

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
May 4, 2017

Members Present

Lynn Perkins, Chairman
Heather Evans, Vice Chair
Stephen Coppolo, Secretary
Randall Kelley

Members Absent

Joseph Carnevale

Alternates Present

Donald Burgess

Alternates Absent

Code Enforcement

Robert Mackey

Mr. Perkins called the meeting to order at 7:00 p.m. with the salute to the flag, and notice of fire and handicap exits and that this and all Zoning Board meetings are videotaped.

The Board introduced themselves for the record.

Mr. Perkins said that before the Board gets into the cases this evening that they need to have their annual election of officers. He said that before they do that they have to have a second reading of an amendment to the Policy and Procedures.

Mr. Perkins motioned to modify the Town of Derry Zoning Board of Adjustment's Policy and Procedures for appointment of officers for the Zoning Board of Adjustment, for one year only, for the year starting in 2017. This modification would require a majority vote, by primary or full members when only a Quorum of Primary members are in attendance instead of requiring all primary or full members to be present. Mr. Perkins said this concludes the second reading of this motion and called for a second.

Seconded by Mr. Kelley.

Mr. Burgess asked if this amendment ends in December of 2017.

Mr. Perkins said no that it was until next year's election of officers.

Vote: Unanimous.

Mr. Burgess, Mr. Kelley, Mr. Coppolo, Mrs. Evans, Mr. Perkins

Election of Officers

Position of Chairman

Mr. Kelley nominated Mr. Perkins for the position of Chairman.
Mrs. Evans nominated Mr. Perkins for the position of Chairman.
Mr. Coppolo nominated Mr. Perkins for the position of Chairman.

Vote: Unanimous.

Mr. Kelley, Mr. Coppolo, Mrs. Evans

Position of Vice Chairman

Mr. Perkins nominated Mrs. Evans for the position of Vice Chairman.
Mr. Kelley nominated Mrs. Evans for the position of Vice Chairman.
Mr. Coppolo nominated Mrs. Evans for the position of Vice Chairman.

Vote: Unanimous.

Mr. Kelley, Mr. Coppolo, Mr. Perkins

Position of Secretary

Mr. Perkins nominated Mr. Coppolo for the position of Secretary.
Mrs. Evans nominated Mr. Coppolo for the position of Secretary.
Mr. Kelley nominated Mr. Coppolo for the position of Secretary.

Vote: Unanimous.

Mr. Kelley, Mrs. Evans, Mr. Perkins

It was noted for the record that Mr. Burgess would sit for the following cases this evening.

17-111 Anthony Baldini dba The Goddard School
Owner: John Hajjar, Trustee, The Derry Realty Trust

The applicant is requesting a variance to the terms of Article III, Section 165-20a of the Town of Derry Zoning Ordinance to install an 8' x 16' shed less than 75 feet from a wetland greater than one acre in size at 12 Tsienneto Road, PID 08079-006, Zoned GC II

Anthony Baldini, applicant, read his application criteria and letter of explanation for the record. Mr. Baldini said that he felt that the request was simple as they were only requesting to build a very small shed to be able to store playground equipment. He said that the property slopes drastically off so there was not an area that would be able to put

the shed further away from the wetland. He said that the business has grown and they need an area for storage of toys.

Code Enforcement

Mr. Mackey provided the Board with the following information:

- The applicant is requesting approval to install an 8' x 16' shed less than 75' from a wetland greater than 1 acre in size.
- Based on the plans submitted, it would appear that the shed will be located approximately 45' from the edge of the wetland that is located at the bottom of the slope.
- The shed will be located inside the fenced perimeter which is a maintained lawn area.
- The wetland in question is not classified as a Prime Wetland.
- If approved, a building permit will be required.
- There are pictures of the property in the file for review by the Board.

Board Questions

Mr. Coppolo asked if the abutting properties needed a variance to install their parking lot. Mr. Mackey said that section of the ordinance speaks to buildings but does not speak to parking lots. They did require site plan review and State wetland permits but no variance was required.

Mr. Coppolo asked if the property was located in the aquifer district and possibly requires a joint meeting. Mr. Mackey said the proposal use was not a use that required a joint meeting.

Mr. Coppolo asked what was the reasoning the building was oriented on the property. Mr. Baldini said he did not know the reasoning.

Mr. Kelley said that he believed the structure was placed that way for aesthetic reasons. Mr. Mackey said yes as it shares a driveway with the other business next door.

Mr. Perkins said that the spirit of the setback is for a grassy area for run off and erosion control and if the grass area would still be kept. Mr. Baldini said yes as this was the best solution as the rear only has a slight drop off of approximately 4-5 feet.

There was some discussion with design and height of the proposed shed.

Favor

No one spoke in favor of the request.

Opposed

No one spoke in opposition of the request.

Mr. Kelley motioned to go into deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mr. Burgess, Mr. Kelley, Mr. Coppolo, Mrs. Evans, Mr. Perkins

Deliberative Session

Mr. Perkins said the Board needed to draft the motion in the affirmative and that the standard condition of being subject to obtaining all State & Town permits and inspections be made.

Mr. Coppolo said the request was straight forward and that he felt it met the 5 criteria.

Mr. Kelley motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Burgess, Mr. Kelley, Mr. Coppolo, Mrs. Evans, Mr. Perkins

Mr. Coppolo motioned on case #17-111 Anthony Baldini dba The Goddard School, Owner: John Hajjar, Trustee, The Derry Realty Trust to Grant a variance to the terms of Article III, Section 165-20a of the Town of Derry Zoning Ordinance to install an 8' x 16' shed less than 75 feet from a wetland greater than one acre in size at 12 Tsienneto Road, PID 08079-006, Zoned GC II as presented with the following conditions:

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

Seconded by:

Vote:

Mr. Kelley:	Yes.
Mr. Burgess:	Yes.
Mr. Coppolo:	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.

**17-112 Benchmark Engineering, Inc.
Owner: Stonemark Homes**

Rehearing of Case 17-103 - The applicant requests a variance to the terms of Article VI, Section 165-47.B.2 of the Town of Derry Zoning Ordinance to construct a single family dwelling on a 13± acre lot with 47 feet of frontage on Hilda Avenue, where 150 feet is required at 36 Hilda Ave, PID 11070, Zoned LMDR

Attorney Peter Bronstein, representing the applicant, reviewed the history of the property and read the application criteria for the record.

Board Questions

Mr. Coppolo said that he recalled that there were a series of subdivisions off the same piece of property by the same owners and that the last subdivision in 1991 was when the lot was labeled as unbuildable. The minutes from that meeting were underlined as creating a non-buildable lot. Attorney Bronstein said that was described in exhibit 10 of the application request and reviewed for the record.

Mr. Coppolo said that his concern was that today's intention is to only build 1 home on the lot but they could come back to build another as 26 years ago the applicant left the area as an unbuildable lot. Attorney Bronstein said he was not here in 1991 but it was his understanding that the lot was noted as unbuildable due to no frontage on a Town approved road. He said that the road was now paved and accepted as a Town approved road and as such the property does now have frontage on a Town approved road.

Mr. Burgess said that the property still lacked adequate frontage as only have 47' even though testimony was given was that they have more frontage due to the paving of the area. The property still only has 47'. He said the paved portion is not Town property which the Town mistakenly paved onto the applicants property but it does not make the area belong to the Town. Attorney Bronstein described exhibit 8 for the Board.

There was some discussion with regard to the paved portion onto the applicant's property.

Attorney Bronstein said that in 2003 the Town accepted the roadway as a Class V road and accepted the whole area.

Mr. Kelley asked if the paving of the area was giving them the frontage requirement needed. Mr. Mackey said that there was always some area on Hilda Ave that had a turn

around and do not feel it was the intention of the Town to take the property. He said that the area that is paved is still owned by the applicant and has not been accepted by the Town.

Mr. Perkins said that he was concerned that in 2 years that someone will come back with a 5 lot subdivision. Attorney Bronstein said that his client is willing to have deed restriction to stipulate 1 house.

Mr. Coppolo said that a stipulation was also put in the 1991 minutes and they are here today requesting to build. Mr. Maynard said that he was here in 1991 and at that time and that they were also in discussion with next door neighbor with regard to purchasing the property. He said that the wording at that meeting was done as the property did not have frontage on a Town road of which the Town has now accepted and paved Hilda Ave. In 1991 there was no way to access the lot and the Town also spoke of bringing Town water to the area although that has not occurred.

Mr. Kelley said that a 600' driveway was quite extensive and asked if the structure could be located closer. Mr. Maynard said that it was a long driveway but if the structure were to be moved closer than it would require an additional variance to the 75' wetland setback.

Mr. Perkins asked what became of the cottontail study. Mr. Maynard said that the study was conducted and that there were no endangered species located where the driveway was to be located.

Mr. Coppolo asked what the building house style would be and if it would meet all the setback requirements. Mr. Maynard said that the structure would be approximately 30' x 60' standard home and would meet all the setback requirements.

Favor

No one spoke in favor of the request.

Opposed

Beth Crawford, 34 Hilda Ave, said that the property directly abuts a wetland and wildlife corridor and do not wish to take away someone's right to build but they have been living in the area for 40 years and know that the property is very wet. She said that she felt a bit better knowing only one home to be built in the area but she has concerns for the large wet area located directly behind her home and what they will do to the area. Mrs. Crawford said the property was the remains from a huge previous subdivision that they have done over the past decade or more and that they could have easily left access off of Ledge wood or one of the other roads. She said that the applicant stated that they propose to build a standard home on a lengthy driveway which is going to cost around \$50,000 to build. She said that the applicant purchased the property for \$15,000 and have been paying \$500 a year in taxes for the past 15 years and said that for the \$25,000 dollar

investment they are going to make a huge profit and do not feel they have shown sufficient hardship and said that they should just sell to the Town for conservation land. She said that she was concerned with the other lot of 56 acres and that this area abuts and who owns that and what happens if they come back to further subdivide. Could the property still be utilized as first they subdivided for Visa then Overledge and that this property abuts other tracts of vacant property all the way to Auburn which consists of a large wildlife corridor where moose, bear, and other critters have been utilizing as their home. Mrs. Crawford said she also has concerns of what type of impact it would have on the values of the surrounding homes. She said with regard to the paved area it was paved as a convenience as use to be a small turn-around where snow was pushed off to the side.

Mr. Coppolo said the idea of deeding to the Town might be best for both worlds but was beyond the scope of the Board.

Donna Marsten, 26 Hilda Ave, said that her property was located at the bottom where the run off from this property comes and was concerned what will happen to her property when they start to develop it. She said that she also has concerns for the wildlife in the area as they have seen grouse and turkeys in the area.

Mr. Coppolo said that with the amount of earth moving the applicant will need to provide some sort of drainage plan.

Mr. Perkins said that where the structure was proposed to be placed was a great distance away and that her property would not be affected.

Tanya Vallario, 12 Garvin Road, said that they moved to the area for its privacy and was curious of how this proposal affects her property. Mr. Maynard showed her on the map where her property was located with regard to the proposed structure.

Rebuttal

Attorney Bronstein said that the wetland areas would be preserved as the applicant was seeking to build a single home on the property. He said as for the wildlife corridor that there was only a small amount of the 13 acres that would be disturbed and only where the proposed driveway and home would be placed. He said as for the area of where the Town paved for the tear drop they would provide the Town with an easement. He said that the Town maintains this already and since the court case he said that they felt that the Town already owned this area.

Mr. Maynard said that there was a concern of water from the site and that the water currently flows westerly to Rainbow Lake.

Mr. Perkins asked if the owners had any interest in the 54 acres next to the property. Mr. Maynard said no. He said that the 54 acres has a lot more wetlands on it of which were prime wetlands that abut Rainbow Lake. He said that if it were to be subdivided it would need to go through the Planning Board process.

Mr. Coppolo said that the concerns before were why not come off Visa Ave. Mr. Maynard said that the Garvin Road area has a huge grade difference to where the home was proposed to be built and that they were willing to accept 1 lot with one home.

Mr. Coppolo said that the title deeds need to match what's on the ground so the applicant would still have to do some sort of land deed transfer.

Mr. Perkins said that there was concern with regard to property values and square footage of a home larger than what is currently in the area. Mr. Maynard said that in 1991 the Garvin Road subdivision was built as colonial style housing. He said that whatever the home that is constructed on the property will not have detrimental value to the area.

Mrs. Evans asked if the lots on Hilda Ave were previous camp lots. Mr. Maynard said yes.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mr. Burgess, Mr. Kelley, Mr. Coppolo, Mrs. Evans, Mr. Perkins

Deliberative Session

Mr. Coppolo said that he would like to see a deed restriction for no further subdivision of lot. He said that there may also be a question of possible illegal taking if stipulated.

Mr. Mackey said that in order to build another home on the lot it would require the property to be subdivided.

Mr. Burgess asked if the plan would need to go to the Planning Board.

Mr. Mackey said that they would need an amendment of some sort put in to remove the non-buildable status.

Mr. Coppolo said that he would like to impose some conditions on the land owner so they are not back here in 10 years requesting to subdivide the property.

Mr. Perkins said that the motion should have the following conditions:

1. Deed restriction for no further subdivision of lot.
2. Easement for Town turn-around.

Mr. Mackey said that the condition of the easement would need to be addressed by the Public Works Department and the Town Council if it were offered.

Mr. Burgess said he would like the Board to request an easement be given to the Town

There was some discussion with regard to the turn-around area.

Mr. Kelley motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Burgess, Mr. Kelley, Mr. Coppolo, Mrs. Evans, Mr. Perkins

Mr. Coppolo motioned on case #17-112 Benchmark Engineering, Inc., Owner: Stonemark Homes to Grant a variance to the terms of Article VI, Section 165-47.B.2 of the Town of Derry Zoning Ordinance to construct a single family dwelling on a 13± acre lot with 47 feet of frontage on Hilda Avenue, where 150 feet is required at 36 Hilda Ave, PID 11070, Zoned LMDR as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Deed restriction for no further subdivision of lot.**
- 3. Easement to Town of Derry for Hilda Ave turn around.**

Seconded by Mrs. Evans.

Vote:

Mr. Coppolo:	Yes.
Mrs. Evans:	Yes.
Mr. Kelley:	Yes.
Mr. Burgess:	Yes.
Mr. Perkins:	Yes.

The application was Granted by a vote of 5-0-0. Anyone aggrieved by a decision of the Board has 30 days to file a request for a rehearing. After that the recourse would be to appeal to Superior Court.

Mr. Perkins asked if Mrs. Crawford understood the decision as the Board was looking to preserve the area and not to build more homes.

Mrs. Crawford said she understood and that she was concerned for her back yard and asked if the Board's decision would prevent her from approaching the applicant about possibly purchasing the portion of property behind her home.

Mr. Mackey said that if neighbors were to approach the applicant it would be considered a lot line adjustment and did not think that would be a problem.

Mr. Maynard said the Board's stipulation of no further subdivision would require them to come back to the Board for an additional variance as a lot line change by State law is considered a subdivision of property.

Approval of Minutes

Mr. Burgess motioned to table the approval of the minutes of April 20, 2017 to the next meeting.

Seconded by Mr. Kelley.

Vote: Unanimous.

Mr. Burgess, Mr. Kelley, Mr. Coppolo, Mrs. Evans, Mr. Perkins

Other Business

Mr. Kelley said that the Salvation Army on Folsom Road was hosting a yard sale this weekend at 7:00 am and the public is invited to attend.

Adjourn

Mr. Burgess motioned to adjourn.

Seconded by Mr. Kelley.

Vote: Unanimous.

Mr. Burgess, Mr. Kelley, Mr. Coppolo, Mrs. Evans, Mr. Perkins

Adjourn at 8:45 pm

Minutes transcribed from tape:

Ginny Rioux

Recording Clerk

APPROVAL OF MINUTES May 18, 2017

Mr. Perkins motioned to approve the minutes of May 4, 2017 as amended.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mr. Burgess, Mr. Kelley, Mr. Coppolo, Mrs. Evans, Mr. Perkins.