

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
April 1, 2010

Members Present

Allan Virr, Chairman
David Thompson
Cecile Cormier

Members Absent

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. Fairbanks and Mr. DeBonis would sit for the following case.

10-105 Kevin P. Jolicouer & Loren Brunet

Variance Extension request to the terms of Article III, Section 169-9 & RSA 674:41, to build a single family structure on a lot with no frontage on a town approved road (Variance was granted by the Zoning Board of Adjustment on July 15, 2004 and extended on May 3, 2007 with a time stipulation that has expired) at 11 Morrison Road, Parcel ID 10039, LDR DISTRICT

Attorney Brian Germaine, representing the applicant, said that the applicant has been before the Board three times before and that the home is currently constructed and awaiting a certificate of occupancy however, the variance has expired. He said that at the time the initial variance was requested the same Simplex standards still apply. Attorney Germaine read the application for the Board.

Mr. Thompson said that house is complete but the staff report indicates that it is not. Mr. Jolicouer said that the home has been framed.

Attorney Germaine said that the home is being taxed as a finished home.

Mr. Virr asked how long before the home would be complete. Mr. Jolicouer said as soon as this goes through and have a buyer will finish the structure. He said that he had a buyer but they did not want to wait for the variance to be approved and the 30 day appeal process to expire.

Mr. Thompson asked how much longer it would be for the expected completion. Mr. Jolicouer said that it could be 90 days or a year depending on a prospective buyer.

Mr. Virr asked how much more would it cost to complete the structure. Mr. Jolicouer said that it would depend on the prospective buyer but if no input and if he completes it without a buyer then it will run about another \$200 thousand.

Mr. Virr asked how much cost has been accrued so far. Mr. Jolicouer said approximately \$400 thousand.

Mr. Virr asked if that included the land. Mr. Jolicouer said yes.

Mr. Virr said that for the record let it be noted that the municipal waiver has been recorded at the Rockingham County Registry of Deeds.

Code Enforcement

Mr. Mackey said that the applicant is requesting to renew a variance originally granted in 2004 and extended for two years in 2007. The construction has not been completed. The original variance granted allowed the single family dwelling on a lot without frontage on a Town approved road. The variance request also referenced RSA 674:41 as required by State statute. A notice of waiver of municipal liability has been recorded at the Registry as required by the Board in 2007 when the variance was extended. Currently, the house has been framed and sided but interior "rough in" has not been done (see photos). Road maintenance is handled by a private association consisting of the residents living on the road. There are pictures in the file for the Boards review.

Mr. Virr asked at what point is a structure considered complete. Mr. Mackey said that technically it is not until occupancy is issued.

Mr. Virr asked at what point it is considered substantially complete. Mr. Mackey said that if you're speaking in dollar value the structure is substantially complete if all the utilities are in place.

Mr. Virr asked if a stipulation of one year completion would be suitable. Mr. Jolicouer said that he would be more comfortable with 2 years but it may be possible to complete in one year.

Attorney Germaine said that he felt that a 2 year completion would be fair as the applicant has a fair amount of money invested into the property and it would not be prudent to let it sit for another 2 years would completing and that a 2 year stipulation is not an unreasonable request.

Mr. DeBonis said that he would like to see that progress has been made in 2 years and not come back to the Board in the same status as it is presently. Attorney Germaine said that the property pays \$9,000 a year and not in the applicant's best interest to let the property stay in it's present condition.

Favor

Albert Dimmock, High Street, said that he had sat on the Zoning Board on the original request and went to see the area and spoke to the neighbors who feel that the building is an asset to the area. He said that he felt that the applicant has spent a great amount of money already on the property and felt that allowing a 2 year completion time was not a large request as the Board needs to consider the economy and that as the applicant has already stated he has lost a previous sale. Mr. Dimmock said that the applicant still has a lot left to complete the home for occupancy as there was still electrical, plumbing, insulation and sheetrock and other factors ahead that a one year stipulation would not allow the applicant enough time to finish the home and they then would be back before the board again for another extension.

Opposed

No abutters were present.

Mr. Virr motioned to go into deliberative session.
Seconded by Mr. DeBonis.

Vote: Unanimous.

Deliberative Session

Mr. Virr said that he did not feel that a 2 year limitation was unreasonable considering the market conditions and that the applicant still needed to find a buyer and finish it to the prospective buyers taste.

Ms. Cormier motioned on case #10-105, Kevin P. Jolicouer & Loren Brunet, to Grant a Variance Extension request to the terms of Article III, Section 169-9 & RSA 674:41, to build a single family structure on a lot with no frontage on a town approved road (Variance was granted by the Zoning Board of Adjustment on July 15, 2004 and extended on May 3, 2007 with a time stipulation that has expired) at

11 Morrison Road, Parcel ID 10039, LDR DISTRICT, as presented with the following conditions:

- 1. Subject to completion within 2 years or variance shall be void.**

Seconded by Mr. DeBonis.

Vote:

Mr. Fairbanks: Yes. Believe the applicant has met all the criteria.

Ms. Cormier: Yes.

Mr. DeBonis: Yes.

Mr. Thompson: 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

Ms. Cormier motioned to approve the March 18, 2010 minutes as amended.

Seconded by Mr. Thompson.

Vote: Unanimous

Mr. DeBonis, Mr. Fairbanks, Ms. Cormier, Mr. Thompson, Mr. Virr

Other Business

Mr. Mackey said that he was asked at the last meeting to contact the Local Government Center with regard to making stipulations on a use variance. He said that he has spoken to Attorney Dave Connell and he indicated that typically you wouldn't stipulate that if it went with another owner and still in continuance with the land and still be in effect. However, he said that in some instances that a stipulation can be made that if the business shuts down for a certain length of time then in that instance the Board can make the stipulation that the variance is void.

Mr. Thompson asked if that it would be considered under the abandonment clause. Mr. Mackey said that in the ordinance the abandonment clause states one year then the property would revert to the uses that are allowed in that district. A variance however is different that if a variance is granted it is a permitted use. Mr. Mackey said that there was a court case but was unable to recall the case or look it up but there appears that there was a case that contradicts stipulations on a variance.

There was some discussion with regard to stipulation criteria.

Mr. Thompson asked if they were still going to have a joint meeting. Mr. Mackey said that he had spoken with the applicant after the last meeting and put him in touch with the Conservation Commission and had indicated to him at that time that the cut off for the next meeting was tonight and he had not shown at close of business so it is not scheduled at this time.

Adjourn

Motion to adjourn by Mr. Thompson.

Seconded by Mr. Virr.

Vote: Unanimous.

Mr. Popp, Mr. DeBonis, Mr. Fairbanks, Ms. Cormier, Mr. Thompson, Mr. Virr

Adjourn at 7:29 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes May 20, 2010

Mr. Osborn motioned to Approve the minutes of April 1, 2010 as amended.

Seconded by Mr. Webb.

Vote: Unanimous.

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