

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
May 15, 2008

Members Present

Allan Virr, Chairman
Christopher Lunetta, Vice Chairman
Albert Dimmock
George Chaloux

Alternates Present

Michael Fairbanks
David Thompson
Ernest Osborn
James Webb

Staff Present

Fred Kelley, Assistant Building Inspector

Members Absent

Cecile Cormier

Alternates Absent

Dana Theokas

Mr. Virr 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.

CASES

It was noted for the record that Mr. Dimmock would step down and that Mr. Fairbanks and Mr. Webb would sit on the following case.

CASE #08-111 Rock A. Rottler

Exception as provided in Article VI, Section 165-47A, to operate Educational Consulting Service Business from residence at 119 Hampstead Road, tax map 09016-001. LMDR DISTRICT

Rock Rottler, owner, reviewed his application for the Board.

Mr. Lunetta asked if there would be opposition if the Board stipulated the number of vehicles that could come to the home. Mr. Rottler said that a stipulation would be fine and that if there was anyone coming to the home it would be by appointment only. He said that his business is primarily done through his computer.

Mr. Lunetta asked what times per day would he be accepting clients. Mr. Rottler said that his business is event based rather than a day basis and it did not take much time to review with

the client and most of his business is performed via the internet or a phone conversation. He said possibly 6 clients per day at 1 ½ hour increments and not more than 6 vehicles at a time.

Mr. Virr asked if there would be 1 client at a time. Mr. Rottler said yes.

Mr. Fairbanks said that it appeared from the picture that there was a turn-around, was it part of the property and if there was room for cars past the turn-around. Mr. Rottler said yes as they have installed an area for turning around as a safety measure, was jointly owned with his neighbor and there may be more than 1 vehicle at a time but not his intent as most of his business is done via website and his post office box.

Mr. Chaloux asked what was the purpose his sign request. Mr. Rottler said that he felt that a sign was very important as it would inform and educate parents with college bound students that he was there. He said that he hoped that this type of business would hopefully grow by word of mouth.

There was some discussion with regard to size and placement of the sign.

Code Enforcement

Mr. Kelley said the applicant's request for an exception to allow an educational consulting service from his residence. The business has been represented as primarily internet based but there may be some clients that come to the residence by appointment only. A sign is being requested and cannot exceed 3 square feet. No non-residential employees are being requested. There are pictures of the property in the file for the Board's review.

There were no abutters present.

Mr. Virr asked what hours of operation were being requested. Mr. Rottler said that he would like the hours of 6:00 pm – 8:30 pm Monday – Friday and Saturday 9:00 am – 5:00 pm as he has a full time job during the week and did not get home from work until about that time during the week and he would have no business hours on Sunday. He said that his business is done via the internet so he could virtually be working at any time and from any where.

Deliberative Session

Mr. Lunetta said that he did not believe that the applicant meets the criteria of the listed businesses. He said that he did not have a problem with an internet business but does have a problem with the hours of operation as 6:00 am until 8:30 pm during the week could generate a lot of traffic in the area.

Mr. Virr said that the hours requested were 6:00 pm – 8:30 pm which would only allow possibly 2 clients.

Mr. Chaloux said that he did not feel that the times were unreasonable as it would not generate more than 2 clients during the week nights.

Mr. Lunetta said that he had missed the pm request.

Mr. Fairbanks said that he felt that the business was more of a consultant type business and if the business does take off and he wanted to change his hours of operation what would be the process.

Mr. Virr said that if the hours of operation wished to be changed the applicant would need to reapply to the Zoning Board. He reviewed the conditions for the Board.

Mr. Webb asked if the driveway could fit 4 vehicles. Mr. Kelley said yes.

Mr. Lunetta motioned case #08-111, Rock A. Rottler to Grant an Exception as provided in Article VI, Section 165-47A, to operate Educational Consulting Service Business from residence at 119 Hampstead Road, tax map 09016-001, LMDR DISTRICT with the following conditions:

- 1. No more than 4 vehicles at any one time.**
- 2. Hours of operation Monday – Friday 6PM - 9:30PM, Saturday 9AM – 5PM with no Sunday Hours.**

Seconded by Mr. Chaloux.

Vote:

Mr. Webb: Yes.

Mr. Fairbanks: Yes.

Mr. Lunetta: No. Do not believe trade is in line with the listed uses that are allowed in the Zoning Ordinance.

Mr. Chaloux: Yes.

Mr. Virr: Yes.

The application was granted by a vote of 4-1-0. 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 Mr. Chaloux would step down and that Mr. Osborn and Mr. Thompson would sit on the following case.

**Case #08-112 Pennichuck East Utility, Inc
Owner: Robert & Christine Morissett**

Variance to terms of Article VI, Section 165-46, to allow construction and maintenance of Water Booster Station in residential district at 1 Cabot Drive, tax map 05038. MDR DISTRICT.

John Pendleton, Attorney in Nashua, said that he was representing Pennichuck East Utility, Inc. and that Mr. John Boisvert, Chief Engineer for Pennichuck was also present to provide information relating to their request.

Attorney Pendleton reviewed the criteria for the Board. He said that this booster station was the most efficient way to bring dependable water to the homes located in the area and also will help maintain the public health and safety concerns in the area.

Mr. Osborn asked what type of structure was proposed to be built at the site. Attorney Pendleton said that a 1 story structure was proposed.

Mr. Osborn asked if it was beneficial to the area and not just Pennichuck. Attorney Pendleton said yes.

Code Enforcement

Mr. Kelley said that the applicant's request is for a use variance to allow the construction of a water booster station to be constructed on an easement at 1 Cabot Drive which is located in the Medium Density Residential Zoning District. A legal opinion was obtained from the Town's Attorney indicating that a variance is required for this construction as it is not listed as a permitted use in the Medium Density Residential Zoning District (see attached). The location of the building, as proposed, complies with the appropriate setbacks for the district. As a use variance is being requested, the Simplex hardship test will apply. If approved, Planning Board review and approval will be required. There are pictures in the file for the Board's review.

Mr. Kelley said that Mr. Thomas Carrier from the Department of Public Works was present in the event that the Board required additional information.

Favor

Mary Gillis, Winter Hill Road, said that she had some concerns as to where the structure would be located and how would it not diminish property values in the area. Mr. Osborn showed her a plan of the proposed location.

Mark Connors, 5 Cabot Drive, said that he was concerned with regard to the easement if the owner would have to give written permission. He also asked if any other uses were proposed such as a 2 story structure instead of a 1 story would they have to come back. If this is approved would like to see the existing one removed.

Mr. Virr said that the variance would allow the structure but the easement would be by the owner and any other uses other than what is requested in the application would need to come back to the Board for approval.

Thomas Carrier, Deputy Public Works Director, said that the Derry Town Council held a meeting on May 6, 2008 and approved the proposed use. He said that this booster station will increase fire protection in the area as ample water supply will be provided. It will also

increase revenues and is consistent with the Derry Master Plan. He said that when they were first approached by Pennichuck the ordinance and statues were reviewed and it was determined that a variance was required. As Mr. Pendleton and Mr. Kelley have stated this application will require Planning Board approval.

Mr. Lunetta asked if there was currently a pressure concern in the area. Mr. Carrier said that the Maple Hills Development area currently has drilled wells. The public water system will be sized much larger and the new pump system will be sized accordingly to provide adequate water pressure to the area.

Mr. Lunetta asked if this would adversely affect water down pressure down the road. Mr. Carrier said no that this would provide the possibly of allowing for future extension of the water system down to Route 28.

There was some discussion with regard to pipe size and requirements.

Mr. Dimmock stated that the reason that Pennichuck wants to install the booster station and tie into Derry's water system is due to their current filtration system and inadequate pressure on their current system. He said that he felt that this use would be an asset as will produce revenues to the Town and fire hydrants would have adequate water pressure recovery in the event of a serious fire. Mr. Dimmock said that it was cheaper for Pennichuck to build the pump station verses a new treatment plant and felt that it was a win win situation for the Town.

Mr. Virr asked if there were water quality standards and if these standards would be provided to the customers. Mr. Carrier said that there was an annual water consumer report that was sent out to the customers.

Mr. Virr asked who monitored the water quality. Mr. Carrier said that the water quality was monitored by the Public Utilities Commission.

Mr. Osborn said that he had concerns about abandoning the existing system and so were the pipes cut and tank filled in. Mr. Kelley said that it was possible to have the tank caved in and filled.

Mr. Chaloux asked if there was a plan showing what the proposal would look like. Attorney Pendleton said that traditionally the booster stations were designed to fit the neighborhood and usually white with black shutters and believe that the Planning Board will be the ones reviewing the overall design of the structure.

Mr. Boisvert presented the Board with pictures of the proposed design along with other pictures of similar booster stations that have been constructed.

There was some discussion with regard to the size of the proposed tank and the abandoning of the existing tank of how it would be monitored.

Mr. Webb asked how many pumps would be located in the station and what was the decibel level. Mr. Boisvert said that there would be 3 pumps located inside the station of which only

2 would be active at all times and the third one would be used as a back up in case one of the pumps failed and there would also be a generator located inside that would run only during routine maintenance times or in the event of a power outage. The noise level would be that as of a normal conversation and the generator would only run during a power outage and that would be muffled inside and could not be heard outside the structure.

Deliberative Session

Mr. Lunetta said that the application appears to meet the Simplex test requirements and that it will benefit the Town.

Mr. Osborn said that he felt that the application meets the requirements.

Mr. Virr said that he felt that it was a win win situation as the customers would be provided with better water and that the Town would benefit financially.

Mr. Dimmock said that the Town Council and Fire Chief have both agreed that there is a need for the use as also stated by Mr. Carrier. He said that he feels the use will cover a safety issue for the area and will help keep the cost down for people currently on the system.

Mr. Dimmock motioned on case #08-112, Pennichuck East Utility, Inc., Owner: Robert & Christine Morissett to Grant a Variance to terms of Article VI, Section 165-46, to allow construction and maintenance of Water Booster Station in residential district at 1 Cabot Drive, tax map 05038, MDR DISTRICT as presented with the following conditions:

1. Subject to Planning Board Approval

Seconded by Mr. Lunetta.

Vote:

Mr. Thompson:	Yes.
Mr. Lunetta:	Yes.
Mr. Osborn:	Yes.
Mr. Dimmock:	Yes.
Mr. Virr:	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.

Correspondence

2008 Local Government Center Officials workshops Part I - June 7, 2008 in Concord and Part II - June 14, 2008 in Concord.

Derry Fire Fighters Ball invitation June 13, 2008 to be held at Brookstone Park.

Approval of Minutes

Mr. Dimmock motioned to approve the minutes of April 3, 2008 as amended.

Seconded by Mr. Lunetta.

Vote: Unanimous.

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

Other Business

The Board voted to hold their Summer Meeting Schedule as follows:

Thursday - July 17, 2008
Thursday – August 7, 2008

Mr. Dimmock motioned to except the summer schedule.

Seconded by Mr. Fairbanks.

Vote: Unanimous.

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

Adjourn

Motion to adjourn by Mr. Chaloux.

Seconded by Mr. Dimmock

Vote: Unanimous.

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

Adjourn at 8:42 pm

Minutes transcribed by:

Ginny Rioux
Recording Clerk

Approval of Minutes June 5, 2008

Mr. Dimmock motioned to approve the minutes of May 15, 2008 as amended.

Seconded by Mr. Chaloux.

Vote: Unanimous.

Mr. Webb, Mr. Chaloux, Mr. Lunetta, Mr. Dimmock, Mr. Virr.