

**TOWN OF DERRY**  
**ZONING BOARD OF ADJUSTMENT MINUTES**  
**August 16, 2012**

**Members Present**

Allan Virr, Chairman  
Albert Dimmock, Vice Chairman  
Ernest Osborn, Secretary  
Lynn Perkins  
Donald Burgess

**Members Absent**

**Alternates Present**

Louis Serrecchia  
Joseph Carnvale  
Teresa Hampton  
Frank Mazzuchelli  
David Thompson

**Alternates Absent**

Mr. Virr called the meeting to order at 7:02 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.

**12-113          Robin Hatfield**

**Applicant is requesting a Special Exception per Article VI, Section 165-46B to the Town of Derry Zoning Ordinance to allow the operation of an auto wholesale business at the residence. Parcel ID 22012-014R, 7R Norman Drive, Zoned MDR**

Robin Hatfield, owner, read her application for the Board. Ms. Hatfield said that she was seeking to establish an office in her home for an auto wholesale business and that no people would come to her home but would possibly have 2 vehicles for sale at the home. She said that typically the vehicles purchased would go from auction to auction.

**Board Questions**

Mr. Virr said that typically auto sales offices do not allow vehicles to be sold from the property. Ms. Hatfield said that there would be no sales of vehicles from her property.

Mr. Burgess said that according to the condo documents on page 5 states that no commercial business could be operated from the property. Ms. Hatfield said that she was in the process of dealing with the Rockingham County Registry in having that dissolved as there is no association.

Mr. Thompson asked which was the proper address for the property as the paperwork submitted states 7B. Ms. Hatfield said that she uses 7B as her mailing address but it is the right side.

Mr. Virr said that while the condo documents are in affect that he did not feel that the Board would be able to approve the request at this time.

There was some discussion with regard to status of ownership and covenant matters.

Mr. Mackey said that the declaration of the covenants prohibits the commercial use but also states that it may allow for professional offices which the Board could hear the case and motion that there be no commercial activity such as sale of vehicles on display or sold from the property.

Mr. Dimmock said that he had held a wholesale license which allows a person to attend auctions and get better deals on cars but he said that if there would be vehicles in the yard or kept on the property that it would not be allowed. Ms. Hatfield said that her intent was to go to Massachusetts auctions and then have the vehicle delivered to a New Hampshire auction for resale and that no vehicles would be sold from her home.

Mr. Virr said that the request for having 2 vehicles on the property would be a deal breaker and that an office only would be allowed. Ms. Hatfield said that she understood.

Mr. Perkins said that in viewing the deed the unit is described as 7R and not 7B and would like it noted for the record.

### **Code Enforcement**

Mr. Mackey said the applicant is requesting approval to obtain an auto wholesale license at the premises. If approved, I would request that the Board stipulate that no business vehicles be displayed for sale or stored on the property. The Declaration of Condominium for the development in which this property is located prohibits commercial or business use of the premises but allows for limited professional use which would not be incompatible with the residential character of the development and is in compliance with Town of Derry ordinances and regulations. If approved, a State license application must be approved by the Code Enforcement Office. There are pictures in the file for review by the Board.

### **Opposed**

Lee DiMauro, 20A Norman Drive, said that the area is a heavy residential area which has a very busy street with a lot of children. She said that she would be okay with the business as long as there were no vehicles would be sold from the property.

Mr. Virr said that the motion would be that there would be no vehicles stored on the property.

## **Favor**

Delia & Mark Bugley, 8L Norman Drive, said that they have small children and live across the street from the applicant and feel that the proposed business would not affect their property.

Mr. Dimmock motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

## **Deliberative Session**

Mr. Virr said that the applicant reviewed the criteria and as long as there were no vehicles on the property that he did not see a problem with the request.

Mr. Perkins said that it appears that the applicant is utilizing 120 square feet for the business but that he did not see the actual square footage for the whole unit but see a note of 1332 square feet of occupancy if calculated that number it would be less than 25% of use for the business.

Mr. Virr reviewed the conditions for the Board.

Mr. Mackey said that the State may go to the home to perform an inspection but the Town does not.

Mr. Dimmock motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

**Mr. Osborn motioned on case #12-113, Robin Hatfield to Grant a Special Exception per Article VI, Section 165-46B to the Town of Derry Zoning Ordinance to allow the operation of an auto wholesale business at the residence. Parcel ID 22012-014R, 7R Norman Drive, Zoned MDR as presented with the following conditions:**

- 1. Subject to obtaining all Town and State permits and inspections.**
- 2. No vehicles stored or displayed for sale on property.**
- 3. No Sign.**
- 4. Office Only.**

**Seconded by Mr. Perkins.**

**Vote:**

**Mr. Perkins: Yes.**  
**Mr. Burgess: Yes.**  
**Mr. Osborn: Yes.**  
**Mr. Dimmock: 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. Burgess called for a short break @ 7:39pm  
The Board reconvened at 7:45pm

**12-114          Bradley Ross**

**Applicant is requesting a Special Exception per Article VI, Section 165-46B to the Town of Derry Zoning Ordinance to allow the operation of an auto wholesale business at the residence, 3 Schurman Drive, Parcel ID 38030, Zoned MDR.**

Bradley Ross, owner, read his application for the Board. Mr. Ross said that he would possibly have 1-2 vehicles on his property at various times.

Mr. Dimmock said that dealer plates do not make the vehicle registered and that the Town regulations only allow one unregistered vehicle on the property so would it be a problem if they made a motion that no non-registered vehicles be allowed on the property. Mr. Ross said that it would be alright.

Mr. Virr said that the proposed office space is within the 25% of allowable space.

**Code Enforcement**

Mr. Mackey said that the applicant is requesting approval to obtain an auto wholesale license at the premises. If approved, I would request that the Board stipulate that no business vehicles be displayed for sale or stored on the property. The State license application requires approval by the Code Enforcement Office. There are pictures in the file for review by the Board.

### **Board Questions**

Mr. Perkins asked if the applicant could explain the 3 vehicles in the photos. Mr. Ross said that they were personal vehicles and that the vet was not registered but will be stored in the garage.

Mr. Virr asked if it was a personal vehicle or for sale. Mr. Ross said that it was a personal vehicle and that it was currently not running that it was his winter project.

### **Opposed**

Grant Benson Jr., 33 East Derry Road, said that he would like assurance that there would be no vehicles for sale on the property as the street was for family's and not designed for business use traffic. He said that there always a lot of noise from the property such as motorcycles and cars coming and going at all times.

Mr. Virr said that if the Board approves the applicants request a stipulation of no vehicles would be allowed for sale on the property and that recourse would be to inform Code Enforcement if there was concern that the conditions were infringed upon.

### **Favor**

No abutters were present.

### **Board Questions**

Mr. Burgess asked if the vehicles in the picture could be explained again. Mr. Ross said that they were personal vehicles. The motorcycle noise was from his neighbor next door that have several vehicles of their own. Mr. Ross said that the vehicles that are sometimes on the corner of East Derry Road are his neighbors

Mr. Dimmock motioned to go into deliberative session.

Seconded by Mr. Osborn.

Vote: Unanimous.

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

### **Deliberative Session**

Mr. Virr said that conditions should be made to no sign, no employees and subject to State and local permits and inspections.

Mr. Dimmock motioned to come out of deliberative session.

Seconded by Mr. Osborn.

Vote: Unanimous.

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

**Mr. Osborn motioned on case #12-114, Bradley Ross to Grant a Special Exception per Article VI, Section 165-46B to the Town of Derry Zoning Ordinance to allow the operation of an auto wholesale business at the residence, 3 Schurman Drive, Parcel ID 38030, Zoned MDR as presented with the following conditions:**

- 1. Subject to obtaining all Town and State permits and inspections.**
- 2. No vehicles stored or displayed for sale on property.**
- 3. No Sign.**
- 4. Office Only.**

**Seconded by Mr. Dimmock.**

**Vote:**

**Mr. Dimmock: Yes.**

**Mr. Osborn: Yes.**

**Mr. Burgess: Yes.**

**Mr. Perkins: 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**

**12-115            Todd Miller  
Granite Industrial Gases, Inc.**

**Applicant is requesting a modification of the conditions of the variance granted September 3, 1998, to the terms of Article 600, Section 613.1 of the Derry Zoning Ordinance to allow a welding supply business in the MHDR district. Parcel ID 29125-001, 49 North High Street, Zoned MHDR**

Todd Miller, owner of Granite Industrial Gases, Inc., read his application for the Board.

Mr. Virr asked what the conditions that he was seeking to be modified from the 1998 request. Mr. Miller said that he was seeking relief from condition #1, 3, 5, 6 and 8. He said that they were not a scrap metal business and when they started the business in 1998 the business has grown and changed and most companies are going green which means that no material can be left on the job sites so now have to bring all debris back to the shop on a daily basis.

Mr. Virr asked what is then done with the debris that is brought back. Mr. Miller said that it then has to get separated and then disposed of at different places.

Mr. Burgess asked if once separated can they be disposed of. Mr. Miller said yes and that is an additional cost as have to pay someone to separate it all then pay to also have it removed.

Mr. Perkins asked if the applicant could review each point that he wished to change for the record.

Mr. Virr said that the Board has a copy of the list of conditions that were set in 1998. He asked what conditions on the list was modification being requested. Mr. Miller said that he wished to modify condition #1, #3, #5, #6 and #8. He said that with regard to condition to #1 that he was not a scrap metal business and since he started his business in 1998 a lot has changed and that most companies are going green which means no materials can be left on job sites so now construction debris have to come back to the shop on a daily basis.

Mr. Virr asked with regard to condition to #3 in number of employees what would like changed. Mr. Miller said that he currently has 10 employees and had originally started with 5, 3 of which are Derry residents and he would like to be able to employ more than 10 employees.

Mr. Virr asked what would change with regard to condition to #5 and #6. Mr. Miller said that he still has the same number of vehicles but would like a few additional vehicles. He said that he still has the two 40' foot storage trailers and also have 2 other trailers that go from site to site that may at times have to come back to the shop periodically.

Mr. Virr said that condition #8 was stating that no welding be conducted on site. Mr. Miller said that they do currently do welding at the site as some items have to be prefabricated as to when he first started the business his fabrication was performed on the job site and today it requires that items have to be prefabricated at the shop to be able to compete with the market.

Mr. Virr asked if there were Saturday hours. Mr. Miller said that some employees work on Saturday but they pick up vehicles and then return to the shop but no other work is performed at the shop on Saturday's.

There was some discussion with regard to hours of operation and the type of storage materials such as gases were kept on the property.

### **Code Enforcement**

Mr. Mackey said that the property in question is currently zoned MHDR. In 1979, a variance was granted to allow a commercial use (Derry Paving) at the property and a commercial structure was constructed. Since then, the property has changed ownership a couple of times and in 1998, a variance was granted to the current owner to operate a welding supply business. An expansion of the building was undertaken in 2001.

Planning Board approval was obtained at that time. Over the last several months, this office has received complaints/concerns from the abutter located across the street regarding the noise, hours of operation and traffic being generated from the site. Upon investigation, it appeared that the owner was not in compliance with several conditions imposed by the Board when the variance was originally granted. The owner was advised that he must operate within the restrictions imposed by the Board or seek a modification of those conditions (see attachments). There are pictures in the file for review by the Board.

### **Board Questions**

Mr. Perkins asked if the expansion done in the 90's was done with approvals. Mr. Miller said that the addition was done with Planning Board approvals but did not recall all the specifics. He said that since he relocated his business there 15 years ago that the street is no longer a quiet back road as there are UPS trucks up and down the street 24 hours a day, several businesses have been located down Ash Street have 24 hour business operations and have on video tractor trailers trucking dirt at all hours. Mr. Miller said that he closes his business at 5:00 – 5:30 as he did not want to pay overtime. He said that also the road is a short cut for traffic from exit 5 that was not there 15 years ago.

Mr. Perkins said that he wanted to point out that the outside debris and materials could be an issue. He said that he has seen pickup trucks driving around collecting scrap metal because it is a lucrative business, so feel disposing of scrap metal by the applicant shouldn't be a problem. Mr. Miller said that when he views a job and customer states that removal of scrap and debris must be removed from the property on a daily basis that he has no choice but to bring some of the debris home in the evening as most companies business hours are the same as his and that before he can bring the debris to the scrap yard that he was required to separate it and that was unable to be performed on the job site so it is done on his property and removed when he has sufficient materials to scrap so not to make several different trips on a daily basis.

Mr. Dimmock asked where the hard debris were currently on the property. Mr. Miller said that he has several plastic tanks that he needs to have removed that were currently stacked to the rear of the property.

Mr. Virr said that the previous motion stated no outside storage on premises.

Mr. Osborn said that he knew that various debris used to be free to get rid of where now there is a cost involved for disposal. Mr. Miller said that was correct and if anyone knew of where he could dispose of the tanks or if anyone wanted them that they were welcome to come and take them.

### **Opposed**

Attorney John Weaver, counsel for Andrea Murphy of 54 High Street, submitted pictures and explained to the Board what each entailed. Attorney Weaver said that Ms. Murphy is in opposition as the applicant does not meet the 5 criteria of a variance today. He said

that since 1998 his client has had no objection and has felt that the applicant abided by the variance granted at the time but in 2008 the business began changing. Also, Ms. Murphy has been subject to vehicles backing onto her property and subject to excessive noise from the vehicles idling at various times. There is more accumulated storage of scrap metal along the recreational path located at the rear of the applicant's property. He said that his client has also been subject to noxious odors of propane that feel is omitted from the propane truck that dispenses propane into tanks which then in turn omit odors into the air.

Mr. Virr asked if any of the complaints were registered with Code Enforcement. Ms. Murphy said that she has been in contact with Mr. Mackey since October of last year.

Attorney Weaver said that he feels the uses being proposed are outside the scope of Industrial sites and not allowed in residential areas. He reviewed the five criteria for the Board as follows:

1. Contrary to Public Health – Health concerns with regard to odors of propane being omitted and loud noises from the property.
2. Reasonable Character – Industrial use next to a residential area is not reasonable.
3. Substantial Justice – Do not feel that substantial justice would be served by allowing the business to expand.
4. Diminish Property Values – Client has invested a significant amount of money into home and unable to obtain a reasonable sale price from her home due to the appearance and nature of the business located across the street.
5. Literal Enforcement – The applicant has been expanding the business over the years and there has been no enforcement of the previous restrictions set by the Board.

Mr. Thompson asked where this situation has been ongoing since 2008 why hasn't a suit been filed. Attorney Miller said that the violations started out as minor and have since been ongoing. He said that his client has been in contact with Code Enforcement with regard to the matter.

Ms. Murphy said that she had rebuilt her home in 2003 and at that time got along with her neighbor. She said that the last time that she went over to the property was on June 9<sup>th</sup> at 9:00 pm due to loud noises which she did call the police. Ms. Murphy said that she also had a real estate broker to her home and they indicated that with the type of business located across the street that the sale of the home would be a significant loss if sold now.

Mr. Burgess said that he resides up the street from the property and has heard loud noises and also the telephone serving the property is very loud.

Mr. Dimmock said that with regard to noise complaints that anything before 7:00 am and after 10:00 pm can be directed to the police department. Attorney Weaver said that that was a misconception that the Town can request that the Building Inspector can enforce time restraints according to the RSA's.

Mr. Virr asked what the abutter wished to have the Board help remedy her situation. Attorney Weaver said that his applicant would like the following:

1. Property not allowed to omit noxious odors, noises, etc.
2. Do not feel that having a successful business qualifies as a hardship.
3. Do not believe the criteria presented has been enough to satisfy as unnecessary hardship.
4. Would like the Board to enforce Articles.

Mr. Thompson said to summarize what the abutter is seeking is the following:

1. Focus on the reduction of noise and a general clean up of the property.
2. No welding noises outside the hours of 8:00 am – 5:00 pm
3. Ensure that there is no trespassing of trucks on abutter's property.
4. Property cleared of debris and scrap metal.
5. No propane smells before 8:00 am or after 5:00 pm.

Mr. Thompson asked if there would be a problem with reaching an understanding with these requests. Mr. Miller said that he could do them.

Mr. Virr said that it would be a hard stretch to make a welding business look pretty and that the applicant was not seeking a new variance just a modification to the existing variance.

Ms. Murphy asked if there could be a decibel cap on the noise when moving the metals. Mr. Osborn said that they had tried that with a wood cutting business and that it would be a moot issue.

Mr. Burgess said that the decibel levels are not lot term when moving the metals so would not meter out on a device. Ms. Murphy said that the noise is loud at 7am.

Mr. Dimmock said that if the request was granted tonight that it would be subject to conditions and if they were not followed then could go to Code Enforcement office to cease and desist.

Attorney Weaver said that he felt that the concerns of Ms. Murphy were that the applicant was not abiding by restrictions originally set forth.

Mr. Virr said that they were not trying to put the applicant out of business and that the Board will address the issues.

### **Rebuttal**

Mr. Miller said that the assumptions coming from the neighbor's Attorney with regard to his company affecting their health that he would have appreciated some notification so he could have attended tonight with his own counsel.

Mr. Dimmock asked if willing to have no junk stored on the property. Mr. Miller said that he did not see a problem with the request but does have debris on the property from time to time but would do more to keep it organized and disposed of more frequent.

Mr. Osborn said that he felt it would be best route was to address the pictures that were submitted. He asked who was C&C. Mr. Miller said that was a friend's vehicle that he was asked to look at for a problem and has not been able to get to it yet.

Mr. Osborn asked if he was operating as a junk yard. Mr. Miller said no.

Mr. Osborn asked what was the white propane truck on the property. Mr. Miller said that the propane truck was registered and has been on the property since 1998 in which the Fire Department performs regular inspections. He said it was used to fill fork lift tanks.

Mr. Thompson asked if it was used to fill tanks. Mr. Miller said yes it was used to fill 100 lb. tanks and have a permit from the Derry Fire Department.

Mr. Osborn asked what were the large white tanks. Mr. Miller said that they were from a job site and that he has been looking for a way to get rid of them that he may have to just crush them for disposal.

Mr. Virr said that earlier stated not filling propane tanks but just stated now filling of tanks. Mr. Miller said that he said that he does not do small tank fillings but does do bulk fillings.

Mr. Burgess asked if he was omitting propane fumes. Mr. Miller said it was hard pressed to say that he was the only one with propane fumes as neighbors have propane and fill their tanks also.

Mr. Dimmock said that the hours of operation were 8:00 am to 5:00 pm but that did not mean unable to park trucks after 5:00 pm just unable to operate machinery. Mr. Miller said that all he was seeking there was to allow his trucks to come and go outside of regular business hours but his shops operating hours to be open was 8:00 am to 5:00 pm.

Mr. Virr said that the Board has discussed noise, hours of operation and increase of number of employees. He said that times have changed along with the nature of the business due to the change in laws with regard to going green. Mr. Miller said that he felt that he operated a clean business and that the front of the property was kept clean and that he wanted to erect a fence to the rear of the property when first moved in but the Town has said no because of the recreation path.

Mr. Burgess asked if the diesel trucks could be located on another part of the property if they were to be started early in the morning and allowed to idle before leaving the shop. Mr. Miller said that could be arranged.

Mr. Virr asked if Mr. Mackey could request that the Fire Department inspect the propane tank for leakage and submit some sort of paperwork for clarification to the office. Mr. Mackey said that he would contact the Fire Department.

Mr. Burgess asked if the Board wished to possibly postpone this meeting until the request from the Fire Department was received. Mr. Virr said that was not necessary as the Code Enforcement Office could handle any issues from there if enforcement were necessary.

Mr. Dimmock motioned to go into deliberative session.

Seconded by Mr. Perkins.

Vote: Unanimous.

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

### **Deliberative Session**

Mr. Perkins said that he had issues with the creditability of the applicant as he has broken his previous agreement that was granted to him with the Town. He said that there were conditions with regard to no fabrication on the property and he is fabricating product on the property and seeking additive relief at the expense of his neighbor. Also have issues with the storage of debris which is being done now and not supposed to have and that he did not feel it would be a disservice to make a condition to have a strict limit on keeping debris restricted to a confined area. Mr. Perkins said that he didn't buy into the applicant's statement of not knowing where propane smells were coming from. He did not feel that it was reasonable to restrict the number of employees or hours of operation.

Mr. Virr said that the nature of the business has changed which requires fabrication to be conducted off site of job location thus requiring that the fabrication be performed at the place of business. He said that he has gone by the property several times and have not witnessed a cluttered mess.

Mr. Perkins said that he would like a condition to structure some sort of limit on the amount of debris that could be stored on the property.

Mr. Virr motioned that the Board continue the meeting until 10:15pm.

Seconded by Mr. Dimmock.

Vote: Unanimous

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

Mr. Virr said that the Board needed to review what the applicant was seeking relief from and reviewed the items as follows:

- #1 Delete condition as unable to limit no outside storage of business debris or material as times have changed and so has the business.
  - #3 Modify to not limit the number of employees.
  - #4 Modify hours of operation to be 7:00 am to 6:00 pm Monday through Friday.
  - #5 Delete as unable to limit the number of vehicles allowed for business use.
  - #8 Delete as again the nature of the business has changed that requires manufacturing on site.
- Add condition that modification is subject to Fire Department inspection of the propane truck.
- No welding or fabrication activity to be done after 6:00 pm.

Mr. Perkins said that he would also like a restriction of storage of debris be placed into a dumpster as would like to have some sort of recourse for Code Enforcement. We have had case on Tinkham Ave where requirements to the lot were in place and there have been problems so without a restriction for debris on this case the Town will have no recourse for enforcement.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mr. Dimmock.

Vote: Unanimous.

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

**Mr. Osborn motioned on case #12-115, Todd Miller -Granite Industrial Gases, Inc. to Grant a modification of the conditions of the variance granted September 3, 1998, to the terms of Article 600, Section 613.1 of the Derry Zoning Ordinance to allow a welding supply business in the MHDR district. Parcel ID 29125-001, 49 North High Street, Zoned MHDR as presented with the following conditions:**

- 1. Delete conditions #1, #3, #5, and #8 of Notice of Decision dated September 3, 1998.**
- 2. Expand condition #4 regarding hours of operation to be 7:00 am – 6:00 pm Monday thru Friday.**
- 3. Subject to Derry Fire Department inspection of existing propane truck.**

**Seconded by Mr. Dimmock:**

**Vote:**

**Mr. Perkins:** No. Believe that condition #1 pertaining to outside storage of business debris needs to be addressed.

**Mr. Burgess:** No. Applicant was not seeking to expand hours of operation and feel that the scrap metal debris needs to be cleaned up.

**Mr. Osborn:** Yes. Feel that the applicant will make an effort to be a good neighbor and clean up debris and adhere to the conditions that were made.

**Mr. Dimmock:** Yes. Feel good neighbor and has a clean front of building but unable to say that for the rear of the property and business is an asset to the neighborhood.

**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**

**Applicant is requesting a variance to the terms of Article VI, Section 165-45A to allow commercial vehicle storage and construction of a cold storage structure on the property. Parcel ID 29125, 45 North High Street, Zoned MHDR**

Mr. Virr said that the Board would be unable to approve a commercial structure without some sort of plan and that he was recommending that the Board continue this case without finding as would like some sort of drawings of the proposed structure and what would be housed there. He asked if the applicant would agree to a motion to be without finding until such time as plans could be submitted. Mr. Miller said that he was not sure what type of structure he wished to place on the property but also filed in that request was seeking permission to park commercial vehicles on the property.

Mr. Dimmock said that if the Board proceeded with the case as written then it would only be able to grant a two (2) year construction period and if proceed as the Chair stated would allow time to prepare a full proposal.

### **Code Enforcement**

Mr. Mackey said the property in question is adjacent to the current Granite State Industrial Gases business. The applicant purchased the property in 2006 which consists of a residential 2 unit structure. It was noted by this office that the applicant was storing various commercial vehicles on the property. He was informed that the property is zoned residential (MHDR) and he would need to seek approval from the ZBA for this use or remove the vehicles. The applicant is seeking approval to store commercial vehicles on the property as well as approval to construct a vehicle storage building in the future. As this time, he does not have a site plan prepared. If approved he would be required to obtain site plan approval from the Derry Planning Board. There are pictures in the file for review by the Board.

There was some discussion with regard to cold storage and definition.

**Mr. Osborn motioned on case #12-116, Todd Miller, to Continue Without Finding until additional information is available variance request to the terms of Article VI, Section 165-45A to allow commercial vehicle storage and construction of a cold storage structure on the property. Parcel ID 29125, 45 North High Street, Zoned MHDR.**

**Seconded by Mr. Dimmock.**

### **Vote:**

**Mr. Osborn:      Yes.**  
**Mr. Burgess:    Yes.**  
**Mr. Perkins:     Yes.**

**Mr. Dimmock: Yes.**

**Mr. Virr: Yes.**

**The application was Continued without finding by a vote of 5-0-0.**

### **Approval of Minutes**

Mr. Virr motioned to approve the minutes of June 21, 2012.

Seconded by Mr. Osborn.

Vote: 7-0-1

Yes: Mr. Thompson, Mr. Carnvale, Mr. Mazzuchelli, Mr. Serrecchia, Mr. Burgess, Mr. Osborn, Mr. Virr

Abstain: Mr. Dimmock.

### **Other Business**

Mr. Mackey said that he had received an email from Southern NH Planning with regard to sit with the Board at a workshop to discuss any questions that the Board could collectively put together. He said that they would need to set up a time and date directly with Southern NH Planning.

### **Adjourn**

Mr. Osborn motioned to adjourn.

Seconded by Mr. Dimmock.

Vote: Unanimous.

Mr. Thompson, Ms. Hampton, Mr. Carnvale, Mr. Mazzuchelli, Mr. Serrecchia, Mr. Burgess, Mr. Perkins, Mr. Osborn, Mr. Dimmock, Mr. Virr

Adjourn at 10:38 pm.

Minutes transcribed by:

Ginny Rioux

Recording Clerk

**Approval of Minutes on September 20, 2012**

**Mr. Virr motioned to approve the minutes of August 16, 2012 as amended.**

**Seconded by Mr. Burgess**

**Vote: Unanimous**

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