

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
June 17, 2010

Members Present

Allan Virr, Chairman
David Thompson, Vice Chairman
James Webb, Secretary
Ernest Osborn
Cecile Cormier

Members Absent

Alternates Present

Michael Fairbanks
John DeBonis
Stephen Popp
Betsy Burtis
Jason Gesing

Alternates Absent

Staff Present

Robert Mackey, Code Enforcement Director

Mr. Virr called the meeting to order at 7:00 p.m. with the salute to the flag, and notice of fire and handicap exits.

Mr. Virr informed the public that the Board would take a brief recess so that the Board could meet with Town Counsel. The meeting reconvened at 7:45 pm.

It was noted for the record that Mr. Gesing would recuses himself from this meeting.

10-111 Property Portfolio Group

Requests Appeal of An Administrative Decision of the Planning Board (May 5, 2010), with regard to the Site Plan Determination application of MTM Realty, LLC, located at 32 West Broadway. Planning Board waiver of site plan review violated Article III, Section 165-15 & 16, and Article VI, Section 165-33, C, D, E, F & G of the Town of Derry Zoning Ordinance. In addition, applicant also alleges that the decision violates Article VI, Section 165-49, G, 1, b of the Town of Derry Zoning Ordinance. Parcel ID 29194, 7 Central Street, Zoned CBD

Attorney John Griffith said that he was representing Barbara Woodward, owner of Property Portfolio Group, 7 Central Street. Attorney Griffith presented the Board with information regarding their appeal.

Attorney Griffith asked if the meeting with Counsel earlier was with regard to this case. Mr. Virr said that the Board's meeting with Counsel did not discuss the merits of this case.

Attorney Griffith said that MTM Realty was granted approval by the Planning Board to expand the seating capacity allowing seating over the former Fire Station bay area and also was allowed a waiver for the location of their dumpsters. He explained the sketches in the information that he had previously submitted to the Board that also had been submitted to the Planning Board for the number of seats and dumpster location. Attorney Griffith said that the Planning Board approved these sketches without having a formal site review. He said that they are appealing this decision for three reasons. The first being is that the Planning Board violated Section 165-16 of the Derry Zoning Ordinance which requires site plan review of any change of use or expansion of commercial uses. The Planning Board waived site plan review and granted site plan determination. Second, the Planning Board violated Section 165-33 F which prohibits any use which would be injurious, noxious or offensive by way of the creation of adverse traffic impacts or conditions, odors, fumes, smoke, dust, vibration, noise or other objectionable features. The third item is that the approval also violates the Town of Derry Zoning Ordinance Section 165-49G, which requires that for commercial uses, off street parking must be provided in accordance with Chapter 170 of the Land Control Regulations 170-63 B 4 which requires 1 space for every three seats, 1 space for each employee and 1 space for every 2 seats in cocktail lounges and bars.

Attorney Griffith explained his concerns regarding the seating expansion, lack of parking, offensive odors, the location of the dumpster and the water drainage issue. He also gave reasons why he felt that the Board should require these issues go back to the Planning Board for formal site plan review. There was some discussion regarding these concerns.

Mr. Thompson said that he did not believe that the Board can tell the Planning Board that it needs to do a full site plan review. Attorney Griffith said that the Zoning Board is a Quasi Judicial Board whose job is to see that due justice is done. He said that this has not been done and that an additional 60 seats will greatly impact the area that is starved for parking already and feels that it is up to the Zoning Board to see that all these matters are addressed properly.

Mr. Fairbanks said that he did not feel that it was appropriate to request that the matter go back to the Planning Board without hearing testimony from someone from the Planning Board.

Mr. Virr said that the Board did discuss with Town Counsel. He asked if the 2005 plan of architectural drawings had shown a conceptual plan with seating. Mr. Mackey said that he believed that they did show as a future endeavor of a glass type enclosure.

Mr. Virr asked if they showed roof deck seating. Mr. Mackey said yes an enclosed area for roof top seating was shown.

Ms. Cormier asked what was the present seating capacity. Mr. Mackey said that presently there were 120 seats that consisted of a maximum of 49 seats located on the second floor due to a single egress.

Ms. Cormier asked if the Fire Department would be determining the actual seating capacity. Mr. Mackey said yes and that the number of seating would be determined on the size of the roof area and there is a regulation with regard to the tables, chairs and isle width which would require that a plan be submitted to the fire department for review.

Code Enforcement

Mr. Mackey said the applicant's request is for an administrative appeal. This case is an appeal of the Planning Board's May 5, 2010 decision to grant site determination approval for outdoor, rooftop seating on the flat roof portion of 32 West Broadway. Also being appealed is a waiver granted by the Planning Board for the location of dumpsters. There are pictures in the file for the Board's review.

Mrs. Burtis said that the original change from a fire station to a restaurant was approved showing additional seating for a banquet room proposal so why are these matters being addressed. Attorney Griffith said that the plans showed the seating as enclosed and he feels if making changes they should be required to go back for site review.

Mr. Osborn said that the outdoor seating was approved in May 2005 by the Planning Board. Attorney Griffith said that the Planning Board did approve outdoor seating in front of the building along the sidewalk. Attorney Griffith said that he felt that these matters should have had a formal site plan review which was waived by the Planning Board. Attorney Griffith said that water and sewer fees are paid according to the number of seats and that the Town Water/Wastewater Commissioner is upset with the approval of outdoor seating as apparently that was not reviewed by the department.

Favor

Steve Trefethan, property manager 40 West Broadway and 8 Storer Court, said that he was also speaking for the next case. Mr. Trefethan said that the water runoff has been an issue since the Fire Hall was allowed to go in and that Rig-A-Tony's gets filled with water and in the winter months the snow and ice that they plowed up had caused damage to the fence at 40 West Broadway. He said that the water issue has been an issue from the start and the matter concerning the dumpsters has been heard at several meetings and an appeal at Superior Court for a 20' buffer was awarded. Mr. Trefethan said that all these matters have been appealed and feel that they should have had a formal site plan review.

There was some discussion with regard to this matter.

Opposed

Robert Moran, representing MTM Realty, said that he feels that the Board recognizes the concerns of the applicant. However, the Halligan's Tavern does not recognize it as a fact that exhaust fumes from a restaurant are offensive odors. He said that the applicant is an apartment owner that also omits fumes. Mr. Moran said that the Halligan's Tavern has been operating for 5 months and feel that the sanitary issues have not been an issue but will address with the neighbors as they want to be a good neighbor. He said that dumpsters can be unsightly and was seeking to enclose them. He said that he feels that the Board does recognize that the restaurant currently has 120 seats and that the roof deck seating has not been specified which will possibly be up to 60 more which would make the restaurant up to 180 seats. Mr. Moran said that in reality the patrons that do come would tend to sit outside which may not increase the number of occupancy. He said that the Halligan's Tavern would love to have the restaurant filled to capacity but in reality that probably won't happen. He said that the outdoor deck would not be enclosed and would only be open during the months of June, July, August and maybe a few weeks in September but the other 9 months would not be utilized due to the temperature.

Mr. Virr asked if there would be a tent area. Mr. Moran said that there would possibly be umbrellas. He said that the concerns with the dumpsters and the drainage issues he will address with Code Enforcement and that the deck seating area would not be utilized for 9 months out of the year.

Mr. DeBonis said that he felt that an additional 60 seats may or may not increase patronage but any manager would want to fill the additional seating to maximum capacity.

Mr. Virr said that that matter was clarified by Mr. Moran stating that the outdoor seating was a seasonal use.

Ms. Cormier asked if the property was located in the Traditional Overlay Business District which is on page 96 of the Town Zoning Ordinance. It states that it takes precedence and a court order required the 20' rear buffer if that was correct. Mr. Mackey said that yes, a court order required a 20' wide buffer in the rear of the property.

Ms. Cormier asked that if it was correct that anything else could be located 5' feet from the side property line. Mr. Mackey said the proposed dumpster location states 25' from the rear lot line.

Attorney Griffith said that the buffer requirements are spelled out in the zoning code but refers to the Land Development Code Regulations for the dimension, Chapter 170 where there are no specific requirements and reverts back to the Zoning Ordinance so there is a conflict in uses within the two districts. He said that in Section 165-49 paragraph number #2. A, the event of a conflict that the uses only take precedence not the dimensional requirements.

Ms. Cormier asked if the PPG property was located in the overlay district. Mr. Mackey said no that only the properties that go from the intersection of Crystal and Birch Street down Broadway Ave to about the Derry News, Storer Court area but it was only the frontage properties.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Thompson.

Deliberative Session

Mr. Virr said that he would like the Board to proceed on a point by point basis and state reasons. He said that with regard to Section 165-15, Offensive Uses, he felt that Jake D's, Rig-A-Tony's, Mary Ann's are all restaurants in the same area and omit odors/fumes which are generic to restaurants but is it grounds for appeal.

Mr. Thompson said that he did not feel that it was relevant and that the Board needs only to determine if the Planning Board violated the Town Zoning Ordinances.

Mr. Virr said that he felt that Section 165-15 that the grounds were irrelevant as there are other restaurants in similar districts.

Mr. Webb said that he agreed with the Chairman that all businesses have deliveries and do not believe more fumes will be generated by having additional seating.

Ms. Cormier said that it was part of a business district.

Mr. Webb said that it was part of being an abutter next to a business district.

Ms. Cormier said that she felt that the Board needed to vote on each article and give reasons so the minutes were clear and concise on how we are voting.

Mr. Virr said that he would poll the Board on Article 165-15 if it was relevant for grounds to be granted an appeal.

Mr. Webb said no he did not feel that it was relevant.

Mr. Thompson asked if not a formal vote as to why voting. He said that with regards to obnoxious fumes 165-15, he said that he felt that the ordinance has been violated without a proper site review.

Mr. Osborn said no and felt that it was a Code Enforcement matter and if there is a slight problem that they shouldn't be losing their business they should be working to fix it.

Ms. Cormier agreed and felt that she did not feel that the Planning Board violated the Zoning Ordinance Section 165-15.

Mr. Virr said that in this particular case he did not find it relevant to be granting an appeal.

Mr. Virr said that he would again poll the Board with regard to Section 165-16 if there were grounds to be granted an appeal.

Ms. Cormier said that according to the Land Use Regulations Chapter 170-50 that the Planning Board has the ability to waive site plan review. She said that she felt that the Planning Board had purview and that she felt that the Board did not have jurisdiction over Planning Board decisions. Ms. Cormier said that there was no grounds for an appeal.

Mr. Virr said that it also states in the Land Use Regulations 170-51 that the Planning Board may after conducting a duly executed plan and conducting a duly noticed public hearing which the Planning Board can grant approval without a formal site review.

Mr. Osborn said that he did not feel there were grounds for an appeal and we do not have jurisdiction.

Mr. Thompson said no.

Mr. Virr said that he also votes no.

Mr. Webb said that he also did not feel that it was grounds for an appeal as it was a minimal expansion under 170-51.

Mr. Virr said that the Board was in agreement that it was a minimal expansion and that the Planning Board acted within their rights that they are empowered with under the Land Control Regulations.

Mr. Virr said that he would again poll the Board with regard to Section 165-33.C if there were grounds to be granted an appeal.

Mr. Virr said that he was unsure of what the area measurements are and not ordinarily address that in any variance. He said that he did not see any testimony given in the Planning Board minutes.

Mr. Thompson said that there was no testimony given in that area.

Mr. Webb said that no testimony was given and there is nothing in the minutes that relates to this section so do not believe an error was made.

Mr. Osborn said that he did not see any as change.

Ms. Cormier said that it was not relevant for area dimensions and not noted in the minutes and no testimony was given.

Mr. Thompson said should not vote on that matter as no testimony was given.

Mr. Virr said he was voting no also.

Mr. Virr said that he would again poll the Board with regard to 165-33.D if there were grounds to be granted an appeal.

Mr. Virr said that he believed that the Planning Board made a point to discuss outdoor seating.

Ms. Cormier said that it refers to the Land Use chapter and is the purview of the Planning Board so do not feel the section was violated. She said that it was not in the Board's purview.

Mr. Webb said no as already addressed in 165-16.

Mr. Osborn said that he was also voting no.

Mr. Thompson said that he abstained.

Mr. Virr said that he was voting no.

Mr. Virr said that he would again poll the Board with regard to 165-33.E if there were grounds to be granted an appeal.

Ms. Cormier said that Section 165-33.E refers to chapter 170 in the Land Development Control Regulations

Mr. Virr said that the buffer zone was discussed at great length and was in previous site plan review.

Ms. Cormier asked if that according to the Land Use Regulations regarding buffers is it a commercial use or a residential use?

Mr. Virr said that in a case that was brought against the town in which we considered it a commercial property it was decided that if people lived there it was residential.

Mr. Webb said that the buffer is intact on 7 Central Street and Attorney Griffith stated that it was violated on the Rig-A-Tony's side which is the commercial property.

Ms. Cormier said that it was still considered a Land Use Regulation and the Board has no purview over the regulations.

Mr. Virr asked is E relevant to the issue before the Board tonight?

Mr. Webb said that he voted no as it is a land use issue.

Mr. Thompson said that he would like to ask Attorney Griffith a question before answering that question.

Mr. Virr said that the Board was in deliberative session.

Mr. Thompson said that he abstained.

Mr. Osborn said that it was not relevant.

Ms. Cormier said no that it was not relevant.

Mr. Virr said that he agrees.

Mr. Virr said that he would again poll the Board with regard to 165-33.F if there were grounds to be granted an appeal.

Ms. Cormier said that this was reviewed in 165-15 in offensive uses and is in the Traditional Business Overlay District which permits restaurants, cafés and is an allowed use and feels that it is more of an enforcement issue.

Mr. Thompson said no.

Mr. Osborn said that he did not believe it was relevant.

Ms. Cormier said no.

Mr. Webb said that he did not believe it was relevant.

Mr. Virr said that the cite is irrelevant.

Mr. Virr said that he would again poll the Board with regard to 165-33.G if there were grounds to be granted an appeal.

Mr. Virr said that it was not in the Board's purview as it relates to the Land Development Control Regulations and no way that any of those restaurants can meet the requirements where located on the street.

Ms. Cormier said that the Land Use Regulations has requirements also the Zoning Ordinance is a round robin issue. She said that the Planning Board has purview to waive parking requirements and, that the downtown area does have parking issues.

Mr. Virr said it was impossible for the Board to know and that it was a Planning Board issue do not feel violated zoning issue.

Mr. Thompson said no.

Mr. Osborn said no it was not relevant.

Ms. Cormier said no.

Mr. Webb said no.

Mr. Virr said he agrees and votes no.

Mr. Virr said that he would again poll the Board with regard to 165-49.G.1.b if there were grounds to be granted an appeal.

Mr. Virr said it this was a loop around and redundant to what has previously been discussed.

Ms. Cormier said 149 is in the Traditional Overlay Business district and appealing the overlay.

Mr. Webb said that he was going to vote no that it was the same issue.

Mr. Thompson said no.

Mr. Osborn said no.

Ms. Cormier said no.

Mr. Virr said that he also votes no.

Ms. Cormier reviewed the general consensus for the Board. She said that Mr. Thompson abstained from 165-33 regarding the review and buffer and voted no 165-15, Offensive Uses.

Mr. Virr said that overall the Board has reached a consensus and he would entertain a motion. He said that the motion needs to be made in the affirmative and a yes vote means that the appeal is granted and a no vote means it is denied.

Mr. Virr asked if the plans for the deck have to come to Code Enforcement. Mr. Mackey said yes and the Fire Department.

Ms. Cormier motioned on case #10-111, Property Portfolio Group, to Grant Appeal of Requests Appeal of An Administrative Decision of the Planning Board (May 5, 2010), with regard to the Site Plan Determination application of MTM Realty, LLC, located at 32 West Broadway. Planning Board waiver of site plan review violated Article III, Section 165-15 & 16, and Article VI, Section 165-33, C, D, E, F & G of

the Town of Derry Zoning Ordinance. In addition, applicant also alleges that the decision violates Article VI, Section 165-49, G, 1, b of the Town of Derry Zoning Ordinance. Parcel ID 29194, 7 Central Street, Zoned CBD, as presented.

Seconded by Mr. Osborn.

Vote:

Mr. Webb: No. Do not believe it violates 165-15, fumes. Section 165.16, believe it is minimal impact. 165-33.C believe there was no testimony given and nothing in the minutes. 165-33.D was covered under 170-51. 165-33.E is not relevant. 165-33.F believe 165-49b covers that. 165-49.G believe is a Planning Board issue with the parking and not our issue. 165-49.G.1.b is same issue with regard to parking just covered again.

Mr. Osborn: No. Believe there is a few minor enforcement issues but nothing to be grounds for an appeal.

Ms. Cormier: No. Believe that the Planning Board acted in good faith and it is their purview to waive any of their site plan regulations. In their process of reviewing the applicants were at the meeting and some of the issues could have been addressed. The Planning Board issues were simply the dumpster and outside seating area and some of the appeals have nothing to do with that particular site plan review.

Mr. Virr: No. Believe that the Planning Board acted as stated in good faith and reliance upon the powers that are granted to them in the Land Control Regulations in particular Chapter 170.

Mr. Thompson: No. Believe the administrative decision of the Planning Board to waive the May 5, 2010 and in their purview to do. He said that he questioned if it was right not to have a full site review from day one would have been appropriate thing to do but tonight not an issue.

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.

10-112 DomVincent, LLC

Requests Appeal of an Administrative Decision of the Planning Board (May 5, 2010), with regard to the Site Plan Determination application of MTM Realty, LLC, located at 32 West Broadway. Planning Board waiver of site plan review violated Article III, Section 165-15 & 16, and Article VI, Section 165-33, C, D, E, F & G of the Town of Derry Zoning Ordinance. Parcel ID 29197, 40 West Broadway, Zoned CBD

Steve Trefethen, manager of 40 West Broadway, presented the Board with information with regard to the appeal request. He said that he was going to proceed a little bit from the back to see if this case could go a bit faster than the previous case.

Mr. Thompson said that Board would was not here to consider anything that occurred in 2005 unless it was relevant to the May 2010 Planning Board hearing.

Mr. Trefethen said that section 165.33 speaks to changes being subject to Planning Board review and so he wished to speak regarding the Site Plan Review on the open deck area that what he has marked as number one the conversion from a fire department to a full restaurant to be known as the Fire Hall Pub & Grill had a seating capacity of 120 back in May 18, 2005 and according to May 5, 2010 the Planning Board waived site plan review and approved seating in the confines of a building. Mr. Trefethen reviewed the information that he submitted marked item numbered 4 for the Board and explained his concerns.

Mr. Thompson asked if the outdoor enclosure was never voted on for the roof and was a proposed use for later. Mr. Mackey said that was proposed on the site plan.

Mr. Virr asked if he was a direct abutter. Mr. Trefethen said yes, that Rig-A-Tony's was a 1 story structure in between and that 40 West Broadway is a 4 story building next to it.

There was some discussion with regard to noise and original agreement regarding hours of operation.

Mr. Trefethen said that he said that the Planning Board waived the site plan due to the fact that it had already been approved in 2005 but he said that was a proposed enclosed area with blinds not an open area that the patrons would be making noise and would also be looking across into the bedrooms of 40 West Broadway. He said that he felt that the Board should send the plan back to the Planning Board for a full site plan review.

Mr. Thompson said that noise, etc. was an enforcement matter and not purview of the Board.

Mrs. Burtis asked what defines noise in the ordinance and what constitutes excessive noise is conjecture as 60 people are not going to be church mice.

Ms. Cormier asked if there was a decibel reading for the zone. Mr. Mackey said only in the Industrial Zone not the Central Business District.

Mr. Thompson said that this meeting was only to determine if the Planning Board violated the Zoning Ordinance. Mr. Trefethen said that they did not consider offensive uses and waived a site plan review.

Mr. Virr reviewed ordinance for the Board. Mr. Trefethen said that the area is mostly a residential neighborhood.

There was some discussion regarding the former owners of 32 West Broadway and their agreement with the Town and the current site plan waiver.

Favor

Barbara Woodward, Property Portfolio Group, said that she would like to point out to the Board that her apartment building has emptied except for 1 tenant and has struggled to survive. She said that she has approached the current owners and asked them what they were planning to do and about when they planned on doing something about the water problem and cover the unsightly back of the building. At that time they explained that they planned on covering the unsightly features however now stating that they are going to do nothing and that water runs down hill. Ms. Woodward said that she has tried to solve the problems neighborly and has spent a large fortune in litigation. She also purchased a historical property and it is not fair to give new businesses all the rights to do as they please. The town had a signed agreement with the owners and that now they have reneged on agreement. She said that she has tried numerous times to stop the wrong procedures and have been to Code Enforcement to ask them for assistance to fix the problem and have applied to the past and present owners and it has not worked. Ms. Woodward asked the Board to please send them back to the Planning Board for formal site review.

Opposed

No abutters present.

Code Enforcement

Mr. Mackey said that there was nothing new to add and that his staff report was on file.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Thompson.

Deliberative Session

Mr. Virr reminded the Board that the ordinances referred to are overwhelming and the Board agreed that the articles in question did not apply and agreed by a vote of 4-1. He said that he did not see that the vote would be any different but a different applicant.

Ms. Cormier said that she was aware that the applicant can appeal the decision but asked if a recommendation be made to the Planning Board. Mr. Mackey said that the Board can vote to bring it back to the Planning Board would need to site a section.

Mr. Thompson motioned on case #10-112, DomVincent, LLC to Grant Appeal of An Administrative Decision of the Planning Board (May 5, 2010), with regard to the Site Plan Determination application of MTM Realty, LLC, located at 32 West Broadway. Planning Board waiver of site plan review violated Article III, Section 165-15 & 16, and Article VI, Section 165-33, C, D, E, F & G of the Town of Derry Zoning Ordinance. Parcel ID 29197, 40 West Broadway, Zoned CBD as presented.

Seconded by Mr. Webb.

Vote:

Mr. Osborn: No.

Ms. Cormier: No. Do not believe that it violates specifically these articles from the ordinance but do believe that the Planning Board should have reviewed under Article 170-67 under site design requirements and then taken it under consideration.

Mr. Webb: No. Do not believe it violates 165-15, fumes. Section 165.16, believe it is minimal impact. 165-33.C believe there was no testimony given and nothing in the minutes. 165-33.D was covered under 170-51. 165-33.E is not relevant. 165-33.F believe 165-49b covers that. 165-49.G believe is a Planning Board issue with the parking and not our issue.

Mr. Thompson: No. Do not see where the applicant showed evidence that the Planning Board violated the Zoning Ordinance. He said that the 2005 meeting was not relevant to the May 2010 Planning Board decision and whether it was the right thing to do is unable to determine.

Mr. Virr: No. For the same reasons as stated in the previous case and Mr. Webb's decision. Believe that the Planning Board acted on the powers of the Land Control Regulations and do not see where it violated site plan review.

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.

**10-115 Mark Hesse
 Owner: MTM Realty Trust**

Requests a variance to the terms of Article VI, Section 165-42A, to operate a tattoo studio. Parcel ID 35015-002, 10 Manchester Road, Zoned Industrial IV.

William Zolla, representing the applicant and owner, said that he would like to explain the location of the property for the Board. Mr. Zolla said that Scorpion Tattooing provides a personal service of tattooing and some sale of merchandise. He read his application for the Board. Mr. Zolla said that his client has outgrown his current location on Rockingham Road and was seeking to relocate to a larger facility on Manchester Road.

Ms. Cormier asked what type of merchandise would be sold. Mr. Hesse said that there would be tattoo related products such as after care healing products and some tee shirts offered.

Mr. Virr asked if there was permission from the landlord. Mr. Zolla said yes and there should be a letter on file.

Mr. Fairbanks asked if there would be any discard of inks into the drains. Mr. Hesse said that the inks he utilizes are non-toxic and regulated by the State. He said that the needles are disposed into plastic containers and disposed of properly.

Mr. Thompson asked if there were State regulations pertaining to tattooing. Mr. Hesse said yes and that he was licensed by the State and required to take several other courses such as CPR etc.

Mr. Virr asked if the license had to be displayed. Mr. Hesse said yes that it is a requirement by the State.

Mr. Virr asked if there was a health inspection involved. Mr. Mackey said no that the State regulates tattoo studios but there will need to be inspections if renovations are performed by the Fire Department and Code Enforcement Office but the State does the actual inspection for licensing the facility.

Mr. DeBonis said that the needle disposal was in proper containers but where are the soiled towels disposed of. Mr. Hesse said that the blood on any towels does not come from a vein so that the disposal of soiled towels is the same as household waste.

Ms. Cormier asked how many employees were there and how much area would be for merchandise. Mr. Hesse said that he currently has 4 licensed employees and that the

space for merchandise would be about 20% consisting of aftercare products and some t-shirts.

Code Enforcement

Mr. Mackey said the applicant is seeking a use variance to allow the operation of a tattoo studio from the property. The building also contains a laundromat, retail sports equipment store, a sub shop and an automobile leasing business. This property is located in the Industrial IV Zoning District which permits "retail business". Currently, the zone contains a broad range of commercial uses, including many different types of service businesses. Over the years, the "retail" designation for this zone has been broadly interpreted which has resulted in this wide variety of uses. It has been determined that the "retail business" designation be more strictly interpreted and only include actual retail sales type businesses. As a tattoo studio is primarily a service type business, the applicant was advised that a use variance would be necessary. There are pictures in the file for the Boards review.

Favor

No abutters present.

Opposed

No abutters present.

Ms. Cormier asked if 2,000 square feet was large enough to accommodate any type of manufacturing use. Mr. Mackey said that 2,000 square feet was a small space.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Thompson.

Deliberative Session

Mr. Virr said that the applicant was currently operating up at Hillside Plaza for 14 years and felt that this was an easy decision. He said that the applicant should be subject to filing for a change of use form and subject to all State and Town permits and inspections.

Mr. Webb asked if they could restrict to just the applicant.

Mr. Thompson said that under abandonment it would be allowed.

Mr. Virr said that if the use was abandoned for more than 1 year that the variance shall be null and void.

Mr. Thompson said that he never had a tattoo and did not see a problem.

Ms. Cormier motioned on case #10-115, Mark Hesse, Owner: MTM Realty Trust to Grant a variance to the terms of Article VI, Section 165-42A, to operate a tattoo studio. Parcel ID 35015-002, 10 Manchester Road, Zoned Industrial IV, as presented with the following conditions:

- 1. Change of use form to be obtained from Planning Department**
- 2. Subject to all town and state permits and inspections,**
- 3. Variance to applicant. If the use is abandoned for more than 12 months, the variance shall be null and void.**

Seconded by Mr. Thompson.

Vote:

Mr. Webb: Yes. Believe that the criteria has been met.

Mr. Thomson: Yes. For the same reasons as stated.

Mr. Osborn: Yes.

Ms. Cormier: Yes. Believe criteria has been met and due to the size of the space available that it would not allow for an industrial type use.

Mr. Virr: Yes. For the same reasons as stated.

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.

**10-114 Fun Event Rental, Inc.
Owner: Fisher Craft, Inc.**

Requests a variance to the terms of Article VI, Section 165-45A, to operate an entertainment and equipment rental facility. Parcel ID 29128, 19 Elm Street, Zoned MHDR

Attorney Brian Germaine, representing applicant, said that the property is located at the Fisher Craft building which was formally a shoe factory that was constructed in the early 1900's. Attorney Germaine read the application for the Board and presented the Board with flyers showing some of the items that the applicant was proposing to store at the property. Attorney Germaine said that his client came to the Town and has spoken to Mr.

Sioras and Mr. Mackey and was informed that he would need a variance in order to utilize the space for this type of use due to the fact that the property was located in the MHDR zone.

Mr. Thompson asked if there would be any opposition if they stated that no entertainment items be stored outside. Attorney Germaine said no and that one of the neighbors asked if there would be ponies kept on the property and said that there would not be.

Mr. Fairbanks asked if there would be delivery trucks. Attorney Germaine said that there would be box type vehicles on the property for transporting the rental equipment to and from the facility.

Mr. Fairbanks asked if the property was large enough for this type of use. Mr. Mackey said that there was ample parking in the rear of the property.

Mr. Gesing asked what side were the loading docks located and what size were the trucks. Attorney Germaine said that they were located in the front and that there was parking in the rear and that the trucks were basic box type vehicles not tractor trailer trucks.

Ms. Cormier asked what hours of operation would there be. Attorney Germaine said that the hours were various as there is a lot of rental activity on weekends and a lot during the end of year for school events.

Code Enforcement

Mr. Mackey said that the applicant is requesting a use variance to operate an entertainment and equipment rental facility from the property. This building, which is located in the Medium High Density Residential Zoning District, originally contained a shoe manufacturing use. Subsequently, it operated as Fishercraft, Inc. which produces molded sink components. In more recent times, the Fishercraft operation has been scaled back and the owner has been renting space to a variety of tenants, including a salsa manufacturing business. As the building is located in the MHDR Zoning District, the property is considered pre-existing, non-conforming. As new uses are proposed, the appropriate change of use form must be filed with the Planning Board Office and the proposed use must be manufacturing related or a use variance will be required. There are pictures in the file for the Board's review.

Favor

No abutters present.

Opposed

No abutters present.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Osborn.

Deliberative Session

Mr. Virr said that the situation again in this case is to the applicant and not the owner so motion should be made for the applicant.

Ms. Cormier said that she did not see a problem with the proposed use.

Mr. Virr reviewed the conditions for the Board.

Ms. Cormier motioned on case 10-114, Fun Event Rental, Inc., Owner: Fisher Craft, Inc. to Grant variance to the terms of Article VI, Section 165-45A, to operate an entertainment and equipment rental facility. Parcel ID 29128, 19 Elm Street, Zoned MHDR as presented with the following conditions:

- 1. Change of use form to be obtained from Planning Department**
- 2. Subject to all town and state permits and inspections,**
- 3. Variance to applicant. If the use is abandoned for more than 12 months, the variance shall be null and void.**

Seconded by Mr. Osborn.

Vote:

Mr. Thomson: Yes. Simplex criteria has been met.

Mr. Webb: Yes. Believe that the criteria has been met.

Mr. Osborn: Yes. Criteria has been met.

Ms. Cormier: Yes. Believe criteria has been met.

Mr. Virr: Yes. For the same reasons as stated.

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

Mr. Virr said that the Board needed vote on their summer schedule. He said that the Board typically has met only one time for each month and it was typically the third Thursday of the month.

Mr. Osborn motioned to meet for the summer schedule as follows:

**July 15, 2010
August 19, 2010**

Seconded by Mr. Thompson.

Vote: Unanimous.

Mr. Gesing, Mrs. Burtis, Mr. Popp, Mr. DeBonis, Mr. Fairbanks, Ms. Cormier, Mr. Osborn, Mr. Webb, Mr. Virr.

Approval of Minutes

The minutes of June 3, 2010 were tabled to the next meeting.

Adjourn

Motion to adjourn by Ms. Cormier.

Seconded by Mr. Thompson.

Vote: Unanimous.

Mr. Gesing, Mrs. Burtis, Mr. Popp, Mr. DeBonis, Mr. Fairbanks, Ms. Cormier, Mr. Osborn, Mr. Webb, Mr. Virr.

Adjourn at 11:18 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes July 15, 2010

Ms. Osborn motioned to approve the June 17, 2010 minutes as amended.

Seconded by Mr. Thompson.

Vote: Unanimous

Mr. Gesing, Mrs. Burtis, Mr. Fairbanks, Mr. Osborn, Ms. Cormier, Mr. Webb, Mr. Thompson, Mr. Virr