

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
June 4, 2020

Members Present

Lynn Perkins, Chairman
Craig Corbett – Vice Chair
Heather Evans, Secretary
Crystal Morin
Allan Virr

Members Absent

Alternates Present

Donald Burgess

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: ginnyrrioux@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.

The Board members introduced themselves.

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

The applicant is requesting a variance terms of Article VI, Section 165-47.B.4 of the Town of Derry Zoning Ordinance to allow the construction of a 26 foot by 28 foot detached garage less than 15 feet from the side property line at 2 Hunter Drive, PID 07075-005, Zoned LMDR

Vahik Melikian, owner, reviewed his application criteria for the record.

Board Questions

Mr. Burgess asked what the measurements on the map submitted as there appears to be able to move closer so as to not encroach lot line. Mr. Melikian described area for the Board.

Mr. Burgess asked why unable to move closer. Mr. Melikian said that there was due to a steep slope of the driveway and height access makes it difficult and the tree line along Hunter Drive would need to be removed. He said that there was only a very small flat area that would be able to accommodate the garage.

Mr. Virr said he knew the area of Hunter Drive and that this lot slopes to a great incline and also has a culvert at the end and other side of home has the septic system.

Mr. Corbett asked if the existing driveway was separate. And where were the other vehicles located. Mr. Melikian said yes and that the other vehicles would be located in the new garage once built. He said that they currently have more cars home due to COVID and that the temporary tents do not work and have caused damage to his vehicles in the past.

Mr. Corbett asked why not able to shrink size. Mr. Melikian said he was seeking to have 2 bay doors to be able to accommodate his vehicles.

Mrs. Evans asked if there would be storage over. Mr. Melikian said there were no plans to have storage over at this time.

Code Enforcement

Mr. Mackey supplied the following information for the record:

- The applicant is requesting a variance to allow the construction of a 26 foot x 28 foot detached garage within 5 feet at its closest point to the side property line.
- If approved, a building permit will be required.
- There are pictures of the property in the file for review by the Board.

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 star 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 star 9 and will answer your call.

Opposed

No one spoke in opposition of the request.

Mrs. Evans motioned to go into deliberative session.

Seconded by Mr. Corbett.

Vote: Unanimous.

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

Deliberative Session

Mrs. Evans reviewed the conditions for the record.

Mr. Virr said his observation that the abutter at 4 Hunter Drive was a considerable distance away.

Mrs. Morin said she did not see any issues with the request.

Mr. Perkins said that he felt that storage over would be purview of the Code Enforcement Office.

Mr. Corbett said that Mr. Virr had addressed the concern of the layout of the property and the applicant had also described the property for the record.

Mr. Corbett motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Mrs. Evans motioned to Grant case #20-121 Vahik Melikian to Grant a variance terms of Article VI, Section 165-47.B.4 of the Town of Derry Zoning Ordinance to allow the construction of a 26 foot by 28 foot detached garage less than 15 feet from the side property line at 2 Hunter Drive, PID 07075-005, Zoned LMDR as presented with the following conditions:

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

Seconded by Mrs. Morin.

Vote:

Mr. Virr:	Yes.
Mr. Corbett:	Yes.
Mrs. Morin:	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.

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

**20-122 Promised Land Survey, LLC
Owner: Robert & Anne-Marie Letourneau**

The applicant is requesting a variance to the terms of Article VI, Section 165-45.B.1.iii, bi, ci & di of the Town of Derry Zoning Ordinance to allow the construction of a two-family home on the property at 28 South Ave, PID 26214, Zoned MHDR

Timothy Peloquin, Promised Land Survey, LLC, said he was representing Mr. & Mrs. Letourneau. Mr. Peloquin read his letter of explanation and reviewed criteria for the record. He reviewed the plot plan submitted to the Board for the record outlining his clients wishes.

Board Questions

Mr. Perkins asked if an elevation certificate would be required for the flood zone. Mr. Peloquin described the note #3 on the plan for the record.

Mr. Perkins asked if the 28' x 40' proposed structure would be in the flood zone. Mr. Peloquin said no that the only portion of the property is the rear right corner that is located in the flood zone.

Mr. Perkins asked why request for 2 family and not a single family. Mr. Peloquin said that his client wishes to construct a 2 family and value of market. He said that there is a need for affordable housing and this is a small unit as there are currently other multi-family and commercial uses in the area.

Mrs. Evans said that there are notes on the plan that the subject is burdened by two right-of-ways. Mr. Peloquin said that was correct and is being researched by an Attorney as old lot of record. He said that the larger parcel to the rear of the lot has access which is unique and not needed and owner is aware and client is seeking to extinguish easements.

Mrs. Evans asked what was the number of feet on the parcel. Mr. Peloquin described the easement locations for the record and said that clear not for vehicle access.

There was some discussion with regard to multi-family lot size requirements.

Code Enforcement

Mr. Mackey supplied the following information for the record:

- The applicant is requesting a variance to allow the construction of a two-family dwelling on the property after it has been subdivided.
- Currently, there is an existing two-family dwelling on the property. The proposal is to create a separate lot across the cul-de-sac and construct another two-family dwelling.
- At present, the Town has an easement for use of the cul-de-sac. The owners will need to go through the process of having this cul-de-sac formally accepted by the Town so actual frontage is created for the new lot.
- The property is zoned Medium High Density Residential II (MDHR II) which permits the construction of a single family dwellings only. Therefore, a variance is being requested.
- If approved, Planning Board review and approval will be required for the subdivision as well as Town Council acceptance of the cul-de-sac.
- There are pictures of the property in the file for review by the Board.

Mr. Burgess said that he was reading the lot size being different. Mr. Mackey reviewed the multi-family requirements for the record.

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 star 9 and will answer your call.

Favor

Irene Nikias, 14 Brook Street, said that she abuts the property in question and has a question on the elevation and concern with the right-of-way as that was the access to the rear of her property and did not want to lose it. She said that the property has a steel shed

and garage on the other that abuts her lot. She said that her property was purchased in 1968. She said that the potato business asked if could utilize to park vehicles on and told them they could but that the land still belonged to her.

There was some discussion with regard to the right-of-ways.

Mr. Peloquin said that the question of the easement location Attorney Germaine will be reviewing.

Mr. Perkins asked if approved the proposed driveway would not limit access through the right-of-way. Mr. Peloquin said that was correct. He said that there are some questions of the right-of-way as clear they were not for vehicle access.

Mr. Perkins asked how different. Mr. Peloquin said it was the way it is written.

Ms. Nikias said that her only concern is not to lose her right-of-ways as have lived here since 1968 and have no plans to develop as she likes her property just the way it is.

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 star 9 and will answer your call.

Opposed

No one spoke in opposition of the request.

Mr. Peloquin said that the value of the lot economically needs to build 2 family structure and feel that the design is modest and will have the appearance of a single family structure. New Hampshire Housing Authority has stated that there is a great need for affordable housing.

Mrs. Evans motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Deliberative Session

Mr. Virr said that he felt that the proposal was against the spirit and intent of the ordinance as feel in excess of size of property.

Mr. Perkins said that he understands lot of record but there were too many infractions to the property where a single family structure could work perfectly. Applicant speaking of affordable housing.

Mr. Corbett said he agrees with Mr. Virr and that the lot was very small and a 2-family structure would have a potential for a lot of vehicles.

Mrs. Morin said that she agreed with both statements and understands the lot size and that the applicant is trying to make more desirable.

Mrs. Evans said that she did not see substantial justice point met as would feel more comfortable with a single family structure.

Mr. Perkins reviewed the conditions for the record.

Mr. Virr said he would like to see more clarification of right-of-ways as may need to provide legal documentation.

Mr. Perkins said that the abutter has access so no need to make condition.

Mrs. Morin motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Mrs. Evans motioned on case #20-122 Promised Land Survey, LLC, Owner: Robert & Anne-Marie Letourneau to Grant a variance to the terms of Article VI, Section 165-45.B.1.a.ii, bi, ci & di of the Town of Derry Zoning Ordinance to allow the construction of a two-family home on the property at 28 South Ave, PID 26214, Zoned MHDR as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Subject to providing flood elevation certificate to the Code Enforcement Office.**

Seconded by Mrs. Morin.

Vote:

Mr. Corbett: No. No substantial justice has been shown.

Mr. Virr: No. Spirit and intent of ordinance has not been met due to size of request.

Mrs. Morin: No. Feel substantial justice has not been met.

Mrs. Evans: No. No substantial justice has been shown. Would create more non-conformity if granted.

Mr. Perkins: No. No substantial justice has been shown. Only in favor of applicant and not the neighborhood. Would be contrary to public interest and not in the spirit and intent of the ordinance.

The application was Denied 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.

The Board took a brief recess and reconvene at 8:11 PM

It was noted for the record that Mr. Perkins would recuse himself from the following case and Mr. Corbett would sit as Chair and Mr. Burgess would also sit.

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

20-123 Stephen & Shannon Vadney

The applicant is requesting a variance to the terms of Article VI, Section 165-45.1.A of the Town of Derry Zoning Ordinance to allow the construction of a two-family dwelling after the subdivision of the property at 5 Ferland Drive, PID 31017-001, Zoned MHDR II

Kevin Hatch, Cornerstone Survey, said he was representing the applicant who was also online to assist with any questions that the Board may have. Mr. Hatch reviewed the application criteria for the record. He also provided an overview of the property and plan submitted for the record.

Board Questions

Mr. Burgess said that this lot was not the only one effected by the zoning change. He said he was familiar with the Ash Street property and also the area has a mix use of single family. Mr. Hatch said that if a single family was placed on this lot it would stick out and not conform to the area.

Mr. Burgess said that he has been present on the Board to see this property three different times and it appears that the flood plain has changed. He said he recalls the 150' prime wetland was much closer which was one of the reasons for denial.

Mr. Virr said he recalls it was deemed not to be located in the prime wetland.

Mr. Mackey said that was correct that it was deemed not to be in the prime wetland. He said the property was presented before with proposals for a 6 unit and a 4 unit structure at which time the location line was adjusted to the correct measurement.

Mr. Virr asked when was date of the zoning change. Mr. Mackey said h believes it was 4 years ago.

Mrs. Evans asked what the easements were on the property. Mr. Hatch said that there were sewer and some driveway easements that will be worked out.

Code Enforcement

Mr. Mackey supplied the following information for the record:

- The applicant is requesting a variance to allow the construction of a two-family dwelling on the property after it has been subdivided.
- Currently, there is an existing two-family dwelling on the property. The proposal is to create a separate lot across the cul-de-sac and construct another two-family dwelling.
- At present, the Town has an easement for use of the cul-de-sac. The owners will need to go through the process of having this cul-de-sac formally accepted by the Town so actual frontage is created for the new lot.
- The property is zoned Medium High Density Residential II (MDHR II) which permits the construction of a single family dwellings only. Therefore, a variance is being requested.
- If approved, Planning Board review and approval will be required for the subdivision as well as Town Council acceptance of the cul-de-sac.
- There are pictures of the property in the file for review by the Board.

Mr. Burgess said that he believed the first time the applicant came before the Board was with a purchase & sales agreement. Mr. Mackey said he purchased the property and hung onto for a year or so to see if sewer was going to run down Ferland Drive.

Mr. Virr said that the Planning Board develops changes and present to Town Council and have hearings on changes before they become effective. He said he agreed with Mr. Burgess that the details do not match and that zoning changes are not made in secret.

Mr. Burgess said when the changes were being reviewed, he was asked to come and speak so he believes that the applicant also had the same opportunity.

Mr. Hatch said he was familiar with the zoning changes which he believes was 3 years ago. He said that when he noticed it was to late to get a notice in before zoning change. He said that the applicant had been waiting for sewer to be available as the money had been budgeted but was allocated to another project.

Steve Vadney, owner, said that in regard to the zoning change he had been noticed approximately 10 days prior to attend a meeting and at that time he had addressed his concerns. He said he was told that there was to be a vote at the next meeting and as such there was no time to get a plan together and submitted to the Planning Board. Mr. Vadney said that he never received a fair warning of the proposed changes and felt that a

month or two notice in advance would have been fair. He said that the water line project had been approved prior to his purchase and he built a duplex and installed a well with the intent to put in additional dwelling when the water line was installed. Mr. Vadney said that in speaking to Mr. Burgess's statement of Ash Street property comparison is that this property borders 10 lots of which 5 are single family and 5 are multi-family so could argue that 50% is single and 50% is multi-family but the unique portion of this is that it is surrounded by multi-family. He said that he felt that a duplex would be within the characteristics of the neighborhood and that he was only seeking 2 units which he felt was a reasonable request. Mr. Vadney said that in response to Mr. Virr's statement of not matching what is on the ground is the reason for the request.

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

Favor

No one spoke in favor of the request.

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

Opposed

No one spoke in opposition of the request.

Mr. Vadney said that he feels that the proposed use was in character of the neighborhood and if a single family structure was placed among this area surrounded by multi-family it would be out of character and diminish the value of the home. He said that he hopes the Board would find in favor of his request.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Deliberative Session

Mr. Corbett reviewed the conditions for the record.

Mr. Virr said that he recalled the prior case of water and sewer being an issue.

Mr. Mackey said that it will be connected to water and sewer so not an issue at this time.

Mr. Corbett said that he also remembers prior case of 4 unit. He said that a duplex is lowest use and in viewing area it would not be out of line and worth consideration by the Board.

Mr. Virr said that he felt that a single family home could also fit on the property. He said that at prior meetings have voted against due to the access area.

Mrs. Morin said that she has seen other neighborhoods in town and it appears that there were single family homes on one side and duplexes on the other side.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Mrs. Evans motioned on case #20-123 Stephen & Shannon Vadney to Grant a variance to the terms of Article VI, Section 165-45.1.A of the Town of Derry Zoning Ordinance to allow the construction of a two-family dwelling after the subdivision of the property at 5 Ferland Drive, PID 31017-001, Zoned MHDR II as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Subject to providing flood elevation certificate to the Code Enforcement Office.**

Seconded by Mr. Burgess.

Vote:

Mr. Burgess: No. Do not feel in the spirit and intent of the ordinance and would not be in the public interest.

Mr. Evans : Yes.

Mr. Virr: Yes.

Mrs. Morin: Yes.

Mr. Corbett: 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.

Mr. Perkins resumed his position as chair and provided the information to the public on how to access the case for the record.

20-124 David T. Dalton

The applicant is requesting a variance to the terms of Article VI, Section 165-48.B.4 of the Town of Derry Zoning Ordinance to allow the construction of a deck on the lake side of the dwelling less than 15 feet from the side property lines at 59 Conley's Grove Road, PID 16057, Zoned LDR

David T. Dalton, owner, reviewed the required criteria for the record. He said that he has already applied to the State and received their approval.

Board Questions

Mr. Perkins said that this was an existing home and not proposing a garage. Mr. Dalton said that he was only proposing a deck and have obtained State approval. He said that he has a plan that he could show the Board if able to share screen.

There was some discussion with regard how to share the screen but some technical difficulties occurred and was unable to view.

Mrs. Evans asked if the document showing the 21'x 9' was the proposed structure correct. Mr. Dalton said yes and explained that there would be a set of stairs also to the right.

Mr. Perkins asked if the picture of the house with the deck was for a second floor entry. Mr. Dalton said yes.

Mr. Perkins said that the proposed deck would not change absorption in ground. Mr. Dalton said that was correct and that the State also asked the same question.

Mr. Virr asked what was the distance to the side with the stairs. Mr. Dalton said it would be 9' with the stairs.

Mr. Perkins asked if the deck encroachment was on the opposite property line and home closer to boundary than the deck. Mr. Dalton said yes as he only has 38' of frontage and that the deck would be in the same footprint of the home except for the stairs.

Mr. Perkins said the reasoning for the stairs to be on the outside was due to the encroachment to the lake. Mr. Dalton said yes.

Mr. Virr said that the stairway could be built in the middle. Mr. Dalton said they could but it would then take away from the patio and also there was a doorway also in the middle that would interfere with placement.

Mr. Corbett said that he could see point of relocating to middle not working as reason for stairs on the side. Mr. Dalton said yes, as would also encroach to the water.

Mr. Virr said that the stairway to the right side being 9' from the lot line would not interfere with neighboring property that was a considerable distance away from the lot line.

Mr. Burgess said that he visited the area but was unable to actually see but the proposal appears to be a normal for the area.

Code Enforcement

Mr. Mackey supplied the following information for the record:

- The applicant is seeking approval to construct a 21.9' x 12' deck on the side of the home facing Big Island Pond.
- The proposed deck will be located less than 15 feet from the side property lines so the applicant is seeking a variance.
- This is waterfront property and is typical of the properties in the area which are small pre-existing lots and non-conforming structures with regard to setbacks.
- The applicant has applied to the N.H. DES for the required shoreland permit.
- If approved, a building permit will be required.
- There are pictures of the property in the file for review by the Board.

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 star 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 star 9 and will answer your call.

Opposed

No one spoke in opposition of the request.

Mrs. Evans motioned to go into deliberative session.

Seconded by Mr. Corbett.

Vote: Unanimous.

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

Deliberative Session

Mrs. Evans reviewed the conditions for the record.

Mrs. Morin said she felt that the request was a reasonable one.

Mr. Corbett said that the proposal was a nice design and would allow for an additional means of egress.

Mrs. Evans said she agrees with the points addressed by the Board.

Mr. Corbett motioned to come out of deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Mrs. Evans motioned on case #20-124 David T. Dalton to Grant a variance to the terms of Article VI, Section 165-48.B.4 of the Town of Derry Zoning Ordinance to allow the construction of a deck on the lake side of the dwelling less than 15 feet from the side property lines at 59 Conley's Grove Road, PID 16057, Zoned LDR as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Subject to obtaining N.H. DES State Shoreland permit.**

Seconded by Mr. Burgess.

Vote:

Mr. Virr: 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.

Correspondence

Mr. Perkins said that the Board has received a copy of Town and Country if anyone wished to review.

Approval of Minutes

Mr. Virr motioned to table the minutes of May 21, 2020 to the next meeting.

Seconded by Mrs. Morin.

Vote: Unanimous.

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

Other Business

Mr. Perkins said that the Board typically meets once in July and once in August on summer schedule. Those meeting dates would be scheduled to the following:

**July 16, 2020
August 20, 2020**

Board Voted unanimously.

Mr. Mackey said that no cases have been submitted for the June 18th meeting but may need to hold a meeting due to some rehearing requests that may be received.

Mr. Burgess said that the Red Cross Blood Drive was coming up and very important to get out and donate as been unable to have blood drive in the past few months due to the COVID-19 situation.

Mr. Virr said that the Calvary Bible Church on Hampstead Road was hosting the blood drive sponsored by the Derry Police Department.

Adjourn

Mr. Corbett motioned to adjourn.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Adjourn at 9:15 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

Approval of Minutes June 18, 2020

Mrs. Evans motioned to approve the minutes of June 4, 2020 as amended.

Seconded by Mrs. Corbett.

Vote: Unanimous.

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