

**TOWN OF DERRY**  
**ZONING BOARD OF ADJUSTMENT MINUTES**  
**May 19, 2011**

**Members Present**

Allan Virr, Chairman  
David Thompson, Vice Chairman  
Albert Dimmock, Secretary  
James Webb  
Ernest Osborn

**Members Absent**

**Alternates Present**

Betsy Burtis  
Lynn Perkins  
Donald Burgess

**Alternates Absent**

John DeBonis

**Staff Present**

Bob 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.

**11-107      David Morin**  
**Owner: ISA Nominee Realty Trust**

**Applicant requests a special exception to the terms of Article VIII, Section 165-67 to allow for the operation of a motor vehicle and service business on the property located in the Groundwater Resource Protection District, 11 Tinkham Avenue, Parcel ID 35015-014, Zoned IND IV.**

David Morin, applicant, said that he was representing ISA Nominee Realty Trust. He read his application for the Board. Mr. Morin said that he had researched ways to minimize any possible ground water contamination and had submitted that in his application to the Board for their review.

Mr. Thompson asked if this was for the rear building only or both. Mr. Moring said that was correct that the floor drains were installed in the rear building and not in the front building as the previous company had snow plows.

Mr. Thompson asked if the front building is to be utilized for repairs how would control contaminates. Mr. Morin said that they would have proper containment measures would be taken and that any salt and sand from winter would not be hazardous.

Mr. Burgess said that his personal vehicles have had snow packed in the under carriage for months and that when in garage it would melt and run off onto floor does the garage have a pitch so the run off goes out.

### **Code Enforcement**

Mr. Mackey said that the applicant is requesting a special exception to Article VIII of the Zoning Ordinance addresses the Groundwater Resource Conservation District (GRCD). Specifically, this involves the underground aquifers that have been mapped throughout the Town. A large amount of the aquifer is located in the most densely populated area of Town in the vicinity of the downtown. Within the district there are permitted uses, prohibited uses and uses allowed only after a special exception has been granted per Section 165-67. Motor vehicle service and repair requires this special exception and the applicant must establish that the 4 criteria under Section 165-67B have been met. The hearing is held with attendance of the Planning Board and Conservation Commission to provide advice. The Board must find, in written findings of fact, that all 4 criteria have been met in order to grant approval. The site was originally approved by the Planning Board in July 1999 as a garage/office and equipment garage. There is an approved site plan on file with the Planning Department including details of the oil/water separators. There are pictures in the file for review by the Board.

### **Favor**

### **Opposed**

### **Board Questions**

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Dimmock.

Vote: Unanimous.

Mr. Perkins, Mr. Dimmock, Mr. Osborn, Mr. Webb, Mr. Virr

### **Deliberative Session**

Mr. Osborn said that he did not see a problem with the request as 165:46b covers it but would like to see the location clearly marked so a possible client would not be looking for it.

Mr. Virr reviewed the conditions for the Board.

Mr. Osborn said that the applicant's letter of explanation also covers it.

Mr. Virr motioned to come out of deliberative session.

Seconded by Mr. Osborn.

Vote: Unanimous.

Mr. Perkins, Mr. Dimmock, Mr. Osborn, Mr. Webb, Mr. Virr

**Mr. Osborn motioned on case #11-107, David Morin Owner: ISA Nominee Realty Trust, to Grant a special exception to the terms of Article VIII, Section 165-67 to allow for the operation of a motor vehicle and service business on the property located in the Groundwater Resource Protection District, 11 Tinkham Avenue, Parcel ID 35015-014, Zoned IND IV, as presented with the following conditions:**

- 1. Sign requested – approved subject to permit**
- 2. No non-resident employees**
- 3. Hours, Monday – Friday 9:00AM to 9:00PM, Saturday and Sunday 9:00AM to 5:00PM**
- 4. No more than one client auto at any time**
- 5. All town/state permits and inspections.**

Seconded by Mr. Dimmock.

### **Vote:**

**Mr. Dimmock: Yes.**

**Mr. Webb: Yes. Believe it meets the criteria and will not affect the neighborhood.**

**Mr. Osborn: Yes. Meets the requirements for a special exception.**

**Mr. Perkins: Yes. Agree with the Board and do not see any conflicts in granting the request.**

**Mr. Virr: Yes. For the same reasons as stated as it meets the criteria needed to be granted an exception.**

**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.**

**11-108            Scott Hayward**

**Variance request to the terms of Article VI, Section 165-47.B.4 and Article XIII, Section 165-107A to raise the roof and construct walls under an existing well house, 70 Hampstead Road, Parcel ID 09118, Zoned LMDR.**

Scott Hayward, owner, said that he was not intending to make the structure larger than the existing roof but wanted to create usable space for a possible barn.

Mr. Osborn said that he felt that if the roof line was brought up 8-10 feet that an oncoming vehicle would not be able to see the doors to the station and in the event of an emergency it could pose an issue for oncoming traffic.

Mr. Burgess asked what was located inside and why wouldn't it be better just to remove it and fill it in. Mr. Hayward said that he would like to utilize the well and also would like to utilize it for a barn.

Mrs. Burtis asked what the foot print size was of the existing roof. Mr. Hayward said that it was approximately 28' x 27' of a large roof type structure.

**Code Enforcement**

Mr. Mackey said the applicant proposes to raise an existing roof structure, originally constructed by the Town to protect a well utilized as a pumping station for the East Derry Fire Department, to create a storage barn. The current roof structure does not meet the required front and side setbacks for the district, therefore, a variance is required to expand the structure by adding walls. I have checked with Fire Chief Klauber regarding this proposal and it is his opinion that this construction of a single story structure would not create a site line issue for fire vehicles exiting the East Derry station. If approved by the Board, a building permit will be required for the construction. There are pictures in the file for review by the Board.

Chief Klauber said that the Town id not build the building as it was constructed by the East Derry Fire Precinct and its intent was to be able to hook up a truck and pump water from it. It currently has a concrete flooring to keep water from leaking out and believe that never has had any water taken out of it. He said that he had spoken to Captain Bruno Soucy to see if a clear view could be maintained and he informed that the trucks drive at a 90 degree angle and come to a complete stop before coming out onto Hampstead Road due to the speed of traffic so site line would not be an issue . Mr. Klauber said that there is currently a 3-4' grassy area and a side walk located on that side of the road so if a vehicle were to drive out from that area it could clearly see oncoming traffic even if the structure is on the lot line. He said that the former owner Ms. Spofford and the current owner Mr. Hayward have been great neighbors during snow removal and hope that continues so he endorses the usage as its current state is an eyesore to the neighborhood

and that it would be nice if it looked like it belonged in the area as in its current state it does not.

### **Favor**

No abutters were present.

### **Opposed**

Ann Breault, 75 Hampstead Road, said that she was not really opposed to the request but had a question with regard the usage of the barn and concerned as it is only 40' from her porch and if utilized as a barn that she would not approve of the odors that are created from horses so would not like to see it used for a barn.

Mr. Hayward said that the well house has a column of water under it and may not be able to put horses into the structure after it is built but would like to utilize it for a garden shed type building etc. and his wife would like to have a garden along the side of the property.

### **Board Questions**

There were no additional questions from the Board.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Osborn.

Vote: Unanimous.

Mr. Osborn, Mr. Webb, Mr. Dimmock, Mr. Thompson, Mr. Virr.

### **Deliberative Session**

Mr. Thompson said that he did not see a problem with the request.

Mr. Osborn said that he has concerns that the structure is over water and have heard from the Fire Chief that visibility would not be a problem but feel that the applicant will build the structure to code.

Mr. Dimmock said that he had concerns with the site distances for vehicles coming up the road as it was not enough and that the Code Enforcement Office will need to oversee the structure as it is being built over water and safety concerns. However the ordinance asks if it is a reasonable use and therefore it should be granted as the owner should be allowed to do something with his property.

Mr. Webb said that he felt that there may be a visibility problem but the Fire Chief has stated that the trucks will not have visibility issues.

Mr. Virr reviewed the conditions for the Board.

Mr. Virr motioned to come out of deliberative session.

Seconded by Mr. Thompson.

Vote: Unanimous.

Mr. Osborn, Mr. Webb, Mr. Dimmock, Mr. Thompson, Mr. Virr.

**Mr. Thompson motioned on case #11-108, Scott Hayward to grant a to the terms of Article VI, Section 165-47.B.4 and Article XIII, Section 165-107A to raise the roof and construct walls under an existing well house, 70 Hampstead Road, Parcel ID 09118, Zoned LMDR, as presented with the following conditions:**

- 1. Subject to all town permits and inspections.**

**Seconded by Mr. Osborn.**

**Vote:**

**Mr. Thompson: Yes.**

**Mr. Osborn: Yes.**

**Mr. Dimmock: Yes. Believe is a reasonable use of the property.**

**Mr. Webb: Yes. Have concerns with possible visibility not being met but Chief Klauber stated that the proposal would not interfere with the fire truck visibility.**

**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**

Mrs. Burtis asked when the rehearing of the other case was coming back.

Mr. Mackey said that the applicant had been notified but has not submitted his application for the request at this time.

**Approval of Minutes**

Mr. Virr motioned to approve the minutes for March 17, 2011 as amended.

Seconded by Mr. Osborn.

Vote: Unanimous.

Mr. Burgess, Mr. Perkins, Mrs. Burtis, Mr. Webb, Mr. Osborn, Mr. Dimmock, Mr. Thompson, Mr. Virr.

Mr. Virr motioned to approve the minutes of May 5, 2011 as amended.

Seconded by Mr. Thompson.

Vote: Unanimous.

Mr. Osborn, Mr. Webb, Mr. Dimmock, Mr. Thompson, Mr. Virr.

### **Adjourn**

Motion to adjourn by Mr. Virr.

Seconded by Mr. Thompson.

Vote: Unanimous.

Mr. Burgess, Mr. Perkins, Mrs. Burtis, Mr. Webb, Mr. Osborn, Mr. Dimmock, Mr. Thompson, Mr. Virr.

Adjourn at 9:23 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk