

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
February 20, 2020

Members Present

Lynn Perkins, Chairman
Heather Evans, Vice Chair
Randall Kelley, Secretary
Michelle Navarro
Craig Corbett

Members Absent

Alternates Present

Donald Burgess
Crystal Morin
Allan Virr

Alternates Absent

Code Enforcement

Robert Wentworth, Assistant Building Inspector

Mr. Perkins called the meeting to order at 7:01 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 Mrs. Evans would step down and Mr. Virr would sit for the following case.

20-108 Timothy & Donna Gyorda
Fimby Property, LLC

The applicants are requesting a variance to the terms of Article VI, Section 165-33.B.5 of the Town of Derry Zoning Ordinance to allow the attached garage to be converted to a 3rd living unit at 15 Rollins Street, PID 30087, Zoned CBD

Timothy & Donna Gyorda, owners, were present. Mr. Gyorda read the application criteria and letter of explanation for the record. He said that Derry has many unoccupied businesses and is currently lacking affordable housing. Mr. Gyorda said he felt that this location would be best suitable for someone to live verses having a business located there which he did not feel the neighbors deserved.

Board Questions

Mr. Kelley asked how many bedrooms are there. Mr. Gyorda said there was currently 2 3-bedroom apartments.

Mr. Kelley said he assumed that the parking area would be expanded. Mr. Gyorda said yes that it would be expanded to the right side.

Mr. Perkins asked if the area would be upstairs and a downstairs apartment. Mr. Gyorda said yes and that the downstairs would be the living area with a one bedroom upstairs.

There was some discussion with layout and size of the proposed unit.

Mr. Virr questioned the parking area size for the number of vehicles. Mrs. Gyorda said that they did not anticipate to have more than 6 vehicles at the property.

Mr. Wentworth said that the regulations require 1.5 spaces per bedroom so would require to have 11 spaces.

Code Enforcement

Mr. Perkins outlined Mr. Mackey's staff report for the record.

- The current property consists of a 2-family dwelling with an attached garage.
- The applicant is requesting a variance to allow the existing attached garage to be converted to a 3rd living unit, thus creating a multi-family structure.
- The property is located in the Central Business District (CBD) which does permit multi-family residential use subject to the restrictions outlined in Section 165-33.B.5 of the Zoning Ordinance. The applicant is seeking relief from several of the provisions of section 5 including the creation of a multi-family structure which is not in conjunction with a mixed use, is less than 800 sq. ft. and which will be partially located below the 2nd floor. In addition, the existing lot does not meet the area requirements for the CBD.
- If the variance is granted, appropriate Fire and Building Codes must be followed and permits and inspections will be required.
- If approved, the Planning Director will determine what level of Planning review will be necessary.
- There are pictures of the property in the file for review by the Board.

Mr. Burgess said that the ordinance states less than 800 square feet so he was concerned that the change to an apartment would be a problem as Rollins Street is busy.

Mr. Perkins asked if seeking relief for size. Mr. Gyorda said that the unit would be over 800 square feet.

Mr. Perkins informed the Board that the applicant is seeking relief from several areas so need to review each prong.

Mr. Wentworth said that the next prong is there is no mixed use.

Mr. Perkins asked if the request was looking at category of new construction. Mr. Wentworth said it was a conversion and criteria is different for both. He said that the size of the lot and setbacks are also a concern.

There was some discussion with regard to size of lot.

Mrs. Gyorda said that they were not looking to increase the square footage of the existing building so they would not be getting closer to the lot lines.

Mr. Perkins asked if not wanting business due to neighborhood setting but ordinance requires put business in so seeking an apartment use as do not feel business would work. Mr. Gyorda said he could put a business in that part but do not feel that it would generate income for the tenant so there would be a constant change in tenants so he felt that an apartment would be more suitable for the area and more profitable for him verses having to constantly find a business tenant to fill the space.

Mr. Perkins asked when was the purchase of the property. Mr. Gyorda said May of 2019.

Mrs. Morin asked if there was any attempt to have a business located there. Mr. Gyorda said no. He said his concern would be a constant turnover of tenants.

Mrs. Navarro asked if there was a problem with renters. Mr. Gyorda said no. He said that he felt that there would be more of a turnover with tenants if business use was required.

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 Mr. Virr.

Vote: Unanimous.

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

Deliberative Session

Mr. Perkins said that the Board needs to review the 4 parts of the variance request of which they are as follows:

- Square footage of property
- Square footage of space requested, 800 minimum requirement.
- Question of providing and going against habitable space of first floor
- Square footage of lot requirements verses allowed for 3 units

Mr. Perkins said that the criteria in the ordinance provides for commercial growth. The Board needs to review the 5 criteria and that it see if the applicant meets the relief aspect of criteria outlined in the ordinance.

Mr. Virr said that the choice of living space or business space needs to be reviewed as he feels the zoning ordinance was reaching for future needs verses what is matching on the ground. He said a previous case on Broadway had numerous tenant turnover and sought relief to convert area into a studio apartment as the commercial aspect was not a suitable fit.

Mr. Kelley said that he agreed with Mr. Virr as he was unsure of what else would fit in the area. He said that parking may be an issue but affordable housing was a need in Derry. Mr. Kelley said that he could convert the garage to utilize as a business but feel that it would be difficult to find a matching tenant so feel applicant is doing the right thing.

Mr. Corbett said this case is much different than the prior case as that one had shown hardship. He said that the applicant has a garage that could be utilized for something else but just because he doesn't want to utilize it that way it still has a use.

Mr. Virr said that doesn't have to match what's on the ground as the area still has barns and use. He said he agrees that Derry is despite for affordable housing.

Mr. Kelley said he felt it would improve the area and generate tax base and felt it was the best use for the property.

Mr. Perkins reviewed the condition for the record.

Mr. Kelly motioned to come out of deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Mr. Kelley motioned on case #20-108 Timothy & Donna Gyorda, Fimby Property, LLC to Grant a variance to the terms of Article VI, Section 165-33.B.5 of the Town of Derry Zoning Ordinance to allow the attached garage to be converted to a 3rd living unit at 15 Rollins Street, PID 30087, Zoned CBD as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Subject to meeting all Building & Life Safety Codes.**

Seconded by Mrs. Navarro.

Vote: 4-1-0.

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

Mr. Perkins: No. Feel would be against the spirit and intent of the ordinance and no hardship has been shown. Do not feel it is what the legislative body was seeking when created ordinance.

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 Mrs. Evans would resume her position on the Board.

20-109 Craig & Linda Boulanger

The applicants are requesting a special exception as provided in Article VI, Section 165-46.B of the Town of Derry Zoning Ordinance to allow a handyman service business to be operated from the property at 9 Mundy Lane, PID 56053-001, Zoned MDR

Mr. Perkins said that the applicant was before the Board in March and at that time was not an official resident at the time the case was presented so it was tabled until a certificate of occupancy was achieved. He said that this case will proceed to where the Board left off.

Craig & Linda Boulanger, owners were present. Mr. Boulanger reviewed the criteria for the record.

Board Questions

Mrs. Evans asked if intending to have clients at the property. Mr. Boulanger said no. He said that he does not have a show room and there was no need for clients to come to his home.

Mr. Perkins asked if he could address noise and fumes. Mr. Boulanger said that he may do some occasional staining or painting but any odors would be contained in the garage.

Mrs. Evans asked if there would be a need to set hours of operation. Mr. Boulanger said that he works at a client's home and only would have his vehicles and tools at the property.

Code Enforcement

Mr. Perkins outlined Mr. Mackey's staff report for the record.

- The applicant is requesting a Special Exception to allow the operation of a handyman service business from a portion of the detached garage located on the property.
- The applicant had previously applied for this Special Exception and the case was tabled by the Board on May 2, 2019 as the home had not been constructed and, therefore, the residential use had not been established.
- Since that time, the home and garage have been constructed and a certificate of occupancy was issued for the home on 2-6-2020.
- The proposed business will be run from a portion (20' x 25') of the new 36' x 64' garage that has been constructed. Records indicate the living area of the home is 2,000 sq. ft.
- There are pictures of the property in the file for review by the Board.

Favor

No one spoke in favor of the request.

Opposed

Attorney Michael Scott, Scott & Scott, P.A., said he was representing Patrick & Julie Mullaney of 6 Orchard Drive. Attorney Scott said that his clients have no objection to business but have concerns that they would like to have addressed. He said that he has photographs for review that he would like to present and review for the Board. Attorney Scott said that he did not have much notice for the meeting and was unsure as to type of business being requested. He said that the applicant has created an apron of crushed stone up to the lot line and feel will park closer than 10 feet to the lot line. Attorney Scott said that the applicant has also plowed snow onto his client's property and that they have a concern with run off from the property onto their property and would like to request that some sort of buffer be placed along the property.

There was some discussion with regards to criteria requirements.

Attorney Scott said that his clients also have concern with the overhead spotlight and heavy equipment being washed on the property. He said that the bright light shines into his clients home at night and also the vehicle lights are very bright so light pollution is a problem and is discussed in case law. Attorney Scott reviewed the photographs provided to the Board for the record. He said that the light is disruptive also concern with

compressor noises and servicing commercial vehicles at night during sleeping hours. Attorney Scott said that if the Board grants the applicants request, he would like a condition of a 10' setback and that no cars are parked there. He said that he would also like to have the lighting addressed as not necessary to have that bright and shine into his client's windows.

Mr. Mullaney said that he would also like to have some sort of buffer placed as when trucks pull in the lights shine right into their bedroom windows as the grade to the property has been raised.

Mrs. Morin asked what was considered sleeping hours. Mr. Mullaney said past 10:00 pm. He said his children go to bed at 7:30 and has gone on beyond 10:00. He said it was not so much as the time but the intensity of the light is a problem.

Attorney Scott said it appears to be a commercial spotlight.

Mr. Perkins asked Mr. Wentworth if there were any conditions established with regard to pavement behind the structure when the occupancy permit was issued. Mr. Wentworth said that there was an apron of gravel crushed stone and fully paved and wrapped.

Mr. Perkins asked if there were any unusual circumstances with the issuance of this occupancy. Mr. Wentworth said there were no stipulations or conditional circumstances made on the occupancy permit.

Attorney Scott said that the sound and light at that time of night is not zoned for this area.

Rebuttal

Mr. Perkins asked what heavy equipment was on the property. Mr. Boulanger said he does not have any heavy equipment. There was during time of construction but not there now.

Mr. Boulanger said he has the following:

- A manlift
- 8' x 5' & 12' x 6' trailers
- Own a compressor but not plugged in or used yet as have not done any work with it yet and it is for personal use.
- Have numerous personal vehicles and some toys that are going to be stored in the garage.

Mr. Boulanger said he was unsure of how use home as still moving in. His normal hours are typically 7:00 am – 5:00 pm but do have some emergency calls on occasion.

Mr. Perkins asked if using compressor to work on personal specialty vehicles. Mr. Boulanger said yes, but it not set up yet as still moving in.

Mrs. Navarro asked how long have you lived in the home. Mr. Boulanger said since February 6, 2020.

Mr. Burgess asked Mr. Wentworth if there was any restriction for lighting at a residence. Mr. Wentworth said no.

Mr. Virr asked if the noise could be from a power washer. Mr. Boulanger said he has a power washer but has not used it yet.

Mr. Boulanger said that as for the lighting he has flood lights that are the same as everyone else in the area that he does not have any commercial lighting. He said that he turns on his lights when he needs them and does not keep on. Mr. Boulanger said that no lights point to the neighbor's home and that the garage lights point down. He said it was possible that his car lights may occasionally shine toward their home but do not keep them on. He said the concern of chemicals being used that he may change his own oil on his vehicles but other than that he could not think of anything. Mr. Boulanger said that his property to the rear of the garage is only wrapped in the back and he would love to pave it but not at this time. He said that this is his home and garage and most of the garage is for storing his own cars and a portion of the area for his tools for his business.

Mr. Perkins said that the Board understands pay taxes and it was the purview of the Board to balance concerns and the pictures that the abutter provided it was a well lite property. Mr. Boulanger said he has standard flood lights and no commercial lighting.

Mr. Perkins said that possibly find a way to curb lighting so as not as bright as could see where it could impede on neighbor.

Mr. Perkins asked if the outhouse was still on the property. Mr. Boulanger said no that he just sent that back as had to have on the property during construction.

Mr. Perkins said that the abutter concerns were not relevant to the request and not ignoring the concerns. He said that surface behind a garage is allowed and there was some concern of exceeding the 10' boundary and recommend the applicant be cautious of snow plowing etc.

Mrs. Evans motioned to go into deliberative session.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

Deliberative Session

Mr. Corbett said that there was no actual way of knowing when working on business or personal vehicles.

Mr. Perkins reviewed the conditions for the record.

Mr. Kelley said that there was no noise ordinance and can utilize a compressor etc. and do agree it is a bright light on rear of the building so possibly might take some time to review and redirect lighting to not shine towards neighbor's property. He said that as for the snow he feels the issue will be addressed and understand the neighbors' concerns.

Mrs. Navarro said that there are ways to mitigate lighting if bothering neighbors.

Mrs. Navarro motioned to come out of deliberative session.

Seconded by Mr. Corbett.

Vote: Unanimous.

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

Mr. Kelley motioned on case #20-109 Craig & Linda Boulanger to Grant a special exception as provided in Article VI, Section 165-46.B of the Town of Derry Zoning Ordinance to allow a handyman service business to be operated from the property at 9 Mundy Lane, PID 56053-001, Zoned MDR with the following conditions:

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

Seconded by Mrs. Navarro.

Vote: Unanimous.

Mr. Corbett, Mrs. Navarro, Mr. Kelley, 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.

**20-110 Daniel F. Hughes, Jr.
Owner: Joanne Termine**

The applicant is requesting a variance to the terms of Article VI, Section 165-46.C.2 of the Town of Derry Zoning Ordinance to allow the construction of a single family dwelling on an existing lot with less than 125 feet of street frontage at 7 D'Amore Lane, PID 45008, Zoned MDR

Daniel Hughes, applicant, said he was also present with his fiancé Stacy. Mr. Hughes read the application criteria and described the area where D'Amore Lane was located for the record.

Board Questions

Mrs. Evans asked if the actual frontage was 62'. Mr. Hughes said he believed it was but has not actually measured it but it states it on the plan provided to the Board.

Mr. Perkins asked if the property was under agreement. Mr. Hughes said yes and the purchase was contingent on obtaining the variance.

Mr. Perkins asked if there was a letter of authorization from the owner. Mr. Hughes said he only has the purchase and sales agreement and was not told he needed a letter.

Mrs. Morin said that the purchase and sales agreement is only good for 45 days and the Board's appeal period is 30 days.

There was some discussion with regard to continue to continue the meeting without a letter of authorization.

Mr. Perkins said the Board could hear the case and not make a decision until letter was obtained.

Mr. Kelley motioned to table the case to the next meeting so a letter of authorization could be provided.

Seconded by Mrs. Evans.

Vote: 3-2-0.

Yes: Mrs. Navarro, Mr. Kelley, Mrs. Evans

No: Mr. Corbett, Mr. Perkins

Case tabled to the next meeting of March 5, 2020 .

Mr. Perkins said that he suggests that an extension to the purchase and sales agreement be requested and obtain a letter of authorization from the owner to be provided for the meeting of March 5, 2020.

Approval of Minutes

Mr. Kelley motioned to approve the minutes of February 6, 2020 as amended.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Adjourn

Mrs. Navarro motioned to adjourn.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

Adjourn at 8:49 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

Approval of Minutes March 5, 2020

Mr. Kelley motioned to approve the minutes of February 6, 2020 as amended.

Seconded by Mrs. Evans.

Vote: Unanimous.

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