

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
March 3, 2011

Members Present

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

Members Absent

Alternates Present

Michael Fairbanks
John DeBonis
Betsy Burtis
Albert Dimmock

Alternates Absent

Stephen Popp

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. Thompson said that he would step down for this case. Mr. Virr asked Mr. Dimmock to sit for the following case.

11-101 Daniel M. Mogé

Applicant requests a special exception to the terms of Article VI, Section 165-47A.1 to operate an automotive repair garage at the residence, 6R Lesley Circle, Parcel 03103-033R, Zoned LMDR

Daniel Moge, owner, read his application for the Board. He said that he was seeking to operate his own small business at his residence until he was as able to afford to lease a larger building in a commercial area. Mr. Moge said that his objective would be to operate a full service facility which would be solely operated in a detached garage located on the property.

Mr. DeBonis asked if the vehicles would be kept in the garage at all times or outside. Mr. Moge said that there would be no more than 3 vehicles at the most outside at any given time and none of them would be in the form of disrepair and all would be inspected.

Mr. DeBonis asked if there was enough space on the property for vehicles Mr. Moge said yes.

Mr. Webb asked if the property was a condex. Mr. Moge said it was a duplex and that he owns both sides of which he currently rents out the other side.

Mr. Webb asked if it was a shared driveway and how many cars would there be. Mr. Moge said that his tenants have 2 vehicles and he has 3 personal vehicles but there was ample room at the garage area for additional parking.

Mr. Webb asked how many cars can the driveway park. Mr. Moge said that the driveway is easily 2 cars wide then expands out to 4 cars wide and feel can park 8 cars easily. He explained his plot plan for the Board.

Mr. Fairbanks asked what measures were going to be taken for hazardous waste disposal. Mr. Moge said that any waste will be kept inside and disposal company will be providing 30-55 gallon storage containers that the waste will be kept in and company will come periodically to remove.

Ms. Cormier asked if the property was serviced by well water. Mr. Moge said yes.

Ms. Cormier said that the living area calculations only come out to 2,074 square feet and the applicant is seeking 518 square feet of space for the business which exceeds the 25% allowance requirement. She said that she felt that this type of enterprise was not a small business and that she understands that the hazardous waste would be kept in special containers but how would the noise be contained in the summer hours without air conditioning. Mr. Moge said that the garage would have air conditioning and that repairs would be conducted inside and the garage doors would be closed.

Mr. Virr reviewed the ordinance and allowable space for the Board. He asked if the garage would be added onto. Mr. Moge said that he would be adding an 8'x 8' area to the side of the garage for and area to be keeping his files and that the garage would be dormered out for the lift to be installed.

Mr. Osborn asked if the garage would be attached to the home. Mr. Moge said no that the proposed addition to the garage would only be 8' and that there would still be several feet between the buildings.

Mr. DeBonis said that according to the ordinance that you could not change the dwelling and that the applicant would be changing the dwelling as adding an office area.

Mr. Dimmock reviewed the ordinance section 165-46.b for the Board that refers to what the applicant was requesting as he felt that the owner could conduct this type of business as he falls under repairman which is listed as an allowed by exception in the Town Zoning Ordinance.

Mr. Osborn asked if the oil and anti-freeze would be kept inside or outside in the 30 gallon containers. Mr. Moge said that they would be kept inside.

Mr. Osborn asked if there would be a spill pad provided under the containers. Mr. Moge said yes.

Mr. DeBonis said that they actually have an item that is called a secondary container pad for hazardous materials.

Code Enforcement

Mr. Webb read the Code Enforcement Memo from Mr. Mackey for the record as follows:

- The applicant is requesting a special exception for a home occupation to operate an automotive repair facility at this residence.
- The business would be conducted in a portion of a detached garage located on the property.
- The Board will need to determine if the application/proposed use qualifies for a special exception as allowed under Article VI, Section 165-57A.1.
- If approved, the facility must be operated in compliance with all Town, State and Federal regulations.
- If approved, I would request that the Board consider a condition to limit the amount of unregistered vehicles or vehicles not actively being repaired that are allowed on site. This is to avoid the accumulation of “junk” vehicles on the property.
- There are pictures in the file for the Board’s review.

Board Questions

Ms. Cormier said that she felt that the Board could not address this application as she felt that it requires a variance as it exceeds the 25% allowable area.

Mr. Virr said that he had consulted Mr. Mackey on the matter and that he did not feel that it required a variance as the applicant owned both sides of the unit.

Mr. DeBonis said that the garage was not a finished living area and did not feel that it should be allowed to be utilized and it exceeded the allowable area.

Mr. Osborn said that 20 square feet is the size of a sheet of plywood and did not find it of concern.

Mr. Moge said that the figures of the garage layout on the plan are the outside measurements which are not the true square footage.

Mr. Virr said that the Board needs to determine if the applicant meets the conditions and vote as reasons for approval or denial of the applicant’s request.

Favor

No abutters were present.

Opposed

No abutters were present.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Osborn.

Vote: Unanimous.

Mr. Dimmock, Mr. Osborn, Ms. Cormier, Mr. Webb, Mr. Virr.

Deliberative Session

Mr. Webb said that he felt that a full auto shop the use would change the residential character of the property. He said that his thought of a tradesman would be cabinets not auto repair.

Ms. Cormier said that she agreed with Mr. Webb and that her interpretation of the 25 percent of allowable living space is given for a reason to keep home businesses on a small scale.

Mr. Dimmock said that he reviewed the case and reviewed the area and neighborhood and that this is not a neighborhood to allow a garage but the section 165-47b allows for tradesman, repairman, etc. and that the applicant falls under a repairman. He said that a garage is not part of a residence so that the 20 square feet over does not really have a lot to do with the case and that the applicant is trying to support his family and that adding the dormer for allowances of the lift would require a building permit which is not part of the Board but under the Building Department to issue.

Mr. Osborn said that the applicant has stated that he wants to get a start there and have 3 cars and a small sign that he did not feel that it would change the neighborhood and that no neighbors were here in opposition of the request. He said that allowing the 20 or 30 square feet more of space is not going to pose a problem with the property and that he did not feel that it would drag down the value of the neighboring area.

Ms. Cormier said that a tradesman or repairman would be someone coming to other homes to perform a service not performing services at their home.

Mr. Osborn said that he does as much as he can at his own property and probably makes more noise than an auto mechanic would make.

Mr. Virr reviewed the conditions for the Board.

Mr. Osborn motioned to come out of deliberative session.

Seconded by Ms. Cormier

Vote: Unanimous.

Mr. Dimmock, Mr. Osborn, Ms. Cormier, Mr. Webb, Mr. Virr

Ms. Cormier asked if the State would have to come down and perform an inspection of the property. Mr. Moge said yes that it was part of the requirement from the State to ensure that the shop meets the guidelines required in order to issue State inspection stickers.

Mr. Dimmock said that the State inspection signs were required by the State but the Board could

Mr. Virr said that he would entertain a motion.

Mr. Osborn motioned on case #11-101, Daniel M. Mogé to grant a special exception to the terms of Article VI, Section 165-47A.1 to operate an automotive repair garage at the residence, 9R Lesley Circle, Parcel 03103-033R, Zoned LMDR as presented with the following conditions:

- 1. Not more than one (1) unregistered vehicle on the property**
- 2. No vehicles that are not actively being repaired to be stored on site.**
- 3. Subject to all State and Town permits and inspections.**
- 4. Hours of operation Monday – Friday 8:00 am – 6:00 pm.**
- 5. Sign not to exceed 3 square feet and not internally illuminated.**
- 6. No non-resident employees.**

Seconded by Mr. Dimmock.

Vote:

Mr. Osborn: Yes. Feel that it meets the criteria and no abutters are present in opposition.

Mr. Webb: No. Believe that the application is drawing a line for in-home businesses as the use is more of a commercial nature. Feel it will change the residential character of the neighborhood.

Ms. Cormier: No. Feel it does not meet the criteria outlined in the ordinance for a home business. It would change the residential character of the neighborhood and that it exceeds the allowable 25% usage. Feel that the use will be noxious and that the use does not fit into the interpretation of a home business but more of a commercial enterprise.

Mr. Dimmock: Yes. Feel that the applicant falls under the use as a tradesman/repairman and use is allowed according to the ZBA as making an adjustment to allow the applicant to operate a repair garage from his residence.

Mr. Virr: No. Feel that the home business will affect the character of the property and that the type of activity will be obnoxious to the neighborhood.

The application was Deniedd by a vote of 2-3-0. Anyone aggrieved by a decision of the Board has 30 days to file a request for a rehearing. After that the recourse would be to appeal to Superior Court.

Approval of Minutes

Ms. Cormier said that she had some changes that she would like to have added before the minutes were approved and asked if they could be postponed until the next meeting.

Other Business

Mr. Virr informed the Board that Steve & Laura Trefethen have filed a petition against the Board in Superior Court with regard to case #10-127, Riana Vonash, 22 Crescent Street.

Adjourn

Motion to adjourn by Mr. Osborn.

Seconded by Mr. Thompson.

Vote: Unanimous.

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

Adjourn at 8:00 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes March 17, 2011

Mr. Thompson motioned to approve the minutes of March 3, 2011 as amended.

Seconded by Mr. Webb.

Vote: Unanimous.

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