

TOWN OF DERRY  
ZONING BOARD OF ADJUSTMENT MINUTES  
December 4, 2008

**Members Present**

Allan Virr, Chairman  
Christopher Lunetta, Vice Chairman  
Cecile Cormier, Secretary  
Albert Dimmock  
George Chaloux

**Members Absent**

**Alternates Present**

David Thompson  
Ernest Osborn  
Michael Fairbanks  
James Webb

**Alternates Absent**

Dana Theokas

**Staff Present**

Robert Mackey, Code Enforcement Director

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.

Mr. Virr informed the public that the Board would be meeting briefly with Town Counsel before proceeding with the regularly scheduled meeting. When the Board members returned, he explained meeting procedures and introduced the Board members.

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

**Property Portfolio Group, LLC**

**Request for Rehearing of Case # 08-124 in Appeal of Administrative Decision of Code Enforcement Officer with regard to enforcement of buffer between 9 & 7 Central St., tax maps 29193 & 29194 CBD DISTRICT**

The Board reviewed the minutes of October 16, 2008 and request for a rehearing supplied by the applicant.

Mr. Virr asked the Board if they were ready to proceed with the discussion of whether to grant the requested rehearing.

Mr. Thompson said that he did not feel that the applicant had submitted any new information that would be needed in order to grant the request of a rehearing.

Mr. Chaloux agreed that he did not feel that there was any new evidence presented. He said that he felt that the allegation in item #4 section C stating that the Board had erred in their decision was not so that he felt that when the Planning Board granted the waiver it took it out of the Zoning Boards hands.

Mr. Fairbanks said that the only area that he felt any concern over was that the applicant's statement indicating that the Board failed to determine within the 30 days of application to the Planning Board and wondered if that was true and other than that he did not see any new evidence presented that had not already been reviewed.

Ms. Cormier said that she had reviewed the applicants original request, which she had noted comments on each statement but did not see where the applicant had shown new evidence and also feels that the Board did not make any error in judgment. She said that the Planning Board had jurisdiction to grant the buffer waiver and not the Zoning Board.

Mr. Virr reviewed the issues and indicated that he did not recall that area being questioned and that it was an allegation. He said that the original motion was for administrative ruling and that the Board upheld Code Enforcement in stating that Mr. Mackey acted in good faith and that the Planning Board does have the right to grant waivers. He said that he did not feel that the Board erred in making their decision and did not see anything in the request that had not been reviewed and no new evidence was presented in order to grant a rehearing request.

Mr. Thompson said that he did not see any new evidence presented that had not already been reviewed. He said that he felt that waiver granted by the Planning Board should not be under discussion as the issue is currently before the courts.

**Mr. Chaloux motioned to Grant Property Portfolio Group, LLC a Request for Rehearing of Case # 08-124 in Appeal of Administrative Decision of Code Enforcement Officer with regard to enforcement of buffer between 9 & 7 Central St., tax maps 29193 & 29194. CBD DISTRICT.**

**Seconded by Ms. Cormier.**

**Vote:**

**Mr. Thompson: No. Do not feel there has been any new evidence presented.**

**Ms. Cormier: No. Applicant has not provided any new evidence. Feel that the Board did not err in their decision.**

**Mr. Chaloux: No. Do not feel there was any new evidence presented in order to be granted a rehearing.**

**Mr. Lunetta: No. Feel there is insufficient evidence presented in order to be granted a rehearing.**

**Mr. Virr: No. Same reasons as stated and that no substantial evidence has been presented that would warrant a rehearing.**

**The application was denied by a vote of 0-5-0. Anyone aggrieved by this decision the recourse would be to appeal to Superior Court.**

**Approval of Minutes**

Ms. Cormier motioned to approve the minutes of October 16, 2008 as amended.

Seconded by Mr. Chaloux.

Vote: Unanimous.

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

### **Adjourn**

Motion to adjourn by Mr. Chaloux.

Seconded by Ms. Cormier

Vote: Unanimous.

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

Adjourn at 8:15 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

### **Approval of Minutes December 18, 2008**

Mr. Dimmock motioned to approve the minutes of December 4, 2008 as amended.

Seconded by Mr. Fairbanks.

Vote: Unanimous.

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