

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
May 7, 2015

Members Present

Lynn Perkins, Chairman
Allan Virr, Vice Chairman
Heather Evans, Secretary
Teresa Hampton

Members Absent

Donald Burgess

Alternates Present

Stephen Coppolo
Dana Nauerz

Alternates Absent

Michael Demeo
Daniel Taylor
Katherine Prudhomme-O'Brien

Mr. Perkins called the meeting to order at 7:00 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.

It was noted for the record that Ms. Nauerz would sit for the following case.

15-108 Stephen R. Ward

Variance to the terms of Article VI, Section 165-45-B.1.d.ii of the Town of Derry Zoning Ordinance to allow the construction of a deck less than 15 feet from the side lot line. 4 Pinehurst Avenue, Parcel ID 24019, Zoned MHDR

Stephen Ward, owner, read his request for the record.

Board Questions

Mr. Virr asked if the existing setback on the left side was 12' 4" and the intent was to maintain that setback for the proposed deck. Mr. Ward said yes as there is an existing cement porch on the side and will be continuing with the same setback just heading towards the rear of the property.

Mr. Coppolo said that the proposal appears to be straight forward.

Mr. Perkins asked how old the existing structure was. Mr. Ward said that the home was approximately 100 years old.

Code Enforcement

Mr. Mackey said that the applicant is requesting a variance to allow the construction of a 10' x 16' deck 12'4" from the side lot line where a 15' side setback is required. The property is located in the Medium High Density Residential (MHDR) zoning district. If approved, a building permit must be obtained and the required inspections conducted by this office. There are pictures in the file for review by the Board.

Mr. Virr said that in reviewing the pictures it appears that a lot of work has been done to the home. Mr. Ward said that he was trying.

Favor

No one spoke in favor of the application.

Opposed

No one spoke in opposition of the application.

Mrs. Hampton motioned to go into deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

Ms. Nauerz, Mrs. Evans, Mrs. Hampton, Mr. Virr, Mr. Perkins

Deliberative Session

Mr. Perkins said that a condition of being subject to obtaining all Town permits and inspections and also a stipulation that the new deck not proceed any closer than the existing structure to the boundary be made.

Mrs. Hampton motioned to come out of deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

Ms. Nauerz, Mrs. Evans, Mrs. Hampton, Mr. Virr, Mr. Perkins

Mrs. Evans motioned on case #15-108, Stephen R. Ward to Grant a Variance to the terms of Article VI, Section 165-45-B.1.d.ii of the Town of Derry Zoning Ordinance to allow the construction of a deck less than 15 feet from the side lot line. 4

Pinehurst Avenue, Parcel ID 24019, Zoned MHDR as presented with the following conditions:

- 1. Subject to obtaining Town permit and inspections.**
- 2. Deck not to proceed any closer than the existing entry way to the boundary line.**

Seconded by Mr. Virr.

Vote:

Mrs. Hampton: Yes.
Mrs. Evans: Yes.
Ms. Nauerz: Yes.
Mr. Virr: Yes.
Mr. Perkins: 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

Mr. Ward asked if it was okay to proceed with submit his request for a building permit. Mr. Mackey said that he could submit his permit request but to keep in mind that the variance approval is subject to appeal but can proceed at own risk.

Mr. Virr said that the previous case did not interfere with the May 7, 2015 Zoning changes that occurred with Sections 165-45 & 165-48 but it does appear to affect the following case and reviewed the section for the Board.

Mr. Mackey said that there are two issues for the next case being that the request is to build on a non-Town approved road and lot size requirements.

It was noted for the record that Mr. Coppolo would sit for the following case.

**15-109 Promised Land Survey
 Owners: Craig & Linda Boulanger**

Variance to the terms of Article III, Section 165-9 and Article VI, Section 165-48.B.1 of the Town of Derry Zoning Ordinance and relief under NH RSA 674:41 (ii), to allow the subdivision of the property to create two undersized lots on a private road at 10 Gill Road, Parcel ID 07026, Zoned LDR.

Neal McCarthy, Promised Land Survey, said that he was representing the applicant Craig Boulanger who was also present. Mr. McCarthy said that he would read for the record his application.

Mr. Virr said that he was concerned with the way the application was written as it appeared not to be the same format which needs to address the 5 criteria.

Mr. Perkins said that it appeared the proposed document addressed the 5 criteria and allowed Mr. McCarthy to continue.

Mr. McCarthy read his application and summary for the record.

Board Questions

Mr. Virr asked if it was his understanding that one lot was to become two consisting of one lot being 1.63 acres and the other the remainder of the property. Mr. McCarthy said that the lots would be 1.44 and 1.4 acres each.

Mrs. Evans said that she was curious with regards to the 2005 variance and why was the property not subdivided at that time. Mr. Boulanger said that they did not have plans at the time of subdividing but since that time things have occurred that are forcing the matter.

Mr. McCarthy said that the previous variance should be in the file.

Mr. Virr said that the minimum lot requirement for the area is 3 acres per lot and the proposed request is significantly short. He asked if Gill Road had an outlet. Mr. Boulanger said that the road was a dead end but they do have a turnaround for fire.

Mr. Virr said that the previous application for lot requested turn around. Mr. Virr asked what the width of Gill Road was. Mr. Boulanger said that the average width of the road was 25'.

Mr. Perkins asked if the area where the dumpster was currently placed if that was considered the turn around. Mr. Boulanger said that it was and that he recently placed the dumpster there and it will be relocated to another area.

Mrs. Hampton asked if it was the understanding that they were seeking to remain in Derry. Mr. Boulanger said yes.

There was some discussion with regard to the width of Gill Road.

Mr. Coppolo said that Mr. Gill is abutter hence the road being Gill Road. He said that his concern is that the area currently has 2 houses now and questions on well and soil capability on impact to abutting properties. Mr. McCarthy said that the plan shows the well can be in a position that the radius would not infringe on abutting properties. The property is a 4k area which is standard for septic and will support request. He said that the soil types area reasonable and that there was no poor drainage and that the categories will perk out fine.

Mr. Coppolo asked if the Town requested survey for well and septic location. Mr. Mackey said that the Town will require more information if the proposal is approved.

Code Enforcement

Mr. Mackey said that the applicant and owners are requesting approval to subdivide the property, which is located on a private road, into 2 lots. The proposal would result in the creation of a 2 acre lot for the existing dwelling and an additional lot containing 1.44 acres. The property is located in the Low Density Residential (LDR) zoning district which require 3 acre lot minimum. A variance was granted in 2005 for the construction of the existing dwelling on a private road. As the property is located on a private road, a variance is also required under Article III, Section 165-9 of the zoning ordinance which mandates that each lot shall face on an approved public street. In addition, the provisions of NH RSA 674:41 (ii) also apply and a waiver of municipal liability and responsibility must be recorded with the deed for the newly created lot prior to issuance of a building permit. If granted, the dwelling constructed would be serviced by a private well and septic system. If approved, Planning Board subdivision approval will be required. There are pictures of the existing home and property in the file for review by the Board.

Mr. Perkins said that the map that was submitted at the time of application listed an abutter as being Michael Gage and it is actually a Michael Gill who was duly notified and that he was present in the office when a call was placed to the applicant and at that time due to the timing a new plan with proper abutter listing was not requested but applicant was informed that the change needed to be made.

Favor

Bob Hanson said he was a physician and Head of Radiology has lived in Derry for 35 years was speaking for Dr. Saka who is also present who currently owned parcel 07023 said that they were in favor of the proposal. He said that he and Dr. Saka both have a practice in Salem, NH. He said that they are currently speaking of developing 07023 and have spoken with Mr. Boulanger and we support his decision to subdivide the lot. He said that they are not here to discuss 07023 but will possibly be here in the future.

Mr. Coppolo asked if there was currently a residence on 07023. Mr. Perkins said no.

Opposed

Leslie Gill, owner 0718, said that she currently owns the private way and it was suggested that they would be taking an existing non-conforming area and making it more non-conforming. Section 165-9 requires being on a public way and that Gill Road is a private way. Section 165-48 requires 3 acres per lot and that the proposal is not 3 acres each and that she disagrees with the promises of not changing the residential character as feel it will change as the right side of the property is currently all trees and that the area is currently access to Big Island Pond and that the left side is pasture field behind where the proposed property is located which is currently Cheryl O'Connell which is land locked and it will impact her property. Ms. Gill said that the road is very narrow and at times need to pull over in order to have another vehicle to pass. She said that she was also

concerned with maintenance to the road would increase if more vehicles were allowed as there currently is many ruts now and that the area needs to be graded. She asked that the Board deny the request.

Mrs. Hampton asked if she was the owner of lot 0718. Ms. Gill said yes and that her address was 173 Warner Hill Road as the property also fronts on Warner Hill.

Mr. Coppolo asked that 018 parcel owns the road. Ms. Gill said correct that she has a letter from the Town states own the road.

Mrs. Evans asked if the Right-of-Way was with the deed. Ms. Gill said original deed in 70's creates Right-of-Way and that still needs legal research.

There was some discussion with regards to easements and who has access.

Michael Gill, 8 Gill Road, said that he had spoken with Ginny in Code Enforcement about not proper listing of owner on map and said that he objects and not duly notified as stated as there is not a new map showing correct abutter.

Mr. Perkins said that due to timing of the matter being noted and that he was present during conversation with applicant that he was comfortable with not having a new map printed and noted that proper mailing had occurred as certified mail was sent to Michael Gill of 8 Gill Road and not Michael Gage.

Mr. Gill said that testimony was made that they were seeking to downsize due to economics. He said that he was concerned with well capacity as he had to drill down 550' feet to get water and if proposal is allowed may not get as good of an output as currently have. He said that Mr. Boulanger knew in 2005 when he purchased the property what the zoning was and that he had supported him to obtain the current variance at that time. Since then he now operates a business from his residence and if allowed to subdivide he was concerned with where the dumpster would be located and did not want to have it outside his bedroom window. He presented the Board with pictures of the property with regard to his dwelling. Mr. Gill said that they had all signed a paper and had it recorded at the registry with regard to road maintenance. He said that there was currently a contract between Mr. Boulanger and himself and that if allowed to subdivide it becomes null and void. He said that rules should be upheld to 3 acres per lot as do not have a Town approved street. He said that 2 lots would cost 20+ for school etc. and that feel that there is an economic down fall if allowed.

Mr. Virr asked if recorded copies were required as common practice. Mr. Mackey said yes but does not have 3rd party to maintenance.

Mr. Virr asked if deed recording was what speaking about. Mr. Gill said no.

Mr. Mackey explained what Mr. Gill was speaking about was a separate document between parties involved for maintenance of the road.

There was some discussion with regard to regular maintenance of road who owns road.

Joanne Gill, 8 Gill Road, said that she was opposed to the request due to traffic on Gill Road as many times have to pull over to allow people to pass and also people utilized the road for recreation to hunt and fish also State of NH utilize the area to travel through to view the wetlands. She said that she was also concerned with water pressure for her well if allowed. Mrs. Gill said that she was sorry for Mr. Boulanger's financial hardship but did not feel that financial difficulty warrants hardship to subdivide. She said that she also did not wish to see the dumpster outside her bedroom window.

Rebuttal

Mr. Virr said that before begin with rebuttal that he said that with the matter of the application and taking the questions and putting into a narrative form but feel only glazed over the points.

Mr. Perkins said that he did not have a problem of elaborating but the application is to keep it simple and then summarize after addressing criteria. He said that other ZBA Boards treat differently but this Board does require that the criteria be addressed first then we will allow you to summarize. Mr. McCarthy said that he thought it would be easier but in the future will address accordingly.

Mr. Boulanger said that he would like to present the Board with some additional pictures Mr. Perkins said that any submission from the applicant needed to be made available to the Board 10 days prior to the meeting and that the only reason that an abutter is allowed to present pictures during the meeting as they do not have the means to what is being presented prior to the meeting.

Mr. Boulanger said that the dumpster would be relocated out of the right-of-way and that he realizes is a poor choice of location and if granted will relocate also so it will not affect the abutter. He said that he spent thirty thousand dollars to build the road in order to build his home and that Mr. Gill did not contribute to the road construction. They currently work together now with upkeep and no issues with road as it is currently dirt. He said that he felt adding another home will not make any differences in aesthetics. He said that he had submitted letters in the file in favor of the proposal and one of which is from Mrs. O'Connell with no opposition.

Mr. Perkins said that he was not concerned with contractual agreement but concerned with maintenance agreement of who maintains the road. Mr. Boulanger said that when he sells his home he will make it a condition as part of the sale.

Mr. Coppolo asked when was Gill Road built up and what were the conditions before. Mr. Boulanger said the road was previously was an unlevel path that in 2005/06 he had treed and bulldozed the area and in 2006 hired American Excavation to build up.

Mr. Coppolo asked how accessed over Dr. Saka & Mr. Gill's property. Mr. Boulanger said that was on grandfathered deed as easement.

Mr. Gill said that it was stated that he stated he would not contribute to the road maintenance and that was not the case. He said that in 1999 he had obtained a letter from the Derry Fire Department supporting that the road was passable by Derry Fire. At that time he was told by the then Chair Ms. Norton that took offense to the fact that I had received a letter from Fire in support of my request to the Zoning Board during his request to obtain a variance to build of which was denied.

Mr. Perkins asked if he helped build the road. Mr. Gill said no and that Mr. Boulanger upgraded the road without obtaining permission from all Leslie Gill who legally owns the road.

Dr. Hannon said that if there was some way to work out that they will work together to resolve the issues with regard to the road.

Mrs. Evans motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

Mr. Coppolo, Mrs. Hampton, Mrs. Evans, Mr. Virr, Mr. Perkins.

Deliberative Session

Mr. Coppolo said that he had asked a lot of questions of road regarding access conditions. There are 2 houses already existing on a bad situation and have concerns with making it worse.

Mr. Virr said that the request must meet the 5 criteria and that he has concern that it is contrary to public interest. The ordinance states 3 acre requirement and proposal is 2 lots with just over an acre each. Also have concern as what if four fire engines had to get down that road in the event of an emergency as he barely had access to turn around let alone add another home to the area. He said that there is a dramatic difference of acreage and concerns with public safety issues as unable to get down Gill Road.

Mr. Perkins said that there were houses already existing on the road.

Mrs. Hampton asked if other homes required cisterns.

Mr. Mackey said that cisterns are required on new subdivisions but the applicant can opt to provide a sprinkler system which consists of a tank and pump in the basement.

Mr. Virr said that the dumpster located in the turnaround is a bad judgement but could also be a fatal mistake and had concerns of who would police the location of the dumpster.

Mrs. Evans said that she has reviewed the 5 criteria and is unable to see the hardship. She said that she is sympathetic to the financial aspect of the applicant but not sure that it meets the criteria for granting the request.

Mr. Virr said that only need to establish one reason now have two areas of not meeting the 5 criteria.

Mrs. Nauerz said that financial hardship is not considered as part of the 5 criteria.

Mr. Coppolo said that he has reviewed the criteria and that a lot of the lots in the area are nowhere near the 3 acre requirement so may be an area of sympathize so maybe meets 1 of the 5 criteria.

Mrs. Evans said that it is a private road and not Town maintained.

Mr. Virr asked when it was recorded as a subdivision.

Mr. Perkins said that shows recording in 2005.

Ms. Nauerz said that minutes reflect no further subdivision.

Mr. Perkins said that protocol broken as Ms. Nauerz is unable to speak in deliberative session.

Mr. Virr said that conditions of being subject to Planning Board approval and subject to all Town and State permits and inspections and a new waiver of municipal liability be recorded. He said that the property owners needed to get together and revise as existing contract would be void.

Mr. Coppolo said that the existing contract would be void upon subdividing. He said that he wished a condition could be made that all parties had to get along but not in purview of the Board so unable to condition that.

Mr. Perkins said unable to get into contract matters.

Mr. Virr asked if it would be subject to TRC review.

Mr. Perkins said that unable to suggest anything on location of dumpster as not in purview of Board.

Mrs. Evans reviewed the conditions as follows for the Board:

1. Subject to obtaining State & Town permits and inspections.
2. Subject to Planning Board approval.
3. Subject to new waiver of municipal liability to be recorded with the Rockingham County Registry of Deeds.
4. Subject to correcting typo on map and submitting new plan.

Mr. Perkins said that he was in the Code Enforcement Office and witnessed the discussion with regard to the typo on the map and due to timing did not request a new plan submission but made note that a new plan would show correction at time of submission to Planning Board so do not feel that needs to be a condition.

Mr. Virr said that he felt that the Fire Department would have issues with access if in the event of an emergency.

Mrs. Hampton motioned to come out of deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

Mr. Coppolo, Mrs. Hampton, Mrs. Evans, Mr. Virr, Mr. Perkins

Mrs. Evans motioned on case #15-109, Promised Land Survey, Owners: Craig & Linda Boulanger to Grant a variance to the terms of Article III, Section 165-9 and Article VI, Section 165-48.B.1 of the Town of Derry Zoning Ordinance and relief under NH RSA 674:41 (ii), to allow the subdivision of the property to create two undersized lots on a private road at 10 Gill Road, Parcel ID 07026, Zoned LDR as presented with the following conditions:

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

Seconded by Mr. Virr.

Vote:

- Mr. Virr:** No. Primary objection is that it is not in the public interest as road condition is not Town standards and could have safety issues.
- Mrs. Evans:** No. Sympathetic to economic hardship but feel is contrary to the public interest. Agree also with Mr. Virr.
- Mrs. Hampton:** Yes.
- Mr. Coppolo:** Yes.
- Mr. Perkins:** No. Feel spirit and intent of ordinance is not observed as area is not suited for subdivision due to road situation.

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

Mrs. Hampton said that she had concerns with page 7 of the minutes as she recalled that the applicant had questions with concern of parking his truck while in process of appeal and thought it was not allowed.

Mr. Virr said that it was referred to Code Enforcement to check with Legal Counsel not Town Council.

Minutes were reflected to not change.

Mrs. Hampton motioned to accept the minutes of April 2, 2015 as amended.

Seconded by Mrs. Evans.

Vote: Unanimous.

Ms. Nauerz, Mr. Coppolo, Mrs. Hampton, Mr. Burgess, Mrs. Evans, Mr. Virr, Mr. Perkins

Other Business

Mr. Virr asked if any cases came in for the May 21st meeting.

Mr. Mackey said a case did come into the office but the applicant requested to be placed on the June 4, 2015 meeting.

Mr. Perkins said that he wished to take up the summer schedule for the Board early. He said typically that typically the Board only meets once during the months of July and August. He suggested that the Board meet on July 16th and August 20th which are the third Thursday's of each month and would entertain a motion.

Mr. Mackey said that the only item that would need to be taken into consideration is if a re-hearing request is submitted that the Board will need to meet within the 30 day appeal period.

Mrs. Hampton motioned to meet on the following dates for the Boards summer schedule:

July 16, 2015
August 20, 2015

Seconded by Mrs. Evans.

Vote: Unanimous

Ms. Nauerz, Mr. Coppolo, Mrs. Evans, Mrs. Hampton, Mr. Virr, Mr. Perkins

Adjourn

Mrs. Evans motioned to adjourn.

Seconded by Mr. Virr.

Vote: Unanimous.

Ms. Nauerz, Mr. Coppolo, Mrs. Hampton, Mr. Burgess, Mrs. Evans, Mr. Virr, Mr. Perkins

Adjourn at 9:00 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes June 4, 2015

Mr. Virr motioned to accept the minutes of May 7, 2015 as amended.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mrs. Prudhomme-O'Brian, Mr. Coppolo, Mrs. Hampton, Mrs. Evans, Mr. Virr, Mr. Perkins