

**TOWN OF DERRY  
ZONING BOARD OF ADJUSTMENT MINUTES  
November 18, 2010**

**Members Present**

Allan Virr, Chairman  
James Webb, Secretary  
Ernest Osborn

**Members Absent**

David Thompson  
Cecile Cormier

**Alternates Present**

Michael Fairbanks  
Albert Dimmock  
John DeBonis

**Alternates Absent**

Betsy Burtis  
Stephen Popp

**Staff Present**

Robert Mackey, Code Enforcement Director

Mr. Virr called the meeting to order at 7:02 p.m. with the salute to the flag, and notice of fire and handicap exits.

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

**10-126      Imad Baggar**

**Requests a variance to the terms of Article VI, Section 165-32.1.A to allow the subdivision of a property containing a non-conforming residential use at 67 By-Pass 28, Parcel ID 08102, Zoned GCII**

**Code Enforcement**

Mr. Mackey said the applicant's request is to subdivide a property containing a pre-existing, non-conforming residential use. The property is zoned General Commercial II. This zone was created in 2004 and allows for various commercial uses but does not allow single-family residential uses. Therefore, the property contains a pre-existing, non-conforming use and in order to change the current status (subdivide) the property, a variance is required. As proposed, both lots being created will meet the lot size criteria for the district and the existing structures will comply with the required setbacks. The

result of the subdivision will be to create an approximate 5.75 acre commercial lot and a 1.32 acre lot containing the residential use. If approved, Planning Board subdivision approval will be required. There are pictures in the file for the Board's review.

### **Favor**

No abutters were present.

### **Opposed**

Tony Travia, 1 London Road, asked if the request was approved could a convenient store or a used car lot be put there.

Mr. Mackey said that the lot was currently zoned General Commercial II and could be developed with the allowed uses listed in the ordinance. He reviewed the list for the Board.

Mr. Travia said that he was not aware that all the items on that list was allowed there and that he did not want any of those uses to go there.

Mr. Virr asked how long has he resided at the residence. Mr. Travia said that he has lived there for 39 years.

Mr. Virr said that this zone was created in 2004 and that he should have addressed it at that time. Mr. Travia said that the previous owner had a trash business which has now gone.

Mr. Virr said that the only thing that the applicant is requesting from this Board is to allow the residential home to be on a separate lot.

Mr. Osborn said that the applicant could remove the existing home and build a larger commercial structure on the lot.

Mr. Travia asked if it was correct in understanding that they could tear down the home and put a larger commercial property there now. Mr. Virr said yes and that the Planning Board would decide from a full site plan what a could be allowed there. He said that the request from Board was only to allow the residential use to remain on a separate lot that the next step for the applicant would be to the Planning Board and that he could voice his opinion there.

Mr. Mackey said that if approved that it would then be required to go to the Planning Board with a formal site plan for approval and then it would be noticed for a public hearing. He said at this time no plans have been submitted for any proposal for the lot.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. DeBonis.

Vote: Unanimous.

### **Deliberative Session**

Mr. DeBonis said that the property was already grandfathered and did not see a problem with the request.

Mr. Webb said that the owner could easily level the residential property and put up a larger commercial building.

Mr. Virr asked if the PSNH easement corridor was part of the 5.7 acres and if there was any restrictions of building under.

Mr. Mackey said yes that the easement corridor was part of the 5.7 acre parcel.

Mr. Dimmock said that the only thing that could be put in a easement corridor was parking.

Mr. Virr said that would leave approximately 3.7 acres of allowable use.

Mr. Mackey said that as Mr. Dimmock stated parking could be utilized in an easement corridor.

Mr. Osborn said that it appears that the property would be just under 3 acres for a building with wetlands and easements.

Mr. Fairbanks asked if once subdivided would the lot be too small to develop.

Mr. Mackey said that there was no minimum acreage for commercial and that the applicant could also merge the lot back and utilize the whole property if needed.

Mr. Virr said that the conditions that he felt needed to be listed would be subject to Planning Board approval and all Town and State approvals and inspections.

Mr. Fairbanks asked if the grandfathering was only the residential lot.

Mr. Mackey said that was correct.

**Mr. Osborn motioned on case #10-126, Imad Baggar, to Grant a variance to the terms of Article VI, Section 165-32.1.A, to allow the subdivision of a property containing a non-conforming residential use at 67 By-Pass 28, Parcel ID 08102, zoned GCII, as presented with the following conditions:**

- 1. Subject to Planning Board approval**
- 2. Subject to all Town and State approvals and inspections.**

**Seconded by Mr. DeBonis.**

**VOTE:**

- Mr. Webb:** Yes. Believe it is in the spirit and intent of the ordinance and already is zoned GCII District.
- Mr. DeBonis:** Yes. Same reasons as stated.
- Mr. Osborn:** Yes. Feel applicant has shown a partial hardship as the property is already utilized as a residential property.
- Mr. Fairbanks:** Yes. Feel any reduction of a non-conforming use within the Town is a good thing.
- Mr. Virr:** Yes. Only issue was hardship but a partial hardship does exist due to the existing use.

**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 and Mr. Dimmock would sit for the following case.

**10-127      Riana Vonash**  
**Owner: Brando Quarles & Nancy Casey**

**Requests a special exception as provided in Article VI, Section 165-45D to operate a family group daycare at the residence, 22 Crescent Street Parcel 37019, Zoned MHDR**

Riana Vonash, applicant, read the application for the Board.

Mr. Webb asked if the property was her residence. Mrs. Vonash said that they are currently working on the property and getting it ready to reside there.

Mr. Webb asked if there was going to be 2 employees. Mrs. Vonash said that she currently has 2 employees but there are not there at the same time.

Mr. Virr asked how many hours do the employees work. Mrs. Vonash said that one works 40 hours and the other fills in on an as needed basis.

Mr. Dimmock said that the applicant was not the owner and believes that an exception is for the owner. Mrs. Vonash said that there was a letter in the file from the owner stating that he had no objection.

Mr. Osborn said that the request utilizing the basement and the first floor exceeds the square footage allowance. Mr. Vonash said that he drew out the plans showing the total basement area but the area also houses the utilities which consist of approximately 85 square feet and that they understand that they are limited to 25 percent rule and that they would not be utilizing the entire first floor.

Mr. Fairbanks said that there is approximately 600 square feet at the most that could be utilized for the daycare. Mr. Vonash said that they would comply with whatever was required by the Town and State.

Mr. DeBonis asked if the reason for seeking the location was to expand the existing daycare. Mrs. Vonash said that they have chosen the home to have more room for her family and also to provide for more children.

Mr. DeBonis said that would require more people to run if expand and that the special exception does not allow to expand. Mrs. Vonash explained that currently have drop offs at 8:45 am and then out of that 4 children go to school so that the number of children varies and never have all 12 children at the same time.

There was some discussion with regard to the allowed square footage and number of employees.

Mr. Fairbanks asked if the property was required to be an established residence before an exception could be granted. Mr. Mackey said that the Board could make that as a condition.

Mr. Vonash said that they currently had the keys to the property and that they were just cleaning and getting the place ready before relocating.

Mr. Webb asked where the children were staggered if during school vacations if they take on more children. Mrs. Vonash said that the children are already included in the calculations during school vacations as once registered that is your spot and that they do not always have 12 children at any one given time and that she will not take in a 13<sup>th</sup> child due to the possibility of the State making an unannounced visit and lose her licensing.

Mr. Virr asked what are the hours of operation. Mrs. Vonash said the hours are 7:00 am to 6:00 pm with the first drop off at 7:30 am.

Mr. Osborn asked if it was Monday thru Friday. Mrs. Vonash said yes.

Mr. Virr asked if a sign was requested. Mrs. Vonash said yes.

Mr. Dimmock asked if there was room for parking as the pictures did not show parking and that he was concerned for on street parking. Mr. Vonash said that the driveway was 12 feet wide.

Mr. Virr said that the applicant had previously stated that there would be no on street parking and that there was room for 6 vehicles and that the personal vehicles would be in the garage and that the employee gets dropped off.

Mr. Vonash said that he will be addressing the drop off schedule with the parents and that the drop off times are staggered so really no reason for on street parking.

Mr. Dimmock said that the pictures show signs of no parking and asked whose signs were they. Mr. Vonash said that he was unsure who owns the signs as they have only been to the property a few times and never noticed them.

There was some discussion with regard to no on street parking signs.

### **Code Enforcement**

Mr. Mackey said the applicant's request is for a special exception to allow the operation of a family day care from the residence. The applicant is requesting to be licensed for 12 children. This number of children requires 2 providers – the applicant and 1 employee. The space provided for the day care must meet the State regulations (40 square feet per child) as well as Town requirements (not more than 25% of living space). If approved, a State license is required and inspections and approvals must be granted by the Town Health Department and Fire Prevention Office. There are pictures in the file for the Board's review.

### **Favor**

No abutters were present.

### **Opposed**

No abutters were present.

Mr. Virr motioned to go to deliberative session.

Seconded by Mr. Osborn

### **Deliberative Session**

Mr. Virr said that the biggest issue is that the State requirements are 40 square feet per child and that the Town is limited to 25% of total area. He reviewed the conditions for the Board.

Mr. Webb said that he was concerned about the non-resident employees as there would be 2 there if she was not there and that the ordinance states only 1 non-resident employee.

Mr. Virr said that there would not be more than 1 non-resident employee at a time and only with the exception if she was out. He said that he did not know how to resolve that matter.

Mr. Dimmock asked who made the decision that there could only be 1 non-resident employee.

Mr. Webb said that he felt that was implemented so as not to create a full blown business in residential areas.

There was some discussion with regard to the number of employees allowed and the ordinance limitations.

**Mr. Osborn motioned on case # 10-127, Riana Vonash, Owners: Brando Quarles & Nancy Casey, to Grant a special exception as provided in Article VI, Section 165-45D to operate a family group daycare at the residence, 22 Crescent Street Parcel 37019, Zoned MHDR as presented with the following conditions:**

- 1. Sign requested, permit required.**
- 2. Not more than one non-resident employee at any time**
- 3. Hours 7:00AM to 6:00PM Monday – Friday**
- 4. No off street parking allowed**
- 5. Business limited to 25% of livable area**
- 6. Special exception not valid until residence is established**
- 7. Subject to all town & state inspections and approvals.**

**Seconded by Mr. Fairbanks.**

**Vote:**

**Mr. Fairbanks: Yes.**

**Mr. Dimmock: Yes.**

**Mr. Osborn: Yes. Do not see anyone here that is opposed and feel the applicant has met the requirements.**

**Mr. Webb: Yes. Do not see any opposition and also feel has met the requirements.**

**Mr. Virr: Yes. Feel that the conditions have been satisfied. Have shared the concerns of allowable space requirements but the Board is bound by the ordinance.**

**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 provided the Board with copies of the revised Notice of Decision showing how it would now appear.

### **Approval of Minutes**

Mr. Osborn motioned to approve the minutes of October 7, 2010.

Seconded by Mr. Webb.

Vote: Unanimous

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

### **Adjourn**

Motion to adjourn by Mr. Virr.

Seconded by Mr. DeBonis.

Vote: Unanimous.

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

Adjourn at 8:18 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk