

`TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
February 18, 2021

Members Present

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

Members Absent

Alternates Present

Donald Burgess

Alternates Absent

Gaspar Obimba

Code Enforcement

Robert Mackey, Code Enforcement Director

Mr. Corbett 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: ginnyrxioux@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 stated that in keeping with the mask mandate it has been reviewed that if all parties can maintain 6' distances then do not require to wear, however, if more comfortable to wearing then also have that option.

The Board members introduced themselves.

It was noted for the record that Mr. Perkins would be stepping down for this case and Mr. Corbett would chair and Mr. Burgess would sit.

The applicants are requesting a Special Exception as provided in Article VI, Section 165-48.A of the Town of Derry Zoning Ordinance to allow the operation of a small engine repair business at the property at 288 Island Pond Road PID 07048, Zoned LDR

Douglas & Cheryl Kimball, 288 Island Pond Road, were present. Mrs. Kimball reviewed the required criteria and their letter of explanation for the record.

Board Questions

Mr. Virr said that he has driven by the property over the past several years and have seen the sign and that the property has been improved and kept neat and orderly.

Mrs. Morin said she agreed that the property has had many improvements done and that there is ample parking and enough room to turn around without backing out onto the road.

Mr. Corbett asked if he would be picking up and dropping off or would the customer be bringing and picking up. Mr. Kimball said that he typically picks up and drops off but have had an occasional drop off and pick up.

Mr. Corbett asked how much noise would be generated. Mr. Kimball said that he performs his repairs inside with the door open for exhaust omission but did not feel that the noise would be very loud. He said that he does work on chain saws periodically that are a bit louder but does this on random occasions.

Mr. Corbett asked how was the waste oil disposed of. Mr. Kimball said that he brings it to the Derry Transfer Station along with cardboard, etc.

Code Enforcement

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

- The applicant is requesting approval to operate a small engine repair service at the property.
- It was brought to the attention of our office that the business was being conducted and the owner was informed that he would need to apply for a Special Exception for a home occupation.
- The applicant is seeking to run the business from the detached garage located on the property.
- A small sign has been installed and is being requested by the applicant.
- 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

No one spoke in favor of 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.

Opposed

No one spoke in opposition of the request.

Mrs. Evans motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Deliberative Session

Mr. Corbett reviewed the conditions for the record.

Mrs. Evans said that the applicant met the required criteria and presented their case very well.

Mr. Burgess said that the area was clean and had ample distance between neighbors so did not feel that there would be an issue.

Mr. Virr said that the road was very busy but the lots were large and there was clear visibility to enter and exit.

Mrs. Morin said she agrees that the request was reasonable.

Mr. Corbett said he agrees also with the Board as the request was not overboard with hours of operation.

Mr. Virr said that he just wanted to clarify for the record that a special exception with the applicant and does not transfer with the sale of the property.

Mr. Burgess motioned 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 #21-105 Douglas C. & Cheryl A. Kimball to Grant a Special Exception as provided in Article VI, Section 165-48.A of the Town of Derry Zoning Ordinance to allow the operation of a small engine repair business at the property at 288 Island Pond Road PID 07048, Zoned LDR as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Hours of operation to consist of Monday – Friday 8:00 AM – 5:00 PM, Saturday 8:00 AM – 12:00 PM – Closed Sundays & Holidays.**
- 3. Sign not to exceed 3 square feet and not to be internally illuminated.**

Seconded by Mr. Virr.

Vote:

Mr. Burgess: Yes.

Mrs. Morin: Yes.

Mrs. Evans: Yes.

Mr. Virr: Yes.

Mr. Corbett: 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 that Mr. Perkins would resume his position but as a member and Mr. Corbett would chair.

**21-103 Randall Coate
 Owner: James L. Sullivan & Maureen Doherty**

The applicant is requesting a variance to the terms of Article III, Section 165-9 and Article VI, Section 165-46.C of the Town of Derry Zoning Ordinance to allow the construction of a single family dwelling on the property which is located on a private road and which will have less than the required building setbacks at 17 Charlestown Place, PID 51099, Zoned MDR

Mr. Corbett informed the Boar that this case was a continuation from the February 4th meeting where the Board requested that some additional information was needed such as

distance to setbacks and size of existing properties and confirmation of sewer accessibility.

Mr. Coate said that they had made some changes to their original design and are going with a smaller home. He said that he also submitted a plan showing the setbacks and also a plan showing the distances of other homes setbacks. Mr. Coate said that he also contacted the Public Works Department and the property can be connected to the sewer line for a fee. He said that the proposed structure would not be out of line with the neighboring setbacks and will conform to the average front setback.

Board Questions

Mr. Corbett said that according to the plans submitted the average structures were 18.5 feet from the front lot line and proposing to be 19 feet. Mr. Coate said yes, as they are no longer having a balcony.

There was some discussion with regard to setbacks.

Mr. Mackey said that the Town of Derry Zoning Ordinance has a provision that speaks to setbacks and reviewed for the record.

Mr. Perkins said that the applicant is now showing a 690 square foot home and the average setback was a partial reason for tabling. He said the applicant prior presentation was for a home of 1,100 square feet and other homes in the area are between 500-700 square feet single story structures. Mr. Perkins said proposing 690 square feet seems to fit in conformity.

Mr. Perkins asked what was the reasoning behind the side to side aspect. Mr. Coate said he went more to the left side as the home on the right was closer to that lot line. He that there has not been a survey yet as he did not own the property and once purchase is completed a survey will be done. Mr. Coate said he could setback further if needed.

There was some discussion with regard to well radius to neighboring leach fields and possible sewer easements.

Mr. Virr asked what if drill well and don't find water. Mr. Coate said that he has spoken to two well companies and have been told will find water. He said that he could possibly deed well to the other lot.

Mrs. Morin said that she still was struggling with the size of the dwelling as still significantly larger than other homes in the area.

Mr. Perkins said that the overall footprint is proposed as 680 square feet.

Mr. Virr said that 0198 appears to be approximately 12.5 feet to the property line. Mr. Coate said that 0198 is further back.

There was some discussion with regard to setback congestion to the side setbacks.

Mr. Perkins said that the Board could structure a motion to read that the proposed structure can be no closer than 13.5 feet to both side setbacks to elevate conflict and possibly have to come back.

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 favor of the proposed request. He said if wish to speak press star 9 and will answer your call.

Opposed

Laura Brooks, 19 Charlestown Place, said she was opposed to the proposed structure as would obstruct her view.

Mr. Brooks, 19 Charlestown Place, said he was concerned with the placement of the well as their septic was in the rear of their lot and well was in the front and believes that wells require a 75 foot requirement.

Mrs. Brooks asked what was the setback distance. Mr. Corbett said the proposed setback is 13.5 feet and ordinance is 15 feet.

Mrs. Brooks said she is also opposed to the 2 foot difference of required setback as it makes a difference on the congestion.

Mr. Mackey said that the State's requirement is 75 feet well radius to a septic and the applicant could possibly apply for a waiver of liability. He said that he could also do an easement from the other lot if needed.

Mrs. Morin said that he could also possibly do a lot line adjustment fairly easily.

Mr. Corbett reviewed a letter submitted in opposition from Mrs. Brooks, 19 Charlestown Place for the record.

Mr. Coate said that wells can be drilled at angles and will explore further when purchase and survey is conducted.

Mr. Mackey said he would like to remind the Board that there are 2 variances motions for consideration, the first for the private road and the other for the setbacks.

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

Mr. Corbett said that there are 2 motions for consideration, the first for the private road and the other for the setbacks. He asked of the well and setback radius needs to be put as a condition?

Mr. Virr asked if the applicant purchases both lots may have more land to place well on the other lot and create an easement. Mr. Mackey said it was not a common practice but could be done.

Mrs. Morin said that the lot line adjustment could also be done as Tobacco Road has ample land.

Mr. Virr said that if well was drilled on adjoining land then would need legal access to service.

Mr. Perkins said that the first motion should also list a condition to tie into town sewer. He said that he appreciated the structure size being reduced and that a condition on the second motion be specific to 23' x 30' dwelling, not to encroach average front setbacks to be done by surveyor.

There was some discussion with regard to size of the proposed dwelling and setbacks.

Mr. Mackey said that the condition should read the location of the structure including front entry must comply with the average front setback as determined by a licensed land surveyor.

Mrs. Evans 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 #21-103 Randall Coate Owner: James L. Sullivan & Maureen Doherty to Grant a variance to the terms of Article III, Section 165-9 of the Town of Derry Zoning Ordinance to construct a single family dwelling on a lot without frontage on a Town approved street at 17 Charlestown Place, PID 51099, Zoned MDR as presented with the following conditions:

1. Subject to obtaining all State & Town permits and inspections.
2. Subject to a recording of Municipal Liability and Responsibility with the Rockingham County Registry of Deeds as required per N.H. RSA 674:41.
3. Subject to extending and tying into Town sewer.

Seconded by Mrs. Morin.

Vote:

Mr. Virr: No. Do not feel hardship has been met as it is in own making with regard to all setbacks.

Mrs. Evans: No. Feel hardship has not been shown.

Mrs. Morin: No. For the same reasons as stated by Mr. Virr and Mrs. Evans.

Mr. Perkins: Yes.

Mr. Corbett: Yes.

The application was Denied by a vote of 2-3-0. 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 short break and reconvened at 8:29 PM.

21-104 Paul C. Doolittle

The applicant is requesting a variance to terms of Article III, Section 165-8 and Article VI, Section 165-47.A of the Town of Derry Zoning Ordinance to allow the use of the property as a non-profit religious/educational retreat center/sanctuary to include multi-unit residential and campground accessory uses at 33 Old Chester Road PID 09138, Zoned LMDR

Mr. Corbett reviewed what had been discussed at the February 4, 2021 meeting for the record.

Mr. Doolittle said that at the prior meeting there were questions with regard to the location of buildings and the 9 bedroom septic system. He said that he had additional plans to submit to the Board showing the various outline of the buildings and described his submission for the record. Mr. Doolittle said that he had spoken to Mr. Mackey who put him in touch with the State NHDES, Anthony Drouin who is the State Sludge and Septage Coordinator. He said that they spoke in length about his humanure pile and will be receiving the State's rules and conditions to review before implementing. Mr. Doolittle said that he has been utilizing humanure for 50 years and was not aware of guidelines so will be working with DES and following their guidelines. He said that he was seeking to conform to the climate change and model living to reduce carbon footprint to a more natural environment.

Board Questions

Mr. Perkins said that he loved the maps and drawings submitted and asked what the red dots were as they look like restroom signs. Mr. Doolittle said the dots indicated the wells and is the well symbol to show the location of the wells on the property.

Mrs. Evans asked if the shipping container and other RV type uses would be year round. Mr. Doolittle said he would like them to be utilized year round.

Mrs. Evans asked what would be the capacity number for year round residence. Mr. Doolittle said that he has a 9 bedroom septic system so it would limit the number of people.

Mrs. Morin asked what would the RV hookups would be used for. Mr. Doolittle said that the RV hookups would be for tiny house.

Mrs. Morin said the RV hookups would have no water or bathroom facilities. Mr. Doolittle said the main home would be the common space with bathroom and kitchen facilities.

Mr. Perkins said RV hookups are designed 2 ways, one for electric and the other for sewer and water hookup. He asked if seeking this type of hookup or different. Mr. Doolittle said that would be unable to hookup into leach field and some may have water and electricity. He said that he has lived in building number 4 on the map for 50 years with no water or electricity.

Mr. Perkins asked what would the shipping containers be used for. Mr. Doolittle said that they were to be used for housing for parishioners to experiment alternative living and grow their own food and leave less carbon footprint. He said that he was seeking to do legal and align with all health and safety guidelines.

Mr. Corbett said that seeking a Church of minimalist lifestyle. Mr. Doolittle said yes. He said that live life simple and give more space to land to grow food and try not to eliminate any fertile soil. Mr. Doolittle said that DES requirements to human waste needs to meet state guidelines. He said that the property used to have a yurt and a tee pee that has since been removed.

Mrs. Morin said that asking for multiple level units such as campground uses. She said that keep going back to the 9 bedroom septic system. Mr. Doolittle said that he does not have an actual number for who would be on the property. He said that the 9 units for staff, retreat space would be also for year round staff and farmers.

Mrs. Morin said that Hidden Valley Campground has a specific number of how many campers would be at full capacity. She asked if there would be 20 or a 1,000 people as could be a fire safety issue and also parking and accessibility concerns. Mr. Doolittle said that there could be 15-20 people full house in summer.

Mrs. Morin asked how many people other than staff would there be. Mr. Doolittle said that there are no plans in terms of numbers as have had people come and go for many years.

There was some discussion with number of staff and use and location of tiny homes and shipping containers.

Mr. Virr said that he understands what seeking to do but unsure of where this type of use would fit in as a campground has specific regulations and the Town does not have an ordinance on tiny homes. Mr. Mackey said that the Town does have specific ordinances for campgrounds in a more traditional sense but does not have on tiny homes at this time.

Mr. Virr asked what concept is being sought as regulations for campgrounds does not fit or tiny homes. Mr. Mackey said that the State is reviewing and starting to recognize the tiny home concept and is part of what needs to be ironed out. He said that the prior meeting was to be defined as a church and Mr. Doolittle has gone ahead and received his non-profit status. Mr. Mackey said that reason he is back before the Board is for the containers and get some sort of concept of approval and address tiny home. The humanure concept is something Mr. Doolittle needs to work with the State level and their regulations.

There was some discussion with regard to the 501 status use of the property.

Mrs. Evans said she would like to see more clarification as if conformance with campground facilities ordinance.

Mrs. Morin said she agreed and access to water and plans of tiny homes occupancy status so as to have some record of who's there in the event of an emergency.

Mr. Perkins said that at the prior meeting the number of bedrooms in the home in relation to the 9 bedroom septic system. The applicant provided testimony that the RV/tiny homes and storage container would consist of 1 bedroom each and staff and other occupants would utilize the existing home for shower and bathroom facilities so the extra 4-5 bedroom septic so the plans submitted show something of what presented to meet the septic capacity.

Mr. Burgess asked if the shipping containers and coop have bathroom facilities. Mr. Doolittle said no and that he had been utilizing a humanure system but have since shifted to the house.

There was some discussion with regard to the bedroom capacity.

Mrs. Morin asked if this presentation would still need to go to the Planning Board. Mr. Mackey said yes and as Mr. Perkins had stated the number of bedrooms is based on septic capacity is based at the State level. He reviewed section 165-46.E of the ordinance regarding campgrounds for the Board and said that along with State rules the application request would probably be hard to meet standards so trying to fit this into some sort of mold.

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

Sandra Coffey, 40 Old Chester Road, said that she was in support of Mr. Doolittle's request to practice and teach organic practices and farming in order to preserve the land and share his knowledge with others.

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.

Opposed

Glenn Carlson, 44 Old Chester Road, said that in 2006 the property was sold and comment was made that no additional changes were to be made in the bill of sale. He said that he had concerns of whether the property is to be uses as a sanctuary, church or a campground. Mr. Carlson said that he was also very concerned with the use of the humanure pile and glad to hear that DES is reviewing as Beaver Lake is .2 miles from this property. He said that he was an engineer at heart and also has concerns for wells in the area and possibility of biohazards as who would monitor and inspect to make sure in good condition. Mr. Carlson said that he also concerned with what happens when expand and who monitors who comes and goes. Was told that the shipping containers were not supposed to be worked on but they are still doing. There had also been an uncontrolled burn in February that the Derry Fire Department responded to and was there for over an hour.

Mrs. Evans asked how far was his home in relation to road. Mr. Carlson said 50' possibly 70' from road. He said that Pinkerton also uses the road for their track team and that the turkey trot also uses the road.

Jordan Young, 13 Old Chester, said that they did not understand the request was it for multifamily or a campground. Mr. Young said that there are multiple requirements and if granted will set precedence and change the existing character of the neighborhood and zoning.

Mr. Perkins said trying to get definition as multifaceted and that the applicant is working with the Board and submitting materials of what trying to seek.

Mr. Young asked how many RV's or homes are being requested. Mr. Perkins said that they have not reached that point yet but hear abutter concerns.

Rebuttal

Mr. Doolittle said the campground piece is for a religious effort purpose to share spiritual experience. He said he did sell 2 house lots and the remaining property is still in current use. Mr. Doolittle said that he was seeking a retreat center and the Board is calling it campground it is not a campground. He said that he is working with DES regarding the humanure system.

Mr. Virr asked if Mr. Mackey could review ordinance with regard to campground and define recreational uses. Mr. Mackey reviewed the campground ordinance section for the record.

Mr. Corbett reviewed the church ordinance and here for church but no plans show church and spending time on campground use.

Mr. Virr said that the applicant needs to fit under one point or another but difficult as do not have an ordinance for tiny homes.

Mr. Burgess said that Mr. Doolittle is already defined the utilization of 6 bedrooms and that leaves 3 that could possibly be utilized for tiny homes or RV's.

Mr. Perkins said that if there was no one left to speak from the public that could close the public input and look at structuring a motion. He said that they can look at segregation the church sanctuary motion and not approve the campground until further reviewed by applicant or structure with tiny homes so go to Planning Board to begin that process.

Mr. Perkins motioned to extend the meeting an additional 10 minutes.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Mr. Perkins said that the Board could pass without non-profit and make proposal as the assessing office will follow for tax break. He said that would need approval from the applicant to approve the sanctuary use and review the other parts and not jeopardize other points he is trying to make. Mr. Perkins said that the applicant can also request to go forward with request and not separate.

Mr. Corbett asked the applicant how he wished to proceed. Would he like to leave out the camp portion and continue the use as a non-profit sanctuary?

Mr. Doolittle said so he could possibly utilize the barn and home would still leave 3 bedrooms under construction and not part of the camp. Mr. Mackey said that the bedrooms and home can occupy now but would not be able to utilize the tiny homes and RV items until can iron out with building and fire codes if motion to split. The Board could make a condition to be per Code and Fire regulations. He said that just like the tiny homes or the container home they are not built to the current housing standards.

Mr. Doolittle said that he wants to be safe and work with Code.

Mr. Perkins said possible to table to which time the applicant can review with Code to obtain a determination of how to fit into building code and not jeopardize case.

Mr. Mackey said he would recommend that the applicant do a bit more research of the retreat/sanctuary use of the property and the non-traditional housing.

Mrs. Evans motioned to table case #21-104 Paul C. Doolittle 33 Old Chester Road PID 09138 until such time that the applicant can provide additional information of the retreat/sanctuary and the non-traditional housing use of the property.

Seconded by Mrs. Morin.

Vote: Unanimous.

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

Approval of Minutes

Mr. Virr motioned to approve the minutes of February 4, 2021 as amended.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Adjourn

Mr. Burgess motioned to adjourn.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Adjourn at 10:09 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

Approval of Minutes on March 18, 2021

Mr. Virr motioned to approve the minutes of February 18, 2021 as amended.

Seconded by Mrs. Evans.

Vote: Unanimous.

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