

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
November 1, 2012

Members Present

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

Members Absent

Alternates Present

Louis Serrecchia
Frank Mazzuchelli
Joseph Carnvale
Teresa Hampton
David Thompson

Alternates Absent

Code Enforcement

Robert Mackey

Planning Board

George Sioras

Mr. Virr called the meeting to order at 7:03 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 asked the first applicant case #12-117R if they would mind if they went out of order tonight and take the next case on the agenda as it was a special hearing that required a joint meeting with members of the Planning Board and Conservation Commission. The applicant said that he did not mind being next on the agenda.

It is noted for the record the following members of the Planning Board and Conservation Commission were present for case #12-121:

Planning Board Members

John O'Connor, Vice Chairman
David Milz, Council Representative
John Anderson, Town Administrator
Frank Bartkiewicz, Secretary
Randall Chase
Jan Choiniere
Ann Marie Alongi
Laurie Davison

Conservation Commission

Richard Tripp
James Degnan

Applicant is requesting a Special Exception as provided in Article VIII, Section 165-67 of the Town of Derry Zoning Ordinance to allow the operation of a motor vehicle service and repair business in the Groundwater Resource Conservation District (GRCD). This request requires a joint meeting of the Zoning Board of Adjustment, the Planning Board, and the Conservation Commission. Parcel ID 35015-011, 8 Tinkham Avenue, Zoned IND IV.

Philip LaTorre, applicant, said that he was here tonight to request a special exception to operate a motor vehicle service and repair shop at 8 Tinkham Ave. Mr. LaTorre said that there would be no changes to the existing site except for the installation of a small walkway for clients to enter and exit the facility safely.

Mr. Burgess asked where was the list of conditions that were required to be reviewed for the Board.

Mr. Mackey said that this request was for a special exception and not a variance request so that the applicant only needs to address and meet the 4 criteria of this special exception for the Board.

Mr. LaTorre reviewed his letter of explanation listing the criteria for the Board. He said that they will have 10,000 square feet of space and hope to hire 3-4 people within the year.

Board Questions

Mr. Osborn asked if there was an existing shop currently being operated now. Mr. LaTorre said that they currently operate at their customer's sites and there has been some work done at Mr. Ouellette's property.

Mr. Burgess asked where will the vehicles enter the structure. Mr. LaTorre said that there was a 14' door near the Green Mountain Stove Shop and also 2 loading docks.

Mr. Perkins said that in the letter of explanation it abbreviates on the use of PIG mats if they could explain more about how they work.

Larry Ouellette, applicant, presented the Board with a handout of additional information with regard to the mats.

Mr. Dimmock said that according to the Board's Policy & Procedures all information was required to be submitted at the time of application or no less than 10 days before the meeting so the Board had time to review the information provided.

Mr. Virr said that he would entertain a motion from the Board to accept the information if the Board wishes.

Mr. Perkins said that he asked for the applicant to elaborate as they referenced them in the letter of explanation and some people may not know what they were.

Mr. Dimmock motioned to accept the information.

Seconded by Mr. Perkins.

Vote: Unanimous.

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

Mr. Ouellette explained the use of the PIG mat information that he provided to the Board.

Mr. Virr asked if these were the same type of mats that FedEx utilized. Mr. Ouellette said yes that FedEx has them onsite in the case of any spills.

Mr. Perkins asked the applicant to explain how the kit worked. Mr. Ouellette said that the kit has a section in it that is called a snake that would be laid down around a spill and the mat would then absorb any oils from any water. These in turn would go into a plastic container and Clean Harbor would then be utilized for pickup of the contaminated product.

Mr. Perkins asked if the mats only collect oil from the water or if it also had the ability to collect antifreeze. Mr. Ouellette said that the mats also work with coolants and oils.

John O'Connor, Vice Chairman of Planning Board, said that he was familiar with the type of mat as worked in a facility with 300 vehicle network that has utilized this type of mat.

Randy Chase, Planning Board, said that the mats are industry standard kits and do exactly as the applicant has stated they will do and leave the water alone as they only absorb petroleum products.

Mr. Dimmock said that he also has seen this type of mat utilized and the applicant is telling the truth.

Mr. Virr asked if Mr. Osborn thought if there would be any problem with the size of his truck accessing the incline at the area. Mr. Osborn said that there should be no issue with the slope.

Richard Tripp, Conservation Alternate, said that there is no site plan available for the facility and that this proposal is a new operation to the area and that the applicant noted that there were no known floor drains. Mr. Tripp said that he felt that something should be determined with regard to the possibility of floor drains before granting approval for the exception.

Mr. Osborn said that the Board could make that a contingent in their motion.

Mr. Virr asked Mr. Mackey if there had been a site inspection done of the property. Mr. Mackey said not yet.

Mr. Osborn asked if there were floor drains what would be required. Mr. Mackey said that they would be required to be filled in.

Ralph Valentine, representing Kachanian Two Realty Trust, said that the building was originally built as a warehouse and stored paper products. He said that he has walked the floor many times and has never noticed any floor drains. The property was also utilized by Textron and now recently empty.

Mr. Burgess asked if there was an Ashley Furniture storage there. Mr. Valentine said that they were in unit D and unit C was a powder finishing company.

Mr. Tripp said that the applicant was not anticipating any waste water discharge. Can there be a condition on the approval for servicing only and no washing of vehicles.

Mr. Osborn asked if there would be any washing of vehicles. Mr. Ouellette said that power washing would be done at the FedEx facility and not on Tinkham Ave.

Ms. Hampton said that what Mr. Tripp was asking was if there would be any toxic fluid run off. Mr. Ouellette said no as there would be no washing of vehicles on property.

Mr. Tripp asked if where this request was a special exception if the matter had been broached with DES as they may also want to be informed. Mr. Dimmock said that he had been in touch with DES and was told that if they were performing work only inside the building that the DES had no control over the matter.

Mr. Burgess asked if there would be outside parking. Mr. Ouellette said that the services are done inside and 99% of the time the vehicles are done and leave the same day.

Mr. Virr asked if all servicing would be done inside. Mr. Ouellette said yes and that the only vehicles outside would be their own vehicles and any employees vehicles.

Mr. Osborn asked if there would be any lifts installed. Mr. Ouellette said yes one now and maybe another later on.

James Degnan, Conservation Commission Alternate, asked if it was correct that the mat could hold 4.5 gallon volume and as much as 9 gallons. Mr. Ouellette said yes as the kit contained an item called a snake that is laid out and absorbs fluids.

Code Enforcement

Mr. Mackey said that the applicant is requesting approval to operate a motor vehicle service and repair facility. The proposed use is a permitted use in the Industrial IV Zoning District. The property is located in the Groundwater Resource Conversation District (GRCD) or aquifer district which requires that a special exception be obtained for

this particular use. (see Zoning Ordinance – Article VIII, Section 165-67A). The hearing for a special exception requires a joint meeting with the Planning Board and Conservation Commission in order to obtain advice from these Boards. In order for the special exception to be granted, the Board must find, in written findings of fact, that the four criteria as stated in Section 165-67B have been met. There are pictures in the file for review by the Board.

Mr. O'Connor said that have seen these types of procedures 3 times in the last 4 years and have all been allowed to go forward with same criteria of sealing drains etc. He said that he feels that the Fire Department should do a follow up to verify compliance.

Mr. Virr explained that only the 5 Zoning Board Members would be voting and that the purpose of the joint meeting was to allow for Planning and Conservation input only. He said that the Board has heard some great input tonight and it would be taken into consideration.

Mr. Thompson asked if the hours of operation being requested were 7:00 am to midnight. Mr. Ouellette said that it would probably start off at 3:00 in the afternoon until midnight at first.

Mr. Thompson asked if there were any residential homes in the area. Mr. Mackey said that any residential properties were located quite a distance

Favor

James Forest, owns 9 Tinkham Ave. and reside in Pelham NH, said that he had no objection to the request and was in favor.

Ralph Valentine, represent owners, said that the building was 51,000 square feet of building that was currently empty and that he and the owner have walked the site with the applicant as they were also concerned with use of the property but after speaking with the applicant they will enforce any conditions that the Board imposes. He said that the owner is in favor of the request.

Mr. Dimmock asked if there was a lease agreement who would be responsible to oversee enforcement of the conditions. Mr. Valentine said that the owner would oversee that the conditions were adhered to.

Mr. Virr said that the original structure was designed as a warehouse how would the applicant deal with exhaust fumes and if the Fire Department has checked for any floor drains. Mr. Valentine said that they had already discussed that and they would be venting any exhaust fumes properly. He said that the owner would be monitoring the property on a routine basis.

Mr. Burgess asked where the entry was located. Mr. Valentine said if you faced the building the entrance was on the left side and that there was also a 12' x 16' door there

and that the incline was approximately 4-5%. The entry would be in the same area as there was also a 100' x 100' boxed area that has an existing man door where they would be installing a walkway for customers.

Ms. Hampton asked if the applicant would be subject to any liabilities or penalties if violated. Mr. Valentine said that he was unsure as he was not an attorney.

Mr. Virr said that would be due diligence of the property owner.

Mr. Osborn said that it appears that the property has 2 dock doors and one drive in door that they may want to think about installing something in front of them so no one just drives out and off them. Mr. Valentine said that was a good point and would look into with the owner.

Opposed

No one spoke in opposition of the application.

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 there was good feedback from the Planning Board, Conservation Commission, Mr. Valentine and the applicant. He said that he felt there should be several conditions to the request such as subject to obtaining all State and local permits and inspections. No washing of any vehicles on the property. No outside work or storage of vehicles.

Mr. Perkins said that if the hours of operation were 3:00 pm to midnight how would anyone know if there were vehicles there and who would enforce restriction.

Mr. Virr said that was not part of the 4 criteria.

Mr. Burgess said that with 10,000 square feet that he felt there was ample parking inside overnight for any vehicles and that there should be none located outside.

Mr. Dimmock said that the hours of operation should not be part of the motion as the property is located in the industrial area and do not feel they have the right or authority to implement hours of operation and that the applicant should be allowed to operate any hours that are convenient for them

Mr. Virr added a condition subject to no repairs or washing of vehicles, no long term storage.

Mr. Osborn asked about any condition regarding signage.

Mr. Dimmock said that would be a Code Enforcement matter and that there was a question with regard to the possibility of floor drains present. Feel a condition be made that if present they must be sealed properly.

Mr. Virr said that he was going to break protocol and ask if the Planning Board or Conservation Commission had any other special conditions they may wish to have added.

It was noted that neither Board made any comment.

Mr. Osborn 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 #12-121, Larry Ouellette, Owner: Kachanian Two Realty Trust to Grant a Special Exception as provided in Article VIII, Section 165-67 of the Town of Derry Zoning Ordinance to allow the operation of a motor vehicle service and repair business in the Groundwater Resource Conservation District (GRCD). This request requires a joint meeting of the Zoning Board of Adjustment, the Planning Board, and the Conservation Commission. Parcel ID 35015-011, 8 Pinkham Avenue, Zoned IND IV as presented with the following conditions:

- 1. No washing of vehicles on property.**
- 2. Any floor drains present must be properly sealed.**
- 3. Subject to all State and local permits and inspections.**
- 4. No storage or repairs to be performed outside.**

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

Mr. Anderson said that he felt that the Board should list the finding that each of the 4 criteria had been met as this was not heard in the motion.

Mr. Virr said that the 4 criteria were read as part of the testimony presented.

Mr. Anderson said that in the past the Town has had some legal issues due to the Board not being specific when making a motion.

Mr. Virr said that during a recent seminar he was told that as long as each point of the criteria was reviewed during testimony then they did not have to list them as part of the motion.

Mr. Anderson said that the Board is not the one that have to deal with the legal department and it would not hurt to mention points in future motions to cover all basis.

The Board took a 5 minute recess at 8:02 pm. Reconvened at 8:07 pm

It was noted for the record that Mr. Dimmock stepped down for the following case and Mr. Thompson would sit.

12-117R Robert L. Allen

Rehearing of Case #12-117. Applicant is requesting a variance to the terms of Article VI, Section 165-48B.2 & 3 of the Town of Derry Zoning Ordinance to allow the subdivision of an existing lot into two (2) lots, leaving the existing lot with less than the required frontage and lot width. Parcel ID 04075, 6 Cella Drive, Zoned LDR

Tim Lavelle, Lavelle Associates said he was representing the applicant. Mr. Lavelle said that the applicant was seeking to create a lot with a 59' wide access way for a 15 acre parcel.

Mr. Virr said that he did not feel that it was necessary to reread the original application. He said that in the original application the Board heard testimony that there would be one large lot with 59' of frontage in a 3 acre zoning area. The 15 acre parcel meets the criteria and the Board thought there were other plans for the parcel.

Mr. Osborn said that there was adequate spacing of the homes in relation to the 15 acre parcel.

Mr. Lavelle said that the intention of the spacing of the one home in relation to another lot was for aesthetics. And that lot number 5 with relation to lots 4 and 7 would have adequate spacing between them. The applicant is only proposing one home at this time on a single lot.

Mr. Virr asked if there would be setback problems. Mr. Lavelle said no. There was some discussion with regard to the location of the proposed home on the 15 acre parcel.

Mr. Thompson asked if anything had changed since the original plan and if there was any additional information that would allow for future development. Mr. Lavelle said that there would be possible future development but the variance would then go away and the proposal would be required to go through Planning Board review again.

There was some discussion with regard to the amount of turn around access there was available on Cella Drive.

Mr. Virr said that the previous submission was for a single house lot. Mr. Lavelle said it is the same submission and if there were any future development to create a road it would need to be part of another larger development.

Mr. Virr asked if the applicant owned any other land abutting the parcel. Mr. Lavelle said no.

There was some discussion with regard to lot size, the driveway and house location.

Code Enforcement

Mr. Mackey said the applicant is requesting approval to subdivide an 18.92 acre lot into 2 lots. The new lot will contain 3.01 acres and 200 feet of frontage and the existing lot will contain 15.91 acres and 59 feet of frontage (200 feet required). The original subdivision was approved by the Planning Board in 2008 and contains 7 residential lots. Currently, the road has been constructed and drainage installed and two of the lots have homes under construction. If approved, Planning Board subdivision approval will be required. There are pictures in the file for review by the Board.

Board Questions

Mr. Dimmock said that the point was brought out as to where the house was to be constructed on the lot with regard to the 15 acres. Mr. Mackey said that any future development would be required to go to Planning Board and meet the regulations of TRC and Fire.

Mr. Osborn asked what were the driveway elevations. Mr. Lavelle said that they were less than 8%.

Favor

No one spoke in favor of the application.

Opposed

No one spoke in opposition of the application.

Rebuttal

There were no additional Board questions.

Mr. Osborn motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Deliberative Session

Mr. Virr said that the approval be made subject to the configurable 15 acre parcel and to obtaining all State and Town permits and inspections and subject to Planning Board approval.

Mr. Thompson said that a condition be added that only 1 home to be constructed on the property.

Mr. Virr said that he disagreed as he did not feel that such a condition would stand up in court. He said that the Board is approving as a single house lot and that it has no control of the future.

Mr. Thompson said that he felt that there was insufficient frontage to approve the request.

Mr. Perkins said that any future growth would have to meet other criteria.

Mr. Thompson said that he felt that the Board needed to think of future impact to the area.

Mr. Osborn motioned to come out of deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Mr. Osborn motioned on case #12-117R, Robert L. Allen, to Grant a variance to the terms of Article VI, Section 165-48B.2 & 3 of the Town of Derry Zoning Ordinance to allow the subdivision of an existing lot into two (2) lots, leaving the existing lot with less than the required frontage and lot width. Parcel ID 04075, 6 Cella Drive, Zoned LDR as presented with the following conditions:

1. Subject to obtaining all State and local permits and inspections.
2. 1 house to be built on property.

Seconded by Mr. Burgess.

Vote:

Mr. Osborn: Yes.

Mr. Perkins: Yes.

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

Mr. Burgess: Yes.

Mr. Virr: Yes.

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

12-122 Crystal Realty Associates

Applicant is requesting a variance to the terms of Article III, Section 165-20a, of the Town of Derry Zoning Ordinance to allow the construction of a building no closer than 48 feet to the proposed new wetland limit, where 75 feet is required. Parcel ID 32030, 23 Crystal Avenue, Zoned GC

Karl Dubay, The Dubay Group, Inc., said he was also here with Luke Hurley of Gove Environmental Services and James Derderian, owner of the property. Mr. Dubay read the application for the Board. He said that the plans that were submitted to the Board had been something that they have been working on for a while and he wished to thank the Planning Board, Mr. Mackey and the staff in assisting with helping them answer the questions and creating the proposed project.

James Derderian, owner, said that he the property has been in the family for 42 years at the time of purchase it was Standard Sash and Door that sold products to builders and

contractors. They made windows and doors and had also expanded their facility to Merrimack Valley Wood Products who is sister company that they still own but lease out. Mr. Derderian said that it was no longer profitable for doing mill work so they closed the business. He said that he and his father decided to go with this site plan as it was very esthetically pleasing and as it was also across from St. Thomas Church that they wanted something that would work well with them as well. Mr. Derderian said that his father still inquires as to what is going on in Derry and how this project was coming.

Mr. Dubay reviewed photos for the Board.

Board Questions

Mr. Dimmock asked if the vines were on their property or the abutting property and if they were bittersweet. Mr. Dubay said that they were on Mr. Derderian's property and that they were bittersweet which the proposal was to remove them and hopefully have less invasive plants.

Mr. Virr asked if Conservation agrees with the 48 feet. Mr. Dubay said that he has not spoken with the Conservation Commission at this time but anticipate signing off on project after site walk, etc is performed.

Mr. Virr asked what was the proposed date to begin the project. Mr. Derderian said that they were unsure as they have not signed any tenants as of yet and they do not have any approvals from the Board's.

Mr. Virr said that DES has signed off on the 48'. Mr. Dubay said yes and have listed the standard conditions which we are willing to fulfill and move toward Planning Board approval.

Mr. Virr asked if the plan was to get rid of the bittersweet. Mr. Dubay said yes and that the DES agrees with the decision.

Mr. Burgess asked where the property would be acquired from to create the turning lane. Mr. Dubay explained the proposal shown on the plan for the Board.

Mr. Virr said that would be a matter for the Planning Board and that this Board is only addressing the wetland issue. He said that 5A.ii lists all uses and parking of which all will be addressed by the Planning Board and will also be in Mr. Derderian's best interest.

Code Enforcement

Mr. Mackey said the applicant is proposing to locate a building less than 75 feet from a wetland greater than 1 acre in size. As part of the redevelopment of the property, the applicant has received a wetlands permit from NHDES to fill a small portion of the wetland with the result that the proposed building will be located no closer than 48 feet to the new wetland limit. The wetland being impacted is not part of the 100 year flood plain

and is not classified as a prime wetland. The applicants have been working with the Conservation Commission with regard to the environmental issues on the site. If approved by the Board, a Site Plan will then be submitted to the Planning Board for their review. There are pictures in the file for review by the Board.

Favor

Mr. Osborn read letter from Olga Downing, 32 Crystal Ave., in favor of the proposal for the record.

Don Demers, representing St. Thomas Aquinas and the Bishop of Manchester, said that the church's position is favorable to the request and they would like to see Mr. Derderian move forward with the proposed project.

Laurie VanCuren, 8 Lenox Road, said that she felt that the property would be affected when the proposed project is built as the middle lane on Crystal Ave will cause more issues than there are presently on Crystal Ave. She said that a lot of parking along the area is currently utilized by the Church and that there would be potential oil leaking into the runoff. When the original building was removed the problems that currently exist are the owners own fault as they did not make allowances when they removed the old structure. She said that the area currently has a lot of animals and was concerned what would happen to them as some of them live in the wetlands in the area. Also the school abuts the area and it would infringe on the open space for the children and also the lighting would be a problem for the school as it would possibly make it more attractive for kids to start hanging out in the area.

Mr. Virr said that the lighting would possibly be aimed down and that there would be traffic studies to ensure the safety of Crystal Ave.

George Sioras, Planning Director, said that the issues that the abutters have brought up would be Planning Board matters and not for the Boards decision. He said that he and Mr. Mackey thought that the first step would be to have the applicant deal with the wetland encroachments. Mr. Sioras said that the Staff at the Code Enforcement and Planning Board office have worked hard with the applicant and he has met with Mr. Demers and they have taken into account the Church's concerns and are willing to work into an agreement with them.

Mr. Valentine said that he was in support of the applicant and have spoken directly to the School Board of whom are unanimous in favor of the proposal and lighting to the rear of the property as it would make it less attractive to vagrants. He said that he has also met with the owners of Moo's and they are in full support of conceptual plans and that they proposal may also assist with some of the traffic flow.

Mr. Garrett, 30 Crystal Ave., said that he was in favor of the proposal as it would fix up the area.

Opposed

No one spoke in opposition of the application.

Rebuttal

There were no additional questions from the Board.

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 he felt that it would be a bonus to Crystal Ave if it is done right and that the only issue that the Board is looking at is the 48' of wetland setback violation of which the DES and Conservation Commission has already signed off and approved. He asked the Board if the normal 2 years to build or void would be sufficient time or should it be more so the applicant would have time to go through the Planning Board process.

Mr. Dimmock said that he did not object to allowing more time to complete the project.

Mr. Osborn said asked if they could make it contingent that significant gains be done to property so that it wouldn't just be left sitting there.

Mr. Virr said that the Board has never been that restrictive on other cases.

Mr. Burgess asked if it the Board could make it 2 years from date of receiving final Board approvals.

Mr. Dimmock said that he would be in favor of not limiting 2 years or void as he knows of other projects that have taken longer and have had to come back for additional approval.

Mr. Virr said that a motion be made as presented subject to the following conditions of obtaining all State and local permits and inspections and to have Planning Board approval and to be completed within 3 years from final Planning Board approval or void.

Mr. Virr 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 #12-122, Crystal Realty Associates, to Grant a variance to the terms of Article III, Section 165-20a, of the Town of Derry Zoning Ordinance to allow the construction of a building no closer than 48 feet to the proposed new wetland limit, where 75 feet is required. Parcel ID 32030, 23 Crystal Avenue, Zoned GC, as presented with the following conditions:

- 1. Subject to obtaining Planning Board approval.**
- 2. Subject to obtaining all State and local permits and inspections.**
- 3. To be completed within 3 years from final Planning Board approval or void**

Seconded by Mr. Burgess.

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

The Board took a brief recess and reconvened at 9:15 pm

Approval of Minutes

Mr. Dimmock motioned to approve the minutes of October 4, 2012.

Seconded by Mr. Burgess.

Vote: Unanimous

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

Applicants are requesting a Rehearing of case #12-119, Alan & Susan Fillingham of Special Exception per Article VI, Section 165-47A.1 of the Derry Zoning Ordinance to allow the operation of a shooting sports and firearms equipment business specializing in collectable and antique firearms at the residence. 18 Hubbard Hill Road, Parcel ID 06106-028, Zoned LMDR

The Board reviewed the applicants request for a re-hearing.

Mr. Virr said that he has reviewed the minutes from the original hearing and that the 2nd amendment gives the right to bear arms. He said also that the Town's Zoning Ordinance allows for in home businesses if they meet the criteria. He said that he felt that the internet business met the requirements to be granted and that he did not see any error in judgment made by the Board.

Ms. Hampton said that the applicant has submitted a letter speaking to the real estate factor. She said that she would have liked to have seen a broker price opinion or appraisal as it would have shown possible market questions based upon what a home buyer would be willing to pay.

Mr. Virr said home prices are down 20% of value already and that the home is not changing as it will still be a residential home.

Mr. Osborn said that anyone could start an internet business even to sell shoes and no one would know or care for that matter. He said that he did not feel that the Board made any error in judgment.

Mr. Virr said that the Board needs to answer the simple question of if there is any new evidence provided in the information received tonight that was not stated and reviewed by the Board during the original hearing to warrant a rehearing.

Mr. Dimmock said that the Board needs to decide if they made a mistake in their original decision of granting the exception.

Mr. Burgess said that people would be coming to the home to buy a product and there for he felt that it was a retail business and should not be allowed.

Mr. Osborn said that according to the Government they are required to have an actual address and if they did not then no one would even know that the internet business was being operated from the home.

Mr. Virr said that he felt that it was going to be more of a hobby than a business as the applicant stated during the original hearing that he worked full time and if the business expanded that he would relocate.

Mr. Virr motioned to Grant Rehearing Request from Kathleen & Steven Doyle of case #12-119, Alan & Susan Fillingham, to Grant a Special Exception per Article VI, Section 165-47A.1 of the Derry Zoning Ordinance to allow the operation of a shooting sports and firearms equipment business specializing in collectable and antique firearms at the residence. 18 Hubbard Hill Road, Parcel ID 06106-028, Zoned LMDR

- 1. No new evidence was presented.**
- 2. No error in judgment was made by the Board.**

Seconded by Mr. Osborn.

Mr. Virr informed the Board that a yes vote would to be Granting a rehearing request.

Vote:

Mr. Dimmock: No. Do not feel any new evidence has been shown to change original decision of the Board. No error in judgment has been

Mr. Osborn: No.

Mr. Perkins: No. Based on no new evidence provided to change original decision. Feel request was based on hype not reality.

Mr. Burgess: Yes.

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

The application was Denied by a vote of 1-4-0. Recourse would be to appeal to Superior Court.

Adjourn

Mr. Dimmock motioned to adjourn.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Adjourn at 9:30 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes December 6, 2012

Mr. Osborn motioned to approve the minutes of November 1, 2012 as amended.

Seconded by Mr. Serrecchia.

Vote: Unanimous

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