

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
December 2, 2010

Members Present

Allan Virr, Chairman
David Thompson, Vice Chairman
Ernest Osborn

Members Absent

James Webb
Cecile Cormier

Alternates Present

Michael Fairbanks
Betsy Burtis
Albert Dimmock
John DeBonis

Alternates Absent

Stephen Popp

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.

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

10-128 Scott Cataldi

Requests a variance to the terms of Article VI, Section 165-48.B.2 & 3, to allow the property to be subdivided into two lots with one of the lots having less than the required frontage and lot width. 33 English Range Road Parcel ID 11082, Zoned LDR

Attorney Marshall Tulley, Sweeney & Sweeney Attorneys at Law, said he was representing the owner, read the application for the Board.

Mr. Thompson said that he did not feel 63.60 footage was adequate. Attorney Tulley said that it would only be for a driveway and that the lot would actually open up to 200' to the rear of the property.

Mr. DeBonis asked what the grade stake had and significance to reference to in the pictures. Attorney Tulley said that the picture was of no significance.

Mr. Thompson said that the ordinance requires 200 feet of frontage and to subdivide will make the lot non-conforming and that he did not feel that the Board could grant that under the RSA's and asked if there was any other way that the applicant could subdivide. Attorney Tulley said that non-conforming is non-conforming and that granting the request would allow his client reasonable use of the property.

Mr. Virr asked if the zoning requirement was existing and if the 200' frontage requirement was there when the property was purchased in 2000. Mr. Mackey said that the zones of LDR, MHDR, and MDR were created in 1997 and that the 200 foot frontage requirement was existing at the time of purchase.

Mr. Dimmock said that the Board has refused previous cases for 105' of frontage and only seeking 63.60' and wanted to know what the hardship was. Attorney Tulley said that he did not feel the frontage was an issue.

There was some discussion with regard to the frontage requirement.

Code Enforcement

Mr. Mackey said the applicant's request is to subdivide his 13.28 acre lot into 2 lots. The lot containing the existing dwelling will conform with the 200 foot frontage and lot width requirements. The other lot is proposed to have 63.60 feet of frontage. The wetland located in the rear of the property is classified as Prime Wetland. The required 150 foot protective buffer has been utilized on the plan to indicate the allowed building envelopes. If approved, Planning Board subdivision approval will be required. There are pictures in the file for the Board's review.

Mr. Virr asked if the request would be subject to Conservation review. Mr. Mackey said that typically would be forwarded to the Conservation Commission for review and that they might possibly require a site walk.

Mrs. Burtis asked if when the home was originally constructed if it was built with future intentions. Mr. Cataldi said that he had two different ideas and was more thinking of the future to construct a home for his children.

Mrs. Burtis asked if the shed on the property is located where the proposed driveway would be located. Mr. Cataldi said that the shed would be removed.

Mr. Virr asked if the driveway encroaches over the lot line. Mr. Cataldi said that the driveway currently goes to the existing barn.

Favor

No abutters were present.

Opposed

Philip Gauthier, 35 English Range Road, presented the Board with photos of his property in reference to the applicant's property. He read his letter that he sent to the Board for the record. Mr. Gauthier said that he wanted to build an addition to his home 15 years ago and was in need of sixteen inches in which he had requested a variance for and was denied so he had built his addition conform to the zoning requirements. He said that he felt that granting the applicant a variance was not in the public interest.

Chris Burke, 13 Buttonwood Drive, said that he felt that the request was excessive and that the applicant purchased the property knowing the current zoning requirements. Mr. Burke said that when he had purchased his own home that he had done his due diligence when researching the area and purchased his home from Cooper Development also. He said that he was concerned for septic, wells, fire and what additional impact could it pose to lower shields pond. Mr. Burke said that he felt that if Cooper Development could have subdivided the property that they would have done it before the applicant had purchased it.

Attorney Tulley said that he felt that there would be little increase in population as only seeking a single family structure. He said that the abutter was able to change his plans in order to maintain the setback and that he felt that the wetlands are a positive aspect to the applicant's request as the request is for a 5 acre lot and would not be able to divide lot any more. The construction would be routine and substantial buffer would be in place prior to building.

Mr. Thompson asked if the dwelling would be attached to the existing barn. Attorney Tulley said yes and that the concrete already existed so there would be very minor construction.

Mr. Virr asked what time frame would be required as they typically put a 2 year stipulation on construction. Attorney Tulley said that he was unsure.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Thompson.

Vote: Unanimous.

Deliberative Session

Mr. Thompson said that the only problem is the lack of frontage being 25% of what is required and that the width of the property. He said that he did not feel that should be able to create a non-conforming lot.

Mr. Fairbanks said that when the applicant purchased the property the requirement was existing and that he did not see a hardship.

Mr. Virr asked if the Board felt that it was contrary to the public interest and if it would increase density to the area.

Mr. Osborn said that he was concerned with the driveway egress and ingress onto English Range Road as it is already a very heavily traveled road.

Mr. Virr said that he felt that the hardship is one being created by the applicant.

Mr. Dimmock said that he agreed with Mr. Fairbanks that the applicant purchased the property knowing the lot size requirement and then stated that he thought that he might want to build for his children at a later date. He said that the Board has denied other cases and did not see where they could grant this request.

Mr. Thompson said that he did not feel that it would be in keeping with the spirit and intent of the ordinance.

Mr. Virr reviewed the conditions for the Board.

Mr. Thompson motioned on case #10-128, Scott Cataldi, to Grant a variance to the terms of Article VI, Section 165-48.B.2 & 3, to allow the property to be subdivided into two lots with one of the lots having less than the required frontage and lot width. 33 English Range Road Parcel ID 11082, Zoned LDR, as presented with the following conditions:

- 1. Subject to Planning Board approval**
- 2. Completion within 2 years or variance shall be void.**
- 3. Subject to all Town and State permits and inspections.**

Seconded by Mr. Osborn.

VOTE:

Mr. Osborn: No. Do not believe that there is hardship shown.

Mr. Dimmock: No. Do not feel there is a hardship.

Mr. Thompson: No. Does not comply with the spirit and intent of the ordinance.

Mr. Fairbanks: No. Do not feel that it is in the spirit and intent of the ordinance and that the hardship is the applicant's own creation.

Mr. Virr: **No. Do not feel that it meets the spirit and intend due to the lack of frontage. The property was zoned LDR when constructed and that has not changed. Feel the hardship being portrayed is one that the applicant is creating.**

The application was Denied 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. DeBonis & Mrs. Burtis would sit for the following case.

10-129 Richard & Patricia Novia

Requests a variance to the terms of Article III, Section 165-20.a, to construct a 28' x 32' attached garage within 24 feet of a wetland less than 1 acre in size, where a 30' setback is required, 5 Prosperity Drive, Parcel ID 11029-005, Zoned MDR

Attorney Frank Cimler, Corso & Cimler at Law, said that he was representing the owner. He read the letter of explanation for the Board and presented the Board with a narrative and proceeded to review for the Board.

Mr. Thompson asked if the proposed addition was to be 24'. Attorney Cimler said yes that the proposed garage would be 24'.

Mr. Virr said that the Board would take a 5 minute break to review the information submitted.

Mr. Osborn said that the applicant has provided a wonderful narrative but don't want to make everyone feel that they have to go through this length to obtain a variance.

Mr. Virr said that was a good point to make that the general public does not need to go to such great lengths to seek a variance to add a 2 stall garage.

Mr. Thompson asked if the whole front of the home was also being brought out. Attorney Cimler said that the applicant was seeking a farmers porch all the way across the front.

Mr. Osborn asked if the door was to be used as an access door. Attorney Cimler said that the way the driveway was located that the garage door would be right against the existing chimney so adding the door would allow additional access and also not have the vehicle door bang into the chimney when opening inside the garage.

Mr. Thompson asked if the door would have additional access into the home. Attorney Cimler said yes.

Mr. Fairbanks asked if other avenues had been reviewed to make the proposal conform. Attorney Cimler said that they had never thought there was an issue and always thought of the area was for a drainage ditch and that the proposal was aesthetically pleasing and would not be out of character of the neighborhood.

Mr. Dimmock said that he actually drove by the area and had to actually look to see what was actually being requested and that he did not see why 6' would make a difference in this particular wetland.

Code Enforcement

Mr. Mackey said that the applicant's request is to construct a 28' x 32' garage 24 feet from a wetland less than 1 acre in size. A 30 foot setback is required. After a building permit was issued, and prior to construction starting, it came to my attention that there was a possible issue with regard to a "wet" area located on the property. At this time, the owner was advised to not begin construction until he consulted with a wetland scientist to determine if the area actually met the requirements to be classified as a wetland. A determination was made that a wetland, less than 1 acre in size existed 24 feet from the proposed construction. This is not a Prime Wetland. The applicant was advised that a variance would be required prior to the commencement of construction. If approved, this office will insure appropriate erosion control measures have been put in place prior to the start of construction. There are pictures in the file for the Board's review.

Mt. Thompson said that he had a similar issue on his property and that it was called a stream and asked if that was what essentially was on this property. James Gove, Gove Environmental Services, said that as described the area does get water and that the reviewing the area it was found that there were some poorly drained soils on the bottom and some rushes. He said that in general the area was very marginal area and that the function is for water to go from here to there.

Favor

No abutters were present.

Opposed

No abutters were present.

Mr. Virr motioned to go to deliberative session.

Seconded by Mr. Thompson.

Vote: Unanimous.

Deliberative Session

Mr. Thompson said that he did not see a problem and that the applicant was only seeking 6 feet.

Mr. DeBonis said that he did not believe that all alternatives have been reviewed.

Mr. Thompson said that the shed located there had no adverse effect to the area.

Mr. DeBonis asked if the shed was there legally.

Mr. Osborn said that the doorway was only there due to the location of the chimney.

Mr. DeBonis said that even if the applicant had to have a door that he felt that the garage could be cut down to make the encroachment a bit less.

Mr. Thompson said that the area was not considered a prime wetland.

Mr. Virr said that raises a good point and that the applicant is meeting the lot line setback requirement and as Mr. Gove had pointed out there are mature hardwood trees located there.

Mr. DeBonis said that the proposal is more of a convenience issue and have seen many garages constructed with just the garage doors and not an additional access doorway.

There was some discussion with regard to convenience and necessities.

Mr. Virr reviewed the conditions for the Board.

Mr. Virr motioned to come out of deliberative session.

Seconded by Mr. Thompson.

Vote: Unanimous.

Mr. Thompson motioned on case #10-129, Richard & Patricia Novia, to Grant a variance to the terms of Article III, Section 165-20.a, to construct a 28' x 32' attached garage within 24 feet of a wetland less than 1 acre in size, where a 30' setback is required, 5 Prosperity Drive, Parcel ID 11029-005, Zoned MDR, as presented with the following conditions:

- 1. Must provide adequate wetland protection.**
- 2. Subject to all Town & State inspections and approvals.**
- 3. Completed within 1 year or variance shall be void.**

Seconded by Mr. Osborn.

Vote:

Mrs. Burtis: Yes. Feel all conditions have been met.
Mr. DeBonis: No. Believe other means of construction can be achieved to make the encroachment less.
Mr. Thompson: Yes. Believe all the criteria has been met.
Mr. Osborn: Yes. Do not see any wetland issues.
Mr. Virr: Yes. Believe that the wetlands are minimal and criteria have been met.

The application was Granted by a vote of 4-1-0. 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 November 18, 2010 minutes.
Seconded by Mr. Virr.

Vote: Unanimous

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

Adjourn

Motion to adjourn by Mrs. Burtis.

Seconded by Mr. DeBonis.

Vote: Unanimous.

Mr. Dimmock, Mrs. Burtis, Mr. DeBonis, Mr. Fairbanks, Mr. Osborn, Mr. Webb, Mr. Virr.

Adjourn at 8:26 pm

Minutes transcribed by:

Ginny Rioux
Recording Clerk

Approval of Minutes December 16, 2010

Mr. Osborn motioned to approve the December 2, 2010 minutes.
Seconded by Mr. Thompson.

Vote: Unanimous

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