

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
September 19, 2019

Members Present

Lynn Perkins, Chairman
Stephen Coppolo, Secretary
Randall Kelley
Michelle Navarro

Members Absent

Heather Evans

Alternates Present

Donald Burgess
Allan Virr

Alternates Absent

Craig Corbett
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.

The Board members introduced themselves.

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

19-125 Dawn V. Merrill Revocable Trust
Dawn V. Merrill

The applicant is requesting an equitable waiver to the terms of Article VI, Section 165-46.C.4 of the Town of Derry Zoning Ordinance to allow an existing attached shed to be located less than 15 feet from the side property line at 30 Coles Grove Road, PID 51019, Zoned MDR

Dawn Merrill, owner, read her application criteria for the record. She said that she removed the shed in 2012 due to carpenter ants and replaced in 2016 but did not realize that it was a one year rebuild where it was considered as non-conforming. Mrs. Merrill said that she has been working with Mr. Mackey since she was informed of the issue.

Board Questions

Mr. Perkins asked about the 4 year gap. Mrs. Merrill said yes that they started building the shed in 2012 and finished somewhere in 2013.

Mr. Kelley said that he understood reason here.

Mr. Burgess asked if the shed is in the same location as before. Mrs. Merrill said yes and also has a door on it.

Mr. Virr said 28 years meets the 10 year requirement but being removed over a year may be an issue.

Mr. Coppolo said words in ordinance are confusing as what ignorance of law. Mrs. Merrill said she never thought about it and had never done an addition before.

There was some discussion of where moved from.

Code Enforcement

Mr. Mackey supplied the following information for the record:

- The applicant is requesting an equitable waiver to allow an existing, attached shed, rebuilt in 2016, to remain on the property being located less than 15 feet to the side property line.
- The situation was brought to the attention of this office by the abutter at 28 Coles Grove Road.
- The owner was advised that they would need to remove the shed or seek relief from the Zoning Board of Adjustment. They have applied for an equitable waiver and, therefore, must show the Board that they meet the 4 required criteria.
- If approved, a building permit as well as State Shoreland approval, must be obtained by the applicant.
- There are pictures in the file for review by the Board.

Mr. Kelley asked if possibly less troublesome to get permit where not established. Mr. Mackey said it may but need to show impervious areas.

Mr. Virr asked if the shed predated act. Mr. Mackey said the original one yes but removed and not put back in a year so feel requires a DES permit.

Mr. Burgess asked if DES found there before may not change impervious surface. Mr. Mackey said he was unsure of what DES would determine.

Mr. Burgess asked if there was a cement foundation. Mrs. Merrill said no that it was wood.

Mr. Coppolo asked what size was the shed. Mrs. Merrill said it was 4' x 5'.

Favor

Lynn Estes, 17 Coles Grove Road, said she was in support of the existing shed as it was an existing structure and should be allowed.

Mr. Perkins asked where was she located in reference to the applicant. Ms. Estes said she was across the street.

Opposed

Roger Caron, 28 Coles Grove Road, said that he did not believe the shed was there when she purchased as he had a copy of the assessor's sheet and it does not show the shed. He said that he had spoken with Dawn Merrill and asked why she built the shed there and why he had not received any abutters notice and was told that she rebuilt what was there and has friends that would swear that it was always there. Mr. Caron said that he feels that it is a new structure and was built while he was out of the country.

Mr. Perkins asked how long before it was brought to Mr. Mackey's attention. Mr. Caron said that he has an ongoing project at his property and spoke with Mr. Mackey and filed two complaints but could only find one in the file. He said that the issue is still unresolved and service request was filed on August 30, 2018.

Mr. Caron said that in 2019 he contacted the office as erecting a fence and encroaching on property line. He said that in January 2019 he obtained a permit for a farmer's porch and a site visit was done and he received a permit. When he asked about the neighbors shed, he was told it would be removed.

Mr. Perkins asked if during this time frame if Code Enforcement described the process. Mr. Caron said no one described any process.

Mr. Perkins said that something is being done now as the applicant is before the Board. Mr. Caron said yes and he read a message from Mrs. Merrill to Mr. Wentworth for the record.

Mr. Perkins asked if Mr. Caron was in compliance. Mr. Mackey said yes with the Shoreland but another issue was raised with regard to the garage that was rebuilt which the Board will see at the next hearing date.

Mr. Perkins said that he did not want to escalation of dispute and was it his understanding that Mr. Caron would be back in two weeks to remedy. Mr. Mackey said he did not want to get into the other case but yes Mr. Caron would be coming before the Board in two weeks.

There was some discussion with regard to fence installation and other aspects done to the property.

Mr. Burgess asked if the shed was removed in 2014 and rebuilt in 2016 why not spoken about until 2018. Mr. Caron said that he was out of the country and did not know until he returned home.

Mr. Burgess asked how did he know it was wrong. Mr. Caron said he had to go to Concord for permits and they didn't do and that the assessors record shows no record of the shed.

There was some discussion of items kept in the shed and possible hazards with regard to lot line distances.

Rebuttal

Mrs. Merrill said that letters were sent to the abutters from the zoning office not her. She said that a lot of things have been said between them and that she has original survey in 1992 which shows the structure in question on her plan.

Mr. Coppolo asked what was kept in the shed. Mrs. Merrill said her lawn mower and gas cans were kept in her garage the shed held rafts and summer things.

Mr. Kelley said it might be best if leave gas and other items of concern in the garage. Mrs. Merrill said her husband was previously a firefighter in New Jersey so is very cautious of hazards.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

Deliberative Session

Mr. Burgess said that the mortgage inspection plan does not have a date but the applicant stated purchased the property in 1992 and it was listed as being there at that time. He said that the shed is also 2' less than the house is to the lot line so he did not see where any harm would be done and that the applicant is willing not to store any gas in the shed so as to not offend neighbor.

Mr. Kelley said that the shed is what it is and everything in the area is pretty much pre-existing non-conforming. He said he was all about safety when it comes to fences installed in tight areas and that a foot makes a big difference.

Mr. Coppolo said that the neighbor's reference to the assessor's tax record not showing shed that those records are notoriously bad of getting actual things down on paper. He said that the requirement of applicant to show not done in bad faith was explained that they did not know the law that they needed to obtain permission to rebuild something that

had been there before. He said that there is no way anyone can meet the prongs of definition and he did not how to give answer to the points.

Mr. Mackey said that the language is a bit confusing and is out of the RSA books. He said that the Board needs to find standing of ordinance criteria.

Mr. Perkins said that in granting an equitable waiver the applicant would still require Shoreland DES permits and feels that Code Enforcement will do a follow up as well. He asked the Board if approval to table until permits and inspections are given.

Mr. Mackey said or language in motion to be granted when necessary permits are obtained. He said a permit by notification may be quicker for applicant to obtain.

Mr. Kelley asked if DES could take longer than 90 days. Mr. Mackey said it was possible.

There was some discussion with establishing a sunset clause of 90 days in granting the waiver request.

Mr. Mackey said that if the applicant is diligently pursuing and DES is the hold up the office can work with knowing if applicant has applied for approvals. He said if permit by notification he felt it could be reviewed within the 90 day time frame.

Mr. Perkins reviewed the conditions for the record.

Mrs. Burgess motioned to come out of deliberative session.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

Mr. Coppolo motioned on case motion on case #19-125 Dawn V. Merrill Revocable Trust, Dawn V. Merrill to Grant an equitable waiver to the terms of Article VI, Section 165-46.C.4 of the Town of Derry Zoning Ordinance to allow an existing attached shed to be located less than 15 feet from the side property line at 30 Coles Grove Road, PID 51019, Zoned MDR as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
 - 1a. Waiver Granted upon receipt of DES Shoreland and building permits within 90 days.**

Seconded by Mr. Kelley.

Vote: Unanimous.

Yes: Mr. Burgess, Mrs. Navarro, Mr. Kelley, Mr. Coppolo, Mr. Perkins

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.

Approval of Minutes

Mr. Burgess motioned to approve the minutes of September 5, 2019 as written.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

Other Business

Mr. Kelly wanted to remind everyone that Derryfest was this weekend and that the annual Chili Chowder cookoff was next weekend and still looking for venders and patrons.

Adjourn:

Mr. Burgess motioned to adjourn.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

Adjourn at 8:09 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

Approval of Minutes October 3, 2019

Mrs. Evans motioned to approve the minutes of September 19, 2019 as amended.

Seconded by Mr. Kelley.

Vote: Unanimous.

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