

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
December 20, 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

Code Enforcement

Robert Mackey

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.

#12-124 Stephen Condodemetraky
Owner: John & Pauline Kachanian, Trustees

Variance to the terms of Article VI, Section 165-42A & C of the Town of Derry Zoning Ordinance to allow the operation of a retail auto sales facility (no outside display of vehicles for sale) at the property (Units D & E). PID 35015-011, 8 Tinkham Avenue, Units D&E, Zoned IND IV

Stephen Condodemetraky, Applicant, read his application for the Board. Mr. Condodemetraky said that he buys and restores antique cars for resale as he is the owner of Dusty Old Cars.com. He said that he was seeking to be allowed to sell their old cars inside the building of 8 Tinkham Ave and that all vehicles will be inside and there would be no vehicles outside on display with flags. He said that there may be some vehicles located outside for delivery to a customer. Mr. Condodemetraky said that they wished to install a lift in order to perform minor repairs to their own vehicles and that there would be no repairs to outside vehicles unless the vehicle was sold to that client. He said that when the business first started he had 3 employees and now currently have 10 and wish to

double his personal as he is also seeking to capitalize on the EBay sales market. Mr. Condodemetraky said that he has sent vehicles to China and also seeking to open in other countries as well. Currently advertise on WBIN TV of which will feature a Dodge Dart Convertible that they restored. He said his current location there is no outside vehicles and that he operates a Retail Auto Dealership but actually most of his sales are online as 90% of his business is via picture sales and phone calls. He said that he currently has a PE in Environmental Engineering and have obtained an Army Core Engineer permit. He said that the proposed use will not have any effect with the Groundwater shed in the area as there is no discharge of wastewater on site. He said that his company utilizes a reclamation mat and use less than 3 gallons of water when power washing and then collect water so no discharge would be released as very important. Mr. Condodemetraky said that he was a 20 year mechanical engineer and has been in Derry for 2 years at his current location with no complaints.

Board Questions

Mr. Perkins asked what was the square footage of the show room. Mr. Osborn said that the area was 30,000 square feet.

Mr. Perkins asked how many vehicles would there be at any one time. Mr. Condodemetraky said that he currently has 75 and seeking to have 125 – 130 and he also rents a small facility.

Mr. Perkins asked where operating now prompted the use of mats. Mr. Condodemetraky said that he currently is located at 80 North High Street and utilize the mats now as it is the right thing to do. He said that he washes more mouse poop off than any oils.

Mr. Osborn said that the pictures show 3 large over size doors and in a previous case that was allowed it was mentioned that the dock door be blocked somehow in order to prevent an accident. Mr. Condodemetraky said that that was a good point as his facility does attract gawkers for lack of a better word and that there are some sort of scissor type barriers there that will be utilized.

Mr. Burgess said that he sees a door on the left then a shop door and then a wide expanse about 40-50' then another door if that was correct. Mr. Condodemetraky said that was correct as there was a man door and 2 dock doors then an 8' door at the end as they were planning on taking down a separation wall as to open up the area.

Mr. Dimmock said that the pictures did not show the rear of the building and asked if there were any doors allowing access to the rear. Mr. Condodemetraky said that there were no doors opening to the rear of the building and it abuts property 35001 and that he has never walked around the building.

Mr. Osborn asked if all vehicles were running or if the lift installation was to perform repairs. Mr. Condodemetraky said that they wished to install a lift for minor repairs.

Mr. Burgess asked what would be done if a vehicle came in and engine required repair would it be torn down and rebuilt there. Mr. Condodemetraky said no that he works with

a local shop that does any engine repair and any major mechanical repairs. He only would be performing minor repairs as major repairs slow down process and take up space.

Mr. Virr asked if licensed with the State and have dealer plates. Mr. Condodemetraky said yes.

Code Enforcement

Mr. Mackey said that the applicant is seeking a variance to allow vehicle sales in the Industrial IV Zoning District. The sale of automobiles is prohibited in this district per Article VI, Section 165-42C. The applicant is proposing to have no outside display of vehicles for sale i.e. no exterior car lot is proposed. If approved, the applicant has represented that there will be vehicle lifts installed in the lease space for the repair of vehicles that they will be selling. Therefore, if the variance is approved, a Special Exception will be required per Article VIII, Section 165-67 as the property is located in the Groundwater Resource Conservation District (GRCD). There are pictures in the file for review by the Board.

Favor

Lance Stevens, 75 Warner Hill Road, said that he was concerned if there was to be any sanding, painting or body work performed as he did not want chemicals in the groundwater but if not performed on the site that he did not have an issue with the proposed use. Mr. Condodemetraky said that they did not perform such applications.

Kevin Coyle, 68 North Shore Road and own 6 Folsom, said that he was in favor and had no issues but concerned that the Town Ordinance states that 2 dealerships could not be within so many square feet of each other.

Opposed

No one spoke in opposition of the application.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Dimmock.

Vote: Unanimous.

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

Deliberative Session

Mr. Virr said that he did not see a problem with the request and that they needed to establish conditions such as obtaining all Town and State permits and inspections.

Mr. Perkins said that if the Board granted the request based on the testimony of the applicant he felt the Board would lose recourse on the next case. He said that he knows that he is licensed with the State but what about DES and question the containment of chemicals.

Mr. Virr said that the condition of being subject to obtaining all Town and State permits would cover any issues there.

Mr. Osborn asked if the request should be subject to the Town Fire Department performing an inspection.

Mr. Burgess asked if the Board could make it subject to the next case being granted or void.

Mr. Dimmock said that the applicant was not seeking to operate a repair garage and only looking to operate a resale type garage. He said that the next case would require set conditions that would need to be met. He said that the request was for an automobile show room inside and feel that the zoning ordinance was changed to prevent the display of vehicles for sale outside.

Mr. Perkins asked if the motion could state that no lifts be installed as if grant without he felt would fall back of condition on repairs.

Mr. Dimmock said that he agreed with Mr. Perkins that not granting any repairs that would come on the next case only granting to sell cars.

Mr. Virr said that the motion should state the following conditions that the request should be subject to obtaining all Town and State permits and inspections, no outdoor sales or display of vehicles and be subject to approval of case #12-125 being granted or void.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mr. Osborn.

Vote: Unanimous.

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

Mr. Osborn motioned on case #12-124, Stephen Condodemetraky, Owner: John & Pauline Kachanian, Trustees to Grant a Variance to the terms of Article VI, Section 165-42A & C of the Town of Derry Zoning Ordinance to allow the operation of a retail auto sales facility (no outside display of vehicles for sale) at the property (Units D & E). PID 35015-011, 8 Tinkham Avenue, Units D&E, Zoned IND IV as presented with the following conditions:

- 1. Subject to obtaining all Town and State permits and inspections.**
- 2. No outdoor sales or display of vehicles.**
- 3. Subject to approval of case #12-125 being granted or void.**

Seconded by Mr. Virr.

Vote:

Mr. Perkins: Yes.
Mr. Burgess: Yes.
Mr. Osborn: Yes.
Mr. Virr: Yes. Feels the 5 criteria have been met.
Mr. Dimmock: 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 at 7:45 pm and reconvened at 7:50 pm.

Mr. Virr said that the following case was being combined with the Planning Board and Conservation Commission with their role as being an advisory capacity only so the Zoning Board could form specific questions.

It is noted for the record the following members of the Planning Board were present for case #12-125 and that there were no members present from the Conservation Commission:

Planning Board Members

John O'Connor, Vice Chairman
Randall Chase
Jan Choiniere
Ann Marie Alongi

Special Exception as provided in Article VIII, Section 165-67 of the Town of Derry Zoning Ordinance to allow motor vehicle service and auto repair 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. PID 35015-011, 8 Tinkham Avenue, Units D&E, Zoned IND IV

Stephen Condodemetraky, applicant, said that he owned and operated a very detailed business being Dusty Old Cars.com and welcomed the Planning Board's input this evening. Mr. Condodemetraky read his letter of explanation for the Board.

Mr. Virr said that this application required different requirements and need to read the application.

Mr. Mackey said that the Special Exception application is different than that of an exception and that the applicant needs to meet four conditions that are specifically outlined and does not have the same point requirements as that of an exception. He said that the applicant needs to prove to the Board that his request meets the 4 criteria in order to be granted a special exception by the Board.

Mr. Condodemetraky continued to read his letter of explanation for the Board and asked if the Board would like an explanation of the mats that they would be utilizing.

Mr. Virr said that the Board was familiar with the types of mats proposed as had heard of them from a previous case.

Code Enforcement

Mr. Mackey said that the applicant is requesting approval to conduct automobile service and repair of vehicles that will subsequently be sold. As represented, the intention is not to have an automobile repair business open to the general public. It appears that Section 165-67 does not make a distinction. Therefore, the special exception is required. The property is located in the Groundwater Resource Conservation 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 a 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. Therefore, the motion should list the four criteria so as to be included for the records as part of the vote. There are pictures in the file for review by the Board.

Board Questions

Mr. Virr asked if the applicant could address the specific findings of the first criteria. Mr. Condodemetraky said that they do not change oil or coolants and if there are any minor spills they handle with an EPA approved product such as kitty litter and also have PIG mats that they utilize if there were any minor repairs to be made.

Mr. Virr asked with regard to item #2 that he believed that the property was serviced by Town water and sewer. Mr. Condodemetraky said that was correct that they would be drawing water from the Town and discharging into the Town system.

Mr. Virr asked if item #3 could be addressed. Mr. Condodemetraky said that the only wastewater would be less than 3 gallons per vehicle.

Mr. Virr asked if there would be any steam or chemicals used. Mr. Condodemetraky said that they utilize reclamation mats and have an oil free storage collection system that uses MSDS materials if they steamed the vehicles.

Mr. Virr asked if they have company for disposal of any hazards. Mr. Condodemetraky said that they have a contact with an operations company and in the past 2 years they have reclaimed less than 16oz in material.

Mr. Dimmock said that the Board was familiar with reclamation mats as previous case had described them but asked if the other mat could be explained for the Board. Mr. Condodemetraky said that the mat is approximately 10' x 20' black vinyl type of material that holds all water and any oil on it from escaping.

Mr. Osborn asked if they actually wash the vehicles. Mr. Condodemetraky said yes but utilize minimal water and PIG mats collect all oils and water. He said that the mat is moveable but very large and heavy that they try to leave it in one location.

Mr. Burgess asked how the water was removed off the mat. Mr. Condodemetraky said that the kit comes with a pump that would be required to be used to remove the water off the mat.

Mr. Virr said that he was concerned with the washing of the vehicles as he conducted a site inspection of the existing location and found someone washing a green truck with a bucket and a pressure washer and no mat was located under it. Mr. Condodemetraky said that they sometimes rinse off so as to remove mouse poop and/or leaves off first as try not to get that type of material on the mat and that the person was only getting the organic matter off before detailing.

Mr. Virr asked if the regular practice was performed inside. Mr. Condodemetraky said that his business is conducted inside and that they may be outside to take pictures and also wash vehicles off with mops and buckets outside³ to get rid of the organic matter.

Mr. Dimmock said that they have seen the rinsing of vehicles with hoses and no mats on different occasions. Mr. Condodemetraky said that it is not policy and that they use a pressure washer and will speak to the employee that this is unacceptable.

Mr. Perkins said that it was seen and if doing indoors will not want large pools of water inside. Mr. Condodemetraky said that they utilize minimal water so there would not be large pools of water indoors.

Mr. Virr asked if the Planning Board had any questions at this time.

John O'Connor, Vice Chairman of the Derry Planning Board said first that he would like to complement the applicant on his growth in a poor economy. He asked if the Code Enforcement Office had any permits and annual inspections that are conducted on businesses and if there was not that maybe it was something that needed to be established in the ordinance.

Mr. Mackey said that he believed that the Fire Department inspects business facilities with regard to the set up but unsure if it is yearly. He said that no annual inspections or permits are required from the Code Enforcement Office at this time.

Mr. O'Connor asked if there was sufficient parking and where it would be located if seeking to add 10 employees to the business. Mr. Condodemetraky said that they have parking in front of the docks and also another 4-6 parking spaces to the rear sales doors.

Mr. O'Connor asked if the building was co-existing condo business that was shared. Mr. Condodemetraky said no that it was not a shared business.

Mr. O'Connor said that he was familiar with reclamation mats that can service 200-300 vehicles as it consists of a large piece of plastic with special pumps attached that remove the water into tanks. He said that he would like the Board to impose a condition that Tom Carrier from the Public Works Department check periodically to make sure the reclamation mats are acceptable.

Mr. Virr said that he was unsure if the Board could impose that the Public Works Department make periodic inspections. Mr. O'Connor said that the Town may need to put something into the ordinance with regard to inspections.

Mr. Virr said that he believed that the Fire Department made annual inspections.

Mr. Mackey said that the sewer ordinance does regulate what can and cannot be deposited into the system and that Mr. Carrier can check the products to make sure that they are safe for the system.

Mr. Virr said that a motion should include that wash mats be utilized and that they be subject to approval of the Public Works Department.

Mr. O'Connor said that he would also concur that there be no outdoor washing of vehicles due to the location of the main drain to Hood Pond being located in the area. He said that that was the advisory of the Planning Board.

Mr. Dimmock said that he agreed with Mr. O'Connor that the zoning ordinance needs to be updated. And that as far as inspections were concerned that the ordinance did require

to be updated so the Code Enforcement Office would have some basis to enforce rules if they were within the ordinance with potential fines etc. if violated.

Mr. Condodemetraky said that the State has the authority to come in at any time and they do periodic inspections of his facility as they just had a visit and were told that they have done an exceptional job with their books and facility upkeep.

Mr. Dimmock said that the imposition of the condition of no outside washing of vehicles is to ensure the protection of the groundwater table. Mr. Condodemetraky said that the site would be impossible to wash a vehicle outside without being seen and that he would also not want to lose the exception and that all vehicles would be washed indoors.

Mr. O'Connor said that he would be getting together with Mr. Anderson and the Board to establish some rules and regulations to the area.

Mr. Virr reviewed the four points as follows for the Board:

#1 That there be no detrimental effect on the aquifer as there be a stipulation that there be on outside washing of vehicles and no steam cleaning of vehicles and be required to have review by the Town water/waste water designee.

#2. The proposed use not cause a significant reduction in the long-term volume of water contained in the aquifer. Applicant would not be drawing or adding water into the aquifer.

#3. Proposed use will not discharge wastewater – stipulation that no discharge of wastewater and that wash mats be utilized indoors and that there be no washing of vehicles outside the facility.

#4. Proposed use complies with all other applicable sections – feel as long as the situation is controlled that the proposal can be done.

Mr. Virr asked if there were any other items that the Planning Board wished to have implemented as part of the conditions. Mr. O'Connor said that he felt that it was covered at this time.

Favor

Mr. Kachanian, owner of the property, said that he has not met the applicant and said that he heard testimony that the applicant wished to expand his employees from 10 to 20 and wondered what they do.

Mr. Condodemetraky said that he has 3 operations people 1 that cleans the vehicles and 2 that prep them, 2 sales, 1 administration and 3 office personal at this time. He said that he would like to add to his operations and sales area.

Mr. Kachanian said that as the owner he was concerned with possible spills as he would not want to be liable and would want it added into the record that he was not responsible. Mr. Virr said that the Board could not add that into the record but the Fire Department does have rapid response in case such event should occur.

Mr. Kachanian said then he would put it in his lease agreement with the applicant.

Opposed

No one spoke in opposition of the application.

Mr. Perkins motioned to go into deliberative session.

Seconded by Mr. Osborn.

Vote: Unanimous.

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

Deliberative Session

Mr. Virr said that the applicant has addressed the 4 points dealing with the groundwater district and that the following conditions: Subject to all town and state permits and inspections, no outdoor display of vehicles for sale, no outdoor washing of vehicles, no steam or chemical cleaning of vehicles, and that water reclamation mats must be used.

Mr. Perkins said that he felt that this request contradicts the previous motion.

Mr. Virr said that if this request is not granted then the previous variance is void.

Mr. Osborn said that they could still wash the vehicles but would be unable to steam or chemical clean.

Mr. Virr asked if the Planning Board wished to have any other conditions considered.

Mr. O'Connor said that soap is a chemical and if it was possible to add a stipulation that any cleaning products be reviewed by Tom Carrier of the Public Works Department before utilizing to ensure that they are environmentally safe.

Mr. Virr said that a condition be also be made that all cleaning materials must be environmentally safe and subject to inspection of the Town of Derry Water & Sewer Department.

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 #12-125, Stephen Condodemetraky, Owner: John & Pauline Kachanian, Trustees to Grant a Special Exception as provided in Article VIII, Section 165-67 of the Town of Derry Zoning Ordinance to allow motor vehicle service and auto repair 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. PID 35015-011, 8 Tinkham Avenue, Units D&E, Zoned IND IV as presented with the following conditions:

- 1. Subject to all town and state permits and inspections**
- 2. No outdoor display of vehicles for sale**
- 3. No outdoor washing of vehicles.**
- 4. No steam or chemical cleaning of vehicles**
- 5. Water reclamation mats must be used**
- 6. All cleaning materials must be environmentally friendly and subject to inspection by Town Water & Sewer Department.**

Seconded by Mr. Dimmock.

Vote:

Mr. Osborn:	Yes. Believe that the proposal can be run safely and efficiently.
Mr. Perkins:	Yes. For the same reasons as stated by Mr. Osborn.
Mr. Burgess:	Yes.
Mr. Dimmock:	Yes.
Mr. Virr:	Yes. Feel answered all 4 of the criteria as outlined in the points of the ordinance and believe will be operated within the imposed conditions set by the Board.

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 short recess at 8:41 pm and reconvened at 8:45 pm.

It was noted for the record that Mr. Thompson recused himself from the following case.

Anthony J. DeRosa

Renewal of Variance granted May 21, 2009, to the terms of Article VI, Section 165-32B and Article XIII, Section 165-107A and B of the Town of Derry Zoning Ordinance, to rebuild the existing structure for single family residential use, within four feet of the side lot line and to build a 2400 square foot addition for collision repair and auto/motorcycle restoration within three feet of the side lot line. Parcel ID 03084, 191 Rockingham Road, Zoned GC

Mr. Virr said that the applicant did not have to read his application into the record and asked if he could please state his reason for being here for the record.

Mr. DeRosa said that for the past 4 years he has been trying to build on the property and when he was before the Board in 2009 and asked if 2 years to complete the project was going to be enough that he had stated yes but here he was asking to be given a renewal to his expired variance. Mr. DeRosa said that it has been a long road and that it was an oversight on his part of the 2 years not being completed as found that the lot was not big enough for the building he had purchased so he had to obtain a piece of property from Mr. Kershaw which was recently finalized. He has spent many hours with the Town of Derry Technical Review Committee, Planning Board, and Code Enforcement of whom all have been very helpful in the whole process and had passed all the hurdles only to find when he applied for his building permit that the variance had expired so he was here seeking renewal so he could finally start and finish his project.

Code Enforcement

Mr. Mackey said that the applicant is requesting approval to renew the variance granted in May of 2009. At the current time, final Planning Board approval has been granted and the project is ready to move forward. A review of the file prior to a pre-construction meeting with the owner revealed that the variance had expired and must be renewed. There are pictures in the file for review by the Board.

Favor

No one spoke in favor of the application.

Opposed

No one spoke in opposition of the application.

Board Questions

Mr. Virr said that he was sorry that the project has taken so long to complete and asked how long before the project would be started and if a 2 year completion would be enough. Mr. DeRosa said that he had a few more hurdles but hoped that he would be completed within 2 years.

Mr. Virr motioned to 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 the request should be subject to obtaining all State and Town permits and inspections and to be completed within 3 years or void. He said that he felt that making the condition to 3 years should allow the applicant time to complete his project.

Mr. Osborn asked if there would be any problems as the applicant had not read his application into the record.

Mr. Virr said that he did not feel that there would be any issues as it was on file and that it was only a renewal that nothing had changed in the request.

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 #12-126, Anthony DeRosa, to Renewal of Variance granted May 21, 2009, to the terms of Article VI, Section 165-32B and Article XIII, Section 165-107A and B of the Town of Derry Zoning Ordinance, to rebuild the existing structure for single family residential use, within four feet of the side lot line and to build a 2400 square foot addition for collision repair and auto/motorcycle restoration within three feet of the side lot line. Parcel ID 03084, 191 Rockingham Road, Zoned GC as presented with the following conditions:

- 1. Obtain all State and Town permits and inspections.**
- 2. To be constructed within 3 years or variance is void.**

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.

The Board took a short recess at 8:55 pm and reconvened at 8:58 pm.

Variance to the terms of Article VI, Section 165-46A and Article XIII, Section 165-108A of the Town of Derry Zoning Ordinance to allow the construction of a two family dwelling on the property after the removal of two existing cottages. Parcel ID 51087, 53 and 55 Beaver Lake Avenue, Zoned MDR

Kevin Coyle, 68 North Shore Road and owner, read application for the Board. Mr. Coyle said that he was seeking to replace the 2 existing cottages that violated the setbacks to the stream and front setback. The proposal will conform to all setbacks and that he could rebuild the structures that were there but felt that the proposed structure would be a better fit than what was currently there. Mr. Coyle said that the Board had addressed similar issues before on properties that were smaller and could not meet the setback requirements and the Board had granted those applications. He said that he has resided in the neighborhood for 15 years and it has changed for the better.

Board Questions

Mr. Virr asked if the property consisted of 2 lots that were combined and if it was a half-acre in size. Mr. Coyle said no that it was only 1 lot with 2 single family homes on it that consisted of approximately 6 tenths of an acre.

Mr. Dimmock asked if it would be serviced by Town Sewer. Mr. Coyle said yes as there were 2 connections existing there.

Mr. Osborn asked if that was a new well being drilled on the property. Mr. Coyle said yes as his well driller was available to do it so he let him install it.

Mr. Virr asked where the other duplexes were located. Mr. Coyle said that they were located up the hill and owned by the Simard's and the Cooper's. There were also some along North Shore Road owned by the Coopers.

Code Enforcement

Mr. Mackey said The applicant is proposing to replace two old cottages on the property with a 2-family dwelling. As the property is located in the Medium Density Residential Zoning District (MDR), only single family dwellings are permitted. The two cottages on the property, constructed over 50 years ago, constituted a legal, pre-existing, non-conforming use. As the applicant wishes to consolidate and relocate the 2 units, a variance is required. It appears that the proposed building will comply with required setbacks. It appears that the proposed building will be greater than 250' from Beaver Lake and therefore, will not fall under State Shoreland Protection regulations. The property is currently serviced by Town Sewer. If approved, appropriate permits and inspections will be required. There are pictures in the file for review by the Board.

Mr. Osborn asked if the sewer line would be capped. Mr. Mackey said no that each side would have their own sewer connection.

Favor

No one spoke in favor of the application.

Opposed

Al McClure, 51 Beaver Lake Ave, said that his home was constructed in 1997 and that he was uncomfortable with a duplex being constructed on the property as he moved away from Derryfield Road in order to get away from duplexes. He said that the applicant could easily construct a single family dwelling and was only seeking a monetary gain by building a duplex.

Seth Enwright, 78 Beaver Lake Ave, said that he did not feel that a duplex was in keeping with the neighborhood as the previous 2 structures on the property were seasonal in use and owned by the same family. He said that a duplex would be occupied by 2 different family's and be a major impact to the area. Mr. Enwright said that he also had a letter from his neighbor that could not attend tonight also opposed to the request and gave it to the Board.

Mr. Virr read a letter from Josephine Phaneuf, 76 Beaver Lake Ave., in opposition of the applicant's request.

Mr. Virr motioned to into deliberative session.

Seconded by Mr. Osborn.

Vote: Unanimous.

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

Deliberative Session

Mr. Burgess asked if the request to build the duplex was not granted if the applicant could still rebuild the 2 dwellings.

Mr. Mackey said yes that the applicant has the right to rebuild what was there within 6 months of removal.

Mr. Osborn said that the proposed dwelling that the applicant has shown did not look like a typical duplex.

Mr. Dimmock said that there was testimony presented that the neighbors were not happy and would not like a duplex to be constructed on the property but they need to understand that Mr. Coyle could still construct 2 houses on the property without approval and that he felt that the request for a duplex was a reasonable use of the property.

Mr. Virr said that the area has seen a lot of rebuilding and that he did not feel that the duplex was any larger than what was currently going on in the area and do not feel that there would be an impact to the neighborhood. He said that the request should be made subject to obtaining all State and Town inspections and permits and be subject to be completed within 3 years or the variance would be void.

Mr. Dimmock said that the request is stating that it is 250' from the lake and not in the water shed area and that the Board needs to decide on the stipulations as the applicant owned the property before the buildings were torn down so he could rightfully replace two dwellings back on the property without a variance.

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 #12-127, Kevin Coyle, to Grant a Variance to the terms of Article VI, Section 165-46A and Article XIII, Section 165-108A of the Town of Derry Zoning Ordinance to allow the construction of a two family dwelling on the property after the removal of two existing cottages. Parcel ID 51087, 53 and 55 Beaver Lake Avenue, Zoned MDR as presented with the following conditions:

- 1. Obtain all State and Town permits and inspections.**
- 2. To be constructed within 3 years or variance is void.**

Seconded by Mr. Dimmock.

Vote:

Mr. Perkins:	Yes.
Mr. Dimmock:	Yes.
Mr. Osborn:	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.

The Board took a short recess at 9:15 pm and reconvened at 9:22 pm.

Special Exception as provided in Article III, Section 165-28.B.2.b & c to add 3 antennas to an existing telecommunications (cell) tower along with supporting equipment. Parcel ID 06089A, 78A Warner Hill Road, Zoned LMDR

Michael Johnson, Haverhill, MA, said that he was here representing the applicant. He said that AT&T is proposing to place 3 additional antennas to the tower where they have 6 currently in order to meet 4G wireless services. Mr. Johnson said that he believed that the existing tower currently has 30 antennas of which all do not belong to AT&T. He said that they will also have corresponding ground upgrades that will be located inside the existing shelter. Mr. Johnson said that the initial lease agreement has been in existence for many years and that they were not proposing any lighting or outside additions. The tower is approximately 180' and that the proposed antennas would be located at approximately 170'. There would be no site plan changes or noise omitted from the antennas. AT&T has been located on the tower for 10 plus years and seeking to upgrade their existing service to accommodate the 4G wireless needs.

Board Questions

Mr. Virr asked if the 3 antennas were the long ones. Mr. Johnson said yes that they were the same as the Sprint/Nextel ones. One antenna would be 96" and the other 2 would be 54".

Mr. Dimmock said that he would like clarified that the proposal was to add 3 antennas not 3 new towers. Mr. Johnson said yes and that he wished they could add a new tower but that was not the request.

Mr. Osborn asked how many times they are there at the site for service. Mr. Johnson said that they have visited the site once last month by a technician.

Mr. Osborn said that there was a stove on the site and it appears to be of an illegal dumping if someone could clean up as the grounds needed some sort of maintenance. Mr. Johnson that he would speak with SBA owner and have someone clean up the site.

Mr. Virr asked if the access was over the Bouche property or was it a separate entrance. Mr. Johnson said that it was their own road.

Mr. Burgess asked how many companies were located on the tower. Mr. Johnson said that he knew that there was Sprint/Nextel but was unsure of which styles they used and who else had equipment on the tower and thought that maybe the Town also had some equipment located on it.

Mr. Osborn asked if he was a tenant on the tower. Mr. Johnson said yes, and that his company was federally licensed and that he represented the company.

Favor

No one spoke in favor of the application.

Opposed

Alice Boucher, owner of the stove, said that the noise level emitted from the tower was horrible and when the wind blows the antennas sing very loud. She said that Warner Hill is the highest spot in Rockingham County. She said that she felt that it was untrue that cell towers do not cause cancer as most everyone that has lived in the area for the past 20 years has had some form of cancer. And that there is traffic at the site daily from wreckers, cranes, etc...it's 24 hours a day 7 days a week. Ms. Bouche said that there is no actual road to the tower that it is only a right-of-way up her driveway and that she was strongly opposed to any more growth on the tower.

Mr. Dimmock asked if she owned the property and had a lease with the tower company and if it stated no additions be done to the existing tower. Ms. Bouche said yes but the lease is old and it does not state anything about adding additions.

Mr. Virr said that the FCC regulations basically state that if we deny the request that the USC 253 can override our decision. Ms. Bouche said that it was crazy and that she hopes the Board will not allow any more antennas to the tower.

Mr. Osborn said that they were unable to override the Federal Communications Act of 96'.

Mr. Mackey said that the Town revised their ordinance and created what is now a telecommunications zone basically locating them in the industrial zones and along Route 93. He said that when the Warner Hill Road tower was erected it was done legally and that the zoning ordinance then established a process that requires the existing non-conforming towers to go through a process and 3 criteria that is required to be met in order to be granted.

Mr. Dimmock said that Ms. Bouche answered her own question by stating that Warner Hill Road was the highest spot in Town.

Mr. Virr said that the applicant stated that the antennas were necessary and will override a denial by enacting the USC 253 Act. Ms. Bouche said that if the Board could not deny the request then why were they sent notices about a meeting if nothing can be done.

Frank Mulone, 5 Ruben Road, said that he has resided in the area for 20 years and that there used to be only a handful of antennas on the tower and today it has grown considerable and that there is not another tower like this one in any other Town. He said that he felt that the tower was unsafe to the neighbors as there is a home with 5 bedrooms located within 30' and another 7 homes that are approximately a football field away. He said that part C of the ordinance states that not allowed if it interferes with public safety and that he felt that the Board should vote no and evoke the Federal Law. He said that if any of these antennas fall off it they could cause considerable damage to any of the homes in the area.

Mr. Dimmock said that the tower is an existing non-conforming tower and it is legal but it does not conform to today's zoning regulations.

Mr. Mackey said that the zoning change went into effect approximately 1996 in an attempt to give some local control as to regulate where new towers could be located. This particular tower has been before the Board several times from AT & T and others seeking approval to expand their services with new equipment.

Mr. Virr said that a football field was a hundred yards and that the existing tower was not a hundred yards tall. He said that it was stated from another person that the area was the highest point in Rockingham County and that the applicant was not requesting to expand the tower that they were seeking to add 3 additional antennas.

Mr. Dimmock said that there was nothing in the ordinance that stipulated how many antennas could be on a tower.

Lance Stevens, 75 Warner Hill Road, said that he was concerned with all the additional weight of additional antenna's and asked how much weight could a 20-30 year old tower take.

Mr. Perkins asked if Mr. Mackey could respond to the structural integrity of the tower.

Mr. Mackey said that the permit process requires structural engineering stamp stating that the tower could support the additional weight.

Mr. Virr motioned to into deliberative session.

Seconded by Mr. Dimmock.

Vote: Unanimous.

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

Deliberative Session

Mr. Virr said that the criteria need to be reviewed.

Mr. Burgess said that he felt that it passes all the criteria.

Mr. Virr said that there was no increase in height proposed and that the ground support was to be in the existing buildings. The question of being necessary was answered by a representative from the company as stated that it was necessary to provide for the 4G connection.

Mr. Perkins asked if it was necessary for public service as it is a paid service that people purchase.

Mr. Burgess said that the times have changed from analog phones to the current 4G phones that the 4G phones are supposed to better serve the public and that this was just signs of change.

Mr. Osborn asked if there was any removal of any of the existing antennas. Mr. Mackey said that he was unaware if there has been any removal of existing antennas as there is no permit required for removals only installations.

Mr. Dimmock said that maybe a provision needs to be made to the State that if not being used that they are removed. Mr. Mackey said that there is a similar provision in the zoning ordinance for new towers.

Mr. Dimmock asked if a condition that the Board they should stipulate that if something is not being used that it be taken down and asked if there was any way to enforce such a requirement. Mr. Mackey said that he felt that the Board could stipulate removal of any antennas that are not being used.

Mr. Dimmock said that there needs to be some way to control what the tower companies are doing and their maintenance.

Mr. Burgess said that he felt that the only issue was in this matter is that the applicant is not the sole lease and that he felt that the property owner would need to do.

Mr. Osborn said that there was a signed lease and that the issues were with the lease and the tower company and that the land owner needs to address their concerns with the tower company with the concerns.

Mr. Virr motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Mr. Perkins asked if there could be a condition of hours to access the property.

Mr. Dimmock said that access to the tower is a legal right-of-way so they would be unable to stipulate hours.

Mr. Perkins said that also if impose hours of access it would only be to AT & T as this application is not the tower owner.

Mr. Osborn motioned on case #12-128, SBA Properties, Inc. to Grant a Special Exception as provided in Article III, Section 165-28.B.2.b & c to add 3 antennas to an existing telecommunications (cell) tower along with supporting equipment. Parcel ID 06089A, 78A Warner Hill Road, Zoned LMDR as presented with the following conditions:

1. To keep within the current footprint of the structure.

Seconded by Mr. Dimmock.

Vote:

Mr. Dimmock: Yes.

Mr. Burgess: Yes.

Mr. Osborn: Yes.

Mr. Perkins: No. Feel need to be a voice for the abutters as feel that the expansion is not necessary.

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.

Approval of Minutes

Mr. Virr motioned to approve the minutes of December 6, 2012 as amended.

Seconded by Mr. Osborn.

Vote: 5-0-0

Mr. Mazzuchelli, Mr. Perkins, Mr. Osborn, Mr. Dimmock, Mr. Virr

Adjourn

Mr. Perkins motioned to adjourn.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Adjourn at 10:10 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes on February 7, 2013

Mr. Virr motioned to approve the minutes of December 20, 2012 as amended.

Seconded by Mr. Dimmock

Vote: Unanimous

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