

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
August 20, 2009

Members Present

Allan Virr, Chairman
David Thompson, Vice Chairman
Albert Dimmock
James Webb

Members Absent

Cecile Cormier

Alternates Present

Ernest Osborn
Michael Fairbanks
John DeBonis

Alternates Absent

Staff Present

Robert Mackey, Code Enforcement Director

Mr. Virr called the meeting to order at 7:02 p.m. with the salute to the flag, and notice of fire and handicap exits.

09-115 Mark & Terrylee Murphy

Variance to terms of Article VI, Section 165-45B(d)ii, to construct 26' x 24'- 2 stall attached garage within 12' of the side lot line (15' required) at 15 Coburn Road, tax map 36062. MHDR DISTRICT.

Mr. Virr informed the Board that case #09-115 had been WITHDRAWN by the applicant.

Mr. Mackey said that the office had received a letter from the applicant to withdraw the case and he had previously spoken to their Attorney who had also stated that they were not proceeding with the proposal at this time. Mr. Mackey said that the Board had to formally meet as abutters to the property had been notified by certified mail of tonight's meeting and no way of letting them know that the case had been withdrawn.

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

09-116 Louis Baretto

Variance to terms of Article VI, Section 165-46A & 165-46C4, to raze 2 detached dwellings and replace with two-family dwelling too close to side lot lines at 38 Coles Grove Road, tax map 51023. MDR DISTRICT

Louis Baretto, owner, read his application for the Board. He said that he hoped to remove two very old buildings and replace with one new two-family structure on the property.

Mr. Virr asked if the existing structures were currently within the setbacks. Mr. Baretto said no that the front building was approximately 1-2' from the side lot line and the rear building was possibly within the setback.

Mr. Thompson asked if the property was currently boarded up. Mr. Baretto said no the buildings were not boarded up.

Mr. Dimmock asked if the windows facing the street were boarded up. Mr. Baretto said that he did not believe. He presented the Board with current pictures of the buildings and explained their locations for the Board.

Mr. Fairbanks asked if there was an economical hardship that requires him to put up 2 units. Mr. Barreto said that he would like to replace with same as he currently has 2 units and with the economy the way it is it would be a financial hardship to only build 1 unit.

Mr. Virr asked if there were any pictures of the proposed unit. Mr. Barreto presented the Board with a proposed look of the dwelling.

Mr. Dimmock asked if the structure would be moving away from the shore line. Mr. Barreto said that the proposed duplex would be 55' from the lake.

Mr. Webb asked if the driveway would be in the front. Mr. Barreto said yes and there would be garages under with a driveway for each unit.

Mr. Fairbanks said that according to the plan it states that the setbacks were to be determined are they accurate. Mr. Barreto said that he had an updated plan and gave it to the Board with the measurements from the lot lines.

Code Enforcement

Mr. Mackey said that the applicant's request is to remove two separate existing dwellings and replace them with a single, two family structure too close to the side lot lines. The current use is a pre-existing, non-conforming situation consisting of two separate dwellings on one lot. There are two separate municipal sewer services to the property. This request involves both a use variance to allow the current two family use of the property to continue in a single structure and an area variance to allow the new structure to encroach into the side

setbacks. Therefore, both the “Simplex” hardship criteria and the “Boccia” hardship criteria must be considered along with the other variance criteria. If approved, a State Shore land permit will also be required through the N.H. Department of Environmental Services. This permit will regulate such items as landscaping and the amount of impervious area that can be created on the lot. There are pictures in the file for the Board’s review.

Mr. Thompson asked if the property would be for rentals or for sale. Mr. Baretto said that he would possibly sell the units.

Mr. Virr asked how long he had owned the property. Mr. Baretto said for approximately 3-4 years.

Mr. Virr asked if the property was currently used. Mr. Baretto said that the property was used prior and had rented the units in the past but now are currently in disrepair.

Mr. Mackey said that the property currently has 2 buildings and 2 separate sewer hookups and that the applicant was seeking to replace the 2 units with 1 single 2-family dwelling.

Mr. Dimmock asked if each unit had separate sewer hook ups or if there was a single hook up. Mr. Mackey said that he believed that there was one main connection that splits to the 2 units.

Favor

Mark Yuska, 40 Coles Grove Road, said that he was in favor of the applicant’s proposal as he feels that it would increase values to the area as the property as it stands now is a bit of an eyesore. He said that his only concern was a possible traffic increase as the property is not currently utilized.

Mr. Thompson asked if the homes were used now. Mr. Yuska said no.

Mr. Virr asked if Coles Grove was a Town accepted road. Mr. Mackey said that he believed it was.

Mr. Dimmock said that currently with the 2 buildings there now there would be 4 cars with one 2-family dwelling there would still be 4 cars.

Opposed

There were no abutters present.

Mr. Fairbanks asked if there would be paved parking. Mr. Baretto said possibly.

Mr. Virr asked if the paving to each garage would be of impervious surfaces. Mr. Mackey said that it was possible to install an impervious driveway to each unit and is typically the way the State deals with the paving.

Deliberative Session

Mr. Thompson said that he did not see a problem with the proposal and feels that it meets the Simplex and Boccia criteria.

Mr. Virr said the use variance is currently a 2-family issue for sale or rental was not a concern for the Board. As far as an area variance it already violates the setbacks and the proposal would help the non-conformity and be more compliant.

Mr. Fairbanks said that the proposal would be making it more conforming as it will be moved over off the side lot lines and improve the area.

Mr. Webb said that he agreed that it would also improve the area the only difference will be that there will be one house with a 2 family dwelling as opposed to two single buildings.

Mr. Virr said if the proposal is built as presented he felt that it would be a benefit to the area.

Mr. Dimmock said that he did not feel that the applicant was going beyond the boundaries as there is already two dwellings there. Also section of the undersized lot will be making the area more compliant as stated by Mr. Fairbanks and that the application should be granted.

Mr. Virr reviewed the conditions for the Board.

Mr. Thompson motioned on case #09-116, Louis Baretto to Grant a Variance to terms of Article VI, Section 165-46A & 165-46C4, to raze 2 detached dwellings and replace with two-family dwelling too close to side lot lines at 38 Coles Grove Road, tax map 51023. MDR DISTRICT as presented with the following conditions:

- 1. Subject to obtaining Shore land Protection Act permit from State.**
- 2. Subject to all Town inspections & permits.**
- 3. Construction to be completed within 2 years or variance shall be void.**

Seconded by Mr. Dimmock.

VOTE:

Mr. Dimmock:	Yes. Believe it meets all the criteria.
Mr. Thompson:	Yes. Feel it meets the Simplex & Boccia criteria.
Mr. Webb:	Yes. Feel it meets the criteria.
Mr. Fairbanks:	Yes. For the same reasons as stated.
Mr. Virr:	Yes. Same reasons as stated. The property definitely has hardships involved in the property.

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. Osborn would sit for the following case.

Kastorion Realty Trust

REHEARING REQUEST of Case 09-114 Variance to terms of Article VI, Section 165-49C1, G1b, to build 2nd story to exiting structure and build 2-story addition on an undersized lot without required off street parking at 49 E. Broadway, tax map 30161. TBOD DISTRICT

The Board reviewed the information submitted for the rehearing request.

Mr. Thompson asked if in the original case that was presented if there was an error in the term not more than 5 feet.

Mr. Mackey said that in the TBOD District most of the setbacks are average and that the ordinance states that can not be more than 5 feet. Typically in the downtown area there is a 0' front setback and no more than a 5' side setback.

Mr. DeBonis said that he had stated in the previous meeting that he had a problem with the side setback of 5'.

Mr. Thompson said that he believes that the Board has made an error in the vote.

Mr. Virr said that he believes that would be better if they could split out the parking requirement from the setback requirement.

Mr. Mackey said that the Board could split the voting but with the understanding that if one part was denied the other part would be moot.

There was some discussion with regard to the ordinance requirements and the proposal.

Mr. Fairbanks said that the TBOD overlay means that there is no on street parking that the Board needs to possibly review the case over.

Mr. Thompson said that they were not here to discuss the case just to determine if it the Board made an error in the decision and if it warrants a rehearing.

Mr. Thompson made a motion to Grant a Rehearing Request to Case 09-114, Kastorion Realty Trust, Variance to terms of Article VI, Section 165-49C1, G1b, to build 2nd story to exiting structure and build 2-story addition on an undersized lot without required off street parking at 49 E. Broadway, tax map 30161. TBOD DISTRICT

Seconded by Mr. Webb.

VOTE

Mr. Webb: Yes. Believe an error was made.

Mr. Dimmock: Yes. Agree with Mr. Webb that the case was presented wrong and an error was made.

Mr. Osborn: Yes. Believe some of the information submitted warrants a rehearing.

Mr. Thompson: Yes. For the same reasons as stated.

Mr. Virr: Yes. Due to the previous way the case was presented the Board may have made an error in judgment.

Motion for Rehearing was Granted by a vote of 5-0-0.

Approval of Minutes

Mr. Thompson motioned to approve the minutes of July 19, 2009 as amended.

Seconded by Mr. Osborn.

VOTE: Unanimous.

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

Correspondence

Annual Fall Conference - October 17, 2009

43rd Annual So. NH Planning Commission – September 11, 2009

Municipal Law Lecture Series

Adjourn

Motion to adjourn by Mr. Thompson.

Seconded by Mr. Dimmock.

Vote: Unanimous.

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

Adjourn at 7:52 pm

Minutes transcribed by:
Ginny Rioux
Recording Clerk

APPROVAL OF MINUTES 10-15-2009

Mr. Thompson motioned to approve the minutes of August 20, 2009 as written.

Seconded by Mr. Dimmock.

Ms. Cormier abstained as was not present.

Vote: Unanimous.

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