

**TOWN OF DERRY**  
**ZONING BOARD OF ADJUSTMENT MINUTES**  
**February 7, 2008**

**Members Present**

Andrew Myers, Chairman  
Christopher Lunetta  
Albert Dimmock

**Members Absent**

Michael Demeo  
Cecile Cormier

**Alternates Present**

Allan Virr  
Dana (Tripp) Theokas  
Randall Chase

**Alternates Absent**

**Staff Present**

Fred Kelley, Assistant Building Inspector

Mr. Myers called the meeting to order at 7:03 p.m. with the salute to the flag, and notice of fire and handicap exits. He explained meeting procedures and introduced the Board members.

It was noted for the record that Mr. Virr & Ms. Theokas would sit on the following case.

**CASES**

**08-100          Diane Kathryn Robinson**

**Exception as provided in Article VI, Section 165-46B, to operate Preschool program from residence at 45 Berry Road, tax map 02076. MDR DISTRICT**

Diane Robinson, owner, said that she wished to have a preschool program from her home. She said that she wished to have 6 children in each of her proposed 2 sessions. Her first session would be between the hours of 8:30 am – 11:30 am and then the second session would be from 1:00 pm – 4:00 pm, Monday – Friday. She read her application for the Board.

Mr. Myers asked if a sign was being requested. Mrs. Robinson said that she would not be putting up a sign at this point in time but may want to have one later so she wished to be allowed to have a sign.

Mrs. Theokas asked if the children would be inside or outside. Mrs. Robinson said that she would be having outside activities and would be installing a fence on her property. She explained where the fence would be installed for the Board.

Mr. Myers asked how many children was she looking to have. Mrs. Robinson said that she wished to have 6 children in her morning session and 6 in her afternoon session.

Mr. Myers asked if she had started her State approval process. Mrs. Robinson said not at this time as she thought it best to start with her request for an exception first.

There was some discussion with regard to hours of operation.

Mr. Dimmock suggested that she may wish to request to change her hours of operation as to be more flexible. Mrs. Robinson said that she wished to be allowed hours of operation from 8:30 am to 4:00 pm Monday – Friday.

Mr. Myers asked if there was anything else that she wished to add. Mrs. Robinson said that she had 2 letters from her abutters that were unable to make the meeting but were in favor of the preschool. She submitted the letters for the record.

Mr. Lunetta read letters from Bridgett Peschke, 32 Berry Road and Russell & Linda Dagostino, 43 Berry Road in favor of the proposed use.

### **Favor**

Ed Cartwright, 47 Berry Road, said that he had no objection with the preschool being operated from the property. He did have concern with the safety of the children but his concern had been addressed with the applicant said that they would be installing a fence on the property.

### **Code Enforcement**

Mr. Kelley said that the applicant's request is for a special exception to operate a family day care from the above referenced property. As a single provider, the applicant can have up to 6 preschool and 3 after school children. 35 square feet for each child must be provided (inside). If approved, the applicant must have inspections by the Health Department and the Fire Department. Town and State licensing is required. A sign permit is required if the applicant requests a sign. Access to the property consists of a gravel driveway with ample turn around space. There are pictures in the file for the Board's review.

Ms. Theokas asked if 6 children would be a problem for the well. Mr. Kelley said that typically the well is not an issue and he did not recall any problems of water issues in the past.

### **Deliberative Session**

Mr. Virr said that he felt that the applicant had met all of the ten conditions in order to be granted an exception.

Mr. Lunetta asked if the Board could make the fence installation a requirement.

Mr. Kelley said that the State would make the installation of a fence a requirement where there would be any type of playground type area for the children.

Mr. Myers said that the usual conditions would apply but he still has a problem with the use as it is not one of the listed allowed uses in the zoning ordinance.

There was some discussion with regard to allowed uses.

**Mr. Lunetta motioned on case #08-100, Diane Kathryn Robinson to Grant an Exception as provided in Article VI, Section 165-46B, to operate Preschool program from residence at 45 Berry Road, tax map 02076, MDR DISTRICT, as presented with the following conditions:**

- 1. Subject to obtaining all State and Local approvals.**
- 2. Hours limited to Monday – Friday, 8:00 AM – 5:00 PM.**
- 3. One sign not to exceed 3 square feet and not internally illuminated and sign permit must be obtained.**
- 4. Only one non-resident employee allowed.**

**Seconded by Mr. Virr.**

**VOTE:**

**Ms. Theokas: Yes.**

**Mr. Virr: Yes.**

**Mr. Lunetta: Yes.**

**Mr. Dimmock: No. Not listed as one of the allowed uses.**

**Mr. Myers: No. Use is not listed as one of the items listed as an allowed use.**

**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.**

It was noted for the record that Ms. Theokas and Mr. Chase would sit on the following case.

**08-101            Beli-Nari Properties**

**Variance to terms of Article VI, Section 165-34B, Article XIII, Section 165-106, to convert detached garage into two additional living units expanding the pre-existing nonconforming status at 41 W. Broadway, tax map 29136.    OBD DISTRICT**

Paul Furnari & David Belisle, co-owners of the property were present to represent the case. Mr. Belisle said that they were requesting a variance in order to improve the property. He reviewed the application for the Board.

Mr. Myers asked where the hardship would be if the request were to be denied. Mr. Belisle said that if the property were utilized as OBD there was a hardship for market ability would be difficult as there was no actual street frontage which creates a difficulty in advertising and there is no easy access to get to the garage.

Mr. Lunetta asked if he heard that they were not planning on changing the footprint or height of the existing building. Mr. Belisle said that they were utilizing the same foundation footprint and were planning on adding a second story to the structure but would be keeping within the height restrictions.

Mr. Virr asked if the property would be rented or sold. Mr. Belisle said that the units were planned on being sold.

### **Favor**

Scott Rief, Prudential Verani Realtor, said that he was in favor of the proposal as he has been working with the owners for over a year to market the property which has been very difficult with the zoning restrictions imposed on the property and its unique location. He said that he felt that a condex use would be more suitable for the area as the property currently had a multi-family unit in the front of the property.

### **Code Enforcement**

Mr. Kelley said that the applicant's request is to convert an existing garage into 2 additional living units on a property containing a pre-existing, non-conforming use (6 unit condominium). The property is located in the Office Business District which limits residential use to single family dwellings. Therefore, the proposal is not a permitted use (Section 165-B) and is an expansion of a non-conforming use (Section 165-106A). Currently, there is an existing 6 unit condominium in the front of the property and the garage is located to the rear of the property. There is a gravel access off the existing paved parking area in the front and a gravel parking lot in the area of the garage. A building permit was issued for the garage on November 7, 1984. If approved, Planning Board site review will be required. If approved, all appropriate permits must be obtained and all construction must be in compliance with Fire and Building regulations. There are pictures in the file for the Board's review.

Mr. Myers asked what was currently allowed to be utilized on the property. Mr. Kelley said that OBD allows for businesses and professional type offices. He reviewed the ordinance specifications for the Board.

Mr. Myers said that a single detached use would be allowed but seeking two units if that was where the problem was. Mr. Kelley said yes.

Mr. Virr asked if the 100 year flood plain currently ran through the property. Mr. Kelley said yes and if it was found that the flood plain was closer than it would affect the setbacks for the structure and would need to be reviewed.

Mr. Dimmock asked if the Board could grant a 2 unit structure. Mr. Kelley said yes.

There was some discussion with regard to the flood plain corridor.

Mr. Chase asked if the garage was found to be slab on grade if they could still build. Mr. Kelley said that they could not build on the structure unless there was a frost protected footing.

Mr. Dimmock asked if the request was approved would it be subject to fire codes. Mr. Kelley said yes.

### **Deliberative Session**

Mr. Lunetta said that at first he not originally keen on approving the request but find it difficult to promote a business out back of a condo complex is a hardship issue.

Mr. Dimmock said that he was looking at the use as being not allowed but do feel that there is a valid hardship due to the location of the garage.

Mr. Myers reviewed the hardship and Simplex issues for the Board.

**Mr. Lunetta motioned on case #08-101, Beli-Nari Properties, to Grant a Variance to terms of Article VI, Section 165-34B, Article XIII, Section 165-106, to convert detached garage into two additional living units expanding the pre-existing nonconforming status at 41 W. Broadway, tax map 29136, OBD DISTRICT as presented with the following conditions:**

- 1. Subject to Site Plan Review.**
- 2. Subject to all State & Local requirements.**

**Seconded by Mr. Dimmock.**

There was some discussion with regard to which zoning section the case should have been presented and then determined that the case was advertised for the correct section.

### **Vote:**

**Mr. Chase: No. Feel that there would be major reconstruction to achieve the proposed project plan. Do not feel that it is in the spirit and intent of the ordinance.**

**Ms. Theokas: No. Believe there are other options for the structure. Not in the spirit and intent of the ordinance.**

Mr. Lunetta: Yes.  
Mr. Dimmock: Yes.  
Mr. Myers: Yes.

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.

### Correspondence

NH Department of Environmental Services Green Yards Program

### APPROVAL OF MINUTES

Ms. Theokas motioned to approve the minutes of December 6, 2007 as amended.

Seconded by Mr. Dimmock

Vote: Unanimous.

Ms. Theokas, Mr. Virr, Mr. Lunetta, Mr. Dimmock, Mr. Myers

### Adjourn

Motion to adjourn by Mr. Lunetta.

Seconded by Ms. Theokas

Adjourn at 8:04 pm

Minutes transcribed by:  
Ginny Rioux  
Recording Clerk

### APPROVAL OF MINUTES March 6, 2008

Mr. Virr motioned to approve the minutes of February 7, 2008 as written.

Seconded by Mr. Dimmock.

Vote: Unanimous.

Mr. Virr, Mr. Dimmock, Mr. Myers