

**TOWN OF DERRY**  
**ZONING BOARD OF ADJUSTMENT MINUTES**  
**February 21, 2019**

**Members Present**

Lynn Perkins, Chairman @ 7:55 pm  
Heather Evans, Vice Chair  
Stephen Coppolo, Secretary  
Randall Kelley

**Members Absent**

Michelle Navarro

**Alternates Present**

Donald Burgess  
Evan Rathburn  
Crystal Morin  
Craig Corbett

**Alternates Absent**

Michael Fodiman

**Code Enforcement**

Robert Mackey

Mrs. Evans 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.

Mrs. Evans informed the public that the first case on the agenda was going to be heard last so Mr. Perkins could be present.

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

**19-106            Thi My Hanh Nguyen**  
**Owner: Douglas & Rosalind Hartley**

**The applicant is requesting a variance to the terms of Article XII, Section 165-101.3.A.11 of the Town of Derry Zoning Ordinance to allow the installation of 2 exterior signs, each one to be greater than 10 square feet with one of them to be internally illuminated at 91 West Broadway, PID 26066-001, Zoned OBD**

David Tanis & Thi My Hanh Nguyen, applicants, were present. Mr. Tanis said that Douglas & Rosalind Hartley were also present this evening if there were additional questions. He read the application criteria and described area for the record.

## **Board Questions**

Mrs. Evans asked if the 84" X 80" sign would be illuminated. He said the side sign was not illuminated but would like both to be.

Mr. Burgess asked why not leave the signage where located as it is visible where presently located. Mr. Tanis said that was discussed but where they were seeking to give the building a face lift the intent was to have the signage on the false walls.

Mr. Kelley asked if the intent was to have 2 illuminated signs and rebuild the facer to have the signs located on the façade not jutting out. Mr. Tanis said that was correct.

Mr. Corbett asked if the side sign was similar to front sign. Mr. Tanis said that it was a bit smaller but would not exceed 62 square feet.

Mr. Corbett asked Mr. Mackey what the current sign size was. Mr. Mackey said he was unsure of exact size but it was substantially larger.

Mr. Kelley said that the request was for only 1 sign to be illuminated. Mr. Mackey said that they were proposing to have the front sign illuminated but seeking to have both. He reviewed the OBD sign requirements for the record. Mr. Mackey said that if the Board allows both to be internally illuminated it would need to be clarified in the motion.

Mr. Tanis said that he would like to have both signs internally illuminated.

Mr. Corbett asked if Stevens Auto was a separate building and same owner. Mr. Mackey said no that they were 2 separate buildings with separate owners. Mr. Mackey said that there is no connection to get from one to the other.

Mr. Coppolo said that he felt that the applicant was seeking to beautify the area and is willing to put money into the area.

## **Code Enforcement**

Mr. Mackey supplied the following information for the record:

- The applicant is requesting a variance to the sign regulations located in Article XII, Section 165-101.3.A.11 of the Zoning Ordinance that deal with signs located in the Office Business District (OBD) where the property is located.
- Signs in this zoning district are limited to one sign per business which cannot exceed 10 square feet in size and which cannot be internally illuminated.
- As part of an overall façade renovation for a proposed new restaurant (Sun Asian Bistro), the applicant would like to install 2 signs – one on the front of the building and the other on the left side of the building. Each sign will exceed 10 square feet in area and the front sign is proposed to be internally illuminated. (see the building elevations and sign details in your packets). Hence, the variance request to section 165-101-3-A.11.

- The applicant has submitted the required application to the Planning Office for the business and has received a building permit for the façade renovation (not including the signs).
- There are pictures of the property in the file for review by the Board.

### **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 Mr. Corbett.

Vote: Unanimous.

Mr. Corbett, Mr. Burgess, Mr. Kelley, Mr. Coppolo, Mrs. Evans

### **Deliberative Session**

Mrs. Evans said that the motion would need to state the change of two signs illuminated.

Mr. Kelley said that he felt that this will bring other businesses to the area and there is a need for this in the Town of Derry. He said that this area will always be something such as a restaurant. Mr. Kelley said he believed other types of businesses would need to come before the Board.

Mr. Corbett asked if this business leaves this area would another business need to come here for their own signage.

Mr. Burgess said that Derry Pizza is located up the street but have a different type of sign.

Mr. Mackey said that Derry Pizza was zoned General Commercial so different zoning requirements. He said that if this business or different business were to alter or move they would need to come back before the Board.

There was some discussion with regard to size requirements.

Mr. Kelley motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Corbett, Mr. Burgess, Mr. Kelley, Mr. Coppolo, Mrs. Evans

**Mr. Coppolo motioned motion on case #19-106 Thi My Hanh Nguyen, Owner: Douglas & Rosalind Hartley to Grant a variance to the terms of Article XII, Section 165-101.3.A.11 of the Town of Derry Zoning Ordinance to allow the installation of 2 exterior signs, each one to be greater than 10 square feet with one of them to be internally illuminated at 91 West Broadway, PID 26066-001, Zoned OBD as presented with the following conditions:**

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Variance for 2 signs to be internally illuminated.**
- 3. Neither sign to exceed presented dimensions.**

Seconded by Mr. Kelley.

**Vote:**

<b>Mr. Coppolo:</b>	<b>Yes.</b>
<b>Mr. Kelley:</b>	<b>Yes.</b>
<b>Mr. Burgess:</b>	<b>Yes.</b>
<b>Mr. Corbett:</b>	<b>Yes.</b>
<b>Mrs. Evans:</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.**

It was noted for the record that Mr. Rathburn and Mrs. Morin would sit for the following case.

**19-107            BR-10 Lot, LLC  
                     Care of Bob Allen**

**The applicant is requesting an Equitable Waiver to the terms of Article VI, Section 165-48.B.4 of the Town of Derry Zoning Ordinance to allow for a portion of the house, currently under construction, to be located within the front yard setback of 35 feet at 51 Steele Road, PID 04084-005, Zoned LDR**

Karl Dubay, Dubay Group, said he was also here with Sam and Bob Allen was also present.

Mrs. Evans asked if Mr. Allen could please authorize for the record for representation.

Robert Allen, owner, said he gives permission for Karl Dubay to represent him this evening.

Mr. Dubay said that Steele Road was a new road which the house is currently under construction with an approved septic design on record. they were here to request an Equitable Waiver. He reviewed the required criteria and plan submitted for the record. Mr. Dubay said that Mr. Mackey discovered the encroachment when he was reviewing the building file and brought it to the attention of the builder. Mr. Dubay said that this was not something done on purpose and was a complete oversight on their behalf as found out the guy measured off the curb line and not the actual lot line. He described the area for the Board.

### **Board Questions**

Mrs. Evans said that testimony given was that the measurement was taken off the curb line. Mr. Dubay said yes and described where the curb line was located. He said that this portion of the home was the bedroom side of the home and not the garage side.

Mr. Corbett asked if the measurement was 20'. Mr. Dubay said no that it was 15'9". He said that the home was placed at an angle due to the homeowner wanted the placement of the structure to be close to the road so not to have a large front yard.

Mrs. Morin asked how much square footage would be lost if have to remove.

Mr. Coppolo said he calculated it to be 384 square feet.

Mrs. Evans asked if there would be any damage from snow plowing or snow. Mr. Dubay said no as there is a granite curb along the roadway so he did not feel that there would be any damage from plowing.

### **Code Enforcement**

Mr. Mackey supplied the following information for the record:

- The applicant is requesting an equitable waiver (not a variance) to allow a portion of the dwelling, which is currently under construction, to be located less than 35 feet from the front property line.
- The encroachment was not discovered until the dwelling was framed and the rough plumbing and electrical had been installed. At the time of the foundation inspection, the required certified location plan had not been submitted and it was not until after a subsequent review of the building file that the encroachment was discovered.

- In determining whether to grant an equitable waiver the Board must find the criteria as listed in the application have been met. These criteria are mandated per NH RSA 674:33-a, a copy of which has been submitted by the applicant.
- It would appear that due to a steep drop off on the right side of the property, the house & garage were set at an angle which resulted in the encroachment.
- There are pictures of the property in the file for review by the Board.

### **Favor**

No one spoke in favor of the request.

### **Opposed**

No one spoke in opposition of the request.

Mr. Dubay said that he wanted to say that he wished to apologize for this oversight.

Mr. Kelley motioned to go into deliberative session.

Seconded by Mr. Rathburn

Vote: Unanimous.

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

### **Deliberative Session**

Mr. Kelley said that he felt that this was an honest mistake.

Mrs. Evans reviewed the conditions for the record.

Mr. Coppolo said that he believed it also was an honest mistake and can see why thought it was further away.

Mr. Kelley motioned to come out of deliberative session.

Seconded by Mrs. Morin.

Vote: Unanimous.

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

**Mr. Coppolo motioned on case #19-107 BR-10 Lot, LLC, Care of Bob Allen to Grant an Equitable Waiver to the terms of Article VI, Section 165-48.B.4 of the Town of Derry Zoning Ordinance to allow for a portion of the house, currently under construction, to be located within the front yard setback of 35 feet at 51 Steele Road, PID 04084-005, Zoned LDR with the following conditions:**

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

**Seconded by Mr. Kelley.**

**Vote:**

<b>Mr. Coppolo:</b>	<b>Yes.</b>
<b>Mr. Kelley:</b>	<b>Yes.</b>
<b>Mr. Rathburn:</b>	<b>Yes.</b>
<b>Mrs. Morin:</b>	<b>Yes.</b>
<b>Mrs. Evans:</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 7:58pm

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

**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**

Neil Cartier, Promised Land Survey, said he was here along with Daniel Themeles of Nikko Land, LLC. Mr. Cartier said that the applicant was personally vested in the proposed request and was seeking to build his home on lot A and another friend is interested in lot B to do the same. He said that they were seeking to do a small conservative subdivision and feel that the proposal is a modest plan and no further subdivision is proposed. Mr. Cartier reviewed the plan for the record and said that the plan shows a 50' green space of which shows the nature of keeping the neighbors concerns in mind.

## **Board Questions**

Mr. Coppolo asked if it was the intent to eliminate the cul-de-sac. Mr. Cartier said no. He said that the intent was to bring 2 driveways off the existing cul-de-sac.

Mr. Coppolo said that he believed that a cul-de-sac was land not currently owned. Mr. Cartier said that they would possibly deed to the Town.

Mrs. Morin said that she recalled testimony that the neighbors were adamant that they wanted to keep the cul-de-sac.

Mr. Coppolo asked if the wetlands could be described. Mr. Cartier said that the wetlands were jurisdictional wetlands and that the proposed plan meets the requirements for a subdivision but he was unsure of the exact classification.

Mr. Corbett asked how would the proposed driveways work. Mr. Cartier said that lot A would require wetland crossing permits and that lot B would be angled a bit to allow for emergency vehicle access.

Mr. Coppolo asked if the 50' buffer was of mature growth. Mr. Cartier said the 50' buffer growth was already present and intent is to leave as much as possible but they will remove any dead trees if pose any danger.

Mr. Burgess asked what was the boundary distance off the cul-de-sac. Mr. Cartier said he believes it was 50'.

Mr. Perkins asked if he could describe the other option of lot off Mill Road. Mr. Cartier said that they fall 17' short of frontage for a Mill Road access and there would be more impact to wetlands so this proposal is laid out best for minimal impact to wetlands.

## **Favor**

No one spoke in favor of the proposed request.

## **Opposed**

Rhonda Lane, 24 Alyssa Drive, said that she was not in opposition but she has lived in the area for 26 years and that the wetlands are wet all the time and over the summer months they are still muddy. She said that she enjoys the area and understands change and not opposed to the variance but want to work out compromise with the developer as lot B is directly behind her home and feels that some items still need to be worked out. She said that they have walked the property and feel that they will still see the proposed home so asking for the home not to be located directly behind her home as they have an inground pool and feel that their privacy will be lost. She also said that she believed that she owns out to the grassy area of the cul-de-sac if that area would change as do not want to lose land. Mrs. Lane said that they were the last house on Alyssa Drive and do have



water in their back yard and do not want more water in their yard from this proposed development.

Mr. Mackey said that the cul-de-sac would not change that there is a 50' right-of-way that is proposed to have 2 driveways located off of it. He said that the original cul-de-sac was designed to be temporary but the developer will be changing 50' of the area.

Mr. Perkins said that the Board was unable to delineate where the home will be placed but the Planning Board may address more on the placement due to the wetlands.

Dennis Wiley, Island Pond Road, said that he likes the proposed plan as it is lower density than what it could be.

Chad & Richard Dow, 23 Alyssa Drive, said that they were in favor of the variance as lease density use of the property and still provides for wooded area.

### **Rebuttal**

Mr. Cartier said that the concern of lot B's driveway and house location will be set further back with a 50' green space buffer so should provide for the pool area privacy and that the proposed home will be approximately 200' away from the area. He said that the Planning Board will be reviewing the wetland layout and subdivision plan.

Mr. Burgess asked what was the type of vegetation growth of the 50' buffer and what would it be like in the winter months. Mr. Cartier said that there was a lot of birch and young growth and feel that during the winter there would still be a dense natural buffer.

Mr. Corbett asked if lot B house would front to lot A or opposite. Mr. Cartier said that he believed that it would be more towards Alyssa on a due west view.

Mrs. Evans motioned to go into deliberative session.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

### **Deliberative Session**

Mr. Perkins said that he questioned the possibility of the lot coming in from Mill Road where there would be creating 2 non-conforming lots off of Alyssa Drive so the question arises is it a reasonable use for the land owner. He said that a variance request for Mill Road the placement of a home could have gone anywhere. Mr. Perkins said that he felt that this was more balance from property owner and modify the conservation area.

Mr. Kelley said that he agreed.

Mr. Coppolo said that he felt that it was a well thought out plan and understood the lot B being an issue but house is proposed to be 250' away from pool. He said that one lot is proposed with 6 acres and other with 12 acres where they could have more lots. Mr. Coppolo said it was a respectful plan as could have easily extended cul-de-sac and created more house lots. He questioned if they could possibly make condition of no further subdivision.

Mr. Perkins said that he did not believe possible once a house was built but could entertain a condition.

Mr. Kelley said he felt it was a good idea but don't feel needed as if change will need to come back before the Board for another variance.

Mr. Coppolo said that he agreed as trying to squeeze another driveway off Mill Road would create more impact on wetlands and that this layout was more pleasing.

Mr. Corbett said that he felt a condition that 26 Alyssa Drive home could be located more to the left would create less of a concern for the neighbor and not as visible to pool area.

Mr. Kelley said that he did not believe could mandate as it was beyond the scope of the Board.

Mr. Perkins reviewed the conditions for the record.

Mrs. Evans motioned to come out of deliberative session.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

**Mr. Coppolo motioned on case #19-105 Promised Land Survey, LLC, Owner: Nikko Land, LLC to Grant 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 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. Evans:** Yes.  
**Mr. Coppolo:** Yes.  
**Mr. Kelley:** Yes.  
**Mr. Corbett:** No. Feel creates unnecessary hardship for abutters.  
**Mr. Perkins:** Yes.

**The application was Granted by a vote of 4-1-0. 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 February 7, 2019 as written.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

**Correspondence**

Mr. Perkins asked if there was any information available to the annual spring conference.

Mr. Mackey said that he had received an email but no actual dates yet but will forward information as soon as it becomes available.

**Other Business**

Mr. Perkins informed the Board that the next meeting will be in a different room due to a special council meeting to be held the same night.

**Adjourn**

Mr. Kelley motioned to adjourn.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Adjourn at 8:37 pm

Minutes transcribed from notes & tape:  
Ginny Rioux  
Recording Clerk

**Approval of Minutes March 7, 2019**

Mr. Coppolo motioned to approve the minutes of February 21, 2019 as written.

Seconded by Mrs. Morin.

Vote: Unanimous.

Mrs. Morin, Mr. Corbett, Mr. Rathburn, Mrs. Navarro, Mr. Coppolo, Mrs. Evans.