

**TOWN OF DERRY**  
**ZONING BOARD OF ADJUSTMENT MINUTES**  
**March 5, 2020**

**Members Present**

Heather Evans, Acting Chair  
Randall Kelley, Secretary  
Michelle Navarro  
Craig Corbett

**Members Absent**

Lynn Perkins

**Alternates Present**

Donald Burgess  
Crystal Morin  
Allan Virr

**Alternates Absent**

**Code Enforcement**

Robert Mackey, Code Enforcement Director

Mrs. Evans called the meeting to order at 7:04 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.

**20-110          Daniel F. Hughes**  
**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**

Mrs. Evans said this case was originally heard on February 20, 2020 and at that time it was noted that a letter of authorization from the owner was not on file so the case was tabled until a letter was received. Mrs. Evans said that the authorization letter has been received and on file and the Board will continue to hear case to where left off.

Daniel Hughes, applicant, described the area for the record and that he was seeking to build a single family dwelling on the existing lot. Mr. Hughes said that he was just seeking to put in a driveway according to Town specifications and not looking to continue the road.

### **Board Questions**

Mr. Burgess asked Mr. Mackey if he knew how would this area work for the Town as they currently plow snow into the area. He asked if some sort of cul-de-sac or arrangement was going to be made. Mr. Mackey said that the applicant needs to work with Public Works and he is aware that the Town currently pushes the snow onto this lot.

Mr. Virr asked if a turn-around would be established on the property. Mr. Mackey said that if Public Works insists for a turn-around that they may request some sort of easement and will be part of the building approval.

Mr. Virr asked if this would be reviewed by the Planning Board. Mr. Mackey said no as it is an existing lot of record and only requesting for a single family structure.

Mrs. Evans asked if the frontage was 62' or 50' feet. Mr. Hughes said he was unsure as the road comes in then flares out a bit.

Mr. Mackey said that the road is 50' and the plan says 62'. Mr. Mackey described the discontinued road and Green Lane area for the record.

Mr. Burgess asked if the length of the proposed driveway was known. Mr. Hughes said he was unsure at this time.

Mr. Mackey said that the Town has driveway regulations and explained the regulations for the record.

### **Code Enforcement**

Mr. Mackey supplied the following information for the record:

- The applicant is requesting a variance to allow the construction of a single family dwelling on the property.
- The property contains approximately 7.71 acres and is located at the end of D'Amore Lane. It has 50 feet (+/-) of frontage where it intersects with the end of D'Amore Lane. The property is located in the Medium Density Residential Zoning District (MDR) which requires 125 feet of frontage for a lot. Therefore, the applicant is seeking a variance.
- As the provisions in the zoning ordinance that deal with non-conforming lots (Article XIII, Section 165-105) speaks to the width and not frontage, it has been determined that a variance is necessary.

- A State approved septic system has been obtained for the property and a private well is proposed.
- If approved, the driveway will need to be constructed in accordance with the Town regulations.
- There are pictures of the property in the file for review by the Board.

### **Favor**

No one spoke in favor of the request.

### **Opposed**

No one spoke in opposition of the request.

Mr. Mackey said that at the prior meeting an abutter had spoken to the applicant regarding some drainage stipulations. Mr. Mackey said that the Planning Board had had a 3 lot subdivision submitted with a proposed cul-de-sac showing an easement with a retention pond was designed. He said that this request is for a single family home so no easement or retention pond is required.

Mrs. Evans asked if the 3 lot subdivision had been approved. Mr. Mackey said that there was a potential but never was recorded.

Mrs. Navarro motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

### **Deliberative Session**

Mrs. Evans reviewed the conditions for the record.

Mr. Kelley said that the applicant was unable to obtain additional frontage.

Mrs. Evans said she agreed that this was a large parcel.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

**Mr. Kelley motioned on case #20-110 Daniel F. Hughes, Owner: Joanne Termine to Grant 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 as presented with the following conditions:**

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Subject to meeting driveway specifications as outlined in Article V, Section 170-26A.16 of the Land Development Control Regulations.**

**Seconded by Mrs. Navarro.**

**Vote:**

**Mrs. Navarro: Yes.**  
**Mr. Kelley: Yes.**  
**Mr. Burgess: Yes.**  
**Mr. Corbett: Yes.**  
**Mrs. Evans: Yes.**

**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. Virr would sit for the following cases:

**20-111 Edward N. Herbert Associates, Inc.**  
**Owner: Joseph McCarron/ Deborah Van Etten**

**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 a property which does not have frontage on a Town approved street at 13 Field Road, PID 56001, Zoned MDR**

**20-112 Edward N. Herbert Associates, Inc.**  
**Owner: Joseph McCarron/Deborah Van Etten**

**The applicant is requesting a variance to the terms of Article III, Section 165-20.a of the Town of Derry Zoning Ordinance to allow the construction of a single family dwelling on the property less than 75 feet from a wetland at 13 Field Road PID 56001, Zoned MDR**

Mr. Mackey said that the request is one case but after review he had decided that it was 2 separate issues one being a wetland setback and the other being the lot had no frontage on a Town approved road so felt 2 separate votes would be required.

Mr. Kelley asked if the applicant did not pass the first point no point of hearing the second part or vice versa. Mr. Mackey said that was a possibility but both areas require a vote.

Shayne Gendron, Herbert Associates, said he was representing the owner who was also present. Mr. Gendron reviewed the application criteria for the record. Mr. Gendron said that the pavement ends at the corner of the lot and that the applicant has owned the property since 2002 and paying taxes as a buildable lot of record. He said that the applicant is seeking to build a single family home consistent to the area. Mr. Gendron said that they brought the project to the Town and was told the lot would require a variance. He said that the lot has been reviewed and a septic design has been submitted to the State of N.H. for approval and that they have met with the Town regarding the driveway approval. Mr. Gendron said that the lot is a pre-existing lot of record and that the applicant is seeking to build a single family home in which they feel they have met the criteria needed for granting of a variance.

### **Board Questions**

Mrs. Evans asked if could explain the elevation and plan proposal. Mr. Gendron reviewed the plan design for the record.

Mrs. Evans asked what the approximate size of the proposed home would be. Mr. Gendron said the home was approximately 2,000 square feet on a pad. He said that they were seeking to be 50' to the brook where 75' was required.

Mrs. Evans said that the property has no street frontage. Mr. Gendron said that was correct.

Mrs. Navarro asked when was the property purchased. Mr. McCarron said he purchased the property in 2002 and it was the largest remaining lot on the lake.

Mr. Virr asked what the flood zone AE was. Mr. Gendron said that AE is an assigned elevation area and that they had to do a full survey of the lot to obtain all elevation levels for the State.

Mr. Virr said he believed that AE pertained to an erosion level. Mr. Gendron said that it was determined that level of where the proposed dwelling would be located would not be in the flood plan.

Mr. Mackey explained the Town's requirements that were adopted by FEMA that have strict requirements. He said that the proposed slab is to be at an elevation of 294 and that AE is a 100 year flood elevation. Mr. Mackey said that parts of the lot is in the flood zone and people typically hire surveyors to determine elevation of their property to

elevate flood insurance. He said when the slab is installed a flood elevation certificate will be required to be submitted.

Mrs. Morin asked if the footbridge was utilized by people to access the lake. Mr. McCarron said that there was a footbridge there that he utilizes to get to the island.

Mr. Burgess asked if variance were to be approved if a waiver of liability would be required. Mr. Mackey said yes. He said that it was determined that the area was not an approved street so a waiver of municipal liability would be required.

Mrs. Evans asked if the brook was wet year round or dry up during the summer. Mr. McCarron said that is somewhat dry during the summer months.

### **Code Enforcement**

Mr. Mackey supplied the following information for the record:

- The applicant is requesting approval to construct a single family dwelling on this property which is an existing lot of record.
- The property is located on Beaver Lake and does not have frontage on a Town approved and maintained street. Currently, the Town maintains Field Road around the curve and on to Kenro Way but does not maintain the stub of Field Road that extends from the curve and from which this property has access. Therefore, they are seeking a variance to the frontage provision (section 165-46.C.2).
- In addition, there is a small brook that runs along the east side of the property that requires a 75 foot building setback (Section 165-20.a). The applicants are seeking to be permitted to construct the building within 50 feet of this brook.
- Both of these issues have been incorporated in the application that was submitted and are being addressed concurrently. However, as the case involves two separate provisions, the Board should vote on them separately, hence you have two separate motions in your packets to vote on.
- If approved, a notice of municipal liability and responsibility must be recorded with the deed prior to issuance of a building permit.
- If approved, the building must be elevated above the 100 year flood elevation and an elevation certificate will be required once the building slab has been installed.
- A State Shoreland permit has been issued for the proposed construction.
- There are pictures of the property in the file for review by the Board.

### **Favor**

No one spoke in favor of the request.

## **Opposed**

No one spoke in opposition of the request.

Mr. Corbett asked Mr. Mackey if could explain about the properties on 56003 and other lot on the side. Mr. Mackey said that there were 2 houses actually off the stub of the road. He said that one was on Kenro Way which was built by variance and the other has frontage on an approved road.

Mr. Kelley motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

## **Deliberative Session**

Mr. Virr reviewed the conditions for the record.

Mrs. Evans said that the Board would review the conditions of the first portion of the request of no frontage then take up the second portion of setback to the wetland separately.

Mr. Kelley motioned to come out of deliberative session.

Seconded by Mr. Corbett.

Vote: Unanimous.

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

**Mr. Kelley motioned on case #20-111 Edward N. Herbert Associates, Inc., Owner: Joseph McCarron/ Deborah Van Etten to Grant 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 a property which does not have frontage on a Town approved street at 13 Field Road, PID 56001, Zoned MDR 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:**

**Mr. Kelley:** No. No hardship has been shown as owned property since 2002.  
**Mrs. Navarro:** No. Agree with Mr. Kelley as do not see hardship has been shown.  
**Mr. Virr:** Yes.  
**Mr. Corbett:** Yes.  
**Mrs. Evans:** No. Do not see hardship established.

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

Mr. McCarron said he had sold his home to build a home on the lake and has paid taxes for the past 18 years with the assumption to build this home.

Mrs. Evans said that his next course of action would be to file for a rehearing as the Board could not discuss case further.

Mr. Virr asked if they would need to vote on the next portion as feel would it be irrelevant. Mr. Mackey said that the Board should vote on the second portion as the applicant could possibly work with Public Works to extend the road so if they agree then the applicant would no longer require a variance but still need a wetland setback variance. He said that the Board may wish to review second portion of the request with relation to the wetland setback.

**Mr. Kelley motioned on case #20-112 Edward N. Herbert Associates, Inc., Owner: Joseph McCarron/Deborah Van Etten to Grant a variance to the terms of Article III, Section 165-20.a of the Town of Derry Zoning Ordinance to allow the construction of a single family dwelling on the property less than 75 feet from a wetland at 13 Field Road PID 56001, Zoned MDR as presented with the following conditions:**

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Certificate of Elevation to be filed with Code Enforcement.**

**Seconded by Mr. Virr.**

**VOTE:**

**Mr. Virr:** Yes.  
**Mr. Corbett:** Yes.  
**Mrs. Navarro:** Yes.  
**Mr. Kelley:** No. For same reason as prior case as no hardship has been shown.  
**Mrs. Evans:** Yes.



**The application was Granted by a vote of 4-1-0. 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. Corbett motioned to approve the minutes of February 20, 2020 as amended.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

### **Correspondence**

Mrs. Evans said that there was a copy of the March/April Town & City magazine available.

### **Adjourn**

Mr. Kelley motioned to adjourn.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Adjourn at 7:51 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

### **Approval of Minutes April 16, 2020**

Mr. Corbett motioned to approve the minutes of March 5, 2020 as written.

Seconded by Mrs. Evans.

Vote: Unanimous.

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