

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
September 3, 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 now physically and also electronically. As such this meeting is being held 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 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: 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.

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 Mr. Burgess would sit for the following case

20-133 John & Shannon Joyce

The applicants are requesting an equitable waiver to the terms of Article VI, Section 165-48.B.4 of the Town of Derry Zoning Ordinance to allow the existing pool and deck to remain less than 15 feet from the side property line. 9 Buttonwood Drive, PID 11084-006, Zoned LDR

John Joyce, owner, said that he had submitted the survey that the Board.

Mr. Perkins reviewed the survey that had been provided for the record. He stated that this meeting was a continuance from August 20, 2020 as the Board felt that they needed to view the survey indicating the actual distances of the pool and deck to the property line.

Mr. Perkins asked the abutters if they had seen the survey. Mrs. Saitta said that they had not. They were provided a copy for review.

Mrs. Saitta said that the law was 15 feet and the plan shows that the pool was 9' 8" and the deck was 11' attached to the pool.

Mr. Perkins said that the applicant is here for an equitable waiver and you are provided the opportunity to speak. Mrs. Saitta said that this was frustrating as either way they are noted as the bad neighbor. She said that they were opposed to the granting of this variance as it was very close to her property and was unable to sit in their deck now as it is very disturbing.

Mr. Perkins asked where was the deck located on the home. Mrs. Saitta said it was on the back of their home.

There was some discussion with regard to the distance of the applicant's pool and the location of the abutters home.

Mrs. Saitta said that this was a case of begging for forgiveness as done on purpose and falsified permit. She said that they were asked to stop on numerous occasions and continued to build. Mrs. Saitta said that surveys were supposed to be done before construction in order to obtain a permit.

Mr. Mackey said that for smaller projects certified plot plans were not required.

There was some discussion with regard to discrepancy and the setback requirements.

Mr. Corbett asked how does this affect her property values. Mrs. Saitta said that the deck previously wrapped around the side of the pool which was removed. She said that they were over the 15 foot requirement which is clearly stated and it disrupts her property.

Mrs. Evans asked if it was the pool or deck that was the cause of the concern. Mrs. Saitta said she assumed everything was done properly. She said that when the deck was being constructed, she called the building department as it was coming closer to their property.

Mrs. Evans asked if there had been any prior conversations of where the lot line was prior to construction. Mrs. Saitta said yes that she had told Mr. Joyce that the arborvitaes were on her land and that they needed to get a survey of their own.

Mr. Corbett 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. Corbett said that the cost to move the pool and deck would be significant. He said that he had asked the abutter of how it would devalue their property but did receive a direct answer. Mr. Corbett said that he reviewed the plan provided and roughly calculated distance of the pool to the abutters home that he did not see how it would negatively affect the abutting property.

Mr. Burgess said that an above ground pool does not typically have a long life span and that he understands that it is currently too close to the property line and that the cost to relocate at this time would be significant. He said that if and when the time came to replace it that it should be relocated to meet the proper setbacks.

Mrs. Morin said that she agrees with both Mr. Corbett and Mr. Burgess's comments. She also said that all the years of maintaining the grass to the arborvitaes the applicant had never been told that they were mowing the abutters lawn.

Mrs. Evans said that she agrees with the Board. The applicant stated that he had seen a 2004 survey and had a conversation with the abutter of where the lot line was stated that they had discussions to where the line was. Mrs. Evans said that she agreed that she could not see having to relocate the pool at this time due to the cost.

Mr. Perkins said that the arborvitaes appear to be the culprit of all the misunderstandings of where the boundary line was located. He said that the deck was where the discrepancy had been noted and is 14 feet to the lot line. Mr. Perkins reviewed the distances of the pool and deck to the property line. Mr. Perkins said that the injustice in balance of misunderstandings of where one's lot lines are located are reasons of why public looks for guidance for relief. He said he did not feel that the disturbance that Mrs. Saitta has stated would be any different if the applicant was required to relocate the pool 6 feet and that the Saitta's home was more than 15 feet from the boundary line. Mr. Perkins said that he did not feel that there would be justice if made to relocate.

Mr. Perkins reviewed the conditions for the record.

Mr. Perkins asked if relocate pool in the future would it be required to meet the setback. Mr. Mackey said that was correct.

Mr. Corbett asked if the deck would be required to be relocated also. Mr. Perkins said that if the deck were to be taken down and rebuilt it would need to meet the setback requirements also.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mrs. Morin.

Vote: Unanimous.

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

Mrs. Evans motioned on case #20-133 John & Shannon Joyce to Grant a an equitable waiver to the terms of Article VI, Section 165-48.B.4 of the Town of Derry Zoning Ordinance to allow the existing pool and deck to remain less than 15 feet from the side property line. 9 Buttonwood Drive, PID 11084-006, Zoned LDR as presented with the following conditions:

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

Seconded by Mr. Corbett.

Vote:

Mrs. Morin: Yes.

Mr. Corbett: Yes.

Mr. Burgess: 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.

It was noted that Mr. Virr would sit for the following cases.

The applicant is requesting a variance to the terms of Article XII, Section 165-101.11 of the Town of Derry Zoning Ordinance to allow the installation of an electronic message center sign at the property at 11 Windham Road, PID 5006-001, Zoned MDR

Peter March, NH Signs, & Dan Hutchins, NH Signs, were present to represent the applicant. Mr. March reviewed the submitted letter of explanation and criteria for the record.

Board Questions

Mr. Corbett said that in viewing the drawings and permitted sign it appears so much bigger if it was to allow for the message board. Mr. Hutchins said that the original permitted sign was reviewed and so as to enhance color images.

Mr. Virr said that in reviewing drawings proposed that it appeared that the existing sign has a wooden post and what would the new signpost be made out of what. Mr. Hutchins said that the old signpost was wood and painted and that the new post would be made out of metal.

Mr. Burgess asked if it would be located further back and what would the hours of illumination be before and after. Mr. Hutchins said that the sign would be further back. Mr. March said that the hours would be from opening until close at 7:00 pm.

Mr. Virr asked what part of the sign would be illuminated. Mr. Hutchins said that the entire sign would be illuminated.

Mr. Virr asked if the red portion of the sign was a bright red. Mr. March said it was more of a tomato red.

There was some discussion with regard to length of time display for message.

Code Enforcement

Mr. Mackey supplied the following information for the record:

- The applicant is requesting approval to install an electronic message center sign as part of a new replacement sign at the property.
- The business, Daigle Plumbing has been located on the property since 2005 and is considered a legal, pre-existing, non-conforming use. The property is zoned Medium Density Residential (MDR) but has a long history of commercial uses.

- The applicants are looking to update the signage at the property and a permit was applied for and granted by this office. At that time, it was not realized that part of the sign included a small electronic message center sign. Once this was discovered, the owner was advised that a variance would be required for this portion of the sign.
- Currently, per Article XII, Section 165-101.11, electronic message center signs are only allowed by right in the General Commercial (GC), General Commercial IV (GC IV) and Industrial IV (IND IV) Zoning Districts.
- It would appear that the other aspects of the sign would comply with the sign regulations.
- If approved, a sign permit will be required.
- There are pictures of the property in the file for review by the Board.

Mr. Perkins said that the old sign sort of statement and asked if tested clearance from stop sign of 10 feet. Mr. Hutchins said yes and explained size of proposed sign.

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. Corbet, Mr. Perkins.

Deliberative Session

Mr. Virr said that he has dealt with Daigle Plumbing for many years and he liked the looks of the new sign.

Mrs. Evans said she agrees and also likes the design and agree that update is best goal and keeping up with technology.

Mrs. Morin said agree with Board that proposed design look and that the other sign has existed for many years.

Mr. Perkins said that he cautions of illumination and set hours.

Mr. Perkins reviewed the conditions for the record.

Mrs. Morin asked if a condition stipulating hours and brightness of the sign. Possibly add condition of 6:00 AM to 6:00 PM.

Discussion with regard to hours of illumination.

Mr. Virr said that a condition of no flashing of messages should be made.

Mr. Mackey said that a condition of operate under Section 165-101.11 should be part of the motion.

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 on case #20-134 NH Signs, Owner: Daigle Family Properties, LLC to Grant a variance to the terms of Article XII, Section 165-101.11 of the Town of Derry Zoning Ordinance to allow the installation of an electronic message center sign at the property at 11 Windham Road, PID 5006-001, Zoned MDR as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Hours of operation of message center to be 6:00 AM – 7:00 PM**
- 3. Operation of message center to comply with Section 165-101.11 of the Zoning Ordinance.**

Seconded by Mrs. Morin.

Vote:

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

20-135 John F. Webster

The applicant is requesting a variance to terms of Article VI, Section 165-46.C.4 of the Town of Derry Zoning Ordinance to allow the construction of a 24 ft by 28 ft garage less than 15 feet from the side property line at 17R Norman Drive PID 22012-047R, Zoned MDR

John F. Webster, owner, read his submitted criteria for the record. He said that he currently has a portable garage which is the second one that he has had to put up due to the first one collapsing and has had to put a tarp over. Mr. Webster said that he has an antique car and wishes to work on it. He said that he has spoken to his neighbors and no one has any objections to his proposed garage.

Board Questions

Mr. Corbett asked if the pictures submitted were of what he proposed to construct. Mr. Webster said yes that the pictures show his portable garage and another of what the proposed garage would look like and the other is a picture of a neighboring property that is similar with a room over.

Mrs. Morin asked if looking to build just a garage or have storage over. Mr. Webster said that he was just seeking to build a single story 2 stall garage.

Mr. Virr asked if the truck and trailer on the land would be in the garage. Mr. Webster said yes that the trailer is only there three weeks a year other at the drag way or the Londonderry Flea Market.

Mr. Corbett asked why need 2 car garage. Mr. Webster said that he has two vehicles and that he wished to be able to work on his own vehicle.

Mr. Perkins asked if the 28' deep was in align with the home. Mr. Webster said yes.

Mr. Burgess said that he felt that 4'8" is very close and asked if could make longer verses wider. Mr. Webster said that a typical 2 car garage was 24' wide.

Mrs. Evans asked if there were any restrictions or easements in the deed. Mr. Webster said no.

Code Enforcement

Mr. Mackey supplied the following information for the record:

- The applicant is requesting a variance to allow the construction of a two car, 24 foot by 28 foot garage at the property. The garage is proposed to be 4.82 feet from the side property line.
- The property is located in a large, two-family development, built in the mid to late 80's, comprised of small lots with limited building envelopes, i.e. no room for expansion.
- The properties are serviced by Town water & sewer.
- If approved, permits and inspections will be required.
- There are pictures of the property in the file for review by the Board.

Mr. Virr asked what size was the lot. Mr. Mackey said it was just over 11,000 square feet.

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.

Mr. Perkins asked by not single bay garage with deeper bay. Mr. Webster said that he has 3 vehicles and his plan is when trailer is home has an antique track car to work on and have his van on the other side.

Mrs. Evans said that the deed speaks to structures erected and association.

Mr. Perkins asked if under an association. Mr. Webster said he has a condex agreement but there was no association.

Mr. Virr said that he recalled that it doesn't exist and never was established.

Mr. Mackey said that the development started out as rentals and over the years have condominized and no association or board of directors had been established.

Mr. Burgess asked if there were any restrictions to build towards back of lot. Mr. Mackey said would still need to maintain 15 feet to side and rear setbacks and he did not know the topography of the lot.

Mr. Virr asked if fire would there be egress to respond properly. Mr. Webster said yes as there would be 4' 8" to the property line.

Mr. Perkins asked if there were any drawings from a surveyor. Mr. Webster said that the lot bound was next to the sidewalk and there was rebar pin to the rear.

Mr. Burgess asked if the Board could ask for a survey as part of the requirement. Mr. Webster said that he was asking to build a 24' wide garage off his existing foundation and in measuring that would set him at 4' 8" to his side lot line going off the plan provided.

Mr. Perkins said that it was in the Board's purview to ask and a valid request made as a suggestion.

Mrs. Evans motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Deliberative Session

Mr. Corbett said that it was a nice garage and that he had inquired if a one car one bay garage would be acceptable as would fit in setback radius as feel a 2 bay garage is a stretch of an encroachment.

Mr. Perkins said that the Board has to determine if the request is reasonable. He said that he felt that the property is in an older part of the community. He said the point brought forth by Mr. Virr of fire apparatus accessibility to the rear of the property was answered by Mr. Webster that there was 40' between the homes. Mr. Perkins said that the question of building a new 2 car garage necessary and was informed other structures built in neighborhood similar. He said that he did not want to deny but don't want to be excessive overbuild to lot line.

Mr. Virr said in viewing the property all the lots are small and in a congested area. He said that his problem is that it would be 4' 8" to the property line and a one car garage could easily fit and feel request is excessive.

Mr. Perkins reviewed the conditions for the record.

Mrs. Morin said that carport is there and may be closer to the setback already.

Mr. Perkins asked if certified are required for building a garage. Mr. Mackey said typically no not unless the Board requires it as part of the conditions.

Mrs. Evans motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Mrs. Evans motioned on case #20-135 John F. Webster to Grant a variance to terms of Article VI, Section 165-46.C.4 of the Town of Derry Zoning Ordinance to allow the construction of a 24 ft by 28 ft garage less than 15 feet from the side property line at 17R Norman Drive PID 22012-047R, Zoned MDR as presented with the following conditions:

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

Seconded by Mrs. Morin.

Vote:

Mr. Virr: No. Feel distance to lot line is to close.

Mr. Corbett: No. Do not see hardship as a smaller garage could fit.

Mrs. Evans: No. For the same reason as stated by Mr. Virr.

Mrs. Morin: No. Feel would be contrary to the public interest.

Mr. Perkins: No. Also do not see in public interest or substantial justice has been met and no hardship has been shown.

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.

Other Business

Mr. Perkins said that the annual Planning & Zoning conference has been cancelled.

Correspondence

Mr. Perkins said that the Board received a letter from Liberty Utilities to let know that they are located in Town and helping to heat homes.

Approval of Minutes

Mrs. Evans motioned to approve the minutes of July 16, 2020 as written.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Mrs. Evans motioned to approve the minutes of August 20, 2020 as amended.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Adjourn

Mr. Burgess motioned to adjourn.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Adjourn at 8:41 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

Approval of Minutes September 17, 2020

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