

**TOWN OF DERRY**  
**ZONING BOARD OF ADJUSTMENT MINUTES**  
**September 6, 2018**

**Members Present**

Lynn Perkins, Chairman  
Heather Evans, Vice Chairman  
Randall Kelley  
Michelle Navarro

**Members Absent**

Stephen Coppolo

**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. Burgess and Mrs. Morin would sit for the following case:

**18-120          Yvon and Yolaine Beaulieu**

**The applicant is requesting a variance to the terms of Article VI, Section 165-46 (C).4 of the Town of Derry Zoning Ordinance to allow construction of a 24' x 30' detached garage less than 15 feet from the side property line at 3 Wildwood Drive, PID 11057-020, Zoned MDR**

Yvon Beaulieu, owner, read his application criteria for the record. Mr. Beaulieu said that the property was difficult due to the ledge and location of the leach field and propane tank. He said that they had previously lost their home due to mold and rebuilt in 2002 so

the home is the newest in the area. Mr. Beaulieu said that during the blizzard they had difficulty cleaning off the snow of his wife's vehicle as she is a nurse and was called into work.

### **Board Questions**

Mr. Perkins asked if the floor plan is of the house and not garage and desire was to build one and if so why on the side. Mr. Beaulieu said yes the floor plan was of his home and he wished to build a garage and only have 33' to the side where the neighbor's fence is located.

Mr. Perkins asked if reason for detached is due to location of propane tank. Mr. Beaulieu said yes and that the meter was also located on the side of the home.

Mr. Perkins asked if the request was to be 4' from the home and 5' from the fence. Mr. Beaulieu said that was correct.

Mr. Perkins asked if the garage was proposed to be 24' wide and 30' in depth so as to not further infringe on the lot line. Mr. Beaulieu said yes.

Mr. Perkins said that the request was for a 2 car garage. He said notably it was hard to place 2 cars into a 22' wide opening. Mr. Beaulieu said that was correct.

Mr. Burgess asked if the existing home had a 2 stall garage under. Mr. Beaulieu said no but does have a 6' wide door under his porch that currently where he stores his 4 wheeler and lawn mower etc.

Mr. Burgess asked if the enclosure was under a porch. Mr. Beaulieu said yes that he enclosed his 16' x 16' deck into living space.

Mr. Burgess said that the sketch shows 40' on one side and 46' on the front.

There was some discussion with regard to size of home.

Mrs. Navarro asked if the 4' area could be connected by a breezeway. Mr. Beaulieu said no due to the placement of a window and meter. He said that he would love to connect but would involve more expense to move all the items located on the side.

Mrs. Morin asked what was the distance to the home on the other side of the fence. Mr. Beaulieu said he was not sure but possibly 25' to 30'.

## **Favor**

Daniel Flannigan, Wildwood Drive, said that he has lived in the area for 42 years and that Mr. Beaulieu's guess with regard to the distance of his home to the fence was approximately 25-26' separation from the fence. He said that he has spoken with Mr. Beaulieu sometime in August with regard to the placement of his proposed garage and he told me that he would need a variance as it would be no closer than 5' to the fence. He said that he wrote a letter in support but would like to stipulate that the garage be no closer than 5' to the fence.

Mr. Perkins asked if he was in favor of the request. Mr. Flannigan said yes. He said that if he had a problem he would speak up. Mr. Flannigan said he agrees only that it would be no closer than 5'.

## **Opposed**

No one spoke in opposition of the request.

## **Code Enforcement**

Mr. Mackey supplied the following information for the record:

- The applicants are requesting a variance to allow the construction of a 24' x 30'; two-stall, detached garage 5 feet from the side property line. The required setback is 15 feet.
- There is a plot plan in your file indicating the location of utilities on the property and the proposed location of the garage.
- If approved, appropriate permits (building and electrical) and inspections will be required.
- There are pictures of the property in the file for review by the Board.

Mr. Mackey said that the letter that the applicant is speaking to in favor from the abutter should be made part of the record.

## **Board Questions**

Mr. Perkins asked if the stamped plan was not the home that was rebuilt. Mr. Beaulieu said no and he apologized. He said that he rebuilt his home due to a severe mold issue and kept the same foundation and that the length of his home was 42'6" and 40' wide.

Mr. Perkins said that the plan shows 46' wide. Mr. Beaulieu said that he kept the same foundation but enclosed an old deck and added a new deck.

Mr. Mackey said that the home was rebuilt in 2005 and previous home was 26' x 42'.

Mr. Perkins said that the letter of support will be stamped and accepted as part of the record. He said that the Board has an option to move forward or table the request until a certified plot plan could be obtained by the applicant where there appears to be a discrepancy of footprint size of existing structure.

Mr. Beaulieu said that he obtained a building permit in 2005 and pay taxes on the property.

Mr. Burgess said that he was concerned with the existing home distance to the lot line.

Mr. Kelley said he felt that the applicant was confused with what the Board was requesting and explained to the applicant that the Board was looking to get an accurate measurement to the lot line as if it uses what is shown may not be actually where the proposed garage could be closer than 5'.

Mrs. Navarro said she would prefer to have an actual survey of the lot line.

Mrs. Morin said she also agreed that an actual survey would be beneficial.

Mr. Beaulieu said he measured from the foundation to the fence and it was 33'.

Mr. Perkins said that unfortunately a fence is not always on a lot line. He said that the Board could motion to continue the case or make motion to have a certified plan done.

Mr. Mackey said that he went onto vision appraisal and that the applicant's testimony corroborates with his testimony of 42.6 feet of what represented.

Mr. Perkins said he recommends a site certified plan as to where the neighbor has stated he agrees but no closer than 5' to the lot line. He said otherwise he still feels questions to where actual line is located.

Mr. Kelley said that he agrees as he also has concerns with fire safety and that anything less than 10' raises flags as the fence could be 3 or 5' either way and 5' is too much room for error.

Mr. Beaulieu said there was a concrete pillar in the front of the property and that the fence was on the pillar.

Mr. Perkins said that there was a surveyor here tonight that could possibly speak with and have the line surveyed. He said that the Board could motion to table the case until a certified plan could be established.

**Mr. Kelley motioned to table the case until a certified plot plan could be obtained.**

**Seconded by Mrs. Evans.**

**Vote: Unanimous.**

**Mrs. Morin, Mr. Burgess, Mrs. Navarro, Mr. Kelley, Mr. Perkins**

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

**18-121            Joanne Curran**

**The applicant is requesting a variance to the terms of Article VI, Sections 165-47.B 1, 2 and 3 of the Town of Derry Zoning Ordinance to allow the subdivision of the property into 2 lots with the existing dwelling to be located on a lot containing 1.91 acres and to the other lot to contain 10.39 acres and have 50.22 feet of frontage at 64 Lane Road PID 06060, Zoned LMDR**

Timothy Peloquin, Promised Land Survey, said that the owner was also present if the Board had any additional questions. Mr. Peloquin read the application criteria for the record. Mr. Peloquin explained the proposed plan for the record.

**Board Questions**

Mrs. Evans asked what the different colors of lines represented on the plan. Mr. Peloquin said reviewed the plan for the record.

Mr. Kelley asked if Conservation has reviewed proposal. Mr. Peloquin said that they have been in discussion with the abutting Rutter property and it is a potential but not done at this time.

Mr. Rathburn asked what the building was on the rear of the property. Mr. Peloquin said that was sort of a tree fort.

Mr. Rathburn asked if deed land to conservation if would take away rights. Mr. Peloquin said that the 10 acres would stay as a nice 10 acre conservation lot.

**Code Enforcement**

Mr. Mackey supplied the following information for the record:

- The applicant is requesting approval to subdivide the property into 2 lots. The property is located in the Low Medium Density Residential Zoning District (LMDR) which requires that each lot contain a minimum of 2 acres and 150 feet of frontage and lot width. The proposal is to have the existing dwelling be situated on a 1.91 acre lot and the remainder of the property (10.39 acres) be a separate lot with 50.22 feet of frontage. Therefore, area, frontage and lot width variances are required.
- Town records indicate the home was constructed in 1860.
- If approved, Planning board subdivision will be required.
- There are pictures of the property in the file for review by the Board.

### **Favor**

No one spoke in favor of the request.

### **Opposed**

Mark Alexander, 55 Floyd Road, said if request was to subdivide off one lot and remainder to be a 10.3 acre lot if that lot would later be sold off to a developer. He said that all the homes in the area were on well and septic so he has a concern with his well. Mr. Alexander said that 10 acres could lead to future development and would utilize the same natural resources. He said there have been 5 new homes constructed in the area recently and if intent is to subdivide to build more houses later he was opposed to granting the variance.

### **Rebuttal**

Mr. Peloquin said the intent was for one single family lot. He said it would be very difficult for a developer to carve up and put in a road so he did not see any future in developing.

Mr. Perkins asked if essentially seeking to trade off ability to build one home. Mr. Peloquin said favor is of only one home.

Mrs. Evans motioned to go into deliberative session.

Seconded by Mrs. Navarro.

Vote: Unanimous.

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

### **Deliberative Session**

Mr. Perkins reviewed the conditions for the record.

Mrs. Navarro said she did not have any concerns at this time.

Mrs. Evans said she agreed with the proposed conditions and had no other concerns.

Mr. Corbett said he did not have any concerns with the proposed request.

Mr. Rathburn said he also did not have any concerns with the proposed request.

Mr. Rathburn motioned to come out of deliberative session.

Seconded by Mr. Corbett.

Vote: Unanimous.

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

**Mrs. Navarro motioned on case 18-121 Joanne Curran to Grant a variance to the terms of Article VI, Sections 165-47.B 1, 2 and 3 of the Town of Derry Zoning Ordinance to allow the subdivision of the property into 2 lots with the existing dwelling to be located on a lot containing 1.91 acres and to the other lot to contain 10.39 acres and have 50.22 feet of frontage at 64 Lane Road PID 06060, Zoned LMDR 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. Evans: Yes.**

**Mrs. Navarro: Yes.**

**Mr. Corbett: Yes.**

**Mr. Rathburn: 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. Morin would sit for the following case:

**18-121            Thomas F. Cavanaugh**

**The applicant is requesting a variance to the terms of Article VI, Section 165-45.B.1.d of the Town of Derry Zoning Ordinance to allow the existing garage to be located 8.5 feet from the side lot line after the subdivision of the property into three lots at 4 Hood Road, PID 32067, Zoned MHDR**

Thomas Cavanaugh, owner, read his application criteria for the record. He said that he was seeking to subdivide the property into 3 separate lots. The south lot would have the detached garage which he would like to keep but it would be to close to the lot line so he was here to seek a variance to allow the existing garage to remain to close to a newly created lot line.

## **Board Questions**

Mr. Perkins asked how many lots were being subdivided. Mr. Cavanaugh said he was proposing a 3 lot subdivision. He said that the drawing shows 1 house & garage and his proposal is to leave the garage.

Mr. Perkins asked if the proposal was to leave the garage on the subdivided piece. Mr. Cavanaugh said yes and described the proposed plan for the record.

Mrs. Evans asked if owned both properties. Mr. Cavanaugh said it was all one lot.

Mr. Burgess said he understands the concept but the neighborhood was very congested area.

## **Code Enforcement**

Mr. Mackey supplied the following information for the record:

- The applicant is requesting a variance to allow the existing garage to be located 8.5 feet from a side lot line after the existing parcel is subdivided into 3 lots.
- The property is located in the Medium High Density Residential Zoning District (MHDR) and the proposed lots will comply with area and frontage requirements for single family homes (10,000 sq. ft. per dwelling unit with 100 ft. of frontage).
- If approved, Planning board subdivision will be required.
- There are pictures of the property in the file for review by the Board.

## **Favor**

No one spoke in favor of the request.

## **Opposed**

Judith Loeffler, 2 Hood Road, said was opposed to request of building two more homes. She said that she is in disagreement with the lot lines and has not had her property surveyed nor have been able to see a real estate party to obtain a real estate analysis as to what sort of market value would done to her property. She said she has concerns with drainage and has not seen any proposal she felt would also be a negative impact to the area. Ms. Loeffler said that the applicant has already cut down trees on the property and that she does not know what kind of impact that is going to have to her property when snow melts. She said she would like to see a full plan with proposed structures.

Mr. Perkins said that was not the purview of the Board and that this meeting was for the setback requirement for the garage to be 8.5 feet from a lot line. He said that the other questions are valid questions but would be purview of the Planning Board. He said that the Board could possibly structure a motion for some of your concerns to be addressed.



Mr. Kelley said that if approved there will be a survey required but not what this meeting is about and the proposed subdivision but only for an 8'5" setback for a garage to be located from a lot line.

Ms. Loeffler asked what the time frame was as ten days was not enough time to obtain a market analysis.

Mr. Mackey explained the Planning Board process. Ms. Loeffler said that notification time was not enough time to get any information ready for her property.

Mr. Kelley asked if they applicant removed the garage if this would even be before this Board. Mr. Mackey said no it would only be a Planning Board matter.

Bruce Brown, 6 Hood Road, said that he has been a resident of the area for 60 years and remembers the garage in question was built after the home in 1957. He said when the Town tried to bring in water and sewer to the area had to stop due to the ledge in the area and stopped at the Church. Mr. Brown said that a trench was also formed along the lower level of the property for runoff and was to be kept open. He said that the stone wall to the rear of the property is protected as historical wall and any removal would require permissions from all abutters. Mr. Brown said that this is the third time before the Zoning Board as prior it was for 5 Mt. Pleasant Street to develop and the for 22 Lenox Road to put in a house which became a court case now for the third time to wedge in more homes. He said that he felt that houses are getting wedged in where they don't belong and if this is allowed a lot of blasting will need to be done due to the ledge in the area.

### **Rebuttal**

Mr. Cavanaugh said that the neighbor of 2 Hood Road was correct to the lot line reference and he has noted it on the plan. Mr. Cavanaugh said with regards to the concern of ledge he may find property unaffordable to build as proposed but the property does have access to town water and sewer.

Mr. Kelley motioned to go into deliberative session.

Seconded by Mrs. Morin.

Vote: Unanimous.

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

### **Deliberative Session**

Mrs. Evans asked for clarification if the request was for the line between the house and the garage.

Mr. Perkins said that the applicant is seeking to subdivide the property and proposal is for the existing garage to be allowed to be 8.5 feet from the proposed new lot line. He reviewed the proposed plan for the record. Mr. Perkins said that the Board needs to focus on the five criteria. He said that points that stand out in his opinion was to the public interest and that the property owner has rights and need to review latitude. He said also with regard to the hardship portion the applicant recently purchased the property and is seeking latitude which in his mind is not fitting.

Mrs. Navarro said that shed agreed that she also did not see any hardship.

Mr. Kelley said he also agreed.

Mrs. Evans said she also did not see a hardship.

Mr. Perkins reviewed the conditions for the record.

Mrs. Evans motioned to come out of deliberative session.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

**Mr. Kelley motioned on case # 18-121 - Thomas F. Cavanaugh to Grant a variance to the terms of Article VI, Section 165-45.B.1.d of the Town of Derry Zoning Ordinance to allow the existing garage to be located 8.5 feet from the side lot line after the subdivision of the property into three lots at 4 Hood Road, PID 32067, Zoned MHDR 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:**

<b>Mr. Kelley:</b>	<b>No. Do not find it in the spirit and intent of the ordinance.</b>
<b>Mrs. Evans:</b>	<b>No. Do not see the hardship.</b>
<b>Mrs. Morin:</b>	<b>No. No hardship shown.</b>
<b>Mrs. Navarro:</b>	<b>No. No hardship shown.</b>
<b>Mr. Perkins:</b>	<b>No. No hardship has been shown and spirit and intent of ordinance has not been met.</b>

**The application was Denied by a vote of 0-5-0. 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. 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, Mrs. Evans, Mr. Perkins.

### **Correspondence**

Mr. Perkins said the New Hampshire Office of Strategic Initiatives Planning Division 2018 have made some legislative updates and information has been provided to the Board.

Mr. Perkins said that an email was sent out informing the Board Members of the upcoming training sessions to be held in October. He strongly recommends new members to attend.

Mr. Perkins said he received notification from Upton & Hatfield regarding the Supreme Court hearing of the storage facility for the Boards review.

### **Other Business**

Mr. Kelley said Derryfest is seeking volunteers for Saturday and that vendors are also needed for the Chili Chowder Cook Off.

### **Adjourn**

Mrs. Navarro motioned to adjourn.

Seconded by Mrs. Navarro.

Vote: Unanimous.

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

Adjourn at 8:42 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

**Approval of Minutes September 20, 2018**

Mr. Corbett said that the minutes need to be amended to reflect that Mr. Coppolo was not present for the September 6, 2018 meeting.

Mr. Burgess motioned to approve the minutes of September 6, 2018 as amended.

Seconded by Mr. Kelley.

Vote: Unanimous.

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