

**TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
November 3, 2011**

Members Present

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

Members Absent

James Webb

Alternates Present

Lynn Perkins
Donald Burgess
Louis Serrecchia

Alternates Absent

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.

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

11-121 Paul Scalera

Applicant is requesting a Special Exception to the terms of Article VI, Section 165-47.A.1 to allow the operation of a photography business at the residence. Parcel 01009-014, 2 Settlers Lane, Zoned LMDR.

Paul Scalera, owner, read his application for the Board.

Mr. Thompson asked if the actual pictures were taken at the property or just at weddings. Mr. Scalera said that he does both and occasionally will do engagement pictures and he also does pictures for his daughters friends.

Mr. Thompson asked how many clients would there be at a time. Mr. Scalera said that it was usually the bride & groom and sometimes they are accompanied by the parents. He said that he does approximately 15-20 weddings a year and about 20 engagement sessions.

Mr. Dimmock asked why the sign already existed. Mr. Scalera said that he has been doing the business for a while as he was unaware that he needed to come before the Board. He said that his wife's business has not operated in over 5 years. He said that his business advertising is via internet and word of mouth.

Mr. Virr said that a permit would be required for the sign. Mr. Scalera said that he would obtain that if granted.

Mr. Osborn asked if the photographs were digital or chemical developed. Mr. Scalera said that the photographs were digitally developed and if he were to have them chemically developed that those would be sent out to be developed.

Code Enforcement

Mr. Mackey said that the applicant was requesting a special exception to allow the operation of a photography business from the residence. The applicant's spouse received a special exception in 1997 to operate a Cooking Business. The applicant has stated that this business no longer exists. As only one home business is permitted, the board will need to rescind this previous approval. There is a long gravel driveway that services the property which will house several vehicles. There are pictures in the file for review by the Board.

Favor

Daniel Ingram, 1 Settlers Lane, said that the applicant may have one car at the property occasionally and that he did not have a problem with Mr. Scalera operating his business there.

Opposed

Bob & Luanne Whitton, 4 Settlers Lane, said that they were opposed to the operation of Mr. Scalera's business as it is disruptive to the neighborhood. Mrs. Whitton said that the applicant takes photos a foot from the lot line and has been doing the business for 10 years as they purchased their home at the same time as the applicant. She said that they own 3 small dogs that bark at his customers and that Mr. Scalera calls the dog officer on them constantly. She said that they are unable to sit in their back yard due to his clients coming to his home and walking around on his property that they felt uncomfortable in their own back yard and were unable to enjoy their property. She said that she felt that this type of business belongs in a business district and not in a residential neighborhood. Mrs. Whitton said that Mr. Whitton has threatened them and that the animal control officer has issued them a citation due to the barking.

Mr. Dimmock said that the Animal Control Officer has to hear the dogs bark for a half hour and asked if witnessed. Mrs. Whitton said that they had received a citation that they are appealing and was unaware that the officer needed to hear the dogs. She said that her property is fenced in and that the dogs never leave her yard.

Mr. Virr said that he was sorry to hear the unsettling tale and will give it consideration.

Rebuttal

Mr. Scalera said that he takes offense to being said that he has made a threat as he has never made any threats. He said that he may have 12-15 customers a year and if disrupt it disrupts dogs in the neighborhood that he was unable to control that. He said that he has made complaints to Animal Control as the dogs bark at all times even after hours at night and there are no customers at his property at that time. He said that the dogs bark whenever friends or neighbors visit as there is no time that they are not barking. Mr. Scalera said that his daughter has friends that visit and the dogs bark. When clients come to the home they are quiet and not disruptive to the neighborhood and that he did not feel it is fair to say that he could not have his business at his home.

Mr. Thompson asked if a condition could be made that he conduct his business away from his neighbor and that no camera was pointing in their direction. Mr. Scalera said that would be fine.

Mr. Perkins asked if Mrs. Whitton could tell the Board what kind of dogs they were. Mrs. Whitton said that they had a 10 year old poodle, 7 year old 20 pound terrier and a 2 year old beagle.

Mr. Dimmock said that he did not feel that it was the Board's prerogative to tell the applicant where he can and can't take pictures as he owns the property.

Mr. Thompson motioned to rescind the special exception granted in 1997.

Seconded by Mr. Osborn.

Vote: Unanimous.

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

Mr. Thompson motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Deliberative Session

Mr. Thompson said that he did not have a problem and has been there awhile. He said that he felt that the applicant should amend things with the neighbor and take photo skills to the other side of the property.

Mr. Virr said that it is a difficult situation and that Mr. Scalera should avoid using any flash in the neighbor's direction.

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

Mr. Virr reviewed the conditions for the Board.

Mr. Osborn motioned to come out of deliberative session.

Seconded by Mr. Dimmock.

Vote: Unanimous.

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

Mr. Osborn motioned on case #11-121, Paul Scalera to Grant a Special Exception to the terms of Article VI, Section 165-47.A.1 to allow the operation of a photography business at the residence. Parcel 01009-014, 2 Settlers Lane, Zoned LMDR as presented with the following conditions:

- 1. Sign requested, permit required**
- 2. Hours Monday through Sunday 10:00AM to 6:00PM – appointment only.**
- 3. No non-resident employees**
- 4. No client autos on the street**
- 5. Subject to all town permits and inspections**
- 6. Applicant is advised to conduct outdoor photo shoots away from abutter's property line.**

Seconded by Mr. Dimmock.

Vote:

Mr. Thompson: Yes.

Mr. Osborn: Yes.

Mr. Dimmock: Yes.

Mr. Burgess: 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. Serrecchia would sit for the following case.

11-122 Jeffrey & Patricia Crothers

Applicant is requesting a variance to the terms of Article VI, Section 165-46.C.4 and Article XIII, Section 165-107 to construct an addition to the existing premises that increases the volume of the portion of the building already existing in the applicable sideline setback. Parcel 56033, 11 North Shore Road, Zoned MDR

Attorney Brian Germaine, representing owner, presented the Board with plans of proposal and apologized for not having them part of the record before the meeting.

Mr. Thompson asked if wished to continue as there was a lot of information to review. Attorney Germaine said that if the Board feels that there needs to be more information provided then he did not see a problem with continuing.

Mr. Virr asked where the front elevation was. Craig Fowler, builder, said that the front was the street.

Mr. Thompson motioned to continue and request that architectural plans be provided showing more detail at the next meeting.

There was some discussion with regard to what the Board wished to see at the next meeting.

Mr. Thompson motioned to continue case #11-122, Jeffrey & Patricia Crothers, variance to the terms of Article VI, Section 165-46.C.4 and Article XIII, Section 165-107 to construct an addition to the existing premises that increases the volume of the portion of the building already existing in the applicable sideline setback. Parcel 56033, 11 North Shore Road, Zoned MDR with the following conditions:

- 1. Submission of proper and detailed plans for the proposed addition.**
- 2. Plot plan showing the position of the foundation and existing structure.**
- 3. Any new building over-hangs to be clearly delineated.**

Seconded by Mr. Osborn:

Vote:

Mr. Thompson: Yes.
Mr. Osborn: Yes.
Mr. Dimmock: Yes.
Mr. Serrecchia: Yes.
Mr. Virr: Yes.

The application was Continued 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

Board Questions

Mr. Mackey said that the proposal for the case was to add over an existing structure. Mr. Thompson said that there was no indication on the submitted application of how much volume was being increased.

Attorney Germaine said that in the past cases required of any increase in volume to come before the Board and that was what the applicant was seeking and that the second package submitted shows the setbacks and the dark areas show where the structure was being increased. The plan submitted is part of the existing Town file on record at the building inspector's office.

Craig Fowler, applicant's contractor, said that the plans submitted show the front elevation and the height are indicated in the cross section and there is no change to the size of the existing foundation.

Mr. Thompson said that the reason for requesting the additional information as the Board previously granted a property permissions for a dormer and it turned into a whole third floor.

Approval of Minutes

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

Other Business

Mr. Mackey asked for the Board to clarify if the continuance of case #11-22 Jeffrey & Patricia Crothers was to be scheduled for November 17, 2011.

Mr. Virr said that if the applicant submits all the requested information prior to the hearing then the Board will hear the case.

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

11-119R

David Schultz

Owner: Tedd & Terry Property Management Service, LLC

Re-hearing Request of 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.

The Board reviewed information provided for the Re-Hearing request.

Mr. Virr said that he did not feel that the evidence submitted for the rehearing request takes away from the reasons for denial. He said that he recalled that the Board had concerns for the public safety in an industrial zoned area where there will be major road construction being performed soon and that the existing sidewalk was located on the opposite side of the street.

Mr. Osborn said that he agreed as the safety issues have not changed. The manufacturing is not the issue it was the kids in in the parking lot on bikes and skateboards that he felt was unsafe. He said that he has had 2 weeks to review the case and hate to say no but the issue of kids outside in a parking lot even with signage was not a good mix. Mr. Osborn said it was a wonderful idea but would like to see it located somewhere else.

Mr. Perkins said that he did not see anything new to change the decision that was made at the prior meeting. He said that the rear parking area where a majority of the parking would be allowed was full of obstacles that in it create an unsafe area for people to have access or egress to and from the building.

Mr. Burgess said that some of the statements made at the prior meeting to the existing skate board park located off Pierce Ave were not as depilated as stated as he went and viewed the area. He said that the applicant's proposed location would be unsafe as the side road to the property was dangerous as it did not offer any means of sidewalks and had large trucks frequently utilize it.

Mr. Dimmock said that the manufacturing of skate boards and ramps was not the issue and that the Board needs to review if it made an error in its decision for denial. He said that he felt that installing signage did not make an area any safer and he felt that the Board made the right decision at the prior meeting.

Mr. Osborn motioned on case#11-119, David Schultz, Owner: Tedd & Terry Property Management Service, LLC, to Grant the Request for a Rehearing of 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.

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

Seconded by Mr. Perkins.

Vote:

Mr. Perkins: No.
Mr. Osborn: No
Mr. Thompson: Yes.
Mr. Dimmock: Abstain.
Mr. Virr: No.

The Request for Rehearing was Denied by a vote of 1-3-1. Recourse would be to appeal to Superior Court.

Adjourn

Motion to adjourn by Mr. Dimmock.

Seconded by Mr. Osborn.

Vote: Unanimous.

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

Adjourn at 8:12 pm

Minutes transcribed by:
Ginny Rioux
Recording Clerk

Approval of Minutes November 17, 2011

Mr. Dimmock motioned to approve the minutes of November 3, 2011.

Seconded by Mr. Osborn

Vote: Unanimous.

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