

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
July 11, 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
Allan Virr

Alternates Absent

Craig Corbett

Code Enforcement

Robert Wentworth

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 asked to have a moment of silence to recognize the passing of a former Zoning Board Member David Thompson.

Mr. Virr and Mr. Burgess said that Mr. Thompson was a valued member to the Zoning Board for a number of years and will be sadly missed.

It was noted for the record that Mr. Kelley would step down and Mr. Rathburn would sit for the following case.

19-121 Richard E. & Doris B. Rand

The applicant is requesting a Variance to the terms of Article III, Section 165-25.d & e of the Town of Derry Zoning Ordinance to allow the construction of a single story detached accessory dwelling unit of approximately 1300 sq. ft. with a 2 car garage at the property at 145 Chester Road PID 12028, Zoned LDR

Kevin Coyle, said that he was representing Mr. & Mrs. Rand who were also present this evening along with his wife Kathryn. Mr. Coyle read the application criteria for the record. Mr. Coyle said the Rands have lived in Town over 80 years and have been residing on the Chester Road property over 66 years. He said that the property was formerly a farm and in the 1990's it was subdivided and the Rand's kept 2.25 acres with their existing home. At the time of subdivision, the zoning allowances was 1 acre lots and since that time zoning has changed to 3 acres per lot. Mr. Coyle said the Rand's were seeking to build a single detached 1300 square foot home with handicap accessibility hence the reason for being larger than the allowed 800 square feet. He said that the property has access to water and would be on its own private septic system.

Board Questions

Mr. Virr asked what the current acreage was. Mr. Coyle said it was 2.25 acres of which today's zoning requires 3 acres per lot to subdivide. He said that the surrounding properties were 1 to 1.5 acre lots.

Mr. Virr asked when was the zoning changed. Mr. Wentworth said he believed it was around 1993 as a vast zoning change happened around that time.

Mr. Burgess said that was stated the use was allowed but based on 674.73 of the ordinance states that it is not allowed. Mr. Coyle said that he meant to say that accessory dwellings were allowed.

Mr. Burgess said that accessory dwellings were allowed but to be attached with a common door. Mr. Coyle said that was correct but the existing home is unable to accommodate attaching due to the layout of the dwelling.

Mr. Virr asked if the accessory was proposed as detached. Mr. Coyle said yes and the Board has granted same use on Beaver Lake Road and another in another area in the last 2 years.

Mr. Coppola said speaks to the unnecessary hardship being economics but why not subdivide the property. Mr. Coyle said that they thought about possibly subdividing as they have enough frontage but not the acreage. He said that he felt that this was the least objectionable plan. Mr. Coyle said that if the Board wished they would withdraw and come back with a request for subdivision variance request.

Mr. Kelley said that the applicant would have 2 buildings on one property would be their burden if ever go sell. He said that this would be more controlled verses subdividing.

Mr. Coppola asked why would they not be able to attach. Mr. Coyle said that the existing structure is over 80 years old and sits almost on the lot line and the surrounding area has the driveway, well or garage so building an addition would make near impossible.

Mrs. Evans asked if the easement in the front would pose any affect on building. Mr. Coyle said no as would only be coming through with a driveway and easement would remain.

Mr. Perkins said prior approvals are not president and that they were also containment in size. He asked why request was larger than the 800 square foot allowance. Mr. Coyle said that 800 square feet is very small and the Rands are used to a larger area and proposal is a 2 bedroom 2 bath home.

Kathryn Coyle said that they were proposing a 2 bedroom 2 bath home and creating space large enough to allow for handicap accessibility. She said a small pedestal bath would not accommodate someone with special needs and space needed for this type of allowances.

There was some discussion with regard to structure layout proposal

Code Enforcement

Mr. Wentworth supplied the following information for the record:

- The applicant is requesting approval to construct a 1300 sq. ft. detached accessory dwelling unit on the property.
- Per Article III, Section 165-25.d & e of the Zoning Ordinance accessory dwelling units are required to be attached to the main dwelling and are limited to be a maximum of 800 sq. ft. of living space. Therefore, the variance(s) are being requested.
- The area is serviced by private wells and septic systems.
- The property is located in the Low Density Residential Zoning District (LDR) which requires a minimum of 3 acres and 200 feet of frontage. Therefore, the property cannot be subdivided.
- If approved, appropriate permits and inspections will be required.
- There are pictures in the file for review by the Board.

Mr. Coyle said that there was not a lot of frontage on Chester Road but have 450' of frontage on a Town approved Road.

Favor

Scott Savard, 1 Londonderry Road, asked if there were any plans of what the structure would be and location and if the existing home would be removed. He also asked if there could be a possible subdivision after.

Mr. Coyle said that the plans were to leave the existing home would remain and build new home with a garage. He said there were no plans to subdivide as the lot did not have the current requirements for the zoning to subdivide.

Mr. Coppolo said that the property would be deeded together.

Mr. Burgess said that the zoning was currently 3 acres per lot and that the applicant only has 2.25 which was not enough to subdivide so request is for 2 houses on 1 lot and accessory requires one owner to be occupied.

Diane Baraket, 1 Heather Lane, said she has resided in the area since 1993 when Heather Lane was built. She said that 1300 square foot ranch style home was not an unreasonable request as 800 square feet is like a trailer. Ms. Bar said that the request was not unreasonable as existing home is over 100 years old and not wheelchair accessible and a new home would be cozier and is in favor of granting their request as they would be improving their property.

Mr. Coppolo asked when purchased and how much land did, she have. Ms. B said that her home was built in 1993 and she purchased in 1994.

Philip Litchfield, 4 Heather Lane, said that he had not seen the plans and recently received the notice and wanted to know if proposed home would be accessed from Heather Lane and what the street numbering would be. He said he would not have a problem with the proposal if same lot and same address.

Mr. Wentworth said proposal is to access onto Heather Lane and that the Fire Department would be addressing the street numbering.

Mr. Savard said that he has no objection to building of another residence on the property as they are doing the best, they can with what they have.

Opposed

Jeffrey Jussif, 143 Chester Road, said that their homes were close together and that their home was close to the road their motion light goes off constantly has headlights and cars in his rear yard. Mr. Jussif said that in the winter they could see everything and would prefer not to see another home in his back yard. He said he builds ADU's and that they could easily build handicap accessibility in the 800 square foot allowance and live comfortably and did not need 2 bedrooms or 2 bathrooms or a garage.

Rebuttal

Mr. Coyle said that the proposed house would be located to the far right of the property and not seen from abutters yard. He said that they purchased the home with road there and that the Rand's home was older. Mr. Coyle said that one bath is not enough sometimes so need 2.

Mrs. Navarro asked if the 2 car under how would it be one floor living. Mr. Coyle said that the lot slopes down and would love to attach to have one level. He said that they are having an engineer review the area and if can attach will do if engineer said it can be done.

Mr. Virr said that a 2 car under would require stairs so how would they get to living area and as a previous chair has said in the past that now were written says have to have a garage. Mr. Coyle said that they would do all that they can to get 1 level of living area and will make accommodating for the Rands.

Mrs. Evans motioned to go into deliberative session.

Seconded by Mr. Rathburn.

Vote: Unanimous.

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

Deliberative Session

Mr. Perkins said that he understood the Rand's direction and desires as later in years and wish to have relief and comfortable living conditions. He said that he was concerned with how many variables of the request the Board was looking at as stated by Mr. Wentworth. The Board is seeing a detached use, 1300 square feet, whole separate septic system, not expanding into existing living dwelling so not singular issue but several prong request.

Mr. Coppolo said he felt the request was very well presented and does blend with neighborhood however the question of unnecessary hardship of property. He said whether you like the plan or not is not the law and not hardship.

Mrs. Navarro said that she felt that the property should be subdivided and on its own property.

Mr. Coppolo said that if subdivided would create school impact not like Island Pond this proposal just fits with neighborhood.

Mr. Rathburn said the unnecessary hardship runs with the land and the zoning changed.

Mr. Perkins said the zoning change creates the avenue for reason to be here presenting timeline hardship.

Mrs. Evans said that she was sympathetic with applicant but stuck on the hardship as currently have an existing 1500 square foot structure and seeking another which would make more non-conforming.

Mr. Coppolo asked if accessories were allowed to be detached.

Mr. Perkins said no that they are only allowed to be attached to the existing dwelling. There was some discussion with regard to accessory dwelling requirements.

Mr. Coppolo asked if the request was granted what would prevent them building a larger size dwelling.

Mr. Wentworth said that when the office receives the plans for construction and they are not as presented the permit would not be issued. He said for example if the variance were to be granted and the applicant submitted plans that calculate to be 100 square feet over than what was approved the permit would be denied and the applicant would have to resubmit a plan that meets the variance. Mr. Wentworth said that the plans would be reviewed and approved to how it is supposed to be built.

Mr. Rathburn said that granting would be making 2 properties non-conforming.

Mrs. Navarro motioned come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Mr. Coppolo motioned on case #19-121 Richard E. & Doris B. Rand to Grant a Variance to the terms of Article III, Section 165-25.d & e of the Town of Derry Zoning Ordinance to allow the construction of a single story detached accessory dwelling unit of approximately 1300 sq. ft. with a 2 car garage at the property at 145 Chester Road PID 12028, Zoned LDR as presented with the following conditions:

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

Seconded by Mrs. Navarro.

Vote:

Mrs. Navarro: Yes.

Mr. Coppolo: Yes.

Mrs. Evans: No. Do not feel it meets the spirit and intent of the ordinance and no unnecessary hardship has shown.

Mr. Rathburn: Yes.

Mr. Perkins: No. Addressed concerns on 3 points as not worried of the frontage on Chester Road. Feel the hardship aspect has 3 prongs being oversized, detached and separate septic. Better if presented with plan more specific as a subdivision.

The application was Granted by a vote of 3-2-0. 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

Mrs. Evans motioned to approve the minutes of June 6, 2019 as written.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

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

Other Business

Mr. Perkins informed the Board that a letter from FEMA informing the Board that there would be a meeting on July 17, 2019 in Manchester.

Adjourn:

Mr. Burgess motioned to adjourn.

Seconded by Mr. Coppolo.

Vote: Unanimous.

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

Adjourn at 8:04 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

Approval of Minutes August 15, 2019

Mr. Perkins motioned to approve the minutes of July 11, 2019 as written.

Seconded by Mr. Coppolo.

Vote: Unanimous.

Mrs. Morin, Mr. Corbett, Mr. Burgess, Mrs. Navarro, Mr. Coppolo, Mrs. Evans, Mr. Perkins