

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
September 17, 2020

Members Present

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

Members Absent

Alternates Present

Donald Burgess
Gaspar Obimba

Alternates Absent

Code Enforcement

Robert Wentworth, Assistant Building Inspector

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 now physically and also electronically. As such this meeting is being held and will also be 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 you can be present or by 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: ginnryrioux@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.

The Board members introduced themselves.

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

It was noted for the record that Mrs. Evans would step down and Mr. Burgess would sit for the following case

20-136 Brian G. Germaine, Esq.
Owner: Marino Family Trust of 2018

The applicants are requesting a variance to the terms of Article VI, Section 165-46.C.4 of the Town of Derry Zoning Ordinance to allow the structure to be rebuilt with a second story at 62 Beaver Lake Ave, PID 51078, Zoned MDR

Attorney Brian G. Germaine, Germaine & Blaszk, P.A., said he was representing the Marino Family who he believes who will be online telephonically if the Board had additional questions with regard to the variance request. Attorney Germaine said that he had some additional information that he wished to provide the Board this evening as he felt it would assist in the explanation for this request.

Mr. Perkins asked the Board if they were willing to accept the information that Attorney Germaine wished to provide as part of the narrative for the case being presented. The Board voted unanimously to accept the information being provided.

Attorney Germaine reviewed the required criteria for the record and explained why the need for the variance was being requested. He said that his client and the Town had worked very hard to try to locate the home to the center of the lot however, the State Shoreland denied that requests but have granted approval to rebuild with 2nd story and deck as shown in the presentation. Attorney Germaine said that the hardship is existing in the land and that the request is consistent with other homes in the area. He said that the homes across the street slope so would not interfere with other property views and expansion was of footprint only.

Board Questions

Mr. Perkins asked if the basement was what the home currently sits on. Attorney Germaine said yes but his clients could speak better to the existing structure description if the Board needed.

There was some discussion with regard to the existing structure and proposed structure.

Code Enforcement

Mr. Wentworth said that Mr. Mackey had provided information with regard to the property for the record and that he did not have anything additional to add.

Mr. Corbett asked if the basement ground level would be the first floor. Attorney Germaine said that his clients were seeking to add 1 floor to an existing dwelling and had never seen a Board look for expansion downward.

Mr. Wentworth said that living space need for foundation under.

Mr. Perkins said that Attorney Germaine outlined that the Marino family are seeking to increase the volume by adding a second story and that a Shoreland permit has been granted. He also explained that properties across the street were of a higher elevation than this property.

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

Johnathan Pollack, 41 Beaver Lake Ave, said he would like clarification to the height of the proposed structure.

Mr. Perkins said that the information had not been provided but typically a 2-story structure is a 20' elevation to the eve and that was only speculation.

Mr. Corbett said it appears to be a demolition with a rebuild.

Mr. Pollack asked how would traffic be managed with heavy equipment as the road was very narrow.

Mr. Perkins said that the proposal was a build on site and traffic control was not a purview of the Board.

Attorney Germaine said that he would like to point out that the contractor was Craig Fowler who has a very reputable reputation. He said with regards to position of trucks and equipment that Mr. Fowler understands the area very well and feel that he will adjust so as to not interrupt traffic flow.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mrs. Morin.

Vote: Unanimous.

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

Deliberative Session

Mr. Perkins reviewed the conditions for the record.

Mr. Corbett said that he felt that the proposal met the criteria and that it would be of minimal impact to the neighborhood.

Mrs. Morin said that she agreed with Mr. Corbett.

Mr. Burgess 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 #20-136 Brian G. Germaine, Esq., Owner: Marino Family Trust of 2018 to Grant a variance to the terms of Article VI, Section 165-46.C.4 of the Town of Derry Zoning Ordinance to allow the structure to be rebuilt with a second story at 62 Beaver Lake Ave, PID 51078, Zoned MDR as presented with the following conditions:

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

Seconded by Mrs. Morin.

Vote:

Mr. Corbett: Yes.

Mrs. Morin: Yes.

Mr. Virr: Yes.

Mr. Burgess: 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 Mr. Perkins would step down and Mr. Corbett would act as Chair and Mr. Burgess would also sit for the following case:

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

20-137 Robert & Kristal Tanguay
Owner: U.S. National Bank Association

The applicant is requesting a variance to the terms of Article VI, Section 165-46.A of the Town of Derry Zoning Ordinance to allow the property to be utilized as a three family dwelling at 32 North Shore Road PID 56059, Zoned MDR

Krystal Tanguay, applicant, provided the Board with the current assessors record of the property and read the required criteria for the record. She explained that they were in the process of purchasing the home that had been unoccupied for 10-12 years except for a squatter. Mrs. Tanguay said that there had been some updates that had been started on the property but not finished.

Robert Tanguay, applicant, said that the inside of the structure you could clearly see 2 kitchens and the tax records taxed as a 3-family structure. He said the cost to rehab will be extensive and having the allowance of the third unit will help them supplement the cost of bringing the home back into living conditions.

Board Questions

Mr. Virr said that that the property was unoccupied for 2 years at least and felt that the legal non-conforming status was abandoned after 18 months that it lost its status. Mr. Wentworth said probably yes but it has been being taxed as a 3 unit structure.

Mr. Virr asked if the main house had 3 baths. Mrs. Tanguay said yes and that the second part of the structure has 2 baths of which was one full and one pulled apart for a total of 5 bathrooms.

Mr. Tanguay said that they have a revised floor layout for the Board.

Mr. Corbett said that they would accept the plans if there was enough for everyone. Mr. Tanguay said yes, then explained the layout for the record.

Mrs. Morin asked if unit 3 was proposed to be a studio apartment. Mrs. Tanguay said yes. She said that they are not planning on building giant units as they will be also living there.

Mrs. Morin asked how many bedrooms would there be in units 1 & 2. Mrs. Tanguay said that they would be studio apartments but unit 2 would have a sunroom that could possibly be utilized as a bedroom.

Mrs. Morin asked if it would be owner occupied. Mrs. Tanguay said yes.

Mrs. Evans asked if was sold as a 3 unit and where would the studio apartments be located. Mrs. Tanguay said that the property was advertised as a 3 unit and that they were currently under a purchase and sales agreement. She explained where the apartments would be located for the record.

Mr. Corbett said that the Board has a copy of the purchase and sales agreement on file.

Code Enforcement

Mr. Wentworth said that Mr. Mackey had provided information with regard to the property and that it was a pre-existing 3-family structure and being taxed as a 3-family structure.

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

Daphne Thurgood, 34 North Shore Road, said she wanted to know how this property became a 3-family. She said she lived directly next door and that the driveway was only 25 feet from her bedroom window so she was concerned that there would be headlights shining into her bedroom. Mrs. Thurgood said that the property has been vacant except for a squatter that lived there for 10 years who mowed the lawn. She said that she was thrilled that there was some interest in the property and that improvements would be made but the aspect of a 3-family dwelling on such a small lot there would be no room for parking. Mrs. Thurgood said that she wanted to make work for everyone but feels a 3-family would be to much for the property with all the vehicles.

Mr. Corbett said that he understands the vehicle headlight concern into the bedroom and asked if there were any other concerns. Mrs. Thurgood asked if the cars would be in the garage.

Mrs. Evans said that need to keep with facts verses assumptions.

Mr. Virr said that the 3rd unit was never aggrieved with the tax assessor and abatement process never done.

Diane Gallagher, 30 North Shore Road, asked if approved she was concerned that other homes could be created into 3-family dwellings. Mr. Corbett said that would not be allowed without a variance.

Ms. Gallagher said that she moved here as it was a quiet neighborhood and do not want to live next door to an apartment building. She said she also has a concern with the increase of traffic.

Robin Thurgood, 34 North Shore Road, said that he read the ordinance and it states the zone is for single family dwellings and feel that if granted the Board would be setting precedence. Mr. Thurgood said the house does not have room for parking for 2 apartments let alone 3. He said that it violates the language of the Article. Mr. Corbett said that the applicant has addressed the points and are seeking relief to the ordinance. He did not know when the property became a 3-family.

Phil Gallagher, 30 North Shore Road, said that he was retired and lives in a quiet neighborhood so have concern that a 3-family would change the residential character of the area and more noise would be created. He said that all his investment of living in a quiet neighborhood would be gone if allowed.

Mr. Corbett said that if wish to speak in opposition to press star 9 and will answer your call.

Peter Shattuck, 1 Orchard Drive, said that he lived next door to the property and had to erect a fence to block the headlights from the home. He said that a multi-family does not conform to the surrounding area and also would put a strain on the water quality. Mr. Shattuck said that there was insufficient parking as the lot was already non-conforming and would it meet the requirements for parking for a multi-family. He said that he heard it was being taxed as a 3-family but no one was collecting taxes as it was abandoned. He wanted to know when it changed. Mr. Shattuck said that he was concerned that not on public water and parking. He said that he understands secondary income but he did not feel that the property could support use.

Mr. Corbett said that it appears that the use was listed at least 20 years ago.

Mr. Virr said that the property was a pre-existing, non-conforming use and zoning has changed over the years. He said that its currently on the ground and exists.

Mr. Shattuck said that he understands 50 years ago things were different and change all the time. He said he felt that it was time to be revisited.

Rebuttal

Mrs. Tanguay said the question with regard if there would be a garage there will be one built that will house 2 vehicles and reviewed the driveway layout for the record. She said that they will be happy to install a fence to help block out headlights. Mrs. Tanguay said

that the neighborhood has a nursing home that consists of 2 living units besides the resident status. She said that the neighborhood consists of many non-conforming homes. Mrs. Tanguay said the concern of water that the well servicing this home was an artesian well with a 250 foot depth.

Mr. Perkins asked if knew the gallons per minute. Mrs. Tanguay said it was 12.6 gallons per minute.

Mrs. Morin asked if stipulation of no more than one bedroom for not owner occupied units as porch could potentially be second bedroom. Mr. Tanguay reviewed the proposed layout of and said that they did not want units consisting of 2-3 bedrooms as they would be living there also.

There was some discussion with regard to size of units and number of bedrooms of the proposed floor layout.

Mrs. Morin motioned to go into deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Deliberative Session

Mr. Corbett said that it was an interesting lot consisting of a non-conforming structure. He said that the concern of when occurred the Board has been provided record that it consisted 20 plus years. The applicant is here to see if can be allowed to fix mistake of a 3-family on record that is located in a single family zone.

Mrs. Morin said she googled image so she could see driveway and that the mailboxes there show a 32 A&B and can see that it has been multi-family.

Mr. Virr said that the assessor decided it was a 3-family however feel use has been abandoned so no longer exists. He said that the assessor does not always go inside to see actual floor plan of a home.

Mr. Burgess said that he felt the same as Mr. Virr and do not see a 3-family on the lot. He said it could be a single with an accessory apartment. Mr. Burgess said the property has been abandoned for a number of years and it is a nice plan of what they wish to do but do not see a 3-family.

Mrs. Morin said that the information supplied shows that in 1991 it was being taxed so potential of when it became a 3-family.

Mr. Corbett said that the Board needs to structure a motion and a suggestion was made to cap the number of bedrooms for apartments and applicants were acceptable.

Mr. Virr said he did not think the Board could regulate the number of bedrooms that it would be something that Code Enforcement would determine.

Mr. Corbett reviewed the condition for the record.

Mrs. Morin motioned come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Mrs. Evans motioned on case # as 20-137 Robert & Kristal Tanguay, Owner: U.S. National Bank Association to Grant a variance to the terms of Article VI, Section 165-46.A of the Town of Derry Zoning Ordinance to allow the property to be utilized as a three family dwelling at 32 North Shore Road PID 56059, Zoned MDR presented with the following conditions:

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

Seconded by Mrs. Morin.

Vote:

Mrs. Morin: Yes.

Mrs. Evans: Yes.

Mr. Burgess: No. Do not see hardship and would be against spirit and intent of the ordinance.

Mr. Virr: No. Feel would be contrary to the public interest due to the size of the lot. Substantial justice not shown as 3rd unit has been abandoned.

Mr. Corbett: Yes.

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

Other Business

Mr. Perkins said that he would like to welcome Mr. Gaspar Obimba who has been appointed by Town Council as an alternate to the Zoning Board of Adjustment.

Approval of Minutes

Mrs. Evans motioned to approve the minutes of September 3, 2020 as amended.

Seconded by Mr. Corbet.

Vote: Unanimous.

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

Adjourn

Mr. Burgess motioned to adjourn.

Seconded by Mr. Corbett.

Vote: Unanimous.

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

Adjourn at 8:30 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

Approval of Minutes October 1, 2020

Mr. Corbett motioned to approve the minutes of September 17, 2020 as amended.

Seconded by Mrs. Evans.

Vote: Unanimous.

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