

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
September 6, 2012

Members Present

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

Members Absent

Alternates Present

Louis Serrecchia
Joseph Carnvale
Frank Mazzuchelli
David Thompson

Alternates Absent

Teresa Hampton

Mr. Virr called the meeting to order at 7:02 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 for the record that Mr. Dimmock stepped down and that Mr. Thompson would sit for the following case.

**12-117 Robert L. Allen
 Gennaro Estates, LLC**

Applicant is requesting a Variance to the terms of Article VI, Section 165-48B.2 & 3 of the Town of Derry Zoning Ordinance to allow the subdivision of an existing lot into two (2) lots, leaving the existing lot with less than the required frontage and lot width, 6 Cella Drive, Parcel ID 04075, Zoned LDR

James Lavelle, Lavelle Associates said that he was representing the owner. Mr. Lavelle said that the applicant wished to create a 3 acre lot at the end of the existing cul-de-sac and leave the existing lot with 59 feet of road frontage and 15.91 acres.

Board Questions

Mr. Thompson asked who was Robert Allen with regard to Gennaro Estates. Mr. Lavelle said that he was the owner and principal of the LLC.

Mr. Lavelle read the application for the Board. He said that the intent of the 3 acre lot is the existing lots and would be subject to soils tests and if approved will require Planning Board review and the remaining parcel would not be subject to testing but would be performed any way. Mr. Lavelle said that he believed that there were two lots currently under construction at this time and the intent of the owner is to put one home on the 15.9 acre parcel at this time.

Mr. Thompson asked if there was only one house to be constructed on the 15 acre parcel but stated testing would be done to show adequate spacing of homes is that for future subdivision. Mr. Lavelle said no that at this time it was for one home on the 15 acre parcel and it would be adequately spaced from the lot lines.

Mr. Osborn asked if more frontage could be gained by making the cul-de-sac larger. Mr. Lavelle said yes but it would involve possibly blasting due to the grade and ledge so it would be more of an expense.

There was some discussion with regard to restructuring the cul-de-sac.

Mr. Perkins asked if the water supply was public or private. Mr. Lavelle said the water system serving the property was private.

Mr. Perkins asked what the soil types were as reflecting in the Land Development Regulations. Mr. Lavelle said that an acre was 43,560 and that the area meets the requirements per acre.

Mr. Virr said that soil types speak to Planning Board issues and were not relevant to tonight's meeting.

There was some discussion with regard to soil testing in relation to lot sizing.

Mr. Mazzuchelli said that he believed that the home would have to be setback from the lot lines or require an additional variance.

Mr. Osborn motioned to go into deliberative session.

Seconded by Mr. Perkins.

Vote: Unanimous.

Mr. Thompson, Mr. Burgess, Mr. Perkins, Mr. Osborn, Mr. Virr

Deliberative Session

Mr. Virr said that soil types would be part of the Planning Board process and were not part of the Zoning Boards purview to consider.

Mr. Perkins said that his questions with regard to soils types was answered.

Mr. Thompson asked which lot would not have the required frontage the 15 acre parcel or the 3 acre parcel.

Mr. Virr said it was the 15 acre parcel that would only have 59 feet of frontage.

Mr. Thompson said that there was a previous case that the Board had denied on English Range Road that also did not have the required frontage but ample acreage.

Mr. Burgess said that he agreed that if the lot was to have 175 feet or 150 feet he could agree but 59 feet is small.

Mr. Virr said that the previous case was different as there were buildings on both properties.

Mr. Osborn said that the previous case was only presented for 18 feet of frontage and a very poor area of visibility onto the existing road that were factors for denial as it was a major safety issue.

Mr. Virr said that the applicant was here because the law says that unable to do it and they are seeking relief from the requirement.

Mr. Thompson said that he felt that it was opening up for future development to build multiple homes on a future subdivision. He felt that the laws and ordinance of 200 feet of frontage was set for a reason. He said that he also did not see where the hardship has been proven.

Mr. Virr said that if it were required to follow every letter of the law why have a Board of Adjustment and that he felt that people should have a right to request changes to laws if meet certain criteria.

Mr. Osborn said that the lot should be subject to only one home to be constructed on the lot and that all Town and State permits and inspections be required and that it also be subject to Planning Board approval.

Mr. Osborn motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Thompson, Mr. Burgess, Mr. Perkins, Mr. Osborn, Mr. Virr

Mr. Osborn motioned on case #12-117 Robert L. Allen, Gennaro Estates, LLC, to Grant a Variance to the terms of Article VI, Section 165-48B.2 & 3 of the Town of Derry Zoning Ordinance to allow the subdivision of an existing lot into two (2) lots, leaving the existing lot with less than the required frontage and lot width, 6 Cella Drive, Parcel ID 04075, Zoned LDR as presented with the following conditions:

- 1. Only one home to be built on the property.**
- 2. Subject to obtaining all Town and State permits and inspections.**
- 3. Subject to Planning Board approval.**

Seconded by Mr. Burgess.

Vote:

Mr. Perkins: Yes.

Mr. Burgess: No. Feel insufficient frontage.

Mr. Osborn: Yes.

Mr. Thompson: No. Feel does not even closely meet the required frontage width and not compliant with ordinance. Feel also opening property for major development. No hardship has been shown.

Mr. Virr: No. For some of the same reasons as stated by Mr. Thompson as the lot is short 125 feet of frontage and that it is against the spirit and intent of the ordinance.

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

Mr. Osborn motioned to approve the minutes of August 16, 2012.

Mr. Dimmock said that he felt that the minutes required additional review as they were not an accurate record and felt that they were incomplete as very important statements were missing.

Mr. Virr motioned to table the minutes of August 16, 2012 so they can be reviewed and corrected.

Seconded by Mr. Osborn.

Vote: Unanimous

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

Other Business

Mr. Osborn asked that the phone list be reviewed to check terms of members.

Mr. Perkins asked if a letter of protocol could be sent out to the Board members so they would know when they were able to ask questions.

Mr. Virr said that it was in the Policy and Procedures and requested that they be emailed out to the Board members again.

Adjourn

Mr. Osborn motioned to adjourn.

Seconded by Mr. Dimmock.

Vote: Unanimous.

Mr. Thompson, Mr. Carnvale, Mr. Mazzuchelli, Mr. Serrecchia, Mr. Burgess, Mr. Perkins, Mr. Osborn, Mr. Dimmock, Mr. Virr

Adjourn at 7:45 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes September 20, 2012

Mr. Dimmock motioned to approve the minutes of September 6, 2012.

Seconded by Mr. Osborn

Vote: Unanimous

Mr. Thompson, Mr. Carnvale, Mr. Mazzuchelli, Mr. Serrecchia, Mr. Burgess, Mr. Perkins, Mr. Osborn, Mr. Dimmock, Mr. Virr