

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
January 6, 2011

Members Present

Allan Virr, Chairman
David Thompson, Vice Chairman
Ernest Osborn

Members Absent

James Webb
Cecile Cormier

Alternates Present

Michael Fairbanks
John DeBonis
Betsy Burtis
Albert Dimmock

Alternates Absent

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.

Mr. Virr said that the first order of business was to revise the approved minutes of November 18, 2010 to reflect on case #10-127, Riana Vonash, to change condition #4 to read that there would be no on street parking allowed as was discussed in the minutes.

Mr. Osborn motioned to amend the approved minutes of November 18, 2010 as noted.

Seconded by Mr. Thompson.

Vote: Unanimous.

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

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

Steven & Laura Trefethen, Request for Rehearing of 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

Mr. Virr reviewed the applicant's request for rehearing for the Board as follows:

- #3 - 165-45.1 MHDR II - should be 165-45.d.
- #4 - Profession, The applicant questions whether a day care provider is a recognized profession. In response, Mr. Virr said that the State recognizes daycare as a profession. The applicant's statement indicating Mrs. Vonash was not residing there so residency was not established so the special exception was illegal. Mr. Virr stated he believes that the applicant had a letter from the owner indicating that he was aware of the request and gave permission and that they had signed a lease. Also one of the conditions applying to Mrs. Vonash was residency was required to provide proof of residency before the special exception would be valid.
- #5 - The applicant questioned the issue of parking. Mr. Virr stated that might apply if it was a non-residential or multi-family dwelling but the dwelling is a single family home so that is not applicable. The applicant claimed that a full site plan should have been required. Mr. Virr said that there is nothing in the ordinance for routine requests for home businesses to go to the Planning Board and that the State indicates child care to be in a residence.
- #6 - Employees, condition of not more than 1 non-resident employee applies.
- #7 - Buffer. Mr. Virr said that no buffer requirement applies to the request.
- #8 - Site Plan Review, does not apply.
- #9 - Site Plan Review for Access, does not apply.
- #10 - Lead Paint - Mr. Virr said this is a local health or a State issue and would be determined prior to issuance of license. Mr. Mackey said that he was not directly involved as the Health Officer but believes that the State would possibly pick up before licensing.
- #10a - Notification; The file shows certification from Post Office that mail went out in a timely manner to the abutter's address of record.
- #10b - Parking; Mr. Virr stated property is a residence and testimony was given that there was room for 6 automobiles in driveway.
- #10c - 165-16, applies to non-residential and multifamily use, does not apply.
- #10d - LDCR 165-51, discusses licensing for public safety department.
- #10e - Planning Board cited: should be Zoning Board.

Mr. Fairbanks said that the applicant was questioning the type of business and said that the Board has had other daycare requests before and did not feel that this one was any different than the past. He said that he felt that the Board had made the right decision in granting the request.

Mr. DeBonis said that he agreed with Mr. Fairbanks that the Board had discussed the case and that the concerns addressed by the applicant are not for the Board.

Mr. Dimmock said that the applicant stated that Mrs. Vonash was not the owner of the property but remember hearing testimony that a lease had been signed so feel that she

was a legal resident of the property. He said as far as improper notification that the Board has no control when someone picks up their mail.

Mr. Fairbanks said that the Mrs. Vonash had also submitted a letter from the property owner stating that she had permission to make the request.

Mr. Dimmock said that the keys had been turned over so they were a legal resident of the property.

Mr. Fairbanks said that he recalled that Mrs. Vonash stated they were currently working on the home before moving into it but had signed a lease.

Mr. Virr asked Mr. Mackey if Mrs. Vonash had made any request to start the operation of the business. Mr. Mackey said that the request to operate would not come through his office but would go through the State, Fire and Health Departments. He said that he did believe that they were working with the Fire Department to utilize space.

Mr. Fairbanks said that it appears that they were addressing some of the concerns of the applicant.

Mr. Virr said that a daycare provider is a recognized profession as more and more people work and daycare is sometimes the answer to a lot of working parent's child care concerns.

Mr. Osborn said that he did not feel that the Board did anything wrong in its decision to grant the request.

Mr. Dimmock said that when Mr. Osborn made the initial motion it was subject to 7 conditions and one of which was subject to obtaining all Fire, State and local permits so feel that the Board made the right decision.

Mr. Osborn motioned on Steven & Laura Trefethen, to Grant a Request for Rehearing of 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.

Seconded by Mr. Fairbanks.

Mr. Virr informed the Board that a yes vote would grant the request for a rehearing and a No vote would deny the request.

Vote:

Mr. Fairbanks: No. Believe that due diligence has been done and no new evidence has been presented that the Board had not discussed during the meeting.

Mr. DeBonis: No. For the same reasons as stated by Mr. Fairbanks.
Mr. Osborn: No. Read the request and do not feel that the Board made any errors in its decision.
Mr. Dimmock: No. Do not feel that the Board did anything wrong and feel that due diligence was given on the case. Do not see any reasons given to grant the request for a rehearing.
Mr. Virr: No. For the same reasons as stated by Mr. Osborn have reviewed the request and feel that the Board acted properly in its decision.

The request for a rehearing has been Denied by a vote of 0-5-0. The recourse would be to appeal to Superior Court.

Approval of Minutes

Mr. Osborn motioned to approve the minutes of December 16, 2010.

Seconded by Mr. Thompson.

Vote: Unanimous

Mr. Dimmock, Mrs. Burtis, Mr. DeBonis, Mr. Osborn, Mr. Thompson, Mr. Virr

Abstain: Mr. Fairbanks

Adjourn

Motion to adjourn by Mr. Thompson.

Seconded by Mr. Osborn.

Vote: Unanimous.

Mr. Dimmock, Mrs. Burtis, Mr. DeBonis, Mr. Fairbanks. Mr. Osborn, Mr. Thompson, Mr. Virr.

Adjourn at 7:32pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk