans were very good and presentation was informative. He said that he also appreciates the abutters input but he did not see reasons of concerns that were pointed out would be reasons for denial. He said that the applicant has 93% of what was needed for a lot.

Mr. Virr said that he felt that the house lot would not look any different than the 2 other lots and that deer have become very adaptive to the area.

Mr. Perkins said that a condition of being subject to obtaining all State and Town permits and inspections be made and also be subject to Planning Board review.

Mr. Coppolo asked if the State regulates the well location.

Mr. Wentworth said yes.

Mr. Virr motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mr. Kelley, Mr. Coppolo, Mr. Virr, Mrs. Evans, Mr. Perkins.

**Mrs. Evans motioned on case #16-117 Mary E. Morgan to Grant a variance to the terms of Article VI, Section 165-48B.1 of the Town of Derry Zoning Ordinance to allow the creation of a 2.39 acre lot where 3 acres is required as part of a three lot subdivision. 7 Sheldon Road, Zoned LDR, Parcel ID 10073 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. Virr.**

**Vote:**

<b>Mr. Virr:</b>	<b>Yes.</b>
<b>Mrs. Evans:</b>	<b>Yes.</b>
<b>Mr. Coppolo:</b>	<b>Yes.</b>
<b>Mr. Kelley:</b>	<b>Yes.</b>
<b>Mr. Perkins:</b>	<b>Yes.</b>

**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**

Mrs. Evans motioned to approve the minutes of June 16, 2016 as amended.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Kelley, Mr. Burgess, Mr. Coppolo, Mrs. Evans, Mr. Virr, Mr. Perkins

### **Adjourn**

Mr. Burgess motioned to adjourn.

Seconded by Mr. Virr.

Vote: Unanimous.

Mr. Kelley, Mr. Burgess, Mr. Coppolo, Mrs. Evans, Mr. Virr, Mr. Perkins.

Adjourn at 9:09 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

### **APPROVAL OF MINUTES August 18, 2016**

Mrs. Hampton motioned to approve the minutes of July 21, 2016 as amended.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mr. Kelley, Mrs. Mrs. Hampton, Mr. Coppolo, Mrs. Evans, Mr. Virr, Mr. Perkins