

TOWN OF DERRY  
ZONING BOARD OF ADJUSTMENT MINUTES  
June 2, 2011

**Members Present**

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

**Members Absent**

Ernest Osborn

**Alternates Present**

Betsy Burtis  
Lynn Perkins  
Donald Burgess

**Alternates Absent**

John DeBonis

**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. Burgess would sit for the following case

**11-109 Bedford Design Consultants, Inc.  
Owner: Carrigg Commercial Builders, LLC**

**Applicant request a variance to the terms of Article VI, Section 165-45.B.2.b & c to construct a five unit multi family structure on a lot containing 129.7 feet of frontage and 129.7 feet of lot width (150 feet required for each) at 1 Davis Court, Zoned MHDR Parcel ID 27108**

Robert Baskerville, Bedford Design Consultants, said that he was representing the owner and was present with Katherine Weiss from Bedford Design who could speak with regard to the layout of the property as she is the design consultant for the proposed project. Mr. Baskerville said that Davis Court was not a Town road but was actually on Pleasant Street. He reviewed the application for the Board.

Katherine Weiss, Bedford Design Consultants, said that the parcel consisted of more than 1 acre in size and multi-family was allowed. She said that the proposal was to remove

the existing dilapidated single family home and replace with a 5 unit Townhouse style structure. Ms. Weiss said that she felt that the property meets the criteria needed in order to be granted a variance due to the existing factors in the property.

Mr. Baskerville described the property for the Board and abutters. The proposed structure is designed to be a 5 unit Townhouse style building consisting of a 2 story structure with a walkout portion to the rear which would view the conservation area. He said that the proposed project was designed to meet all wetland and Shoreland Protection Act requirements and was flagged out.

### **Code Enforcement**

Mr. Mackey said that the applicant's proposal is to remove an existing single family structure and replace with a 5 unit multi-family building. The property is zoned MHDR which allows for the creation of multi-family but requires 150 feet of lot frontage and lot width (measured at the 35 foot front setback). The lot contains 129.7 feet; therefore, a variance is required. The proposed structure is designed to meet the average side yard setbacks as permitted under Section 165-10. The rear portion of the property drops very steeply to Beaver Brook. This portion of the property is located in the 100 year flood zone and is also regulated under the N.H. Shoreland Protection rules as Beaver Brook is considered a Fourth Order Stream in this area. No construction or improvements are proposed in these locations. If approved, Planning Board site review will be required. There are pictures in the file for review by the Board.

### **Board Questions**

Mr. Virr asked if section 165-45C.2 counter acts the request of minimum distance and that 165-10 does not say much about setbacks. Mr. Mackey said that they are proposing a 5 unit building but each will be an attached single family structure according to the building code and that the ordinance states that all setbacks will conform with structures within 300 feet of all sides of the property.

Mr. Dimmock said that as the proposal is for a 5 unit multi-family, who would own it. Mr. Baskerville said that was possible that the owner would rent all 5 units or sell each unit as a condo.

Mr. Mackey said that under the building code regulations the units are required to be constructed under strict regulations with regard to fire wall separation etc.

Mr. Virr said that according to 165-10 it states that it shall conform to the average setbacks and the plan shows lots into each other. Mr. Mackey said that it requires 30 feet on a multi-family structure but also conform to average setbacks.

Mr. Virr asked what the width of the lot was at the setback. Mr. Baskerville said that the property was just short of the requirement as it is 100 feet that is buildable then goes to 260 feet in width but drops off. He said that the lot is larger than most lots in the area and

allows for 14-15 units according to the formula but only seeking to put a 5 unit structure on the property. He reviewed the plan for the Board.

Mr. Thompson asked if the right corner of the existing dwelling appears to drop down 30 feet. Mr. Baskerville said that the property is flat through where the proposed units would be constructed then drops down.

Mr. Virr asked what the size of the building would be. Katherine Weiss, Landscape Designer for Bedford Design, said that the building proposed was 100' x 40' wide which each unit would consist of 20' x 40' structure.

Mr. Burgess asked why the driveway could not be placed in the center. Ms. Weiss said that it was easier to place on the right side of the lot to allow for more green space in the front.

Mr. Webb asked how many garages and extra parking would be allowed per unit. Ms. Weiss said that each unit will have a 1 car garage under and room for 1 car in front of the garage with additional parking allowed on the side of the property.

There was some discussion with regard to parking.

### **Favor**

No abutters present.

### **Opposed**

The following abutters Kenneth Bartke, 14 Pleasant Street, Richard Ganley, 16 Pleasant Street, Kevin Desaulners, 10 Pleasant Street, William Morsett, 17 Pleasant Street, Sarah Elliott, 10 Pleasant Street, Rosalie Buckley, 23 Pleasant Street, Dennis Ferreira, 3L MacGregor Street had the following concerns:

- Concerned with height of structure not in conformance with surrounding properties and not consistent with the neighborhood as most of the homes are currently single family structures.
- Diminution of property values.
- Insufficient parking during winter months with snow removal as existing the road is barely one car width in winter months.
- Increase in traffic in a small, densely populated neighborhood where there are no sidewalks.
- Large equipment during construction.
- History of sewage backups in the area and an increase of another 15 bedrooms would possibly increase the number of possible sewage backups.
- Existing multi-family on MacGregor is vacant and would not want to have another vacant structure in the neighborhood.

- No property maintenance being performed now such as lawn mowing etc. currently being performed by neighboring properties.

### **Board Questions**

Mr. Perkins asked at what point when purchased a year ago and at that time knowing that the lot did not conform, what were the plans for the property at time of purchase? Mr. Baskerville said that Carrigg purchased with plans of tearing down the existing structure as it is not fit for remodel due to deterioration of structure. He said that Mr. Carrigg had sat down with George Sioras from the Planning Board and Bob Mackey of the Code Enforcement Office and felt that this type of improvement was suitable for the area and that he plans on building attractive units for potential buyers. He said that a lot of things can make a hardship and feel that the land is the hardship as it was subdivided long before zoning existed and the lot frontage also existed before zoning existed and those 130 feet was acceptable for multi-family.

Mr. Perkins asked why not build 2 family structure. Mr. Baskerville said that his client could build 2 two-family structures on the property but felt that this would be a more suitable use for the area.

Mr. Thompson asked if what is being said is that the lot is grandfathered. Mr. Baskerville said yes.

Mr. Virr said that the Board had had a similar case of hardship several years which was denied due to insufficient frontage and which went to trial and was lost. He said that the Board is unable to make something that was created in 1920 conform to today's standards.

Mr. Dimmock said that he did not recall the case but the applicant claims hardship and it was purchased knowing the hardship existed. He said that he felt that creating a 5 unit townhouse with 3 bedrooms each would be an impact to the neighborhood.

There was some discussion with regard to construction and impact to the area.

Attorney John Solkal, Hinkley, Alan & Snyder, said that the owner purchased the lot knowing of hardship and the need to seek a variance for the proposed structure. He said that the owner did not create the hardship and believe that the criteria has been satisfied to grant the request. Attorney Solkal said that the people in the neighborhood have raised some good issues but those points regarding parking, snow removal etc. are Planning Board matters and will need to be addressed at the Planning Board. He said that the Board needs to focus on the lot width.

Mr. Dimmock said that the lot is legal, non-conforming now as it stands and seeking to make more non-conforming. Attorney Solkal said that the lot is currently zoned multi-family and meets the criteria with the exception of the frontage requirement.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Thompson.

Vote: Unanimous.

Mr. Burgess, Mr. Webb, Mr. Dimmock, Mr. Thompson, Mr. Virr

### **Deliberative Session**

Mr. Webb said that he has listened to the neighbors' concerns and have the same concerns and also know that with snow removal that people are not going to park in front of their garages as then they would have to go out and move the vehicle if utilizing the space in the garage.

Mr. Burgess said that during the winter months that snow can only be pushed back so far then it would have to be removed which will cause parking issues.

Mr. Virr said that snow removal is not part of the Board's place to consider and only here tonight to determine if the applicant can construct a five unit multi family structure on a lot containing 129.7 feet of frontage where 150 feet required is required. He said that 7 MacGregor has 4 units which sits directly in front of the lot. The Board needs to decide if 20 feet matters.

Mr. Thompson said that the property is now conforming with a single family structure on it now and seeking to make it non-conforming.

Mr. Virr said that multi-family is allowed in the zone and that the hardship is in the land as if they had the frontage then they could build the 5 unit structure without the variance and only speaking of 20' 3" feet frontage is all that is missing.

Mr. Webb said that the applicant purchased knowing that the hardship existed.

Mr. Virr said that the applicant purchased and performed due diligence with speaking with Bob Mackey and George Sioras.

Mr. Thompson said that it does not conform to ordinance and creating more of a hardship in a densely populated area.

Mr. Dimmock said that he disagreed that the proposal would not cause hardship as adding a 5 unit building with 3 bedrooms each and 10 kids or more will add impact to the neighborhood.

Mr. Burgess said that he felt that it was a hardship to the neighborhood.

Mr. Webb said that he felt that it was contrary to the public interest.

Mr. Virr said that the property has safe access onto a public street. He said that the lot consisted of 129.7 feet of frontage and unable to make larger. Hardship is in the land as it drops off significantly to the rear of the property and that the Board is not in a position to telling a builder what they can build on a lot. The property meets the side lot line requirements under 165-10 and that the lot was only lacking 20.3 feet of frontage.

Mr. Thompson said that it did matter in this situation due to the type of neighborhood already existing.

Mr. Virr said that there was already a 4 unit structure across the street and that the Board's only concern is if the lack of frontage was sufficient criteria for a variance.

Mr. Thompson motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote:

Yes: Mr. Burgess, Mr. Webb, Mr. Dimmock, Mr. Thompson

No: Mr. Virr.

Motion carried by vote of 4-1-0

**Mr. Webb motioned on case #11-109 Bedford Design Consultants, Inc. Owner: Carrigg Commercial Builders, LLC. to Grant a variance to the terms of Article VI, Section 165-45.B.2.b & c to construct a five unit multi family structure on a lot containing 129.7 feet of frontage and 129.7 feet of lot width (150 feet required for each) at 1 Davis Court, Zoned MHDR Parcel ID 27108 as presented with the following conditions:**

- 1. Subject to all town permits and inspections.**
- 2. Planning Board Site Review**

**Seconded by Mr. Dimmock.**

**Vote:**

**Mr. Webb: No. Believe that under section 1 is that it is contrary to the public's best interest and would make the lot non-conforming. Concerns brought up with snow plow removal and other issues that make it not in the best interest of the public.**

**Mr. Dimmock: No. Agree with Mr. Webb as not in the best interest for the public. Believe do not have the proper frontage and feel that it will be derogatory to the neighborhood as it is not suited for the property.**

**Mr. Thompson:** No. Agree with Mr. Webb as it is not in the best interest of the neighborhood and does not meet the requirements of frontage for the setback.

**Mr. Burgess:** No. Believe it is not in the best interest of the neighborhood due to the increase of vehicles.

**Mr. Virr:** Yes. Believe that this is a permitted use. Meet the side lot line requirements and meet setbacks to flood plain and only concerned with 20' 3" do not feel that in the scope of things that it does not matter that much.

**The request for a Variance has been Denied by a vote of 1-4-0. The recourse would be to appeal to Superior Court.**

**The Board took a short break and reconvened at 8:35pm**

### **Correspondence**

Mr. Virr said that the Board has received a written request from Louis A. Barretto requesting an extension of his variance and asked if normally the applicant comes back to present the case.

Mr. Mackey said that the Board typically has required that an applicant return to the Board.

Mr. Virr motioned to ask the applicant to come back to the Board.  
Seconded by Mr. Dimmock.

Vote: Unanimous

Mr. Mackey said that the office will notify the applicant.

Mr. Virr said that there were 3 letters submitted from Attorney Steve Clark as he has withdrawn from a few of the cases that he was representing and that Lynne G. Sabean has been appointed as counsel for the Town of Derry relative to the matters of the Property Portfolio Group, LLC Town of Derry, Laura Trefethen, et al vs. the Town of Derry and Dom Vincent, LLC vs. the Town of Derry.

Mr. Mackey said that the case of Trefethen vs. Town of Derry hearing is set for Monday at 9:00AM regarding the daycare matter on Crescent Street.

Mr. Virr asked who was attending the June 11<sup>th</sup> conference meeting.  
All members present stated that they were attending.

**Other Business**

Mr. Mackey said that the Board needed to address their summer schedule and typically the Board has only held one meeting during the months of July & August.

**Mr. Virr motioned to meet for the summer schedule as follows:**

**July 7, 2011  
August 4, 2011**

**Seconded by Mr. Thompson.**

**Vote:**

**Yes: Mr. Burgess, Mr. Perkins, Mrs. Burtis, Mr. Webb, Mr. Thompson, Mr. Virr  
Opposed: Mr. Dimmock**

Motion carried by a vote of 4-1-0

Mrs. Burtis said that in terms of the training that she had attended the Local Government Center and if that counted? Mr. Virr said yes.

**Adjourn**

Motion to adjourn by Mr. Thompson.

Seconded by Mrs. Burtis.

Vote: Unanimous.

Mr. Burgess, Mr. Perkins, Mrs. Burtis, Mr. Webb, Mr. Dimmock, Mr. Thompson, Mr. Virr.

Adjourn at 8:40 pm

Minutes transcribed by:  
Ginny Rioux  
Recording Clerk



**Approval of Minutes August 4, 2011**

Mr. Thompson motioned to approve the minutes of June 2, 2011 as amended.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Burgess, Mr. Perkins, Mrs. Burtis, Mr. Osborn, Mr. Webb, Mr. Dimmock, , Mr. Thompson, Mr. Virr