

**TOWN OF DERRY  
ZONING BOARD OF ADJUSTMENT MINUTES  
October 6, 2011**

**Members Present**

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

**Members Absent**

Ernest Osborn

**Alternates Present**

John DeBonis  
Lynn Perkins  
Donald Burgess  
Louis Serrecchia

**Alternates Absent**

Betsy Burtis

**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 [and that this and all Zoning Board meetings are videotaped.](#)

Mr. Virr stated that the applicant David Schultz, case # 11-119 scheduled for tonight's meeting has requested to be continued to the October 20, 2011 meeting.

Mr. Virr informed the public that the Board would be taking a [recess](#)~~brief meeting~~ in order to [consult-meet](#) with Town Council [see](#)il @ 7:03 pm.

Board reconvened at 7:24 pm

It was noted that Mr. Burgess would sit for the following case.

**11-117            Granite House Sober Living, LLC  
Owner: Damiano Nano**

**Applicant requests a variance to the terms to Article VI, Section 165-33B and Article XIII, Section 165-108, to modify the use of an existing structure from a rooming house to a specialized residence serving a sober living community and to**

**expand the occupancy at the structure from 16 to 31 residents. Parcel ID 29139, 35 West Broadway, Zoned CBD**

Attorney Brian Germaine said that he was representing the applicant Eric Spofford who was the principal of Granite Sober Living, LLC. Attorney Germaine said that the original case had been filed for the September 6, 2011 meeting but the applicant had received a letter from the Town stating that a change of use was needed so we withdrew our application and resubmitted the application to the Board and apologizes for any inconvenience that it may have caused anyone that may have attended the previous meeting. Attorney Germaine read the application for the Board.

Mr. Virr asked if the business was non-profit. Mr. Spofford said no that it was not a non-profit agency.

Mr. Thompson asked if there would be a medical facility at the property. Attorney Germaine said no that the members receive their treatment at the CLM facility.

Mr. DeBonis asked if the treatment facility could be defined. Attorney Germaine said that a treatment facility would require to be licensed and this facility is only for living purposes. He said that if anyone tests positive for any drug or alcohol use then they are removed.

Mr. Burgess asked where the weekly tests were performed. Mr. Spofford said that the tests were performed on site as a dip strip urine test.

Mr. Dimmock asked if the testing was done randomly or on a scheduled time. Mr. Spofford said that the tests are conducted randomly and can be requested at any time if there is a reason for suspicion. He said that he was a recovering addict and knows what signs to look for.

There was some discussion with regard to what authority and education with testing experience there would be on site.

Mr. Virr asked if under the Fair Housing Act if there would be any residents that would require ADA compliance. Attorney Germaine said that they would be required to be ADA compliant.

Mr. Virr asked how the property was operated on Union Street. Attorney Germaine said that they no longer have the property on Union Street.

Mr. Virr said that the Board was in receipt of a letter from Chief Klauber and summarized it for the Board.

There was some discussion with regard to fire codes and compliance.

Mr. Perkins asked how the background checks were performed of people coming into the facility. Mr. Spofford said that extensive phone screenings and background check are performed with family and councilors.

Mr. Perkins asked if no criminal background checks were performed how you know that no one has any criminal behavior. Mr. Spofford said that the facility has a zero tolerance policy and if violated then they are removed.

Mr. Webb asked if operating on Union Street property and relocated here without proper permissions. Mr. Spofford said that he apologizes as he jumped the gun as he did not see the move as a change of use and that he did increase the number of occupants but was also unaware that it could not be done until informed by the Town and it has since been brought back down to the 16 residents.

There was some discussion with regard to background checks.

### **Code Enforcement**

Mr. Mackey said that the applicant is requesting a use variance to allow the operation of a sober house facility at the property. The building has been previously utilized as a rooming or lodging house. As this use was not listed as a permitted use in the Central Business District (CBD), the use was considered legal, pre-existing, non-conforming. Town records indicate a 16 bedroom, 16 occupant facility has historically existed. Per the Life Safety Code, the current use is also classified as a rooming house. It has been determined that the use as a sober house, which will include up to 31 residents, requires that a variance be obtained as the use is also not listed as a permitted use in the CBD. If the variance is granted, additional life safety items will need to be addressed (i.e. the installation of a sprinkler system) prior to increasing the occupant load above 16 as it will now be classified as a "hotel" use per the Life Safety Code. Be advised that the classification per the governing Fire Code may be different than the actual zoning classification. For instance, what the applicant is proposing is not a "hotel" in the traditional sense although it will need to meet those standards. Currently, a site plan [is in](#) being prepared to include that removal of the dwelling located on the parcel to the right of the building and the installation of a parking lot in its place. The applicant's engineer has been before the Technical Review Committee and the Highway Safety Committee and final submission of the plan is pending the outcome of this hearing. He said that he included in the chairman's packet a letter he received on October 4, 2011, concerning this case which he believed was intended for the Board. There are pictures of the property in the file for review by the Board.

### **Board Questions**

Mr. Thompson asked why there was a letter in the file from the Highway Safety Committee. Mr. Mackey said that he believed that was included to show the Board that the applicant had submitted a curb cut onto West Broadway to enter and exit the property as it was required as part of the Planning Board process.

Attorney Germaine said that he would like to submit to the Board a record from the Derry Police Department affidavit regarding the Union Street property police log. He said that it showed only one log entry that being the theft of a laptop. Attorney Germaine said that

also was the log from July 1, 2011 from the West Broadway property showing only one entry and that was regarding a dispute with a dry wall contractor that was working on the property.

There was some discussion with regard to the number of police calls to the former Mariner's Inn and some of the residents that lived there prior to the Granite Sober Living Facility purchasing the property.

Mr. Virr said that he was in receipt of a letter sent to Mr. Mackey from Kim Taylor in favor of the proposed use.

Mr. Webb asked if the facility would only be for men. Mr. Spofford said yes the facility would only be for men between the ages of 18 to 35 year olds but may occasionally have an older resident.

### **Favor**

The following people were in favor of the applicant's request:

Marge Bisson, 3 Cole Road, Derry, N.H., [felt met Fair Housing Act as addiction was a disability.](#)

Sandi Ruebchinuk, [Regional Coordinator, Allies in Substance Abuse Prevention, Portsmouth](#)~~behinuk, Exeter~~, N.H.

Mac McCartin, [Chairman of Derry Friendship Center](#), Derry, N.H.

[Dr. Madeline Histamule, Psychologist & Member of Board of Directors for the Friendship Center in Derry and the Avery House, Londonderry, NH](#)

Ed Nolan, Londonderry, N.H., [parent of a Granite House resident and a Law Enforcement Official.](#)

Derrick Prince, 612 Amherst Street, Manchester, N.H., [family member dealing with addiction.](#)

Mike Starr, 13 Gage Road, Bedford, N.H., [Co-owner of the property.](#)

Lisa Desisto, 38 West Broadway, Derry, N.H., [Business Owner - Rig-A-Tony's](#)

Sue Centner, 11 Peabody Road, Derry, N.H., [work for a non-profit agency and Granite House residents have volunteered their services at the agency.](#)

[Patricia Carl, Moody Street, Derry, NH, lost a family member due to alcohol.](#)

[Anniemie Day, 65L Derryfield Road, Derry, N.H., recovering addict and volunteer's with Big Brother's & Big Sisters in Nashua, NH](#)

Michael W. Moore, 5 Fairway Drive #21, Derry, N.H., [recovering alcoholic and addict utilizing services of the Granite House.](#)

Keith Taylor, 6 Moody Street, Derry, N.H., [recovering addict and so is his wife](#)

Janet Conroy, 16 High Street, Derry, N.H., [Board Member of the Marion Gerrish Community Center](#)

Cecile Cormier, 63 Lane Road, Derry, NH, **reminded Board that if the criteria has been met then the application should be approved.**

**Each expressed one or more of the following points:**

- Wonderful job fixing up the property.

- Unable to stop as the application falls under the Fair Housing Act as a drug and alcohol conditions are an illness and are considered a disability.
- [Much n](#)Needed service in the community.
- [Feel that the 5 criteria has been met.](#)
- Feel that the owner has good intentions.

Mr. Thompson motioned to take a short break.

Seconded by Mr. Webb.

Vote: Unanimous.

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

[The Board reconvened at 8:59 pm](#)

### **Opposed**

The following people were in opposition of the applicant's request:

Fred Oven, [Property owner of 94 West Broadway, 3 Ash Street and 4 Maple Street, Derry, N.H. and a direct abutter.](#)

Steve Trefethen, [Property](#) Manager 40 West Broadway, Derry, N.H.

They had the following concerns:

- Direct adverse effect on community.
- Deny expansion increase to 32 residents as there was no ample parking.
- Stating denial would go against the Fair Housing ~~Act~~[Act asbut](#) there was no discrimination as the applicant moved in prior to seeking the proper approvals.
- Town has the right to protect the community.
- Use is not allowed in the zone in which being requested and that there were other zoning districts that the facility would fit into without the need for a variance.

### **Board Questions**

Mr. Perkins said that he understands all the steps that the applicant needs to go through but wanted to know specifically what were the concerns. Mr. Trefethen said that he was concerned with the recreation center and the property values decreasing if allowed to expand. [He said that he has not yet suffered any direct harm at this time but he does not know what harm may result of the Granite House moving into this property.](#)

Mr. Burgess said that the property was already allowed 16 residents and asked again what the concerns were. Mr. Trefethen said that the Fire Department made the owner reduce the number of residents and they are now here requesting to expand a non-conforming

use and that the zoning ordinance does not allow for the expansion of a non-conforming use.

There was some discussion with the regards to the non-conforming status and previous owner's use.

Janet Fairbanks, Derry resident, said that she was disturbed in the way that the Board was treating Mr. Trefethen and that he had every right to speak in opposition and that he should not be treated in such a deplorable manner.

Mr. Virr asked if Ms. Fairbanks would like to speak for or against the applicant. Mrs. Fairbanks stated that she was neither.

### **Rebuttal**

Attorney Germaine said that he would like to speak with regard to Mr. Trefethen's testimony that Mrs. Camirand who was the previous owner of the Mariner's Inn did not allow alcohol on the property so sounds like the property's pre-existing use was a sober house. He said that the property is really a boarding house and that sex offenders need to be registered in their community so they would not be a resident of the Granite House Sober Living Facility as they could not use that as their address.

Janet Conroy, 16 High Street, submitted a letter from the Board of the community center indicating that they did not have any concerns with the proposed use and did not feel that it would be a detriment to the neighborhood if allowed.

Steve Trefethen said that he was speaking for other people in the community's behalf and that with regard to Mrs. Conroy's statement he said that the community center has approximately 150 groups in and out of the facility weekly in which some of them may have concern with the proposed use not just the Board members call to answer for all the different groups that use the center.

Mr. Thompson motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

### **Deliberative Session**

Mr. Thompson said that he felt that the applicant has met all five criteria and the Fair Housing Act. He said that the increase from 16 to 31 residents did not appear to be a problem as the applicant would be going to a hotel setting and need to meet higher criteria for the use than the current situation.

Mr. Virr said that the Board needed to review the criteria.

1. Contrary to the public interest – Mr. Virr asked the Board does the Granite House as it now appears alter in any way the essential character of building or the locality. He said that testimony tonight indicates that there has been a lot of improvement to the area. He said that he remembers what the Mariner's Inn ~~form~~formerly~~ally~~ looked like and that there is an improvement in the area.
2. Spirit of the ordinance is observed – Mr. Virr said that the property allows for hotels and inns and rooming houses are a thing of the past and that are subject to change and no use is static as things are subject to change.
3. Substantial justice is done – Mr. Virr asked if granted would the change be consistent with Derry's present use. He said that as a lodging house with 16 residents then changing to a Sober Living Facility would increase the residents to 31 does the character of the building change.
4. Property values are not diminished – Mr. Virr said that the property had fallen into disrepair and that the Sober Living Facility has cleaned up the area and performed substantial repairs to the exterior of the property so he did not feel that the property values have been diminished.
5. Unnecessary hardship – Mr. Virr asked what exactly is the hardship. It is it has 16 bedrooms; -what else can it be used for? T~~and that~~ the days of the rooming house are gone.

Mr. Webb said that according to ~~he~~ Section 165-108A it is not permitted. He said that he did also not see where the hardship has been proven as there are other areas that the use is allowed as this one is expanding a non-conforming use.

Mr. Virr said that restriction does not mean that it unable to change and that the Board is being asked to create a new classification as a Sober Living Facility which is more like a hotel or a dormitory which has a whole new level of requirements and things change.

There was some discussion with use and non-conformity.

Mr. Dimmock said that anyone ~~has~~ve a right to disagree with interpretation of law. He said that as far as the applicant moved in and exceeded the number of occupants and that was brought to the attention of Code Enforcement. -and Mr. Mackey responded and made them comply so the error of judgment has been corrected.

Mr. Virr said that there has been a case in Boca Raton which was just overruled in a similar case. He said that the applicant has a property that has 16 bedrooms and is seeking relief from Section 165.108. He said that there is no longer definition in the dictionary for a rooming house as those days are gone and that things change.

Mr. Burgess said that he felt that the motion should be made that the applicant meet all the required codes for expansion.

Mr. Virr reviewed the conditions for the Board.

Mr. Webb said that if this variance is granted that it is forever and that it is not limited to the Granite House could it be used for something else.

Mr. Virr said that they would require a change of use and a new variance.

Mr. Thompson motioned to come out of deliberative session.

Seconded by Mr. Dimmock.

Vote: Unanimous.

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

**Mr. Thompson motioned on case 11-117, Granite House Sober Living, LLC., Owner: Damiano Nano, to Grant a variance to the terms to Article VI, Section 165-33B and Article XIII, Section 165-108, to modify the use of an existing structure from a rooming house to a specialized residence serving a ~~sober~~ Sober living Living facility Facility and to expand the occupancy at the structure from 16 to 31 residents. Parcel ID 29139, 35 West Broadway, Zoned CBD as presented with the following conditions:**

- 1. Subject to all Federal, State and Town ordinances, rules, regulation, permits and inspections.**
- 2. Subject to Planning Board Approval.**

**Seconded by Mr. Burgess.**

**Vote**

**Mr. Burgess: Yes.**

**Mr. Webb: No. Believe that Section 165-108A there is no definition of Sober Living Facility in the ordinance. Believe that it would be an expansion of use which is not allowed in the ordinance and that there are other locations that allow for this type of use. Also believe that there is no hardship as they were in another area and relocated.**

**Mr. Thompson: Yes. Feel meets the criteria and moved from the previous location due to expanding and helping more people which is a good thing.**

**Mr. Dimmock: Yes.**

**Mr. Virr: Yes. Feel that it meets the criteria including hardship.**



**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.**

Board took a brief recess. Reconvened at 10:18 pm

It was noted for the record that Mr. DeBonis would sit for the following case.

**11-118            Kastorian Realty Trust**

**Applicant requests an extension of the variance granted September 17, 2009, to the terms of Article VI, Section 165-49.C.1 and Section 165-49.G.1.b to construct a second story to an existing structure and to construct a two-story addition on an undersized lot which lacks the required off street parking. The two year time limitation has expired. Parcel ID 30161, 49 East Broadway, Zoned TBOD**

Tamara Lampes, owner, said that she was seeking to have her existing variance extended as they have not started construction due to the economy. She explained the location of her property for the Board

Mr. Thompson asked if they would be changing anything from the previous application. Mrs. Lampes said no that they were just asking for an extension of time.

Mr. Virr asked how long of an extension was being requested. Mrs. Lampes said that it was hard to predict as still see a slow moving economy.

There was some discussion with regard to the number of years to be allowed for an extension and what has been allowed in previous years.

Mrs. Lampes said that her husband has owned the building since 1986 and kept the corner clean and have tried to be patient and do what is required to be done so anytime that would be given as an extension would greatly be appreciated.

Mr. Virr asked if Planning Board approval had been received. Mrs. Lampes said that they have not at this time.

Mr. DeBonis motioned to go into deliberative session.

Seconded by Mr. Thompson.

Vote: Unanimous.

Mr. DeBonis, Mr. Webb, Mr. Dimmock, Mr. Thompson, Mr. Virr.

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### **Deliberative Session**

Mr. Thompson said that he did not see a problem as there was no change and only seeking extra time due to economic conditions.

Mr. Virr said that he felt a 3 year extension would give the applicant better opportunity to complete the request.

Mr. Dimmock said that would be setting a ~~precedence~~precedence as only used to give 1 year and changed to 2 and he did not object but feel that 2 years is ample and that it would be an asset to the downtown.

Mr. DeBonis said that he sees both sides but feel that 2 years was ample time and no one can say what the economy is going to do and if not then they can reapply again.

There was some discussion regarding length of time to be granted for an extension.

### **Favor**

No abutters were present.

### **Opposed**

No abutters were present.

Mr. Thompson motioned to come out of deliberative session.

Seconded by Mr. Dimmock.

Vote: Unanimous.

Mr. DeBonis, Mr. Dimmock, Mr. Webb, Mr. Thompson, Mr. Virr

**Mr. Virr motioned on case #11-118, Kastorian Realty Trust to Grant an Extension of the variance granted September 17, 2009, to the terms of Article VI, Section 165-49.C.1 and Section 165-49.G.1.b to construct a second story to an existing structure and to construct a two-story addition on an undersized lot which lacks the required off street parking. The two year time limitation has expired. Parcel ID 30161, 49 East Broadway, Zoned TBOD as presented with the following conditions:**

- 1. Subject to Planning Board Approval.**
- 2. Substantial completion to be completed within 2 years or variance shall be void.**

**Mr. Thompson motioned to make a limit to 3 years.**

**Seconded by Mr. Webb.**

**Vote:**

**No: Mr. Webb, Mr. Dimmock, Mr. DeBonis, Mr. Virr.**

**Yes: Mr. Thompson**

**Motion Failed by a vote of 1-4-0**

**Mr. Virr asked for a second of the previous motion.**

**Seconded by Mr. Webb.**

**Vote**

**Mr. Webb: Yes.**

**Mr. DeBonis: Yes.**

**Mr. Dimmock: Yes.**

**Mr. Thompson: 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.**

Mr. Virr said that in the beginning of the meeting it was noted that the case was continued case #11-119, David Schultz to the October 20, 2011 meeting.

**Mr. Virr motioned to continue case #11-119, David Schultz to the October 20, 2011 meeting.**

**Seconded by Mr. Thompson.**

**Vote: Unanimous.**

**Mr. Webb, Mr. Dimmock, Mr. Thompson, Mr. Virr.**

### **Other Business**

Mr. Virr said that it was with regret that the Board has received a letter of resignation from Betsy Burtis.

### **Adjourn**

Mr. Thompson motioned to adjourn.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Serrecchia, Mr. Burgess, Mr. Perkins, Mr. DeBonis, Mr. Webb, Mr. Dimmock, Mr. Thompson, Mr. Virr.

Adjourn at 10:34 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

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

Mr. Thompson motioned to approve the minutes of October 6, 2011 as amended.

Seconded by Mr. Webb.

Vote: Unanimous.

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