

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
September 1, 2016

Members Present

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

Members Absent

Teresa Hampton
Stephen Coppolo

Alternates Present

Donald Burgess
Randall Kelley
Joseph Carnevale

Alternates Absent

Code Enforcement

Robert Mackey

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.

It was noted for the record that Mr. Kelley and Mr. Burgess would sit for the following case:

16-119 Benchmark Engineering
Owner: H & B Homes

The applicant is requesting a variance to the terms of Article III, Section 165-9, of the Town of Derry Zoning Ordinance to allow the construction of a new dwelling, where the lot does not have direct frontage on a Town approved road but does have access to the lot through an easement on an abutting property. 32 Windham Depot Road, Zoned LMDR, Parcel ID 03005

Joseph Maynard, Benchmark Engineering, read the application criteria for the record. Mr. Maynard described the property as 1.3 acre lot located on the Windham/Derry town line. He said that the property north of the lot is owned by DRED. Mr. Maynard said that when the developer subdivided the property in Windham known as Spruce Pond subdivision left a right-of-way stubbed off on the cul-de-sac portion off Nathan Road. He said that the developer clearly marked the area off so any potential buyer was aware that there was a right-of-way located on the property to access the lot in Derry. Mr.

Maynard said that the lot has plenty of dimensional area and the well radius will be on own site.

Board Questions

Mr. Burgess said he had some difficulty locating the area as it was not shown on the Windham Depot Road map. He asked why the crossing was not across the rail trail. Mr. Maynard said that the rail trail crossing was not granted

Mr. Burgess asked if the property abutted Windham Depot Road. Mr. Maynard said no that the property was located approximately 4-500 feet away.

Mr. Virr asked if the property was located off Taninger Road. Mr. Maynard said yes it was located at the end of the cul-de-sac.

Mr. Perkins asked if on the map provided if the property was the highlighted area. Mr. Maynard said yes.

Mr. Virr asked what was the length of the right-of-way off Taninger Road. Mr. Maynard said the right-of-way has a variable width easement. He said that the road is 26 feet wide shown on the Spruce Pond Estates subdivision which was approved 10 years ago. Mr. Maynard described the right-of-way width variables for the Board.

Mr. Virr asked if the driveway/utility easements were recorded. Mr. Maynard said yes they were located on the deed and on Plan D-3799 and also noted on abutter property B-5469 P-0934. He said that it was noted on a number of plans on original subdivision which has numerous recordings.

Mr. Kelley said that he would also like to see it noted on deed.

Mr. Perkins said that Mr. Maynard noted that it was on several plans and deeds.

Mr. Maynard said that the actual deed was not drawn yet but will have Attorney Bronstein note it when drawn out.

Code Enforcement

Mr. Mackey provided the following information for the record:

- The applicant is requesting a variance to allow the construction of a home on a lot that does not have direct frontage on a Town approved road.
- Although the lot does not have frontage, it does have access to a Town approved road (in Windham) by virtue of a driveway/utility easement over the abutting property.
- As the home would be located in Derry, any school children will attend Derry schools.

- The property is a pre-existing lot of record and is 1.3 acres in size. It is located in the LMDR District.
- The proposed home would be serviced by a private septic system and well.
- The northern boundary of the lot abuts the rail trail.
- There are pictures of the property in the file for review by the Board.

Favor

No one spoke in favor to the request.

Opposed

James Garrett, 22 Taninger Road, said that with regard to criteria #4, he felt that the construction of home will depreciate his home value due to the proposed structure will be located in his back yard. He said that he was not against construction but the location of the proposed dwelling will be visible in his back yard. He said that he also feels that there will be difficulty of Derry bus and fire to access property.

James Dukas, 18 Taninger Road, said that he was unaware that there would be a home to be constructed behind his property. He said that he felt that it would be an inconvenience and confusion for Derry's Police, Fire and bus company to come in for one home.

Rebuttal

Mr. Maynard said that he was before the Board 3 months ago for Nathan Road and said that he has spoken to all departments with regard to access to the property. He said the Derry school bus already is in area for Nathan Road properties. Mr. Maynard said that the Derry Police and Fire departments have no issues with the location of the home. He said that there was a cistern on the street. He said with regard to property values they have situated the structure so it would not be directly in back of existing structures.

Mr. Perkins said that he has also spoken to Derry Fire and Police and they share dispatch and have reviewed also. He said that the street was completed so only need to address the 5 criteria.

Mr. Virr said that he had a question for Mr. Mackey. He said that the previous lots on Nathan Road were due to size and questioned if this lot had any issues with size. Mr. Mackey said that Nathan Road had a 2 acre requirements as to this lot is pre-existing lot of record. He said if the lot had frontage on a Town approved road they would not be here as would have been considered a buildable lot but where property has no frontage it requires a variance.

There was some discussion with regard to discontinued roads and property location.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

Deliberative Session

Mr. Burgess said that there are new requirements for driveway widths from the Fire Department so that would need to be addressed.

Mr. Mackey said that the driveway regulations are in the Land Development Control Regulations and he will discuss with Chief Jackson with regard to the width.

Mr. Perkins asked if any curtesy be noted for joint inspections.

Mr. Mackey said that the driveway will be in Windham so it will need to meet their requirements.

Mr. Perkins said that a condition be noted that it be subject to the Town of Windham permits and inspections also.

Mr. Burgess said that the driveway starts in another community and need to give curtesy to build.

Mr. Perkins suggested that possibly a condition of release of municipal liability be a condition.

Mr. Virr said a waiver for a private driveway would not be required as is on a Town approved road.

Mr. Perkins reviewed the conditions as follows for the record:

1. Subject to obtaining all State & Town of Derry and Town of Windham permits and inspections.
2. Subject to providing a copy of recorded driveway/utility easement over tax map 3-B, lot 863 in Windham, NH

Mrs. Evans motioned come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Mrs. Evans motioned on case #16-119 Benchmark Engineering, Owner: H & B Homes to Grant a variance to the terms of Article III, Section 165-9, of the Town

of Derry Zoning Ordinance to allow the construction of a new dwelling, where the lot does not have direct frontage on a Town approved road but does have access to the lot through an easement on an abutting property. 32 Windham Depot Road, Zoned LMDR, Parcel ID 03005 as presented with the following conditions:

1. Subject to obtaining all State & Town of Derry & Town of Windham permits and inspections.
2. Subject to providing copy of recorded driveway/utility easement over tax map 3-B, lot 863 in Windham, NH.

Seconded by Mr. Virr.

Vote:

Mr. Kelley: No. Believe would be opening door for additional homes to be constructed with similar situations. Also feel that 4 bedroom home with no frontage does not meet requirements.

Mr. Burgess: Yes.

Mrs. Evans: Yes.

Mr. Virr: 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.

Approval of Minutes

Mr. Perkins asked if the Board wished to postpone approval of the minutes due to the absence of 2 members this evening.

Mr. Mackey informed the Board that no cases had been filed by the end of business day so there would not be a meeting on September 15th so they would need to take up approval this evening.

Mr. Perkins said that he had reviewed them and had not found any items for change but wished to hear from other members that sat on the case that evening.

Mr. Virr said that he reviewed and outside of a few grammar errors he had also not found any items for change.

Mr. Burgess said that he had not reviewed the minutes.

Mrs. Rioux informed the Board that she had not heard from anyone with regard to any changes and would make the grammar changes that the Board found.

Mr. Virr motioned to approve the minutes of August 18, 2016 as amended.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Other Business

Mr. Perkins said that annual Law Lecture Series was open for registering and to please let Code Enforcement know if you are planning on attending. He said that he encourages everyone to partake of these meetings as they are very informative.

Mr. Mackey said that this year they are offering the typical 3 Wednesday evenings which are being offered here at the Municipal Center starting on September 14th or a one day event on Saturday October 15th in Concord at the NHMA Offices. They are asking to have registrations online and to please let the office know so we can start the process to get the payment set up.

Adjourn

Mr. Burgess motioned to adjourn.

Seconded by Mr. Carnevale.

Vote: Unanimous.

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

Adjourn at 7:46 pm

Minutes transcribed from tape:

Ginny Rioux

Recording Clerk

APPROVAL OF MINUTES October 6, 2016

Mr. Virr motioned to approve the minutes of August 18, 2016 as written.

Seconded by Mr. Coppolo.

Vote: Unanimous.

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