

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
October 6, 2016

Members Present

Lynn Perkins, Chairman
Allan Virr, Vice Chairman
Teresa Hampton, Acting Secretary
Stephen Coppolo

Members Absent

Heather Evans

Alternates Present

Donald Burgess
Randall Kelley
Joseph Carnevale

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.

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

16-120 James Real & Michele Schindler

The applicant is requesting a variance to the terms of Article III, Section 165-20a of the Town of Derry Zoning Ordinance to allow the construction of a 24' X 30' 2 car garage, a 12' x 12' kitchen addition and a 12' x 26' deck (of which 14' will be screened) less than 75' from a wetland greater than 1 acre in size at 1 Martha Drive, Parcel ID 38114, Zoned MDR

James Real, owner, said he was also here with his wife Michele Schindler and his builder if the Board had questions for him. Mr. Real read his application and letter of explanation for the record.

Mr. Real said that they purchased the home in June of 2016 and wanted an attached 2 car garage and their realtor had told them that they could build with no problem. He said that the home consisted of 2,000 square foot gambrel style with a single car garage under which was not very functional. The home was originally constructed in 1965 and has a spiral stair case from the garage floor to access the main level. He said that due to health

reasons they are seeking to live on one level and wished to add a 2 car attached garage and expand the existing kitchen. The current kitchen is only 12' wide and a portion of that space has a half bath located in the same area. The deck area would be built along the length of the home and they wished to enclose a portion of the deck with screens due to insects.

Board Questions

Mr. Coppolo said that the letter states a 12' x 26' deck and a 12' x 14' porch but the numbers do not match up. Mr. Real said that the proposed deck would run along the length of the home with a portion of the deck to be enclosed with screens.

Mr. Perkins asked if the deck and screen porch would be built on posts. Mr. Real said yes.

Mr. Coppolo asked if there was a run off area and if they would be removing the paved area and installing an impervious area. Mr. Real said yes that the existing driveway runs downhill so when it rains the water runs down the driveway then onto the grass and into the water.

Mr. Burgess asked if would be raising the property for the garage. Mr. Real said yes for the foundation.

Mr. Burgess asked if the proposed garage was 38' from the wetland if there would be a full foundation. Mr. Real said yes and his builder could answer questions better.

Woody Meredith, Bedford, NH, said that the 12' x 12' addition would have a full foundation with a walk out door and the deck and porch would be on be on posts.

Mr. Virr said that the home already was currently located in the setback. Mr. Real said yes that the majority of the home was located in the setback.

Mr. Virr asked if there were any plans of the proposed structure. Mr. Real said no as he did not know he needed to have them for this process.

Michele Schindler, owner, said that the structure would be one story.

Mr. Virr asked what happens to the existing garage. Mr. Real said that it would be closed off and that the area behind would be bumped out 12' feet to the rear.

There was some discussion of the existing setbacks of the current structure and the proposed addition with regard to the elevation levels.

Mr. Virr asked if there was a flood certification from the mortgage holder. Mr. Real said that they have a flood certificate and are not located in a flood zone.

Code Enforcement

Mr. Mackey provided the following information for the record:

- The applicants are requesting a variance to allow the construction of an attached garage and various improvements less than 75' from Beaver Meadow, a wetland greater than 1 acre in size.
- Beaver Meadow is not designated as a prime wetland and is not regulated under the State Shoreland Water Quality Protection Act. Therefore, the required wetland setbacks are those specified in Article III, Section 165-20a of the Zoning Ordinance.
- The existing home was constructed in 1965 which pre-dates the applicable wetland setback regulations.
- The proposed improvements are designed to be in compliance with other property line setbacks.
- If approved, appropriate permits and inspections will be required by the Code Enforcement Office and an elevation certification will also need to be submitted due to the proximity of the flood plain. In addition, proper erosion control will need to be installed while construction is underway.
- There are pictures of the property in the file for review by the Board.

Favor

No one spoke in favor to the request.

Opposed

Joseph Calcavecchia, 2 Martha Drive, said has lived in Derry since 1987 and purchased his current home on Martha Drive in 1992 due to its view of the pond. He said that he was against the construction of the proposed garage as it would block his view completely. He said that he does not blame them for wanting a larger kitchen and the construction to the rear will not affect him. He presented the Board with pictures taken from his home of the current view and described them for the record.

Mr. Coppolo asked when the home was constructed and purchase date. Mr. Calcavecchia said that he purchased his home in 1992 and it was constructed in 1964.

John & Lorraine Moore, 3 Martha Drive. Mr. Moore said that he wished he knew if the property would be filled in as was told he was unable to fill in and also if any trees will be cut down.

Mrs. Moore said that they purchased their home in 1978 and was told by the former owner that they used to have a water swirl area that was filled in. She said that she was concerned of a foundation being in the water table and if area is filled in if it would affect their property with water.

Mr. Perkins said that bridge footings were constructed in water so there would be no concern for a foundation.

Mr. Moore said that when they purchased in 1978 they were required to have flood insurance and when the property flooded they were told that they were not near moving water so a claim was not paid. Not opposed to construction just concerned with having water directed onto their property.

Mr. Virr said that when someone purchased a home lenders require a flood elevation certificate. The applicant has indicated that they were not in a flood zone and does not have flood insurance.

Fino Landry, 18 East Derry Road, said that they were not direct abutters but lives behind 2 Martha Drive and have view of the water and birds. He said that he was opposed to the garage construction as will also lose his view of the pond.

Jenna Calcavecchia, 2 Martha Drive, said that she grew up in the area and understands the applicant's situation and their wishes to renovate but other people enjoy the view of the pond and the view holds a sentimental value with her as she has always had it growing up.

Rebuttal

Mr. Real said that he understands concerns and respects the points of concern as the view is one of the reasons for the purchase of the home. He said that they are trying to make the home more functional to fit their needs and do not wish to sell. He said if granted they will do their best to address concerns and that they clearly understand the neighbor's concerns.

Mr. Kelley asked if it would be possible to change the design to mitigate some of the neighbor's concerns with possibly moving the garage over and make it a 1 stall instead of 2. Ms. Schindler said that the kitchen was very small and also shared in the space was a bathroom which was bright pink.

Mr. Virr said it was not the function of the Board to tell how to build. The applicant only needs to address and meet the 5 criteria.

Mr. Real said that he had reviewed the possibility of a 2 car under but it would not solve the stair issue.

There was some discussion with regard to the construction of the proposed garage.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Carnevale.

Vote: Unanimous.

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

Deliberative Session

Mr. Virr said that he understands the loss of view when they have the environment to view everyday, however, it was not part of the Board's purview as it was not part of the 5 criteria.

Mr. Coppolo said that he disagrees as the 4th criteria speaks to value and to not diminish surrounding properties and he feels plan as presented will diminish surrounding property values. He believes there are other alternatives the applicant could review.

Mr. Perkins said that the Real's could grow trees and they would grow and block view. Here to review the applicant's request and feel that the 5 criteria have been addressed.

Mrs. Hampton said that she disagreed with Mr. Virr and agrees with Mr. Coppolo as Derry has a long standing history to preserve the view of lakes. She said that with regard to #5 and unnecessary hardship do not feel this has been shown as the property is what it is. She said that if the applicant was told he could build they should have checked with a home inspector or the Code Enforcement Office and there may be some recourse available there.

There was some discussion with regard to the applicant's rights and property values.

Mr. Wentworth said that a condition of a Flood Elevation Certificate be required to be submitted to the office.

Mr. Perkins said that the following conditions should be made:

1. Subject to obtaining all State & Town permits and inspections.
2. Subject to a Flood Elevation Certificate to be filed with the Code Enforcement Office.

Mr. Carnevale motioned come out of deliberative session.

Seconded by Mrs. Hampton.

Vote: Unanimous.

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

Mrs. Hampton motioned on case #16-120 James Real & Michele Schindler to Grant a variance to the terms of Article III, Section 165-20a of the Town of Derry Zoning Ordinance to allow the construction of a 24' X 30' 2 car garage, a 12' x 12' kitchen addition and a 12' x 26' deck (of which 14' will be screened) less than 75' from a wetland greater than 1 acre in size at 1 Martha Drive, Parcel ID 38114, Zoned MDR as presented with the following conditions:

- 1. Subject to obtaining all State & Town of Derry permits and inspections.**
- 2. Copy of Flood Elevation Certificate to be filed with the Code Enforcement Office.**

Seconded by Mr. Coppolo.

Vote:

Mr. Coppolo: No. Believe surrounding property values would be diminished.
Mr. Virr: Yes.
Mrs. Hampton: No. Believe property values will be diminished.
Mr. Carnevale: Yes.
Mr. Perkins: Yes.

The application was Granted by a vote of 3-2-0. 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.

The Board took a brief recess.

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

16-121 Maria & Erica J. Kennedy-Cruz

The applicant is requesting an equitable waiver to the terms of Article VI, Section 165-47.B.4 of the Town of Derry Zoning Ordinance to allow the existing shed to remain in its current location which is less than 15' from the rear lot line at 5 Derby Road Parcel ID 06046-013, Zoned LMDR.

Maria Kennedy-Cruz, owner, read the application criteria for the record.

Board Questions

Mr. Perkins asked how this came about. Mrs. Kennedy-Cruz said that Mr. Becotte sent a letter to the Town with regards to a lot of unstated facts. She said that the shed has no bearing on abutter as doors do not face his property.

Mr. Coppolo said that they Board does not know what the letter states and no one appears to be present in the audience in opposition to the request.

Mrs. Kennedy-Cruz read a letter from the abutter at 41 Lampton Drive addressed to the Code Enforcement Officer.

Mr. Coppolo asked if the litigation was involved. Mrs. Kennedy-Cruz said no. She said that she hired a tree service to cut down some trees on September 14, 2014 and one tree was accidentally cut down that was located approximately 3 ½ feet on the abutters property. She said that the litigation suit is a counter suit that has been going on for over a year.

Mr. Virr said that according to the property assessment records of vision appraisal the shed has been on the property since 1995.

Mrs. Kennedy-Cruz said that she had submitted a letter from 3 Derby Road property owner stating that the shed has been there.

Mr. Virr said that the property has had 3 lenders and there has been no raise of concern.

Mr. Coppolo asked how long the neighbor has resided next door. Mrs. Kennedy-Cruz said she believes since 2006. She said that she has measured everything.

Mr. Virr said that sheds all over Derry are always placed in on the rear of the properties.

Mr. Burgess said that the property was built out before the other property existed.

Mrs. Kennedy-Cruz said that she provided the pictures showing the shed location and seeking permission to allow it to remain in its current location.

Mr. Perkins asked if the string was survey line. Mrs. Kennedy-Cruz said yes as the survey was done by Eric Mitchell. She said that she placed the string along the stakes so the Board could have a better visual. She said that the survey was due to the tree issue and not the shed location. She said that 4 weeks after they moved in they had hired a tree service that inadvertently cut a dead tree down on the abutter's property.

Mr. Virr asked if there was any ordinance in place for tree removal on abutting properties.

Mr. Coppolo said yes and that he believes it relates to board feet and cited the RSA Timber Trespass Law.

Mr. Kelley said that he believed a fine of \$300.00 minimum

There was some discussion with regard to the tree removal.

Code Enforcement

Mr. Mackey provided the following information in his absence for the record:

- The applicants are requesting an equitable waiver to allow the existing 8' x 12' shed to remain in its existing location which is approximately 8' 7" from the lot line.
- Apparently, the shed has existed for over ten years in its current location and was only recently brought to the attention of the Code Enforcement Office by a complaint from the abutter.
- The owners were subsequently advised that the shed must be relocated or they could try to obtain an equitable waiver from the Zoning Board of Adjustment.
- There are pictures of the property in the file for review by the Board.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

Deliberative Session

Mr. Virr said that he believes it meets the requirements.

Mr. Perkins said that a condition of as presented should be made.

Mr. Coppolo motioned to come out of deliberative session.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

Mrs. Hampton motioned on case #16-121 Maria & Erica J. Kennedy-Cruz to Grant an equitable waiver to the terms of Article VI, Section 165-47.B.4 of the Town of Derry Zoning Ordinance to allow the existing shed to remain in its current location which is less than 15' from the rear lot line at 5 Derby Road Parcel ID 06046-013, Zoned LMDR

1. As presented.

Seconded by Mr. Virr.

Vote:

Mr. Kelley: Yes.
Mr. Coppolo: Yes.
Mrs. Hampton: Yes.
Mr. Virr: 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. Virr motioned to approve the minutes of September 1, 2016 as written.

Seconded by Mr. Coppolo.

Vote: Unanimous.

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

Adjourn

Mr. Burgess motioned to adjourn.

Seconded by Mrs. Hampton.

Vote: Unanimous.

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

Adjourn at 8:36 pm

Minutes transcribed from tape:

Ginny Rioux

Recording Clerk

APPROVAL OF MINUTES October 20, 2016

Mr. Coppolo wished to change wording on page 5 paragraph 2 to say 4th criteria not 5th criteria.

Mr. Coppolo motioned to approve the minutes of October 4, 2016 as amended.

Seconded by Mr. Burgess.

Vote: Unanimous.

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