

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
October 5, 2017

Members Present

Lynn Perkins, Chairman
Heather Evans, Vice Chairman
Stephen Coppolo, Acting Secretary
Randall Kelley
Michelle Navarro

Members Absent

Alternates Present

Donald Burgess

Alternates Absent

James Webb

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.

Mr. Perkins said that the following cases were continued from the previous meeting due to the lateness of the meeting.

17-123 Samuel Chakarian
By his attorneys Beaumont & Campbell, PA

The applicant is requesting a variance to the terms of Article III, Section 165-9 and Article VI, Section 165-48.B of the Town of Derry Zoning Ordinance to construct a single family dwelling on a lot with 49.27 feet of frontage on an unapproved street at 404 Collette's Grove Road, PID 19043, Zoned LDR

Attorney Bernard Campbell, Beaumont & Campbell, PA, said he was representing Samuel Chakarian who was not present tonight but a letter of authorizing representation is in the file. Attorney Campbell read the application criteria and letter of explanation for the record. He said if there were any specific questions for Mr. Chakarian to answer then they would wish to postpone to the next meeting.

Board Questions

Mr. Burgess asked if the equipment on the property was Mr. Chakarian's or the abutters. Attorney Campbell said that he believed the equipment belonged to Mr. Chakarian.

Mrs. Evans asked if the property was under any type of association. Attorney Campbell said that he was unaware of any association as there are no notes in on the title.

Mr. Mackey said that he believes that the property is being mistaken for Chase's Grove which does have an association.

Mrs. Evans asked if there were any plans to make the road public as it appears that most homes are year round. Attorney Campbell said that most of the homes were year round and is not aware of any plans to make the road a public road.

Mr. Coppolo said that he sees a septic design but no layout of the proposed home and wanted to know if it would meet setbacks. Attorney Campbell said that there were no plans of the proposed home provided but believe it will meet the required setbacks.

Code Enforcement

Mr. Mackey supplied the following information for the record:

- The applicant is requesting a variance to construct a single family dwelling on a vacant lot of record which is located on a private road. The lot has 49.72 feet of frontage and contains .82 acres and is located in the Low Density Residential (LDR) zoning district.
- The property is located on Lane 4 which is not maintained by the Town. Collette's Grove Road, giving access to Lane 4, is considered a Class V road and is maintained by the Town.
- As the lot is located on an unapproved street, if the variance is granted, a notice of release of Municipal Liability and Responsibility will need to be recorded with the deed (per RSA 674:41).
- The area in question is largely composed of small lots and non-conforming structures typical of this type of lake community.
- A septic system design for a 3 bedroom home has been approved by N.H.D.E.S.
- There are pictures of the property in the file for review by the Board.

Mr. Perkins asked if the Town plows the road. Mr. Mackey said that the Town plows lane 1 but not the side roads which this property is located.

Mr. Burgess asked if the reason not a Town road was that it not wide enough for the Town to accept as a public way. Mr. Mackey said that Lane 1 is accepted and paved but Mr. Burgess was correct that there was no way for Lane 4 to meet the 50' right-of-way with 24' paved surface.

There was some discussion with voluntary merger and right-of-way history.

Mr. Coppolo said that he was concerned with the crowded area and whether fire truck access was possible to reach all areas of neighborhood. Attorney Campbell said that he had not been in the area for over a month but knew Sanborn Road access was paved and in good condition and more room to access the area. He said that he researched the area and most homes in the area are year round properties.

Mr. Perkins said that other homes in the area share same risks and also if granted will require a release of municipal liability to be recorded with registry.

Attorney Campbell said if granted to build there will be another share holder for road maintenance.

Favor

No one spoke in favor to the request.

Opposed

Joyce Kingsbury, 24 Collette's Grove Road, said that the property abuts the rear of her back yard and had concerns with water drainage. She described the two properties for the record. She said that she thought the applicant just built two year round homes this past spring and now seeking a third. Two years ago the property only had a seasonal camp which was torn down and built with a year round home. Mrs. Kingsbury said that she thought the lots were going to be joined but now here for a variance to build a new home.

There was some discussion with regard to location of lot and where other homes had been constructed.

Mrs. Evans asked what were the concerns with the drainage. Mrs. Kingsbury said that the applicant has raised the lot 2-3 feet higher than lot and now have a swale. During the months of March thru July water came beyond fence and into her back yard. She said that she was also concerned with plowing and where the snow would be placed on the lot.

Mr. Coppolo said that the Board was unable to speak to what has already occurred but know that someone was not allowed to divert water onto another's property. Mrs. Kingsbury said that the Town did sent the applicant a letter to stop filling of which he did but he still has built two new houses in an already crowded area.

Mr. Perkins said that the question is of non-conforming lot us which is an existing lot of record and conflict is that it is located in a low density residential zone which does not fit into this area. He said that the Board is unable to force a voluntary merger by right of law the applicant can apply for a variance to build. Mrs. Kingsbury read Section 165-10b for the record stating that she did not know how the applicant could do this and create

such a high impact to the area. She said with regard to the fire issue a home almost burnt down in the area as the Fire Department was unable to get water.

There was some discussion with regard to water drainage and snow plowing.

Mr. Perkins said that where snow is stored on a residential property is not purview of the Board and asked if the main concern was the buildup of the property and elevation with regard to water runoff. Mrs. Kingsbury said yes.

There was some discussion with regard to the layout of the two properties and where the water drainage location was with regard to the home.

Mr. Mackey said that there had been some filling done on the property and it has been raised up. He said that the whole area does have water issues and described the area for the record. He said that he did recall some filling in with woodchips and that had caused some concern of which the applicant has built a swale across the lot to assist the flow of drainage.

Mr. Coppolo said that he was sympathetic to the abutter but to render the lot unbuildable was tough and unlikely that would happen as the lot is a lot of record. Mrs. Kingsbury said that the remedy would have been when the first home was built or the second not the third and that the owner owns lots of non-conforming land should have been merged and only built 1 or two homes. She reviewed the history of the property for the Board.

Mr. Kelley asked if mitigating water was a Planning Board concern. Mr. Mackey said it is a single family home so no Planning Board would be required but the Board could implement that the applicant implement a drainage study.

Mr. Coppolo said that the Boards position is to address the proposal before them of what is presented and suggest that speak with the applicant's Attorney to address concerns.

Mrs. Evans asked to have association clarification. Mrs. Kingsbury said that they pay dues to maintain the lanes during the winter months and grading in the spring. Plowing is done usually with first trucks out of the Grove.

Mr. Burgess asked if the elevations to the property go up from the road or down to the road. Mr. Mackey said the property is flat goes to front and also goes towards the swale.

There was some discussion with regard to elevations.

Rebuttal

Attorney Campbell said that the septic design for the rear parcel was done in 1999 before merger and a deeded right-of-way thru parcel 19-40. He described the lot for the record and said that he believes the lot was raised approximately one foot over the course of time. He said that the merger clauses legislature has since 2011 statutes of property protection.

Mr. Perkins said that Attorney Campbell was correct with regard to forced mergers as requested by Mrs. Kingsbury the law protects property owners rights. Attorney Campbell said that as of August 2014 the law is clear and unable to force mergers.

Mr. Perkins asked if the applicant would be willing to create some sort of containment of run off. Attorney Campbell said that the applicant was not here to speak with regard to agreement. However, he believes his client is certainly willing to work with conditions to prevent run off onto her property.

Mr. Mackey said suggest verbiage the applicant be required to acquire engineering services that note post run off not precede development run off.

Attorney Campbell said that his client is willing to work with abutter and Town and if unfeasible will be back before the Board.

Mr. Kelly motioned to go into deliberative session.

Seconded by Mr. Coppolo.

Vote: Unanimous.

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

Deliberative Session

Mr. Coppolo said the condition to be that the applicant make sure that there is no increase run off onto parcel 051.

Mr. Mackey said that it should apply to any parcel.

Mr. Kelley said that he was also concerned with run off.

Mr. Perkins reviewed the conditions for the record.

Mrs. Navarro said that the wording should be that the applicant ensure post construction run-off not to exceed pre-construction run-off.

Mr. Coppolo reread the proposed conditions for the record.

Mrs. Evans motioned to come out of deliberative session.

Seconded by Mrs. Navarro.

Vote: Unanimous.

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

Mr. Burgess asked if a waiver of responsibility condition should also be made. Mr. Mackey said yes.

Mr. Coppolo motioned on case #17-123, Samuel Chakarian, by his Attorneys Beaumont & Campbell, PA to Grant a variance to the terms of Article III, Section 165-9 and Article VI, Section 165-48.B of the Town of Derry Zoning Ordinance to construct a single family dwelling on a lot with 49.27 feet of frontage on an unapproved street at 404 Collette's Grove Road, PID 19043, Zoned LDR as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Subject to Waiver of Municipal Liability to be recorded with the Rockingham County Registry of Deeds.**
- 3. Subject to obtaining engineering services to ensure post construction run-off not to exceed pre-construction run-off, and to be reviewed by Town Engineer.**

Seconded by Mrs. Evans.

Vote:

Mr. Coppolo:	Yes.
Mrs. Evans:	Yes.
Mr. Kelley:	Yes.
Mrs. Navarro:	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.

**17-124 Seth Shackford
Owner: Daniel & Nadine Villafranca**

The applicant is requesting a variance to the terms of Article VI, Section 165-45.B.1.d.i of the Town of Derry Zoning Ordinance to construct a farmers porch less than 35 feet from the front property line. 27 Hillside Avenue, PID 29014, Zoned MHDR

Seth Shackford, Kellerford Construction, Inc., said he was representing the owners who were also present this evening. Mr. Shackford read the application criteria and letter of explanation for the record. He said that the owners wished to build a simple farmers porch that they purchased in 2001. Mr. Shackford said the existing structure was built in 1964 and that the proposed porch was not anything lavish and only seeking to come out 8'. He said that there are other properties in the area that appear to be closer than what their proposed request would be to the front of their property.

Board Questions

Mr. Burgess said that he lived in the area and also has a porch but his home was built in 1900. He asked if there would be an awning attached to the left side going to the pool. Mr. Shackford said no that they were only seeking to build a porch.

Mr. Coppolo said that the plan was attractive and the home is already in the zoning envelope. Mr. Shackford said that the existing structure is already in setback and with the steps they would be approximately 13' from the lot line.

Mr. Kelley asked if it would be 13' to the bottom step. Mr. Shackford said yes. He said the property consisted of a cape style home that the owners have taken pride in maintaining and wish to add a front porch to their residence.

Mr. Coppolo said that the property abuts 2 streets and appears to be a reasonable use.

Mr. Perkins said that the existing bump out on Jefferson side would not exceed the setback.

Code Enforcement

Mr. Mackey supplied the following information for the record:

- The applicant is requesting a variance to add an 8' wide wrap around farmers porch to the dwelling.
- Per the Town's Zoning Ordinance, the specific section dealing with the front setback requirement (35') in the MHDR zoning district is Article VI, Section 165-45.B.1.d.i which was the section referenced in the legal notice.
- The property is located in an area of small lots with many structures that do not comply with the current setback requirements. The current average front setback in this area may well be less than 35 feet.
- If approved, appropriate permits and inspections will be required.
- There are pictures of the property in the file for review by the Board.

Favor

No one spoke in favor to the request.

Opposed

No one spoke in opposition of the request.

Mr. Coppolo motioned to go into deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Deliberative Session

Mr. Coppolo said that he liked the presentation and that it was a modest encroachment and it would not be a radical change to the property.

Mr. Kelley said that the porch would add value to the come and it would be cosmetically appealing. He said that he would not a condition as presented.

Mr. Perkins said if build differently Code Enforcement will have them come back. He noted that the protrusion on the Jefferson Street side has a slight hardship shown.

Mrs. Evans motioned to come out of deliberative session.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

Mr. Coppolo motioned on case #17-124 Seth Shackford, Owner: Daniel & Nadine Villafranca to Grant a variance to the terms of Article VI, Section 165-45.B.1.d.i of the Town of Derry Zoning Ordinance to construct a farmers porch less than 35 feet from the front property line. 27 Hillside Avenue, PID 29014, Zoned MHDR as presented with the following conditions:

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

Seconded by Mrs. Evans.

Vote:

Mrs. Evans:	Yes.
Mr. Coppolo:	Yes.
Mr. Kelley:	Yes.
Mrs. Navarro:	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.

Approval of Minutes

Mr. Burgess motioned to approve the minutes of September 21, 2017 as amended.
Seconded by Mrs. Navarro.

Vote: Unanimous.

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

Other Business

Mr. Kelley said to please join the festivities of the Salvation Army Chili Chowder cook off next weekend.

Mr. Burgess said that the Special Olympics will be doing a tootsie roll handout at MaryAnn's Restaurant this weekend from 8:00 am – 3:00 pm.

Adjourn

Mr. Burgess motioned to adjourn.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

Adjourn at 8:49 pm

Minutes transcribed from notes & tape:
Ginny Rioux
Recording Clerk

APPROVAL OF MINUTES November 16, 2017

Mr. Perkins motioned to approve the minutes of October 5, 2017 as written.

Vote: Unanimous.

Mr. Rathburn, Mr. Burgess, Mrs. Navarro, Mr. Kelley, Mr. Coppolo, Mr. Perkins.