

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
March 5, 2009

Members Present

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

Members Absent

Alternates Present

David Thompson
Michael Fairbanks
Ernest Osborn

Alternates Absent

James Webb

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 in a short recess as the Board's Secretary was currently researching some information pertaining to tonight's case.

It was noted for the record that Mr. Fairbanks would sit for the following case.

09-104.1 Robin Altenbach

Exception as provided in Article VI, Section 165-46B, to operate Family Group Day Care Business from residence at 9 Forest St., tax map 11057-014. MDR DISTRICT

Robin Altenbach, owner, read her application for the Board.

Mr. Virr asked if her request was for a family group daycare and how that it was different. Mrs. Altenbach said a non-exempt day care is up to 3 children and that her request was for 10 children which falls into a group daycare which allows up to 12 but she only has enough square footage for 10 children.

Mr. Lunetta asked if there was any other business in the home. Mrs. Altenbach said that there was no other business in the home.

Mr. Virr asked if she had any previous experience with having a daycare. Mrs. Altenbach said that she was previously employed at Small Steps in Derry that recently closed and was approached by some of the parents to watch their children.

Mr. Dimmock asked if the Board chose not to grant the requested sign if it would be detrimental to her request. Mrs. Altenbach said that it would not hurt her request as the sign would not necessarily be for advertising as she lives on a dead end street.

Ms. Cormier said that the sign was limited to only 3 square feet so she did not feel that it was for advertising purposes.

Mr. Fairbanks asked if she could still fit 9 vehicles with her own and employee vehicles in the driveway. Mrs. Altenbach said that there would be room for about 6 or 7 vehicles besides her own. She said that the parents would not be staying that they would be just dropping off and picking up their children.

Mr. Osborn asked if a fenced area was required. Mrs. Altenbach said yes as it was part of the State requirements.

There was some discussion with regard to the State requirements.

Ms. Cormier reviewed the deed restrictive covenants for the Board.

Mr. Dimmock said that he felt that the Board should get a legal determination before granting the request as the covenant states that a business is not allowed in a residential zone.

Mr. Virr said that he felt that the residence still remains a residence and that was what a special exception was for was to allow relief from zoning requirements.

There was some discussion with regard to the covenants and zoning of the area.

Ms. Cormier said that she felt that it would be a civil matter and the neighbors could appeal the request. She also thought that covenants usually only have a certain life span and that the applicant could possibly have the covenant removed from her deed. She asked Mr. Mackey if other zones allowed special exceptions. Mr. Mackey said that yes that the Town does have multiple zones where it does allow for special exceptions.

Ms. Cormier said that she was inclined to agree with Mr. Dimmock in the fact that the applicant should seek to determine if the covenants was still legal.

Mr. Dimmock said that he feels that legally the Board did not have the right to grant the request with the restrictive covenants on it and would like a legal opinion before acting on such a request.

Favor

There were no abutters present in favor of the application.

Code Enforcement

Mr. Mackey said that the applicant's request the applicant's request is for a special exception to allow the operation of a Family Group Day Care from the residence. Per State regulations, 35 square foot per child must be provided. The applicant has indicated that 360 square feet will be utilized. Therefore, a maximum of 10 children would be permitted. A second provider must be employed for the number of children proposed. A state license is required which will indicate the maximum number of children that the square footage and the Board will allow. A new 4 bedroom septic system design was prepared in 2005 when an accessory apartment was added. If approved, the applicant must meet all applicable Town and State Health and Fire regulations. Mr. Mackey said that a sign permit is required and there were also pictures in the file for the Board's review.

Opposed

There were no abutters present in opposition of the application.

Deliberative Session

Mr. Virr said that he felt that the case had been discussed and if the Board feels that this case should be postponed until the March 19th meeting so they could obtain legal advice he would entertain a motion.

Mr. Dimmock motioned to continue case 09-104, Robin Altenbach, Exception as provided in Article VI, Section 165-46B, to operate Family Group Day Care Business from residence at 9 Forest St., tax map 11057-014, MDR DISTRICT, until March 19, 2009.

Mr. Lunetta said that the item in question was for land use and building type and felt that the use does not interfere with the existing use as a residence.

Seconded by Ms. Cormier.

Vote:

Mr. Fairbanks: Yes.

Ms. Cormier: Yes

Mr. Lunetta: No. Feel that the building and land use in question does not interfere with the property as a residential use.

Mr. Dimmock: Yes

Mr. Virr: No. Believe the nature of the property would not be changed by the fact of granting a special exception and that the home would still be a home after the children go home in the evening.

The application was Continued by a vote of 3-2-0 until the March 19, 2009 meeting.

Approval of Minutes

Mr. Thompson motioned to approve the minutes of February 19, 2009 as amended.

Seconded by Mr. Lunetta.

Vote: Unanimous.

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

Adjourn

Motion to adjourn by Mr. Thompson.

Seconded by Mr. Lunetta.

Vote: Unanimous.

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

Adjourn at 8:31 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes March 19, 2009

Ms. Cormier motioned to approve the minutes of March 5, 2009 as amended.

Seconded by Mr. Thompson.

Vote: Unanimous.

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