

TOWN OF DERRY  
ZONING BOARD OF ADJUSTMENT MINUTES  
February 21, 2008

**Members Present**

Andrew Myers, Chairman  
Cecile Cormier, Secretary  
Michael Demeo  
Albert Dimmock

**Members Absent**

Christopher Lunetta

**Alternates Present**

Allan Virr

**Alternates Absent**

Dana Theokas

**Staff Present**

Robert Mackey, Code Enforcement Director

Mr. Myers called the meeting to order at 7:01 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 would sit on the following case.

**CASES**

**08-102                      Chris Rives  
                                         Owner: Amy & Mark Mouser**

**Variance to terms of Article VI, Section 165-46C4, to build 5'X20' farmers porch within 25' of the front lot line (35' required) at residence on 11 Pond Rd., tax map 39022. MDR DISTRICT**

Chris Rives, Crossroads Contracting and representing the owners, reviewed the application for the Board.

Mr. Myers asked if the owners were Amy & Mark Mouser as the deed stated the owners were Loryne & Gary Webster. Mr. Rives said that he was contracted by Amy & Mark Mouser and believed they were the owners of the property and did not know why the deed stated someone else.

Mr. Myers asked if there was another deed. Mr. Mackey said that he would check the tax card for the Board to see if they were the current owners of record.

There was some discussion as to ownership. Mr. Mackey verified that Amy & Mark Mouser were the current owners of record in 1999 and that there was a Harbinson in 1994.

Mr. Myers asked Mr. Rives to continue presenting his case for the Board and what portion of the farmer's porch would be 25' from the lot line. Mr. Rives said that the farmer's porch would be 25' and that the stairs would be 22' from the lot line.

Mr. Dimmock asked if there was a 2 stall garage on the property as it appeared to be closer than the proposed porch. Mr. Rives said that he believed that the garage belonged to the neighbor.

Ms. Cormier asked if this would be increasing the non-conformity of the property as it was already closer than the 35' requirement.

There was some discussion with regard to non-conformity.

Mr. Virr asked why the porch was for the front and not the back of the home. Mr. Rives said that the proposal was for a farmer's porch in the front to enhance the look of the home and to allow some usable space in the front of the property.

Mr. Dimmock asked where the hardship was if the home was already non-conforming. Mr. Rives said that he believed that the hardship was the home as it was built within code at the time of construction but where it was placed on the lot limits the owners to what they can and can't do with it.

Mr. Virr asked when was the home constructed and if zoning was in place during that time. Mr. Mackey said that the records indicate that the home was constructed in 1966 and there was zoning.

Mr. Dimmock asked when building records started showing. Mr. Mackey said that he believed that records started showing in the late 60's or early 70's.

Ms. Cormier asked if there would be a roof. Mr. Rives said yes that the proposal was for a complete farmer's porch.

Mr. Virr asked if there were other homes on Pond Road with porches. Mr. Rives said yes and submitted pictures for the Board to review.

### **Favor**

Dave Baxter, 2 Shepard Road, said that he was in favor of the proposed farmer's porch and had no objection.

Mr. Myers asked where Shepard Road was located. Mr. Baxter said it was a small side road off Pond Road.

## Code Enforcement

Mr. Mackey said the applicant's request is for a variance to allow the construction of a 5' x 20' farmer's porch within 25' of the front lot line (35' required). The current structure was constructed in 1961 – No record of permits exist. The building sits 30' from the front property line. As this request concerns a dimensional requirement, the Boccia hardship test will apply. There are pictures in the file for the Board's review.

Ms. Cormier said that the structure was built in 1961 and believe that it was currently non-conforming structure if this proposal would also be an expansion of use. Mr. Mackey said that the Board could make that assumption.

**Ms. Cormier motioned to amend the application to add Section 165.68b allowing the expansion on a non-conforming use.**

**Seconded by Mr. Demeo.**

### Vote:

**Mr. Dimmock: Abstain.**

**Mr. Virr: No.**

**Ms. Cormier: Yes.**

**Mr. Demeo: Yes.**

**Mr. Myers: No.**

**Motion failed for lack of approval.**

Mr. Rives asked what the reason for denial was. Mr. Myers said that the motion was to add a subsection to the notice and that the application was still under consideration.

Mr. Virr explained that there was a section in the ordinance that was not on the legal notice and that was the reason for reluctance to add to the decision.

## Deliberative Session

Mr. Virr said that he did not feel that anyone would know that the farmers porch would be located to close too the lot line and that the assessing office would also be in favor of the proposal.

Mr. Myers said that he agreed with Mr. Mackey that this does fall under the Boccia test and reviewed the hardship test for the Board.

**Mr. Virr motioned on case #08-102, Chris Rives, Owner: Amy & Mark Mouser to Grant a Variance to terms of Article VI, Section 165-46C4, to build 5'X20' farmers porch within 25' of the front lot line (35' required) at residence on 11 Pond Rd., tax map 39022. MDR DISTRICT**

1. To be constructed within 2 years or variance shall be void.
2. Subject to obtaining all permits and approvals.

Seconded by Mr. Demeo.

VOTE:

Mr. Dimmock: Yes.  
Ms. Cormier: Yes.  
Mr. Demo: Yes.  
Mr. Virr: Yes.  
Mr. Myers: 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.

CASE #08-103      Fiber Tower Corp.  
                                         Owner: SBA Properties, Inc.

**Special Exception to terms of Article III, Section 165-28B, 2b, to add 3 Dish Antennas & Equipment Cabinet to existing Telecommunications tower at 78A Warner Hill Rd., tax map 06089A. LMDR DISTRICT**

Jennifer Lugi, representative for Fiber Tower Corp., said that they were seeking to install a 4' x' 4' cabinet on the existing cabinet base location and co-locate 3 dish antennas onto the existing tower. She read the application for the Board.

Mr. Virr asked if Fiber Tower was a carrier. Ms. Lugi said that they were not a carrier service but enhance existing services.

Mr. Virr asked how service could be enhanced without adding additional dishes. Ms. Lugi said that the existing service would be unable to be upgraded without adding the additional dishes. She said that this was part of a three step process with Salem being first then Windham and then Derry.

Mr. Virr asked if the other Town's have approvals. Ms. Lugi said that Salem and Windham were approved and now seeking approval from Derry.

Mr. Dimmock said that in viewing the pictures that there were various types of antennas some have single and double rod antennas and some dish types. If the Board said no additional dishes as opposed to a stick antenna would that be acceptable. Ms. Lugi said no as the stick type antennas are whips and do not believe that they can carry the network end. She said that the dishes are required to be installed to relay singles from site to site.

Mr. Virr asked if she was a representative of the Tower owner. Ms. Lugi said no that SBA Properties owned the tower that Fiber Tower would be a lease.

Mr. Dimmock said that he was concerned with the request as there was not an engineer present to explain the need to add additional antennas to the tower vs whips. Mr. Myers said that there had been testimony that they could not put out the type of single that they were seeking with whip antennas.

There was some discussion with regard to whip antennas vs. dish antennas and co-location.

### **Opposed**

Alice Boucher said that she was the owner of the property that the tower was located on and was opposed to the request. She said that the only way that they find out that SBA wished to do anything to the tower was until they get noticed by certified mail to come to a meeting. She said that she does not believe that anything else needs to be added to the tower.

Mr. Virr asked how long was the lease agreement. Mrs. Boucher said that it was for 99 years.

Mrs. Boucher said that SBA did not respect the 10' right-of-way easement as when ever they need to be at the tower that they parked all over her property and had no regard for her property.

Mr. Myers asked if she had ever contacted the owners of SBA with regard to this matter. Mrs. Boucher said that she has never been able to reach anyone that could answer any of their questions. She said that she owned a hot air balloon and are unable to even launch from their property due to the tower.

Mr. Demeo said who was the original owner of the tower. Mrs. Boucher said that it originally was CB Electronics but sold to SBA.

Mr. Myers asked if there was any interference in frequency inside the home with television or radio. Mrs. Boucher said that no but without cable their television had no reception and did not remember the last time that they ever listened to a radio. She said that she did have concerns for health as there has been cases of cancer with the previous owners.

### **Code Enforcement**

Mr. Mackey said that the applicant's request is to co-locate 3 dish antennas on to the legal, pre-existing, non-conforming tower and install a small equipment cabinet in the existing enclosure at the base of the tower. Section 165-28B, 2b allows for this co-location by special exception provided that the Board finds that the following three criteria are met:

- i. There is no increase in the existing height of the tower.
- ii. The proposed expansion of any ground support facility and buildings shall be otherwise meet all setback requirements and any buffer restrictions applicable to the lot.

- iii. The Board finds that the proposed expansion to the wireless communication facility is necessary and essential to providing the applicant's telecommunication service.

Mr. Mackey said that the original tower was constructed in 1986 and is 190' tall. The antennas are proposed to be installed at a height of 150'. If approved, a building permit is required and the applicant must provide structural data indicating that the tower can support the additional antennas. There are pictures in the file for the Board's review.

Mr. Dimmock asked if approved would the applicant also require Planning Board approval. Mr. Mackey said no as they were only seeking to add an antenna and not a new tower.

Ms. Lugi said that she would like to apologize to the owner of the property as she thought that they had been approached with regard to the matter. She said that she will notify SBA of the landlord's concerns.

Mr. Virr asked if she could give the property owners a card with her name and number in order to contact her. Ms. Lugi said yes.

Mr. Virr said that the ordinance speaks to 3 requirements, one which was necessity and asked why the dish antennas were necessary. Ms. Lugi said that the dish antennas were necessary for the business network frequency.

Mr. Virr asked if there had been any engineering studies performed for alternate sites. Ms. Lugi that engineering studies had been performed and they were also looking into another site to co-locate in Derry as well. She said that the site was chosen due to the height and co-location availability.

There was some discussion with regard to continuing the meeting. The Board felt that an Engineer should also be present so as to offer explanation for the need of expansion and co-location necessity.

**Mr. Virr motioned on case #08-103, Fiber Tower Corp., Owner: SBA Properties, Inc. to Continue the Special Exception request to terms of Article III, Section 165-28B, 2b, to add 3 Dish Antennas & Equipment Cabinet to existing Telecommunications tower at 78A Warner Hill Rd., tax map 06089A. LMDR DISTRICT to March 6, 2008 meeting so an engineer could be present.**

Seconded by Ms. Cormier.

Vote:

Mr. Virr: Yes.  
Mr. Demeo: No. Believe applicant has met the criteria.  
Mr. Dimmock: Yes.  
Ms. Cormier: Yes.  
Mr. Myers: No. Agree with Mr. Demeo that the applicant has met the criteria.

**The application was continued 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.**

**Adjourn**

Motion to adjourn by Mr. Virr.

Seconded by Mr. Demeo.

Adjourn at 7:56 pm

Minutes transcribed by:  
Ginny Rioux  
Recording Clerk

**APPROVAL OF MINUTES March 6, 2008**

Mr. Virr motioned to approve the minutes of February 21, 2008 as written.

Seconded by Mr. Dimmock.

Vote: Unanimous.  
Mr. Virr, Ms. Cormier, Mr. Dimmock, Mr. Myers