

TOWN OF DERRY  
ZONING BOARD OF ADJUSTMENT MINUTES  
October 1, 2009

**Members Present**

Allan Virr, Chairman  
David Thompson, Vice Chairman  
Cecile Cormier, Secretary  
Albert Dimmock  
James Webb

**Members Absent**

**Alternates Present**

Ernest Osborn  
Michael Fairbanks

**Alternates Absent**

John DeBonis

**Staff Present**

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.

**09-117          Andrew Hall**

**Special Exception as provided in Article VI, Section 165-4.A.1, to operate wholesale auto business from residence on 26 Damren Road, tax map 10067.    LDR DISTRICT**

Andrew Hall, applicant, read his application for the Board. He said that there will be no vehicles stored on the property and no repairs will be performed on the vehicles at the property. Mr. Hall summarized his letter of explanation for the Board.

Mr. Fairbanks asked if there will be 1-3 vehicles on the property. Mr. Hall said no that there will only be one on occasion and it would be a high end vehicle that he would be utilizing personally all other vehicles would go directly to auction.

Mr. Hall said that the proposed use would not utilize more than eight percent of the living area and that he was seeking an auto wholesale license only and did not deal directly with customers so there will be no sales conducted from the property.

Ms. Cormier said that the State requires that a sign of some sort be displayed on the property. Mr. Hall said that he had previously spoken to Mr. Mackey and the dealer desk and that no sign will be required.

Mr. Virr suggested that the Staff Report be read into the record.

Ms. Cormier read the following staff report for the Board as written by Mr. Mackey:

The applicant is seeking to obtain a State Wholesaler's license which requires approval of the Code Enforcement Office and a Special Exception for a home business from the Zoning Board of Adjustment. Typically, these types of requests have been approved provided they do not include the display of vehicles for sale on the property. If approved, we request that the Board make this a condition. The deed to the property has a general provision which states that it "is subject to any easements, restrictions and right-of-ways of record". An on-line search of Registry records has shown that there are no restrictions, covenants, etc. attached to the deed. There are pictures in the file for the Board's review.

Mr. Thompson asked what the trailers located on the property were for. Mr. Hall said that they were for their personal snowmobiles.

Mr. Webb asked if the automobiles purchased were running vehicles and if repairs would be performed on them at the property. Mr. Hall said that no repairs will be performed on the property and will be dealing with higher end priced vehicles.

Mr. Webb asked if there would be flatbed trucks delivering vehicles to the property. Mr. Hall said no that he may bring home one vehicle that he would be driving personally but there would be no flatbed trucks delivering vehicles to the home.

Mr. Thompson asked if there would be any objection to stipulating that there be no unregistered vehicles stored on the property. Mr. Hall said that there will be only one vehicle with dealer plates on it located on the property no unregistered vehicles associated with the business would be stored.

Mr. Virr said that he had spoken to Mr. Mackey and that any property may have one unregistered vehicle on the property at any given time.

Mr. Hall said that he was utilizing the address to obtain the State license and would have a file cabinet for paperwork and a desk and computer.

Mr. Dimmock said that according to item #1 claiming residence and if that he actually resided there. Mr. Hall said yes he lived there.

### **Favor**

No abutters were present.

## **Opposed**

William McCarthy, 45 Damren Road, said that he was concerned that if the request was granted that it was opening the gate to other businesses being operated in the area.

Mr. Virr said that an exception is for the applicant only and not for the property. He said that if other applicants wished to seek to operate a business from their home they would need to make the proper application showing their proposal and then be granted an exception by the Board in the same manner.

Mr. McCarthy asked if this would change the zoning in the area. Mr. Virr said no.

Mr. Dimmock stated that anyone can get obtain an exception to operate a business from their home if they meet the required criteria. They would also have to come before the Board and show their reasons and explain their desires. The Board will set conditions however, not every case is granted as they need to meet the proper criteria.

Sandra McCarthy, 27 Damren Road, asked if the request was granted and that there were more vehicles on the property than allowed what would happen.

Mr. Virr said that that matter would then become a Code Enforcement matter and a complaint would need to be generated to that office so the department could perform a follow up inspection to enforce the conditions of the Board.

Ms. McCarthy said that the neighborhood was quiet and did not wish to have the area turned into a race way with more vehicles coming down the road to purchase vehicles. Said she was concerned with her property values being depreciated.

Mr. Virr said that they were valid concerns and that there will be no sales from the property or a sign indicating a business is being operated from the property.

Ms. McCarthy asked if she would call the Code Enforcement office if there was more than one unregistered vehicle on the property. Mr. Virr said yes.

Ms. Cormier motioned for the Board to go into deliberative session.

## **Deliberative Session**

Mr. Virr said that he felt that the request was simple. He said that hours of operation were not discussed but were written in the applicants request so motion should include the requested hours of operation.

Ms. Cormier said that the applicant will be mostly performing computer work from the residence and other than having one vehicle with a dealer plate you would not know there was a business from the residence.

Mr. Dimmock said that the request should be allowed with one or two dealers allowed to come to the property. He said that the vehicle that the applicant will be driving will have a dealer plate on it so it is a registered vehicle and he should be allowed to have another dealer come to the home to purchase the vehicle.

Mr. Virr said that the applicant stated no one would be coming to the home to purchase vehicles but he needs to use the address in order to obtain dealer plates. He said that the applicant has requested an office only and will be performing internet use only.

Ms. Cormier said that there was no way to police the matter.

Mr. Dimmock said that the applicant should be allowed one customer to stop by and asked if he could ask the applicant a question even though they were in deliberative session.

Mr. Virr said that the applicant could be addressed.

Mr. Dimmock asked the applicant if it would be an inconvenience if the request stipulated no customers or sales from the home. Mr. Hall said that he was correct that he does have friends that are also dealers but there would be no sales or customers coming to the home.

Mr. Thompson said that the applicant said that he would be purchasing vehicles that would go straight to auction and that there would be no sales from the property.

**Mr. Thompson motioned on case #09-117, Andrew Hall to Grant a Special Exception as provided in Article VI, Section 165-4.A.1, to operate wholesale auto business from residence on 26 Damren Road, tax map 10067. LDR DISTRICT as presented with the following conditions:**

- 1. Hours of operation Monday – Friday 12:00 pm – 6:00 pm.**
- 2. No more than 1 unregistered vehicle on premises.**
- 3. No vehicles displayed for sale on the premises.**
- 4. No non-resident employees.**
- 5. No sign permitted.**

**Seconded by Ms. Cormier.**

**Vote:**

<b>Mr. Webb:</b>	<b>Yes. Believe the applicant will not be in contrary with the neighborhood.</b>
<b>Ms. Cormier:</b>	<b>Yes. Believe the applicant meets the criteria for an exception.</b>
<b>Mr. Thompson:</b>	<b>Yes. Believe it meets the criteria.</b>
<b>Mr. Dimmock:</b>	<b>Yes: For the same reason as stated by Mr. Thompson.</b>
<b>Mr. Virr:</b>	<b>Yes. For the same reasons as stated.</b>

**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.**

**Other Business**

Senate bill 147-FN - passed which defines unnecessary hardship – effective January 2010.

SNHPC – 2009 Law Lecture Series October 14, 21, 28 at the Derry Municipal Center.

**Adjourn**

Motion to adjourn by Ms. Cormier

Seconded by Mr. Thompson

Vote: Unanimous.

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

Adjourn at 7:35 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

**APPROVAL OF MINUTES November 19, 2009**

Ms. Cormier motioned to Approve the minutes of October 1, 2009 as amended.

Seconded by Mr. DeBonis

Vote: Unanimous.

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