

TOWN OF DERRY  
ZONING BOARD OF ADJUSTMENT MINUTES  
August 19, 2010

**Members Present**

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

**Members Absent**

**Alternates Present**

Michael Fairbanks  
Stephen Popp  
John DeBonis  
Betsy Burtis

**Alternates Absent**

Jason Gesing

**Staff Present**

Robert Mackey, Code Enforcement

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 said that the Board will only be hearing cases until 10:30 pm due to the availability of staffing and should they not get to all the cases on the agenda this evening that the cases would be continued to the next available meeting.

**10-117            T-Mobile Northeast, LLC  
(Owner – Blount Communications, Inc.)**

**Requests a variance to the terms of Article III, Section 165-28.B.1.a, to construct a 140 foot monopole telecommunications tower and supporting facilities. Parcel ID 03116, 8 Lawrence Road, Zoned LMDR**

Attorney Steven Grill, Devine Millimet & Branch Professional Association representing the applicant, said that he was also here with Dinesh Dasani, Radio Frequency Engineer with T-Mobile. Attorney Grill said that as during the previous meeting that applicant was requesting a variance to construct a 140 foot tower on the property which consisted of 10.38 acres and which currently contains four AM Radio towers and that this proposal would be lower than the existing towers so he felt that it would not impact the neighborhood. He said that there was a previous request for a tower location at 133

Rockingham Road which was not constructed. Attorney Grill said that he sent the Board a letter last week stating that T-Mobile would not be opposed to having the variance void.

Mr. Virr asked what reasons that the Dollar Bills tower had not been constructed and if opposed to having the variance voided. Attorney Grill said that the construction for the tower did not happen and that the Planning Board approval had expired so T-Mobile had pulled the funding for the site which is typical and the decision of not proceeding was made. He said that the site at 78 Warner Hill Road provided coverage that didn't exist to the north and east side of Dollar Bills. Attorney Grill said that with the SBA site and the proposed site at 8 Lawrence Road it will allow more coverage than what the Dollar Bills site had offered due to the location. Attorney Grill said that he felt that they can withdraw their variance request at Dollar Bills as the Planning Board conditions had not been met and as the applicant can withdraw the request and the lease agreement has expired and the project has not been constructed. Believe that have the power to withdraw the variance as the applicant as the lease with the land owner has expired.

Mr. Virr said that the Board could motion to nullify the variance and request that the escrow be released. Attorney Grill said that he felt that would be acceptable.

Mr. Thompson said that the request to void the variance was already submitted in letter form.

Dinesh Dasani, 15 Congress Way, Newton, MA, showed the Board maps indicating before and after tower construction coverage. He said that the maps were computer generated showing enhanced coverage along Route 28.

Mr. Fairbanks asked if any other properties were contacted in the overlay districts as the Planning Board put a lot of work to come up with an overlay site and just want to make sure that due diligence was done on site location as the property was not in the overlay district. Attorney Grill said that there were 3 sites that had been reviewed and additional sites were also reviewed which has been supplied in an affidavit that had been submitted to the Board. He said that, Blunt Communications, which is the site in question, was chosen as this site was more feasible due to coverage area and that he felt other areas may have not been feasible due to size and location.

Mr. Osborn asked if the exhibit J in the information supplied to the Board could be explained. Attorney Grill said that J would not be in an air hazard area but still need to submit required information as to comply with FAA regulations. The proposed tower would not have to be lighted or painted due the proposed height to the tower.

Mr. Thompson asked why the tower would not be painted orange and red was it because the ham radio towers are 150' and the proposed tower is 140' which is shorter. Attorney Grill said that was due to make sure that they were in compliance with the FAA and not a hazard to air navigation.

### **Code Enforcement**

Mr. Mackey said that during the previous case his staff report was read for the record but wished to add that the applicant had gone to the Planning Board for the Dollar Bills site and was granted a conditional approval which included recording of the plan which has not been done. He said the site on 78 Warner Hill Road required a special exception and was granted and the applicant had obtained the required permits and inspections.

Ms. Cormier asked what year did the Warner Hill site come in. Mr. Mackey said that the applicant appeared before the Board in April of 2008 and applied for the building permit in May 2008.

### **Favor**

No abutters were present.

### **Opposed**

Albert Dimmock, Derry Resident, said that he opposed the previous location and is opposed to this location. Mr. Dimmock said that the variance at Dollar Bills should have been built and if the Board grants this site that he would like to see that the Board put a time limit on it of not more than 1 year as he does not feel that they should be taking up the Board's time because they let the time lapse on the other one. He said that their engineer said that they needed coverage for Rte 93 and not people in the Derry area and if so why not collocate on a tower closer to Rte 93.

Attorney Grill said that he did not believe that the objective would have been to cover the Route 93 area as Dollar Bills site would have been for the Route 28 area coverage and now finding not all of the area would be covered as to the proposed site location was not available at the time and will now offer a wider coverage area to a lot of Derry residents as well as travelers along Route 28.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Thompson.

### **Deliberative Session**

Mr. Thompson said that he had no objection as the requested tower is less than half the height of the existing towers on the property.

Mr. Virr said that he knew the area and the existing towers and had no objection to adding another tower.

Ms. Cormier said that you would only see the towers at night when lit up.

Mr. Webb said that he was concerned as in null & void in the previous variance it could impose a legal issue as a variance goes with the land.

Mr. Virr said that he has the advice from council that the Board could nullify the existing variance if granting the proposed. He reviewed the conditions for the Board.

There was some discussion with the amount of time frame that would be needed.

The Board came out of deliberative session in order to obtain comment from Attorney Grill with regard to the amount of time need in order to complete the project.

Attorney Grill said that it could be possible to complete in 1 year but it would be taxing that a 2 year would be better due to the 2010 construction season closing soon and still need to establish Planning Board approval and recording.

The Board went back into deliberative session.

Mr. Thompson asked if they were to put auxiliary antennas on this tower would they need to come back to the Board for a variance.

Mr. Mackey said that the way the regulations work is that if you have a legal pre-existing non-conforming tower the applicant would be required to come to the Board to obtain permission to locate antennas to the tower. He said that where this would be a tower granted by a variance that basically makes it legal and not non-conforming. He said that the Board could make it part of the condition that if additional antennas were to be added that they were required to come back.

Mr. Thompson said that he was concerned that they would put up the tower and put all sorts of fingers on it and that it would be an ungodly looking sight.

Ms. Cormier said that the ordinance allows for co-location.

Mr. Virr said that he felt it refers to the overlay district encourages co-location but can make a condition that any additional antennas require a variance.

**Mr. Thompson motioned on case #10-117, T-Mobile Northeast, LLC, Owner, Blount Communications, Inc, to Grant a variance to the terms of Article III, Section 165-28.B.1.a, to construct a 140 foot monopole telecommunications tower and supporting facilities. Parcel ID 03116, 8 Lawrence Road, Zoned LMDR, as presented with the following conditions:**

- 1. Subject to obtaining all Town, State and Federal permits and inspections.**
- 2. Planning Board approval required.**
- 3. Installation must be complete within 2 years or the variance is null and void.**

**4. All co-locations must be approved by the ZBA.**

**Seconded by Mr. Osborn.**

Mr. Thompson said that he would like to add that the condition that Omnipoint a/k/a T-Mobile has agreed to nullify the existing variance at Dollar Bills.

Mr. Virr said that it was part of the testimony and would not be necessary and will follow the advice of counsel.

**Vote:**

**Mr. Webb: Yes.**

**Mr. Thompson: No. Won't put condition in.**

**Mr. Osborn: Yes. Believe that the applicant has shown the need for a tower and the proposed location will be in an area where there are already cell towers. Believe that the previous variance will be nullified and take the advice of counsel.**

**Ms. Cormier: Yes. The applicant has proven the need for an additional tower.**

**Mr. Virr: Yes.**

**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.**

**Mr. Virr motioned on case #06-169, dated August 17, 2006, Omnipoint Communications, Inc., Owner: Jen-Bill Company, Inc., in as much as the previous applicant T-Mobile Northeast, LLC's has submitted a letter of intent to withdraw the variance the Board shall nullify the variance in case #06-169 in order to proceed further T-Mobile would have to send a letter to the Planning Department with regard to escrow.**

**Seconded by Mr. Osborn.**

**Vote: Unanimous.**

**Mr. Osborn, Ms. Cormier, Mr. Webb, Mr. Thompson, Mr. Virr**

Ms. Cormier asked the Chairman if they had any objection to her sitting for the following case as she resides on Lane Road but felt that she could hear the case objectively. Mr. Virr said that if she felt that she could be impartial and stated that she could that she could sit for the case but if she wished to recuse herself she could but would welcome her to be on the Board.

It was noted for the record that Mr. Webb would step down and Mr. Fairbanks would sit for the following case.

**10-119            Keith Garside**  
**Owner: Barbara True**

**Requests a special exception to the terms of Article XIII, Section 165-108, to operate a septic system business at the property, 96 Lane Road. Parcel ID 06047, Zoned LDR**

Joseph Maynard, Benchmark Engineering said he was representing the applicant. Mr. Maynard said that the property is located at 96 Lane Road and has operated as True & Noyes Lumber yard for a number of years not sure when the business was established. He said that Mr. True passed away approximately 3 years ago and that his wife has been in the process of closing out his affairs. He said that during the time that the business has been around and established and there have been a multiple uses that are still existing on the property today. He submitted the Board with some pictures of the property. Mr. Maynard said that historically the property has operated as True & Noyes Lumber and that there is currently a saw mill on the property and did a lot of timbering operations and there has been a lot of construction equipment on and off the property for the past 40 to 50 years. Mr. Maynard said that Mrs. True still rents portions of the land for a multitude of different uses. He said at this time since the early 90's there has been a portion of the property that has been utilized for storage of septic tanks by a company out of Massachusetts that keeps materials in stock at this location and pick up as needed. Additionally out back there is also a contractor that rents space and stores his concrete forms and equipment. There is also an excavation company that keeps a chipper and excavators there and a cordwood company that stores some cordwood and equipment on the property

Mr. Virr asked what date were the photos taken. Mr. Maynard said approximately 1 month ago.

Mr. Maynard said that Mr. Garside has been a local business in Londonderry for the past 40 years. He said that Mr. Garside is seeking to purchase the property to store his trucks on. He has 2 pump trucks at this point in time and any material that is pumped during the day will be off loaded to his 2 tanker trucks that will not be stored on this property. He said that he has 2 tanker trucks where the waste is kept until it is transported to North Andover and they are not going to be coming to this property and not his intent. The intent is a home for his business and looking at the large garage to park his 2 pump trucks and he does own a few excavators and some dump trucks that he runs for his business and uses to install septic systems in the area. His purpose to purchase this land is to have a home for his equipment and secondly he would like to be able to stockpile some of the

material needed such as loam, etc that he needs to install septic systems. Mr. Maynard said that this is not a night business and occasionally from time to time there would be trucks entering and exiting the property.

Mr. Virr asked the applicant to review the criteria needed for a special exception. Mr. Mackey said that the application is just a general application and does not have the 5 points of a variance as this is under section 165-108C. He said that it is up to the Board to find use is no more detrimental or less detrimental to the neighborhood test that the applicant has to show the Board.

Mr. Thompson asked if there would be any attempt to store the tanker trucks at the property as there is a concern of off loading material on the property. Mr. Maynard said that the pump trucks are approximately 3000 gallons each and are pumped off into a large 18 wheeler truck that are currently parked at the property near the Transfer Station which is very central to them to transfer to North Andover.

Mr. Thompson asked if there would be no objection to put a condition that he could not off load into a tanker truck at the property. Mr. Maynard said no objection.

Mr. Maynard reviewed a plan for the Board explaining the buildings on the property.

There was some discussion with regard to usage and neighborhood.

Mr. Virr asked if there was anyone in the audience that would like to see the plan.

Ms. Cormier said that the business has been discontinued and abandoned and does not feel that section 108c is pertinent to the application. Therefore, this particular parcel needs to meet the zoning for this zone and this type of use is not allowed in the LDR district. She said that she felt that it would require a variance as the request to continue a non-conforming use which has been discontinued, cannot be allowed.

Mr. Mackey said that the decision was made to apply for a special exception was appropriate based on the information submitted by the applicant as he did not have personal knowledge of what the operations that have gone on at the property. He said that through testimony, if the Board deems, that the commercial status of the property has lapsed for over a year then a variance would be more appropriate then the applicant could come back for that request.

There was some discussion with regard to the use and whether the applicant needs a variance.

Mr. Maynard said that he had a long discussion with Mrs. True that even when the lumber business was in operation they had skidders, excavation equipment rented to other contractors and heavy equipment has always been on the property. He said that Mr. True was still operating the logging business 3 years ago just not working the saw mill portion of the operation.

Ms. Cormier said that the parking of RV's, renting parking spaces, warehouse storage area, etc. is not the same type of use as a saw mill.

Mr. Maynard said that Mr. True still had construction equipment on the property so the non-conforming use has not been abandoned.

After some discussion regarding the intent of Section 108, Ms. Cormier said that she feels that the non-conformity was with the owner and not the property. Mr. Maynard said that the traditional overlay district does not state non-conformity is with the person but is with the land.

Ms. Cormier said that there was no question that the non-conforming use as a saw mill and timber business was valid but now other people renting and utilizing the land that is not appropriate and the uses should have been up to the Board to grant. Mr. Maynard said that was not in the ordinance and that he has spoken to Mr. Mackey and was told that the property has had very little complaints on the property.

Mr. Virr said that no complaints does not make the use legal. Mr. Maynard said that the non-conforming use never went away.

There was some discussion with the additional usage of the property and if the usage would be considered legal non-conforming.

### **Code Enforcement**

Mr. Mackey said that the applicant's request was for a special exception to allow a septic system business to be operated at the parcel that formerly housed a lumber/sawmill business and currently houses some storage type uses. The property is located in the Low Density Residential Zoning District. Therefore, a commercial use of the property is non-conforming. According to Article XIII, Section 165-108C, an applicant can apply for a special exception to change from one non-conforming use to another non-conforming use. The Board must find that the proposed use is equally appropriate or more appropriate to the district. The proposal is to park commercial equipment and store materials on the site and utilize the existing outbuilding as an office. The dwelling located on the lot will continue to be used as a residence. There are pictures in the file for the Boards review.

Mr. DeBonis said that he felt that the case should be heard as a variance and not a special exception.

Mr. Virr said that the Board was unable to change the request and that the case is portrayed to continue as a non-conforming use.

Mr. Maynard said that he felt that there is some confusion as Mr. True owned construction equipment as the business was a lumber yard so there were excavators, trucks, etc. always on the property. He said that the saw mill has been gone for more than a year but the heavy equipment has never left and has been there for more than 50 years.

There was some discussion with regard to use and ownership.



## **Favor**

No abutter's were present.

## **Opposed**

Abutters – Richard Cowette, 85 Lane Road; Rebecca Ingalls, 100 Lane Road; John Panaro, 80 Lane Road; Ryan Pearson 83 Lane Road; Robert Daziel, 12 Stone Fence Drive; Mary Ijtsma, 10 Stone Fence Drive; Craig Lazinsky, 10 Nelson Farm Road, had the following concerns:

1. Business of True Lumber has been abandoned for years – feel property does not have a legal non-conforming status.
2. Concerned with the amount of storage on the property.
3. Concerned with the amount of noise that would be generated from the property as area is residential.
4. Devaluation of the surrounding properties in the area.
5. Concerned with odors and hazardous waste spills on property.
6. More traffic would be generated in the area.

Mr. Webb read a letter from Mark & Allison Rowe, 92 Lane Road in opposition for the record.

Mr. Virr summarized letters from Denise & David Unkles, 94 Lane Road & Neela & Matt Fortini, 4 Stone Fence Drive in opposition for the record.

Mr. Maynard said that with regard to concerns about hazardous waste the applicant could install a holding tank and pump off into a tank and then re-pumped back into the truck in the morning if required.

Mr. Thompson said that the abutters were concerned with their wells in the area if there were any spills. Mr. Maynard said that the trucks are inspected by the State yearly for any leaks and that they would be parked in the garage on a concrete floor. He said that if there were ever to be a spill that the abutting properties were far enough away that if there was little concern for any sort of contamination to surrounding wells.

## **Deliberative Session**

Mr. Fairbanks said that he was hung up on the definition of non-conforming use and that the request needs to be a lawful use. He said that he felt that the request should be for a variance not a special exception.

Mr. Virr said that he believes that Mr. True had an active business and possibly operated on a hand shake status. He said that he also felt that the request does not meet the criteria for a special exception and needs to be a full variance.

There was some discussion with regard to the request for a special exception verses a variance.

Mr. Virr motioned to come out of deliberative session to ask if the applicant would like to be granted a continuance or bring the request back as a variance.

Mr. Maynard said that he would like to request a continuance so he could bring Mrs. True in so as to be able to answer the Board's questions.

**Mr. Thompson motioned on case #10-119, Keith Garside, Owner: Barbara True, to continue case to October 7, 2010.**

**Seconded by Mr. Fairbanks.**

**Vote:**

**Mr. Fairbanks: Yes.**

**Mr. Osborn: Yes.**

**Mr. Thompson: Yes.**

**Ms. Cormier: Yes.**

**Mr. Virr: No. Feel ill advised and the request requires a variance.**

**The case was continued to September 2, 2010 meeting by a vote of 4-1-0.**

It was noted that the Board took a 5 minute recess – reconvened at 9:24 pm.

**10-120            60 Isinglass, Inc**

**Requests a special exception to the terms of Article XIII, Section 165-108, to operate a business office, daycare, and educational facilities for children and adults at the property. 10 A Street, Parcel ID 08001-002004, Zoned IND IV.**

Attorney Brian Germaine, representing applicant, said that there had been a previous plan presented to the Planning Board that had been granted to condo-minimize the property. He said that the property was the former Gold's Gym facility along with other uses which also had a daycare facility. Attorney Germaine said that Gold's Gym has been closed for less than a year ago and Southern New Hampshire Services has signed a letter of intent to use the rear portion of the building consisting of 8,000 square feet to operate a day care/school head start program from the facility. He said that they were seeking to have a head start program with approximately 80-100 students and operate a limited educational services for adults and use the facility for limited office functions to fulfill its purposes and missions. Attorney Germaine said that he had spoken to Mr. Mackey in the Code Enforcement Office and agreed that the request required a Special Exception from the Zoning Board of Adjustment as the use is not listed in the Industrial IV District. Attorney Germaine said that the property formally had approval for a day care facility before and read his letter of intent for the Board.

Mr. Thompson asked if the property was listed in the TIF area. Mr. Mackey said yes.

Mr. Thompson asked if the business was non-profit and if they pay taxes. Attorney Germaine said that they were a non-profit facility.

Neal Barrett, Southern NH Services, said that they were a tax exempt organizations and understand the concern with regard to revenues but feel that they are bringing in a head start program and fuel assistant programs along with adult education to an area that would greatly benefit from the programs services.

Mr. Thompson asked if Mr. Mackey could explain what the TIF area was. Mr. Mackey said that the TIF area was part of the Route 28 widening project and that Gary Stenhouse was here and could enlighten the Board with regard to the TIF area.

Gary Stenhouse, Town Administrator, said that the TIF District encompasses both sides of Route 28 and stands for Tax Increment Financing which is supposed to pay for the bonds along Route 28.

Mr. Fairbanks said that being a TIF district had nothing to do with the ordinance or the application and asked if Ombudsman was still utilizing a portion of the building. Attorney Germaine said that Ombudsman was still there in condo A and that the Board has valid concerns but the applicant is here to request a special exception to operate from the site and feels that it is similar in use of the former site. Attorney Germaine said that the head start program was not here years ago and that the program is greatly needed as well as adult education. He said that the community action program is also needed and that the Town will benefit and that to deny a special exception would be discrimination.

Mr. Fairbanks asked if filling in the pool would be considered a structural change. Attorney Germaine said that he had spoken to Mr. Mackey and he did not feel that that would be considered a structural change.

Ms. Burtis said that the Board had allowed an abutter to have a church locate in the same zoning area.

Mr. Stenhouse said that the Board was here to decide if the applicant meets the requirements for a special exception not here to discuss TIF.

There was some discussion with regard non-profit organizations and similar uses in the area.

### **Code Enforcement**

Mr. Mackey said the applicant's request is for a special exception to allow the conversion of a portion of the building, formally utilized as a health club, to be converted to a daycare/school head start program. The property is located in the Industrial IV Zoning District which is the only Industrial Zone to permit retail sales. As has been previously discussed with the board over the years the uses permitted in this district were broadly interpreted with the result that a wide range of uses, including service type businesses

exist. More recently only Industrial or actual retail uses have been allowed without zoning board action. The current proposal per Article VIII, Section 165-108C, seeks to change from the non-conforming health club use to a non-conforming educational type use in a portion (8,000 sq. ft.) of the building. It has been represented by the applicant that no “structural” alterations to the building are proposed. Non-structural demising walls will be installed. I do not have any construction plans as of yet. The applicant has been before the Planning Board and recently received approval for a “subdivision” to separate the building into 2 commercial condominiums. There are pictures in the file for the Boards review.

### **Favor**

Donna Briggs, 1 Gaita Drive, said that as a parent of a special needs child feel it would be a disservice not to allow the use as there is a great need for this type of facility.

### **Opposed**

Gary Stenhouse, Town Administrator, read a statement that he requested to be made part of the record citing opposition to the request. Some of the concerns were as follows:

- Use is inconsistent with industrial zoned property.
- Structural alterations render the site ineligible for the special exception.
- Use needs to be determined if equally appropriate or more appropriate to the district than the existing non-conforming use.
- Limited supply of industrial zoned land for potential industrial use.

Attorney Germaine said that he was shocked that the Town of Derry was taking an opposition against the applicant’s request and feels that the use will only benefit the Town. He said that he did not feel that a day care facility was inappropriate in this area when across the street has the Sports Zone. The issue with regard to tax dollars out of this particular building is not a factor as the use will benefit the community. Attorney Germaine said that the Board’s role is limited to whether the special exception use applies and feel that the Rockingham Community Action program is an appropriate use for the space.

Mr. Thompson said that they did not say that head start was not allowed in Town just not an appropriate use for the property location in question.

Mr. Barry said that they had reviewed several areas and that they found that most places they could not afford and when this space became available to purchase only a portion of the building it was found that they could fit their needs into this location. He said that they researched for 6-7 months and that most places did not meet the handicap requirements which added a considerable cost factor into their limited budget. Mr. Barry said that Southern New Hampshire Community Action has Derry listed as one of their communities that they serve and felt best location for the program location.

Mr. Thompson asked why was Derry the best location. Mr. Barry said that Derry was the largest community in the Rockingham County.

There was some discussion with regard to use and location.

### **Deliberative Session**

Ms. Cormier said that she agreed with Mr. Stenhouse as the need to save Industrial IV lands but under the present zoning this change of use doesn't meet Section C criteria. She said that may need to change the ordinance to preserve the industrial land.

Mr. Virr said that according to 108C the Board needs to determine if the use is equally appropriate or more appropriate to the district than the existing non-conforming use.

Mr. Thompson said that he did not see healthcare to a daycare as equal.

Mr. Virr said that if approved that some of the conditions should be that it was subject to Planning Board approval and subject to obtaining all permits and inspections and void if abandoned for 1 year.

**Mr. Thompson motioned on case #10-120, 60 Isinglass, Inc., to Grant Request for a Special Exception to the terms of Article XIII, Section 165-108C, to operate a business office, daycare, and educational facilities for children and adults at the property. 10 A Street, Parcel ID 08001-002004, Zoned IND IV, as presented with the following conditions:**

- 1. Subject to Planning Board approval.**
- 2. Subject to obtaining all State & Local permits and inspections.**
- 3. Special Exception void if abandoned for a period of 1 year.**

**Seconded by Mr. Osborn.**

### **Vote:**

**Mr. Webb:** No. Do not believe section 165-108C has been met as do not feel that it is equal or more non-conforming than the previous use.

**Mr. Thompson:** No. Agree with Mr. Stenhouse as it does not meet the spirit and intent of the ordinance.

**Mr. Osborn:** No. Feel it is not an appropriate use of the area.

**Ms. Cormier:** No. Do not believe it meet section 108C as the ordinance states that the proposed use has to be appropriate and does not feel that it is equal or an appropriate use for the area.

**Mr. Virr:** No. Do not feel being discriminatory as use is not appropriate use as not the same as previous use that there is a difference with little

**children running around. The Town is not making any more commercial property.**

**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.**

Mr. Virr said that due to the time that case #10-122 would be continued to the September 2, 2010 meeting.

**10-121 Donna Briggs**

**Requests a special exception to the terms of Article VI, Section 165-48.A.1, to operate a message therapy business at the residence. 1 Gaita Drive, Parcel ID 03160-021, Zoned LDR.**

Donna Briggs, owner, read her application for the Board.

Mr. Virr asked if a sign was being requested. Ms. Briggs said yes.

Mr. Thompson asked if the road was a dead end. Ms. Briggs said yes and that her business would mostly be by word of mouth as it was a therapeutic business so there was no loud noise.

Mr. Virr asked if there would be any non-resident employees. Ms. Briggs said no.

Ms. Burtis asked how would the clients enter the room. Ms. Briggs said that she owned a split ranch so they would enter the front entrance and go downstairs to the area that she would utilize for her business however they would need to utilize the bathroom which was located upstairs but the rest of the home would be gated off.

Mr. Thompson asked if fire would need to review. Mr. Mackey said no.

Ms. Briggs said that she was licensed and certified.

Mr. Virr asked who licenses. Ms. Briggs said that she was licensed by the State and the MTB.

Mr. Virr asked if the plan submitted showed the space for the proposed use. Ms. Briggs said yes and that it was approximately ¼ of the area and that her downstairs was finished.

Mr. Virr asked what hours were being requested. Ms. Briggs said that she would like 8am to 8pm depending on her work schedule as it varies.

Ms. Cormier asked if it would be seven days a week. Ms. Briggs said yes but may not work on Sunday as she tries to make that day for family time.

**Code Enforcement**

Mr. Mackey said the applicant’s request is to operate a massage therapy business from the residence. The deed to the property references protective covenants, (Volume 2226/Page 277) item 22 allows for the type of professional use being requested. If approved, the applicant must have the appropriate State license. A sign is being requested and will require a permit from the office. There are pictures in the file for the Boards review.

**Favor**

No abutters were present.

**Opposed**

No abutters were present.

**Deliberative Session**

Mr. Virr said that he felt that the requirements have been met and that just needed to be subject to conditions.

**Mr. Osborn motioned on case #10-121, Donna Briggs, to Grant a Requests a special exception to the terms of Article VI, Section 165-48.A.1, to operate a message therapy business at the residence. 1 Gaita Drive, Parcel ID 03160-021, Zoned LDR, as presented with the following conditions:**

- 1. Hours of operation 8:00 am – 8:00 pm Monday – Sunday**
- 2. Subject to all State & Town permits and inspections.**
- 3. Sign not to exceed 3 square feet and not internally illuminated.**
- 4. One client vehicle at any time.**
- 5. No non-resident employees.**

**Seconded by Mr. Thompson.**

**Vote:**

- Ms. Cormier: Yes.**
- Mr. Osborn: Yes.**
- Mr. Thompson: Yes.**
- Mr. Webb: Yes.**
- Mr. Virr: Yes.**

**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 Mr. Mackey submitted a note regarding case #10-116, James Vittum, had noise test done and that it complies with the requirements.

**Approval of Minutes**

Postponed to next meeting.

**Adjourn**

Motion to adjourn by Mr. DeBonis.

Seconded by Mr. Thompson.

Vote: Unanimous.

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

Adjourn at 10:33 pm

Minutes transcribed by:  
Ginny Rioux  
Recording Clerk

**Approval of Minutes on October 7, 2010**

**Mr. Thompson motioned to approve the minutes of August 19, 2010 as amended.**

**Seconded by Mr. Osborn.**

**Vote: Unanimous**

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