

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
August 7, 2008

Members Present

Allan Virr, Chairman
Cecile Cormier, Secretary
Albert Dimmock

Members Absent

George Chaloux
Christopher Lunetta

Alternates Present

David Thompson
Ernest Osborn
James Webb

Alternates Absent

Dana Theokas
Michael Fairbanks

Staff Present

Robert Mackey, Code Enforcement Director

Mr. Virr called the meeting to order at 7:02 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. Thompson and Mr. Webb would sit for the following case.

OTHER BUSINESS

08-117 Guy Toupin

Special Exception to the terms of Article VI, Section 165-33H3, to allow operation of Auto Repair Business from residence at 20 Railroad Ave., tax map 30123. CBD DISTRICT

Mr. Virr asked the applicant where his application addressing the points needed that needed to be met in order to be granted a special exception.

Mr. Mackey said that there was not a standard application process and that the applicant needed to address to the points located in the Central Business District section of the ordinance 165-33H3 items a-g.

Guy Toupin, owner, said that he wished to start a general auto repair business from his residence. He said that according to the zoning ordinance automotive repair is a listed use and that he is employing himself. Mr. Toupin said that he did not feel that the garage would not impact the area as Railroad Ave and South Ave also have repair shops located on them. He said that as such it would not impair the integrity or be out of character of the

neighborhood. Mr. Toupin said that he hopes to make the repair shop successful and the money that he makes will be kept within the community as he intends to shop in the area. He said that he wishes to have the hours of 9:00 am – 5:00 pm Monday – Friday and 8:00 am – 1:00 pm every other Saturday. He would be performing routine brake repair, tire rotation and changes, and struts.

Mr. Virr asked if he intended to change the character of the building also for the garage use. Mr. Toupin said that he intended to live in the house and utilize just the garage for his business.

Mr. Webb said that he saw a permit in the file to add a 4' foot addition and if this would be used for a lift. Mr. Toupin said that he does not have a permit for an addition or installing a lift that he would be utilizing a scissor type lift for his work.

Mr. Virr asked if he would be the only employee. Mr. Toupin said yes.

Ms. Cormier asked if he intended to hire additional employees. Mr. Toupin said that he may hire a bookkeeper later on if his business becomes successful.

Mr. Virr asked how extensive of work would be performed from the garage. Mr. Toupin said that he would be performing routine maintenance consisting of brakes, struts, etc.

Mr. Virr asked if he would be doing restoration work. Mr. Toupin said that he would not be performing any bodywork.

Mr. Webb asked where would the oil and antifreeze be stored. Mr. Toupin said that storage would be in the garage and that Clean Harbor would come in and pump out on a regular basis.

Mr. Osborn asked if there was heat in the garage. Mr. Toupin said that there was an existing woodstove located in the garage that he intended on utilizing for heat.

Ms. Cormier asked if he had more than one customer's vehicle to be worked on where would his personal vehicle be stored. Mr. Toupin said that his driveway was large enough for 2 cars in the garage and for 2 cars in the driveway.

Mr. Virr asked if there was public parking adjacent to the property. Mr. Toupin said that there was a Town parking lot located on Wall Street.

Mr. Thompson said that it was stated that there would be no body work preformed on the property but the pictures show a vehicle with no door. Mr. Toupin said that the vehicle in question was his own personal vehicle and he was just swapping out a door.

Mr. Virr asked if a sign was allowed in this district. Mr. Mackey said that a sign was allowed and the Code Enforcement Office could go by the sign regulations or that the Board could stipulate a size limit.

Mr. Thompson asked if there was a permit required for storage of oil and antifreeze. Mr. Mackey said that there was not a permit required from the Town but there may possibly be one from the State.

There was some discussion with regard to hours of operation and possible future employees.

There was no one present in favor of the application.

Code Enforcement

Mr. Mackey said the applicant's request is for a special exception to allow the operation of an automotive repair business in the Central Business Zoning District. He said that under Article VI, Section 165-33H1, certain uses are allowed by Special Exception, including auto repair and restoration. Current use of the property is listed as a single family dwelling constructed in 1950. In order to be granted a special exception the Board must find that all conditions as specified under 165-33H3 a through g have been met. If approved, Planning Board site review is required. There are pictures in the file for the Board's review.

Mr. Virr asked if the applicant would need to reapply if the applicant wished to expand to have additional employees. Mr. Mackey said that if the Board voted as presented the applicant would be limited to just himself as the only employee. However, the Board can make a condition to the number of employees so as he would not be limited to just himself otherwise he would need to reapply in order to have additional employees.

Mr. Dimmock said that he believed that it would be of benefit to the applicant to request 2 employees.

There was some discussion with regard to the number of employees to be allowed.

No abutters were present.

Mr. Dimmock said that when the Board grants the application that the request be granted with the hours of operation be 8:00 am – 5:00 pm Monday – Saturday as the applicant stated every other weekend and if the business expands he would need to reapply to the Board for changes. He also said that there be no more than 2 other employees besides himself to allow for future expansion.

Deliberative Session

Mr. Thompson said that he felt that the applicant met the criteria except for the number of employees as the code states will provide employment. He said that he did not feel that the Board should set restriction to the number of employees.

Ms. Cormier said that she felt that a restriction be made that all repairs be performed inside the garage. She said that the applicant should be able to determine the number of employees that he hires.

Mr. Dimmock said that he felt that the applicant be limited to 2 employees as there the garage is only 2 bays and if more than 2 employees he would be performing work in the street. He said that he used to operate a garage and know what type of work gets done and work does routinely get performed outside. He feels that a stipulation be made that all work be performed inside the garage.

Mr. Virr reviewed the conditions for the Board.

Mr. Thompson motioned on case #08-117, Guy Toupin, to Grant a Special Exception to the terms of Article VI, Section 165-33H3, to allow operation of Auto Repair Business from residence at 20 Railroad Ave., tax map 30123, CBD DISTRICT as presented with the following conditions:

1. Sign permit obtained from Code Enforcement Office.
2. No more than four (4) customers at one time.
3. No on-street parking.
4. All work to be performed inside the garage.
5. Planning Board site review is required.

Seconded by Mr. Dimmock.

Vote:

Mr. Webb: Yes.
Mr. Thompson: Yes.
Ms. Cormier: 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.

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

08-118 Christine Guevara

To modify Exception as provided in Article VI, Section 165-46B, to operate Day Care Business, by increasing number of children from 6 (six) to 12 (twelve) at residence on 6 Bedard Ave., tax map 05035-001, MDR DISTRICT

Christine Guevara, owner, said that she wished to expand her existing day care to provide care for more children as she currently has a waiting list.

Mr. Virr asked if she had previously appeared in October 2006. Ms. Guevara said yes.

Ms. Cormier said that the applicant was seeking to increase the number of children and that the previous approval stated no increase to number of employees.

Mr. Mackey said that the applicant is seeking modifications to change the existing exception along with its current conditions.

Mr. Virr reviewed the previous conditions for the Board.

Ms. Cormier said that the Fire Department has sign off on the approval for the State license and have provided a letter stating that there is not enough room for 12 children.

Mr. Mackey said that he has not discussed the letter with the applicant but have spoken to the Fire Department. He said that the applicant was seeking to upgrade to a Group Day Care so the Fire Department performed a routine inspection and that with a day care there must be provided a 35 square foot area per child. The area was measured and based on calculations there appears that there was not ample square footage for 12 children. The applicant was aware that she needs to have the Health and Fire Department satisfied before she can achieve her State licensing.

There was some discussion with regard to the Fire Departments letter.

Mr. Thompson asked since the business has been in operation had there been any parking or falling issues. Ms. Guevara said no and that she has two letters of support of her proposed expansion.

Mr. Mackey said that any information that the Board reviews needs to be obtained for the record.

Ms. Cormier read letters in favor of the applicant from Watt's Auto Salvage, R. Crete and Cheryl & James Bouchard.

Mr. Webb asked if seeking to increase to 12 children or 12 plus 5. Ms. Guevara said that she was only seeking to have 12 children.

Mr. Virr asked if there was an assistant plus a helper that was employed full time. Ms. Guevara said that there would be 1 full time and 1 part time employee.

Ms. Cormier asked if there would be 12 or 17 children. Mr. Mackey said that the Group Day Care allows for 12 plus 5 after school children so would allow up to 17 children.

Mr. Dimmock said that would only be allowed if have the allowed required area per child.

Ms. Cormier said that only requesting 12 children. Ms. Guevara said that was correct.

Mr. Dimmock said that according to the Fire Department she only has room for 6 plus 4 and does not have enough area which is required for 12 children.

Mr. Mackey said that in understanding the Fire and Health Departments need to sign off before the State comes down and issues and type of license. He said that the Fire Department has stated that she currently has enough room for 10 children.

Mr. Thompson asked if there would be a problem if the Board limits the number of children to 10. Ms. Guevara said no.

Ms. Cormier said that if the Board allows 12 children that the State will only issue a license for what is allowed per square footage.

Mr. Dimmock said that he had concerns to the fact that the applicant only had a 4 bedroom septic and that the Health, Code and Fire Department need to sign off. He said that he also feels that the applicant did not have sufficient parking for employees and self with customers dropping off and picking up children.

Mr. Virr asked how long was the driveway. Ms. Guevara said that she did not know the length of the driveway but can fit 9 cars in the driveway. She said that pick up and drop off occurs all the time and have not had any issues.

Ms. Cormier asked if there had been any complaints received. Mr. Mackey said not to his knowledge.

There was some discussion with regards to the number of children that the applicant could have and what the square footage required by the State.

Favor

Roman Higgins, 6 Bedard Ave., said that the 35 square footage requirement did not include the kitchen area. The application states up to 12 children and she does not feel that the Board should restrict the number of children as the State will make that determination. Ms. Higgins said that the driveway was large enough and that the children now are currently dropped off and picked up now at all various hours and have not had any issues with parking.

Mr. Thompson said that the application requires that sufficient parking be provided for personal vehicles and employees plus customer parking and that the issue is that currently there is not enough space to meet the requirements. Feel that the case should be continued so the applicant can get permission from the State and Fire Department and come back for the exact number of children that is allowed.

Mr. Virr said that was a valid point as if the current request was voted down she would need to request a rehearing.

Mr. Virr asked if the applicant would like to continue the hearing until the next meeting so as to have the State and Fire Department get together to give the exact number of children that would be allowed. Ms. Guevara said that the Fire Department was waiting for response from tonight's meeting.

Ms. Guevara requested to continue her case until she could get clarification from the State and Fire Department.

There was some discussion with regard to modification of the request.

Mr. Mackey said that it would have been easier for the Board if the applicant had known. If the Board grants up to 12 children feels that the Board would be covered if it states that the applicant must be in compliance with all State and Fire regulations.

Mr. Thompson said that the applicant stated that she wished to have her case continued.

Mr. Virr said that the applicant has requested to continue and as such will be placed first on the agenda of the September 4, 2008 meeting.

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

08-119 Jason & Linda Doyle

Variance to terms of Variance to terms of Article VI, Section 165-46C4, to build addition for 2-car garage w/master bedroom over, within 11' & 12.6' of the side lot lines (15' required) at residence on 4 Wood Ave., tax map 21024-010. MDR DISTRICT

Jason Doyle, owner, and Josh Bishop from Crossroads Contracting were present.

Mr. Bishop said that the applicant was seeking to construct a 24' x 32' garage which would be 4 feet to close to the side lot line. He read the application for the Board.

Ms. Cormier asked if there was anything to the rear of the deck. Mr. Bishop said that the deck was proposed to be removed in order to extend the dining area and a new deck would be constructed but that it does not require a variance as it would meet the setback requirements.

Mr. Virr said that in reviewing the proposed plans that it would blend in with the neighborhood. He asked if there was a slight step back for the master bedroom. Mr. Bishop said that was correct.

Ms. Cormier asked if the septic was on the other side of the home. Mr. Bishop said that was correct and that the septic was currently located on the other side of the home.

Mr. Virr asked if the existing septic system would need to be upgraded. Mr. Bishop said that there was no increase to the number of bedrooms that the home would still have 3 bedrooms.

Mr. Virr said that he had some concerns with regard to some signage on the property and asked if there would be any issues with neighbors. Mr. Doyle said that there was some past history with the neighbor but do not feel that the proposed addition would be a problem with the neighbor.

No abutters were present in favor of the application.

Code Enforcement

Mr. Mackey said the applicant's request is for a variance to allow the construction of a 24' x 32' attached garage with a master bedroom above within 11' feet of the side property line (15' required). Property is approximately 15,700 square feet and is serviced by municipal water and a private septic system. If the variance is approved, a new, State approved septic system will be required. According to Assessing records the existing home was constructed in 1974. As an area variance is being requested, 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.

There are pictures in the file for the Board's review.

Ms. Cormier asked what was the frontage of the property. Mr. Doyle said his frontage was 139 feet.

Mr. Virr asked if not changing the number of bedrooms why would a new septic design be required. Mr. Mackey said that the State is currently requesting that a new design be done in the event of failure that a new system could be installed.

Mr. Dimmock asked if there was any talk of Town sewer becoming available to the area. Mr. Mackey said not to his knowledge.

No abutters were present in opposition to the application.

Deliberative Session

Ms. Cormier said that she felt that the applicant meets all the criteria necessary to be granted a variance.

Mr. Thompson said he agreed.

Mr. Virr reviewed the conditions for the Board.

Ms. Cormier motioned on case 08-119, Jason & Linda Doyle to Grant a Variance to terms of Variance to terms of Article VI, Section 165-46C4, to build addition for 2-car garage w/master bedroom over, within 11' & 12.6' of the side lot lines (15' required) at residence on 4 Wood Ave., tax map 21024-010, MDR DISTRICT as presented with the following conditions:

- 1. All construction be completed within 2 years or variance is void.**
- 2. Subject to obtaining all State and Town permits and inspections.**

Seconded by Mr. Dimmock.

Vote:

Mr. Dimmock: Yes.
Mr. Osborn: Yes.
Ms. Cormier: Yes.
Mr. Thompson: 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.

Approval of Minutes

Mr. Dimmock motioned to approve the minutes of July 17, 2008 as amended.

Seconded by Mr. Thompson.

Vote: Unanimous.

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

Other Business

21st Annual Municipal Volunteer Awards – August 2008.

Adjourn

Motion to adjourn by Ms. Cormier.

Seconded by Mr. Thompson.

Vote: Unanimous.

Mr. Thompson, Mr. Webb, Mr. Osborn, Mr. Dimmock, Ms. Cormier, Mr. Virr

Adjourn at 8:42 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes September 4, 2008

Mr. Dimmock motioned to approve the minutes of August 7, 2008 as amended.

Seconded by Mr. Thompson.

Vote: Unanimous.

Mr. Thompson, Mr. Webb, Mr. Osborn, Mr. Fairbanks, Mr. Chaloux, Mr. Dimmock, Ms. Cormier, Mr. Virr