

**TOWN OF DERRY**  
**ZONING BOARD OF ADJUSTMENT MINUTES**  
**June 3, 2010**

**Members Present**

Allan Virr, Chairman  
James Webb, Secretary  
Ernest Osborn  
Cecile Cormier

**Members Absent**

David Thompson

**Alternates Present**

Michael Fairbanks  
John DeBonis  
Stephen Popp

**Alternates Absent**

**Staff Present**

Robert Mackey, Code Enforcement Director

Mr. Virr called the meeting to order at 7:01 p.m. with the salute to the flag, and notice of fire and handicap exits.

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

**10-110          Frank J. Tomczkowski**

**Requests Equitable Waiver of dimensional requirements to the terms of Article VI, Section 165-48B.4, to allow a garage addition to remain within 8.1 feet of the side lot line where 15 feet is required at 328 Island Pond Road, Parcel ID 17006-003. LDR District.**

Frank J. Tomczkowski, owner, said that his home had had a fire in January so he decided to sit down with a contractor to rebuild and add a garage. Mr. Tomczkowski said that the contractor had obtained permits and started to build the garage and during this time his neighbor had their land surveyed for other purposes and found that the lot line was in the middle of his driveway and not in the woods like he had previously thought when the building permit was obtained. Mr. Tomczkowski read his application for the Board.

Mr. Webb asked if the mortgage plan dated 1986 was what he had gone by and how long had he owned the property. Mr. Tomczkowski said that he purchased in 1999 and had salvaged the plot plan that was submitted from the fire and felt that it was accurate.

Mr. Virr asked if his mortgage company had required their own survey. Mr. Tomczkowski said that he was unsure and when his contractor asked for a plot plan so he could submit for a building permit he submitted that one as he felt it was accurate.

Mr. Virr said that he was sorry about the fire and felt that this was an honest mistake that was made.

Ms. Cormier asked if the Herbert plan and septic plan from 1986 was original does the 2010 current plan show the existing foundation as it is currently. Mr. Tomczkowski said yes it does show the addition.

Ms. Cormier asked if the garage was 8.1 and 9.1 feet from the lot line. Mr. Tomczkowski said yes.

Mr. Fairbanks asked if the plot plan dated May 17, 2010 was the actual survey which line moved. Mr. Tomczkowski said that the one on the left side of the home was the lot line in question.

There was some discussion with regard to mortgage surveys and certified plot plans.

Mr. Virr said that the problem is clearly an error and was discovered due to a neighbor having a survey done. The applicant had their own survey done that showed the setbacks to be 9.1 and 8.1 feet from the side lot line.

Mr. Virr asked if the left side was the garage and if it was front entry. Mr. Tomczkowski said yes.

### **Code Enforcement**

Mr. Mackey said that the applicant's request is for an equitable waiver to allow an existing addition under construction to remain within 8.1 feet of the side lot line. On March 19, 2010 a building permit was issued to the owner of the property to repair fire damage to the existing dwelling and to add a garage. The proposed setback for the addition was based on a mortgage survey dated 9-25-86. After construction had begun, a new survey was completed by the abutter which indicated there could be an issue with the setback of the addition. It was subsequently confirmed by a survey that the applicant then had done, that the addition was 8.1 feet from the side lot line at its closest point. Due to the extent of construction that had taken place, it was determined that the applicant could apply for an equitable waiver. As the addition is new, the 2<sup>nd</sup> part of the equitable waiver criteria will apply. There are pictures in the file for the Boards review.

Mr. Virr asked if the Code Enforcement Office requested a surveyed plot plan before additions are constructed. Mr. Mackey said that a surveyed plot plan is not required to obtain a building permit for an addition only on brand new construction. He said that the office does suggest a survey be done if the proposal is questionable to setbacks.

Mr. Webb read letter submitted by Bruce Manke, 326 Island Pond Road in favor of the applicants request for the record.

Mr. Virr asked if the requests that Mr. Manke had asked for had been discussed and agreed upon. Mr. Tomczkowski said yes that they had discussed the concerns with his neighbor.

Mr. Osborn asked if there was a lot of the driveway located on the neighbors property and if there would be any problem removing that portion of the driveway. Mr. Tomczkowski said that there was approximately a 2 ½ by 20' section of pavement that would need to be removed and did not see a problem with doing that.

### **Favor**

No abutters were present.

### **Opposed**

No abutters were present.

Ms. Cormier asked if the driveway had always been there or if it was new. Mr. Tomczkowski said that it was there when he purchased so believe it is the original driveway when home was built.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Osborn.

Vote: Unanimous.

Mr. Popp, Mr. DeBonis, Mr. Fairbanks, Ms. Cormier, Mr. Osborn, Mr. Webb, Mr. Virr.

### **Deliberative Session**

Mr. Osborn said that he felt it was an honest mistake and did not see a problem with the request.

Ms. Cormier said that she agreed but should indicate in the motion what remediation would be performed so that Code Enforcement had something to go by.

Mr. Osborn said that the letter from the abutter was read for the record and felt that that was satisfactory as a condition.

Ms. Cormier said that she felt that the motion should be clean cut and made part of the record in the conditions.

There was some discussion with regard to conditions.

Ms. Cormier asked if Mr. Mackey could address his concerns.

Mr. Mackey said that the Board could make it a condition that it be subject to what the Code Enforcement Officer feels is sufficient.

Mr. Virr reviewed the conditions for the Board.

**Ms. Cormier motioned on case #10-110, Frank J. Tomczkowski to Grant Request for an Equitable Waiver of dimensional requirements to the terms of Article VI, Section 165-48B.4, to allow a garage addition to remain within 8.1 feet of the side lot line where 15 feet is required at 328 Island Pond Road, Parcel ID 17006-003. LDR District, as presented with the following conditions:**

- 1. Remedial measures to be taken as stated in the abutter's letter**
- 2. from Manke.**
- 2. Remedial measures to be inspected and approved by the Code Enforcement Officer.**

**Seconded by Mr. Osborn.**

**Vote:**

**Mr. DeBonis: Yes. Believe that the conditions of waiver request have been met.**

**Mr. Osborn: Yes. Feel it is an easy solution between neighbors and was an honest mistake.**

**Mr. Webb: Yes. Granting the waiver is a way to fix situation that has existed for a long time and has only been brought into fact due to a fire.**

**Ms. Cormier: Yes. Feel applicant has met the criteria.**

**Mr. Virr: Yes. Same reasons as stated as the problem has existed for a long time.**

**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.**

#### **10-111          Property Portfolio Group**

**Requests Appeal of An Administrative Decision of the Planning Board (May 5, 2010), with regard to the Site Plan Determination application of MTM Realty, LLC, located at 32 West Broadway. Planning Board waiver of site plan review violated Article III, Section 165-15 & 16, and Article VI, Section 165-33, C, D, E, F & G of the Town of Derry Zoning Ordinance. 7 Central Street Parcel ID 29194, CBD District.**

**Mr. Virr said that case #10-111, Property Portfolio Group was postponed by the applicant in a letter dated May 26, 2010.**

Mr. Webb read the letter dated May 26, 2010 from the applicant requesting to be rescheduled to the June 17, 2010 meeting for the record.

### **Correspondence**

Letter from NH Department of Agriculture, Markets & Food dated June 1, 2010

Mr. Mackey addressed the concerns of the letter for the Board and said that the letter really did not belong with the Board at this time but it was addressed to them.

### **Approval of Minutes**

Mr. Osborn motioned to Approve the minutes of May 6, 2010 as amended.  
Seconded by Mr. Webb.

Vote: 5-0-1

Yes: Mr. Popp, Mr. DeBonis, Mr. Fairbanks, Mr. Osborn, Mr. Webb, Mr. Virr.

Abstain: Ms. Cormier.

Ms. Cormier said that she had concerns about making changes to minutes via email as she felt that it was not appropriate.

Mr. Virr asked if Mr. Mackey would check with Legal Counsel to see if this type of method was appropriate. Mr. Mackey said that he would.

Mr. Webb motioned to Approve the minutes of May 20, 2010 as amended.  
Seconded by Mr. Osborn.

Yes: Mr. Popp, Mr. DeBonis, Mr. Fairbanks, Mr. Osborn, Mr. Webb, Mr. Virr.

Abstain: Ms. Cormier.

### **Other Business**

Mr. Virr said that the Board needed to discuss what their summer schedule will be for the months of July & August. He said that the Board typically has met only one time for each month and it was typically the third Thursday of the month.

There was some discussion with regard to dates and it was determined that the Board's summer schedule would be the following dates:

**July 15, 2010**  
**August 19, 2010**

## **Adjourn**

Motion to adjourn by Mr. Osborn.

Seconded by Mr. DeBonis.

Vote: Unanimous.

Mr. Popp, Mr. DeBonis, Mr. Fairbanks, Ms. Cormier, Mr. Osborn, Mr. Webb, Mr. Virr.

Adjourn at 7:51 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

## **Approval of Minutes July 15, 2010**

Ms. Osborn motioned to approve the June 3, 2010 minutes as amended.

Seconded by Mr. Thompson.

**Vote: Unanimous**

Mr. Gesing, Mrs. Burtis, Mr. Fairbanks, Mr. Osborn, Ms. Cormier, Mr. Webb, Mr. Thompson, Mr. Virr