

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
February 19, 2009

Members Present

Allan Virr, Chairman
Albert Dimmock
Christopher Lunetta

Alternates Present

David Thompson
Michael Fairbanks
Ernest Osborn
James Webb

Staff Present

Robert Mackey, Code Enforcement Director

Members Absent

Cecile Cormier

Alternates Absent

Dana Theokas

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.

It was noted for the record that Mr. Osborn and Mr. Thompson would sit for the following case.

09-103 Kevin Cooper

Variance to terms of Article VI, Section 165-451A, 165-451B-1b, to raze existing single family structure and replace with duplex on lot with minimal frontage at 1 South Railroad Ave., tax map 27077. MHDR2 DISTRICT

Todd Connors, Sublime Civil Consultants representing applicant, said that the parcel was located at 1 South Railroad Ave and consisted of 2.5 acres located in the MHDRII district. He said that the applicant seeks relief from two counts one being the Simplex test and the other the Boccia test. He explained that the proposal was to demolish the existing building on the lot and construct a duplex on the parcel. Mr. Connors reviewed the application for the Board with regard to Article 165-45A. He said that the property previously had frontage but the legal right-of-way was discontinued by statue and as such no longer allows owners to have full property frontage as the abutting properties have inherited now to the center and as such does not allow continuance of the road. He explained the maps depicting the single family and 2-family homes in the area. Mr. Connors then reviewed the criteria for Article 165-45B-1b for the Board.

Mr. Lunetta asked how much frontage did the property actually have. Mr. Connors said that the property currently has 26 feet.

Mr. Thompson asked if the driveway would encroach onto the abutting property. Mr. Connors said that the driveway would be constructed to the road and barrel perpendicular along the shared right-of-way.

There was some discussion with regard to the use to the right-of-way.

Favor

There were no abutters present in favor of the application.

Code Enforcement

Mr. Mackey said that the applicant's request is to allow the construction of a two-family dwelling in the MHDR-II zoning district on a lot with inadequate frontage. The property is located in the neighborhood across from Parkland Hospital and is made up of primarily single family homes along with a few two-family dwellings. Currently, a paved access approximately 15' wide exists along South Railroad Ave. to service the property and the house located across the street. Some of the lot is located in the 100 year flood zone. As both use and area type variances are being requested, both Simplex and Boccia hardship criteria must be applied. The MHDR-II Zoning District is limited to single family dwellings. Therefore, a use variance is required and the Simplex hardship criteria must be applied:

- i. The zoning restriction as applied interferes with the land owner's reasonable use of the property, considering the unique setting of the property in its environment.
- ii. No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property.
- iii. The variance would not injure the public or private rights of others.

As a dimensional type variance is also required for insufficient frontage (100 feet required with Town Water & Town Sewer), the Boccia hardship test will apply:

- i. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.
- ii. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.

Mr. Mackey said that there were also pictures in the file for the Board's review.

Mr. Virr asked if the public utilities went through the easement. Mr. Connors said that the property currently has a sewage interceptor located behind the property along Beaver Brook that they would be connecting to.

Mr. Virr asked how the zoning change came about. Mr. Mackey said that he believed that the change came by petition from the neighborhood to the Planning Board which then went to Town Council for approval.

Opposed

Lee O'Connor, 23 Norton Street, said that he was surprised to be here tonight because 3 years ago there were three meetings in which the Planning Board actually conducted a site walk of the property and agreed that multi-family was not appropriate for the area. He said that Norton Street is a very narrow road with no sidewalks and if allow a multi-family dwelling it would be in contrary to what the zone was designed for. He stated that there were several vacant lots available in the area and if allow this one what is there to stop the next one from occurring.

Frederick Blaisdell, 2 South Railroad Ave, said that 3 years ago the applicant wanted to build a 24 unit building on the property which was not allowed. When petition went around he said that he gave up his right to build another home on his property. He said that the water pressure is poor in the area as the pipes are very small and as such does not feel a duplex is the right building for the property.

Nolan Watson, 29 Norton Street, said that he was one of the people involved in helping to get the zoning change in the area. He said that he believes that if this use is allowed that the applicant will continue to build additional duplexes on the lot. Feels that it is unfortunate that the applicant purchased the lot but should only be allowed to build a single family structure on the property as that is what the intention of the zoning was intended for. He also stated that he has poor water pressure due to the size of the pipes in the area and if a duplex was constructed that he felt it would only make the water pressure worse. Mr. Watson said that a duplex is not the same as a house and if one would to choose of buying a house over a duplex that the person would buy a house. He said that he did not feel that this should be an issue as it would lower property values in the area and that a single family home would be in keeping with the neighborhood.

John Debonis, 27 Norton Street, said that he does not believe that the applicant's intentions are genuine as they have stated that the lot is an oversized lot for the area and that he would continue to build more than one duplex on the property. He said that he purchased a single family home in the area because he liked the view of a back yard. There is also a bike trail near the property which is very busy during the summer months.

Mr. Connors said that most of the abutters concerns were that they were going to build more than one duplex as this is not the intentions of the applicant. If we wanted to build a multi-family then would have submitted application for such units. He said that there were currently 19 lots in the area that were approved permitted duplexes in the area. Mr. Connors said that this was a unique situation as the applicant does not have the ability to obtain more frontage as this is what the lot comes with. As for the concern with reference to poor water pressure he said that he was told by Mr. Carrier that there is ample water supply for the area but there are small pipes. If it is determined that they can not obtain sufficient water pressure to the duplex they would drill their own well on the property. With regard to the owner's own hardship due to purchase is not so as the petition did not occur until after the applicant had purchased the property.

Mr. Thompson asked if when the property was originally purchased if they knew the easement was gone. Mr. Connors said no that it was not determined until the applicant had submitted plans to the Planning Board.

Mr. Lunetta asked how many other duplexes have been constructed since the zoning change. Mr. Connors said that he knows of one other vacant lot in the area.

Mr. Mackey said that he believed that there may have been one single family home in the area but nothing else that he was aware of at the moment.

There was some discussion with regard to the rights of building a duplex and the petitioned zoning changes for the area and reasonable use of the property.

Deliberative Session

Mr. Lunetta said that he did not feel that the applicant is inappropriate as was originally proposed for 25 units then 12 and now coming in for a 2 unit. Just because the neighborhood wanted a rezoning it happened and it is now an MHDRII district. Since rezoning no other duplexes have been constructed and do not see any hardship or evidence that it has to happen so feel that it is not zoned for the neighborhood.

Mr. Virr asked if aware that they could build a single family home with an accessory use dwelling in the area also.

Mr. Thompson said that he agreed with Mr. Lunetta and that the applicant could build a nice single family dwelling on the property.

Mr. Osborn said that he did not see any hardship that the applicant has to build a multi-family dwelling.

Mr. Dimmock said that the Board needed also to consider the size of the lot and do not feel that if anyone of the abutters had the lot that they would want to build a single family home either and would want to build a duplex. He said that he felt that there is a hardship and it was the size of the property. If anyone else had the available land that they would want to do the same thing. As the applicant stated the property is also located in the 100 year flood zone so unable to build in that area. The staff report states that the property is unique and that the property meets the Boccia criteria with regard to the hardship test.

Mr. Mackey said that he wished to clarify that the list of criteria is for the Board to determine and that the Code Department did not determine the criteria for the Simplex or Boccia standards.

Mr. Lunetta asked how much actual land was buildable. Mr. Mackey said that just looking at the plan of 2 ½ acres that there was possibly an acre of buildable land available. The zoning requires 10,000 square feet per lot if serviced by Town water and sewer which an acre consists of 43,560 square feet.

Mr. Virr said that there were two issues before the Board and has not heard much input on area variance.

Mr. Lunetta said that he is against building on a lot with only 15' feet of road frontage but there is already a home on the property.

Mr. Dimmock said that the Planning Board is currently reviewing the zoning ordinance and will be under review for changes and the area may again be changed.

Mr. Thompson motioned to Grant case 09-103, Kevin Cooper, Variance to terms of Article VI, Section 165-451A, 165-451B-1b, to raze existing single family structure and replace with duplex on lot with minimal frontage at 1 South Railroad Ave., tax map 27077. MHDR2 DISTRICT as presented with the following conditions:

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

Seconded by Mr. Lunetta.

Vote:

Mr. Dimmock: Yes

Mr. Osborn: Yes.

Mr. Lunetta: No. Do not have issue with road access but feel that Town has voted to keep the neighborhood a single family area for a reason.

Mr. Thompson: Yes.

Mr. Virr: No. Have listened to abutters concerns and that the Planning Board had approved the change in zoning for the MHDR II. Do not have problem with access to property but do not feel a duplex is appropriate use for the lot.

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. Virr said that the Board needed to vote to accept the revised variance application and would entertain a motion.

Mr. Dimmock motioned to accept the revised variance application.

Seconded by Mr. Lunetta.

Vote: Unanimous.

Mr. Dimmock, Mr. Lunetta, Mr. Virr

Approval of Minutes

Mr. Thompson motioned to approve the minutes of December 18, 2008 as amended.

Seconded by Mr. Dimmock.

Vote: Unanimous.

Mr. Fairbanks, Mr. Webb, Mr. Thompson, Mr. Osborn, Mr. Dimmock, Mr. Lunetta, Mr. Virr

Correspondence

16th Annual Spring Planning & Zoning Conference – Saturday, May 2, 2009

Adjourn

Motion to adjourn by Mr. Thompson.

Seconded by Mr. Lunetta.

Vote: Unanimous.

Mr. Fairbanks, Mr. Webb, Mr. Thompson, Mr. Osborn, Mr. Dimmock, Mr. Lunetta, Mr. Virr

Adjourn at 8:31 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes March 5, 2009

Mr. Thompson motioned to approve the minutes of February 19, 2009 as amended.

Seconded by Mr. Osborn.

Vote: Unanimous.

Mr. Fairbanks, Mr. Thompson, Mr. Osborn, Mr. Dimmock, Mr. Lunetta, Mr. Virr