

**TOWN OF DERRY  
ZONING BOARD OF ADJUSTMENT MINUTES  
November 15, 2018**

**Members Present**

Heather Evans, Acting Chair  
Stephen Coppolo, Secretary  
Randall Kelley  
Michelle Navarro

**Members Absent**

Lynn Perkins

**Alternates Present**

Donald Burgess  
Evan Rathburn

**Alternates Absent**

Craig Corbett  
Crystal Morin

Mrs. Evans called the meeting to order at 7:04 p.m. with the salute to the flag and informed public of fire and handicap exits. She noted that this and all Zoning Board meetings are videotaped and recorded.

The Board introduced themselves for the record.

It was noted for the record that Mr. Rathburn would sit for the following case:

**18-130            Houston Builders, LLC  
                     Owner: Cale Houston**

**The applicant is requesting a variance to the terms of Article III, Section 165-9 of the Town of Derry Zoning Ordinance and an exception to NH RSA 674:41(II) to allow the construction of a single family home on the existing 5 acre lot with 566 feet of frontage on a discontinued portion of Drew Road. 63.5 Drew Road, PID 07100, Zoned LDR**

Kevin Hatch, Cornerstone Survey Associates, Inc., said he was here to represent the owner who was also present. Mr. Hatch reviewed the required criteria for the record and explained the proposal for the record.

**Board Questions**

## **Code Enforcement**

Mr. Mackey provided the following information for the record:

- The applicants are requesting approval to construct a new single family dwelling on a vacant lot located on a discontinued road. Although it remains a public way, maintenance of this portion of the road was abandoned many years ago. Therefore, a variance is required as the lot does not have frontage on an approved street.
- The proposed access would utilize 200 feet of an existing gravel drive located within the right-of-way that currently provides access to a home that was recently rebuilt on the abutting property. The driveway would then branch over to the applicant's property.
- If approved, the new section of driveway would be required to meet the Town's driveway standards. In addition, the new dwelling would be serviced by a private well and a State approved septic system.
- Per the exception provided in RSA 674:41, if approved, a waiver of Municipal Liability and Responsibility must be recorded with the deed prior to issuance of a building permit.
- It does appear that there are significant wetlands located on the property and the dwelling would be required to maintain the appropriate setbacks (75' from a wetland 1 acre or larger).
- There are pictures in the file for review by the Board.

## **Board Questions**

### **Favor**

No one spoke in favor of the request.

### **Opposed**

Guy Pagliuca, 65 Drew Road, described his well location for the record. He said that he felt that the wetlands and map submitted are not correct. Mr. Pagliuca said that Drew Road was very dangerous and that they did not need more traffic on an already heavy traffic area. He said that Hampstead had already denied the applicant access to this lot for good reasons and now here before this Board proposing a home directly behind his home. Mr. Pagliuca said he felt the use to be unreasonable and that it would greatly reduce his property value and concerned with the septic system use in proximity to the wetlands. There was ample wildlife in the area and felt that this property was a very important piece of conservation land to be preserved. He said that the access to the lot is a dirt trail not a road and there was a home that was recently rebuilt and currently owned by Mr. Lee who was a direct abutter and not present tonight.

Mrs. Evans asked if the same issues with water was also on his property. Mr. Pagliuca said yes.

Mr. Coppolo asked if anyone had contacted the State or Town with regard to the water situation. Mr. Pagliuca said no as he was unaware that either could do anything. He said that he was unsure if Mr. Lee knew of the importance of this meeting.

### **Rebuttal**

Mr. Hatch described the Class V and the Class VI areas on the map for the record. He said that the applicant is proposing a single family home only. Mr. Hatch said that the abutter that spoke about the wildlife and wetlands behind his home has a 1.25 acre parcel that is being used as a 2-family. He said that the proposed dwelling would have similar setbacks and no other subdivision was possible as he did not see the Town granting road access to Hampstead. The property has obtained a State approved septic design and that DES does not walk site until septic installed. Mr. Hatch said that the proposal is for one home on a Class VI road and he reviewed the site distances for the Board. He said that Derry had reconfigured the road approximately 10-15 years ago creating more site distance. The concerns for the location of another well in the area is like gambling and that a proposed location is required to be shown on a septic design and they are required to have a 75' radius from any septic system. He said that when drilling you could get lucky and obtain water at a 100' and more often don't so requires deeper well depths.

Mr. Coppolo asked if the applicant has only owned since 2000 according to the deed. Mr. Hatch said that the lot was family owned before that and transferred to the applicant in 2000.

Mrs. Navarro motioned to go into deliberative session.

Seconded by Mr. Kelley.

Vote: Unanimous.

Mr. Rathburn, Mrs. Navarro, Mr. Kelley, Mr. Coppolo, Mrs. Evans

### **Deliberative Session**

Mrs. Evans said that there had been a lot of information presented. She said that the Board needs to review and speak to the criteria points.

Mr. Kelley said that he has heard the concerns and that Code Enforcement has answered a lot of his questions. He said that if this road was paved the applicant would not have to be before the Board. Mr. Kelley said that he was however concerned with a 4 bedroom home in an area with well issues.

Mr. Coppolo said that he was also concerned with the well issues and the representation that the wetlands are not where depicted. He said that he was also concerned with the traffic in the area. Mr. Coppolo said that as for the unnecessary hardship it was difficult to say that an owner can do nothing with a 5 acre parcel. He said he was torn with the fact that the question of would a home with 300' of frontage on a class V road lower property values.

Mr. Kelley said that the evaluation takes into the fact of a new home in the area.

Mr. Rathburn said that he felt that the abutters in the area need to do their due diligence before purchasing property knowing that there was a large vacant parcel in the area.

Mr. Coppolo said that he just looked up the RSA 674:41 and read for the Board. He said that he sees the unnecessary hardship but also feel that property values would be diminished and would need real estate comparison to prove no adverse effect.

Mrs. Evans reviewed the conditions for the record.

Mr. Rathburn motioned to come out of deliberative session.

Seconded by Mrs. Navarro.

Vote: Unanimous.

Mr. Rathburn, Mrs. Navarro, Mr. Kelley, Mr. Coppolo, Mrs. Evans

**Mrs. Navarro motioned on case #18-130 Houston Builders, LLC, Owner: Cale Houston to Grant a variance to the terms of Article III, Section 165-9 of the Town of Derry Zoning Ordinance and an exception to NH RSA 674:41(II) to allow the construction of a single family home on the existing 5 acre lot with 566 feet of frontage on a discontinued portion of Drew Road. 63.5 Drew Road, PID 07100, Zoned LDR as presented with the following conditions:**

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Subject to new waiver of municipal liability to be recorded with the Rockingham County Registry of Deeds.**

**Seconded by Mr. Coppolo.**

**Vote:**

**Mr. Coppolo: No. Changed mind after reading of the statute as feel it will lower neighbor's property value.**

**Mrs. Navarro: Yes.**

**Mr. Kelley: No. For the same reason as stated by Mr. Coppolo.**

**Mr. Rathburn: Yes.**

**Mrs. Evans: Yes.**

**The application was Granted by a vote of 3-2-0. 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.**

Correspondence

Mrs. Evans said that there was a copy of the NH Town & City that the Board receives bi-monthly if anyone wishes to review.

### **Approval of Minutes**

Mr. Kelley motioned to approve the minutes of November 1, 2018 as written.

Seconded by Mrs. Navarro.

Vote: Unanimous.

Mr. Rathburn, Mrs. Navarro, Mr. Kelley, Mr. Coppolo, Mrs. Evans.

### **Other Business**

Mr. Kelley said that the Salvation Army was seeking bell ringers this year and that they actually pay people who ring.

### **Adjourn**

Mr. Kelley motioned to adjourn.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mr. Rathburn, Mrs. Navarro, Mr. Kelley, Mr. Coppolo, Mrs. Evans.

Adjourn at 8:19 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

### **Approval of Minutes November 15, 2018**

Mr. Kelley motioned to approve the minutes of November 1, 2018 as written.

Seconded by Mrs. Navarro.

Vote: Unanimous.

Mr. Rathburn, Mrs. Navarro, Mr. Kelley, Mr. Coppolo, Mrs. Evans