

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
June 20, 2019

Members Present

Lynn Perkins, Chairman
Randall Kelley
Michelle Navarro

Members Absent

Heather Evans
Stephen Coppolo

Alternates Present

Donald Burgess
Evan Rathburn
Crystal Morin
Craig Corbett
Allan Virr

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. Burgess and Mr. Virr would sit for the following case.

19-119 Andrew Lane
OBO: Luke Lane

The applicant is requesting a Variance to the terms of Article VI, Section 165-45.A of the Town of Derry Zoning Ordinance to allow the owner to permit commercial parking in the rear yard of the property at 5 Aiken Street, PID 26041-001, Zoned MHDR

Andrew Lane, owner, read the application criteria and described map for the record. He said that he was requesting permission to park in this area where not allowed due to zoning.

Board Questions

Mr. Perkins asked if there would be some sort of fencing where if item #2, referencing trees not growing, was the same as his case a year earlier from his previous case. Mr. Lane said no and reviewed the plan for the record.

Mr. Perkins said that there needed to show how the 5 criteria fit into what seeking. Mr. Lane said that in the original application was 86 West Broadway and were permitted an asphalt 10' wide area which required a 10' buffer and was granted a variance for a 5' buffer with a fence. Mr. Lane said now here for a variance for the rear portion of the property which also requires a buffer and #82 West Broadway which is shown as the blue area on the map for parking.

Mr. Perkins asked if the green section would also be utilized for parking. Mr. Lane said no that it was currently an unknown tract of land.

There was some discussion with regard to the green area of the map and where the parking was proposed.

Mr. Lane reviewed the landmarks drawn on his plan of what was pertinent to the 5 Aiken Street application and what was approved for his former case as well as what he may request in his next pending case.

Mr. Burgess said that criteria #3 of substantial justice did not match as the abutter requested arborvitae and you requested a fence. He said that the buffer was already removed as was with the previous case and at that time it was stated that there would be no parking on the alternate access so why done and not requested variance before now. Mr. Lane said he was here as a result of a Code Enforcement action stated what he had done to the rear of the property was not allowed.

Mr. Burgess said that when the previous case was here about the arborvitae now here for additional parking. Mr. Lane said he had called and inquired if a permit was required to remove trees and was told no permit was required and was told he could remove trees and thought he could park around back so went ahead and proceeded with the installation of a parking area.

Mr. Burgess asked why the trees died. Mr. Lane said that the left side does well and are beautiful but the right side does not grow so well so removed and feel it was possibly due to the larger trees shading them and not getting enough sun.

Mrs. Navarro asked if cars access the rear from the right side. Mr. Lane said yes but not wide enough.

Code Enforcement

Mr. Mackey supplied the following information for the record:

- The applicant is requesting approval to allow a commercial parking lot on a residentially zoned parcel (5 Aiken St) and to allow access to that lot within the designated buffer zone on 84 West Broadway.
- Last October it was discovered by this office that the applicant had a parking lot installed in the rear of 84 West Broadway as well as 5 Aiken Street. This work was done without the required approvals having been obtained from the Town. At that time, the applicant was advised that if the parking lot were to remain then he would need to apply for the appropriate zoning and planning approvals and have a site plan prepared by a professional. After several months and multiple meetings, a basic plan was submitted

Mrs. Morin asked if the neighborhood rezoning of Aiken Street went through. Mr. Mackey said that it was still at the Planning Board stage and may not be heading in the original direction so as of today it has not been rezoned.

Mr. Perkins asked if the zoning were to change if the property of 5 Aiken parking would change. Mr. Mackey said if the property were to be changed to OBD then it would possibly be allowed but it is currently a different property.

Mrs. Morin asked if the applicant would be able to possibly purchase the land and not need a variance. Mr. Mackey said that if the property at 5 Aiken had enough land and not make it non-conforming it could possibly have a lot line adjustment but still have the area on the map that is unresolved that needs to be cleaned up.

Mr. Virr said that the area was possibly that of an ally way of which is no man's land. Mr. Mackey said that was a possibility.

Mr. Virr asked how much width would be left after vinyl stockade fence was installed. Mr. Lane said there would be 10' to the building and 5' to buffer.

Mr. Virr asked what was the width of a fire engine. Mr. Kelley said it was wider than that.

Mr. Virr asked why it mattered to have asphalt parking. Mr. Lane said he felt discriminated against as there was not enough parking for employees and customers. He said that Aiken Street has commercial parking for a palates business and a church.

There was some discussion with regard to establishing clarity to the two properties and adjoining property boundaries and zoning changes.

Mr. Perkins asked if the property was OBD when built. Mr. Mackey said yes and has the site plan available if the Board wished to review.

Mr. Lane said that the lot is not big enough for parking so feel that his businesses are suffering due to the lack of parking.

Mr. Perkins asked how many tenants were currently in the building. Mr. Lane said that Northpoint has one level, CPA has 5 offices, Lawyer has 1 and Chiropractic has 1 with a former massage office empty. He said that the parking is 14 spaces.

There was some discussion with regard to widths of commercial driveway's and buffer requirements.

Favor

No one spoke in favor of the request.

Opposed

Pat & Terry Ryan, 82 West Broadway, manager & broker at 82 West Broadway. Mrs. Ryan said that there were a number of inconsistencies with what Mr. Lane has stated as Northpoint's lease says they can keep trucks there. She said that during the winter they asked if they could use the side as they didn't want to hit the side of the building. Mrs. Ryan said that they have owned the property for 43 years with the right-of-way and feel that they are changing what the right-of-way was intended for that has existed over 60 years. Mrs. Ryan read her statement that she had submitted to the Board for the record.

Mr. Ryan said that the building that Mr. Lane owns has a full sprinkler system. He said that the property on Aiken Street is currently owned by his son and if was a different resident that they would not be here as they would not have allowed this to happen.

Mr. Perkins asked if the easement ran all the way down the property. Mrs. Ryan said no as there was previously an old depilated garage that they had removed and planted grass in its place. She said that she saw the trees being cut down and did not have a problem with them parking there but does not agree to them utilizing the right-of-way to access the rear of their property.

Mrs. Navarro asked if the picture of the parking area shown did, they have to drive across the parking spaces on 82 West Broadway to access the rear portion of their property. Mrs. Ryan said yes and that she felt that the right-of-way was never extended to 5 Aiken Street as it was intended for the former residential property to gain access to not for commercial property that is currently built there. Mrs. Ryan said that Mr. Lane is now seeking to keep his existing curb cut and also utilize their driveway to access the rear portion of his lot over an old right-of-way. She said that the former owner, the Riley's used to drive down the right-of-way to access their small residential home as they did not have a curb cut on West Broadway. She said that the house was torn down when the Cooper's purchased the property and built the commercial building and also had obtained a curb cut on West Broadway.

Lisa Joslin, 15 Aiken Street, said that the re-zoning of Aiken Street was decided last night that it would not be rezoned at this time. She said that in 2003 the Coopers built the building to the rear of the property as the neighbors were concerned with parking so it was designed to have all the parking in the front of the building along with 15' to the rear

and sides would be a buffer. Mrs. Joslin asked what protects the neighbors if the property were to be sold would the variance be void and wanted to know what protected the neighborhood of another business abutting Aiken Street. She wanted to know how much land was going onto the Aiken Street property.

Mr. Perkins said that he believed the applicant was seeking 15'. Mr. Mackey said that there was a certified location plan in the file of 84 West Broadway and proposed plan shows the gravel lot to be 50' wide so 20-30' would be going onto the Aiken Street property.

Mrs. Joslin said that there were also no other businesses on Aiken Street as stated by the applicant. She said that there was a church but no one parked on the street and also that the police restrict on street parking. Mrs. Joslin said that she was also concerned that the other neighbor was not present tonight in opposition to the request.

Stephen Koralishn, 7 Aiken Street, asked if the area was to be asphalt as concerned with run off and if the fence would stay where it is.

Mr. Perkins said that the area is gravel at this time and asked if the property would require a permit to pave the area. Mr. Mackey said that they do not have paving permits at this time. He said that the applicant will need to address drainage at the Planning Board stage and that Public Works likes to see paved area so any plan will need to show post run off will not exceed pre-run off. Mr. Mackey said that if approved would be up to the Planning Board to decide.

There was some discussion with regard to what would be addressed at the Planning Board level.

Chris Joslin, 15 Aiken Street, asked if the commercial property would allow landscape company to put equipment there during snowstorms. Mr. Mackey said no that it was not allowed as it is for offices only. He said that the landscape company currently has been allowed to build on Ashleigh Drive so will be relocating there.

Mr. Joslin asked if another landscape company could park on the West Broadway property. Mr. Mackey said no.

Rebuttal

Chris Lane, co-owner, said that it was not their intention to upset their neighbors. She said that if there was an issue that they could come and talk to them. Mrs. Lane said that the parking that they have created in the rear of their building is for overflow parking as during tax season clients are coming and going. She said that they have made the area gravel as aware of the runoff. Mrs. Lane said that they removed the arborvitaes because they were dead and serving no buffer. They removed the trees so as to clean up and improve the property on Aiken Street and will continue to improve the property as they have resided and reroofed it and the inside has been remodeled. Mrs. Lane said that they will be installing a vinyl fence that matches the other side and it is maintenance free and will take care of the bushes that are not doing well.

Mr. Lane read the right-of-way description on his deed for the record. He said that he did speak with Pat Ryan with regard to his intention and offered some parking in pack when needing to access to plow the area. Mr. Lane said that he was trying to run a business on Route 102 and have an issue with parking so he took action as needed to provide parking for his tenants and was unaware that he was doing anything wrong only doing what needed to do to alleviate his parking problem.

Mr. Perkins asked when was the purchase of the property and intention. Mr. Lane said that he purchased the property 3 years ago. He said that the previous owner had tenants that had left and was told that they had signed a lease with Northpoint for occupancy of the 2nd floor.

Mr. Kelley said that when Northpoint leaves then then there would no longer be the burden of parking in the rear. He asked how many parking spaces were allowed on the original plan. Mr. Mackey said it was designed for 14 which was calculated by the square foot of unit.

Mr. Kelley said that he felt that 14 spaces was more than sufficient for parking and if all the tenants taking up parking spaces then poor planning on their part for not allocating for customer parking. Mr. Lane said that he was just trying to be good neighbors.

Mr. Corbett said that in reading the right-of-way in the deed does not show how access was to rear of building. He said if grant the rear parking area and if someone were to park in the right-of-way and there was a need for emergency equipment how would they gain access to get to the rear of the building. Mr. Lane said that if requirement is 5' of buffer to building there is an issue of fire safety but if allow variance will have 15' and 35' to rear access which he felt was safer.

Mr. Perkins said that fire safety of 5' to 15' was not the issue. He said that the right-of-way issue contested and never know if abutter will ever have a vehicle parked in the area. Mr. Lane said no but it would be nice to have a larger buffer area.

Mr. Ryan said that he has nothing against the Lane's but if grant the request they currently have 15 parking spaces and if grant then they will only have 13 spaces as it will eliminate 2 of their spaces and he felt that the right-of-way intent was only for residential purposes. He said that a 3 year owner and a 40 year owner change is unfair to them and that the safety issue currently mentioned the building is serviced by a sprinkler system.

Mr. Burgess said that he did not see anything in the right-of-way that allows access to the rear of the building.

Mrs. Navarro motioned to go into deliberative session.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

Deliberative Session

Mr. Burgess said that the parking lot on Aiken Street has no right to have business parking on the property regardless of a fence and he did not see anything in the deed that stated right-of-way was to access the rear of the building.

Mrs. Navarro said that she did not know how they would access the rear of the building if 82 West Broadway did not allow them use of the right-of-way.

Mr. Perkins said that the right-of-way does not spell out intent of easement and access does not meet the requirements.

Mr. Kelley said that he felt that the intent was to maintain bushes and property not to access other property. He said that Planning Board review to be made as a condition as stated by Mr. Mackey. Mr. Kelley said that he knew that the side access was going to become a driveway at the previous meeting.

Mr. Perkins said that the Board needed to focus on the 5 criteria.

Mr. Virr said that he was concerned with substantial justice as he did not see what abutter property and laws in effect over 50 years ago have with relation to newer building.

Mr. Kelley said that if an arborvitae was not doing well then should dig up and plant another. He said a fence was appreciated but original intent was arborvitae planting.

Mr. Virr asked if this would be required to go to the Technical Review Board. Mr. Mackey said yes as the first step is to TRC then to the Planning Board with a site plan.

Mr. Burgess said that he did not see any unnecessary hardship as hears they do not have enough parking and seeking to move things to fit better for himself. He said that if lot #44 neighbor builds a fence where would that leave him and there was no right-of-way to Aiken Street.

Mr. Virr said that the Board needs to focus on the 5 Aiken Street not necessarily substantial justice as is claimed for both properties and if granted problem could leave 5 Aiken Street with undersized lot which could affect future owner of property.

Mr. Kelley said that this would not be happening if the two properties were not related.

Mr. Perkins reviewed the conditions for the record. He said that the Board needs to reflect to 5 Aiken and address criteria.

Mr. Virr motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Mr. Kelley motioned on case #19-119 Andrew Lane. OBO: Luke Lane to Grant a Variance to the terms of Article VI, Section 165-45.A of the Town of Derry Zoning Ordinance to allow the owner to permit commercial parking in the rear yard of the property at 5 Aiken Street, Zoned MHDR, PID 26041-001 as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Subject to Planning Board Site Plan Review.**
- 3. Subject to review by Technical Review Committee**

Seconded by Mrs. Navarro.

Vote:

Mr. Kelley:	No. Find to be in contrary to public interest.
Mr. Burgess:	No. Not in the spirit of the ordinance is not being observed.
Mr. Virr:	No. Feel variance would not be contrary to public interest because it would not improve fire safety and as it would not allow fire lane around building nor fire lane to 5 Aiken Street. Substantial justice fact that the two properties have similar characteristics regarding buffers and parking it does not apply to 5 Aiken Street.
Mrs. Navarro:	No. For the same reasons as stated by Mr. Virr.
Mr. Perkins:	No. Do not see to be in the public interest by granting expanded commercial parking into 5 Aiken Street. Do not believe the spirit of the ordinance is being observed and also question the value to surrounding properties to be diminished.

The application was Denied by a vote of 0-5-0. 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.

**19-120 84 West Broadway Revocable Trust
Owner: Andrew & Christine Lane, Trustees**

The applicant is requesting a variance to the terms of Article VI, Section 165-34.H of the Town of Derry Zoning Ordinance to allow the waiver of the 10 foot arborvitae buffer zone at the rear and side of the building to allow access to the parking in the rear yard of 5 Aiken Street at 84 West Broadway, PID 26045, Zoned OBD

Mr. Perkins said that the next case was to do with plantings and asked the applicant if they would like to continue or withdraw so as not to jeopardize and come back to the Board at a later date.

Mr. Lane said that he wished to postpone this case at this time.

Mrs. Navarro motioned to postpone case 19-120 84 West Broadway Revocable Trust, Owner: Andrew & Christine Lane, Trustees request of a variance to the terms of Article VI, Section 165-34.H of the Town of Derry Zoning Ordinance to allow the waiver of the 10 foot arborvitae buffer zone at the rear and side of the building to allow access to the parking in the rear yard of 5 Aiken Street at 84 West Broadway, PID 26045, Zoned OBD.

Seconded by Mrs. Morin.

Vote: Unanimous.

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

The application was Granted a continuance 5-0-0 to be presented at time of convenience and could be withdrawn at his convenience.

Approval of Minutes

Mr. Corbett motioned to table the approval of the minutes of June 6, 2019.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

Other Business

Mr. Perkins said that an addendum was handed out to the Board Members to the Land Use Regulations.

Mr. Mackey said that there is a conflict with Boards regularly scheduled meeting on July 18, 2019 as Town Council has scheduled a special meeting on that day.

Mr. Perkins said he would like a motion to hold a special meeting on July 11, 2019 as the Boards meeting in July instead of July 18, 2019.

Mrs. Navarro motioned to hold a Zoning Board meeting on July 11th instead of July 18th.

Seconded by Mrs. Morin.

Vote: Unanimous.

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

Adjourn

Mr. Burgess motioned to adjourn.

Seconded by Mr. Rathburn.

Vote: Unanimous.

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

Adjourn at 8:45 PM

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

APPROVAL OF MINUTES July 11, 2019

Mrs. Navarro motioned to approve the minutes of June 20, 2019 as amended.

Seconded by Mr. Burgess.

Vote: Unanimous.

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