

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
July 17, 2014

Members Present

Lynn Perkins, Chairman
Donald Burgess, Acting Vice Chairman
Heather Evans, Acting Secretary

Members Absent

Allan Virr
Teresa Hampton

Alternates Present

Stephen Coppolo
Katherine Prudhomme-O'Brien

Alternates Absent

Michael Demeo

Mr. Perkins called the meeting to order at 7:04 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.

The Board introduced themselves for the record.

Mr. Perkins asked Mrs. Prudhomme-O'Brien and Mr. Coppolo to sit for the following case.

#14-114 John & Denise Sederquest

Variance to the terms of Article III, Section 165-9 and Article VI, Section 165-48B.2 of the Town of Derry Zoning Ordinance and relief under RSA 674:41(ii) to allow the subdivision of the existing property to create a new building lot without frontage on a Town road and to allow construction of a single family home on a lot (to be created) without frontage at 1 Whitney's Grove Road, Parcel ID 04098, Zoned LDR

Attorney Bernard Campbell, Beaumont & Campbell Professional Association, said that he was representing the applicant and that Mr. Sederquest was also present. Attorney Campbell read the application for the record. He said that the area is a fairly lengthy road which serves as access to year round and seasonal residents some of which are fairly new structures. The lot in question is located in the front portion of the road and if this road were to be developed and accepted as a Town approved roadway then the property would have ample frontage and a variance would not be required. Attorney Campbell said that he felt that this was a straight forward case and has met with Mr. Mackey with regard to the required sections of the ordinance that need for a variance. Attorney Campbell said that the public access is well maintained by the owners and feel if the variance were to be granted it would enhance the area and also add another property owner to help maintain the current right-of-way as there is no official association. He said that Planning Board approval will also be required and that the proposed home will meet all setbacks if the

road were to be improved. Attorney Campbell said that he felt that this request meets the criteria and is in the public interest and spirit and intent of the ordinance.

Board Questions

Mr. Burgess asked why there was only a 20' right-of-way and not a 50' right-of-way. Attorney Campbell said that the 20' is the historic right-of-way and that the proposed subdivision plan shows a reserved 50' right-of-way. If Planning Board requires 50' it is available.

Mr. Burgess said there is only 20' of right-of-way shown and not listed as 50' right-of-way. Attorney Campbell said that the owner is at the top of the street. Mr. Sederquest can provide the remaining frontage if Planning Board requires.

Mr. Perkins asked if a 24' pavement offer as future consideration. Attorney Campbell said if the Planning Board makes it a condition. The original area is being proposed with potential of full right-of-way.

Mr. Burgess said that in looking at possible prospect of future of new owner not releasing the extra area if the road was to be developed. Mr. Sederquest said that he would inform potential owner of the possible change.

Mr. Coppolo asked if the client if needed be happy to deed easement for 50 foot right-of-way. Attorney Campbell said that if the road is a dedicated and accepted as a public way and if built Town Council accepts. If it is noted on the plan and recorded the subsequent owners will be made aware.

Mr. Coppolo asked if the applicant would be acceptable to a condition being made of a 50' right-of-way. Attorney Campbell said when plan is submitted to Planning Board it will show a 50' right-of-way.

There was some discussion with regard to other property locations with relation to the right-of-way.

Mrs. Evans said that she had concerns for safety vehicle access and feel that the Planning Board has say with regard to the width of the right-of-way. Mr. Sederquest said that the Fire Department has been down the road with no issues.

Mrs. Prudhomme-O'Brien asked if there was public access to Island Pond. Attorney Campbell said there was no public access as the road is a private way and not a public way. The applicant owns 700' with right to pass by invitation by Mr. Sederquest or by other property owners in the area.

Mrs. Prudhomme-O'Brien asked if the pond has drainage in and out. Mr. Sederquest said that it was a seasonal pond and does have an outlet and does not overflow.

Code Enforcement

Mr. Mackey said that the applicant is requesting a variance to allow the subdivision of a lot that does not have frontage on a Town approved road (as required under Article III< Section 165-9). Whitney's Grove Road is a private access road for several homes on Big Island Pond. As a private way, it is not maintained by the Town. The property is located in the Low Density Residential Zoning District which requires a minimum of 3 acres and 200 feet of frontage. The proposal is to subdivide the 7+ acre lot to create a new, 4+ acre building lot and to leave the existing home with the required 3 acre lot. The new lot will only have frontage on the private access road. The intent is to build a dwelling on the newly created lot. A variance was granted in 1981 to allow the construction of the existing residence on a lot with inadequate frontage. In addition to the variance, an exception is also required per RSA 674:41(11). (see attached). If approved, and prior to a building permit being issued, a State approved septic system design must be submitted. If approved by the Board, Planning Board subdivision approval will be required. There are pictures of the property in the file for review by the Board

Mr. Coppolo said that he was interested in liability and safety situation document apply with concerns with possible ambulance being unable to get down the road beyond this property. Attorney Campbell said that RSA674:41 requires for a piece of property to be set aside for statewide use. He said that the waiver request is called for in statute would be required of Mr. Sederquest to state as a private right-of-way. Attorney Campbell said that there would be no delay in emergency response vehicles being able to get to other people in the area. Attorney Campbell said that he feels that they have addressed all issues and feel if not allowed would be an unnecessary hardship on the applicant. The plan submitted is unofficial and that the proposed request does not cause hardship on others as they are already utilizing the existing right-of-way. There would be no financial hardship on the community. Current emergency access lane. No impact on surrounding properties.

Mr. Burgess asked what the current classification was the road. Mr. Mackey said it was a private way and not classified.

Attorney Campbell said the area is similar to a class V road and have seen other roads worse condition.

Mr. Mackey said that in order to be considered a Class V road it would need to be built to Town specifications.

Mr. Perkins asked how the area was currently maintained. Mr. Sederquest said he and 4 other residents currently plow with pickups and maintain the area and one hires a contractor.

Mr. Perkins said with safety as touched on by other members with regard to emergency access and have heard testimony that fire trucks have been able to get down the road. If there is snow and ice on the roadway how does a fire truck get down. Attorney Campbell said the area is private property and the area can be cleared on the right side all the way down to the fork and be easily accessed by emergency vehicles. There were 4-5 homes

beyond this property that have vested interest and feel assured that there would be ample Town access in the event of an emergency.

Mrs. Evans asked if the waiver of liability would be transferred if property were to be sold. Attorney Campbell said yes and it will be recorded on the plan.

Mr. Coppolo asked if there had ever been or discussed access and maintenance issues. Attorney Campbell said that he was unsure if there had been any discussions or any issues. The applicant has met his provisions from his 1989 subdivision and this property is located in front of the others.

Favor

Eric Schonberger, 15 Whitney's Grove Road, said that they were located at bottom left of the T and own the right-of-way to the dam. Have resided there since 1989 and with regard to the question of plowing he said that they live in the woods and they do not have trash services etc. but they all pitch in and are self-sufficient in the area. He said that the person on the right lives in the city and is now learning to drive a truck and plowing. The neighbors have recently constructed a causeway which is functioning properly. He stated that Mr. Sederquest plows when he was out of Town and that the neighbors all maintain the area. Mr. Schonberger said that he owns a 22,000 pound motor home and that road bears the weight of it well. He knows that they were a bit behind on foliage cutting but they do cut back every 3 to 5 years.

Mr. Coppolo asked if he knew all the neighbors in the area and if they were a cooperative group of individuals as far as access was concerned. Mr. Schonberger said yes that they all work together with regard to plowing and maintenance of the area. He said that there is currently one home in the area for sale with a newly paved driveway and the owners are aware that they are responsible for the plowing and believe they have informed the realtor.

Opposed

No abutters were present in opposition of the request.

Mr. Coppolo motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mrs. Prudhomme-O'Brien, Mr. Coppolo, Mrs. Evans, Mr. Burgess, Mr. Perkins.

Deliberative Session

Mr. Perkins said that they have heard testimony that the area was self-sufficient as the property owners maintain and take on responsibility to upkeep.

Mr. Burgess said that it was similar to Beaver Lake as there are roads in that area that are private. He said that he felt that the motion needs to state that it is a private right-of-way.

Mr. Perkins said that a municipal waiver will be signed and recorded at the registry of deeds.

Mr. Coppolo said that a stipulation to RSA 674:41 needs to be made part of the condition.

Mr. Perkins said that it was stated in the application and would be subject to obtaining all State & Town permits and inspections and subject to Planning Board approval.

Mr. Burgess said that a condition that allowances be made for a 50' right-of-way be noted on the plan for future development of road.

Mr. Coppolo asked if other homes in the area had obtained variances on a private right-of-way.

Mr. Mackey said that they were previous lots of record.

Mr. Perkins said that a stipulation should be made that the future structure be within the required setback of the possible future road construction.

Mr. Mackey said that a setback of 35' from front lot line so would want to make allowance for the 50' for road and then go 35' from there for the setback.

Mr. Perkins said that a stipulation should read that the structure to be situated no closer than 35' from setback if the road was to be developed.

Mr. Mackey said that the Board would want to stipulate that the structure be situated a minimum of 85' from edge of lot on the northley property lot line.

Mr. Burgess reviewed the conditions as follows for the Board:

1. Subject to Planning Board approval.
2. Must obtain all necessary State and Town permits and inspections.
3. Notice of Municipal Waiver of Responsibility and Liability must be received and recorded with Registry of Deeds.
4. Proposed structure to situated a minimum of 85' from the northern property line to allow for 50' Right-of-Way and 35' front building setback.
5. 50' Right-of-Way must be established along northerly property line for possible future expansion of road.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mrs. Prudhomme-O'Brien, Mr. Coppolo, Mrs. Evans, Mr. Burgess, Mr. Perkins.

Mrs. Evans motioned on case #14-114, John & Denise Sederquest to Grant a variance to the terms of Article III, Section 165-9 and Article VI, Section 165-48B.2 of the Town of Derry Zoning Ordinance and relief under RSA 674:41(ii) to allow the subdivision of the existing property to create a new building lot without frontage on a Town road and to allow construction of a single family home on a lot (to be created) without frontage at 1 Whitney's Grove Road, Parcel ID 04098, Zoned LDR as presented with the following conditions:

- 1. Subject to Planning Board approval.**
- 2. Must obtain all necessary State and Town permits and inspections.**
- 3. Notice of Municipal Waiver of Responsibility and Liability must be received and recorded with Registry of Deeds.**
- 4. Proposed structure to situated a minimum of 85' from the northern property line to allow for 50' Right-of-Way and 35' front building setback.**
- 5. 50' Right-of-Way must be established along northerly property line for possible future expansion of road.**

Seconded by Mr. Burgess.

Vote:

Mr. Coppolo: Yes.

Mr. Burgess: Yes.

Mrs. Evans: Yes.

Mrs. Prudhomme-O'Brien: No. Do not feel that it is in the spirit and intent of the ordinance as there was already a variance granted in 1981 to build a residence on the property.

Mr. Perkins: Yes.

The application was Granted by a vote of 4-1-0. Anyone aggrieved by a decision of the Board has 20 days to file a request for a rehearing. After that the recourse would be to appeal to Superior Court.

Other Business

Mr. Perkins said that he had received a letter of resignation from Mr. Carnavale. Mr. Perkins also wanted to Thank Mr. Carnavale for his support while a Board member and appreciate his service to the community while he was on the Board and that he was

welcome to reapply to the Board once he got his personal life in order and resided back in the community.

Mr. Perkins said that he would like also to welcome Katherine Prudhomme-O'Brien as recently being appointed as an Alternate Member to the Board. And also congratulate Mrs. Evans on being appointed as a Full Member to the Board.

Approval of Minutes

Mr. Coppolo called a point of order and said that he did not feel the minutes of June 19, 2014 could be approved as he was not present that evening.

Mrs. Evans said that she also was not present.

Mr. Perkins said that they could abstain from approval of the minutes of June 19, 2014 and thought it would be of best interest to table approval of the minutes to the next available meeting in August when additional Board members that were present could be available to vote on them.

Adjourn

Mr. Burgess motioned to adjourn.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mrs. Prudhomme-O'Brien, Mr. Coppolo, Mrs. Evans, Mr. Burgess, Mr. Perkins

Adjourn at 8:15 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes August 21, 2014

Mr. Burgess motioned to approve the minutes of July 17, 2014, as amended.

Seconded by Mrs. Evans.

Vote: Unanimous

Mrs. Prudhomme-O'Brien, Mr. Coppolo, Mrs. Evans, Mrs. Hampton, Mr. Burgess, Mr. Perkins