

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
November 5, 2020

Members Present

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

Members Absent

Alternates Present

Alternates Absent

Donald Burgess
Gaspar Obimba

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 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: 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.

The Board members introduced themselves.

Mr. Perkins informed the public that case #20-145 Sean Tumblety has requested to be postponed to the next meeting and will not be heard tonight.

Mr. Corbett motioned to postpone case #20-145 Sean Tumblety to the November 19, 2020 meeting.

Seconded by Mr. Virr.

Vote: Unanimous.

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

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

**20-144 DeRosa Development Company, LLC
 Anthony J. DeRosa, Mgr.**

The applicant is requesting a variance to terms the terms of Article VI, Section 165-46.A of the Town of Derry Zoning Ordinance to allow the construction of a two-family dwelling on the property at 151 By-Pass 28, PID 11064-008, Zoned MDR

Anthony J. DeRosa, applicant and owner, said he was also here with Anthony V. DeRosa to help answer any additional questions the Board may have. Mr. DeRosa read the application criteria for the record.

Board Questions

Mr. Perkins asked if the property was recently purchased and raised. Mr. DeRosa said that they had driven by the property and saw the posted for sale sign and was interested in the garage as currently have a variety of classic cars. He said that the garage was an existing 30' x 60' and was in great shape.

Mr. Perkins asked if knew the property was single family. Mr. DeRosa said yes. He said that they pushed to purchase and know that the market is incredible at the present time. Mr. DeRosa said that they wish to pursue a 2-family dwelling as have family that would reside there and they will maintain ownership.

Mr. Perkins asked what was the true hardship. Mr. DeRosa said that he considered the location a hardship as it was a very busy area. He said a single family would sell with todays market but it is not an ideal location for a young family due to the busy road and he would be uncomfortable selling to a young family with children.

Mr. Perkins said that is a noble consideration and asked if the structure would consist of two 3-bedroom units be contrary to statement. Mr. DeRosa said no as he was hoping to have one side for himself and the other for another family member. He said that the septic system is 6 bedroom system.

Mr. Perkins asked if the property file had been checked. Mr. DeRosa said they had researched the property file and a hand drawn design was on file at the building

department and a copy was submitted to the Board. They also have contacted the State on several occasions but they have no record of what is in ground. Mr. DeRosa said that they have located the tank and it is in good condition.

Mr. Perkins said that if request were to prevail would still need to have test pits etc. Mr. DeRosa said that was correct even with what they propose to build being 2 bedrooms on either side or a 4 bedroom colonial.

Anthony DeRosa said that the property has significant room to allow an adequate size septic system for the proposed structure.

Mr. Perkins asked why not put back a split level to what was there verses a 2-family structure. Mr. DeRosa said that the cost to build a single family has increased drastically and constantly receive calls asking if they have any affordable housing for rent as banks won't finance and there is nothing out there. He said that a home with 1,000 – 1,200 square feet and falling apart is averaging 300-350k range and are having no showings and only open houses that receive 3-4 applications to purchase upon entering. They don't last long on today's market.

Mr. DeRosa said that they had several inquires just to purchase the raw land and that the cost to build is dictating cost driving up sale prices. If approved to build a duplex will also be costly but will help offset by income. He said that duplexes are limited and when one becomes available it is sold within hours.

Mr. Corbett asked if intent was to build and sell why not rent single family. Mr. DeRosa said that from a business standpoint a duplex would be a better return and would allow more occupancy to offset cost to build.

Mrs. Morin asked if the garage was an open concept. Mr. DeRosa said that the garage was a clear span, wide open with no plumbing.

Mr. Corbett asked if intent was to keep the garage. Mr. DeRosa said yes, they would clean up and add siding.

Code Enforcement

Mr. Mackey provided information with regard to the property for the record.

- The applicant is requesting a variance to allow the construction of a two-family dwelling on the property.
- The property in question contains approximately 1.26 acres and previously had a single family dwelling on site that was destroyed by a fire.
- The property is located in the Medium Density Residential Zoning District (MDR) which only allows for the construction of single family dwellings.
- If approved, appropriate permits and inspections will be required and the structure must meet the building and fire separation regulations for a two-family dwelling. The septic system may also need replacement.

- There are pictures of the property in the file for review by the Board.

Mr. Perkins asked if place in kind replaces what is there versus a new design. Mr. Mackey said yes. He said that there was an old septic plan is from the 70's for a 6-bedroom home in the building file but it does not state for a single family or duplex type structure.

Mrs. Evans asked if neighboring duplexes were established in the 80's. Mr. Mackey said if are then they predate the MDR zoning in the area.

Mrs. Evans asked if there are any new 2-family dwellings. Mr. Mackey said no as they would have been before the Board.

Mr. Virr asked if both sides of the By-Pass was MDR. Mr. Mackey said yes with some GC and there are a few manufacturing housing parks further down towards the Auburn line.

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. Evans asked if he could touch on unnecessary hardship with regards to a single family. Mr. DeRosa reviewed the history of the property. He said he was uncomfortable building a single family and not sell and felt that this was a safer approach.

Mrs. Evans said it was a single family now requesting a duplex. Mr. DeRosa said he feels it would be better for the property and a safer return in investment. He said that they keep their properties immaculate and have no complaints on the condition of his properties.

Mr. Perkins said that the applicant has stated feel would be a better fit as business aspect.

Mrs. Evans motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Deliberative Session

Mrs. Morin said she did not feel that it met the public interest as a single family home would be less vehicles on an already busy street.

Mrs. Evans said she struggles with traffic flows especially during school times.

Mr. Corbett said he did not feel safe for multi-family and a single family home does fit in the area. He said he did not see the hardship and struggle with being within the public interest.

Mr. Virr said he agrees with the points that Mr. Corbett made. He said he also feel that it would not be in the spirit and intent of the ordinance and would be contrary to the public interest. Mr. Virr said that there are a lot of areas that are approved for 2 family dwellings and feel that it would also be a burden to the community and school district.

Mr. Virr said that he also has similar thoughts. He said that the applicant purchased a single family residence. The applicant has a business interest and fair assessment to ask for a variance. Mr. Perkins said that he also has a hard time focusing on the public safety as the road is well traveled.

Mr. Corbett asked if the septic system discussed would be covered by State & Town

Mr. Perkins said that the septic system was discussed and would be covered by State & Town permits and inspections. He reviewed the conditions for the record.

Mrs. Evans motioned come out of deliberative session.

Seconded by Mrs. Morin.

Vote: Unanimous.

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

Mrs. Evans motioned on case #20-144 DeRosa Development Company, LLC, Anthony J. DeRosa, Mgr. to Grant a variance to terms the terms of Article VI, Section 165-46.A of the Town of Derry Zoning Ordinance to allow the construction of a two-family dwelling on the property at 151 By-Pass 28, PID 11064-008, Zoned MDR as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Subject must meet the building and fire separation regulations for a two-family dwelling.**

Seconded by Mr. Virr.

Vote:

Mrs. Evans: No. Do not feel that meets hardship criteria and the spirit and intent of the ordinance is not observed.

Mrs. Morin: No. Feel hardship has not been met as can be built for what zone allows.

Mr. Corbett: No. Feel would be contrary to public interest.

Mr. Virr: No. Feel would be contrary to public interest as there was a single family structure there and would set precedence. The spirit and intent of the ordinance is not observed. Substantial justice has not been established nor does it meet the hardship criteria as unnecessary hardship.

Mr. Perkins: No. Not comfortable with public interest with public safety as road is very busy. No hardship has been established.

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.

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

20-146 Marc & Jennifer Marios

The applicant is requesting a variance to the terms of Article VI, Section 165-48.B.2 of the Town of Derry Zoning Ordinance to allow the construction of a single family dwelling on the property which has less than the required frontage on a Town approved street. 684 Rte 121 PID 13019, Zoned LDR

Marc & Jennifer Marios, owners, were present to represent their request. Mrs. Marios reviewed the required criteria for the record. She said that they have owned the property for 20 years and have decided it was time to build their retirement home and have their son live in the in-law portion of the home.

Mr. Marios said that the property could be developed but it was not their intention when purchased.

Board Questions

Mr. Perkins asked if intend to occupy the proposed home. Mr. Marios said yes.

Mr. Perkins asked what was the frontage. Mr. Marios said 50'

Mr. Perkins asked if any plans to develop. Mrs. Marios said no just a single family home.

Mr. Perkins said proposal references ADU how large would that unit be. Mrs. Marios said unsure at this time.

Mr. Perkins asked what size home was being considered. Mr. Marios said approximately 2,500 – 3,000 square feet but have not really finalized any plans at this time.

Mr. Corbett asked if lots next to this property were once subdivided off this property. Mr. Marios said they had owned the other property's as well but sold the home and kept the land. He said that the property had already been subdivided when originally purchased.

Mr. Perkins asked what was the structure on the property. Mr. Marios said it was a 16' x 16' shed.

Mrs. Evans asked if the proposed driveway was to go to the left and right being for the garage and proposed home. Mr. Marios said yes.

Mr. Virr asked how far into the property was being proposed to build home. Mr. Marios said approximately 1,400 feet of driveway.

Mr. Perkins asked what was the proposed size of the in-law. Mr. Marios said they have no plans at this time.

Code Enforcement

Mr. Mackey provided information with regard to the property for the record.

- The applicant is requesting a variance to allow the construction of a single family home (with a future accessory dwelling unit) on a property with less than the required frontage.
- The property in question appears to have 50+ feet of direct frontage/access from Route 121, a State controlled highway and is 22.5+ acres in size. The property is located in the Low Density Residential Zoning District (LDR).
- If approved, a state approved septic system design is required as well as a state driveway permit. The driveway must meet the Town of Derry requirements and will also need an updated State Wetlands permit if the driveway is crossing over wetlands. (There is a 2008 wetlands application in the building file).

- If approved, permits and inspections will be required.
- There are pictures of the frontage in the file for review by the Board.

Mr. Perkins asked if the ADU was designed yet. Mrs. Marios said that they have not picked out a specific layout yet but will be keeping with Town code of 800 square feet and 2 bedrooms.

Mr. Perkins said that if changes are made then would need to come back before the Board for additional approvals.

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. Corbet, Mr. Perkins.

Deliberative Session

Mr. Corbett said that he felt that the case was straight forward and a reasonable use for the property verses a large subdivision.

Mr. Perkins said that the request would then land lock the parcel an agrees that it is a reasonable request for a large parcel.

Mrs. Evans said she also agrees.

Mrs. Morin said she also agreed.

Mr. Virr said that the applicant made a point that there is a 50' wide area that is large for a road to be installed but the applicant is seeking a very long driveway for a single family home.

Mr. Perkins reviewed the condition 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 on case #20-146 Marc & Jennifer Marios to Grant a variance to the terms of Article VI, Section 165-48.B.2 of the Town of Derry Zoning Ordinance to allow the construction of a single family dwelling on the property which has less than the required frontage on a Town approved street. 684 Rte 121 PID 13019, Zoned LDR as presented with the following conditions:

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

Seconded by Mr. Virr.

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

20-147 NTC Real Estate Development, LLC

The applicant is requesting a variance to the terms of Article III, Section 165-9 of the Town of Derry Zoning Ordinance and N.H. RSA 674:41 to construct a single family dwelling on a lot without frontage on a Town approved street. 9 Circle Drive PID 50008, Zoned MDR

Attorney Arthur Broadhurst, Law Office of Arthur Broadhurst, Methuen, MA, said he was representing Keith Crowley, NTC Real Estate. Attorney Broadhurst said that the property had been granted a variance in 2004 that has expired and his client is seeking to renew the variance. Attorney Broadhurst reviewed the required criteria for the record.

Board Questions

Mr. Virr said that he sat on the case in 2004 and that the notice of decision had several conditions that were imposed at that time. He reviewed the prior conditions for the record. Mr. Virr asked Mr. Mackey if conditions imposed at that time would still need to be listed as part of the Boards motion. Mr. Mackey said that Circle Drive is a private road and that the driveway would need to meet Town specifications and also needs to have a municipal waiver of liability recorded at the Registry of Deeds.

Mr. Virr asked if needed Planning Board approval. Mr. Mackey said no.

Attorney Broadhurst said that his client will meet all the conditions listed in the 2004 variance.

Mr. Virr asked if this was the last home to be built on Circle Drive. Mr. Mackey said yes.

Mr. Perkins asked if the applicant was willing to agree to all conditions of prior variance granted in 2004. Attorney Broadhurst said yes.

Code Enforcement

Mr. Mackey provided the Board with the following information:

- The applicant is requesting a variance to allow the construction of a single family dwelling on the property which is located on a private road.
- Circle Drive is classified as a private road and is not maintained by the Town.
- A previous variance was granted in 2004 but the home was never constructed. The variance that was granted was subsequently challenged by an abutter and a rehearing was granted. The variance was reaffirmed with several conditions imposed (see attached).
- If approved, a notice of municipal liability and responsibility must be recorded prior to the issuance of a building permit.
- The property is proposed to be serviced by an individual well and septic system.
- There are several other homes located on this road that exist by virtue of variances being granted.
- There are pictures of the property in the file for review by the Board.

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

Kathleen Fuller, 48 Chester Road, said she was in favor of the property being developed. She said that her concerns had been addressed since the prior variance and home location has been staked out on the lot so shows outline of where home would be located. Mrs. Fuller said that the only item that had not been addressed is a large bull pine that was supposed to be removed that has not been done.

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

Jessica Barnhart, 29 Amherst Drive, said her property is located behind the proposed property. She said that she purchased her home in 2002 and it was advertised with view of the lake. Mrs. Barnhart said that when the prior home that was built there has almost completely blocked her view of the lake and feels that when this home is built, she will no longer have a view. Mrs. Barnhart said that they have spent approximately 10k building a new deck and patio so they can sit out there and see the lake and not wishing to lose their view.

Mr. Perkins said that purchasing a home in a residential area with empty parcels could potentially be built so any representation of being unable to build would be a mistake.

Rebuttal

Attorney Broadhurst said that his client will meet with the abutters and discuss the location of the proposed dwelling. He said that the proposed location of the home had already been staked out.

Mrs. Evans motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Deliberative Session

Mrs. Morin said she researched sale price and was purchased as a building lot.

Mrs. Evans said that the property was a lot of record and that the applicant understands the conditions of the variance that had been granted in 2004.

Mr. Virr said that he had sat on the case in 2004 and recalls the conditions and felt that they should apply to this applicant.

Mr. Corbett said that he feels the abutters concerns but unfair to assume that there was property that was unbuildable. He said that the property had been granted a prior variance with conditions in 2004.

There was some discussion with regard to former variance conditions from September 16, 2004 to be made as additional conditions on case.

Mr. Perkins reviewed the conditions for the record.

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 #20-147 NTC Real Estate Development, LLC to Grant a variance to the terms of Article III, Section 165-9 of the Town of Derry Zoning Ordinance and N.H. RSA 674:41 to construct a single family dwelling on a lot without frontage on a Town approved street. 9 Circle Drive PID 50008, Zoned MDR as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Subject to recording of Municipal Liability and Responsibility with the Rockingham County Registry of Deeds.**
- 3. Subject to ALL former conditions of approval of variance that was granted on 9/16/2004.**
- 4. Substantial construction must be completed within 2 years or variance is void.**

Seconded by Mrs. Morin.

Vote:

Mr. Corbett: Yes.

Mr. Virr: Yes.

Mrs. Evans: Yes.
Mrs. Morin: 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

Mrs. Evans motioned to approve the minutes of October 15, 2020 as written.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Other Business

Mr. Corbett wished to send Mr. Obimba sincere condolences to him and his family in the loss of his father.

Adjourn

Mrs. Evans motioned to adjourn.

Seconded by Mr. Corbett.

Vote: Unanimous.

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 November 19, 2020

Mr. Virr motioned to approve the minutes of November 5, 2020 as written.

Seconded by Mrs. Evans.

Vote: Unanimous.

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