

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
May 16, 2019

Members Present

Lynn Perkins, Chairman
Stephen Coppolo, Secretary
Michelle Navarro

Members Absent

Randall Kelley
Heather Evans

Alternates Present

Donald Burgess
Evan Rathburn
Craig Corbett
Allan Virr

Alternates Absent

Crystal Morin

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.

Mr. Perkins introduced the Board members and Code Enforcement Staff for the record.

Mr. Perkins said that this evenings agenda is requesting a Re-hearing of case #19-109 and he would be recusing himself and that Mr. Coppolo would sit as Chair.

19-109 Stephen Vadney & Shannon L. Vadney

Re-Hearing Request of Variance denied on April 4, 2019 to the terms of Article VI, Section 165-45.1.A of the Town of Derry Zoning Ordinance to allow the construction of a four (4) unit multi-family building after the subdivision of the property at 5 Ferland Drive PID 31017-001, Zoned MHDR II

Mr. Coppolo informed the Board that that they have received a request for a re-hearing of case #19-109 Stephen Vadney & Shannon L. Vadney.. He said that the Board needs to find if there is anything in the materials submitted that would warrant the Board to reopen the case.

Mr. Coppolo said that he has reviewed the letter from Attorney Muller who is a different attorney than who originally presented the case and disagree with statement that the

notice of decision did not sufficiently state the Boards denial. Mr. Coppolo reviewed RSA 676:3 for the Board.

Mr. Coppolo asked if Mr. Virr, Mr. Burgess, Mr. Rathburn and Mrs. Navarro would sit on this case as they were the voting members on the original hearing. He also asked if Mrs. Navarro would act as secretary.

Mr. Coppolo said that in reading the letter submitted from Attorney Muller it states that what we did was not good enough and each member has a copy of the notice of decision and the minutes of which clearly states how each member voted and 4 out of 5 members noted no finding of unnecessary hardship. He said that he also does not agree with the assessment of the vote being unlawful and unreasonable as the quoted Hill case is not relevant to this case as the applicant purchased the property in 2014 and for what ever reason chose not to develop at that time and since the time of purchase the zoning has changed in the area. He said it's the applicants burden to prove why the Board got their decision wrong.

Mr. Virr said that he has also reviewed the information submitted and has found no error in law or judgement made by the Board in their decision.

Mr. Burgess said that he also has reviewed the information provided and has reviewed the notice of decision. He said that the applicant knew of the restrictions on this property before as they had appeared before the Board with a purchase and sales agreement of which was also denied and then came before the Board in April with another proposal at which time the Board reviewed their case. Mr. Burgess said that he feels that statement of the Boards decision was unlawful and unreasonable to have no basis as the Board reviewed the information submitted and did not find unnecessary hardship presented.

Mrs. Navarro said that she also agrees with Mr. Virr and Mr. Burgess's statements.

Mr. Rathburn said that he also agrees with the Chair's opinion and that of Mr. Virr's assement and he does not believe that the Board did not err in it's decision. He said that the applicant relied on the Town for work to be done does not show hardship.

Mrs. Navarro motioned on case #19-109 Re-Hearing Request of Variance denied on April 4, 2019 to the terms of Article VI, Section 165-45.1.A of the Town of Derry Zoning Ordinance to allow the construction of a four (4) unit multi-family building after the subdivision of the property at 5 Ferland Drive PID 31017-001, Zoned MHDR II

Seconded by Mr. Virr.

Mr. Coppolo said that all motions are made in the affirmative and that a yes vote would be to rehear the case and a no vote would be to deny the rehearing request. Also, a vote of no needs to state a reason.

Vote:

Mr. Rathburn: No. Do not feel the Board erred in its decision original decision.
Mrs. Navarro: No. For the same reason as stated by Mr. Rathburn.
Mr. Virr: No. Do not feel the decision of the Board was unlawful or illegal.
Mr. Burgess: No. Do not feel the decision of the Board was unlawful or unreasonable.
Mr. Coppolo: No. Do not feel the decision was unlawful or unreasonable and do not find the letter to have any information to warrant a rehearing.

The application was Denied by a vote of 0-5-0. The recourse would be to appeal to Superior Court.

Adjourn:

Mr. Burgess motioned to adjourn.

Seconded by Mr. Coppolo.

Vote: Unanimous.

Mr. Virr, Mr. Corbett, Mr. Rathburn, Mr. Burgess, Mrs. Navarro, Mr. Coppolo, Mr. Perkins.

Adjourn at 7:19 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

Approval of Minutes June 6, 2019

Mr. Corbett motioned to approve the minutes of May 16, 2019 as written.

Seconded by Mr. Rathburn.

Vote: Unanimous.

Mr. Virr, Mr. Corbett, Mr. Rathburn, Mr. Burgess, Mrs. Navarro, Mr. Coppolo, Mr. Perkins