

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
October 1, 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: 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.

20-138 Promised Land Survey, LLC
Owner: Edward C. Cooper Revocable Trust

The applicant is requesting a variance to terms of Article VI, Section 165-47.B.2 of the Town of Derry Zoning Ordinance to allow the property to be subdivided into 5 single family lots each with less than the required 150 feet of frontage. One lot to be created off East View Drive with 132.24 feet of frontage and two lots off Stoneleigh Drive and two lots off Jewell Lane each with 25 feet of frontage at 6 East View Drive, PID 06086, Zoned LMDR

Timothy Peloquin, Promised Land Survey, LLC, explained the concept of the plans that were submitted and reviewed the criteria for the record. Mr. Peloquin further explained how his client was seeking to subdivide the property for the Board.

Board Questions

Mr. Perkins asked if it was a 5 or 7 lot subdivision being sought. Mr. Peloquin said it was a 5 lot plan and explained the area with proposed lot numbers and said that the other 2 lots were transfers to the Cooper Estate.

Mr. Burgess asked if the proposal was creating 1 large lot and if it would become a conservation area. Mr. Peloquin said it was creating one large lot but would be added to the existing lot not a conservation lot.

Mr. Corbett asked if the 11 lot proposed plan could be clarified. Mr. Peloquin explained the proposed 12 lot subdivision plan as there would be one lot on East View and that this proposal would not require a variance. He said that he submitted the alternative plan but the intent of his client is for the 5 lots if the variance was granted.

Mr. Virr asked in viewing the 11 lot proposal the right side property would be transferred to the adjacent parcel where would access be. Mr. Peloquin said it would be East View Drive.

Mr. Virr said that in looking at the area of Brier Lane 001, 19 acre parcel would access be through Brier Lane. Mr. Peloquin said that the idea is to have a 7.61 acre parcel transferred to the Estate Lot and he was not aware of any other access to the parcel.

Mrs. Morin asked if Stoneleigh Drive road was to be extended to Jewell Lane if the cost would outweigh the proposed 5 lot plan. Mr. Peloquin said that the return of the investment would take longer and be a greater gain.

Mrs. Morin said so a 4 lot plan would be better. Mr. Peloquin said that Stoneleigh to Jewell would be 11 lots verses the 4 lots.

Mr. Perkins said that in viewing the proposed 5 lots it appears to be a lot of wet area. Mr. Peloquin said there was not a lot of wetlands as it was mostly woods land.

Mrs. Evans asked if the 8.10 acres and 7.1 acres would be combined with 06086 lot. Mr. Peloquin said yes and described for the record.

Mrs. Evans asked if Jewell Lane would be creating access. Mr. Peloquin explained the proposed intent was to allow conservation to have access to the lot.

Mr. Corbett said that the proposal is to have 2 lots off Stoneleigh Drive, 2 lots off Jewell Lane and 1 lot off East View Drive. Mr. Peloquin said yes.

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 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

Cheryl Pelligrino, 8 Stoneleigh Drive, said she is the abutter to the lot and built their home 15 years ago and at that time Mr. Cooper told her that there was no intention of developing the lot. Mrs. Pelligrino said that 3 years ago she noticed Mr. Cooper on the lot with heavy equipment and taking down trees and was told at that time that his dream was of creating nature trails in the area for people to enjoy. She said that now she received notice of proposed subdivision and she has questions with regard to the proposed lot 3 consisting of 5 acres as she paid a lot for home at the end of cul-de-sac and an 11 lot subdivision was unacceptable.

Mr. Perkins said that the 11 lot plan was not on the table and would not require a variance. He said that if the proposed 5 lots were not approved tonight the applicant is showing a potential 11 lot subdivision could potentially be done.

Mrs. Pellegrino said she has tried to locate the owner of the cul-de-sac as have been mowing for 15 years and the stone walls separating the land are beautiful and have heard there was a law of unable to remove stonewalls in New Hampshire.

There was some discussion with regard to cul-de-sac and the stone walls.

Mark & Cheryl Kimbark, 3 Stoneleigh Drive, said that they were concerned with value of homes being diminished and that the bridge is very narrow in the winter road and there were no sidewalks in the area. Mrs. Kimbark said that the area in front of their home was set up for fire trucks in the event of an emergency and concerned with additional homes utilizing it.

Mr. Perkins said he felt that the value of new homes impact would drive up existing home value does not drive down. He said that snow and road issues would be covered with the Planning Board review and not purview of this Board. Mr. Perkins said that the Fire trucks and cistern would also be part of the Planning Board and that 2 additional house lots he did not feel would impact but concerns would be addressed at the Planning Board meeting.

Mr. Wentworth said that new homes today were required to have either a cistern or fire suppression system installed.

There was some discussion with regard to frontage requirements.

Rebuttal

Mr. Peloquin said that he respects the abutters concerns and understands. He reviewed the concerns as follows:

- Right-of-way access off the cul-de-sac and that it was owned by the Town.
- The stone wall is where the property line is and the only portion that would be removed would be a 50 foot section which is legal and that the cul-de-sac would remain in exact form. Mr. Peloquin explained that a cul-de-sacs are considered temporary and not part of a person's land. If a road were to connect it would be removed and roadway created.
- In reference to paying additional cost for end lot not purview of applicant.
- Never a promise of creating trails and never subdividing.
- House placement not determined at this time.
- No opposition off Jewell Lane which is exact same proposal.
- Applicant keeping homestead and cleaning up estate matters.
- Tree line on plan to show respect to abutting lots of which are 5 acres or more.
- Bridge design meets all standards. Narrower in winter due to snow guard rails which is nothing unusual.

Mr. Burgess asked if the 11 lot proposal were to be implemented would the cul-de-sac be gone. Mr. Peloquin said that would be a Planning Board issue but in past experience they go away and the road is extended.

Mr. Burgess said that the proposal as presented if granted the cul-de-sac would stay. Mr. Peloquin said yes.

Mr. Burgess asked if the 32' x 60' area represents where home placement would be. She said in viewing the 5 lot plan no road is shown and if agreed would there ever be a potential to create road. Mr. Peloquin said structure location was not determined at this time.

Mr. Perkins said that the 5 lot proposal would land lock the area from future road being established.

Mrs. Pelligrino asked if only 2 lots would there be any possibility to subdivide those lots.

Mr. Peloquin said that the proposal is for 2 lots off the end of Stoneleigh and 2 lots off the end of Jewell Lane which would end any potential subdivisions.

Mr. Corbett motioned to go into deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Deliberative Session

Mr. Perkins reviewed the conditions for the record. He said that the Planning Board will have a meeting where additional discussion of the road, etc. will be addressed.

Mrs. Evans said she felt the proposal was well vetted.

Mr. Corbett said that the 5 lot proposal would be a fair exchange verses an 11 lot subdivision.

Mr. Perkins said he agrees that it was a fair exchange and other matters raised would be addressed at the Planning Board level.

Mr. Virr motioned to come out of deliberative session.

Seconded by Mrs. Morin.

Vote: Unanimous.

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

Mrs. Evans motioned on case #20-138 Promised Land Survey, LLC, Owner: Edward C. Cooper Revocable Trust to Grant a variance to terms of Article VI, Section 165-47.B.2 of the Town of Derry Zoning Ordinance to allow the property to be subdivided into 5 single family lots each with less than the required 150 feet of frontage. One lot to be created off East View Drive with 132.24 feet of frontage and

two lots off Stoneleigh Drive and two lots off Jewell Lane each with 25 feet of frontage at 6 East View Drive, PID 06086, Zoned LMDR as presented with the following conditions:

1. Subject to obtaining all State & Town permits and inspections.
2. Subject to Planning Board approval.

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

20-139 Promised Land Survey, LLC
Owner: South Range Realty Trust

The applicant is requesting a variance to terms of Article III, Section 165-9 and Article VI, Section 165-47.A of the Town of Derry Zoning Ordinance to allow the subdivision of the property to create one new lot approximately 4.41 acres in size on the Class VI section of South Range Road for the purpose of constructing a two-family dwelling. 25 South Range Road PID 02082-001, Zoned LMDR

Timothy Peloquin, Promised Land Survey, LLC, said that his client Arthur Caras, Trustee of South Range Realty Trust was also present. Mr. Peloquin reviewed the required criteria for the record.

Board Questions

Mr. Perkins asked why town houses verses single family structures. Mr. Peloquin said that the cost to build the driveway would give a better return of investment and the proposed lot is double the required lot size.

Mr. Perkins asked if it was 2 acres per town house. Mr. Peloquin said yes and explained that a portion of the Class VI road area would need to meet Planning Board, Public Works Department and Fire Department also have certain requirements. He said that the

Fire Department will also requires a 14' width and 11' height passage and the proposed lot will also have to have a hammer head turn around and will also have to have a promise agreement to maintain area.

Mr. Perkins asked what the proposed surface area would be. Mr. Peloquin said it would be pavement.

Mrs. Evans asked if the frontage for lot 70 was for future subdivision. Mr. Peloquin described the plan for the record. He said that the intention at this time is more of a conservation and that the area is a well-traveled path.

Code Enforcement

Mr. Perkins said that Mr. Mackey had provided information for the record.

Mr. Wentworth said that there are no town houses they are called duplexes. He said a waiver of municipal liability will be required and that the request is technically 2 variances that the Board may wish to vote on separately. One for frontage and the other for building a duplex.

Mr. Perkins said that the Board will divide into 2 separate motions.

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. Corbett motioned to go into deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Deliberative Session

Mrs. Evans asked if voting on frontage first.

Mr. Perkins said that suggest start with the proposed 2-family. He reviewed the conditions for both for the record.

Mr. Perkins reviewed the condition for the record.

Mr. Virr motioned 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 #20-139 Promised Land Survey, LLC, Owner: South Range Realty Trust to Grant a variance to terms of Article III, Section 165-9 of the Town of Derry Zoning Ordinance to allow the subdivision of the property to create one new lot approximately 4.41 acres in size on the Class VI section of South Range Road, PID 02082-001, Zoned LMDR as presented with the following conditions:

1. Subject to obtaining all State & Town permits and inspections.
2. Subject to Planning Board approval.
3. Subject to recording of a Waiver of Municipal Liability with Rockingham County Registry of Deeds.

Seconded by Mr. Virr.

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.

Mrs. Evans motioned on case #20-139 Promised Land Survey, LLC, Owner: South Range Realty Trust to Grant a variance to terms of Article VI, Section 165-47.A of the Town of Derry Zoning Ordinance to allow the construction of a two-family

dwelling on the proposed 4.41 acre lot to be subdivided on a Class VI road 25 South Range Road, PID 02082-001, Zoned LMDR as presented with the following conditions:

1. Subject to obtaining all State & Town permits and inspections.
2. Subject to recording of a Waiver of Municipal Liability with Rockingham Registry of Deeds.

Seconded by Mr. Virr.

Vote:

Mrs. Evans: Yes.
Mrs. Morin: Yes.
Mr. Virr: Yes.
Mr. Corbett: No. Feel it would be contrary to the public interest.
Mr. Perkins: 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. Corbett provided the information to the public on how to access the case for the record.

20-140 CJ Developers
Owner: PTK Holdings, LLC

The applicant is requesting a variance to the terms of Article VI, Section 165-32.B of the Town of Derry Zoning Ordinance to allow the replacement of the existing building with a new branch bank with less than the required setbacks to the side and front property line at 46 Crystal Ave, Parcel ID 30072, Zoned GC

David Latulippe, CJ Developers, said that they were seeking to redevelop the existing Nestle Toll House building. He said that Sean Covella, Engineering Nobis Group was also present to assist with answering any questions that the Board may have. Mr. Latulippe reviewed the required criteria and described the proposed plan for the record.

Board Questions

Mr. Perkins asked if proposing to utilize solar for the project. Mr. Latulippe said yes, as they have installed solar panels in New Brunswick and have had success with the installation and assists with no bird droppings, etc.

Mr. Obimba asked if the property would be serviced by Town water and sewer. Mr. Latulippe said it he was told the property has access to Town water and sewer. He said that more detailed plans will be required in the Planning Board process.

Mrs. Evans asked if there were plans of expansion. Mr. Latulippe said yes by approximately 700 square feet.

Mr. Virr asked if they were unable to retrofit the existing cookie store into a bank. Mr. Latulippe said that they tried but the cost would have been more than rebuilding. He said that the proposed bank would be similar to the Enterprise Bank.

Mrs. Morin said that Pizza Hut left as were unable to meet code so they would have eventually had to do the same thing to continue to operate.

Code Enforcement

Mr. Wentworth said that Mr. Mackey had provided the Board with information for the record.

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.

Mrs. Morin asked if the bank would have normal banking hours as feel a concern for neighbors behind the property. Mr. Latulippe said that there may be a drive thru which would be open to have access and regular banking would be approximately till 7:30 pm and Saturday 8:00 am – 5:00 pm.

Mr. Virr asked if Bangor Savings had the required approvals. Mr. Latulippe said yes.

Mr. Corbett motioned to go into deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Deliberative Session

Mr. Perkins reviewed the condition for the record.

Mrs. Morin said she felt the proposal would be great for the economy.

Mr. Perkins said that he also had a concern for the hours but the applicant had answered.

Mr. Corbett motioned come out of deliberative session.

Seconded by Mrs. Morin.

Vote: Unanimous.

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

Mrs. Evans motioned on case #20-140 CJ Developers, Owner: PTK Holdings, LLC to Grant a variance to the terms of Article VI, Section 165-32.B of the Town of Derry Zoning Ordinance to allow the replacement of the existing building with a new branch bank with less than the required setbacks to the side and front property line at 46 Crystal Ave, Parcel ID 30072, Zoned GC as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Subject to Planning Board approval.**

Seconded by Mrs. Morin.

Vote:

Mrs. Morin: Yes.

Mr. Virr: Yes.

Mrs. Evans: Yes.

Mr. Corbett: 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 for the record that Mr. Corbett would step down and Mr. Obimba would sit for the following case.

20-141 John F. Webster

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

John F. Webster, owner, reviewed his application criteria for the record. He said that he previously was before the Board requesting 4.8' to the property line and was denied. Mr. Webster said that his request was now to be 8' from the lot line which is almost double than his prior request and that the proposed garage would be located exactly in line with the existing driveway.

Board Questions

Mr. Perkins asked if the proposed garage would be 20' x 28'. Mr. Webster said no it would be 21.8' x 28'

Mrs. Morin asked how far was the neighbor on the right side to the property line. Mr. Webster said he did not know the exact distance.

Mr. Virr asked what was the distance of the house to the lot line. Mr. Webster said it was 29.8'.

Mr. Perkins asked if the proposed rendition of the garage narrows to allow for consideration of passage around rear of home. Mr. Webster said yes.

Code Enforcement

Mr. Wentworth said that Mr. Mackey had provided the Board with information 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

Roger LaPointe, 22 Norman Drive, said he had no objection to the garage as it would be better than looking at the existing quonset hut. Feel the garage would be a better view.

Sharon Miller, 15L Norman Drive, said she lives next door and there is plenty of room to build a garage. She said that the quonset hut is ugly and that a garage would be better for the area.

Dhaval Patel & Vidya Patel, 17L Norman Drive, said they live next door and have no objection to garage as feel would look better.

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. Webster said that the Patel's live at 17L Norman Drive for the record. He said that he was disabled and that a garage would help so he did not have to walk on an icy driveway to enter his home in the winter.

Mrs. Evans motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Deliberative Session

Mr. Obimba asked what has changed from the original request.

Mr. Perkins explained the previous request was seeking to be 4.8' from the side property line now requesting to be 8'. Mr. Perkins said that the Board needs to determine if the request is excessive or reasonable.

Mrs. Morin said that the abutters are present and in favor of the applicants request where they were not in attendance at the prior meeting. She said that the applicant has stated that he was handicap and has a van. The proposed plan matches up with the existing driveway.

Mrs. Evans said that she felt it was a reasonable request.

Mr. Virr said that he reviewed the 5 criteria and feel that the applicant has revised his request in good faith with a reasonable solution.

Mr. Perkins said that he felt that this request was an adequate compromise as if someone had to get out back in the event of an emergency without impeding on others.

Mrs. Morin said that she drove down the area and seen a few garages in the area that have living space over which the applicant is not requesting to do.

Mr. Perkins reviewed the condition for the record.

Mr. Virr motioned come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Mrs. Evans motioned on case #20-141 John F. Webster 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 construction of an attached garage less than 15 feet from the side property line at 17R Norman Drive, PID 22012-047, Zoned MDR as presented with the following conditions:

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

Seconded by Mr. Virr.

Vote:

Mrs. Evans: Yes.

Mrs. Morin: Yes.

Mr. Virr: Yes.

Mr. Obimba: 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.

Approval of Minutes

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

Other Business

Mr. Perkins said that there have been 2 cases submitted for the October 15, 2020 meeting.

Adjourn

Mr. Corbett motioned to adjourn.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Adjourn at 9:19 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

Approval of Minutes October 15, 2020

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Mrs. Evans motioned to approve the minutes of October 1, 2020 as amended.

Seconded by Mr. Corbett.

Vote: Unanimous.

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