

**TOWN OF DERRY  
ZONING BOARD OF ADJUSTMENT MINUTES  
February 7, 2019**

**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  
Craig Corbett  
Michael Fodiman

**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 notice of fire and handicap exits and that this and all Zoning Board meetings are videotaped.

The Board introduced themselves for the record.

**19-104          Promised Land Survey, LLC  
Owner: Edwin C. Simonsen Revocable Trust**

**The applicant is requesting a variance to the terms of Article III, Section 165-9 of the Town of Derry Zoning Ordinance and an exception as provided in N.H. RSA 674:41II to allow the construction of one new dwelling on the discontinued portion of Halls Village Road at 12 Halls Village Road, PID 13001, Zoned LDR**

Timothy Peloquin, Promised Land Survey, said he was here this evening representing the owners and a letter of authorization was in the file from Mr. Simonsen as he was unable to attend this evening. Mr. Peloquin read the criteria for the record and described the location for the Board. He said that the owner owns approximately 1400 acres of which this particular track is about 300 acres that has additional frontage at Adams Pond Road along Back Chester Road. He described the request for the Board and said that he feels that the request is reasonable and will meet all other criteria.

## **Board Questions**

Mr. Perkins asked if the proposed structure was to be beyond the gate. Mr. Peloquin said yes.

Mr. Coppolo asked if Mr. Simonsen was present and who were the owners of the Trust. Mr. Peloquin said that Mr. Simonsen was in Florida and his father has past so now owned by the siblings.

There was some discussion with regards to deed and ownership.

Mr. Coppolo asked if the applicant could describe the reasoning for applicant to build on discontinued road verses building on a lot with approved frontage. Mr. Peloquin said that there was more viable privacy as the home will be constructed in a field with a 10 acre view. He said that there will also have to be an agreement drafted and recorded with the deed of municipal liability waiver.

Mr. Burgess said that the proposal is a 14' wide driveway what is the other roadway on the plan indicating. Mr. Peloquin said that it was just a pathway into the woods.

Mr. Burgess asked if there would be allowances made for fire trucks and if there was a possibility for additional homes. Mr. Peloquin said yes that there would need to provide and opening for emergency vehicles with ample turn around area. He said that as for other homes it was not known at this time.

## **Code Enforcement**

Mr. Mackey supplied the following information for the record:

- The applicant is requesting a variance to construct a single family dwelling on a portion of the large parcel that fronts on the discontinued portion of Hall's Village Road.
- Although this 300 acre parcel has frontage along Back Chester Road & Partridge Lane, the applicants are seeking to access the proposed new home from the discontinued (Class VI) portion of Hall's Village Road. Therefore, a variance is required as well as an Exception as provided in RSA 674:41 II. This will also require that a Waiver of Municipal Liability & Responsibility be recorded with the deed prior to the issuance of a building permit.
- If approved, the roadway would need to be upgraded to comply with the Town Land Development Control Regulations and Derry Fire Department standards.
- The home will be serviced by a private well and State approved septic system.
- There are pictures of the property in the file for review by the Board.

Mr. Coppolo asked if there was any intent of extending the pavement. Mr. Peloquin said no as they were seeking to keep like a woods road. He said that the Class VI road bi-secs

2 parcels that are owned by the Trust. Mr. Peloquin said that a septic design would also require the owners signature at the State N.H.D.E.S.

Mr. Perkins asked if more than one home could be built. Mr. Mackey said no that the Town rules is that only one dwelling per lot and in order to subdivide the road would have to be built to Town specifications and subdivision regulations.

Mrs. Navarro asked if the dwelling would be year round or seasonal. Mr. Peloquin said it would be a year round home.

### **Favor**

Erica Selin, 1 Lee Circle, said that the area has lots of children and that the road way was only 42' wide to Halls Village Road. If developing concerned of wetland impact later as there was a culvert across the road. Mr. Perkins said that any wetland crossing or impact would require permits from the State.

Andrew Manuse, 3 Lee Circle, said he was concerned of his driveway as the culvert that crosses his driveway was the same size as the one crossing Halls Village Road and that his concern was for possible for more flooding onto his property as he already has some water in his basement. He also said that he was concerned of the use of the roadway as he frequently enjoys walking the area. Also in the past the police have been called due to people parking there and dumping debris out in the woods.

Joseph Kalpokas, 5 Halls Village, said he was the last home on the street and wanted to know how the property was noted as number 12 if that leaves openings for seven more homes to the area. Mr. Perkins said that the request was only for one home.

Kim Dizon, 7 Lee Circle, said she was concerned of having a new road in the area and questioned if a new gate would be put up as there are several children in the area and that they frequently utilize the trail to walk on. Mrs. Dizon said if a new gate was installed would it be to keep others out of the trail.

### **Opposed**

No one spoke in opposition of the request.

### **Rebuttal**

Mr. Coppolo asked if Mr. Peloquin was aware of the flooding concern of 3 Lee Circle. Mr. Peloquin said that the proposed home is to be located approximately 850' away from the this abutter and did not feel that it would be any impact to flooding to his home.

Mr. Peloquin said that as for the trash dumping and unauthorized vehicles he felt that the home would be a betterment to the area as the owner would be policing the area on a

regular basis. Mr. Peloquin described the wetland areas for the record and said that there were no plans at this time to change the culvert as just plan on creating driveway over it.

Mr. Perkins asked if he knew the size of the existing culvert. Mr. Peloquin said he was unsure as it was not noted on the plan but suspects that it is probably a standard 18 or 20”.

Mr. Perkins asked if the concerns of the driveway width and abutter concerns could be addressed. Mr. Peloquin said that the area is currently a wooded road and would remain that with a 10’ to 12’ wide gravel base with shoulders. He said that it will stay in current use as a Class VI road and will remain open for public right-of-way just improved.

Mr. Perkins asked what would become of gate. Mr. Peloquin said that there is a gate that exists and if there were any improvements to the gate it will be per code and Fire and will also allow public to have access.

Mr. Perkins asked where the #12 address came from. Mr. Peloquin said that is what was on the GIS and that the Fire Department will review as part of the permit process.

Mr. Burgess asked if the gate was locked. Mr. Peloquin said no and he believed it was put up due to people dumping trash in the area.

Mrs. Evans motioned to go into deliberative session.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

### **Deliberative Session**

Mr. Coppolo said that he had some concern with the title issue but there was no opposition and said that the Board could possibly make a condition of clear title to be obtained prior to obtaining a building permit. Mr. Coppolo asked if there was any historical protection of stone walls.

Mr. Kelley asked if the gate was Town owned and if a 49’ right-of-way could possibly be of something later.

Mr. Mackey said that the gate should not be there and Fire will not want a locked gate there. He said that a Town road is 50’ which is close to what is required but there was no known plans at this time to any road improvements. Mr. Mackey said that as for the title concern the applicant could submit it to Code Enforcement and that he could provide to the Board for review.

There was some discussion with regard to the proposed conditions.

Mr. Perkins said that he felt that the request was reasonable and reserved use of land which would allow the owner significant use of his land.

Mr. Coppolo said that it was the largest parcel that he had ever seen before the Board.

Mr. Coppolo 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 motion on case #19-104 Promised Land Survey, LLC, Owner: Edwin C. Simonsen Revocable Trust to Grant a variance to the terms of Article III, Section 165-9 of the Town of Derry Zoning Ordinance and an exception as provided in N.H. RSA 674:41II to allow the construction of one new dwelling on the discontinued portion of Halls Village Road at 12 Halls Village Road, PID 13001, Zoned LDR as presented with the following conditions:**

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. A waiver of Municipal Liability and Responsibility must be recorded with the deed prior to obtaining a building permit.**
- 3. Proof to be provided of clear title to be submitted to Code Enforcement.**

**Seconded by Mr. Kelley.**

**Vote:**

<b>Mrs. Evans:</b>	<b>Yes.</b>
<b>Mr. Coppolo:</b>	<b>Yes.</b>
<b>Mrs. Navarro:</b>	<b>Yes.</b>
<b>Mr. Kelley:</b>	<b>Yes.</b>
<b>Mr. Perkins:</b>	<b>Yes.</b>

**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 brief recess and reconvened at 8:03pm

**19-105            Promised Land Survey, LLC**  
**Owner: Nikko Land, LLC**

**The applicant is requesting a variance to the terms of Article VI, Section 165-47.B.2 of the Town of Derry Zoning Ordinance to allow the subdivision of the property into 6 single family residential building lots with two of the lots fronting on Alyssa Drive with less than the required frontage at 45 Mill Road & Alyssa Drive, Parcel ID 06040-001, Zoned LDR**

Timothy Peloquin, Promised Land Survey, reviewed the criteria and proposed plan for the record.

**Board Questions**

Mr. Coppolo asked if the testimony provided that the owner could potentially get a 6 lot subdivision if extended Alyssa Drive. Mr. Peloquin said that more than 6 as could be a solid 8 possible 10 lot subdivision.

Mr. Coppolo asked how much feet into land would be needed. Mr. Peloquin said that there was 600' plus to the rear of the stonewall of lot line.

Mrs. Evans asked if there was the required 200' frontage per lot. Mr. Peloquin said the potential was there with waivers to wetlands etc. He said that the purpose here tonight was only to create 2 large lots verses carving up into several lots.

Mr. Rathburn asked what was the stonewalls on the property. Mr. Peloquin said they were interior walls possibly old pasture walls of which the proposed driveway would go through it and the rocks could possibly be reused on the property.

Mr. Burgess asked if they were to rearrange the frontage on Mill Road they could get more and extend the cul-de-sac to get more frontage. Mr. Peloquin said that was correct but they were seeking to protect 12.5 acre parcel as one lot and that the proposed 2 lots are possibly sold as laid out.

Mr. Coppolo asked if unable to combine frontages. Mr. Peloquin said that was correct.

**Code Enforcement**

Mr. Mackey supplied the following information for the record:

- As part of a proposed 6 lot subdivision of the 32.10 acre parcel, the applicants are requesting a variance to allow 2 of the proposed lots to front at the end of Alyssa

Drive with less than the required frontage. These 2 lots are proposed to have 27.99 feet of frontage each where 200 feet is the requirement in the Low Density District.

- The other 4 lots in the proposed subdivision will have their frontage and access on Mill Road and will comply with the 200 foot frontage requirement.
- Alyssa Drive ends in a cul-de-sac from which the driveways for the 2 lots will be constructed.
- All of the proposed lots would be serviced by private wells and septic systems.
- As a new subdivision, Town regulations mandate that fire protection be provided for the proposed new homes in the form of a cistern or residential sprinkler systems.
- If approved Planning Board subdivision approval will be required.
- There are pictures of the property in the file for review by the Board. One set shows the frontage along Mill Road, the other set shows the end of Alyssa Drive at the cul-de-sac where the 2 lots in question would front and have their access.

### **Favor**

Dennis Wiley, 122 Island Pond Road, said that he felt that this was a good plan as less houses to be constructed in the area.

### **Opposed**

Rhonda Lane, 24 Alyssa Drive, said that she understands changes but love their cul-de-sac and have spoken to the owners with regard to the proposed location of home behind their home. She said that she would rather see driveways verses having the road extended and the cul-de-sac gone. Mrs. Lane said that they are in discussions with eh owners about the proposed home location and wants some sort of assurance that they would not have it directly behind their home and all the trees cut down.

Mr. Mackey said that he had also received an email from Mr. Lane of which was in the file for the Boards review.

Mr. Perkins said that the Board was in receipt of the letter and that Mrs. Lane had also reviewed the contents of the letter.

Michel Walters, 22 Alyssa Drive, said he was opposed to the location of the proposed home as the driveway would be along the property and 24' of frontage he felt he would be directly affected. He said that he would like a stipulation on the 12 acre parcel that there would be no future development.

Chad Dow, 23 Alyssa Drive, said that that he was not opposed as not have road extended but would like to see the plan revised so no houses directly behind the existing homes.

John Royce, 53 Mill Road, said that the 12 acre parcel was of concern as area is wet and property has a pond and running brook on it so concerned with water runoff.

### **Rebuttal**

Mr. Peloquin said that the wetlands are shown on the plan and that the topography has been done and lots will meet all requirements except the frontage requirement on Alyssa Drive. He said that they have made attempts to speak with the abutters and reconfiguration of lot lines was just brought up today. He said that his client is willing to agree if approved of frontage will work with abutters on plan to reconfigure property. Mr. Peloquin said that they were only seeking 2 lots off the existing cul-de-sac and the lot lines can be adjusted but will need to respect wetlands. He said that the proposed plan will still need Planning Board approval before anything can actually occur. Mr. Peloquin said that they walked the property with the Lane's as knowing driveway location would be off property and offered to put in a 50' no cut buffer for protection and they could extend to the other lot line and protect the wetland with the exception of the driveway.

Mr. Perkins asked if they were offering a 50' green buffer except for the driveway. Mr. Peloquin said yes and that they have no problem with a stipulation of no future subdivision.

Mr. Perkins said that the Board hears the abutters are currently in negotiation with the applicant and that the Board also seeks to work with the applicant and address abutters concerns. He said that the question before the Board is to the frontage requirements to be acceptable as presented.

Mr. Coppolo said that the Board could grant a variance to reduced frontage and that the Planning Board would be the lot line buffer requirements.

There was some discussion with location of the proposed home location and buffer.

Mr. Kelley asked if there could be a right-of-way off of Mill Road to give frontage to the other lot. Mr. Peloquin said that prospect was considered but it would be a longer driveway and more wetland impact and the home would still be located in approximately the same location.

Mr. Perkins said that he sees the balance and feel people understand the open space concept. He said that the conflict is of 2 non-conforming lots and feel that the applicant knows what to work on with abutters. He said that Mr. Peloquin would like the opportunity to not be locked into lot size configuration and would like the opportunity to reconfigure lot lines as to be able to be in good faith with the neighbors.

Mr. Coppolo said that the motion is to grant as presented so hearing testimony of lot size may change he feels uncomfortable not knowing what the proposed plan would be. Mr.



Peloquin said that they are walking the property this weekend and trying to make it work with the neighbors.

Mr. Coppolo asked if seeking to subdivide as have the first buyer and possible second buyer for the the other lot later. Mr. Peloquin said yes.

Mrs. Navarro motioned to go into deliberative session.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

### **Deliberative Session**

Mr. Perkins said hearing testimony that the applicant needs time to revise conflicts and that once a variance is granted unable to retract. He said that the Board could vote and structure motion to accommodate concerns.

Mr. Kelley said that it was a non-traditional to vote on something that was not defined out. He said that he understands the concerns and that the applicant is willing to work with the abutters but there is not an actual plan to vote on if it is subject to change.

Mrs. Navarro said she agrees that once voted to agree it is supposed to be as presented.

Mrs. Evans said that she would prefer to see the proposed changes as the applicant is creating 2 non-conforming lots.

There was some discussion with regard to the proposed 2 lot access and proposed changes.

Mr. Perkins said that the Board could come out of deliberative session and choose to table to the next meeting.

Mr. Kelley motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Mr. Perkins motioned to table the discussion to the next Board meeting to allow abutters and applicant to review and come back to the Board with a plan of resolve.

Mrs. Evans motioned to move the Chairs motion.

Seconded by Mr. Coppolo.

Vote: Unanimous.

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

Mr. Peloquin asked if the plan required to be renoticed. Mr. Perkins said no that it was just continued to the next meeting of February 21, 2019.

### **Approval of Minutes**

Mr. Kelley motioned to approve the minutes of January 17, 2019 as written.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

### **Other Business**

Mr. Perkins informed the Board members that if their term was currently up on March 31, 2019 that they needed to submit a letter of intent to Town Council if they wished to seek reappointment.

### **Adjourn**

Mrs. Navarro motioned to adjourn.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

Adjourn at 9:02 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

**Approval of Minutes February 21, 2019**

Mr. Kelley motioned to approve the minutes of February 7, 2019 as written.

Seconded by Mrs. Evans.

Vote: Unanimous.

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