

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
March 2, 2017

Members Present

Lynn Perkins, Chairman
Allan Virr, Vice Chairman
Heather Evans, Secretary
Donald Burgess

Members Absent

Stephen Coppolo

Alternates Present

Randall Kelley
Joseph Carnevale

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.

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

17-106 Jeannette Talbot

The applicant is requesting a variance to the terms of Article VI, Section 165-45B.1.a.ii of the Town of Derry Zoning Ordinance to add a second living unit to the property which contains less than the required lot area for the district (17,424 square feet provided where 20,000 square feet is required). Parcel ID 37115, 5 South Main Street, Zoned MHDR

Jeannette Talbot, owner, read the five criteria and letter of explanation for the record.

Ms. Talbot said that the house was 184 years old and purchased with the intention of having someone live upstairs to help out with the payments. She said at the time it had a kitchen and a bath when she purchased but it was removed so they could perform some much needed renovations so went to the Code Enforcement Office to obtain permits and were informed that they needed a variance due to the size of the second floor.

Board Questions

Mr. Perkins asked if Mr. Martin had done the drawings that had been submitted. Mr. Martin said yes.

Mr. Burgess asked where the doorway to the second dwelling would be located as he did not see when reviewing the plans.

Mr. Perkins asked Mr. Mackey if an accessory door was required. Mr. Mackey said no. He said that the applicant was here as the proposed use is quite a bit more than what is currently allowed for the Town's accessory use of 600 square feet.

Code Enforcement

Mr. Mackey provided the following information for the record:

- The applicant is requesting approval to convert the second story of the existing home to a second living unit.
- The square footage of the proposed unit exceeds the allowance for an accessory apartment and, therefore, would create a two-family dwelling.
- The property is located in the Medium High Density Residential Zoning District (MHDR) which allows two-family dwellings provided that the lot size is 20,000 sq. ft. when serviced by municipal water & sewer.
- This property, which is serviced by municipal water & sewer, is approximately 17,424 sq. ft. Therefore, a variance to the lot area requirement is being requested. All other aspects of the proposal must comply with the appropriate regulations.
- If approved, appropriate permits and inspections will be required.
- There are pictures of the property in the file for review by the Board.

There was some discussion with regard to size of second floor and size of lot with regard to the Town of Derry Zoning Ordinance requirements.

Mr. Virr asked if there was to be an addition built to the second floor. Mr. Martin said that when they purchased the property it had a kitchen and bath. During repairs he removed them with the intention to rebuild a 11' x 12' bath and remodeled kitchen but it would keep within the same footprint.

Mr. Perkins asked if there would be a porch added on. Mr. Martin said that would be in the future and he did not know if it would need a variance for a porch so he put it on the plan to show their intentions.

Mr. Virr said that in the notes provided that the home had some problems with pinning's on the first floor. Mr. Martin said that the home has 5 different roof lines so his drawings show that adding the second level to the area where the bathroom would be would help line up the roof better.

Mr. Virr asked if the home was currently sitting on blocks. Mr. Martin said no that it was sitting on dirt and that there was a very small crawl space under.

Mr. Virr asked if the proposed accessory unit would be the whole second floor. Ms. Talbot said yes and it would have its own entrance and a hallway where there will be a French door. She said that she agrees with Mr. Mackey about the 2-family but has concern for increase of taxes.

There was some discussion with regard to the surrounding abutting area and parking.

Favor

Kevin Toomey, 3 South Main Street, said that he has resided at his residence for 20 years and that his property wraps around the applicants property. He said that there have been several families in and out of the home over the past several years and that the second floor has always been utilized as an apartment. He said that since the applicant has moved in they have performed a lot of much needed repairs to the home which has vastly improved the property. Mr. Toomey said that he was in favor of the applicant being granted a variance as they have done wonderful improvements.

Opposed

No one spoke in opposition of the request.

Mr. Carnevale motioned to go into deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous

Mr. Carnevale, Mr. Burgess, Mrs. Evans, Mr. Virr, Mr. Perkins

Deliberative Session

Mr. Virr said that the property was short 2,500 square feet and that he believed the concept of the ordinance was to eliminate overcrowding but did not see that there would be any danger with this applicant's request. He said that Mr. Martin's intent is to continue to improve the home and the direct neighbor appears to be happy with what has been done so far.

Mr. Perkins asked if there were any concerns regarding exceeding the 600 square feet for accessory use.

Mr. Burgess said that there was testimony from the abutter stating that the property has always been a 2-family or apartment type property. He said that he did feel there would

be any noticeable changes to the property with granting the variance. He said that the applicant has done a lot of improvements already to the exterior of the property.

Mr. Perkins said that he has also seen changes in the home for the better. He said that the motion should include the standard condition of obtaining all State & Town permits and inspections.

Mrs. Evans said that she feels that the applicant has addressed the criteria and feels it is a reasonable use for the property.

Mr. Carnevale asked if the porch addition should be included so the applicant does not need to come back.

Mr. Virr said that they could not do that as there was no presentation to that request.

Mr. Perkins said that the porch addition may not need to come back to the Board if it meets all the setback requirements.

Mr. Carnevale motioned to come out of deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous

Mr. Carnevale, Mr. Burgess, Mrs. Evans, Mr. Virr, Mr. Perkins

Mrs. Evans motioned on case #17-106, Jeannette Talbot to grant a variance to the terms of Article VI, Section 165-45B.1.a.ii of the Town of Derry Zoning Ordinance to add a second living unit to the property which contains less than the required lot area for the district (17,424 square feet provided where 20,000 square feet is required). Parcel ID 37115, 5 South Main Street, Zoned MHDR as presented with the following condition:

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

Seconded by Mr. Carnevale.

Vote:

Mr. Virr:	Yes.
Mr. Burgess:	Yes.
Mr. Carnevale:	Yes.
Mrs. Evans:	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.

Mr. Perkins said next on the agenda are three requests for rehearing's pertaining to the same case. He said that he would like to reverse the agenda and take up the request from Neil & Gail Hitter and Peter C. Mize.

Mr. Perkins asked Mr. Kelley to sit for the following request.

Mr. Perkins said that he would like a motion to dismiss the Peter C. Mize case. He said that he has reviewed the letter and the first conflict is that Mr. Mize signed on Neil & Gail Hitter's letter and the second finding is a redundant submission. Mr. Perkins said that he would take input to address Mr. Mize request as separate.

Mr. Virr motioned on rehearing request from Peter C. Mize to dismiss case.

Seconded by Mr. Burgess.

Mr. Perkins said that removing the Mize request from the hearing was for the fact of redundancy.

Mr. Virr said that there were no new facts presented on the request from Mr. Mize.

Vote: Unanimous

Mr. Kelley, Mr. Burgess, Mrs. Evans, Mr. Virr, Mr. Perkins

Neil & Gail Hitter & Peter C. Mize

Re-Hearing Request of case #17-104 Robert Allen By his attorneys Beaumont & Campbell, PA - Variance to the terms of Article VI, Section 165-48.A of the Town of Derry Zoning Ordinance to construct a self-storage facility consisting of 138 units in four (4) buildings with an office structure for an on-site manager at the property at 343 Island Pond Road, Parcel ID 17002, Zoned LDR

Mr. Virr said that he has read the request and that he finds reiteration of testimony of the storage units and did not find any new evidence presented that had not been reviewed during the meeting.

Mr. Perkins said that there was also a submittal from Attorney Campbell and that the Board is not looking to try case this evening but to establish if there is any new evidence presented that would warrant the Board to bring back for a review. Mr. Perkins said that the Hitter's addressed several points in their request for rehearing. He said that the zoning criteria of the area was reviewed and it seemed as though the Hitter's may have been asking for a forced merger but considering case law history that was ruled against in the higher courts disallowing forced mergers.

Mr. Kelley said that he felt that the reasoning for zoning is more to bring conformity as pertaining to subdivision out back and not to have properties merged. He said that he feels that there needs to be some guidelines applied to this sort of process.

Mr. Virr said that the Board could not get into retrying the case and they need to find if there is any evidence brought forth to be considered for granting a rehearing. He said that the subdivision behind the property did not enter into consideration.

Mr. Perkins said that the zoning criteria of the area was reviewed and also case history and in reading the comments made from the Hitter's may possibly warrant a rehearing but then it goes back to being a forced merger.

Mr. Burgess said that during testimony of the original hearing the Board was told of the subdivision on the rear property. He said that he did not see how the two fall into the same standards. Mr. Burgess said that there are very few properties in the area that have 3 acres and that the property directly next door is an automobile repair shop and others are single family homes on 1 acre or less and that the area also connects to Route 111 and Route 28 so the area will always have traffic and Bartlett Road is less traveled than Island Pond Road. He said that he did not find any new evidence presented that would warrant a rehearing.

Mr. Kelley said that he felt this area is the result of the rezoning of the area to 3 acres and that other homes in the area were built 20-30 years ago plus. He feels that there is a reasoning for debate not question as to put back and stick with home and LDR zoning.

Mrs. Evans motioned to Grant to Neil & Gail Hitter a Re-Hearing Request of case #17-104 Robert Allen, variance to the terms of Article VI, Section 165-48.A of the Town of Derry Zoning Ordinance to construct a self-storage facility consisting of 138 units in four (4) buildings with an office structure for an on-site manager at the property at 343 Island Pond Road, Parcel ID 17002, Zoned LDR

Seconded by Mr. Burgess.

Vote:

Mr. Kelley:	Yes.
Mr. Burgess:	No. Feel the Board was correct in their vote.
Mr. Virr:	No. Feel the Board already reviewed information presented.
Mrs. Evans:	No. No new evidence presented to warrant a rehearing.
Mr. Perkins:	No. No new evidence presented.

The rehearing request was Denied by a vote of 4-1-0.

Town of Derry Town Council

Re-Hearing Request of case #17-104 Robert Allen By his attorneys Beaumont & Campbell, PA - Variance to the terms of Article VI, Section 165-48.A of the Town of Derry Zoning Ordinance to construct a self-storage facility consisting of 138 units in four (4) buildings with an office structure for an on-site manager at the property at 343 Island Pond Road, Parcel ID 17002, Zoned LDR

Mrs. Evans said that she has questions regarding what was presented from the original testimony which implied there were abutting business's vs single family residences ranging in 1-5 acres. She said that she would like more information and clarification with regard to this matter.

Mr. Burgess said that the property was stated as being flat and open which is not true as the property is not flat and feel that the Board had reviewed testimony with traffic and noise and feel all items brought forth in the request were discussed at original hearing and do not find any new evidence presented.

Mr. Virr said that in reading Mr. Serge's presentation there are numerous references to case law. He said that he himself was not versed in case law and would possibly like to rehear the case as there are too many legal quotes cited and he is uncomfortable with not knowing the facts so he feels the case should be reheard.

Mr. Perkins said that he also sees citing the cases with the 5th criteria remark and other comments made that possibly could warrant a rehearing.

Mr. Burgess asked if there was a possibility to have our Counsel review before proceeding.

Mr. Kelley said that he tried to look up some of the case laws that have been cited and said that the Board may need to rehear the case.

Mr. Perkins said that he would like to see both attorneys return on March 16, 2017 as a continuation of the original case and not a denovo case.

Mr. Perkins motioned to continue the case as opposed to a denovo case.

Seconded by Mrs. Evans.

Vote: Unanimous

Mr. Kelley, Mr. Burgess, Mrs. Evans, Mr. Virr, Mr. Perkins

Mr. Mackey said that as point of clarification that abutter's and legal notice for the paper will need to be made.

Mrs. Evans motioned to Grant the Town of Derry Town Council a Rehearing Request of case #17-104 Robert Allen By his attorneys Beaumont & Campbell, PA - Variance to the terms of Article VI, Section 165-48.A of the Town of Derry Zoning Ordinance to construct a self-storage facility consisting of 138 units in four (4) buildings with an office structure for an on-site manager at the property at 343 Island Pond Road, Parcel ID 17002, Zoned LDR.

Seconded by: Mr. Kelley.

Vote:

Mr. Kelley: Yes.

Mr. Burgess: No. Do not see any new evidence presented that would warrant a rehearing.

Mr. Virr: Yes

Mrs. Evans: Yes.

Mr. Perkins: Yes.

The Re-hearing Request was Granted by a vote of 4-1-0.

Approval of Minutes

Mr. Virr motioned to table the approval of the minutes of February 16, to the next meeting.

Seconded by Mr. Kelley.

Vote: Unanimous.

Mr. Carnevale, Mr. Kelley, Mr. Burgess, Mrs. Evans, Mr. Virr, Mr. Perkins.

Other Business

Mr. Mackey said that he had received an email with regard to the Annual Spring Conference of which no agenda was attached. He said that registration usually opens in March and that he will forward the email to the Board members.

Adjourn

Mr. Kelley motioned to adjourn.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Kelley, Mr. Carnevale, Mr. Burgess, Mrs. Evans, Mr. Virr, Mr. Perkins.

Adjourn at 8:09 pm

Minutes transcribed from tape:
Ginny Rioux
Recording Clerk

APPROVAL OF MINUTES April 6, 2017

Mr. Burgess motioned to approve the minutes March 2, 2016 as amended.

Seconded by Mr. Coppolo.

Vote: Unanimous.

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