

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
February 4, 2010

Members Present

Allan Virr, Chairman
David Thompson, Vice Chairman
Cecile Cormier, Secretary
Albert Dimmock
James Webb

Members Absent

Alternates Present

Michael Fairbanks
Ernest Osborn
Stephen Popp

Alternates Absent

John DeBonis

Staff Present

Robert Mackey, Code Enforcement Director

Mr. Virr called the meeting to order at 7:04 p.m. with the salute to the flag, and notice of fire and handicap exits.

10-101 Anthony Zammuto
Owner: Joseph & Tracey Cochran

Special Exception to the terms of Article VI, Section 165-48.A.1, to conduct an auto detailing business from the residence at 21 Gaita Drive, Parcel ID 03160-042, LDR DISTRICT

Applicant was not present at this time.

Ms. Cormier suggested that the Board hear the next case on the agenda in the event that the applicant is in route to the meeting.

10-102 First Stark Road Properties, LLC

Variance to the terms of Article VI, Section 165-47.B, to subdivide an area of 3,909 square feet to be conveyed to the Molly Reid Chapter of the Daughters of the

American Revolution for the relocation of the John Stark Monument at 33 Lawrence Road, Parcel ID 03119-007, LMDR DISTRICT.

Attorney William Mason, representing the applicant said that he was also here with Attorney Saparzina who is representing the Daughters of the American Revolution. He read for the record of what the Chapter was seeking to achieve. He said that the main purpose was to relocate the John Stark Monument and acquire the land that it sits on so as to have a fee interest in the property. Attorney Mason said that the monument had previously been located further down the road on a 25 acre site and during the subdivision process it was suggested to relocate it to the 3 acre parcel which it was depicted as an easement was not what the Molly Reid Chapter of the Daughters of the American Revolution thought they were acquiring. He said that the portion of the lot that the Chapter is seeking does not affect the size of the home to be constructed on the lot and that the 3,909 portion is not for the purpose of building a home but to be the site for the John Stark Monument and to allow the Daughters of the American Revolution to maintain a fee interest in the property.

Ms. Cormier asked who the members of the First Stark Properties, LLC were. Attorney Mason said that he was unsure of all the names of the members but did know that Edward Cooper was the manager.

Ms. Cormier asked if the plan meets the frontage requirements. Attorney Mason said that they were seeking a 3,909 square foot portion of the property from the existing lot which will remain compliant with today's zoning. He said that the Molly Reid Chapter was seeking to have a fee interest with the allowance of this subdivision.

Mr. Virr asked if previously where the monument was located on the 25 acre parcel if there were any parking allowances. Attorney Mason said that there were no plans that showed any parking and that previously anyone that wished to view the monument had to pull over onto the side of the road which in the monuments former location had been very dangerous. He has been told that this relocation is a much safer place than the previous location.

Mr. Fairbanks said that if the request was not granted if they would still have a permanent easement. Attorney Mason said that that was not something that the Chapter was comfortable with in order to maintain their historic site. They had a reasonable fee interest in the former location and were given a reasonable expectation that that is what they were going to have again when the property was subdivided. The Chapter wants to maintain a fee interest portion of the property not just easement rights.

There was some discussion with regard to what the applicant was seeking to achieve.

Mr. Dimmock said that he recalled that the Highway Safety Committee had discussed the relocation a few years ago and it was deemed at that time that the former location was unsafe. When the monument was relocated to this site it was found to be safer as if someone were to pull up to view the monument that they could now pull up and park safely.

Attorney Mason said that the overall process of the relocation of the monument was brought up for safer viewing. The Chapter believed that by doing this that they would still maintain a fee interest in the ground that the monument sits on but the original plan shows an easement and the Chapter is not comfortable with that aspect and as such they are here seeking a variance to be able to subdivide a 3,909 square foot portion of the lot so that they can maintain their fee interest.

Mr. Thompson said that he would like to hear from the other Attorney.

Attorney Marie Saparienta said that the Chapter likes the new location of the monument but feels that there has been a misunderstanding from the original agreement. Attorney Saparienta said that originally the Daughters of the American Revolution had a fee interest where the monument was formally located and are happy with the relocation but would like to still maintain a fee interest in the new location and not just an easement.

Mr. Thompson said that the monument and visibility is better but asked if there was going to be any parking allowances. Attorney Mason said that the previous location was a far more dangerous situation for people to stop and that the Planning Board had granted this new location and that moving it has been a vast improvement than its previous location and may not be perfect but does allow for safer viewing.

Mr. Thompson asked if Mr. Mackey could indicate if the shoulder area was suitable for the ability to pull over for viewing of the monument. Mr. Mackey said that the previous location was on an uphill slop and the shoulder area was a bit steep in some areas. He said now there was more room to get a vehicle off the roadway.

Mr. Virr asked if a deed would be created. Attorney Mason said yes there would be a deed drawn up after Planning Board approval was obtained.

Mr. Dimmock said that the Highway Safety Committee had decided that the location was safer as there was more room for parking on the side of the road in this location.

Attorney Mason said that when the monument was relocated that off-site improvements had been done and that the Chapter is now seeking to complete the process to create a small parcel dedicated to just the monument.

Mr. Virr asked if the Chapter pays taxes. Attorney Saparienta said yes.

Code Enforcement

Mr. Mackey said that the applicant's request is to subdivide an area of 3,909 square feet to be conveyed to the Molly Reid Chapter of the American Revolution for the relocation of the John Stark Monument. The area in question was recently subdivided into 10 building lots and the existing monument was relocated closer to the intersection of Stark and Lawrence Roads. The purpose of this request is to allow the property that the monument sits on to actually be conveyed to the DAR rather than just create an easement on lot 119-007. The revised "Hardship Criteria" is now in effect. If approved, Planning

Board subdivision approval will be required. There are pictures in the file for the Board's review.

Ms. Cormier said that the Board does not have purview over site plan and that the only matter that the Board was voting on is to create an undersized lot.

Favor

No abutter's were present.

Opposed

Moncia Cataldio, 30 Lawrence Road, asked why this was not done before the monument was moved and just having to be done now.

Attorney Mason said that the engineer was under the impression that by providing a permanent easement it would allow the Chapter to gain a fee interest in the property as they previously had and the current situation does not meet the expectation of owning the ground that the monument sits on.

Mr. Virr asked if the reason for relocating was that the monument at its former location was unsafe due to the shoulder work that needed to be performed in the area. Attorney Mason said yes, that the current location offers a better situation from a highway safety issue than the previous location.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Thompson.

Vote: Unanimous.

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

Deliberative Session

Mr. Virr informed the Board that all the 5 criteria needed to be agreed on in order to be granted a variance. He reviewed the criteria for the Board.

Ms. Cormier said that the applicant was not seeking to build a home but only seeking to gain a fee interest in a portion of property for the location of the monument.

Mr. Virr said that he felt that substantial justice would be done.

Ms. Cormier said that substantial justice had been done as where the monument was relocated to was a more accessible location. The only difference was that the Molly Reid Chapter wanted to own the land that the John Stark Monument sits on.

Mr. Dimmock said that they already have an easement. The only difference is that they want to acquire the land so it belongs to the Chapter.

Mr. Virr asked if the Board felt that it was a reasonable request and reviewed the conditions for the Board.

Mr. Thompson motioned on case #10-102, First Stark Road Properties, LLC, to Grant a Variance to the terms of Article VI, Section 165-47.B, to subdivide an area of 3,909 square feet to be conveyed to the Molly Reid Chapter of the Daughters of the American Revolution for the relocation of the John Stark Monument at 33 Lawrence Road, Parcel ID 03119-007, LMDR DISTRICT as presented with the following conditions:

- 1. Subject to Planning Board approval.**

Seconded by Ms. Cormier.

Vote:

Mr. Webb: Yes. Believe best interest to all parties involved.

Ms. Cormier: Yes. Believe it meets the criteria.

Mr. Thompson: Yes. Not happy that the cart was before the horse but feel that it meets the criteria.

Mr. Dimmock: Yes. Feel the criteria has been met and that the monument is in a safer location than it was previously.

Mr. Virr: Yes. For the same reasons as stated by Mr. Dimmock.

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.

**10-101 Anthony Zammuto
 Owner: Joseph & Tracey Cochran**

Special Exception to the terms of Article VI, Section 165-48.A.1, to conduct an auto detailing business from the residence at 21 Gaita Drive, Parcel ID 03160-042, LDR DISTRICT

Applicant was not present at this time.

Ms. Cormier motioned on case #10-101, Anthony Zammuto, Owner: Joseph & Tracey Cochran to Deny without Prejudice Special Exception to the terms of Article VI, Section 165-48.A.1, to conduct an auto detailing business from the residence at 21 Gaita Drive, Parcel ID 03160-042, LDR DISTRICT as the applicant was not present.

Seconded by Mr. Thompson.

Vote: Unanimous.

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

Approval of Minutes

Mr. Dimmock motioned to approve the January 21, 2010 minutes as amended.
Seconded by Mr. Webb.

Vote: Unanimous

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

Adjourn

Motion to adjourn by Mr. Thompson.

Seconded by Mr. Webb.

Vote: Unanimous.

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

Adjourn at 7:45 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

APPROVAL OF MINUTES MARCH 18, 2020

Ms. Cormier motioned to Approve the minutes of February 4, 2010 as amended.

Seconded by Mr. Thompson.

Vote: Unanimous.

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