

**TOWN OF DERRY**  
**ZONING BOARD OF ADJUSTMENT MINUTES**  
**March 4, 2010**

**Members Present**

Allan Virr, Chairman  
David Thompson, Vice Chairman  
Albert Dimmock  
James Webb

**Members Absent**

Cecile Cormier

**Alternates Present**

Michael Fairbanks  
Ernest Osborn  
John DeBonis  
Stephen Popp

**Alternates Absent**

**Staff Present**

Robert Mackey, Code Enforcement Director

Mr. Virr called the meeting to order at 7:07 p.m. with the salute to the flag, and notice of fire and handicap exits.

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

**10-103          Nadev Properties, LLC**

**Variance request to the terms of Article VI, Section 165-45A, and Article XIII, Section 165-106A, to add a Laundromat area to the existing convenience store at 14 North Main Street, Parcel ID 37038, MHDR DISTRICT.**

Kamran Shah, 17 Buckthorn Street, owner, said that he had recently purchased the convenience store and seeking to add a small laundry mat area inside the existing store as some customers have asked if we could add some washing machines and a few dryers to make it convenient for them as either they do not have access to one in their apartment or have to travel to the Shah's plaza or other locations to do their laundry. He read his application for the Board.

## **Code Enforcement**

Mr. Mackey said that the applicant's request is to add a Laundromat area to the existing convenience store at 14 North Main Street. This request involves the addition of a Laundromat use to the existing convenience store/deli that currently operates at the property. The Convenience store/deli was approved by a Special Exception granted by the Board in July 2007 pursuant to Article XIII, Section 165-108C of the Zoning Ordinance. As this current request involves adding an additional commercial use to this residentially zoned property, it was determined that a variance would be required. The history of this property which is zoned Medium High Density residential, is that it was a pre-existing, non-conforming variety store/deli for many years. Several years ago, a Special Exception was granted to convert the store to a full service restaurant. Subsequently, another Special Exception was granted in 2007 to change to its current use. As a variance is being requested, the five criteria necessary for a variance must be reviewed by the Board. If approved by the Board, Planning Department review will be required. There are pictures in the file for the Boards review.

Mr. Virr asked how could a variance be requested under this particular case where the deli/store was operating under a special exception and if the deli/store operation were to be abandoned would the laundry mat then still be allowed. Mr. Mackey said that only seeking to convert a small section of the store so the variance would only be subject to what is approved tonight and believe that they would have to come back to change the rest of the building into a laundry mat if the deli/store would be abandoned.

Mr. Dimmock asked how long has the applicant owned the store. Mr. Shah said that they purchased 3 months ago.

Mr. Dimmock said that they were not the original owners from the previous request. Mr. Mackey said that was correct it was a previous owner.

Mr. Fairbanks asked if the covenants had been reviewed. Mr. Mackey said that he had not reviewed them.

Mr. Virr said that most warranty deeds stipulate the same statement. Mr. Fairbanks said that he said that if this request was still under a special exception that most of D2 did not apply.

Mr. Webb asked if there would be a separate entrance and what would the hours be. Mr. Shah said that it would be the same entrance and same hours as the store. They are looking at a coin operated setup with some drop off services and unsure of how many people will utilize the service but hoping that people will do their laundry and have a sandwich at the same time.

Mr. Webb said that a partition may have to be put up where food is being served. Mr. Shah said that they would be installing a partition wall.

Mr. Virr asked if the proposed area was only 630 square feet. Mr. Shah said that was correct.

Mr. Thompson asked if there were any regulations for dryer/lint control where there would be food preparation if a separate entrance would be required. Mr. Mackey said that that would be something reviewed by the Health & Code Enforcement departments.

Mr. Fairbanks asked if where there was food preparation if the health department would oversee the proposal. Mr. Mackey said yes and as far as dryer installation the Fire, Health and Code Enforcement Offices would be involved.

Mr. Virr asked if permits would be required from the fire department. Mr. Mackey said yes for the gas pipe installation.

### **Favor**

Ali Shah, brother of the applicant, said that he works at the store on the weekends and that the store is struggling to survive. He said that they were trying to seek different avenues in order to make the store work and this idea was brought before them by some of the customers that have come into the store as they have had an issue with their current laundry facilities in their building. Mr. Shah said that they were hoping to bring more business to the store in order to survive. Feels that it would be good for the neighborhood and the business also.

Mr. Virr asked if they have spoken to other building tenants. Mr. Shah said that they have talked to some of their customers with a small survey and that they are thrilled with the idea of having the convenience of shopping or having a sandwich while doing their laundry in the same facility.

Kamran Shah said that the food service side of the business is struggling to compete with a lot of pizza and sub shops in the Town. He said that the food area is not the primary fortay and may seek to minimize the area just to a small sub shop and more of a convenience section. He said it is a trial and error process as he is an engineer by profession so he has a lot of ideas for the store and this request is a very reasonable one that seems to fit into what they are seeking to do in order to help their business grow.

Mr. Webb asked if partitions are added would there be a requirement for additional exits be put on the building. Mr. Mackey said that they may be required to submit some plans into the office that will need to be reviewed and a lot of different variables would be involved and that the Planning Board speaks to parking requirements.

John O'Connor, 13 Arrowhead, said that he recommends that the Board put an approval based on that Public Health Department review the site. He said that typically on areas like this here there is typically if there is a full blown partition one would need a door closure and a different ventilation system that would put that area in a negative pressure system. He said that he feels that adding a laundry mat in an area where there is food preparation etc will create a negative pressure area which will spread micro organisms into the air and where there is food pressure on the other side it would allow for transfer of and washing clothes in an area where food is prepared and served.

Mr. Virr said that motions are made subject to obtaining all Town and State inspections and permits.

Mr. Dimmock said that he agreed with Mr. O'Connor that there are other people that are involved but the Board needs to decide if the applicant meets the five criteria and that the Board needs to review the criteria conditions and also a condition be made that it be subject to all Town and State permits and inspections.

### **Opposed**

No abutters were present.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Dimmock.

Vote: Unanimous.

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

### **Deliberative Session**

Mr. Osborn said that he feels for the applicant in his stating that the business is struggling with financial matters but did not feel that the request meets the criteria needed in order to be granted a variance.

Mr. Virr said that he was unsure if a financial issue is meeting the five criteria that need to be met in order to be granted a variance. If the laundry mat does not work what will be next.

Mr. Thompson said that the only concern for the Board is if it meets the criteria and if approved would like to see a stipulation that states that Planning Board approval be required and that they meet all Town, State and Health regulations and inspections and if they fail to meet any of those requirements that the variance shall be void.

Mr. Virr said that he felt that would be redundant as the motion is always subject to Planning Board approval.

Mr. Thompson said that the Planning Board felt that the Board was putting the responsibility on them when we refer the applicant to the Planning Board for approval and just not trying to confuse the Planning Board.

Mr. Virr said that he did not believe that hardship has been shown and did not feel that a financial hardship was what was needed in order for a variance to be granted.

Mr. Webb said that he agreed that the owners just purchased the property and that they do have a financial hardship as with any new business they need to promote their business to help it improve as starting a business there is always a struggle in the beginning.

Mr. Osborn said that he did not feel that a financial hardship is part of the criteria that is considered a hardship for a variance to be granted.

**Mr. Webb motioned on case #10-103, Nadev Properties, LLC, to Grant a Variance request to the terms of Article VI, Section 165-45A, and Article XIII, Section 165-106A, to add a Laundromat area to the existing convenience store at 14 North Main Street, Parcel ID 37038, MHDR DISTRICT, as presented with the following conditions:**

- 1. Subject to Planning Board approval or variance is void.**
- 2. Subject to obtaining all State & Town permits and inspections.**

**Seconded by Mr. Dimmock.**

**Vote:**

**Mr. Thompson: No. Does not meet the criteria for hardship.**

**Mr. Osborn: No. Do not see a hardship and believe there are other uses available for the property.**

**Mr. Dimmock: No. For the same reasons as stated by Mr. Thompson and Mr. Osborn.**

**Mr. Webb: No. No hardship has been shown.**

**Mr. Virr: No. Problem with hardship has not been shown and not convinced that it is a reasonable use of the property as purchased as a convenience store/deli.**

**The application was Denied by a vote of 0-5-0. 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**

The minutes for February 4, 2010 were tabled until March 18, 2010 meeting.

**Other Business**

John O'Connor, 13 Arrowhead, Planning Board member, said that they formed a sign committee and in the process of reviewing the existing sign ordinance within the Town Zoning Ordinance in order to revise them so they meet the conditions of all zones within the Town. He was here to invite the Zoning Board to attend some of their workshops and input from the Board.

Mr. Osborn volunteered to be the liaison for the Board.

### **Correspondence**

NH Office of Energy & Planning Spring Conference – May 8, 2010

### **Adjourn**

Motion to adjourn by Mr. Thompson.

Seconded by Mr. Webb.

Vote: Unanimous.

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

Adjourn at 8:00 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

### **APPROVAL OF MINUTES MARCH 18, 2020**

Mr. DeBonis motioned to Approve the minutes of March 4, 2010 as amended.

Seconded by Mr. Webb.

Vote: Unanimous.

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