

**TOWN OF DERRY**  
**ZONING BOARD OF ADJUSTMENT MINUTES**  
**October 20, 2011**

**Members Present**

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

**Members Absent**

**Alternates Present**

Lynn Perkins  
Donald Burgess  
Louis Serrecchia

**Alternates Absent**

John DeBonis

**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 and that this and all Zoning Board meetings are videotaped.

It was noted that Mr. Thompson stepped down from the following case so an alternate may sit. It was noted that Mr. Perkins would sit for the following case.

**11-119            David Schultz**  
**Owner: Tedd & Terry Property Management Service, LLC**

**Variance to the terms of Article VI, Section 165-42A to allow the operation of a skateboard membership club facility. Parcel ID 08286-003B, 22 Manchester Road, Unit #3B, Zoned IND IV**

David Schultz, applicant, said he was present with his business associate, he read his application for the Board.

Mr. Osborn said that the manufacturing of boards and ramps is allowed but questioned the need for an area where people can try them and test and use them on the premises. Mr. Schultz said that he felt that the area would provide a safe place with supervision for the kids to skate and utilize the products.

Mr. Osborn asked that that without a test area there would be less of a business potential. Mr. Schultz said yes.

Mr. Virr asked if the purchase of a membership was for use on a regular basis. Mr. Schultz said yes.

Mr. Thompson said that the Board needs to decide if use of the ramps is an allowable use and/or a membership status is allowable in the Industrial Zone.

Mr. Webb if allowing bikes and skate boards on the ramps how many people at a time would there be in what size of an area. Mr. Schultz said that they have to have the Fire Department come in and determine that but would like to be able to have approximately 20 people at a time in a 3,600 square foot area.

Mr. Webb asked how many ramps and what height was the ceiling area for this type of use. Mr. Schultz said that they are proposing seven obstacles in an area that has a ceiling height of 16'.

Mr. Virr asked if he was involved in this type of business anywhere else. Mr. Schultz said that was not doing this anywhere else but was part of one in Haverhill, MA where he sold his product there. He said that he was seeking to open his own facility and expand his business.

Mr. Thompson asked what type of supervision and membership would be provided. Mr. Schultz said that his insurance policy requires helmets and protective gear to be worn at all times and that all participants must sign a waiver to use the facility and explained that there would be session times and that there would be color coded ramps indicating difficulty levels.

Mr. Dimmock asked what hours would the skate facility be open. Mr. Schultz said that he was seeking 10:00 am to 8:00 pm with 3 different session times with cleanups in between.

Mr. Dimmock asked what was the parking allowances. Mr. Schultz said that he was allowed 6 spaces in the rear of the building and 2 in the front but most of his cliental would be walking.

Mr. Webb asked what the hardship was. Mr. Schultz said that he felt that the hardship was that the zoning ordinance did not have this type of use listed anywhere in the ordinance so it was a hardship.

There was some discussion with the usage of skateboards and bikes being utilized on the ramps.

Mr. Perkins asked if the diagram of the area could be explained. Mr. Schultz explained the diagram that he submitted for the Board

## **Code Enforcement**

Mr. Mackey said that the applicant's request, in addition to the sale and manufacturing of skateboards and ramps, is to have a membership club which will allow individuals to utilize his proposed facility. The property, which is divided into Commercial/Industrial Condominium Units, is located in the Industrial IV zoning district which allows for various manufacturing and industrial uses as well as retail business. It was determined that the sale and manufacturing of skateboards and ramps is a permitted use in the district, however, the proposed membership club, available to the general public, will constitute an indoor "skateboard park" which is not a "retail business" and, therefore, not permitted. At that point, the applicant was advised that he must apply for a use variance. Currently, change of use forms have been submitted to the Planning Office. There are pictures in the file for review by the Board.

## **Board Questions**

Mr. Virr asked if memberships would be prepaid. Mr. Schultz said that memberships could be prepaid or on a daily basis.

Mr. Mackey said that the reason that the applicant was sent to the Board was that there was no listing for skateboard parks in the Zoning Ordinance.

Mr. Thompson asked why would Planning Board be involved if it were a change of use. Mr. Mackey said that the process involved was called a change of use which asks for basic information as who they are and who to contact in the event of an emergency which is reviewed by various departments in the Town and the comments are then forwarded to the applicant.

There was some discussion with regard to change of use and variance requirements.

## **Favor**

Walter Carroll, 8 Country Club, Manchester, NH asked what was the definition of a membership as Subway currently has cards for membership and asked if the difference of charging for the membership was the problem.

Mr. Virr said that the request has to comply with State and Local laws.

Mr. Carroll said that he supports the park as he also participates in skateboarding. He said if paying is making the membership a problem then they could look into something different but the Derry kids need something to do and that the Alexander Park area is not much of a skateboard park anymore and it used to be very popular and that the parents always knew where were to find their kids. He said that this area would be fully supervised and that he felt that it would be a much safer area for the children of Derry go so they would be under supervision and hoped the Board would consider approving the request.

## **Opposed**

Attorney David Trovato, representing Daniel & Patricia O’Keefe, said that his clients were opposed for several reasons listed below:

- Does not belong in the building as violates condominium rules and has not been before the Board of Directors.
- Section 674:33 – does not meet any of the criteria needed for a variance to be granted.
- Membership clubs in ordinance states not to be operated for profit and have not seen a tax exempt form.
- Condominium documents state that no use is permitted that will increase insurance premiums for other tenants and feel that this use will increase premiums for other tenants in the building.
- Wonderful idea but not in this particular area.

Attorney Trovato gave the Board a copy of the condominium documents for the record.

Mike Driscoll, President of the Association, gave the Board copies of a letter from the Association and said that he also owned 5 units in the building.

Mr. Virr asked if the owner of the unit where the proposed skate park was seeking to operate had approached the association. Mr. Driscoll said that the owner had filed a paper showing changes but there was not anything noting the usage which should have had condo approvals before seeking a variance. Mr. Driscoll summarized the letter that he presented the Board from their Attorney.

There was some discussion with regard to criteria and parking allowances.

Mr. Burgess asked if the applicant just wanted to manufacture skate boards and ramps that they would not be opposed and that the only issue was the use of the ramps. Mr. Driscoll said yes.

Mr. Thompson said that the problem appears to be with the unit owner itself not complying with the condo guidelines and asked where was the lease informed to approach the association and that the association needs to address the unit owner. Mr. Driscoll said that the occupant was the person applying for the variance and that the association disagrees with the use.

There was some discussion with regard to the use.

Mr. Webb said that the deed indicates that the use would not be allowed in the building.

Mr. Driscoll said that the only issue that the Association has is the indoor skate park and not the manufacturing of the skate boards and ramps.

## **Rebuttal**

Tedd Jackus, member of Tedds, LLC, said that at any time you can go into Shaw's parking lot and can get hit by a car and there also are no rear sidewalk ways in the Shaw's plaza area. He said that the facility is not open and is not being used at this time however kids are already in the parking lot area as they know that there is a possibility of it coming. He said with regard to insurance that they have already spoke to their own insurance company and was informed that as long as the applicant is sufficiently insured that the other tenants insurance rates would not be increased. Mr. Jackus said that in reviewing the association by-laws felt that if they had approached the Board that they would have been denied there as there would be no variance issued prior to meeting with their Board and believe that they need the Zoning Board variance approval before they approach the condo association.

Mr. Shultz said that wanted to speak with regard to the Attorney mentioning that there was noise and people in the parking lot. He said that people have been told there is to be no skate boarding, bike riding, etc. in the parking lot and are in the process of making signs indicating the same. He said as for the noise they are in construction process and have purchased sound proof boards and foam board to help alleviate noise.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Osborn.

Vote: Unanimous.

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

## **Deliberative Session**

Mr. Virr reviewed similar issues prior to the Head Start program coming before the Board. He said that he did not see where the criteria has been met and did not feel that this type of use belonged in an Industrial Zone.

Mr. Osborn said that showing products that are being made was an issue and that he had some concerns for other uses on the property but that was a different subject.

Mr. Perkins said that the machine that crushes vehicles gets transported out to various locations and that it was allowed to be stored in the area but did not see in the ordinance where there was allowances for indoor skate board facilities.

Mr. Webb said that he did not believe hardship has been defined and that felt that the issue is bound by the condo rules and regulations.

Mr. Virr reviewed the criteria for the Board.

Mr. Dimmock said that the Board had been told via their Attorney that this Board has no business with individual condo associations and that those issues were between the applicant and the association.

Mr. Virr said that was a good point and that the Lease should be dealing with the realtor that he signed the agreement with that he was not informed properly.

Mr. Perkins motioned to come out of deliberative session.

Seconded by Mr. Dimmock.

Vote: Unanimous

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

**Mr. Osborn motioned on case#11-119, David Schultz, Owner: Tedd & Terry Property Management Service, LLC, to Grant a Variance to the terms of Article VI, Section 165-42A to allow the operation of a skateboard membership club facility. Parcel ID 08286-003B, 22 Manchester Road, Unit #3B, Zoned IND IV as presented with the following conditions:**

- 1. Subject to all state and local permits and inspections.**

**Seconded by Mr. Webb.**

**Vote:**

**Mr. Webb: No. Do not believe it is in the public interest and hardship criteria has not been met.**

**Mr. Perkins: No. No hardship has been defined. Conflict with abutters and association. Feel that it would also be a safety issue.**

**Mr. Dimmock: No. Abutters present stating there is safety issues with the rear parking lot.**

**Mr. Osborn: No. See safety issues in the rear parking lot area.**

**Mr. Virr: No. Do not feel it is in the public interest as exposing our youth on bikes and skateboards would not be safe in that area. Spirit and intent is not observed as zone was created as Industrial. Proposed use is unreasonable as remember the Head start case and do not feel kids running around the area is safe.**

**The application was Denied by a vote of 0-5-0. 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 informed the public that the Board would be taking a brief recess at 8:28 pm

The Board reconvened at 8:36 pm

**11-120            John Cavaretta**  
**Owner: Vallerie A. Scanlan**

**Applicant requests a variance to the terms of Article VI, Section 165-46A to allow the operation of a firearms sales and training business at the property. Parcel ID 08160, 115 By-Pass 28, Zoned MDR.**

John Cavaretta, applicant, reviewed his application for the Board.

Mr. Virr asked that if according to the plans would there be any size changes. Mr. Cavaretta said that he would be keeping the same size area and just converting the cooler area to a sales room class room area.

Mr. Thompson asked if there would be training where fire arm testing would be conducted. Mr. Cavaretta said no just offering NRA Safety Courses, etc.

Mr. Virr asked if there would be black powder sales. Mr. Cavaretta said not at this time.

There was some discussion of where the business was currently being operated and if it was being relocated or expanded.

Mr. Webb inquired if the 2-family structure would be rented or made into personal home. Mr. Cavaretta said that the tenant on the property would be staying and that Val would be moving and he would be utilizing the unit for himself.

Mr. Webb asked if the business portion would be confined to the area of the store. Mr. Cavaretta said yes.

Mr. Virr asked when he planned on opening. Mr. Cavaretta said that there was considerable work to be done and if approved he would begin work on the exterior portion of the structure now and move to the interior over the winter months. He said that the ATF licensing takes time for approval but hopes to open the beginning of summer.

Mr. Thompson asked if he had purchased the property. Mr. Cavaretta said not at this time but has a purchase and sales agreement pending on the outcome of tonight's meeting.

Mr. Virr said that the Board had checked with the Fire Department and Police Departments to see if all Life Safety Codes were met. He asked Mr. Mackey if the request required Planning Board approval. Mr. Mackey said that the applicant needs Site Plan Determination for various department input.

## **Code Enforcement**

Mr. Mackey said that the applicant's is requesting a variance to allow the operation of a firearms sales and training business at the property. The property consists of a two-family structure and an attached structure that was utilized as a convenience store for many years. As the property is zoned MDR, the convenience store was considered a legal, pre-existing, non-conforming use. The convenience store ceased operation over a year ago, therefore, the property can only be utilized according to the provisions of the MDR Zoning District. A use variance is required for any commercial use. There is a paved parking area in front of the building/store that will accommodate 10-12 vehicles. There are pictures in the file for review by the Board.

## **Board Questions**

Mr. Dimmock asked if there would be anything done to the parking lot and asked if there was anything for parking to the rear of the building. Mr. Carvetta said that the property is 2 acres and there would be no parking to the rear of the building.

Mr. Virr asked if there was any intention to establish a firing range. Mr. Carvetta said no.

There was some discussion with regard to the use of the property and lot size.

## **Favor**

Cory Banister, 111 By-Pass 28, said that he would like to see someone there and clean up the property as it has fallen into disrepair. Mr. Banister said that the owner Val who operated Val's Variety for many years wants to sell and was pushed out of business when Irving arrived. He said that he did not have any problem with just a gun shop being operated from the property. He did ask if the dilapidated shed could be removed and that the property located to the rear was owned by the Town of Derry.

## **Opposed**

No abutters were present.

Mr. Thompson 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 felt that it meets the criteria.

Mr. Virr said that the closest abutter was present and did not have any concerns with the proposal.

Mr. Webb said that he did not see a problem but wish to make a condition that training does not include shooting. He said that shooting can be conducted if you meet the proper clearances and that the property did have ample clearances.

Mr. Thompson said that the applicant stated that no shooting would be conducted on the property.

Mr. Virr reviewed the conditions for the Board.

Mr. Thompson asked if he could ask the applicant if he held a Class III license and if there would be signs posted that no loaded firearms enter the building. Mr. Cavaretta said yes.

Mr. Virr motioned to come out of deliberative session.

Seconded by Mr. Dimmock.

Vote Unanimous.

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

**Mr. Osborn motioned on case #11-120, John Cavaretta, Owner: Vallerie A. Scanlan to Grant a variance to the terms of Article VI, Section 165-46A to allow the operation of a firearms sales and training business at the property. Parcel ID 08160, 115 By-Pass 28, Zoned MDR, presented with the following conditions:**

- 1. Subject to all federal and state and local licenses, permits and inspections.**
- 2. Subject to Planning Board site review.**

**Seconded by Mr. Dimmock.**

**Mr. Thompson motioned to strike the condition requiring Planning Board review.**

**Seconded by Mr. Dimmock.**

**Mr. Osborn motioned to withdraw his motion.**

**Seconded by Mr. Dimmock.**

**Vote:**

Mr. Webb: Yes. Agree with Mr. Thompson that the Planning Board not be part of the condition.  
Mr. Dimmock: Yes.  
Mr. Osborn: Yes.  
Mr. Thompson: Yes.  
Mr. Virr: No.

Motion carried by a vote of 4-1-0

Mr. Osborn motioned on case #11-120, John Cavaretta, Owner: Vallerie A. Scanlan to Grant a variance to the terms of Article VI, Section 165-46A to allow the operation of a firearms sales and training business at the property. Parcel ID 08160, 115 By-Pass 28, Zoned MDR, presented with the following conditions:

1. Subject to all federal state and local licenses, permits and inspections.
2. No third party shooting on the property.

Seconded by Mr. Dimmock.

**Vote:**

Mr. Thompson: Yes. Feel it meets the criteria.  
Mr. Osborn: Yes.  
Mr. Dimmock: Yes. Agree with Mr. Thompson.  
Mr. Webb: Yes. Feel it will improve the property.  
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.

**Approval of Minutes**

Mr. Thompson motioned to approve the minutes of 8/25/2011, 9/1/2011, 9/15/2011 and 10/6/2011 as written and amended.

Seconded by Mr. Webb.

Vote: Unanimous.

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

### **Other Business**

Mr. Virr reminded the Board that the next Law Lecture series was scheduled for Wednesday, October 26, 2011 at the Derry Municipal Center.

### **Adjourn**

Motion to adjourn by Mr. Thompson.

Seconded by Mr. Osborn.

Vote: Unanimous.

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

Adjourn at 9:07 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

### **Approval of Minutes November 3, 2011**

Mr. Virr motioned to approve the minutes of October 20, 2011.

Seconded by Mr. Dimmock.

Vote: Unanimous.

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