

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
November 1, 2018

Members Present

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

Members Absent

Stephen Coppolo

Alternates Present

Donald Burgess
Evan Rathburn
Craig Corbett
Crystal Morin

Alternates Absent

Mr. Perkins called the meeting to order at 7:04 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 would sit for the following case:

18-127 Linda Rutter

The applicant is requesting a variance to the terms of Article III, Section 165-9 of the Town of Derry Zoning Ordinance to approve a residential building lot on a Class VI way. 52 Lane Road PID 06058, Zoned LMDR

Attorney Brian Germain, Germaine & Blaszk, PA, informed the Board that during review of criteria may wish to follow along with the map that is tabbed as number 6 in their packets. Attorney Germaine reviewed the criteria for the record. He said that he believes the plan outlines the owner's intent and the subdivision plan of Fox Hollow does show the road going straight into the Rutter's property on a Class VI road with 182' of frontage.

Timothy Peloquin, Promised Land, said that the actual frontage is 150'.

Board Questions

Mr. Perkins said that he reviewed the application and thought it indicates 50 acres. Attorney Germaine said that the plan shows 150' frontage on a Class VI way that was adopted by the Town. He described the property for the record.

There was some discussion with regard to frontage and road width.

Code Enforcement

Mr. Mackey provided the following information for the record:

- The applicant is requesting approval to construct a single family home on a parcel located on a Class VI way.
- On October 23, 2018, the Derry Town Council accepted the portion of Fox Hollow Road from the end of the cul-de-sac to the property line of parcel 06058 as a Class VI way. This section of the roadway has never been constructed.
- The purpose of this acceptance is to facilitate the subdivision of parcel 06058 to separate the existing dwelling which will have frontage on Lane Road from the remaining land to the rear and to then allow the construction of a driveway over the Class VI way to access a new single-family dwelling to be constructed on the property.
- After consultation with the Town's Attorney, it was determined that a variance would still be required as the Class VI way does not by definition, constitute an "approved street".
- If approved, the proposed driveway will be required to be constructed to Town specifications (LDCR 170-26.A.16).
- If the variance is approved, Planning Board subdivision approval will be required.
- There are pictures of the property, taken from the Fox Hollow Road cul-de-sac, for review by the Board.

Board Questions

Mr. Burgess said that there was some mention of possible conservation land. Attorney Germaine said that they are in discussions with possibly deeding 18.74 acres directly for conservation or for perpetuity.

Mr. Burgess asked if the Class VI area was proposed to be more of a driveway. Attorney Germaine said that it is a public way but currently not used. He described the plan for the record.

Favor

No one spoke in favor of the request.

Opposed

Laura Thompson, 8 Fox Hollow Road, said she was the direct abutter to the road or proposed development. She said that she would like a clearer explanation as to what would happen to her property. Mrs. Thompson said that when she purchased her property was told the road would not be going in due to the wetland. She said that she thought her property went to the stone wall so has been utilizing the area since she purchased. Mrs. Thompson said that she feels that if allowed it will diminish the value of her property as one of the main reasons for purchasing was the ascetic view so her main concern was how much this would devalue her home and privacy. She said that she also is concerned that if the area is a public way but the Town was not responsible for maintaining who would be responsible if there were to be any flooding in the area. Mrs. Thompson said that she has been utilizing the property for over 25 years as if it were her own and now told that there would be a driveway would be going down through the property. She said that she felt that she currently owns the property through adverse possession.

Rebuttal

Attorney Germaine said that acquiring property through adverse possession is an extensive litigation issue. He said that adverse possession can not be made to municipality and if using is encroaching. Attorney Germaine said that his client has every right to put 2 acre lot subdivision here but only seeking single house lot. He said that the concern of value is edge of roadway and what the abutter currently has is a boundary of roadway in her deed. As for the flood concern issue his client is installing a driveway and any flowing water Mr. Mackey will address with his client and that the driveway will also be addressed in discussion with the Planning Board if culverts and drainage needs to be installed. Attorney Germaine said that the abutter purchased the property in 1993 and deed is clear of meets and bounds. He said prior to the Town adopting as a Class VI road it was accepted to cul-de-sac and by doing this eliminates the cul-de-sac area.

Mr. Perkins said that the abutter was concerned with property devalue and flooding. He asked if there were any culverts proposed. Mr. Mackey said that he anticipates regulations over 150' long driveway will need to be 14' wide with 2' shoulders of crushed gravel. He said that the plan be required to be shown on plan by an engineer prior to installing to mitigate any possible flooding. Mr. Mackey said that the plan submitted was not a detailed plan as the proposal is only in the preliminary stage and shows some wetlands with a proposed driveway hugging the side of which will also have a turnaround for Fire Department in the event they needed to respond to the property.

Mr. Peloquin said that he knows the property as he has surveyed it and submitted the plan for the subdivision in the front of the property. He said that he has flagged the wetlands and he described the area for the Board. Mr. Peloquin said that he felt that there would be no wetland impact.

Mr. Perkins said that Mrs. Thompson's concerns are hard to visualize. He said that Mr. Mackey has pointed out that the plan will also need to meet the local and State standards and the concerns of the abutter should be addressed to the Planning Board and.

Mr. Kelley motioned to go into deliberative session.

Seconded by Mrs. Navarro.

Vote: Unanimous.

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

Deliberative Session

Mr. Perkins reviewed the conditions for the record.

Mr. Burgess said that the condition also be made to be subject to Planning Board approval.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mrs. Morin.

Vote: Unanimous.

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

Mrs. Navarro motioned on case #18-127 Linda Rutter to Grant a variance to the terms of Article III, Section 165-9 of the Town of Derry Zoning Ordinance to approve a residential building lot on a Class VI way. 52 Lane Road PID 06058, Zoned LMDR as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Subject to new waiver of municipal liability to be recorded with the Rockingham County Registry of Deeds.**
- 3. Subject to Planning Board approval.**

Seconded by Mrs. Morin.

Vote:

Mr. Kelley: Yes.

Mrs. Navarro: Yes.

Mr. Burgess: Yes.

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

18-128 Andrew W. White & Robyn Stewart

The applicants are requesting a variance to the terms of Article VI, Section 165-47.B.4 of the Town of Derry Zoning Ordinance to allow the construction of a 15 foot by 30 foot addition less than 15 feet from the side property line at 57 Floyd Road PID 06070-003, Zoned LMDR

Timothy Peloquin, Promised Land Survey, LLC, said that he was here to represent the applicants who are also present this evening to answer any questions for the Board. Mr. Peloquin reviewed the criteria and plan for the record.

Board Questions

Mrs. Evans asked if the proposed addition would be 2 stories and if adding additional bedrooms. Mr. White said it would be a single story and it would be more of a den space than actual bedrooms. He said both sets of parents have health issues so this is just a preplan for what may someday be needed for the future if their parents needed to reside with them.

Mr. Kelley asked if it were possible to go up and reverse the design. Mr. White said that he had thought about that but then there would be stairs involved so considering the reason for the addition it was not feasible. He said that is why he had the property surveyed so would know exactly where the line was located.

Code Enforcement

Mr. Mackey provided the following information for the record:

- The applicants are seeking a variance to construct an addition (30' x 15') on the right side of the home that will encroach into the 15' setback requirement. The purpose of the addition is to provide living quarters for their aging parents.
- The home is serviced by an on-site well and septic system that has been approved for a total of 4 bedrooms. Currently, the home is being taxed as a 3 bedroom dwelling. Records indicate that the home was constructed in 2006.
- If approved, appropriate permits and inspections will be required.
- There are pictures in the file for review by the Board.

Mr. White said that the area would be designed as transitional living space and not a full apartment at this time.

Favor

No one spoke in favor of the request.

Opposed

No one spoke in opposition of the request.

Mr. Rathburn motioned to go into deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Deliberative Session

Mr. Perkins reviewed the following conditions for the record:

Mrs. Evans motioned to come out of deliberative session.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

Mrs. Evans motioned on case #18-128 Andrew W. White & Robyn Stewart to Grant a variance to the terms of Article VI, Section 165-47.B.4 of the Town of Derry Zoning Ordinance to allow the construction of a 15 foot by 30 foot addition less than 15 feet from the side property line at 57 Floyd Road PID 06070-003, Zoned LMDR as presented with the following conditions:

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

Seconded by Mr. Kelley.

Vote:

Mr. Rathburn: 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.

The Board took a short recess and reconvened at 7:59 pm

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

18-129 Jeffrey C. Moulton
Owner: Ellen G. Minzner

The applicant is requesting a variance to the terms of Article VI, Section 165-48.B.4 of the Town of Derry Zoning Ordinance to allow the replacement of an existing home and garage with less than the required front and side property line setbacks at 39 Taylor Brook Lane, PID 18019, Zoned LDR.

Jeffrey Moulton, Moulton Engineering, PLLC, said he was the applicant and reviewed the criteria and plans for the record. Mr. Moulton said that they have been in discussions with the neighbor of lot 18017 with regard to the location of the proposed septic system, and possible run off to his property and well. He said that the concerns with regard to water the owner of the property has agreed to extend the berm to the garage so as to not divert any water onto his property. Mr. Moulton said the concerns with location of the owners well there have been some discussion and it was actually located today and that the State will take care of through design to approve as they will review to determine the 75' radius and either allow or have to redesign the proposed plan. He said that the intent is to be in full compliance with the septic system. Mr. Moulton said that they have agreed to some language with regard to installing a silt fence for erosion control and also gutters to be installed and to address the grade of the land so as to not divert water onto abutting properties. Mr. Moulton said that they have also added some language of which was more of a legal matter and not purview of the Board.

Board Questions

Mr. Perkins reviewed the conditions the conditions outlined by lot 18017 for the record. He said that the 6th condition has some changes. Mr. Moulton said the 6th condition has not been agreed to as the last sentence has been revised and not had chance to review.

Mrs. Evans asked for clarification if the terms have been accepted. Mr. Moulton said yes with exception of the revision of the last sentence.

Mr. Perkins asked if the berm was to be relocating more to the garage. Mr. Moulton said yes.

The Board reviewed the Attorney Client conditions.

Mr. Perkins asked if the fence and wall along the northeast boundary would be disturbed. Mr. Moulton reviewed the item labeled picture 4 for the record.

Mr. Kelley asked if the fence would be located along the new garage and if so, he was concerned of the 4' space for a firefighter with gear on would not be able to have access with the trees and fence being so tight. Mr. Moulton described the lot layout for the record.

Mrs. Evans said that she has concerns with the condition of #6 speaking of access. Mr. Moulton said that it was with regard to deed access and that has not been agreed to at this time.

Mrs. Evans asked if the property was to be elevated before construction due to flood plain. Mr. Moulton said yes that they would be raising the foundation 2' above the 100 year flood plan so it will be 4' above grade. He described the layout for the record.

Code Enforcement

Mr. Mackey provided the following information for the record:

- The applicants are seeking approval to tear down the existing seasonal home and garage and replace them with a new home and garage. Assessing records indicate the existing dwelling was constructed in 1911.
- Due to the small size of the property, the applicants are seeking relief from side and front setback requirements. The lot size is typical for this area along Taylor Brook Lane.
- A State Shoreland Permit is also required and has been submitted to the State of N.H. Department of Environmental Services (DES) for their review where items such as stormwater management will be reviewed. A new septic system is also being designed and must receive State approval.
- Due to the proximity of the 100 year flood zone, documentation will need to be provided that the new structure has been elevated above the flood zone.
- There are pictures in the file for review by the Board.

Mr. Burgess said that he has reviewed the two letters and that the only difference he sees is with the last line condition of which he feels would be difficult to meet during construction due to the confined space.

Favor

No one was present in favor of the request.

Opposed

Mr. Knight, 119 North Shore Road, said that he was lot number 18017 and also own property in conjunction with the right-of-way through the subject property. He said that he received the letter of the meeting on Monday and was unable to get an engineer to sit with him before this meeting. He said that he has struggled with the plans as some of the plans show garage a different size and a new plan shows garage to be 24' x 24' and a sunroom to be located 13' from the lot line where it previously showed 18'.

Mr. Mackey said that the applicant had submitted plans showing 18' and has recently submitted a revised plan showing 13' as the previous plan was submitted with an error. He said the revised plan should govern previous plan as also previous plan shows garage 20' x 24 so may need to have clarification for the record. He said the drawing of the septic system is the last page in the packet.

Mr. Knight said he has spoken with Mr. Moulton and have received some clarification with regard to the garage size and that matter has been resolved. He said that he just wants to make sure that the Board is reviewing the same plans as he has.

Mr. Perkins said that the plan that the Board is reviewing is the one with the engineer's stamp of develop conditions.

Mr. Knight reviewed his concerns as outlined on the information submitted to the Board from Attorney Bronstein for the record. He said that he heard during the testimony that there would be 2 bedrooms on the 2nd floor and one on the first but the septic design is only for a 2 bedroom septic. Mr. Knight said that it was stated that all properties were alike which is untrue as other homes have garages across street. He said that larger homes have water problems and that he was not opposed to the new home just concerned of his rights.

Mr. Perkins asked if a certified foundation plan would be required. Mr. Mackey said yes that a certified is required once a foundation is in place and will need to meet all conditions of variance if approved.

Mr. Burgess asked why a certified plan was not required before a foundation was installed. Mr. Mackey said that in cases of being close to setbacks it is strongly suggested to stake out prior to pouring of concrete.

Mr. Perkins asked how would conditions play in Code Enforcement with the issuance of an occupancy permit. Mr. Mackey said that if the Board makes conditions that they will be reviewed and enforced before an occupancy permit is issued.

Mr. Perkins asked if the concerns with regard to the septic system was governed by the State and if not met unable to proceed. Mr. Mackey said yes that the applicant will need to have a State approved septic design and Shoreland permit before a building permit will be issued.

Rebuttal

Mr. Moulton said that the previous drawings submitted labeled sheet 2 had transposed numbers of 18'1" where should have been 13'1" and correct garage dimensions on sheet 3 have no bearings for Board. He said that Herbert Associates had surveyed lot prior and found it to be 113' & 117' and that the deeds are over 100 years old. He said that he does not have the history of the property but does trust the surveyor.

Mr. Perkins said that to be aware that deeds of such age read different than that of today and if approved will be held to today's language.

Mr. Corbett said that there was some concern with the right-of-way and that Mr. Knight did not want a truck to block it and that the fence in the middle is confusing. Mr. Moulton said that the fence was there for privacy and rights-of-way are legal agreements and discussions between lawyers are not of the Boards purview of jurisdiction.

There was some discussion with regard to the right-of-way and conditions set forth by abutter and applicant of which document to approve.

Mr. Kelley motioned to go into deliberative session.

Seconded by Mr. Corbett.

Vote: Unanimous.

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

Deliberative Session

Mr. Perkins said that the Board has accepted the amended plan sheet 2 of 3 showing a 20' x 24' garage and amended plan with relation to setback of 13' 1".

Mrs. Evans said that the proposal appears to be more pleasing and more conforming than what is currently there.

Mr. Perkins reviewed the conditions as follows for the record:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Subject to obtaining a permit from the State as required by the Shoreland Water Quality Protection Act.**

3. **Subject to recording of Release of Municipal Liability & Responsibility with the NH Rockingham County Registry of Deeds.**
4. **Subject to variance conditions presented by David Knight.**

Mrs. Navarro motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Mr. Kelley motioned on case #18-129 Jeffrey C. Mouton, Owner: Ellen G. Minzner to Grant a variance to the terms of Article VI, Section 165-48.B.4 of the Town of Derry Zoning Ordinance to allow the replacement of an existing home and garage with less than the required front and side property line setbacks at 39 Taylor Brook Lane, PID 18019, Zoned LDR with the following conditions:

1. **Subject to obtaining all State & Town permits and inspections.**
2. **Subject to obtaining a permit from the State as required by the Shoreland Water Quality Protection Act.**
3. **Subject to recording of Release of Municipal Liability & Responsibility with the NH Rockingham County Registry of Deeds.**
4. **Subject to variance conditions presented by David Knight.**

Seconded by Mrs. Evans.

Vote:

Mrs. Evans: Yes.

Mr. Kelley: Yes.

Mrs. Navarro: Yes.

Mr. Corbett: 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

Mrs. Navarro motioned to approve the minutes of October 18, 2018 as written.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Other Business

Mr. Kelley said that the Salvation Army was seeking bell ringers this year and that they actually pay people who ring.

Adjourn

Mr. Burgess motioned to adjourn.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Adjourn at 9:09 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

Approval of Minutes November 15, 2018

Mr. Kelley motioned to approve the minutes of November 1, 2018 as written.

Seconded by Mrs. Navarro.

Vote: Unanimous.

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