

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
August 16, 2018

Members Present

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

Members Absent

Alternates Present

Donald Burgess
Evan Rathburn
Crystal Morin
Craig Corbett

Alternates Absent

Code Enforcement

Robert Mackey

Mr. Perkins called the meeting to order at 7:01 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.

It was noted for the record that Mr. Coppolo would step down and Mr. Corbett would sit for the following case:

18-118 Manuel Gendron
by his attorneys Beaumont & Campbell, PA
Owner: Peter Simon & Amy Simon

The applicant is requesting a variance to the terms of Article VI, Section 165-46 (C) of the Town of Derry Zoning Ordinance to allow the subdivision of the property into two (2) lots with the existing residential Structure remaining on a lot with 20.02 feet of Frontage and an area of 17,466 square feet and the conversion of the existing freestanding garage into a single family residence to be located on a new lot

containing 6,859 square feet of area and 125.08 feet of frontage at 54 North Shore Road, PID 52007, Zoned MDR

Attorney Bernard Campbell, Beaumont & Campbell, PA, said that he was representing the applicant who was also present along with Peter & Amy Simon were also present to answer any questions that the Board may have.

Attorney Campbell read the application criteria and agreement to purchase and described the property for the record. Attorney Campbell said that the easement deed was provided for the record and the garage was built in 2006 on an existing foundation. If allowed to proceed to the Planning Board the structure will be connected to the Town Sewer system and possibly a well will be installed or it may share a well with lot 52008.

Board Questions

Mr. Perkins asked if the line drawn behind the garage was the easement piece. Attorney Campbell said that the easement was created in 2007 of which the deed is in the file by Joyce Campbell and Manuel Gendron. Attorney Campbell said that Promised Land has drawn out a new plan and has increased the land by 1,297 square feet proposal so as to allow to have a 15' setback from the side lot line.

Mr. Perkins said that Mr. Gendron had been to the Board at a previous hearing and was told could come back. He asked if it was to allow the garage to be a habitable residence. Attorney Campbell said yes but the 2 residential structures would then be on one lot so unable to proceed as it was not part of the original notice.

Mr. Burgess asked if the proposal was to make the garage into a residential rental property. Mr. Gendron said that the proposal was to make the garage habitable and rent as he currently owns the garage and the property next door. He said that when he decided to sell the home he realized that the garage did not go with the home. Mr. Gendron said that his plans were to sell the other property and convert this into a home for one of his children to live in. He said that at the previous meeting the Board had suggested to obtain a purchase and sales agreement for the land so that is what he did.

Attorney Campbell said that they were seeking variance approval so they could subdivide the land from the Simon's property. He said that this situation currently is similar to Chases Grove as the applicant owns the structure but not the land.

Mrs. Evans asked if the original residential structure would be left with 20' of frontage. Attorney Campbell said yes and the property currently has access on Lake Ave lot 52-11 of which the Simon's also own but they are not merged. He said that the proposed subdivision would provide 125.06 feet of frontage for the garage which will comply with the frontage requirement.

Code Enforcement

Mr. Mackey supplied the following information for the record:

- The applicant is requesting a variance to allow the existing parcel containing 24,426 sq. ft. to be subdivided into 2 lots. After subdivision, the existing house will remain on a parcel containing 17,466 sq. ft. and 20.02 feet of frontage and the existing detached garage, to be converted to a single family residence, will be located on a parcel containing 6,859 sq. ft. and 125.08 feet of frontage.
- The property is located in the Medium Density Residential Zoning District (MDR) which requires a minimum of 1 acre and 125 feet of frontage for each lot in a new subdivision.
- The property is serviced by Town sewer.
- A previous variance to allow the detached garage to be converted to a single family residence while remaining on an easement was withdrawn by the applicant after legal concerns/questions were raised by the Board.
- 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 asked if the property had access to town water. Mr. Mackey said the property did not have access to town water but will have access to town sewer.

Mr. Perkins asked if the purchase agreement was okay to proceed. Attorney Campbell said that the purchase and sales agreement is contingent on obtaining a variance and Planning Board approval to subdivide. He said when that is complete they will then schedule a closing to purchase the land from the Simon's and a deed will be recorded.

Favor

No one spoke in favor of 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.

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

Deliberative Session

Mr. Kelley said that he felt that the lot is what it is and the applicant is unable to do much different than what is being proposed. He said that this is a better suited proposal for the use.

Mr. Perkins said that the applicant is seeking for permission of oversight with agreement by both parties to purchase and make it into a legal lot. He said that also understand that Mr. Gendron had the best intentions and after the fact realized that have a bigger problem. This proposal puts them into a better spot.

Mr. Corbett said that the applicant already owns the garage but not the land as it currently is someone else's. He said that he agrees with Mr. Kelley that this is the best proposal for what is currently already there.

Mrs. Navarro said that this is best to clean up this situation.

Mrs. Evans said that this proposal also cleans up an already existing problem.

Mr. Perkins reviewed the conditions for the record.

Mrs. Evans asked if a condition be made to require to tie into town sewer.

Mr. Mackey said that is already a requirement.

Mr. Kelley motioned to come out of deliberative session.

Seconded by Mr. Corbett.

Vote: Unanimous.

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

Mrs. Navarro motioned on case #18-118 - Manuel Gendron , by his attorneys Beaumont & Campbell, PA, Owner: Peter Simon & Amy Simon to Grant a variance to the terms of Article VI, Section 165-46 (C) of the Town of Derry Zoning Ordinance to allow the subdivision of the property into two (2) lots with the existing residential Structure remaining on a lot with 20.02 feet of Frontage and an area of 17,466 square feet and the conversion of the existing freestanding garage into a single family residence to be located on a new lot containing 6,859 square feet of area and 125.08 feet of frontage at 54 North Shore Road, PID 52007, Zoned MDR as presented with the following conditions:

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

Seconded by Mrs. Evans.

Vote:

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

18-119 Pinkerton Academy

The applicant is requesting a variance to the terms of Article VI, Section 165-46 (A) of the Town of Derry Zoning Ordinance to allow the existing dwelling and property to be utilized for educational purposes at 31 Tsienneto Road, PID 08068-002, Zoned MDR

Ryan Robinson & Tim Powers, Interm Headmaster for Pinkerton Academy were present this evening.

Mr. Powers read the application criteria for the record. He said that the Ombudsman Program was an alternative learning program for approximately 40 students which currently operates off site and that they were seeking to bring the students closer to the Pinkerton campus so they would have access to more services and they would also be part of the campus setting.

Board Questions

Mr. Coppolo asked if the program was already operating and where. Mr. Powers said that the Obudsman program is already part of what Pinkerton offers and is currently located on A Street next to Tupelos'

Mr. Perkins asked if buses transport the students currently. Mr. Powers said no that the students either walk to the school or drive.

Mrs. Evans asked what were the school hours. Mr. Powers said that they are adjusted slightly to allow students more classroom time. He said that the day starts at 7:00 am and last session is at 4:00 pm.

There was some discussion with regard to parking.

Mr. Perkins said that the property is currently a residential structure and that the question before the Board is for the use. He said that the proposal will also require Planning Board approval where parking requirements will be addressed.

Mr. Coppolo asked if the intended student population in the structure would fluctuate. Mr. Powers said there would be 10-15 students at a time during a session and there were 3 sessions per day.

Mrs. Navarro asked if students would be dropped off and that there would also be a path to walk along. Mr. Powers said that there would be access along a path to the property that abuts the property.

Mr. Perkins asked if Pinkerton purchased the property for this use. Mr. Powers said yes.

Code Enforcement

Mr. Mackey supplied the following information for the record:

- The applicant, Pinkerton Academy, is requesting a variance to allow the existing single family residence and property to be used for educational purposes. Specifically, they are looking to relocate the Ombudsman Program, an alternative learning program, to the site.
- The property is located in the Medium Density Residential Zoning District (MDR) which does not include educational uses in the list of permitted uses. Therefore, a variance is being requested.
- If approved, the structure & site will be required to comply with the appropriate building, fire and life safety regulations. Planning Board review will also be required.
- There are pictures of the property in the file for review by the Board.

Mr. Coppolo asked if the current envelope of the structure would be the same and if the ADA ramp would be required. Mr. Mackey said yes. He said that Pinkerton will be doing some interior renovations to make doors ADA compliant. There has been some discussion with Lt. Stanhope to make a rear handicap egress area.

Favor

No one spoke in favor of the request.

Opposed

Julie Lark, 6 Hardy Court, said that in the past 7 years she has seen taxes go pretty high and was concerned with what this would do to the tax base. She said that Pinkerton used to be rated in the top 5 schools with national rankings but now currently 16 with no national rankings. Do not want to warrant bad behavior with bad education.

Mr. Perkins said that he hears concerns and unfortunately not purview of the Board.

Rebuttal

Mr. Coppolo asked if Pinkerton was non-profit corporation and if owned does it remove from the tax base. Mr. Mackey said that they had already purchased the property. He said that he did not know the answer with regard to coming off the tax rolls.

There was some discussion with regard to taxable property.

Mr. Perkins said that he hears concerns from community member and that the issues were beyond the scope of this meeting. He said that the Board was only here to discuss the use of the property for educational purposes.

Mr. Burgess asked if they pay real estate taxes on the property. Mr. said yes.

Mr. Kelley motioned to go into deliberative session.

Seconded by Mrs. Navarro.

Vote: Unanimous.

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

Deliberative Session

Mr. Coppolo said that he felt that the request was a wonderful proposal and appreciates what Pinkerton brings to Derry. He said that he acknowledges the concerns from the community member.

Mr. Kelley said that he had a concern with restricted access as the Board just approved a variance for 26 units across the street. He said that Tsienneto Road is a high impact area for traffic and it was only going to get more congested. Mr. Kelley said that if it was possible to create a different access would be wonderful but not available. He said that he has concerns with safety issues.

Mr. Perkins said that there would be approximately 40 vehicles in and out of the property at various times. He said that future impact would not be major as to what was already

seeing in the area. Mr. Perkins said that the thoughts are admirable but the Board needs to focus on the use and the request before the Board.

Mr. Coppolo said that he frequently visits Irving and that taking a left turn onto Tsienneto Road from their parking lot is sometimes difficult.

Mr. Kelley said that the State proposal for Exit 4A may fix some of the traffic concerns at a later date but his concern was with the safety aspect of what is occurring now.

Mrs. Evans said that she agrees with concerns of community members and have valid points. She said that she felt it would be safer and a benefit for the students to be closer to Pinkerton.

Mr. Perkins said that the safety concerns and discussions with regard to 4A impact and the person that spoke in opposition are matters for the Planning Board to address. He said that Pinkerton is already currently renting a property for this program so feel that the purchase would now allow the space utilized to be back onto the tax rolls.

Mr. Coppolo said that students already walk along Tsienneto Road and Route 28 to access to Pinkerton now and feel that creating a path to walk through would be a great idea.

Mrs. Navarro asked if this would be creating a new school zone.

Mr. Perkins said yes. He reviewed the conditions for the record.

Mr. Coppolo said that he resides in East Derry and see Pinkerton traffic and feel that this proposal is minimal as to what is already occurring in the area. He said that he would like to recommend to create more off street parking.

Mr. Kelley said that the testimony provided they did not feel more parking was necessary.

Mr. Perkins said that they could possibly recommend to create a different curb cut.

Mr. Kelley said that a right turn only would alleviate a lot of the problems.

Mr. Coppolo said that he does not recommend students walking along Tsienneto Road and would like to see that the Planning Board would stipulate a condition on their approval.

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.

Mr. Coppolo motioned on case #18-119 - Pinkerton Academy to Grant a variance to the terms of Article VI, Section 165-46 (A) of the Town of Derry Zoning Ordinance to allow the existing dwelling and property to be utilized for educational purposes at 31 Tsienneto Road, PID 08068-002, Zoned MDR 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. Kelley.

Vote:

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

18-120 Roberta Robie

Re-Hearing request of case #18-117 Appeal of An Administrative Decision of the Code Enforcement Director that the business located on the property (Triangle Portable Services, Inc.) has not expanded and is in compliance with the conditions of the variance granted in 1984 for its operation at 29 Chester Road, PID 44012, Zoned MDR

Mr. Perkins said that the applicant has brought a request for a re-hearing and advised the Board to err caution in discussion so that the Board does not make case for applicant.

The Board reviewed the information provided.

Mr. Coppolo said that he appreciates Mrs. Robie's concerns and feel that the Board gave a fair decision. He said that he did not feel that enough evidence has been provided that the use in 1983 to the present has had sufficient change but only has evolved due to change in times. The information provided was not available during original hearing but was discussed at great length.

Mr. Kelley said that he has re-watched the meeting and that all points were addressed at the original hearing. He said that he hears the concerns but he did not see any new evidenced presented that would change his initial vote.

Mrs. Navarro said that she also did not see any new information provided to warrant a rehearing of the case.

Mrs. Evans said that she disagrees and said that the Board did not have the information that was provided in hand. She said that the applicant had touched on this during the testimony but the information provided tonight speaks to installing of septic systems and leach fields not just to portable toilets.

Mr. Kelley said that they could construct the great wall of China as long as they did not exceed the footprint there is nothing the Board could do.

Mr. Perkins said that he felt that the Board had digested the points brought forward by the applicant and see no reason to rehear the case.

Mr. Coppolo motioned on case #18-120 Roberta Robie to Grant a Re-Hearing request of case #18-117 Appeal of An Administrative Decision of the Code Enforcement Director that the business located on the property (Triangle Portable Services, Inc.) has not expanded and is in compliance with the conditions of the variance granted in 1984 for its operation at 29 Chester Road, PID 44012, Zoned MDR.

Seconded by Mr. Kelley.

Mr. Perkins informed the Board that a yes vote would be to Grant a Re-Hearing and a no vote would be a denial.

Vote:

Mrs. Navarro: No. No new evidence has been provided that had not been discussed during the meeting.

Mr. Kelley: No: For the same reason as stated by Mrs. Navarro as did not see any new evidence.

Mr. Coppolo: No. No new information provided that had not previously been discussed. The information submitted with regard to the website only indicates a goal to expand.

Mrs. Evans: Yes.

Mr. Perkins: No. Feel information was reviewed and that the Board did not err in its decision.

The application was Denied by a vote of 1-4-0. Recourse would be to appeal to Superior Court.

Approval of Minutes

Mr. Kelley motioned to approve the minutes of June 21, 2018 as amended.

Seconded by Mrs. Evans.

Vote: 8-1-0 - Approved

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

No: Mr. Coppolo – Opposed to page 12 being a full page of testimony by one person as feel setting bad precedence.

Mr. Kelley motioned to approve the minutes of July 19, 2018 as written.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Adjourn

Mr. Kelley motioned to adjourn.

Seconded by Mrs. Navarro.

Vote: Unanimous.

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

Adjourn at 8:30 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

Approval of Minutes September 6, 2018

Mr. Kelley motioned to approve the minutes of August 16, 2018 as amended.

Seconded by Mrs. Navarro.

Vote: Unanimous.

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