

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
April 5, 2018

Members Present

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

Members Absent

Alternates Present

Donald Burgess
Evan Rathburn
Crystal Morin

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 informed public of fire and handicap exits. He noted that this and all Zoning Board meetings are videotaped.

The Board introduced themselves for the record.

Mr. Perkins said that the meeting tonight will start with the annual election of officers and then the Board would introduce themselves for the record. He said that he offers to remain as chair if the Board so chose to have him.

Election of Officers

Position of Chairman

Mrs. Evans nominated Mr. Perkins for the position of Chair.

Vote: Unanimous.

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

Position of Vice Chair

Mr. Perkins nominated Mrs. Evans for the position of Vice Chair.

Mr. Kelley motioned to keep the Board members the same with their positions as they have been.

Mrs. Navarro, Mr. Coppolo concurred.
Seconded by Mrs. Evans.

Vote: Unanimous.

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

18-105 Horne Pond Real Estate Group, LLC

The Applicant is requesting a variance to the terms of Article VI, Section 165-45.1.A of the Town of Derry Zoning Ordinance to build a 9,000 square foot commercial/industrial building to replace the 9,260 square foot building that was destroyed by fire at 35 Maple Street, PID 29151, Zoned MHDR II

Kevin Hatch, Cornerstone Survey Associates, Inc., said he was representing the applicant who was also present this evening. He stated that they originally applied for two variances one for the use and the other for the setback. He said that due to the proposed zoning change they would be happy to withdraw the first case and proceed with the case referring to the wetland setback.

Mr. Mackey said that last night the Planning Board voted to schedule the public hearing to change the zoning for this area to central business district, so the use would be allowed by right.

Mr. Perkins asked if there was a letter of representation available. Mr. Hatch said no but Grant Benson was present,

Grant Benson, owner, said that he gives permission for Kevin Hatch to represent the case this evening.

It was noted for the record that case #18-105 Horne Pond Real Estate Group, LLC was withdrawn.

18-106 Horne Pond Real Estate Group, LLC

The Applicant is requesting a variance to the terms of Article III, Section 165-20.a of the Town of Derry Zoning Ordinance to construct a 9,000 square foot commercial/industrial building less than 75 feet from a wetland greater than one acre (Horne Pond) at 35 Maple Street, PID 29151, Zoned MHDR II

Kevin Hatch, Cornerstone Survey Associates, Inc., said he was representing the applicant who was also present this evening. He read the application criteria for the record and explained the plans presented for the Board.

Board Questions

Mr. Coppolo said that he finds the overall concept to make sense but was curious of the 30' overhang with the type of roof and drainage issues. Mr. Hatch said that the overhang was a carport style with the slope going towards the north towards the wetlands. He said that there would be the typical rain fall coming off the roof and go off to the wetland. If the roof was not provided there would be rain or snow falling onto the equipment which would then wash off any salt or debris that would then be carried off to the wetland.

Mr. Burgess said that he was familiar with the property and asked if the old foundation wall was planning on being removed. Mr. Hatch said yes than then the area would be regraded, and a new entrance would be constructed similar to what is there now.

Mr. Burgess said that there were 8-10 vehicles on the property now and a storage facility. Would they be staying and leasing the area or leaving? Mr. Benson said that they would be leaving, and that the property would only be used for storage of his vehicles. The other vehicles are from former owners and will be leaving.

Mr. Kelley asked if the garage doors would be the same height. Mr. Benson said that they would be the same as across the street. He described the area for the Board.

Mrs. Evans asked if there were any flooding issues with Horne Pond. Mr. Hatch said that the property was on the high side and he checked the elevations and they were approximately 10' above flood elevation.

Code Enforcement

Mr. Mackey supplied the following information for the record:

- The applicant is requesting approval to construct a 50' x 180' commercial/industrial building less than 75' from a wetland greater than 1 acre (Horne's Pond).
- The new building is being constructed to replace the 9260 square foot building that was destroyed by fire several years ago. The original building was located in proximity to Horne's Brook.
- Horne's Pond is not classified as a Prime Wetland.
- The building is proposed to be 61' from the wetland with the building overhang being located 31' from the wetland.
- If approved, Planning Board site plan approval will be required.
- There are pictures of the property in the file for review by the Board.

Mr. Burgess said that he has seen flooding in the area and it has only been on the lower parts of the property and never got higher than a foot or two. He asked if the area was to be paved. Mr. Hatch said that the area in front of the garage is proposed to be paved.

Mr. Perkins asked if paving and impervious surfaces are calculated out with the Planning Board. Mr. Mackey said that was correct.

Mr. Coppolo asked if removing the foundation and cleaning up the property. Mr. Hatch said yes that the original foundation and wall will be removed and debris will be cleaned up.

Favor

No one spoke in favor to the request.

Opposed

No one spoke in opposition of the request.

Mr. Kelley 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. Perkins asked if there were any concerns that the Board wished to discuss.

Mr. Coppolo said he was concerned with the pond and run off but feels that the Planning Board would be addressing that matter. He said that he would like the motion to include that the property to be cleaned up from the previous fire damage.

Mrs. Evans said that she agrees that the Planning Board would be addressing run off concerns.

Mr. Perkins said that if the site was never developed would the use be allowed and said he felt that this was a fair exchange of the property as the prior building uses were not the best uses for the area near the water. He said that he feels the applicants proposal would be a better use for the property and agrees that the neighborhood needs a cleanup.

Mrs. Evans said she agrees that the use would be an improvement and looks forward to the cleanup. She said that she feels it would be good for the community.

Mr. Kelley said that he would have some reservations if a different applicant but knowing the Benson's involvement feel that it will be done in a professional manner and that Mr. Benson will address the Board's concerns.

Mr. Mackey said that the overall site development will be part of site plan and a lot of the Boards concerns will be addressed such as the foundation and parking and the Code Enforcement Office will oversee the construction portion and will make sure items are addressed properly.

Mr. Perkins reviewed the conditions for the record.

Mrs. Narvarro motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Mr. Coppolo motioned on case #18-106 Horne Pond Real Estate Group, LLC to Grant a variance to the terms of Article III, Section 165-20.a of the Town of Derry Zoning Ordinance to construct a 9,000 square foot commercial/industrial building less than 75 feet from a wetland greater than one acre (Horne Pond) at 35 Maple Street, PID 29151, Zoned MHDR II as presented with the following conditions:

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

Board took a brief recess and reconvened at 7:45 pm

18-107 George Chadwick

The applicant is requesting a variance to the terms of Article III, Section 165-20.a of the Town of Derry Zoning Ordinance to allow the construction of a 23.5 foot by 34 foot addition to the existing dwelling, less than 75 feet from a wetland greater than one acre at 116 Old Chester Road, PID 12120-007, Zoned LDR

George Chadwick, owner, said that he has had a wetland scientist come out to the property and have staked out the proposed addition with regard to the wetlands as when the original plan was provided there was a foot of snow on the ground and he had only submitted a rough plan. He said that he has a new plan to present if the Board would allow. He provided the Board with new plan showing wetland delineations.

Mr. Perkins said that typically all information is provided to the Board 10 days prior to the meeting so the members had ample time to review but would accept if have enough copies for all members.

Mr. Chadwick reviewed the five criteria for the record.

Board Questions

Mr. Burgess asked if an accessory unit allowed 850 square feet. Mr. Mackey said the Town of Derry regulations allow for an 800 square foot area for an accessory dwelling.

Mr. Kelley asked if proposed addition was going where the existing garage under was located and if would be converting that area to living space. Mr. Chadwick said the proposed addition would be where the existing garage is currently and would remain a garage and the accessory would be above.

Mr. Coppolo asked where the septic system was located. Mr. Chadwick explained the property layout for the Board. He said that a conditional septic plan will be designed to accommodate the additional bedrooms.

Mrs. Evans asked if the driveway was going to be paved. Mr. Chadwick said yes, and it would be approximately 25' away abutting up to grass so any runoff would be into grass.

Mr. Kelley asked if there was a permit required for a driveway. Mr. Mackey said a permit was required if widening at the roadway but where this is interior a permit would not be required.

Mr. Perkins asked if Planning Board would not need to review as this is only a residential addition. Mr. Mackey said that was correct.

Mr. Coppolo asked if any trees were being cut or buffer changes would be made. Mr. Chadwick said no.

Code Enforcement

Mr. Mackey supplied the following information for the record:

- The applicant is requesting a variance to construct a 23.5' x 34' addition to the existing residence less than 75' from a wetland greater than 1 acre in size. The addition is proposed to be utilized as an accessory dwelling unit (ADU).
- The wetland in question is not classified as a Prime Wetland.
- The proposed ADU is being designed to comply with the regulations regarding their installation.
- If approved, 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. Kelley 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 that the reason the State changed the accessory requirements was the need for housing. He said that he felt the request was reasonable and would have had more of a concern if there were trees being removed.

Mr. Perkins said that the State has made changes to the accessory use requirements to allow for more affordable housing. He asked if the Board felt if the applicant has made his case with regard of not being hazardous or a nuisance to the area. Also, if there were any concerns with containment of runoff other than the grass and expansion of impervious area.

Mr. Kelley said he would have had more of a concern if there wasn't such a large wood line on the property, but the applicant stated that there would be no interference with that, so he did not have a concern.

Mr. Coppolo said that the driveway up to the wetlands is a discussion for another day and it appears to be 75' away.

Mr. Perkins reviewed the conditions for the record.

Mrs. Navarro motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

There was some discussion with regard in wording of motion.

Mr. Coppolo motioned on case #18-107 George Chadwick to Grant a variance to the terms of Article III, Section 165-20.a of the Town of Derry Zoning Ordinance to allow the construction an addition to the existing dwelling to be no closer than 38' to a wetland greater than one acre at 116 Old Chester Road, PID 12120-007, Zoned LDR as presented with the following conditions:

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

Seconded by Mrs. Evans.

Vote:

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

It was noted for the record that Mrs. Evans would step down for the following case and Mr. Burgess would sit.

**18-108 James & Lisa Whiteneck
Owner: Debra K. Chakarian, Trustee and William K. Chakarian,
Trustee, of the Debra K. Chakarian Revocable Trust**

The applicant is requesting a variance to the terms of Article VI, Section 165-48.A of the Town of Derry Zoning Ordinance to operate a landscaping business as their primary business with a wholesale and retail nursery as a secondary business where a nursery was the existing primary business at 112 Island Pond Road, PID 06023-003, Zoned LDR

Attorney Brian Germaine, Germaine & Blaska, P.A, said he was here with the applicant and there is a letter of representation in the file. Attorney Germaine said that also present this evening were the applicant, James Whiteneck, who currently owns and operates Springlook Landscaping in Salem, NH, Timothy Peliquin, Promised Land Survey, LLC, Christopher Goodnow, Goodnow Real Estate Services and Cindy Acoin, Caldwell Banker, to answer any questions that the Board might need addressed. Attorney Germaine read the criteria and described the submitted information for the record.

Board Questions

Mr. Coppolo asked what currently is the Whiteneck's interest in the property. Attorney Germaine said that they currently have a purchase and sales agreement on the property.

Attorney Germaine said that they are seeking a variance as there is a question with regard to the use of how big the operation is and that the primary use of the property would be for landscaping then will gradually bring back the nursery use. The applicant currently has 5 trucks, 3 trailers and a tractor which would be onsite. He said that he had discussed the proposal with Mr. Mackey. Attorney Germaine stated the property will have same use as Chakarian but with focus on landscaping being primary and nursery being secondary.

Mr. Perkins asked if the basis of the request was for the growth of the business with an increase in the number of trucks. Attorney Germaine said no that his client wants to be honest and stating that the primary business is landscape but not ready to operate as a garden center at this time.

Mr. Perkins said so the landscape supports the nursery but the primary use would be landscape. Mr. Whiteneck said yes.

Mr. Burgess said that landscape was not listed as one of the permitted uses.

Code Enforcement

Mr. Mackey supplied the following information for the record:

- The applicants are requesting a variance to allow the primary use of a landscaping business to be conducted on the property which is located in the Low Density Residential District (LDR). A wholesale and retail nursery business, as has previously existed on the property, is proposed as a secondary/accessory use.
- The use of the property, formerly known as Chakarian Farms consisted of the growing and sale of plants, trees and shrubs along with associated gardening and landscaping supplies and materials. Not uncommon with this type of operation, there were also some associated accessory uses including landscaping and plowing services and the sale of cordwood. It had been determined that the activities taking place on the site were included under the definition of "agriculture" and were, therefore, an allowed use in the zone.
- As the current proposal is to operate a commercial landscape business as the primary use of the property (as opposed to the sale of plants) the applicants were advised that a use variance is required.
- If approved, Planning Board site review will be required.
- There are pictures of the property in the file for review by the Board.

Mr. Coppolo asked that the use variance would be to allow to utilize the property as a landscaping business. Attorney Germaine said if the Whiteneck's came to operate a garden center and also a landscape business they would not be here but here as they would be operating a landscape business and then later a garden center they are requesting a variance.

There was some discussion with regards to what type of equipment and where it would be stored on the property.

Mrs. Navarro asked what would be the hours of operation. Mr. Whiteneck said they currently operate 7:00 am to 5:00 pm and may work on Saturday 8:00 am to 2:00 pm with no Sundays. He said that they are not solid on times and are willing to change if need to.

Mr. Kelley asked if they would be living on property. Mr. Whiteneck said yes as the property currently has an existing apartment that they are going to renovate and live there.

Mr. Burgess asked if they would be moving from landscaping to greenhouse. Mr. Whiteneck said yes but they would not ever be out of the landscaping business.

Mr. Coppolo asked if there were any current plans to alter the driveway or parking lots. Attorney Germaine said no plans to alter the driveway or parking areas but they possibly will expand the existing garage.

Mr. Burgess said that the existing driveway was gravel so there are no impervious surfaces.

Favor

No one spoke in favor to the request.

Opposed

Aaron Smith, 110 Island Pond Road, said he was not here to object but to voice his opinion as he was concerned with the structure change with traffic going in and out of the property and possible encroachment to his property with the proposed garage expansion.

Dennis Wiley, 122 Island Pond Road, said that he has resided in the area 40 plus years and that the Chakarian's in the beginning had a small vegetable operation that evolved into a greenhouse that never had any variances given that he recalled. He said he felt that a landscape business should be an area for large operations where they can have piles of materials and the noise of trucks backing up is not suited for a residential area. If grant a variance to operate a landscape business in this residential area how do you close the door to other operations that factor into the landscape business. He said that he felt the use would have a negative impact to the area. He asked what does a landscaping business actually consist of.

Ann Horgan, 1 Stone Fence Drive, said that the Chakarian Farm had a small bark mulch pile on their property and she did not wish to see large trucks or large piles of bark mulch or other types of material stored on the property.

Mr. Coppolo asked if there was a tree buffer. Mrs. Horgan said that she has 4 windows that face the farm and can see the buildings and mulch pile and hear people come and go. She said that when she originally purchased there was a buffer of trees but the neighbor clear cut the property so she now can see all of the property.

Mr. Coppolo read letter from Gabriel Thompson, 5 Stone Fence Drive in opposition of the proposed request for the record.

Rebuttal

Attorney Germaine said that the applicant is seeking to make this property their retirement home as well as wish to make a destination to purchase garden needs. Their intention is to run a small landscape business from the property. He said that he heard a general concern of large 18 wheelers and large bark mulch piles which his client does not have.

Mr. Whiteneck said that he will have some small bins of mulch on the property but not a large stock pile.

Attorney Germaine said that his applicant will still be required to have a site plan review. He said that this is a small business and not a giant company. He understands the concern of trucks backing up and beeping sounds and larger equipment is kept off site. Attorney Germaine said some of the small buildings have been removed and that the applicant is planning on residing there. Any possible additional greenhouses etc. will need possible review with the Planning Board. He said it was hard to judge the amount of traffic that would come in and out on a daily basis.

Mr. Perkins said that they have portrayed a small landscape business but has a concern about growth control and the Board have a right to restrict the number of vehicles.

Mr. Whiteneck said that he plans to grow his landscape business but as with everything economics controls everything. He said that the faster they can get the nursery to grow the faster it will reduce the landscape portion of the business. He said that a restriction of 15 vehicles they could possibly live with as they don't see the business growing that much

Mr. Perkins said that the concern is with tri-axle trucks. Mr. Whiteneck said that true intention is to grow into sole retail business and allow moderate growth.

Attorney Germaine said that a restriction of 15 vehicles is more of a Planning Board matter.

Mr. Whiteneck said that he has been in business for 33 years and have looked into the DOT regulations and have found that its more sense to have someone else deliver to the property than carry the class license. He said that any storage on the property will be neat and organized.

There was some discussion with regard to size, types and number of vehicles.

Mr. Coppolo motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Deliberative Session

Mr. Coppolo said that he feels that the case is a business investment and someone who cares and wants to invest dollars in Derry and be user friendly which is a great thing. He said he does have concerns with growth control but in favor of the applicants request.

Mr. Kelley said that he feels that the Planning Board will layout growth potential.

Mr. Perkins said that the Board can leave up to the Planning Board to limit of vehicles but could possibly restrict to the weight limit being under 26,000 lbs.

Mr. Burgess said that they could restrict that no vehicles be allowed that would require a CDL license.

Mr. Coppolo said that he did not think that the Board could do anything about mulch piles as that would be a Planning Board matter.

Mr. Perkins reviewed the conditions for the record.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

Mr. Coppolo motioned on case #18-108 James & Lisa Whiteneck, Owner: Debra K. Chakarian, Trustee and William K. Chakarian, Trustee, of the Debra K. Chakarian Revocable Trust to Grant a variance to the terms of Article VI, Section 165-48.A of the Town of Derry Zoning Ordinance to operate a landscaping business as their primary business with a wholesale and retail nursery as a secondary business where a nursery was the existing primary business at 112 Island Pond Road, PID 06023-003, Zoned LDR as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Subject to Planning Board approval.**
- 3. Recommend restriction to limit the vehicles to be no greater than 26,000 lbs.**
- 4. Recommend restriction of storage volume of bulk material.**

Seconded by Mr. Kelley.

Vote:

Mr. Coppolo: Yes.
Mr. Burgess: Yes.
Mrs. Navarro: 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.

Other Business

Mr. Perkins said the 24th annual Spring Planning & Zoning Conference is scheduled for Saturday April 28, 2018. He asked to have the registration link resent to members and advised the Board to forward their confirmation to the Code Enforcement Office.

Approval of Minutes

Mr. Kelly motioned to approve the minutes of March 1, 2018 as written.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Adjourn

Mr. Coppolo motioned to adjourn.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

Adjourn at 9:37 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

Approval of Minutes April 19, 2018

Mr. Kelly motioned to approve the minutes of April 5, 2018 as amended.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mrs. Morin, Mr. Corbett, Mr. Rathburn, Mr. Burgess, Mrs. Navarro, Mr. Kelley, Mr. Coppolo, Mrs. Evans, Mr. Perkins.