

**TOWN OF DERRY**  
**ZONING BOARD OF ADJUSTMENT MINUTES**  
**March 15, 2012**

**Members Present**

Allan Virr, Chairman  
Albert Dimmock, Vice Chairman  
Ernest Osborn, Secretary  
Lynn Perkins  
Donald Burgess

**Members Absent**

**Alternates Present**

Louis Serrecchia

**Alternates Absent**

**Code Enforcement**

Robert Mackey

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.

It was noted that Mr. Osborn would step down and that Mr. Serrecchia would sit for the following case.

**12-105     Meisner Brem Corporation**  
**Owners: Craig & Snow Bonneau**

**Variance to the terms of Article VI, Sections 165-45.B.1.a.ii; 165-45.B.1.b.i and 165-45.B.1.c.i of the Derry Zoning Ordinance to allow the subdivision of an existing lot into two lots that will have less than the required lot area, frontage and lot width. 2 Howard Street, Parcel ID 31088, Zoned MHDR**

Kurt Meisner, Meisner Brem Corporation said that he was representing the owners who were also present this evening. Mr. Meisner read the application and also explained the proposed plan for the Board. He presented the Board with pictures of the neighborhood and gave an explanation of what they were.

Mr. Virr asked if he could provide a copy for anyone in the audience to view if they wished. Mr. Meisner offered but no one viewed.

Mr. Dimmock asked what the average frontage on the street was. Mr. Meisner said that the two properties adjacent to the property are shorter than 82' and the properties on the end are approximately 100'.

Mr. Virr asked if there were any plans for the existing dwelling or plans to relocate on the lot. Mr. Bonneau said that he planned to reside and reroof the existing structure and that there were no plans to remove the structure at this time.

Mr. Dimmock asked if there were any plans of the proposed structure. Mr. Bonneau said yes and provided the Board with two different types of homes that he thought would best suit the property.

### **Code Enforcement**

Mr. Mackey said the applicant is requesting a variance to allow the subdivision of a lot located in the MHDR zoning district to be subdivided into 2 lots. Currently, the existing lot contains an existing single family dwelling. The property is serviced by Town water & sewer. The zoning regulations for the MHDR District require 10,000 sq. ft. of area and 100 feet of lot frontage and width for a lot serviced by Town water & sewer. Once subdivided, neither lot will meet these minimums so a variance is required. As allowed per Article III, Section 165-10 the average front set back is being utilized for the proposed single family dwelling. If approved, Planning Board subdivision approval will be required. There are pictures in the file for review by the Board.

### **Board Questions**

Mr. Virr asked if the lot frontages on Howard Street were the same as some appear to be 50 feet. Mr. Mackey said that some were approximately 100' and some were shorter as it was an older neighborhood.

Mr. Burgess asked what was the average setback. Mr. Meisner said that 165.10 allows for the calculation of setback within 300' and that his client is proposing to place the structure within 23.9' of the lot line where the average is 12' 7".

Mr. Osborn asked if there was any knowledge of a structure being on the lot. Mr. Mackey said no.

Mr. Meisner said that his attorney researched the property back to 1930 and it has not shown any structure being built on it.

Mr. Virr said that for 1954 leaving a large lot where 2 were possible was odd.

### **Opposed**

Barry Blood, 6 Howard Street, said that he lives on the other side of the empty lot and that he felt that the property had originally contained the leach field as the grass grows much thicker there than any other area on the lot. He said that he objects to a structure being 15' from the lot line as there is where his window to his home currently is.

Mr. Dimmock said that they could place a garage 15' from the lot line and still it would be next to the house as it appears to be close to the lot line. Mr. Dimmock asked how much frontage that he had. Mr. Blood said that he had 70' of frontage and that his home was very close to the side lot line.

Mr. Dimmock said if the home was setback on the lot how would it obstruct view. Mr. Blood said that he currently looks out and sees an empty lot.

### **Favor**

No abutters were present.

### **Rebuttal**

Mr. Meisner said that Mr. Blood's home is approximately 3' from the lot line and that his applicant could position the home over more to accommodate a more suitable setback to the abutter.

Mr. Dimmock motioned to go into deliberative session.

Seconded by Mr. Osborn.

Vote: Unanimous.

Mr. Burgess, Mr. Perkins, Mr. Osborn, Mr. Dimmock, Mr. Virr.

### **Deliberative Session**

Mr. Dimmock said that he had viewed the property and the surrounding area and feel that it would be unfair to hold the applicant to a greater distance than the surrounding properties.

Mr. Virr said that the plan of land in 1954 predated zoning and the other homes in the immediate area have less than 82' of frontage.

Mr. Dimmock asked if it would create an injustice as it is greater than others and feel that it would be a benefit to the neighborhood and it is also subject to Planning Board approval.

Mr. Perkins said that it appears to be an improvement to the lot and will be set back off the property so feel it would be a good fit.

Mr. Osborn said that he felt that the neighborhood was missing something there and that the lot can support the proposed structure. He said that the standard conditions would apply.

Mr. Virr said that the proposal would be subject to Planning Board approval and also subject to obtaining all Town and State permits and inspections.

Mr. Virr motioned to come out of deliberative session.

Seconded by Mr. Dimmock.

Vote: Unanimous.

Mr. Burgess, Mr. Perkins, Mr. Osborn, Mr. Dimmock, Mr. Virr.

**Mr. Osborn motioned on case #12-105, Meisner Brem Corporation, Owners: Craig & Snow Bonneau to Grant a Variance to the terms of Article VI, Sections 165-45.B.1.a.ii; 165-45.B.1.b.i and 165-45.B.1.c.i of the Derry Zoning Ordinance to allow the subdivision of an existing lot into two lots that will have less than the required lot area, frontage and lot width. 2 Howard Street, Parcel ID 31088, Zoned MHDR as presented with the following conditions:**

- 1. Subject to Planning Board approval.**
- 2. Subject to all Town and State permits and inspections.**

Seconded by Mr. Perkins.

Vote:

**Mr. Dimmock: Yes.**  
**Mr. Osborn: Yes.**  
**Mr. Burgess: Yes.**  
**Mr. Perkins: 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**

It was noted for the record that the Board was taking a 5 minute recess 7:32pm.  
Reconvened at 7:36pm

**12-106     Meisner Brem Corporation**  
**Owners: Stephen & Laurie Proulx**

**Variance to the terms of Article III, Section 165-9 of the Derry Zoning Ordinance and NH RSA 674:41 to allow the subdivision of one lot into two lots without frontage on an approved street at 28 Featherbed Lane, Parcel ID 06011, Zoned LMDR**

Kurt Meisner, Meisner Brem Corporation said that he was representing the owners who were also present this evening. Mr. Meisner read the application and also explained the proposed plan for the Board.

**Board Questions**

Mr. Virr asked that with regard to picture #2 if it was the view towards Island Pond Road. Mr. Meisner said no that it was towards Route 28.

Mr. Virr asked if the driveway was to the right of picture #2. Mr. Meisner said no that it was left of picture #1.

Mr. Meisner explained the pictures that were submitted as follows:

1. Shows the property looking towards Island Pond Road
2. Shows where the limit of Town acceptance was located and if traveled would be towards Route 28.
3. Shows the existing driveway and area of Town acceptance.
4. Shows the existing driveway which is in very good condition and consisted of a gravel driveway. Picture would be a view if looking down driveway towards Featherbed Lane.

Mr. Dimmock asked how far up the existing driveway was the proposed driveway to be. Mr. Meisner said that it was proposed to be approximately 200' but is arbitrary as Planning Board and Fire may have more to say about the location.

Mr. Dimmock asked how much frontage was along the discontinued portion of Featherbed Lane and how much frontage does the lot have on the approved portion. Mr. Meisner said that there was approximately 700' along the discontinued portion and approximately 45' on the approved portion.

Mr. Dimmock asked how could they build without proper frontage on a Town approved road. Mr. Mackey said that zoning ordinance formally did not speak about lot frontage but more with regard to lot width and that he remembered obtaining a legal opinion at the time to see if the property required a variance to build.

Mr. Dimmock asked if that made the lot a legal non-conforming lot of record. Mr. Mackey said yes.

Mr. Dimmock said that the ordinance now reads that unable to create a lot without frontage on a Town approved road. Mr. Mackey said yes and that is why they are here.

There was some discussion with regard to the photos provided and the allowance of a lot with no frontage on a Town approved road.

Mr. Dimmock said that he also believed that shared driveways were not allowed.

Mr. Virr said that there were legalities that needed to be reviewed and that with regard to a shared driveway that it was a Planning Board matter and that it would be reviewed by the State roadways with regard to a shared driveway.

Mr. Dimmock said that he felt that the proposal should have been heard by the Planning Board first before appearing before the Zoning Board.

Mr. Perkins said that this is not the first time that there has been conflict about which Board someone should go to first and believe this Board has heard cases to build without proper frontage on a Town approved road.

Mr. Meisner said that there possibly was an opportunity to do without a common driveway as could possibly continue a driveway further onto proposed new lot further north along Featherbed Lane. However, that they are here tonight to seek approval to subdivide a 2 acre parcel out of a larger lot that would have no frontage on a Town approved road. Mr. Meisner said that if they went to the Planning Board first they would in turn say that the applicant does not have a lot as they don't meet the ZBA criteria and that he had previously discussed with Mr. Mackey the proposal to create the lot and then will ultimately seek waivers from the Planning Board.

Mr. Dimmock said that the law states that need to have frontage on a Town approved road. Mr. Meisner said that the proposal is to create 2 parcels of which one that makes frontage of the 45'92" and share a driveway to create a new 2 acre parcel with no frontage on a Town approved road.

### **Code Enforcement**

Mr. Mackey said that the applicant is requesting a variance to subdivide a 2.07 acre parcel from an existing 16.46 acre parcel. The new lot is proposed to be located beyond the Town Approved Section of Featherbed Lane. The proposed lot will not have frontage on an approved street as the section of Featherbed Lane that it will abut has been discontinued. Therefore, a variance is required to Article III, Section 165.9 of the zoning ordinance as well as RSA 674:41. Per RSA 674:41, a building permit cannot be granted unless the street giving access meets certain criteria for which the discontinued portion of Featherbed Lane does not qualify. They are also seeking relief per Section II of this regulation (see attachment in your packets). If approved, the owner will be required to

file a waiver of municipal responsibility and liability with the Rockingham Registry of Deeds. The applicant is proposing access to the new lot from the existing driveway that currently serves parcel 0611. A waiver will be required from the Planning Board as the Land Development Control Regulations (Article V, Section 170-25A.5) required that each lot shall have access through its own frontage. If approved, Planning Board review and subdivision approval will be required. There are pictures in the file for review by the Board.

### **Favor**

No abutters were present.

### **Opposed**

Harvey Feinauer, 1 Featherbed Lane, said that he has resided on Featherbed Lane since 1947 and that the road was not paved but consisted of grindings and that it was just resurfaced with some mica and sand mixture that was already coming apart.

Mark Brotman, 25 Featherbed Lane, said that he owned the items that the Board had made reference to earlier and is currently in the process of removing. He said that he was concerned with drainage as he currently has runoff during rain storms from the applicant's driveway and also concerned with regard to increased traffic as when the applicant currently leaves his driveway in evening hours the lights shine into his home.

### **Rebuttal**

Mr. Meisner said that with regard to Mr. Brotman's concern with runoff that drainage could be brought up at Planning Board and a detailed engineering plan could be created to take care of any future runoff. He said that the proposal would benefit the current situation as it would improve any drainage issues when the driveway is located with regard to the proposed lot.

Mr. Proulx said that he understands that the country is governed by rules and laws but also feel that changes can be made to the rule if the proper channels are followed. He said that he was a 20 year resident of Derry and that he has a child that wishes to relocate back to Derry and that he wished to help out his child by creating a 2 acre parcel off his existing property so his family could build a home near him and that he was not seeking to make a profit.

Mr. Dimmock said that he was not against bringing family home just that the ordinance does not allow. He said that the road was currently narrow and if a Fire truck was needed in the area that there was just not enough room for it to do so safely.

Mr. Virr said that it was possible that the Planning Board would require that the road be improved.

Mr. Dimmock said that the road was currently classified as a Class V and that the Town would not upgrade the road.

Mr. Proulx said that the road was discontinued prior to his purchase of his lot.

Mr. Perkins motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

Mr. Burgess, Mr. Perkins, Mr. Osborn, Mr. Dimmock, Mr. Virr.

### **Deliberative Session**

Mr. Virr said that the property consisted of 16 acres and not wishing to deny a person to utilize property but the property was on a discontinued road.

Mr. Osborn asked if the Board could restrict future development.

Mr. Perkins said that he was apprehensive about what Mr. Dimmock stated and what Mr. Virr has stated about the 5 criteria. He said that this was a remote area and that there is a lot of checks and balances that need to be accomplished before the applicant could even build on the property and did not see why the Board could not grant approval subject to conditions as the Board has granted previous cases without proper frontage.

Mr. Virr said that there were concerns from abutters with drainage and road conditions which are Planning Board areas and asked if the criteria has been met. He said that he did not feel that it was contrary to the ordinance and that there was some question with regard to the spirit and intent of the ordinance with regard to the lack of frontage but there was no purview with regard to a shared driveway. He said that the Board has approved others with no frontage on a Town approved road. With regard to substantial justice the owner would be able to utilize his land and is it a taking if denied.

Mr. Perkins asked when was the zoning change made. Mr. Virr said it was done in 2000.

Mr. Osborn said that the Planning Board would input the checks and balances and the neighbor with the run off concerns. He did not see any major issues with the road and not being paved so is a non-issue and they will need Planning Board approval.

Mr. Virr said that the request should be subject to obtaining all State and Town permits and inspections and subject to obtaining a municipal waiver and Planning Board approval. He said that granting is not making a buildable lot without Planning Board approval.



Mr. Osborn motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Burgess, Mr. Perkins, Mr. Osborn, Mr. Dimmock, Mr. Virr.

**Mr. Osborn motioned on case #12-106, Meisner Brem Corporation, Owners: Stephen & Laurie Proulx to Grant a Variance to the terms of Article III, Section 165-9 of the Derry Zoning Ordinance and NH RSA 674:41 to allow the subdivision of one lot into two lots without frontage on an approved street at 28 Featherbed Lane, Parcel ID 06011, Zoned LMDR as presented with the following conditions:**

- 1. Subject to Planning Board approval.**
- 2. Subject to all Town and State permits and inspections.**
- 3. Subject to obtaining waiver of municipal responsibility and liability recorded with the Rockingham County Registry of Deeds.**

Seconded by Mr. Dimmock.

**Vote:**

**Mr. Perkins: Yes.**

**Mr. Osborn: Yes.**

**Mr. Burgess: No. Feel it lacks proper frontage on a town approved road.**

**Mr. Dimmock: No. Feel it is not in the interest of the ordinance.**

**Mr. Virr: Yes. For reason as stated as not creating a building lot as that is up to the Planning Board.**

**The application was Granted by a vote of 3-2-0. 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**

**Other Business**

Mr. Osborn read the second reading for changes to be made to the Zoning Board's Policy & Procedures.

Mr. Virr motioned to accept the changes as written.

Seconded by Mr. Osborn.

Vote: Unanimous.

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

Mr. Virr said that the Board would take a short break in order to review rehearing requests received. 8:33pm

Board reconvened at 8:39pm

### **Rehearing Requests**

It was noted that Mr. Osborn would step down and Mr. Serrecchia would sit for the following case.

**Mr. Virr said that the Board has received a rehearing request from Attorney Sumner Kalman of case #12-101, Jonathan Watson Sobel, Trustee, Variance to the terms of Article VI, Section 165-45.A.1 (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.**

Mr. Virr said that he has read the submission and concerned with page 3 stating that Mr. Pearson had proceeded with all the necessary steps to develop the property in the fact that Mr. Pearson had never applied for Planning Board approval. Mr. Virr said that paragraph 5 speaks about torpedoing the proposal and that the rezoning created a hardship as that was the only area that was affected by the zoning change and he did not feel that had occurred as the property currently had a single family structure on located on it. Mr. Virr said that with regard to Mr. Bartlett's letter the only thing that he felt was relevant was the 5 criteria and not the master plan that was outlined in his letter. Mr. Virr said that as for the zoning ordinance creating the MHDR II that it was done properly as it was petitioned by the Town's people and voted on by the Town Council that the Board did not create the zone.

Mr. Perkins said that he takes exception to the fact that value to surrounding homes would not be diminished as no evidence was provided to substantiate the claim. And that there was currently an existing residential structure on the property. He said that the Board has deviated from what zoning is and what was being requested here is for the Board to right a wrong and that he did not feel that the Board made an error.

Mr. Burgess said that there were two boards that voted and passed the zoning changes and that the ZBA does not have the right to change the zone.

Mr. Virr said that it was stated that by ignoring the master plan was illegal and said that he did not feel that the Board had made an error in their decision.

Mr. Perkins said that if the Board was to go by the Master Plan then he felt that Mr. Mackey's office would be flooded with tear downs to put up multi-family structures.

Mr. Dimmock said that the Board initially did not accept the document that Attorney Kalman tried to present but then they did accept it and that he had reviewed the

information provided and did not see any evidence there that changed his mind and that he felt that the Board made the right decision.

Mr. Virr said that he did not see any new evidence that addressed the 5 criteria and no new evidence was presented that he felt warranted a rehearing.

**Mr. Virr motioned on case #12-101, Jonathan Watson Sobel, Trustee, to Grant the Request for a Rehearing for a Variance to the terms of Article VI, Section 165-45.A.1 (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.**

**Seconded by Mr. Serrecchia.**

**Mr. Virr noted that a yes vote would grant a rehearing to the case.**

**Vote:**

**Mr. Dimmock: No. Has not met the criteria needed and that no new evidence was provided.**

**Mr. Burgess: No. No new evidence has been presented.**

**Mr. Perkins: No. The request was redundant and the Board did not make an error of law.**

**Mr. Serrecchia: No. Agree with Mr. Perkins that the request was redundant.**

**Mr. Virr: No. No new evidence was presented and no error was made.**

**Request for a Rehearing was denied by a vote of 0-5-0. Recourse would be to Superior Court.**

**Mr. Virr said that the Board received a Rehearing request from Thomas & Martha Morini, et al regarding case #12-103, Melinda Salomone-Abood, Owners: Frances & Gerald Salomone, Variance to the terms of Article VI, Section 165-45.1 (Medium High Density Residential II District) of the Derry Zoning Ordinance to allow use of a residential house as a business venture, operating weeknights and weekends and to post a small sign. Parcel ID 30233, 15 Grove Street, Zoned MHDRII**

Mr. Virr said that the applicant states that the Ms. Salomone-Abood did not meet all 5 criteria needed to be granted a variance. He said that the Office of Planning and Zoning states that there have been Supreme Court cases brought before it and that was discussed at the previous meeting. He said that there appears to be a conflict of the previous case and this is the same area but it was determined by the Board that the change was minimal and not extreme as the case before it and that the applicant had stated that the property would be utilized only for scheduled classes a few hours in the evening and have some small retail sales.

Mr. Burgess said that he agreed with the applicant's statement that the Board created a retail business in residential district as the applicant had stated that she would be selling material to people who wanted material to scrapbook and it was not limited to people who came for classes.

Mr. Osborn said that he did not see any direct abutter's signatures on the rehearing request.

**Mr. Osborn motioned to grant a Rehearing request from Thomas & Martha Morini, et al regarding case #12-103, Melinda Salomone-Abood, Owners: Frances & Gerald Salomone, Variance to the terms of Article VI, Section 165-45.1 (Medium High Density Residential II District) of the Derry Zoning Ordinance to allow use of a residential house as a business venture, operating weeknights and weekends and to post a small sign. Parcel ID 30233, 15 Grove Street, Zoned MHDRII.**

**Seconded by Mr. Perkins.**

Mr. Virr informed the Board that a yes vote would be to grant a rehearing.

**Vote:**

Mr. Burgess: Yes.

Mr. Dimmock: No. Do not feel the Board made an error.

Mr. Osborn: No. No error was made.

Mr. Perkins: Yes.

Mr. Virr: No. No new evidence was shown that the Board has made an error in granting the request.

**Request for a Rehearing was denied by a vote of 2-3-0. Recourse would be to Superior Court.**

**Approval of Minutes**

Mr. Virr said that some changes were made to page 3 of the February 16, 2012 minutes as Mr. Perkins statement was reworded to give it more clarity but it did not change the context of the minutes.

Mr. Burgess said that the first case needs to read 165-45A.1 and that he had voted no on the Grove Street case.

Mr. Dimmock motioned to approve the minutes of February 16, 2012 as amended.

Seconded by Mr. Burgess.

Vote: Unanimous

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

### **Adjourn**

Motion to adjourn by Mr. Osborn.

Seconded by Mr. Dimmock.

Vote: Unanimous.

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

Adjourn at 9:00 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

### **Approval of Minutes on April 19, 2012**

**Mr. Dimmock motioned to approve the minutes of March 15, 2012 as amended.**

**Seconded by Mr. Osborn**

**Vote: Unanimous**

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