

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
February 2, 2012

Members Present

Allan Virr, Chairman
Albert Dimmock, Vice Chairman
Lynn Perkins
Donald Burgess

Members Absent

Ernest Osborn

Alternates Present

Louis Serrecchia

Alternates Absent

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 and that this and all Zoning Board meetings are videotaped.

Mr. Virr informed the public that the Board would be taking a brief recess in order to confer with Counsel. The Board reconvened at 7:20 p.m.

It was noted that Mr. Serrecchia would sit for the following cases.

12-101 Jonathan Watson Sobel, Trustee

Variance to the terms of Article VI, Section 165-45.A (Medium High Density Residential II District) of the Derry Zoning Ordinance to allow a subdivision consisting of a single family existing dwelling on a lot (no variance necessary) and a multi-family development consisting of 21 units on the remaining parcel. Parcel ID 30247, 11 Wilson Avenue, Zoned MHDRII.

Attorney Sumner Kalman, representing owner, said that he was present tonight with Attorney Valvanis, Mr. Sobel, Mr. Bartlett and Mr. Pearson who is the engineer.

Mr. Virr asked what the Board was being presented and said that it was not accepting any new evidence that had not been available before the meeting as the Board requires at least 5 days in order to review the application before a meeting. Attorney Kalman asked if that was a written regulation online to see if there was any requirement to submit any information during the meeting and did not see any 5 day submission requirement when filled out the application.

Mr. Virr said it has been a matter of practice. Attorney Kalman said that he felt that that type of requirement would need to be a written regulations somewhere and available. He

said that he could read from the material and that it was only available to help the Board and if the Board did not have the time to review that this case could continue this case to the next meeting so they can ask Counsel if the Board as can invent new rules. Attorney Kalman said that he wanted it noted for the record that the Board would not accept what he was trying to submit and to consult with their legal counsel to see that fi there was a 5 day submission requirement and if that was something that the Board would have to be written into your regulations and made available somewhere for the public.

There was some discussion with regard to the material that was trying to be submitted and its relevance to the meeting.

Mr. Virr asked if the application could be addressed. Attorney Kalman said that he wished to summarize what the Board would not accept for the record to be as follows:

Rodney Bartlett letter dated December 19, 2011, Planning Board minutes of March 24, 2010, Town of Derry Master Plan relevant portions, updated March 24, 2010, Town Council/Planning Board Joint Meeting minutes May 4, 2010, Town Council Minutes May 18, 2010, Town Council minutes June 1, 2010, Neighborhood map reflecting duplex and multi-family properties, Neighborhood map reflecting existing sidewalks, Time line from Charles Pearson, Derry Zoning Ordinance districts, Writ of Summons – Jonathan Watson Sobel, Trustee, Jonathan Watson Sobel Revocable Trust v. Town of Derry, 218-2010-CV-01343, Derry Ink News Link – Article dated April 6, 2010, Derry News.com – Article dated June 9, 2010, Applicable statutes – RSA 674:33; RSA 674:2 and RSA 674:18

Attorney Kalman said that he was requesting that the document be left for the Board and that it be noted in the record that it was asked to be accepted and that the Board was unable to provide written documentation of what was not accepted and felt that tabs A – N would help expedite the meeting this evening.

Mr. Perkins asked if it was the intent of Attorney Kalman that the Board is to write a wrong or to review history and review a document to see if it meets the criteria for a variance. Attorney Kalman said that he felt that the ordinance needs to state that there was a 5 day submission rule in its regulations as it was not written anywhere.

Mr. Perkins said that it was not the Board's position to review information from 2010 as there was no time to review and digest information from 2010 and that the Board's requirements were to look at the rules today in order to grant a variance.

Attorney Kalman reviewed the criteria for the Board and also said that he felt the RSA's and Master Plan were major factors in granting the variance as it was inconsistent with the Master Plan as the Master Plan shows a piece of property that is inconsistent with the Master Plan intention.

Mr. Dimmock said that Attorney Kalman has mentioned many times that it is not in the public interest and it was the public that went to the Town to have the area rezoned and it was petitioned and brought before the Town Counsel and voted on by the Town Counsel to change the zone so feel that it was in the public interest. Attorney Kalman said that

there were members of the Town Counsel that voted against the change and stated that it was against the master plan's intentions.

There was some discussion with regard to the importance of the change in the Master Plan and its impact on the property in question.

Mr. Dimmock said that a statement was made that the Board is the Zoning Board of Adjustment and that a variance is being requested to a ruling that is made to the zoning and that the Board was not sticking to the rules. He said that the Board is going to review the 5 criteria presented and make a decision on testimony given.

Attorney Kalman said that a 4 year study done by Mr. Pearson who was here tonight if needed. Attorney Kalman said that the practical effect with change of zoning.

Charles Pearson, engineer, said that the plan went before the Technical Review Committee and Planning Board and traffic issues were discussed. Also met with Highway Safety and they evaluated the plan and was told a traffic study was not necessary for this type of development.

Code Enforcement

Mr. Burgess read the Code Enforcement report for the record.

Favor

No abutters were present.

Opposed

Eric Whitney, 5 Wilson Ave., said that he had issues with granting a variance for 21 units was a bit excessive and that when Oak Street Extension is built to a road it is no longer considered a driveway but a road that there would create more traffic in an area with narrow roadways. He said that more things could be done with the lot to be in keeping with the neighborhood other than a 21 multi-family structure. Mr. Whitney said that a single family house or 2 would be more fitting to the area and that he did not see where a hardship existed for the applicant for a 21 unit proposal.

Mr. Perkins asked how far away from the Oak Street Extension area would his porch be located if the area were to be built. Mr. Whitney said that the property had been surveyed when the initial project was being projected and that his shed in the rear area was right on the lot line.

Christopher Lunetta, 7 Wilson Ave., said that the original application that was reviewed and heard by the Planning Board was irrelevant and the rest was inconsistent as the

bottom line is that he felt that the applicant has not met the 5 criteria needed in order to be granted a variance. He said that he was against the request.

Mr. Virr asked how the proposed 21 units would affect abutters. Mr. Lunetta said that there had been multiple court cases and that the 4 acre lot and neighborhood was originally built as single family homes. He said that the lot that the applicant was seeking a variance was wet and had also been built as a single family home.

Mr. Virr asked how it would diminish the values of surrounding homes in the area. Mr. Lunetta said that by bringing in 20 plus families and they are non-homeowners that they would not care for the property as a homeowner would and it would deteriorate the surrounding property values.

Mr. Virr asked how would property values diminish as everyone's property values have already decreased. Mr. Lunetta said that he felt that if he were to sell his home with a 20 plus family non-homeowner structure in the area that it would have less value than it does today.

Holly Whitney, 5 Wilson Ave., said that they were the public and that she was unable to imagine how a 21 unit building would be in the best interest to the neighborhood. She said that the Master Plan stated that the downtown area be multi-family but this area was not built as multi-family and consisted of single family homes. Ms. Whitney said that a family generally consisted of 2 cars per household and if the 21 unit building were to be allowed it would mean possibly 42 more cars going up and down an already narrow roadway were there were many children in the area.

Mr. Virr asked how many children were in the area. Ms. Whitney said that she had 2 children and that several other homes in the area had 2 or more children per household.

Carolyn Mastorakos, 10 Pierce Ave., said that traffic is a concern with increase of cars as the area is currently a driveway and would be converted into an actual street which in turn would generate more traffic. She said that she has a child and that there are additional children in the area. She said that the property was not flat and that there was a steep grade down to the river and felt that squeezing 21 units into the area would not be beneficial to the area. Ms. Mastorakos said that she felt that this project was profit driven as Mr. Sobel did not live in the area and that they live here and that they were the public and did not see where it was in the best public interest as she did not see any hardship in the proposed project. She said that if Mr. Sobel wanted to benefit the community maybe he could donate the property to the Town and the Town could do something beneficial with it.

Charlene Batten, 8 Pierce Ave., said that she has 2 small children and live on a side street adjacent to the proposed project. Ms. Batten said that her street leads to the Alexander Carr Playground that hosts many events and the street was very narrow so on picture day or during an event there is lots of traffic down Pierce Ave and if an additional 21 unit building were to be constructed in the area it would create more traffic in an already densely populated area and it would change the community.

Christopher Lunetta, 7 Wilson Ave., said that Mr. Sobel was heard by the Planning Board and then a petition was heard by Town Counsel who in turn voted to change the area to MHDR II which did not allow for multi-family development for a reason as they felt that the proposal was too dense for the area in question. He said that he did not see where any hardship had been presented to the Board nor had any of the 5 criteria been met in order to be granted any type of variance.

Mr. Virr called for a brief recess at 8:23pm
The Board reconvened at 8:37pm

Mr. Virr asked Attorney Kalman if there was to be any other information that he wished to present to the Board this evening and if so could they make it available to the Code Enforcement Office by February 8, 2012. Mr. Virr also said that the Board would accept the information that he wished to present earlier during the meeting and that they would like to propose to continue the case to the next meeting so the Board could review the information submitted and see how it applies to the case. Attorney Kalman agreed and presented the Board with the information.

Mr. Virr motioned to continue case #12-101, Jonathan Watson Sobel, Trustee to the February 16, 2012 meeting.

As per agreement between the Zoning Board of Adjustment and applicant at February 2, 2012 hearing, any supplemental information which applicant intends to present for the Board's consideration on February 16, 2012 must be received by the Town no later than close of business on February 8, 2012..

Seconded by Mr. Dimmock.

Vote:

Mr. Perkins:	Yes.
Mr. Burgess:	Yes.
Mr. Serrecchia:	Yes.
Mr. Dimmock:	Yes.
Mr. Virr:	Yes.

Case #12-101 was Continued to February 16, 2012 by a vote of 5-0-0.

Mr. Virr said that the Board would take a brief adjournment before the next case.
The Board reconvened at 8:53pm

12-102 Ana Bertrand
Owner: Steve Bertrand

Variance to the terms of Article VI, Section 165-39A of the Derry Zoning Ordinance to allow the operation of a family group day care. Parcel ID 02059, 57 Windham Road, Zoned IND I

Ana Bertrand, applicant, read her application for the Board.

Mr. Virr informed the Board that the reason that the applicant was before the Board for a variance and not the standard exception was due to the zoning for her area and that the standard exception rules did not apply to this case.

Code Enforcement

Mr. Virr read the Code Enforcement report for the record.

Favor

No abutters were present.

Opposed

No abutters were present.

Board Questions

Mr. Burgess asked how long the home was. Mrs. Bertrand said that the home was over 100 feet in length and that she did not fully measure the garage.

Mr. Virr said that the square footage of the home would not be applicable as the State would be determining the number of children allowed.

Mrs. Bertrand said that she needed the variance first before she proceeded applying to the Building Department for permits to finish her basement area and has already had the Health Department approvals.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Dimmock.

Vote: Unanimous.

Mr. Serrecchia, Mr. Burgess, Mr. Perkins, Mr. Dimmock, Mr. Virr

Deliberative Session

Mr. Virr said that he would like to hear the Board's thoughts on the applicant's request.

Mr. Burgess said that he did not see a problem with the request as the State would be deciding on the number of children allowed per the square footage of her home and the Fire Department would also be reviewing the safety regulations.

Mr. Virr said that the standard condition would be made to the motion to be subject to all State and Town inspections and approvals.

Mr. Dimmock said that the Board needed to see if the criteria had been met and that he felt that the applicant has met the criteria needed to be granted a variance as the majority of the request would fall under the State regulations for licensing.

Mr. Serrecchia said that the applicant would be subject to State and Town rules and regulations that he did not see a problem with the request.

Mr. Virr said that the Board needed to review the proposal with relation to the criteria. He said that he did not feel that there would be any negative effect to the neighborhood. Mr. Virr reviewed the conditions for the Board.

Mr. Burgess said that the Windham Road area was a busy street and was utilized as a cut through for commuters to the highway.

Mr. Perkins said that he did not see any conflict with the proposed use.

Mr. Perkins motioned to come out of deliberative session.

Seconded by Mr. Dimmock.

Vote: Unanimous

Mr. Serrecchia, Mr. Burgess, Mr. Perkins, Mr. Dimmock, Mr. Virr

Mr. Virr motioned on case #12-102, Ana Bertrand, Owner: Steve Bertrand, to Grant a Variance to the terms of Article VI, Section 165-39A of the Derry Zoning Ordinance to allow the operation of a family group day care. Parcel ID 02059, 57 Windham Road, Zoned IND I, as presented with the following conditions:

- 1. Subject to all State and Town permits and inspections.**

Seconded by Mr. Dimmock.

Vote:

Mr. Burgess: Yes.
Mr. Perkins: Yes.
Mr. Dimmock: Yes.
Mr. Serrecchia: 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

Correspondence

Mr. Virr said that the Board had received a letter of resignation from James Webb.

Approval of Minutes

Mr. Dimmock motioned to approve the minutes of November 17, 2011.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Serrecchia, Mr. Burgess, Mr. Perkins, Mr. Dimmock, Mr. Virr

Adjourn

Motion to adjourn by Mr. Burgess.

Seconded by Mr. Perkins.

Vote: Unanimous.

Mr. Serrecchia, Mr. Burgess, Mr. Perkins, Mr. Dimmock, Mr. Virr

Adjourn at 9:15 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes on February 16, 2012

Mr. Dimmock motioned to approve the minutes of February 2, 2012.

Seconded by Mr. Serrecchia.

Vote: Unanimous

Mr. Serrecchia, Mr. Burgess, Mr. Perkins, Mr. Dimmock, Mr. Virr