

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
May 7, 2020

Members Present

Lynn Perkins, Chairman
Heather Evans, Vice Chair – via Remote
Craig Corbett – via Remote
Crystal Morin

Members Absent

Alternates Present

Donald Burgess
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. Mr. Perkins stated that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 this public body is authorized to meet electronically. He said that there was no physical location to observe and listen to this meeting. As such this meeting is being held remotely and providing public access to the meeting by telephone with additional access possibilities by video utilizing the ZOOM app for the electronic meeting. To participate in this meeting through dialing 323-909-140 or by clicking on the website address: derrycam.org/TuneIn the phone numbers are 646-558-865 or 312-626-6799 meeting ID: 323-909-140 or if anybody has a problem please call 603-845-5585 or email at: ginnyrioux@derrynh.org. In the event that the public is unable to access the meeting, the meeting will be adjourned and rescheduled otherwise the meeting will end at 10:00 PM. Mr. Perkins said that all votes taken are taken during this meeting shall be done by roll call vote.

Mr. Perkins said that the start of the meeting will be taking a roll call attendance. When each member states their presence, please also state whether there is anyone in the room with you during the meeting, which is required by the right-to-Know law.

The Board members introduced themselves.

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

20-116 Bridget Doyle

The applicant is requesting a special exception as provided in Article VI, Section 165-48.A of the Town of Derry Zoning Ordinance to operate a part-time, single chair hairstyling business at the residence at 5 Ballard View Circle PID 07001, Zoned LDR

Mr. Perkins said that due to the lateness of the prior meeting this case had been continued from the April 16, 2020 meeting and was left with the Board going into a deliberative session. He said that since that time several items have been brought to the Boards attention one of which is the Policy & Procedures in which the applicant speaks to the rebuttal and then the parties in opposition have another chance in order to speak and so forth. Also, it was made aware that during the prior meeting an abutter had not been noticed and that has been rectified in the proper manner.

Mrs. Doyle, said she was present remotely and no one was in the room with her. Mrs. Doyle said that she had submitted a letter outlining some of the concerns of her neighbors and reviewed it for the record. She said she had also reached out to the State and spoke with someone from the subsurface bureau with regard to her septic system and if she would have to upgrade her septic if installing a single chair for a small home based business and was told she did not have to upgrade her system at this time. Mrs. Doyle said she was not seeking to open a public salon just a small single chair home based business by appointment only. She said that she has approximately 3 to 5 people per week by appointment only which is approximately 15 clients per month and feels that she meets the requirements in order to be granted a special exception.

Board Questions

Mrs. Morin said for a point of order that Mr. Virr had not sat on the case at the prior meeting that it was Mr. Burgess.

Mrs. Morin said that she read that the times requested had changed and if so, was that different. Mrs. Doyle said she had previously heard concerns from her neighbors and wished to mitigate them.

Mrs. Morin asked if the Saturday hours were being eliminated. Mrs. Doyle said yes if it came down to that she could not work on Saturday then she would. She explained that she only works two and a half days a week and possibly may do one Saturday a month but not on a regular basis.

Mrs. Morin asked what times would be needed for Saturday. Mrs. Doyle said 7:00 am to 12:00 p.m.

Mr. Perkins said that the applicant has spoke with regard to the flexibility of hours to better suit abutters. Also, addressed the septic and potential chemical hazards and addressed traffic concerns.

Mr. Burgess asked how many customers per week would there be. Mrs. Doyle said it fluctuates and could possibly be 5 to 6 a week and sometimes there was only 2 per day.

Mr. Perkins informed the public that now would be the time to call in favor of the proposed request. He said if wish to speak press #9 and will answer your call.

Favor

No one spoke in favor of the request.

Mr. Perkins informed the public that now would be the time to call in opposition of the proposed request. He said if wish to speak press #9 and will answer your call.

Opposed

Thomas Mullins, 4 Ballard View Circle, said that he did not know the Doyle's and that the bottom line the standpoint is that he moved to this area due to safe quite area with low traffic. The neighborhood is all residential and very rural so feel granting the request would be against the spirit and intent and goes against the character of the neighborhood. He said that there were only 6 homes on the cul-de-sac and 4 are directly opposed to having a business in the area. Mr. Mullins said understands the applicant wanting to operate a business from her home but to disrupt 4 plus homes to benefit one seems out of character. He said that he moved out to the middle of nowhere so as to not have this type of activity around him. Mr. Mullins said that he understands that there is no school at the moment and that there is an influx of children playing and people walking the area due to things beyond their control. He asked why could this not be operated somewhere else. He said he was opposed to granting the request.

Mr. Perkins said he understands his concerns and thanked him for his comments. He said that he also has submittals of testimony from a few of the abutters and needed them to call and review their reasons for the record.

Margaret Stewart, 5 Ballard View Circle, said that she had submitted a letter to the office and reviewed it for the record. She said that she still has concerns with regard to the chemicals and she had also called the State and the EPA said that salons are classified as using hazardous waste products which is a concern as even though stated would be pumping her septic things still get into the ground. Mrs. Stewart said she also has a well and feel that the area should be evaluated by the State as there was a valid concern of toxic waste entering the ground water and the close proximity of Ballard Pond which is a prime wetland. Mrs. Stewart said with regard to home value she said that she said that was told that if a salon was located in a portion of her living area that it would devalue that home and as such possibly have a direct effect creating a disability of potential sale of her own home. She asked if granted with conditions and the Town does not enforce

who will check that she was not utilizing toxic chemicals, etc. Mrs. Stewart said that 4 out of 5 abutters are against the granting of the request. She also does not find a hardship in the applicants request as stated only 2 reasons for request was due to the pandemic and to that reason salons are opening next week so she can go back to work. The other being increase of finances and limited cliental, and to answer to that she could always change her hours and meet needs verses impacting the area to meet her own needs.

Mr. Perkins said that with regard to enforcement that area does come from the Town.

Mr. Mackey said that with regard to the septic system that if granted will need to be reevaluated as a 3 bedroom system may need to have a plan done that if fail will have a design in place to meet requirements. He said that with regard to the wastewater portion he did speak with Mitch Locker, of DES Groundwater Division, and was informed that the applicant will need a registration with their department as they keep an inventory of home salons. Mr. Mackey said that the applicant was correct that a typical home salon does not interfere with the septic as the black water does a good job of purifying chemical breakdown. As for the enforcement part, if receive complaints with regard to hours or inordinate number of customers will take action.

Mrs. Stewart said that she still has concerns for waste and toxic chemicals being deposited into the septic system as Massachusetts requires separate tanks and have to be pumped differently than a standard septic system. She said that she wants proof that what is being deposited into the septic system will not harm her own well or property. Mrs. Stewart said that she also has concern that all abutters were not properly notified.

Mr. Perkins said that a notice did go out in a timely manner and no response from the State of NH has been received and all abutters have been notified.

Mr. Mackey said that Ballard Pond is classified as a Prime Wetland which requires a 150' buffer of protected area and is also governed by the Shoreland Protection Act of 250' so is any thing were to be built in the area would need permission from the State Shoreland. He said in measuring the home it falls outside of the area so no permit is required.

Alfred Vega, 2 Ballard View Circle, said he was not notified and lives at the entrance of Ballard View Circle. He said he purchased his property last year and reason for purchase was that the area was very rural and quiet neighborhood and every car that goes in or out goes by his home. Mr. Vega asked how would it be monitored if allowed and he shares the same concerns as his neighbors as the area is a small cul-de-sac with many people and children walking the area or riding their bikes and would like to keep it that way. He said if he knew a business was in the area, he would not have purchased his home. He said his concern was the increase of traffic and safety of children in the area.

Mr. Perkins said that the Board has received a letter from a Mr. Decollibus and that he needed to call and speak to his submission.

Tullio Decollibus, 6 Ballard View Circle, said that he sent the Board a letter outlining several issues with Mrs. Doyle's request. He reviewed his submission for the record.

Mr. Perkins said that the 8 page insert of materials describing DES points have been validated by Mrs. Doyle & Mr. Mackey. He said that other items were also addressed and the MSDS statements made believe the applicant can provide the MSDS sheets if required necessity and answers the public concern. He said he did not see why not able to be granted.

Jeffrey Higgins, 1 Ballard View Circle, said that he requests that the Board deny the request as it would open the flood gates to a lot of traffic on a very small private road. Mr. Higgins said he was concerned for safety in the area as will increase more traffic.

Mr. Perkins said if any one wished to speak in opposition that has not already done so and on the line to press *9 to be acknowledged to speak and if no one he will close this portion of the meeting and go to the applicant to speak in final rebuttal and then go into deliberative session.

Rebuttal

Mrs. Doyle addressed the concerns as follows:

- Spirit and intent - she was 1 person and not looking to turn the area upside down and did not see what change would be made as it would be inside her own home. She felt that it would be no different than if she had a bible study with 10 friends for 2 hours would be no different.
- Hazardous materials – most standard household cleaners have a general note as causing irritation. She said she also has spoken with the State and was informed that can be mitigated and if needed can build out septic system.
- Good Faith – feel that there is no reason for denial as not looking to harm anyone as live here too. What is best for her may not be best for others but this request for a special use she does not feel is unreasonable and she is sincere with her intentions.
- Increase in traffic – she has no family or friends that visit on a regular basis so do not feel that there would be a major influx of vehicles in the area.
- Environmental – Mitchell Walker will be going over all her products and she will be working directly with the State as she also did not want to harm her environment. She said everyday hairsprays, pesticides. everyone utilizes on a regular basis also get flushed down into their septic's so would be doing nothing different. She said that she does have MSDS sheets available and would supply them to her neighbors if required.

Mrs. Doyle said she was not looking to turn the area upside down and ruffle feathers but has personal reasons for her request. She said she feels she meets the requirements to be granted a special exception.

Mr. Perkins said he felt that all points have been covered and public called in and covered submittals. He asked if there were any other items needed to be reviewed before going into deliberative session.

Mr. Perkins said the hours of operation have been clarified and the septic points reviewed by Mr. Decollibus have been understood. He asked if the hours were being split and 3 days a week. Mrs. Doyle said yes. She said she has had the same hours for 15 years of 10:00 AM – 8:00 PM, Wednesday & Thursday and a half day on Friday by appointment only. Mrs. Doyle said that she will refrain booking during heavy traffic like when kids come home during bus schedule and so she feels 9:00 AM – 2:00 PM then 5:00 PM – 8:00 PM.

There was some discussion with regard to hours of operation.

Mrs. Morin asked if the motion would need to have only one chair and no overlap of clients need to be made. Mrs. Doyle said that she would only have one person at a time and be careful not to overlap her clients.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Deliberative Session

Mr. Perkins said that there were a lot of points brought out and discussed. He said he would like to know the Boards thoughts.

Mr. Burgess said that the home was located at the bottom of a cul-de-sac and that any possible contamination would not affect neighbors as water runs downhill. He said that he felt that if someone were to have a BBQ then there was a potential for 20-30 people at one time and the applicant's testimony is to have only possibly 15 customers per month not a week. Mr. Burgess said that he hears and understands abutters concerns with regard to traffic but if anyone of them had a gathering it would have more than what is being requested. He said that Mr. Mackey said that the state would also be involved and that Mrs. Doyle is aware of the necessary guidelines and already has made allowances for times to be more friendly with bus traffic when children get out of school.

Mr. Corbett said that the use is allowed as is considered an artisan and the 9 points have been discussed. He said that the focus is the 9 points and see a hard time to say why Mrs. Doyle has not met the criteria.

Mrs. Evans said that she agreed with Mr. Corbett and that the request was minimal usage of the square footage of the home.

Mrs. Morin said that she also agrees with Mrs. Evans and Mr. Corbett. She said that Mrs. Doyle has lessened her hours of operation and willing to work with everyone and keep happy.

Mr. Perkins said that the discussion of Tree Line business at the prior meeting was different relevance and if brought before the Board would probably been denied. He said that he did not feel that Mrs. Stewart's property values would not decrease as the application dissolves when Mrs. Doyle vacates her home. He said that he drove down Ballard View and was unable to pick up any type of speed due to design of road and is typical of area for around schools. He said that school zones have posted speed limits during school hours and Mrs. Doyle's clients were older and potentially would be adhering to speed limitations. Mr. Perkins said he agreed a family gathering would be 15-20 cars and during Mrs. Doyle's testimony she said that she did not have family in the area that visits so questioned where was balance of who has traffic and who doesn't. He said that he appreciated of abutters information and concerns and feel that Mr. Mackey will control any conditions set by the Board. He reviewed the conditions for the record.

Mr. Burgess said the applicant changed the hours to be 9:00 AM – 2:00 PM then 5:00 PM – 8:00 PM Monday, Thursday, and Friday and 8:00 AM – 12:00 PM Saturday.

Mr. Perkins asked if different agencies need to be noted or designated conditions.

Mr. Mackey said that he felt they had been covered and as long as proof of documentation be required to be submitted to the office it should be condition.

Mr. Perkins noted a condition of MSDS sheets be made available to the Code Enforcement Office and kept on file.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Mrs. Morin motioned to Grant case #20-116 Bridget Doyle a special exception as provided in Article VI, Section 165-48.A of the Town of Derry Zoning Ordinance to operate a part-time, single chair hairstyling business at the residence at 5 Ballard View Circle PID 07001, Zoned LDR as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Hours of operation to be Wednesday & Thursday 9:00 AM – 2:00 PM & 5:00 PM – 8:00 PM, Friday 9:00 AM – 2:00 PM and Saturday 8:00 AM – 12:00 PM.**
- 3. MSDS sheets to be provided to Code Enforcement and kept on file.**

Seconded by Mr. Burgess.

Vote:

Mr. Burgess: Yes.
Mrs. Morin: Yes.
Mrs. Evans: Yes.
Mr. Corbett: Yes.
Mr. Perkins: Yes.

The application was Granted by a vote of 0-5-0. 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 case.

Mr. Perkins provided the information to the public on how to access the case for the record.

**20-117 Edward N. Herbert Associates, Inc.
 Owner: Joseph McCarron/ Deborah Van Etten**

Rehearing of case #20-111 for 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

Mr. Perkins said that he had not been present at the first hearing and since then 2 members have left the Board and 2 new members so there may be some questions and that this case was not a total de novo case.

Attorney John Cronin, Cronin Bisson & Zalinsky P.C., said he was present remotely and that the former case had been presented by Mr. Gendron from Edward Herbert Associates, Inc. and he has taken over and representing the applicants. Attorney Cronin reviewed the information submitted indicating that a variance was not required.

It was noted for the record that Mrs. Evans was having some technical difficulties and that Mr. Burgess would sit for this case.

Board Questions

Mr. Perkins asked of prior approval if the Board had any questions of wetland setbacks or concerns. Mr. Corbett said that he did not recall any concerns in either area.

Mr. Perkins asked that in Attorney Cronin's testimony was there ample evidence of variance request deeming variance is necessary. Mr. Virr said that he would like a condition of a waiver of municipal liability be recorded.

Mr. Perkins asked if the Board out of protocol determines that no variance was required would a waiver be part of the building permit process. Mr. Mackey said if the Board determines that no variance is required a waiver would still be a requirement. The reason for sending for a variance was due to the area of Field Road was not Town maintained so erred on the side of caution that a variance was needed.

There was some discussion with regard to what would be needed for this area to be accepted and maintained by the Town.

Mr. Perkins said that the Board has heard testimony of lot of record and stipulations and can entertain a motion to dismiss or proceed and hear case. In hearing no motion to dismiss it was determined to proceed with variance request.

Attorney Cronin reviewed the criteria for a variance for the record.

Board Questions

Mr. Perkins asked who currently maintains the area. Attorney Cronin said that the Town currently pushes snow into the lot and if variance granted Mr. McCarron will take responsibility of snow removal.

Mr. Perkins asked if there were any intentions of paving the area. Attorney Cronin said the intent at this time is to create a driveway and was unsure of full intent at this time.

Mr. Perkins informed the public that now would be the time to call in favor of the proposed request. He said if wish to speak press #9 and will answer your call.

Favor

No one spoke in favor of the request.

Mr. Perkins informed the public that now would be the time to call in opposition of the proposed request. He said if wish to speak press #9 and will answer your call.

Opposed

Megan & Michael Hennrikus, 4 Kenro Way, said they have a concern with how maintain plowing as currently they have their own plow guy.

Mr. Perkins said in looking at the submitted plans it appears that the driveway would sweep to the right and there have been some discussion of installing a hammerhead type driveway.

Rebuttal

Attorney Cronin said that in looking at the drawing submitted to 4 Kenro Way comes off of Field Road. He said that the applicant proposes to build driveway to gain access to Field Road and Mr. McCarron would be responsible to clear and maintain his area.

Joseph McCarron, owner, said that 11 Field Road is on the right and he built 4 Kenro Way and resided there for 30 years. He said that the Town did plow the stub of Kenro Way of which then took Kenro & Field Road and paved a portion of Field Road. Mr. McCarron said that the 13 feet of area he would plow and work with abutters and feel there would be no obstacles as will work together. He said that he will sign and file a waiver of municipal liability and take responsibility of the area.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Deliberative Session

Mr. Virr said that he felt that parties involved will resolve the matter of where snow will and other points were cleared up during testimony.

Mrs. Morin said she agreed with Mr. Virr.

Mr. Corbett said that he felt the proposal was good and items were clarified for the record.

Mr. Burgess said he felt that the request should have been granted the first time.

Mr. Perkins said that Attorney Cronin referenced the conditions of concern from the prior meeting and heard testimony that the applicant is willing to work with snow plowing concerns. He reviewed the conditions for the record.

Mr. Corbett motioned to come out of deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Mrs. Morin motioned on case #20-117 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. A waiver of Municipal Liability and Responsibility must be recorded with the deed prior to obtaining a building permit.**

Seconded by Mr. Burgess.

Vote:

Mr. Burgess: Yes.
Mrs. Morin: Yes.
Mr. Corbett: Yes.
Mrs. Evans: Yes.
Mr. Perkins: 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 the Board took a brief recess and reconvenend at 9:38 PM

Mr. Perkins provided the information to the public on how to access the case for the record. He said that the meeting ends at 10:00 PM and asked the applicant if they wished to continue or be tabled to the next meeting.

Attorney Panciocco said that she would prefer to proceed as feel her explanation would not take long.

Mr. Perkins said that he needed to do some housekeeping before proceeding and asked for a motion to table cases 20-119 & 20-120.

Mr. Burgess motioned to table case #20-119 to the May 21, 2020 meeting.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Mr. Corbett motioned to table case #20-120 to the May 21, 2020 meeting.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Mr. Mackey informed the Board that there were an additional 3 cases that have already been submitted for the May 21, 2020 meeting.

**20-118 Patricia M. Panciocco, Esq.
Panciocco Law, LLC
Owner: Barbara A. Albright**

The applicant is requesting a variance to the terms of Article VI, Section 165-48.B.2&3 of the Town of Derry Zoning Ordinance to allow the construction of a single family home on the property which does not have frontage on a Town approved street and which will be accessed over a 16 foot wide right-of-way at 97 Damren Road PID 13023, Zoned LDR

Attorney Patricia Panciocco, Panciocco Law, LLC, said she was representing Barbara Albright and a letter of authorization was in the file submitted to the Board. Attorney Panciocco explained the proposal and reviewed the criteria for the record.

Board Questions

Mr. Burgess said that his question was for Mr. Mackey with regard to the access. He asked where the access was longer than 150' would fire require a 14' wide access. Mr. Mackey said typical of what was required was 14' wide with 1' of shoulder on each side. He described the area where the access was located.

Mr. Virr said that he tried to find 97 Damren Road and only came to 81 which was Hidden Valley Campground. He asked if the access was out of Chester how does the Town bear the burden of access via Chester. He said that also the deeds provided refence Proctor and William where is link of Proctors and Jenkins. Attorney Panciocco described chain of deeds of title. She said that Mr. Mackey had also requested deed showing the right-of-way.

Mr. Virr asked if Proctor deed connects to applicant. Attorney Panciocco said that Jean Jenkins is the current owner and William Polewarczyk passed away 2 years ago.

Mr. Perkins asked if okay with presentation to this point due to the lateness of the hour move to continue to the next meeting.

Attorney Panciocco said she was comfortable with her presentation at this time and would look into the information of the deeds and have answers at the next meeting.

Mrs. Evans asked if clarification of the right-of-way could be outlined for the next meeting.

Mr. Virr motioned to table case #20-118 to the May 21, 2020 meeting.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Mrs. Morin motioned to extend the meeting until 10:10 PM

Seconded by Mr. Burgess

Vote: Unanimous.

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

Approval of Minutes

Mr. Burgess motioned to approve the minutes of April 16, 2020 as amended.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Adjourn

Mr. Burgess motioned to adjourn.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Adjourn at 10:03 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

Approval of Minutes June May 21, 2020

Mrs. Evans motioned to approve the minutes of May 7, 2020 as written.

Seconded by Mr. Burgess.

Vote: Unanimous.

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