

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
October 3, 2019

Members Present

Lynn Perkins, Chairman
Heather Evans, Vice Chair
Stephen Coppolo, Secretary
Randall Kelley
Michelle Navarro

Members Absent

Alternates Present

Donald Burgess
Craig Corbett
Crystal Morin
Allan Virr

Alternates Absent

Code Enforcement

Robert Mackey, Code Enforcement Director

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.

19-126 Cassandra J. Harris
Owner: John & Francine Kermelewicz

The applicant is requesting a Special Exception as provided in Article VI, Section 165-48.A.1 of the Town of Derry Zoning Ordinance to allow the operation of an eyelash extension business at the residence at 31 Drew Road, PID 07068-009, Zoned LDR

Cassandra J. Harris, applicant, read her application criteria and her letter of explanation for the record.

Board Questions

Mr. Perkins asked if Mr. Kermelewicz was her father. Miss Harris said no.

Mr. Coppolo asked if the business would be operated by appointment only. Miss Harris said yes.

Mrs. Evans asked what were the hours of operation being requested. Miss Harris said that she would possibly like 10:00 am – 7:00 pm.

Mr. Burgess said that the plans submitted did not match and if they could explain the floor layout. Mr. Kermelewicz explained the proposed floor plan for the record.

Mr. Virr asked if there was any significance of the letter of authorization was not signed. Mr. Perkins said that the owner was present and stated authorization.

Mr. Corbett asked if the hours of operation were 10:00 am until 6:00 pm or 7:00 pm. Miss Harris said until 7:00 pm, five days a week.

Mr. Burgess asked what was the distance of the driveway to the lot line. Mr. Kermelewicz said it was approximately 15' from the driveway out to the road.

Mr. Coppolo asked if there was any license required from Health. Mr. Mackey said yes, from the State of NH Esthetician Bureau.

Code Enforcement

Mr. Mackey supplied the following information for the record:

- The applicant is requesting approval to operate an eyelash extension business at the residence.
- The proposal is to utilize an 8' x 10' room which has a door to the exterior of the home.
- A State license is required through the N.H. Department of Health and Human Services.
- There are pictures in the file for review by the Board.

Mr. Perkins said the request was for less than 25% use of the domicile.

Favor

No one spoke in favor of the request.

Opposed

No one spoke in opposition of the request.

Mrs. Navarro motioned to go into deliberative session.

Seconded by Mr. Coppolo.

Vote: Unanimous.

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

Deliberative Session

Mr. Perkins reviewed the conditions for the record.

Mr. Kelley said that they have a 50' driveway and are well within the 25% perimeters on the allowed space. He said that the applicant has stated that it is by appointment only so he did not see a large impact with what was being requested.

Mr. Coppolo said that a condition of hours of operation be part of the motion.

There was some discussion with regard to hours of operation.

Mr. Perkins asked for all in favor of changing the hours of operation to 8:00 am – 7:00 pm Tuesday – Saturday say I.

Vote: Unanimous.

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

Mrs. Evans motioned to come out of deliberative session.

Seconded by Mrs. Navarro.

Vote: Unanimous.

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

Mr. Coppolo motioned on case motion on case #19-126 Cassandra J Harris Owner: John & Francine Kermelewicz to Grant a Special Exception as provided in Article VI, Section 165-48.A.1 of the Town of Derry Zoning Ordinance to allow the operation of an eyelash extension business at the residence at 31 Drew Road, PID 07068-009, Zoned LDR as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Hours of operation are 8:00 AM – 7:00 PM Tuesday – Saturday**

Seconded by Mrs. Evans.

Vote: Unanimous.

Mrs. Navarro, Mr. Kelley, Mr. Coppolo, Mrs. Evans, 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.

**19-127 Roger Caron
 Shane Edward Caron**

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 garage to be located less than 35 feet from the front property line at 28 Coles Grove Road, PID 51018, Zoned MDR

Roger Caron, owner, reviewed his application criteria for the record.

Code Enforcement

Mr. Mackey supplied the following information for the record:

- The applicant is requesting an equitable waiver to allow an existing garage that was rebuilt and relocated approximately 5 years ago to remain in its current location.
- This situation was brought to the attention of this office by a complaint from an abutter.
- The applicant did obtain a State Shoreland permit for the construction.
- If approved, a Town of Derry building permit will be required.
- There are pictures in the file for review by the Board.

Mr. Coppolo asked if the with regard to the first question if the request was for dimensional request. Mr. Mackey said that was correct as a garage is allowed as an accessory use.

Board Questions

Mr. Burgess asked if the garage was moved over 8' and what was the measurement from the side. Mr. Caron said that he didn't change the size of the garage he just moved it over and it was 15' from the lot line.

Mr. Perkins asked if Mr. Russell was the surveyor and he had measured the garage distance. Mr. Caron said he measured from the survey that was done by Mr. Russell.

Mr. Perkins said that the distance may be different than outlined.

Mr. Burgess said that it may be best if the Board makes a waiver for both.

Mr. Corbett said that the front setback was a concern and that was answered by Mr. Mackey. He said that the garage appears to be built sturdy.

Mr. Burgess asked what was the width of the garage. Mr. Caron said it was 26'.

Mr. Coppolo asked if he built the garage himself. Mr. Caron said that he poured a monolithic slab and built the garage with help from his neighbor.

Mr. Kelley said that he felt that Mr. Burgess made a good point in stating that the side setback should be included in the motion.

Favor

No one spoke in favor of the request.

Opposed

No one spoke in opposition of the request.

Mr. Coppolo motioned to go into deliberative session.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

Deliberative Session

Mr. Kelley said that he felt that the 15' side setback should be included in the waiver as it possibly is encroaching the side setback.

Mr. Perkins said the motion is exception is 35' to the front and make a condition of #2 to include the west side lot line.

Mr. Coppolo said he felt that it should be included in the motion and not as a condition.

Mr. Perkins said the Board should structure the motion to be adjusted as stated by Mr. Coppolo and conditions to be subject to Shoreland and Town permits.

Mrs. Evans motioned to come out of deliberative session.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

Mr. Coppolo motioned on case #19-127 Roger Caron, Shane Edward Caron 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 garage to be located less than 35 feet from the front property line and less than 15 feet from the side property line at 28 Coles Grove Road, PID 51018, Zoned MDR as presented with the following conditions:

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

Seconded by Mrs. Evans.

Vote: Unanimous.

Mrs. Navarro, Mr. Kelley, Mr. Coppolo, Mrs. Evans, 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.

It was noted for the record that Mr. Perkins and Mr. Coppolo would step down and Mrs. Evans would act as Chair and Mr. Corbett and Mr. Virr would sit on the following case:

**19-128 Bernardo de la Cruz
 Gissell M Amezquita**

The applicant is requesting a variance to the terms of the terms of Article VI, Section 165-45.B.2 a,b,c & d of the Town of Derry Zoning Ordinance to allow the creation of a 3rd living unit at the property at 31 Central Street PID 26212, Zoned MHDR

Bernardo de la Cruz and Gissell M. Amezcuita, owners were present. Mr. de la Cruz reviewed the application criteria for the record.

Board Questions

Mrs. Evans asked if the third floor was existing. Mr. de la Cruz said yes that it was finished living space that he wished to finish for his mother. He said it has its own bathroom and bedrooms there he would just need to add a few cabinets for a kitchen area.

Mr. Coppolo asked if the property was tenants. Mr. de la Cruz said that he occupies the property.

Mr. Kelley asked if the area would be a one bedroom apartment. Mr. de la Cruz said it was 2 bedrooms.

Mrs. Navarro asked if the area has a stove and refrigerator and just needed cabinets. Mr. de la Cruz said he already has the stove and refrigerator in the basement he just needs to put in cabinets.

Mr. Virr asked if the access to the apartment could be described for the record. Mr. de la Cruz said that he needed to create an exit from one of the windows and described the main entrance for the record.

Mr. Burgess said that he only saw 4 windows on one side and asked if dormers would be added. Mr. de la Cruz said all the rooms have windows and described area for the record.

Mr. Coppolo said that he felt that Mr. Mackey would address and possible egress matters in the permit process.

Mrs. Morin asked if the area would require a certificate of occupancy. Mr. Mackey said yes.

Code Enforcement

Mr. Mackey supplied the following information for the record:

- The applicant is requesting approval to install a kitchen in the 3rd floor of the property thus creating an additional living unit.
- The structure is currently a two-family dwelling and the addition of a 3rd living unit by the addition of a kitchen will change the classification to multi-family.
- The property is located in the Medium High Density Residential Zoning District (MHDR) which allows multi-family dwellings. The minimum lot size for multi-family use is 5,000 sq. ft. per dwelling unit and 150' of frontage. This parcel contains 8,709 sq. ft. and approximately 80 feet of frontage. Therefore, the variance(s) are being requested.
- If approved, appropriate building and life safety requirements must be met for the additional unit as well as the entire building.

- If approved, the Planning office must review the request to determine what approvals/procedures are necessary through that office.
- There are pictures in the file for review by the Board.

Mr. Coppolo asked if the area was serviced by Town water and sewer. Mr. Mackey said yes.

Mr. Virr asked if the square footage of the unit on the 3rd floor could fall under the ADU category. Mr. Mackey said no as ADU qualifications requirements are for single family residence and this would be a multi-family.

Favor

No one spoke in favor of the request.

Opposed

No one spoke in opposition of the request.

Mr. Kelley motioned to go into deliberative session.

Seconded by Mrs. Navarro.

Vote: Unanimous.

Mr. Virr, Mr. Corbett, Mrs. Navarro, Mr. Kelley, Mrs. Evans

Deliberative Session

Mr. Virr said that the access would be covered by Town inspections.

Mr. Kelley said conditions of Town review and covered under obtaining all permits and inspections.

Mr. Corbett said that the property already had 3 separate meters.

Mr. Kelley said that Manchester requires all apartments to have their own meter and also a separate meter for outside lights.

Mr. Kelley motioned to go into deliberative session.

Seconded by Mrs. Navarro.

Vote: Unanimous.

Mr. Virr, Mr. Corbett, Mrs. Navarro, Mr. Kelley, Mrs. Evans

Mr. Kelley motioned on case #19-128 Bernardo de la Cruz & Gissell M. Amezquita to Grant a variance to the terms of the terms of Article VI, Section 165-45.B.2 a,b,c & d of the Town of Derry Zoning Ordinance to allow the creation of a 3rd living unit at the property at 31 Central Street PID 26212, Zoned MHDR as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Subject to Planning Department review.**

Seconded by Mrs. Navarro.

Vote: Unanimous.

Mr. Virr, Mr. Corbett, Mrs. Navarro, Mr. Kelley, Mrs. Evans.

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.

19-129 Thomas Watson

The applicant is requesting renewal of the expired variance, granted May 4, 2017, to the terms of Article VI, Section 165-47.B.2 of the Town of Derry Zoning Ordinance to construct a single family dwelling on a 13(+/-) acre lot with 47 feet of frontage on Hilda Ave where 150 feet is required at 36 Hilda Ave, PID 11070, Zoned LMDR

Thomas Watson, applicant, reviewed the required criteria for the record.

Board Questions

Mr. Perkins said that the lot has been before the Board two times and asked if he was a new owner. Mr. Watson said yes. He said he purchased the lot in May of last year and winter came so he did not get his foundation in. Mr. Watson said that when he went in to obtain his building permit, he found that the variance had expired so he was here to request a renewal.

Code Enforcement

Mr. Mackey supplied the following information for the record:

- The applicant is requesting that the variance granted on May 4, 2017 to allow the construction of a single family home on the property be reinstated as the 2 year limitation as provided in NH RSA 674:33-1-a(a) has passed without a building permit having been issued.
- A State wetland crossing permit as well as a State approved septic system have been obtained for the lot.

- The applicant is proposing to build the new home in compliance with the original variance.
- A turn around easement has been recorded with the deed as required by the Board for the previous variance approval.
- If approved, the driveway must be constructed per the specifications outlined in the Town of Derry Land Development Control Regulations.
- There are pictures in the file for review by the Board.

Mr. Virr said that he remembered the case and that the property consisted of a lot of wetlands.

Mr. Coppolo said that he remembers there was a concern of more than one house and that was the reason for the deed restriction.

Mr. Virr asked if driveway needed special permits. Mr. Mackey said that the applicant will require to obtain a wetland crossing permits from the State and that the driveway will also need to meet Town specifications to allow emergency access which will be addressed.

Mr. Burgess said that the property was originally designated as non-buildable. Mr. Mackey explained the history of the lot for the record.

Mr. Kelley said that he recalled abutters were concerned with additional development.

Mr. Perkins asked if a 2 year limit was required. Mr. Mackey said that the State statute now has a 2 year limitation.

Favor

No one spoke in favor of the request.

Opposed

No one spoke in opposition of the request.

Mrs. Evans motioned to go into deliberative session.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

Deliberative Session

Mr. Perkins reviewed the conditions for the record and understand the restriction of 2 years as mandated by the State.

Mrs. Evans asked if a condition of no further subdivision be made.

Mr. Perkins said that this was a renewal of the previous variance.

Mr. Coppolo said that he remembered that the original plan was marked non-buildable and applicant reviewed and resolved matter.

Mr. Kelley motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Mr. Coppolo motioned on case #19-129 Thomas Watson to Grant renewal of the expired variance, granted May 4, 2017, to the terms of Article VI, Section 165-47.B.2 of the Town of Derry Zoning Ordinance to construct a single family dwelling on a 13(+/-) acre lot with 47 feet of frontage on Hilda Ave where 150 feet is required at 36 Hilda Ave, PID 11070, Zoned LMDR as presented with the following conditions:

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

Seconded by Mrs. Evans.

Vote: Unanimous.

Mrs. Navarro, Mr. Kelley, Mr. Coppolo, Mrs. Evans, 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

Mrs. Morin noted that the minutes of September 19th had her being present of which she was not so wished to have them amended.

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

Adjourn

Mrs. Evans motioned to adjourn.

Seconded by Mr. Corbett.

Vote: Unanimous.

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

Adjourn at 8:18 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

Approval of Minutes November 21, 2019

Mrs. Navarro motioned to approve the minutes of October 3, 2019 as written.

Seconded by Mrs. Evans.

Vote: Unanimous.

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