

**TOWN OF DERRY**  
**ZONING BOARD OF ADJUSTMENT MINUTES**  
**September 1, 2011**

**Members Present**

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

**Members Absent**

**Alternates Present**

John DeBonis  
Betsy Burtis  
Lynn Perkins  
Donald Burgess

**Alternates Absent**

Louis Serrecchia

**Staff Present**

Robert Mackey, Code Enforcement

Mr. Virr called the meeting to order at 7:01 p.m. with the salute to the flag, and notice of fire and handicap exits.

It was noted that Mr. Thompson & Mr. Dimmock would step down and that Mr. Burgess & Mrs. Burtis would sit for the following case.

**11-114          Antoinette McClafferty**

**Applicant requests a Special Exception to the terms of Article VI, Section 165-47.A.1 to allow the operation of a family day care at the property located at 7 Lampton Drive, Parcel ID 06046-029, Zoned LMDR**

Antoinette McClafferty, owner read her application for the Board and said that she was requesting to operate a family day care from her residence.

Mr. Virr asked if email to Mr. Mackey were the measurements of what areas she was proposing to utilize for her day care. Mrs. McClafferty said yes.

Mr. Burgess said that she may wish to check with the Post Office with relation to placement of her sign as they may require it to be relocated on another type of post and not on the mailbox post.

Mr. Thompson asked if she had any certifications that are required for a day care provider. Mrs. McClafferty said that she was in the process of submitting to the State and has had CPR certification and still need to have the criminal check done but was working on it.

Mr. Dimmock said that he had conducted a drive by and it appears that there is not enough area for sufficient parking as there is 2 areas in front of the garage and 1 off to the right and asked if more area would be made for parking. Mrs. McClafferty said that she felt that there was ample parking as she has a very large driveway.

Mr. Thompson asked if there would be only 1 child arriving at a time. Mrs. McClafferty said yes.

Mr. Virr asked if drop off and pick times would be staggered. Mrs. McClafferty said yes that she would stagger the drop off and pick up times and that she would not put any child in harm's way with regard to pick up or drop off.

Mrs. Burtis asked what door would be utilized. Mrs. McClafferty said that she would be utilizing the front door.

Mr. Virr asked if the hours of operation requested were 7:00 am – 5:00 pm Monday – Friday and a sign was also being requested. Mrs. McClafferty said yes and that she would follow up with the Post Office regarding placement of her sign as suggested by Mr. Burgess.

Mr. Osborn asked if the play area out back could be made sure to be free of any trees in the area for safety. Mrs. McClafferty said that there were no trees in the fenced in area.

### **Code Enforcement**

Mr. Mackey said that the applicant was requesting a special exception to operate a family day care at her residence. If approved, inspections are required by the Fire Inspector and the Health Officer and she must obtain a daycare license from the State of N.H. She has started this approval process. State daycare regulations allow the care up to 6 full time and 3 after school children for a single provider. State daycare regulations also require a minimum of 40 sq. ft. per child. This square footage total must be in line with the maximum usage of 25% of the living space permitted for a home occupation. If a sign is requested, a permit is required. There are pictures in the file for review by the Board.

### **Favor**

No abutters were present.

## **Opposed**

No abutters were present.

## **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. Burgess, Mrs. Burtis, Mr. Osborn, Mr. Webb, Mr. Virr

## **Deliberative Session**

Mr. Virr said that he felt that this was a routine case.

Mr. Burgess said that his only concern was with the parking as Mr. Dimmock has stated but the applicant stated that she would stagger the drop off and pick up times.

Mr. Virr reviewed the conditions for the Board.

Mr. Virr motioned to come out of deliberative session.

Seconded by Mr. Osborn.

Vote: Unanimous.

Mr. Perkins, Mr. Osborn, Mr. Dimmock, Mr. Thompson, Mr. Virr

**Mr. Osborn motioned on case #11-114, Antoinette McClafferty, to Grant a Special Exception to the terms of Article VI, Section 165-47.A.1 to allow the operation of a family day care at the property located at 7 Lampton Drive, Parcel ID 06046-029, Zoned LMDR, presented with the following conditions:**

- 1. Hours: Monday – Friday 7:00AM to 5:00PM.**
- 2. Sign requested and approved subject to permit.**
- 3. Subject to all State and Town permits and inspections.**

**Seconded by Mrs. Burtis.**

**Vote:**

**Mr. Burgess:** Yes.  
**Mrs. Burtis:** Yes.  
**Mr. Osborn:** 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.**

It was noted for the record that Mr. Thompson, Mr. Webb and Mr. Dimmock would step down from this case and that the following members would sit, Mr. DeBonis, Mr. Perkins, Mr. Burgess.

**#11-115 J. Scott Glover**

**Applicant request a variance to the terms of Article VI, Section 165-47.B.4 to construct a 10' x 14' storage shed two feet from the side lot line where 15 feet is required at 12 Remington Court, Parcel ID 07075-054, Zoned LMDR**

J. Scott Glover, owner, read his application for the Board. He said that he had drafted a letter and brought it around to his abutters and reviewed his proposal with them and obtained their signatures saying that they did not object to the placement of his shed.

**Code Enforcement**

Mr. Mackey said that the applicant was requesting to locate a 10' x 14' storage shed 2' from the north (side) property line. There appears to be issues with the topography of the lot that limits the options for placement of the shed (see attached GIS printout). If approved, a building permit is required. There are pictures in the file for review by the Board.

**Board Questions**

Mr. DeBonis said that in review of the plot plan submitted and the existing footprint of the house that it indicated 41.89 feet to the lot line and asked why the shed could not be moved in closer to the home and meet the setback requirement. Mr. Glover said that he was seeking to add an addition to the side of his garage at a later date and wished to allow room without having to relocate the shed in order to build an addition.

Mr. Webb asked where the power line easement was on the property there was one indicated on the deed. Mr. Glover said that he was unsure.

Mr. Virr asked if he had underground utilities. Mr. Glover said yes.

Mr. Dimmock asked how large of an addition was possibly going to be built. Mr. Glover said that he was possibly looking to building a 12' addition off the side of the garage.

Mr. Dimmock said that there would still be 14' available which still would allow access to the rear of the property.

Mr. Virr said that he felt that the applicant was being conservative in asking for the 2' from the lot line so as to have access to the rear portion of his property.

Mr. Perkins asked why the shed could not go deeper into the lot. Mr. Glover said that the proposed location was the crown area of the lot which was the only level area then his property slopes down.

Mr. Perkins said that it appears that the property slopes to the rear of the garage but even with a future addition that there appears still ample room to bring the shed off the lot line. Mr. Glover said that the property has a large slope behind the garage and if move the shed 12' into the area that they were referring to the property drops off significantly.

Mr. Virr asked if Mr. Mackey could explain the property layout more clearly for the Board.

Mr. Mackey said that the applicant was correct that the area the Board was questioning does slope drastically and that there was really no way of telling what area would actually have until something is put on paper and constructed to know what the applicant would have for usable area after the addition was built.

Mr. Virr asked if it was a possibility that the shed would have to then be relocated in order to build an addition. Mr. Mackey said yes that was a possibility.

Mr. Burgess said that there appears to be a large boat on the property and a substantial portion of level area in the same area. Mr. Glover said that he did own a boat and that if he located the shed 15' off the lot line that the property drops off substantially there and that he has viewed the area several ways so that he would not have to relocate the shed when he built his addition. Mr. Glover presented the Board with pictures of the property.

Mr. Mackey said that he had included a topography map of the property which indicated the area that the applicant has described to the Board which shows the layout of the property to give the Board a general idea of the property.

Mr. Burtis asked why the addition to the garage could not be extended so as to incorporate the lawn equipment. Mr. Glover said that would be nice but it was not in the budget at this time.

Mr. Virr asked if it the shed was being built or purchased. Mr. Glover said that he was purchasing it from Reed's Ferry.

There was some discussion with regard to the property and shed location.

**Favor**

No abutters were present.

**Opposed**

No abutters were present.

Mr. DeBonis motioned to go into deliberative session.

Seconded by Mr. Osborn.

Vote: Unanimous.

Mr. DeBonis, Mr. Perkins, Mr. Burgess, Mr. Osborn, Mr. Virr

**Deliberative Session**

Mr. Virr said that the applicant would be subject to obtaining all Town permits and inspections.

Mr. DeBonis said that he was concerned with the 2' from the lot line as there is room and the addition is a thought and not built and he felt that there would still have 19' with the proposed addition which would still be ample room for the location of a shed without a variance.

Mr. Virr said that the applicant was asking to utilize as much open space as available and that the Board is unable to make a motion that

Mr. Osborn motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Burgess, Mr. Perkins, Mr. DeBonis, Mr. Osborn, Mr. Virr.

**Mr. Osborn motioned on case ##11-115, J. Scott Glover, to Grant a Variance to the terms of Article VI, Section 165-47.B.4 to construct a 10' x 14' storage shed two feet from the side lot line where 15 feet is required at 12 Remington Court, Parcel ID 07075-054, Zoned LMDR, as presented with the following conditions:**

**1. Subject to all State and Town permits and inspections.**

**Seconded by Mr. Perkins.**

**Vote:**

**Mr. Burgess: No. No hardship shown.**

**Mr. Perkins: Yes.**

**Mr. Osborn: Yes. Believe not that much flat space and see where that is a hardship.**

**Mr. DeBonis: No. Feel that #5 criteria has not been met as do not see hardship as there is room for a garage addition and room to move the shed off the lot line.**

**Mr. Virr: Yes.**

**The application was Granted by a vote of 3-2-0. 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.**

**Correspondence**

Mr. Dimmock read a letter from Dom Vincent, LLC, Steven Trefethen dated August 31, 2011 for the record.

**Approval of Minutes**

Mr. Virr motioned to approve the minutes of August 4, 2011.

Seconded by Mr. Thompson.

Vote: Unanimous.

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

**Other Business**

Mr. Virr reviewed the changes of the Policy & Procedures for the Board and asked for a vote to accept the Policy & Procedures as amended.

Mr. Thompson motioned to accept the Policy & Procedures as amended.

Seconded by Mr. Osborn.

Vote: Unanimous.

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

Mr. Mackey asked that if the Board members were considering attending the 2011 Municipal Law Lecture Series being held at the Derry Municipal Center in October that they needed to submit their registrations to the office.

### **Adjourn**

Motion to adjourn by Mr. Thompson.

Seconded by Mr. Osborn.

Vote: Unanimous.

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

Adjourn at 8:30 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

### **Approval of Minutes October 20, 2011**

Mr. Thompson motioned to approve the minutes of September 1, 2011.

Seconded by Mr. Webb.

Vote: Unanimous.

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