

**TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
November 17, 2011**

Members Present

Allan Virr, Chairman
Albert Dimmock, Secretary
Ernest Osborn
James Webb

Members Absent

David Thompson

Alternates Present

Lynn Perkins
Donald Burgess
Louis Serrecchia

Alternates Absent

Staff Present

Robert Mackey, Code Enforcement

Mr. Virr called the meeting to order at 7:06 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. Perkins would sit for the following case.

**11-122 Jeffrey & Patricia Crothers
(Continued from November 3, 2011)**

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, said that he was present with Craig Fowler of Natural Energy Designs who was the applicant's contractor. Attorney Germaine said that they had submitted the material the Board had requested at the previous meeting. He read the application and reviewed the information submitted for the Board. Attorney Germaine said that he felt that the proposal falls in line with the Boccia criteria and was consistent with Section 165.107.

Mr. Osborn asked what the squares represented on exhibit 3. Attorney Germaine said that the plan shows a setback of 1.6 feet and that the squares were the stairs off the rear deck.

Craig Fowler, Natural Energy Designs, said that front part which is North Shore Road is close to the 1.6 feet off the side lot line and that the actual structure was askew of the lot line.

Attorney Germaine said that the property was located in the MDR zone of which approximately only 1 or 2 lots are actually conforming in the area.

Mr. Virr asked if the plan on exhibit 9 showing the front elevation of the gambrel roof at the street if that was the way it was currently. Mr. Fowler said that the existing second floor will be changing to a gable roof line.

Mr. Virr asked if there was to be construction to the existing roof. Mr. Fowler said yes and that they would be changing to the other direction.

Mr. Burgess said that he appreciated the drawings that were submitted and see some changes that were not clear at the previous meeting. Mr. Fowler said that he changed the mansard and moved it in so it would not create any issues.

Mr. Dimmock said that he appreciated the submission of the drawings as it made the proposal clearer as to what was being presented.

Mr. Osborn asked if there would be any skylights. Mr. Fowler said no.

Mr. Webb asked if the height increase would block views of the lake from the abutters. Mr. Fowler said that the homes across the street sit off to the side which one looks down the driveway. He said that the new addition being proposed currently has a second story behind it.

Code Enforcement

Mr. Mackey said that the applicant was requesting a variance to allow the construction of a second floor addition over an existing portion of the structure that currently encroaches into the side setback. As the proposed construction increases the volume of the structure located within the setback, a variance is required. The footprint of the current structure will not change. As the proposed construction will not change the footprint or increase the impervious area of the lot, a State Shoreland permit will not be required. The property is serviced by municipal sewer. If approved, appropriate permits & inspections are required. There are pictures in the file for review by the Board.

Board Questions

Mr. Virr asked if the property was serviced by Town water and sewer. Mr. Mackey said that he believed that it was only serviced by Town sewer and that the properties had individual wells.

Mr. Osborn asked that the property originally had an individual septic. Mr. Fowler said yes.

Favor

No abutters were present.

Opposed

No abutters were present.

Mr. Osborn motioned to go into deliberative session.

Seconded by Mr. Dimmock.

Vote: Unanimous.

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

Deliberative Session

Mr. Virr said that the volume issue was a sensitive area and felt that the drawings provided cleared up a lot of questions that were missing from the previous meeting. He said that the roof peak of 24'9" and not 35' to 40' was considerate for the area.

Mr. Osborn said that he felt that the proposal would be a great improvement for the area.

Mr. Perkins said that he felt that it was a decent improvement and would be an asset to the area and he did not see a conflict as it was a minimal volume change and nothing has been noted that it is expanding on the existing footprint.

Mr. Dimmock said that the information provided this time was clear and as stated by Mr. Perkins it would be an asset to the neighborhood.

Mr. Webb said that he agreed that it would be an improvement to the home and to the neighborhood as only expanding 23.9 inches and it will increase tax revenue for the town.

Mr. Virr reviewed the conditions for the Board.

Mr. Dimmock motioned to come out of deliberative session.

Seconded by Mr. Osborn.

Vote: Unanimous

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

Mr. Osborn motioned on 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 ID 56033, 11 North Shore Road, Zoned MDR as presented with the following conditions:

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

Seconded by Mr. Dimmock.

Vote:

Mr. Webb: Yes. Believe a good improvement to the property and the owners use.

Mr. Perkins: Yes. Improvement to the home and there will be no infringement on the neighbors.

Mr. Dimmock: Yes. Agree with the Board that it would be a good improvement and will not affect anyone in an adverse way.

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

11-117R Dom Vincent, LLC.

Re-hearing Request of case #11-117 Granite House Sober Living, LLC, Owner: Damiano Nano, 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.

The Board reviewed the information provided for the request for rehearing.

Mr. Virr said that he did not see any new evidence or anything that suggested that the Board had made an error in their decision. He said that in reference to paragraph 2 and the issue of being an abutter was immaterial as the applicant was not an abutter so he is not technically noticed. Mr. Virr said that in regard to paragraph 3 that he did not understand how this was relevant. #3 – do not understand that the use will have adverse effect to the neighborhood as stated in 165-108 for non-conforming use. #5 – Sober Living Facility being adjacent to the Marion Gerrish not relevant as had someone representing the Community Center and said that they had no problem with the use. With regard to relocating to another district was noted that was appealed in a court case and was upheld. Mr. Virr said that the rooming house had frequent visits.

Mr. Webb said that this was referenced as a hotel and justified it as calling it a hotel as it is not a hotel it's a Sober Living Facility not a hotel as hotel people get to come and go as they please and that is not the case here. Feel that breaking rules to make it fit.

Mr. Virr said that he knew of only three other States recognize the wording Sober Living Facility and things are not static and with computers, Facebook, etc. always changing and rooming house days are over as it is no longer a need and have a need for this type of use.

There was discussion with regarding use and non-conformity.

Mr. Burgess said that there was no place in Derry that allows the use and that it falls into the zoning and based on that and the Disability Act where it allows use and the mere fact to relocate to another area in Town has already been overruled. They have been told that if it looks the same on the outside then it's the same and should be allowed.

Mr. Virr said that the question before the Board is if there was anything presented tonight to change the decision of the Board that would grant a rehearing request.

Mr. Dimmock said that to his knowledge that the people that are currently located there are considered handicap and that the ADA states that unable to discriminate against them. Feel the Board had to grant the request as was unable to discriminate against them.

Mr. Webb said that he did not feel that there was any discrimination as they were already operating at a place and chose to relocate and the clients are not from the community. Feel that they created their own hardship.

Mr. Virr asked if there was any evidence presented tonight that would change the opinion of the Board.

Mr. Dimmock said that they displaced people to create this use that was not the case they vacated the place to remodel the building.

Mr. Dimmock motioned to come out of deliberative session.

Seconded by Mr. Osborn.

Vote: Unanimous.

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

Mr. Virr informed the Board that the motion needs to be made in the affirmative and that a yes vote means to grant a rehearing and a no vote was not to grant a rehearing.

Mr. Virr motioned to Grant case #11-117R - Dom Vincent, LLC a Re-Hearing of case #11-117, Granite House Sober Living, LLC, Owner: Damiano Nano, 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.

Seconded by Mr. Dimmock.

Vote:

Mr. Burgess: No. For the same reasons as stated.

Mr. Webb: Yes. Feel #3 states that on non-conforming to another and created another non-conforming structure. Item #5 the spirit and intent was on observed and no hardship has been shown.

Mr. Osborn: No

Mr. Dimmock: No. Do not believe the applicant has standing as not a direct abutter.

Mr. Virr: No. No new evidence was provided and feel that there was no mistake of law made.

The Request for Rehearing was Denied by a vote of 1-4-1. Recourse would be to appeal to Superior Court.

Approval of Minutes

Mr. Burgess said that he felt that he had a question in the wording on the motion of the Scalera case #11-121 that it should read that applicant agreed.

Mr. Virr said that he did not feel that a change was necessary as if the dogs bark the police could be contacted and the abutter can call the Code Enforcement Office if the applicant violates the conditions.

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

Other Business

Mr. Virr said that it was with regret that the Board has accepted the verbal resignation of Mr. Thompson.

Mr. Virr informed the public that the Board had vacancies and that if interested please submit intent to the Derry Town Clerk to be reviewed by the Town Council.

Election of Officers

Mr. Webb motioned to nominate Mr. Dimmock for the position of Vice Chair.

Seconded by Mr. Osborn.

Vote: Unanimous.

Mr. Osborn, Mr. Webb, Mr. Virr

Mr. Webb motioned to nominate Mr. Osborn for the position of Secretary.

Seconded by Mr. Virr.

Vote: Unanimous.

Mr. Webb, Mr. Dimmock, Mr. Virr

Adjourn

Motion to adjourn by Mr. Dimmock.

Seconded by Mr. Webb.

Vote: Unanimous.

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

Adjourn at 7:58 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes February 2, 2012

Mr. Dimmock motioned to approve the minutes of November 17, 2011.

Seconded by Mr. Burgess.

Vote: Unanimous.

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