

**TOWN OF DERRY**  
**ZONING BOARD OF ADJUSTMENT MINUTES**  
**September 2, 2010**

**Members Present**

Allan Virr, Chairman  
David Thompson, Vice Chairman  
James Webb @ 7:13pm  
Cecile Cormier  
Ernest Osborn

**Members Absent**

**Alternates Present**

Michael Fairbanks  
John DeBonis  
Betsy Burtis

**Alternates Absent**

Stephen Popp  
Jason Gesing

**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.

Mr. Virr informed the public that case #10-119, Keith Garside, Owner: Barbara True submitted a letter to the Board requesting a continuance to the October 7, 2010 meeting.

Mr. Thompson motioned on case #10-119, Keith Garside, Owner: Barbara True to grant a continuance to the October 7, 2010 meeting.

Seconded by Mr. Osborn.

Vote: Unanimous.  
Mr. Osborn, Ms. Cormier, Mr. Thompson, Mr. Virr.

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

**10-123            Margaret Morgan**

**Requests a variance to the terms of Article III, Section 165-25, and Article VI, Section 165-46A, to allow a basement apartment to remain in an existing two-family dwelling at 8L Al Street, Parcel ID 11042-038L, MDR District**

Margaret Morgan, owner, said that she has been a Derry resident for 25 years was here tonight to request a variance to remain living in her basement apartment. She read her application for the Board.

Ms. Cormier asked if the home was a split level and had to go downstairs to the basement. Ms. Morgan said that the home was not a split that it was a regular 2-story home.

Ms. Cormier asked what happened to the rest of the home. Ms. Morgan said that it is currently empty and would like to legally rent it out to help with household expenses.

Mr. Virr asked if the home was a condominium and if so would she still own all 3 levels and possibly rent the upper level. Ms. Morgan said yes that she did own the unit and recently had to leave her job due to health reasons and has now found that she is unable to climb stairs so she converted the basement level into an apartment for herself.

Mr. Virr noted for the record that Mr. Webb had arrived and would join the Board (7:13 pm).

Mr. Webb asked if there was an active association. Ms. Morgan said that when she purchased the home it was a duplex and recently condoxed with one other family.

Mr. Webb asked if there were any bi-laws and if so who were they with. Ms. Morgan said that they did have an association between herself and the other side of the condo and that it related to any changes being made to the roof, etc.

Ms. Cormier said that RSA 674:33, Section V, describes disability variances and reviewed for the Board. She said that she suggests that the Board grant the variance subject to the upper level remain vacant.

Mr. Mackey said that the property is a 2 family home with an accessory apartment located in the basement level of the applicant's side of the building. The reason that this is here is because an accessory dwelling is restricted to a single family detached dwelling which is a typical single family home. The applicant came into the office to see what could be done to make it a legal use and was told that the request would require a variance from the Board.

There was some discussion with regard to the definition of a single family home and the zoning ordinance.

Ms. Cormier said that the applicant purchased the home as a duplex and then converted to a condex but still is a 2-family home.

Mr. Virr said that he felt that it was a single family home.

Ms. Burtis said that she agreed with Ms. Cormier that it falls into a 2 family dwelling.

Mr. Mackey said that if someone were to come into the office to build a 2 family home today they would deny it as no longer allowed to build according to the zoning ordinance as this use is only allowed in multi-family zones.

### **Favor**

Albert Dimmock, High Street, asked if Mr. Virr wouldn't mind explaining what the letters ZBA stands for. Mr. Virr said that it was Zoning Board of Adjustment.

Mr. Dimmock said yes and that adjustment is what the applicant was asking for which he feels is a reasonable use of her property and to impose that the applicant not be allowed to rent the upper level of her home was adding another handicap to the applicant.

### **Opposed**

No abutters were present.

### **Code Enforcement**

Mr. Mackey said that the applicant's request is to allow an existing accessory apartment to remain in the lower level of a two-family dwelling. The applicant contacted our office to inquire what she needed to do to bring her existing apartment into compliance with Town regulations. The applicant was informed that she would need to apply for a variance as the zoning ordinance only allows for the creation of an accessory apartment in an existing single family detached dwelling (see section 165-25 and definition of single family dwelling). The unit appears to comply with the other requirements of this section i.e. 600 sq. ft., 1 bedroom, etc. Apparently, the apartment was created by adding a bathroom and a kitchen to an already finished basement area. There is no record of permits for this work. If approved, the applicant will be required to apply for appropriate permits and the unit must be brought into compliance with current Building and Fire regulations. There are pictures in the file for the Boards review.

Ms. Burtis asked if it the area had a full kitchen. Ms. Morgan said that she had a full wall of cabinets and with a kitchen/living room combination. She said that she may need to relocate her daybed into the living room area.

Mr. Thompson said that they were not seeking to go against the proposal, just looking for a way to legally allow it

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Thompson.

### **Deliberative Session**

Mr. Virr said that the case has pros and cons but does agree with Ms. Cormier that RSA 674:33 V applies to this situation.

Mr. Thompson said that he felt that it would be the most appropriate section to do under.

Ms. Cormier asked if they were going to vote per RSA or subject to.

Mr. Virr said that they would need to vote subject to.

Ms. Cormier asked Mr. Mackey if there would be any harm in referencing subject to the RSA.

Mr. Mackey said that the RSA reference only states the person involved not the dwelling so did not see where there would be a problem with referencing subject to the RSA.

Mr. Fairbanks said that he would like to add the condition that the upper apartment not be rented. He said that he would like to see a condition that it stays a single family unit not a multi-family.

Mr. Virr said that would not be necessary as when the handicap person leaves the dwelling the usage is no longer valid. He said that the property could not be made into a 3 family as the applicant only owns 1 unit.

Mr. Osborn said that to decide to allow the applicant to have the basement apartment and not be allowed to rent the upper level would be deeming a hardship as she would still need to go upstairs to check. He said that he felt that the applicant has shown hardship and not allow the applicant to rent the upper level would be ridiculous and as soon as sold or the applicant no longer resides at the property it reverts back to the previous status.

Ms. Cormier asked if a condition could be made that the applicant have the Notice of Decision recorded at the Registry of Deeds and a copy of the recording be placed in file at the office so there would be no confusion in the future if the property were ever to be sold.

**Mr. Thompson motioned on case #10-123, Margaret Morgan, to Grant a variance to the terms of Article III, Section 165-25, and Article VI, Section 165-46A, to allow a basement apartment to remain in an existing two-family dwelling at 8L Al Street, Parcel ID 11042-038L, MDR District, as presented with the following conditions:**

- 1. Approved pursuant to RSA 674:33V, relevant to handicap apartments to**

**the following conditions; if the property is sold, the variance becomes null and void.**

- 2. Notice of Decision to be recorded at the Rockingham County Registry of Deeds.**
- 3. Certificate of Occupancy to be issued upon receipt of recorded Notice of Decision.**

**Seconded by Mr. Osborn.**

**Vote:**

**Mr. Thompson: Yes. Feel the necessity is there and the RSA allows it.**

**Mr. Osborn: Yes. Feel it should be allowed.**

**Ms. Cormier: Yes. Feel it meets the criteria in RSA 674:33V.**

**Mr. Fairbanks: Yes. Hardship is there but believe really going for a multi family not a 2-family dwelling.**

**Mr. Virr: Yes. Believe RSA 674:33V provides for a temporary variance allowing the occupant to reside in their home.**

**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 Ms. Burtis would sit for the following case.

**10-122          Hampstead Road & Harvest Drive, LLC**

**Requests a variance to the terms of Article III, Section 165-20a, to construct a single family dwelling, to be located less than 75 feet from a wetland, which is over 1 acre in size at 225 Hampstead Road, Parcel ID 10024-002, LDR District (Continued from 8/19/2010)**

Tim Peliquin, Promised Land Survey said that he was representing the applicant, said that he would like to commend the Board on their professionalism on the way that they handled the previous case. He read the application and letter of explanation for the Board. Mr. Peliquin said that in 2005 the previous owner Ronald Mead subdivided the property and created 3 road frontage lots that would have a common drive off Hampstead Road. The owner of the property now, Mr. MacCormick is seeking to build a house at the beginning of the common road way which had a small red structure on it that the fire department burned for a training exercise. During the Planning Board process it was not noted as to where the wetland setback was located and said that he has drawn up a proposal for a new dwelling on the property with regard to the wetland setbacks and gave the Board a copy of the proposal. He said that the Planning Board gave approval on the lot showing the existing dwelling but no notation as to where the structure would be razed and rebuilt.

Ms. Cormier asked if the wetland ordinance was adopted in 2003 and that the subdivision plan was approved in 2005 that the previous dwelling could be rebuilt? Mr. Mackey said that the provision has been in the ordinance for many years.

Mr. Peliquin explained the plan for the Board and that he has designed the septic design to respect the wetland setbacks and that the property has an existing well. He said that the dwelling would face the access driveway and the wetland setback is actually better than the existing dwelling which was 48'. The proposed structure would be now 54' and 66' respectfully as he made sure to be at least 50' from the recognized forested wetlands. Mr. Peliquin said that he has hugged the structure as close to the front lot line as possible and that the applicant is not seeking to build a large home.

Ms. Cormier said that she was glad that they supplied the Board with an other plan showing the topography of the property as it shows it was very hilly and that can see that he is unable to move the house further up. She said that she felt that the proposal meets the criteria as according to 2005 Planning Board plan showing the location of the existing structure.

Mr. DeBonis asked what the distance from the road to the structure would be. Mr. Peliquin said that it would be at the 35' setback and that they would need to pin the foundation so they would not have to come back to the Board.

Ms. Cormier asked if there was a common driveway agreement. Mr. Peliquin said yes that it was in the deed of all three parcels.

### **Code Enforcement**

Mr. Mackey said that the applicant's request is for a variance to Article III, Section 165-20a, which requires that buildings be located a minimum of 75 feet from a wetland which is one acre or larger in size. The lot was created in 2005 as part of the larger Harvest Estates subdivision. Part of this large subdivision included 3 frontage lots on Hampstead Road served by a common driveway. The subdivision was begun in 2005 but has not been completed. The current owner has begun work to complete Harvest Drive as well as development of the lots along Hampstead Road. The property in question is a large lot (3.64 ac) but due to wetland setback requirements, has a small building envelope in which to locate a dwelling. The wetlands involved are forested, non-prime classified wetlands. Therefore, a variance to Article III, Section 165-20a is applicable. A 4 bedroom septic design has been approved for the lot. There are pictures in the file for the Boards review.

### **Favor**

No abutters were present.

### **Opposed**

No abutters were present.

Mr. Osborn motioned to go into deliberative session.

Seconded by Ms. Cormier.

Vote: Unanimous.

Ms. Burtis, Ms. Cormier, Mr. Osborn, Mr. Thompson, Mr. Virr.

### **Deliberative Session**

Mr. Virr said that he felt that the applicant meets the requirements subject to obtaining all Town and State permits and inspections and completed within 2 years or void.

**Mr. Osborn motioned on case #10-122, Hampstead Road & Harvest Drive, LLC., to Grant a variance to the terms of Article III, Section 165-20a, to construct a single family dwelling, to be located less than 75 feet from a wetland, which is over 1 acre in size at 225 Hampstead Road, Parcel ID 10024-002, LDR District (Continued from 8/19/2010), as presented with the following conditions:**

- 1. Subject to obtaining all Town and State permits and inspections**
- 2. Construction must be completed within 2 years or variance shall be null and void.**

Seconded by Ms. Cormier.

Vote:

**Ms. Burtis: 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.**

### **Approval of Minutes**

Ms. Cormier motioned to Approve the minutes of July 15, 2010 as amended.  
Seconded by Mr. Thompson.

Vote: Unanimous.

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

### **Adjourn**

Motion to adjourn by Mr. Virr.

Seconded by Mr. Thompson.

Vote: Unanimous.

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

Adjourn at 8:20 pm

Minutes transcribed by:  
Ginny Rioux  
Recording Clerk

### **Approval of Minutes on October 7, 2010**

**Mr. Thompson motioned to approve the minutes of September 2, 2010 as amended.**

**Seconded by Mr. Osborn.**

**Vote: Uninamous**

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