

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
January 7, 2010

Members Present

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

Alternates Present

Ernest Osborn
Michael Fairbanks
John DeBonis

Staff Present

Robert Mackey

Members Absent

Cecile Cormier

Alternates Absent

Stephen Popp

Mr. Virr called the meeting to order at 7:03 p.m. with the salute to the flag, and notice of fire and handicap exits.

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

09-123 Peter Bangs

Exception as provided in Article VI, Section 165-45D, to operate a solar electric installation business from the residence, 19 Kendall Pond Road, Parcel ID 24037, MHDR DISTRICT.

Peter Bangs, owner, read his application for the Board.

Mr. Virr asked what would be done from the property. Mr. Bangs said that he currently has an 18" x 24" sign and that he was seeking to store solar panels and components in an area at his property.

Mr. Virr asked if he would be going to the customers. Mr. Bangs said yes as not everyone qualifies for solar use as only 20% of homes face south.

Mr. Thompson asked if all storage would be inside. Mr. Bangs said yes.

Mr. Dimmock asked if this property was the old community supply location. Mr. Bangs said it was.

Mr. Fairbanks asked if the business was presently being operated. Mr. Bangs said that he has the sign but not running business yet. He said most of his business is conducted by computer and storage of the panels.

Mr. Fairbanks asked if there would be customers coming to the property. Mr. Bangs said that he might hold an open house in the mid-spring but most of the business would be at the customer's location.

Code Enforcement

Mr. Mackey said the applicant's request is for an exception to operate a Solar Electric Business from the residence. The applicant requests permission for a business office as well as storage space for business associated materials. A small sign is being requested. He said that he performed a search of the Rockingham County Registry did not indicate any covenants prohibiting a home occupation or business. There are pictures in the file for the Board's review.

Mr. Webb asked if the systems would be electric based and if so would there be storage of batteries on the property. Mr. Bangs said possibly but will have only for a pre-installation.

Mr. Dimmock asked if there had been any discussions with the EPA regarding battery storage. Mr. Bangs said that he had not spoken with the EPA as it had not been a thought until just brought up here. He said that if they were needed that they would be in the truck prior to an installation and not stored on the property.

Mr. Dimmock said that without the EPA approval that the Board could not approve the storage of batteries. Mr. Bangs said that there would not be batteries stored on the property unless he had EPA approval.

Favor

Tom Moodin, 19 Kendall Pond Road, said that he has been working with Mr. Bangs to set up the business and it was his computer that has been utilized so far to create what has been accomplished so far. He said that they were only requesting to store the basic systems as far as batteries that would be done on a special order service and that type of application would be sent out right away. They were seeking to bring solar energy to Derry. He said that they want to bring home and feel that there is a great need to bring renewable energy to Derry and is excited to get started.

Mr. Virr asked what hours of operation were being requested. Mr. Bangs said that they were seeking daytime hours of 6:00 am – 6:00 pm. He said that he hires subcontractors that may also work on Saturday's and Sunday's as they have other jobs.

Mr. Virr said that the sign would require a permit from the Code Enforcement Office. Mr. Bangs said that he would do that as he was unaware that it required a permit.

Opposed

No abutters were present.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Webb.

Vote: Unanimous.

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

Deliberative Session

Mr. DeBonis said that he did not see a problem with the request as the property had previously been utilized as a commercial property and that the material would be stored inside. He said that there appeared to be ample parking to load and unload any product that they might have.

Mr. Dimmock said that the Bang's family has been in the business community for many years and confident that they will run a business in a business like manner. He said that the approval should be granted with the stipulations that they obtain a sign permit from the Code Enforcement Office and if there is to be any storage of batteries that they obtain State EPA approval.

Mr. Webb said that he felt the same and also to obtain any to State permits if required if they were to store batteries.

Mr. Thompson motioned on case #09-123, Peter Bangs, to Grant an Exception as provided in Article VI, Section 165-45D, to operate a solar electric installation business from the residence, 19 Kendall Pond Road, Parcel ID 24037, MHDR DISTRICT, as presented with the following conditions:

- 1. Sign requested.**
- 2. One non-resident employee allowed.**
- 3. Hours of operation are 6:00 AM to 6 PM 7 days.**
- 4. No on-site storage batteries without EPA approval.**
- 5. Subject to obtaining all Town and State inspections and permits.**

Seconded by Mr. Dimmock.

Vote

Mr. Webb: Yes. Believe it would be a benefit to the community and meets the criteria.
Mr. Thompson: Yes. For the same reasons as stated.
Mr. Dimmock: Yes. For the reasons stated.
Mr. DeBonis: Yes. For the reasons stated.
Mr. Virr: Yes. Feel that the conditions have been met.

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. Dimmock would step down and that Mr. Fairbanks and Mr. Osborn would sit for the following case.

**09-124 Paul W. George
Owner: Donahue Family LLC**

Variance to the terms of Article VI, Section 165-32A.1 (c), to allow the operation of a cordwood/logging business with on-site storage of firewood/fuel burning materials as well as typical landscaping materials at 230 Rockingham Road, Parcel ID 03035-001. GC DISTRICT.

Tim Peloquin, Promised Land Survey, said that he was representing the applicant and read the application and reviewed the letter of intent for the Board.

Mr. Thompson asked if the plans submitted of the existing conditions item #14 seeks used car sales if that was still being sought. Mr. Peloquin said that the 2007 plan stipulated car storage as was originally approved and not seeking to change existing approvals just seeking to add storage of firewood/fuel burning materials.

Mr. Thompson asked if it was clear that the sales of modular homes, vehicle sales, storage of firewood, etc was what was being requested and if there would be firewood cut off the property as there is wetlands located on the property. Mr. Peloquin said that there would be no wetland impact and that there will be meetings with the Conservation Commission.

Mr. Thompson asked if the 1 story structure was going to be a homestead. Paul George, applicant, said that there was no intention of creating living space in the home and that there will be possibly other tenants on the property in the future but at this time the property would be utilized for the sale and storage of firewood and other landscape materials.

There was some discussion with regard to the appearance of the property.

Mr. Dimmock said that the request speaks with regard to fuel for heating and asked if there would be propane, kerosene or pellet storage. Mr. George said that there would no oil or kerosene but would like the option of coal, pellets and firewood.

Mr. Dimmock said that coal was considered a contaminate and the dust can affect the environment so a special permit from the State may be required. Mr. George said that he can take coal out as he did not want to have any problems.

Code Enforcement

Mr. Mackey said the applicant's request is for a use variance to allow the operation of a Cordwood/Logging business which will include the storage of cordwood/fuel burning materials at the property. Preliminary discussions with the applicant, myself and the Town Planner regarding this proposal assumed that it was an allowed use. When brought forward to the Technical Review Committee, it was discovered that a conflict existed in the Zoning Ordinance regarding the use. The property is located in the General Commercial District. According to Article VI, Section 165-32A1 (b), it would appear that the proposal would be an allowed use as the ordinance lists "heating supplies and appliances" as a permitted use. However, according to Section 165-32A1 (c) "Offices and Stores for the handling of sales and/or services such as...coal, wood or heating materials not stored on the premises," is allowed. This section would seem to indicate that the sale of these materials is permitted but storage on site is not. As there appears to be a conflict in the ordinance and after discussions with the Town's Attorney, it was determined that the most restrictive section would apply and that a variance would be necessary for the proposed use. There are examples of these materials (cordwood, wood pellets, etc.) being sold/stored in the GC zone although with most examples, it is a small accessory component of the main use. Also, in the Central Business zone, the same language permitting "heating supplies and materials" is present but the section prohibiting on site storage is not. If approved by the Board, site plan review will be required. At that time, appropriate screening methods, etc. can be determined by the Planning Board. There are pictures in the file for the Board's review.

Mr. Virr asked if the property was being purchased. Mr. George said yes that he was seeking to purchase the cooperation.

Mr. Virr said that he understood that there would be truck deliveries but wanted to know where the logs would be coming from. Mr. George said that Roy's Tree Services was part of a family business and that the logs would be coming from the job sites.

Mr. Virr asked how many times per day would the truck be making deliveries. Mr. George said that maybe one to two times per day.

Richard Roy, 2 Lawrence Road, said that he owned Roy's Tree Service and that he has a ten wheeler that he utilizes for hauling the wood to the property.

Mr. Virr asked if there would be cutting and splitting of the wood made onto pallets for deliveries. Mr. George said that the tree business will be a secondary business to the property and not the primary business as it was just to relocate Mr. Roy's existing business to alleviate an existing situation.

Mr. DeBonis asked if the wood would be stored in sheds or concrete bins on the property. Mr. George said that the wood would be stored in concrete bins where the Conservation Commission indicates where they can be placed.

Mr. Peloquin said that the storage bins would be approximately 8 x 8 and that the wood business would be very small.

Mr. Dimmock asked if the trailer sales business was never established and the property was sold if the new owners still had all the rights to do the same thing. Mr. Mackey said that the conditions of approval on the previous plan have expired so it would re-approval by the Planning Board.

There was some discussion with regard to the property use and approvals required.

Favor

Scott Brockalbank, Regional Sales Manager for New England Homes, said that he checks the models once per month and that they are required to hold a certain presentation so the property would not be in any disrepair. He said that he has worked with Mr. George for ten years and feels that he is a great asset to bring a business to Derry.

Sheldon Wolff, 242 Rockingham Road, said that he felt that this would be a great use of the property to bring industry into the area. He said that he was curious of how the logs would be processed and had concerns with safety and to the amount of storage that there would be on the property. Mr. Wolfe said that the property use would be an asset to the Town.

Mr. Thompson said that the Planning Board and Conservation Commission would address those concerns.

Peter George, Dracut, MA, said that the history of the property since the model home was installed has changed. He said that they currently have a model home in Methuen, MA and hoping to expand into the Derry area and be here when the market turns around. Mr. George said that they would be making the lot beautiful as the property would be representing their business. He said that Mr. Roy was Paul's brother-in-law and has done logging for years and they were seeking to supplement some of the cost of the property by letting him utilize a portion of it for his business and feel that it can be presented well and they will keep the property neat in appearance. If the Board wished they can provide a list of references that they could contact and ask about their reputation. He said that he feels that the Town will be proud to have them there as a business.

Opposed

Pamela Resenburg, 13 Kilrea Road, said that she has concerns as a few years ago they had sediment in their water from the construction when the Barking Dog and the John Deere Dealership came in and now also hear a lot more traffic noise. She said that the area has turkeys and other wildlife that come through the property. She was concerned that if the use

was allowed they would destroy the area by cutting down more trees and create noise with the chain saws, and truck noise from deliveries of mulch or stone would also create more traffic on the road that is already very busy. She asked that the Board take into consideration that there were residential homes located around the property when making their vote.

Jason Resenburg, Kilrea Road, said that a cordwood plant creates noise and dust which is an adverse effect on the neighborhood. If they start clearing the property it would also create a lot more noise that would be heard at their home from the traffic generated on Route 28.

Mr. Dimmock said that the concerns for the wildlife in the area that the proposal still is required to go to the Planning Board and also the Conservation Commission who will also be seeking to protect the public and animal wildlife in the area. He said that these questions need to be brought before those Boards that the Zoning Board was only here to determine if the use would be allowed.

Mr. Thompson read a letter in opposition from Tinkham Realty dated January 2, 2010 and hand delivered to the Zoning Board Office on January 5, 2010.

Mr. George said that he would like to address some of the concerns of the abutters. He said that there would be no processing machines and as far as the letter the traffic on Rockingham Road is already entering and exiting on the road so do not feel that there would be much more of an impact of traffic. Mr. George said that as far as bringing an infestation of bugs to the live trees on to the property most of the trees come from jobs in the Derry area so they are already in Derry if they exist. There will no kiln drying of trees on the property.

Mr. Virr asked if there would be the use of chain saws to cut the wood on the property. Mr. George said yes.

Mr. Fairbanks asked a question regarding the abutter's concerns of noise levels if it was correct that the zoning ordinance has a maximum 80 decibel noise level at the property line. Mr. Mackey said that there was and believed that it was not to exceed 80 decibels.

Mr. George said that if they were in violation that they would seek an alternative way to process the wood other than chain saws.

Mr. Thompson asked if the wood brought to the property would be for wood business. Richard Roy, 2 ½ Lawrence Road, said that the wood brought to the property would be utilized for the business. He said that the hours of operation that he was seeking was from 7:30 am to 3:00 pm Monday – Friday and that he would be making deliveries on Saturday and no cutting would be done on Saturday. The firewood would not be done on an everyday basis.

Mr. Thompson asked where the tree work was done. Mr. Roy said that most of the work is generated in Derry and have been doing the business for 20 plus years with no complaints. He said that not all of the trees come to the property and some go to the mill and that the brush and chips or stumps are brought to M&R Wood Recycling on Scobie Pond Road.

Rick Metts, 8 Dustin Ave., said he has known Mr. Roy for a long time and knows of his business and urge the Board to approve the request as the business is currently being operated in a residential zone and this would allow the relocation to a commercial area. Mr. Metts said that Mr. Roy does a professional job and that the Planning Board will also setting guidelines for this type of operation on the property.

Mr. Dimmock asked if Mr. Metts was aware of the situation of Kilrea Road with regards to the trucking concerns and if there was any discussion with installing a traffic light at that intersection. Mr. Metts said that he believed that the State has postponed the installation of a light at the intersection at this time.

There was some discussion with regards to the possibility of increased traffic and storage of materials on the property.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Dimmock.

Vote: Unanimous.

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

Deliberative Session

Mr. Osborn said that he felt that the Planning Board would be responsible for most of the concerns that had been brought up tonight and that their only concern would be with regard to the allowance of wood and storage of materials on the property.

Mr. Thompson said that the Board was here to grant or deny the cordwood business and did not see a problem as he felt that it would be amicable to the area.

Mr. Virr said that the Board needed to see if hardship has been met.

Mr. Fairbanks said that he felt that the Board was only here to grant approval for the storage of wood as the use is not allowed but believe the zoning district allows for processing.

Mr. Virr said that Mr. Metts brought up a good point as the use would be relocating to a more suitable area and not in a residential area. He said that Shaws currently has bundles of wood for sale and so do other convenience stations located within the Town. The only question would be if the Board was comfortable with the stockpiling of wood/landscaping materials on the property.

Mr. Osborn asked if there was still the question of coal storage on the property.

Mr. Dimmock said that the applicant had withdrawn that part of his request.

Mr. Virr reviewed the long list of other businesses within the Town that stored some of the same items as the applicant's request. He said that the General Commercial District may not have had the same restrictions then as it does now but can clearly see that other properties are selling firewood, etc. from locations in the same zoning district.

Mr. Webb said that he did not believe that the applicant would be cutting up the wood on the property.

Mr. Virr said that Roy's Tree Service cuts trees down at tree lengths and would be transporting some of those trees to the property which in turn would then cut them up to stove lengths for resale. He said that he was concerned with the amount of noise that would be generated and that there should be some limitations with regard to times of operation.

Mr. Fairbanks said that he felt that if the Board denied the request that it would be a hardship as other properties have similar uses in the area in which zoning has not been enforced.

Mr. Virr asked if the facility currently being operated on Lawrence Road if that was allowed. Mr. Mackey said no and that is one of the reasons that the applicant is here tonight with the intent to rectify the situation. He said that the owner had started out as a small business which has currently outgrown his location.

Mr. Thompson motioned on case #09-124, Paul W. George, Owner: Donahue Family LLC, to Grant a Variance to the terms of Article VI, Section 165-32A.1 (c), to allow the operation of a cordwood/logging business with on-site storage of firewood/fuel burning materials as well as typical landscaping materials at 230 Rockingham Road, Parcel ID 03035-001. GC DISTRICT, as presented with the following conditions:

- 1. Subject to site plan review and Planning Board approval.**
- 2. Subject to obtaining all State and Local permits and inspections.**
- 3. No on-site storage of oil or propane.**

Seconded by Mr. Osborn.

Vote

Mr. Webb: Yes. Believe it meets the criteria.

Mr. Thompson: Yes. Meets the Simplex criteria and have no problem with the application as presented. Believe that Planning Board and Conservation need to stipulate criteria.

Mr. Fairbanks: No. Do not believe hardship has been proven.

Mr. Osborn: Yes. Believe that hardship is that the property is large with minimal use and convinced that Planning Board and the Conservation Board will be carefully overseeing the operations of the property.

Mr. Virr: Yes. Agree with Mr. Fairbanks but feel hardship has been met due to the inconsistency with the ordinance.

The application was Granted by a vote of 4-1-0. 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. DeBonis would sit for the following case.

**09-125 Shelly Devlin
 Owner: Carl & Elen Galasso**

Variance to terms of Article VI, Section 165-45A, to allow the operation of a beauty salon and spa at 128 East Broadway, Parcel ID 37010, MHDR DISTRICT

Peter Zohdi, Herbert Associates, said that he was here to present the case to the Board along with Attorney William Mason and Shelly Devlin the applicant that will also speak in regards to the request this evening.

Attorney Mason asked the Board if they wanted the criteria read first or would they like an overview of the request.

Mr. Virr asked if the criteria could be read for the record. Attorney Mason read the criteria for the Board.

Mr. Thompson said that any evidence presented to the Board needed to be retained for the record. Attorney Mason said that he understood.

Mr. Zohdi presented the Board with a packet and explained its contents for the Board.

Mr. Fairbanks asked if part of the property was being kept as residential. Mr. Zohdi said yes that Ms. Devlin will be utilizing the second floor of the property as her residence.

Mr. Zohdi reviewed the maps he presented for the Board and explained the location of the property and provided an overview of a current view of the property and a proposed view of what the property would look like.

Mr. Thompson asked if there would be a curb cut proposal. Mr. Zohdi said yes that they would be seeking a curb cut onto Crescent Street.

Mr. Osborn asked if the dumpster located in the space near the parking space marked number 1 was a reasonable place so the dumpster company would not be backing out onto Route 102. Mr. Zohdi said yes that they felt that it would be the best location as it would have less impact on the neighbors.

Mr. Virr asked if the property on the other side was residential. Mr. Zohdi said yes.

Mr. Dimmock said that he had a question for Mr. Mackey pertaining to the amount of hot top if it would comply with the impervious soils as he believes they were utilizing a lot of green area. Mr. Mackey said that he believed that that item would fall under the Land Development Regulations and would be discussed at the Planning Board level.

Mr. Thompson asked if there was a waterfall business being operated there. Mr. Zohdi said he was unsure as he knew the property had once been utilized as a former law office and a DJ business had operated from the property.

Mr. Zohdi said that the proposal will comply with all Town requirements. He explained the location of the property and the surrounding area indicating the properties location in relation to the Derry Rotary, Fire Station, Dental Office, Chinese Restaurant and the Hoodcroft Country Club.

Mr. Dimmock asked if the Planning Board was looking into rezoning that area. Mr. Mackey said that the area near the rotary consisted of gas stations, an ATM, Lobster Claw, and several offices in the large brick building but not on East Broadway.

Ms. Devlin said that she has owned and operated Water's Edge Salon for 20 years and that Londonderry is her third location. She said that she had first started her business in her home and hoped to bring it back home and that the home on East Broadway offered a beautiful setting with a waterfall located in the front of the property which was unique.

Mr. Virr asked if the second floor of the property was set up as a residence. Ms. Devlin said that she would be converting the second floor to a residence as it was currently bedrooms at the present time.

Mr. Virr asked what hours were being considered. Ms. Devlin said that she currently operates Tuesday – Thursday 9:00 am – 9:00 pm, Saturday 8:00 am – 5:00 pm and Monday's are for classes only. She said that her business operates by appointment only.

Mr. Virr asked how many employees were there. Ms. Devlin said that she currently has 15 employees that work for her and that there area three in the salon at a time.

Mr. Thompson asked if this was going to be her primary residence. Ms. Devlin said yes Monday – Friday.

Mr. Virr asked if the exterior look of home would be changed. Ms. Devlin said no as that she loved the look of the home and it was one of the reasons she was seeking to own the property for her business.

Code Enforcement

Mr. Mackey said the applicant's request is to allow the operation of a Beauty Salon and Spa at the above referenced property utilizing the first floor of the home and second floor of the garage. It is my understanding that the applicant will occupy the second floor of the home for her residence. Currently, the property is utilized as a single family residence and it is located in the Medium High Residential Zoning District. As such, a variance is required due to the scope of the business being proposed. Previously, an exception had been granted by the Board in July 2006 to allow the operation of a disc jockey business. The property is located close to the Derry traffic circle in an area of mixed use residences and businesses and is across from the Hoodcroft Country Club. As the application was submitted prior to

January 1, 2010, the Simplex hardship criteria is still applicable. If approved, Planning Board site review will be required. There are pictures in the file for the Board's review.

Mr. Fairbanks asked where the applicant was seeking a full variance would the signage and parking still fall under the same criteria. Mr. Mackey said that the signage and parking would fall under the Land Development Regulations as a sign in a residential zone was limited to three square feet so the Board might want to consider for review.

Mr. Dimmock asked if the Planning Board was reviewing the signage regulations. Mr. Mackey said that a committee was being established and that they would be reviewing the signage regulations.

Mr. Dimmock asked if it would be a good idea to add a stipulation that the Planning Board stipulate the size of signage that could be utilized for this property. Mr. Mackey said that it would not be a bad idea if some sort of stipulation be made.

Mr. DeBonis asked if they would mind that a stipulation that the dumpster be located behind gates or a fence for privacy. Mr. Zohdi said that he had no objection.

Attorney Mason said that the dumpster would be a three yard dumpster and not a very large container.

Mr. Virr said that the Board was not concerned with the size of the dumpster but the noise from the truck for emptying purposes. Attorney Mason said that the dumpster would only be emptied once a week creating some noise.

Mr. Dimmock said that he used to drive a waste truck and know what noise that they create and asked if he would mind a stipulation that the dumpster could be picked up to empty during daytime hours only. Attorney Mason said that Ms. Devlin would be residing upstairs and did not feel that she would want the dumpster to be emptied at two am either.

Mr. Zohdi said that item number five on the site plan states hours of operation for deliveries of 9:00 am to 6:00 pm.

Mr. Thompson said that the dumpster location etc were Planning Board issues.

Favor

Richard Metts, Derry, said that he urges the Board to grant the use as the applicant has been in business for a number of years and he believes in her business. He said that he feels that the property would be a great location for this type of use and be an asset to Derry.

Mr. Dimmock said that he wished to thank Mr. Metts for coming to the meeting.

Opposed

No abutters were present.

Mr. Virr motioned to go into deliberative session.
Seconded by Mr. Thompson.

Vote: Unanimous.

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

Deliberative Session

Mr. Virr said that he felt that the proposal appears to be a first class operation and that sometimes the only way to save some of the older buildings was to allow this type of use.

Mr. Thompson said the property has been utilized for many different businesses prior and feel that this would be a nice use for the property.

Mr. Virr reviewed the conditions for the Board.

Mr. Dimmock motioned on case #09-125, Shelly Devlin, Owner, Carl & Elen Galasso, to Grant a Variance to terms of Article VI, Section 165-45A, to allow the operation of a beauty salon and spa at 128 East Broadway, Parcel ID 37010, MHDR DISTRICT as presented with the following conditions:

- 1. Subject to Planning Board approval.**
- 2. Subject to obtaining all State and Local inspections and approvals.**
- 3. Size and nature of sign to be determined by Planning Board**

Seconded by Mr. Thompson.

Vote

Mr. Thompson: Yes. Believe that hardship has been proven.

Mr. DeBonis: Yes. Feel that it would be a reasonable use for the property due to other commercial uses in the area.

Mr. Webb: Yes. Believe that there are other businesses operating in the area and it will bring some employment to the area and improve the property.

Mr. Dimmock: Yes. Feel it would be an asset to Derry and the property itself would benefit from the use.

Mr. Virr: Yes. Criteria has been established that this is a good use for the property. Believe some of the older homes should be able to be utilized for a home and a business in order to preserve some of the character of the area.

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. Fairbanks would sit for the following case.

09-126 Ralph Stowell
Owner: Earl H. Middlemiss

Variance to the terms of Article VI, Section 165-42A, to operate auto repair business at 36 Scobie Pond Road, Parcel ID 08015-002. IND IV DISTRICT.

Jeannie Knuuttila, Coldwell Banker agent representing the applicant, read the application for the Board. Ms. Knuuttila presented the Board with pictures of the property and she explained that the property looks will not change as you do not see the garage doors from the street as they face the back of the property.

Mr. Fairbanks asked where Spacetown Auto was located in reference to this property. Ms. Knuuttila side that it was located on the same side of the street approximately 6 houses down from this property.

Ms. Knuuttila said that there was a list included in the application of several other auto repair businesses located in the Industrial IV zone. She said that the applicant burns waste oil and has companies pick up antifreeze and any other chemicals that require disposal on a regular basis.

Mr. Dimmock asked if the applicant repaired construction equipment. Mr. Stowell said that he only performed auto repair and no heavy equipment repair that the largest vehicle would be no bigger than a one ton truck.

Mr. Dimmock said that he felt that the oil company business sign would be changing to an auto repair sign and that feels that this new sign size should be under the discretion of the Planning Board.

Mr. Virr asked if the sign size requirement fell under the Code Enforcement Department. Mr. Mackey said yes.

Mr. Webb asked if the tires would be picked up and how many tires would be stored on the property. Mr. Stowell said that the company would pick up once a month but they also only want to pick up at least 30 tires at time.

Mr. Virr asked if the property would be used as his residence. Mr. Stowell said yes. Mr. Virr asked if there would be vehicles for sale from the property. Mr. Stowell said no there would be no sale of vehicles from the property.

Code Enforcement

Mr. Mackey said that the applicant's request is for a use variance to allow the existing garage located on the property to be utilized as an automotive repair facility. The applicant would occupy the existing home as his residence. The property is located in the Industrial IV zoning district which does not specifically list auto repair as an allowed use. There are examples of auto repair facilities in this zone but these are primarily operated as accessory to the main use as retail (Allen Motors, VIP Auto Parts, etc.). Previously, an oil delivery & plumbing business was operated from this location. As the application was submitted prior to January 1, 2010, the Simplex hardship criteria still apply. If approved, all Town, State and Federal regulations must be followed with regard to disposal of waste fluids, etc. If approved, Planning Department approval will be required. There are pictures in the file for the Board's review.

Mr. Dimmock asked if the number of unregistered motor vehicles would be Planning Board stipulation. Mr. Mackey said that it may or may not be but the Board could consider it putting the number of vehicle storage in as a stipulation.

Mr. Virr asked if three unregistered motor vehicles at a time be a reasonable number for use with repairs. Mr. Stowell said that he did not make a habit of storing junk vehicles as it did not look good for business.

Favor

Earl Middlemiss, owner, said that he owned and operated an oil company business for 10 plus years from the property. He said that the property has an unusual shape and was partially residential and he had previously gone through all the necessary Planning Board approvals and that there was no room for expansion as PSNH abuts the property. Mr. Middlemiss said that he had previously conducted business with Mr. Stowell before and that his previous shop had epoxy floors and looked like a show room and felt that this use would be a good location for his business.

Donna Boudreau, 28 Scobie Pond Road, said that she had no objection to an auto repair shop being operated from the property.

Richard Boudreau, 28 Scobie Pond Road, said that he also had no problem with a repair shop being located at the property.

Opposed

No abutters were present.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Dimmock.

Deliberative Session

Mr. Virr said that hardship has been shown as there area other similar type uses in the area and that the property is unusual in shape.

Mr. Dimmock said the zoning district was a mixed uses that are not supposed to be there so feels that this should be an allowed use.

Mr. Virr said that the property should be subject to Planning Board approval.

Mr. Dimmock said that he felt that the sign size should be determined by the Planning Board.

Mr. Virr said that the zoning ordinance addresses rules.

Mr. Mackey said that the ordinance has size restriction on signs in an industrial zone.

Mr. Virr reviewed the conditions for the Board.

Mr. Dimmock said that he felt that 3 unregistered vehicles would be unreasonable as that was not enough in order to make some repairs on other vehicles and that four would be better.

Mr. Virr changed the motion to be 4 unregistered vehicles.

Mr. Fairbanks asked if retail was permitted.

Mr. Mackey said that any other use would be a Planning Board matter.

Mr. Virr motioned on case #09-126, Ralph Stowell, Owner: Earl H. Middlemiss, to Grant a Variance to the terms of Article VI, Section 165-42A, to operate auto repair business at 36 Scobie Pond Road, Parcel ID 08015-002. IND IV DISTRICT, as presented with the following conditions:

- 1. Subject to Planning Board approval.**
- 2. Subject to all Town, State and Federal inspections and approvals.**
- 3. No more than 4 unregistered vehicles on site**

Seconded by Mr. Fairbanks.

Vote:

Mr. Webb: Yes. Believe has met the criteria and the hardship is in the zoning itself as there are other mixed uses in the area.

Mr. Fairbanks: Yes. Meets the criteria and that it is in the spirit of the ordinance.
Mr. Thompson: Yes. For the same reasons as stated.
Mr. Dimmock: Yes: Property is well situated for the intended use and feel it meets the criteria.
Mr. Virr: Yes. Believe the criteria has been met and that the area is a mixed use type area with similar services are provided.

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 November 19, 2009 as written.

Seconded by Mr. Thompson.

Vote: Unanimous.

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

Mr. Osborn motioned to approve the minutes of December 3, 2009 as written.

Seconded by Mr. Thompson.

Vote: Unanimous.

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

Adjourn

Motion to adjourn by Mr. Dimmock.

Seconded by Mr. DeBonis.

Vote: Unanimous.

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

Adjourn at 9:51 pm

Minutes transcribed by:
Ginny Rioux
Recording Clerk

APPROVAL OF MINUTES JANUARY 21, 2010

Mr. Dimmock motioned to approve the minutes of January 7, 2010 as amended.

Seconded by Mr. DeBonis.

Vote: Unanimous.

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