

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
July 17, 2008

Members Present

Allan Virr, Chairman
Cecile Cormier, Secretary
Albert Dimmock

Members Absent

Christopher Lunetta
George Chaloux

Alternates Present

Michael Fairbanks
David Thompson
Ernest Osborn
James Webb

Alternates Absent

Dana Theokas

Staff Present

Fred Kelley, Assistant Building Inspector

Mr. Virr called the meeting to order at 7:03 p.m. with the salute to the flag, and notice of fire and handicap exits. He explained meeting procedures and introduced the Board members

It was noted for the record that Mr. Thompson and Mr. Webb would sit for the following case.

**08-114 Kevin Coyle
 Owner: Estate of Carroll Rand**

Variance to terms of Article VI, Section 165-46C2, Article III, Section 165-9, to build single family structure on lot with no frontage on a Town Approved Rd., at 38 Old Chester Rd., tax map 09136. MDR DISTRICT

Attorney Brian Germaine, representing the applicant, said that the application is for a variance to build a 3 bedroom home on lot 09136. He presented the Board with a recorded plan indicating the right-of-way to the property. Attorney Germaine said that the property is not land locked as has access through lot 09133 of a gravel driveway as shown on the plan. Attorney Germaine read the application for the Board.

Ms. Cormier said that the plan done by Charles Pearson appears to show wetlands on the property and questioned how extensive was the wetland in relation to the property. Mr. Coyle said that the area in question is a small seasonal stream located on the boarder of the property. He said that the septic design would require a 75' setback which is State standard and the area is not a prime wetland

Ms. Cormier asked if the property was subdivided in the 1950's Mr. Coyle said yes.

Mr. Virr asked if the access to the lot is an easement as it does not reflect in the quit claim deed. Mr. Coyle said that the quit claim deed was done by the owners and never actually delineated which has now been established and recorded at the registry of deeds.

Mr. Fairbanks asked if the Board was supposed to hear from the abutters. Mr. Virr said that they would after the applicant has given testimony to the case.

Ms. Cormier asked if the easement was done after Mr. Rand's passing. Mr. Coyle said that the easement was done in February or March of 2008.

Mr. Virr asked if the existing house was uninhabitable. Mr. Coyle said that the home was occupied since Mr. Rand's passing however it has been vacant for some time now and as such he would not occupy the dwelling at this time.

Mr. Osborn asked what was located behind the property. Mr. Coyle said that the property located behind this property was a field of grass with a wetland area and stream running along side it.

There were no abutters in Favor of the application at this time.

Code Enforcement

Mr. Kelley said that the applicant's request is to construct a single family dwelling on a pre-existing lot containing no frontage on a Town approved road. The lot was created many years ago and contains an abandoned dwelling that has not been occupied since 2004. A legal opinion was obtained from Attorney Steve Clark indicating that a variance is required to replace the structure. If approved by the Board the new dwelling must meet all appropriate setbacks and a new, State approved septic design must be obtained. Apparently, there is a 12' wide easement through parcel 09137 to access this parcel. As this request involves a dimensional requirement, the Boccia hardship test will apply:

- i. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.
- ii. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.

Mr. Kelley said there were pictures in the file for the Board's review.

Opposed

John Shannon, 30 Old Chester Road, said that his property abuts the applicants property and has a question to where the easement would be located as he owns 61' feet of frontage on Old Chester Road and had a previous agreement with Carol Rand and the son but there was nothing ever done in writing. He felt that the easement appears to be on his property and not in favor of granting as he has not given anything in writing to have a recorded easement threw his property.

Attorney Germaine reviewed the easement with Mr. Shannon and said that there was an easement recorded with lot 09137 and will be relocated on that lot as shown on the plan.

Mr. Osborn said that the Board was making a decision as shown on the plan presented to the Board tonight showing a recorded easement with the Registry of Deeds.

Linda Healey, 34 Old Chester Road, said that she felt that even with the driveway relocated that the large trucks will still be going in and out on their property due to their size and does not want that to happen.

Mr. Coyle said that a normal driveway is 10 feet wide and so was the easement so there would be no infringement onto the other property.

Eileen Guiney, 32 Old Chester Road, said that most equipment was larger than 10 feet so she felt there would be an encroachment on the property.

Mr. Dimmock said that equipment is not over 8 feet in width so that they can travel over the road ways.

Mr. Webb said that according to the sheet given the new easement states that it is 12' wide but it was not shown.

Ms. Cormier showed the location of the proposed easement on the plan.

Attorney Germaine stated that the recording number was D-35402 on May 08 shows a 12' wide easement and its description.

Mr. Dimmock said that the gentleman stated that they would be available on the property on Saturday however that this matter will be decided tonight.

Ms. Cormier said that the lot line dispute was a civil matter and not the jurisdiction of the Board that they would need their own survey. She said that the Board was making a decision as shown on a recorded easement with the State. Engineers have plotted the easement out etc and if at odds on the recording it becomes a civil matter and would need to be done through Superior Court.

Mr. Shannon asked if the request was granted tonight could the applicant start tomorrow or would they have to wait the 30 days.

Mr. Dimmock said that a lot line dispute would require another surveyor to draw up a plan and dispute against the presented survey in court.

Deliberative Session

Ms. Cormier said that she believed that the applicant has met all the criteria needed to be granted a variance as it is a unique parcel and feel that it would be an injustice if not granted. Feel that it would not be reasonable not to allow the request.

Mr. Dimmock said that he was satisfied with what had been presented provided that they meet all Town and State regulations as all perimeters of setbacks are met.

Mr. Kelly said that typically the office advises builders that there is a time line for appeal that it is recommended that no construction be started until then so as not to be subject to a stop work order.

Mr. Dimmock asked if a stipulation be made in the motion that construction only be started after the 30 day appeal period.

Mr. Virr said that the Board did not have that type of powers to enforce that no construction be started until after the 30 day appeal period.

Ms. Cormier said that any aggrieved party has 30 days to apply for a rehearing and if the rehearing was not granted the next step would be to appeal to Superior court.

Mr. Thompson motioned on case #08-114, Kevin Coyle, Owner: Estate of Carroll Rand to Grant a Variance to terms of Article VI, Section 165-46C2, Article III, Section 165-9, to build single family structure on lot with no frontage on a Town Approved Rd., at 38 Old Chester Rd., tax map 09136, MDR DISTRICT, as presented with the following conditions:

- 1. Construction completed within 2 year or variance shall be void.**
- 2. Subject to obtaining all State & Town permits and inspections.**

Seconded by Ms. Cormier.

Vote:

Mr. Webb:	Yes.
Mr. Thompson:	Yes.
Ms. Cormier:	Yes.
Mr. Dimmock:	Yes.
Mr. Virr:	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 for the record that Mr. Fairbanks and Mr. Osborn would sit for the following case.

Mr. Virr asked if the applicant would mind if the two cases were heard together and voted on separately. Mr. Estey said that would be fine.

08-115 Rita Hardy & Matt Estey

Variance to terms of Article VI, Section 165-46C4, to replace existing single family structure too close to side lot lines (15' required) at 30 Beaver Lake Ave., tax map 51062, MDR DISTRICT.

08-116 Rita Hardy & Matt Estey

Variance to terms of Article VI, Section 165-46C4, to build 26'X34' garage too close to side lot lines (15' required) at 30 Beaver Lake Ave., tax map 51062, MDR DISTRICT.

Chuck Estey, 139 Londonderry Road, Windham, said that the original structure currently sits 40' feet from the water and this proposal is to rebuild a new structure 60' feet from the water but will be installing a deck so will then be 50' feet back from the water.

Mr. Virr asked if they could review the application for the Board first before getting into additional description of the proposal.

Matt Estey, owner, read the applications for the Board.

Mr. Virr asked if they would be building a new home. Mr. Estey said yes.

Mr. Thompson asked if the new structure was to be 62' feet back but building a 12' foot deck so it would still make the structure to be 50' feet from the shoreline. Mr. Estey said that was correct.

Mr. Thompson asked if the home was proposed as a 2 story or 3 story home. Mr. Estey said that there would be a walkout basement on the water side of the home but on the driveway side would be a 2 story home due to the grade of the property.

Mr. Thompson asked if there was a home business going to be operated from the property as the floor plan indicates an office. Mr. Estey said that there would not be a business at the property that the office was for personal use.

Mr. Virr asked how does the garage fit into the request for a variance. Mr. Estey presented the Board with a plan of the proposed garage stating that they wished to build a 26' x 36' garage instead of the requested 26' x 34' garage.

Mr. Dimmock said that he had asked Mr. Kelley why there were 2 requests for the property and he said that it was due to the fact that there were 2 separate requests being sought after and that the Town Attorney had recommended that the request be separate.

Mr. Virr asked what type of sewage system was serving the property. Mr. Estey said that the property was serviced by Town sewer.

Mr. Osborn asked if the neighbor still had a gravestone located in the yard. Mr. Estey said yes but no one was located there.

Ms. Cormier asked why could they not build a smaller garage instead of such a large one. Mr. Estey said that 2 of the bays would be utilized for a car and the other a truck and the third bay was for storage for all the water toys instead of having them laying all over the yard.

There was some discussion with regard to the size of the proposed structure and surrounding properties.

Mr. Fairbanks asked if there was any dispute with regard to the lot lines. Mr. Estey said that the Hepworth survey was the true lot lines and he reviewed the plan for the garage for the Board.

Ms. Cormier asked if the proposed plan would be changed as it indicates proposal. Mr. Estey said no as they plan on building a 26' x 36' garage as according to the plan he just presented to the Board.

Ms. Cormier said that she would like to have a certified plan requested. Mr. Kelley said that the Code Enforcement Office requests a certified plan at the foundation stage and another at the final status so to make sure they are not infringing on lot lines.

Favor

Ken Hepworth, 32 Beaver Lake, said that he feels that he is in favor of the proposal but would like to review the plan as concerned with the distance of home locations. He said that the eaves of the home are currently about 9' feet from the property lines at this time and would like to see that the distances between the eaves of the home stay the same distance.

Mr. Virr said that the Board votes on what is presented to the Board at tonight's meeting.

Ms. Cormier asked if the measurements were taken from the bottom of the home or the roof line. Mr. Kelley said that the measurements are taken from the bottom of the home and this home will not have a cantilever style system as some have done in the past.

Ms. Cormier asked how much does the eaves hang over the home. Mr. Kelley said that a typical eve is 1' foot from roof edge and the home will be built with no cantilevers.

Mr. Hepworth asked that the variance be granted and that the Hepworth's may seek a similar variance in the future and would like to have the same permission to build.

Mr. Virr said that each case is based on its own merit and could not guarantee that type of request at this time.

Carl Hepworth, 32 Beaver Lake, said that he would like to clarify Mr. Osborn's question of the Penny William's gravestone for the Board. He said that Mrs. William's had purchased the stone 18 years ago from the Hepworth Memorials when she purchased a plot in the Forest

Hill Cemetery but her children would not let it be installed at the Cemetery until she leaves this earth so hence the stone was placed in her yard.

There was some discussion with regard to the size and square footage of the home and the Board reviewed the plans presented.

Code

Mr. Kelley said that the applicant's request is for a variance to allow for a replacement dwelling to be constructed to close to the side property lines and the construction of a garage to close to the side property lines. The proposal is to remove an existing dwelling and construct a new dwelling further from the lake shore so as to comply with the State Shoreland Protection Act restrictions which require a 50' foot setback. The other proposal is to construct a 26' x 34' detached garage in conjunction with the replacement of the existing dwelling. If approved, all appropriate permits must be obtained and all other aspects of the Shoreland Protection Act must be followed including obtaining a State permit which is now required under the act. As this request is dimensional, the Boccia hardship test will apply:

- i. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.
- ii. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.

There are pictures in the file for the Board's review.

Deliberative Session

Mr. Osborn said that he did not see any problems as long as the proposed was built according to plan.

Ms. Cormier said that she did not see how it could be constructed any other way without harming the lake.

Mr. Dimmock said that he was in favor of the proposal and that it meets the criteria need to be granted a variance.

Mr. Virr said that there needed to be some conditions made on the request in order to be approved. He said that the applicant needs to meet the State Shoreland Protection Act and all Town and State requirements and permits obtained and feel that a 2 year build or variance shall be void be stipulated.

Mr. Fairbanks motioned on case #08-115, Rita Hardy & Matt Estey to Grant a Variance to terms of Article VI, Section 165-46C4, to replace existing single family structure too close to side lot lines (15' required) at 30 Beaver Lake Ave., tax map 51062, MDR DISTRICT as presented and with the following conditions:

1. Subject to obtaining all State and Town permits and inspections.
2. Subject to Shoreland Protection Act approval.
3. Construction to be completed within 2 years or variance shall be void.

Seconded by Ms. Cormier.

Vote:

Mr. Dimmock:	Yes.
Mr. Osborn:	Yes.
Ms. Cormier:	Yes.
Mr. Fairbanks:	Yes.
Mr. Virr:	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.

Ms. Cormier motion on case #08-116, Rita Hardy & Matt Estey to Grant a Variance to terms of Article VI, Section 165-46C4, to build 26'X34' garage too close to side lot lines (15' required) at 30 Beaver Lake Ave., tax map 51062, MDR DISTRICT as presented with the following conditions:

1. Subject to obtaining all State and Town permits and inspections.
2. Subject to Shoreland Protection Act approval.
3. Construction to be completed within 2 years or variance shall be void.

Seconded by Mr. Dimmock.

Vote:

Mr. Fairbanks:	Yes.
Ms. Cormier:	Yes.
Mr. Osborn:	Yes.
Mr. Dimmock:	Yes.
Mr. Virr:	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. Dimmock motioned to approve the minutes of June 16, 2008 as written.

Seconded by Mr. Osborn.

Vote: Unanimous.

Mr. Thompson, Mr. Webb, Mr. Osborn, Mr. Dimmock, Mr. Virr

Other Business

21st Annual Municipal Volunteer Awards – August 29, 2008.

Adjourn

Motion to adjourn by Ms. Cormier.

Seconded by Mr. Dimmock.

Vote: Unanimous.

Mr. Thompson, Mr. Webb, Mr. Osborn, Mr. Fairbanks, Mr. Dimmock, Ms. Cormier,
Mr. Virr

Adjourn at 8:43 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes August 7, 2008

Mr. Dimmock motioned to approve the minutes of July 17, 2008 as amended.

Seconded by Mr. Thompson.

Vote: Unanimous.

Mr. Thompson, Mr. Webb, Mr. Osborn, Mr. Dimmock, Ms. Cormier, Mr. Virr