

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
May 1, 2014

Members Present

Allan Virr, Chairman
Lynn Perkins, Vice Chairman
Donald Burgess, Secretary
Teresa Hampton
Joseph Carnvale

Members Absent

Alternates Present

Stephen Coppolo

Alternates Absent

Heather Evans
Michael Demeo
Scott Burt

Code Enforcement

Robert Mackey

Mr. Virr called the meeting to order at 7:00 p.m. with the salute to the flag, and notice of fire and handicap exits and that this and all Zoning Board meetings are videotaped.

Mr. Virr said that it was that time of year again for the Board to hold its annual election of officers.

Election of Officers

Position of Chairman

Mr. Virr nominated Mr. Perkins for the position of Chairman.
Seconded by Mr. Burgess.

Vote: 5-0-0

Yes: Mrs. Hampton, Mr. Carnvale, Mr. Burgess, Mr. Virr, Mr. Perkins

Position of Vice Chairman

Mr. Perkins nominated Mr. Virr for the position of Vice Chairman.
Seconded by Mr. Carnavale.

Vote: 5-0-0

Yes: Mr. Carnavale, Mrs. Hampton, Mr. Burgess, Mr. Virr, Mr. Perkins

Position of Secretary

Mr. Perkins nominated Mr. Burgess for the position of Secretary.
Seconded by Mr. Virr.

Vote: Unanimous

Mr. Carnavale, Mrs. Hampton, Mr. Burgess, Mr. Perkins, Mr. Virr.

Mr. Burgess asked if someone else could make the motions this evening. Mr. Carnavale said that he could make the motions this evening.

#14-106 Jarrell Revocable Trust

Applicant is requesting a Variance to the terms of Article VI, Section 165-46A and Article XIII, Section 165-106A of the Town of Derry Zoning Ordinance to allow the construction of a 50' x 50' commercial building at 46 East Derry Road, Parcel ID 39031, Zoned MDR.

Timothy Winings, TJW Survey, said that he was representing the owner this evening.

Mr. Virr said that he was familiar with the applicant as he visits the establishment and if the Board wished he would step down from the case if anyone felt it would conflict with the case.

Mr. Perkins said that hearing no objection that he did not feel it was necessary to step down and that Mr. Virr could sit for the case.

Mr. Winings read the application for the Board and reviewed what the applicant was seeking for the Board. He said that the owner was requesting to be allowed to build a 50' x 50' structure and explained the plan submitted to the Board. He said that the structure was to be multifaceted but the primary use was to park vehicles in building and out of site. Mr. Winings said that site plan will be required and that the applicant will make as nice looking as possible.

Board Questions

Mrs. Hampton asked where would the storage building be located and if it would be the same size as the Fire Station. Mr. Winings said the structure would be between the two buildings but situated slightly behind them. He said that he did not know the size of the fire station but the proposed structure was similar to the looks of the fire station.

Mr. Burgess said that he had gone by the facility and for a place that fixes vehicles it was pretty clean.

Mr. Virr said that the proposed structure appears to be a considerable expense for storage of vehicles and asked if it was also to be utilized as an ancillary repair facility. Mr. Winings said that sometimes vehicles are unable to be moved easily and that the proposed structure would also be utilized to prepare the vehicle for repairs.

Mr. Perkins asked if there would be mechanicals installed such as bathroom, water or heat. Mr. Winings said that the applicant plans on heating the structure but there are no plans for installing a restroom or sinks.

Mr. Coppolo asked if there had been any traffic studies done to possible increase in traffic as East Derry Road is very busy. Mr. Winings said that no studies have been done as it is an ancillary building.

Mr. Coppolo asked if the structure would be visible from the street. Mr. Winings said it was possible.

Mrs. Hampton asked if there would be possible washing of vehicles in the building as she was concerned with the groundwater issue. Mr. Winings said that would be reviewed at site plan process that something maybe required.

Mr. Virr said that he believed that they have moved away from separators to containment devices. Mr. Winings said that was correct but they were still separate but are contained.

Mr. Virr said that there has been a long standing controversy in the area of possible gasoline from the site or from the store. Mr. Winings said there were concerns and that they are no longer monitored as the wells have been closed.

Code Enforcement

Mr. Mackey said the applicant is requesting approval to construct a 50' x 50' building on the property to be used for mainly storage of vehicles that are currently being parked outside in the same area. The auto collision shop and auto service shop located on the property are considered legal, pre-existing, non-conforming uses that date back to the mid 1940's when Allen Motors/East Derry Mercury owned the property. Over the years, variances have been granted to allow additions to be constructed to the buildings associated with these uses. In addition, there is a beauty salon located in another building on the property. This business exists by virtue of a variance granted in 1993. Prior to that, the building housed a physician's office. The construction of another building on

the property associated with the auto repair uses is considered an expansion of the non-conforming use and, therefore, a variance is required. If approved, appropriate permits and inspections will be required by the Code Enforcement Office. If approved, Planning Board site determination will be required. There are pictures of the property in the file for review by the Board.

Favor

No one spoke in favor of the application.

Opposition

William Zolla, 3 Pond Road, said that the property is currently non-conforming and established in 1974 and has stayed that way for 50 years. He said in that time a few expansions have been done and a variance had been obtained for the beauty salon. Mr. Zolla said he was concerned as there was a large buffer zone which is now gone and the parking area has been expanded and now they are seeking a 2,500 square foot structure. He said that he felt that body shops are loud and do not need in the residential district and will have direct impact on the surrounding properties with decrease in property value with the construction of a metal building. He said that he did not hear in the applicant's testimony any hardship and did not see where any of the conditions were met. Mr. Zolla said that he believed a 50' buffer was required from residential properties.

Mr. Mackey said a 50' buffer zone is required for industrial zones where they abut residential property and that a buffer in this area is ultimately up to the Planning Board for determination of a proper buffer.

Mr. Zolla said that the spirit and intent of the ordinance has not been followed. He knows they are currently there but should not be allowed to expand. The law is to protect the residents and the proposal does not meet hardship. He said that the contamination was dichloride methane and the EPA said that it came from that location.

Mr. Virr asked if Mr. Zolla was a direct abutter to the property. Mr. Zolla said that he was not but was the next property over.

Mr. Virr said that he did not believe that the EPA had pinned the location of where the contamination had originated from. He said that he was unsure that an Auto Body shop made a lot of noise as had a prior case of a fire wood business that had a decibel test performed and it was determined that it did not exceed standards. Mr. Virr said that as far as decrease in property values there was no studies performed showing decrease.

Mr. Zolla said that he was a licensed real estate appraiser and said that no one wants that in a residential zone.

Mr. Coppolo asked if the trees were on this parcel or the other parcel. Mr. Zolla said the trees were on this site that went along the north side of the property that was all removed and a fence was installed. He agreed that the current owner had improved the appearance

of the side but the current buildings are constructed of wood and a metal structure would not fit the area.

Mr. Perkins asked when were the trees removed. Mr. Zolla said that they were removed in the past two years.

Timothy Harding, 1 Pond Road, said that he was concerned with the economy and affect it would have on his home as he was a direct abutter. He said that he had several areas of concern such as the height of the structure 1 or 2 story, expansion of business as to what use the structure would be allowed, size and buffer are some of his concerns and wanted to know if they were with the Zoning Board or Planning Board.

Mr. Virr said that the Planning Board would decide what the building size and buffer requirements and that the Board needs to decide if it meets the criteria to allow expansion of a non-conforming use.

Mr. Burges said that the buffer requirement would be up to the Planning Board.

Mr. Harding said that living next to an auto body shop can be noisy as live there. He said that the applicant stated the use to be storage and if in 2 years the structure is not storage but used as a repair facility what recourse does he have.

Mr. Virr said that any change in use would need to come back to the Board for approval. If as an abutter and notice any changes a complaint could be made to the Code Enforcement Officer to follow up.

There was some discussion with regard to usage.

Mr. Coppolo asked Mr. Mackey if there was a mechanism for recourse. Mr. Mackey said yes, that the concerned party would need to file a complaint with the office and the site plan would be reviewed and action taken as necessary.

Yvonne Harding, 1 Pond Road, said that she was opposed to building not opposed to the owner. She said that she likes the clean-up and fence that the owner installed but feel that the building would decrease her property value and only bring up his value. She said that she has resided in the area for 11 years and have been nice and wants to believe in what the applicant has stated in what building will be but unsure that it would remain that way. She asked where would she go if have concerns with buffer requirement.

Mr. Virr said that unable to determine what the building would do to values of surrounding homes as no studies have been submitted. He said that the applicant still has to appear before the TRC Committee and Planning Board for site plan review where they may require a tree buffer, etc. Mr. Virr suggested that she attend the Planning Board meeting where she can have her buffer concerns addressed.

Mrs. Hampton said that a potential buyer coming to view home maybe coming in from New York City and your home is in the country to them. She said that a home's value is worth what a buyer is willing to pay on that day regardless of what is next door.

Rebuttal

Mr. Carnavale said that the Board did not have a plot plan or design available to review and asked what the possible height of the structure would be. Mr. Winings said that the Planning Board would be requiring an aesthetic plan showing features of proposed structure including buffers. He said that he was also a licensed Real Estate Agent and know that people would rather look at a building rather than wrecked vehicles on a property.

Mr. Burgess asked what the approximate height would be about 18-20'. Mr. Winings said that sounded about right. The proposal was a 1 story structure but did not know the exact height but the Planning Board would require one.

Mr. Perkins asked if the possible rise was 8' to ridge what the wall height would be. Mr. Winings said approximately 10'.

Mr. Perkins asked when was the tree removal done. Mr. Winings said he was unsure as was not involved in process at that time. As far as he was aware no actual site plan had been done so there was never any formal buffer requirement but who knows what will be required now.

Mr. Coppolo asked if building be restricted to vehicle storage only and not an active shop if owner would have opposition. Mr. Winings said that he did not believe that there would be opposition. Seeking a place to put vehicles out of site and also so adjusters could have a place to view vehicle out of weather. He said that it would also allow relief from onsite damages. Mr. Winings said that they would also store heavier equipment such as a bobcat that is used for snow removal and shop equipment.

Mr. Burgess asked if there will be preliminary body work such as involving removal of parts but no actual bondo work. Mr. Winings said that was correct.

Mr. Virr asked Mr. Mackey if a restriction of the structure for storage only could be made. Mr. Mackey said if restrict to a particular use then any changes would require coming back to the Board.

Mr. Carnavale motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Carnavale, Mrs. Hampton, Mr. Burgess, Mr. Virr. Mr. Perkins,

Deliberative Session

Mr. Virr said that he felt it wise to allow construction of the 50' x 50' storage building so as to help contain outside storage and vandalism.

Mr. Perkins said that he concurs with Mr. Virr but would like to prepare motion to be definitive to storage use only.

Mr. Virr said that prepping vehicles for repair noise is different than loud screeching sounds of body work etc. which would indicate change in what is being requested.

Mr. Burgess said that the request sounds like the applicant was seeking to be able to perform light mechanics and be able to swap vehicles back and forth while working on them to be out of the weather.

Mr. Perkins said that it was possible to relocate one vehicle from one garage to another.

There was some discussion regarding usage.

Mrs. Hampton said that she was concerned of what the Board was voting on as only have a small description stating a 50' x 50' building with no diminish of property values. There was testimony from abutter with concerns of value and noise disturbance. She asked if the proposal was an allowable use.

Mr. Virr said that the property is a pre-existing non-conforming use.

Mrs. Hampton asked if a condition of how the structure and size could be made.

Mr. Perkins said that the testimony was for a 50' x 50' metal building for storage use.

Mr. Virr said that the sole purpose is to consider if the building can be constructed on a legal non-conforming property. It meets setbacks and that the applicant would still be required to go through TRC and Planning Board where they will take into consideration of setbacks and buffers. The request is for storage of vehicles currently awaiting repair.

Mr. Perkins said that the request is for the implantation of a storage facility and the Board needs to craft a motion in the affirmative to be able to move forward you have the option to vote in favor or deny the request.

Mr. Burgess asked if the building was for a storage/prep facility.

Mr. Virr said storage.

Mr. Perkins said that he had asked if there was going to be mechanicals in the building and was told heat only and that there was to be no water or bathroom facilities to be added.

Mr. Virr said that a motion of no lifts be installed in the structure.

Mr. Perkins said that conditions for contaminates should be crafted.

Mr. Virr said that was a Planning board issue.

Mr. Carnavale reviewed the proposed conditions for the Board as follows:

1. Mr. Subject to Planning Board approval.
2. Subject to obtaining all State and local permits and inspections.
3. Subject to Planning Board hazmat dictates.
4. Contain a heating system.
5. Not to be an expansion of work area.

Carnavale motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Carnavale, Mrs. Hampton, Mr. Burgess, Mr. Virr. Mr. Perkins.

Mr. Carnavale motioned on case #14-106, Jarrell Revocable Trust to Grant a Variance to the terms of Article VI, Section 165-46A and Article XIII, Section 165-106A of the Town of Derry Zoning Ordinance to allow the construction of a 50' x 50' commercial building at 46 East Derry Road, Parcel ID 39031, Zoned MDR as presented with the following conditions:

- 1. Subject to Planning Board approval.**
- 2. Subject to obtaining all State and local permits and inspections.**
- 3. Subject to Planning Board hazmat dictates.**
- 4. Contain a heating system.**
- 5. Not to be an expansion of work area.**

Seconded by Mrs. Hampton.

Vote:

Mrs. Hampton: Yes.

Mr. Carnvale: Yes.

Mr. Virr: Yes.

Mr. Burgess: Yes.

Mr. Perkins: No. Do not feel request is in the public interest.

The application was Granted by a vote of 5-1-0. 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.

Mrs. Hampton asked if she could step down from the following case so an alternate could sit. Mr. Perkins accepted and asked if Mr. Coppolo could sit for the following case.

Mr. Coppolo asked the Board if there would be any conflict with him and the following case as his in-laws reside at 13 Lawrence Road. Mr. Perkins said that he did not feel that there would be any conflict and said that he would welcome input.

#14-107 Riana & Scott Von Asch
Owner: Deirdre Taylor

Applicant is requesting a Special Exception as provided in Article VI, Section 165-47A to allow the operation of a family group day care at the residence, 40 Lawrence Road, Parcel ID 06004, Zoned LMDR

Scott Von Asch, 40 Lawrence Road, said that he was currently renting two homes, the other at 14 Central Street, but have taken possession of the Lawrence Road property as of April 14, 2014 and is currently painting and getting the home ready to move into. Mr. Von Asch read his application for the Board.

Board Questions

Mr. Burgess said in review of the floor plan for the basement it did not show where food for the children would be prepared. Mr. Von Asch said that the parents provide their own food but they can prepare additional meals if required upstairs if needed. Mr. Von Asch said that the Health Officer states that they can prepare or have parents provide food for the children and have stored at the home. He said they could use the upstairs kitchen or may put a small kitchenette in basement if the Health Officer requires.

Mr. Burgess asked if a permit would be required to install a kitchen area. Mr. Mackey said yes and that the State, Health Officer and Town will be performing inspections of the property.

Mr. Virr said that according to the assessor's records it indicates an unfinished basement. Mr. Von Asch said that was incorrect as there was currently a finished basement which was used as a 2 bedroom apartment.

Mr. Virr asked if a building permit would be required. Mr. Mackey said yes if put up walls etc. would require permits.

Riana Von Asch said that the owner purchased the property in 2008 as a foreclosure and it was with the walls in the basement. She said that the only things that they will be doing in the basement was installing new rugs and painting but no major construction was needed.

Mr. Virr said that if the basement renovations were done illegally would they still require a building permit. Mr. Mackey said possible that the owner may want to apply for an after the fact permit if not existing.

Mr. Von Asch said that when the State calculates the 40% per child the State did not take into consideration of the hall and access locations.

Mr. Burgess said that it shows 730 square feet.

Mr. Perkins asked if that included the hallway. Mr. Von Asch said that the 675 square foot area is where the children would be located.

There was some discussion with the square footage of the existing structure and the amount of area being utilized.

Mr. Burgess informed the Board that it totaled out to 17% which falls into the criteria.

Mr. Coppolo asked if they would need to apply for a State license. Mr. Von Asch said that they are re-locating their existing daycare facility.

Mrs. Von Asch said that the State will not look at the residence until they receive the Town approval to operate a daycare at this location.

Mr. Burgess asked if currently operating on Crescent Street near Pinkerton. Mrs. Von Asch said yes. She said the State will do a walk thru then they will need to have the Derry Health, Fire and Code Enforcement department inspections then the State will issue a license to Lawrence Road.

Mr. Perkins asked where they were currently residing. Mr. Von Asch said that they are currently residing on Crescent Street and while he is in the process of doing some painting and setting up for the daycare transfer but he does have possession of keys to the property.

Mr. Coppolo said that he was concerned with children playing outside and if there would be a fence. Mr. Von Asch said no that they would be on the side of the home and that the State will be setting guidelines that they will be following for the children's play area.

Mr. Virr said in viewing of the home it appears that the home sits on a slight rise and sits far back from the road. Mr. Von Asch said yes and that the plan that was drawn out shows the area of where the septic system was located which is very flat and explained where the children will be allowed to play which will be isolated.

Code Enforcement

Mr. Mackey said that the applicant is requesting approval to operate a Group Family Day Care at the residence. Per State regulations, a group daycare allows up to 12 full time & 5 after school children with two providers. I have received a legal opinion from Lynne Sabeau regarding the applicant meeting the residency prong for the Special Exception. Based on the documentation submitted by the applicant, it would appear the requirements have been met (see case and docket number: Laura Trefethen & a. v. Town of Derry, 2013-0544. In dealing with a daycare request, the Board must consider the State required

square footage per child (40) and the maximum allowance of 25% of the living area for a home occupation. If approved, Fire and Health Department Inspections and approvals will be required as well as a State license. There are pictures of the property in the file for review by the Board.

Mr. Virr asked how is the basement currently exited. Mr. Von Asch said that there was an exit floor level to the rear of the home and the stairway to the main level.

Favor

Robert Parkhurst, 38 Lawrence Road, said that he had a question with regard to the road as concerned with signage as Lawrence Road is used as a cut through and vehicles travel very fast on the road. He also asked if it would change the zoning of the neighborhood.

Mr. Burgess said that he was a member of the Highway Safety Committee and that they do not often change the speed limits but can submit a letter to them and request a traffic study.

Mr. Perkins said that the zoning of the area would not change and that if the request is granted it is only with the applicant and if they move then the business is not on going.

Mr. Parkhurst said then he was not opposed and felt good about having the property utilized as it has had several owners in the past. He said that he was mainly concerned with the fast traffic in the area.

Opposed

No one spoke in opposition of the application.

Mr. Carnavale motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Coppola, Mr. Carnavale, Mr. Burgess, Mr. Perkins, Mr. Virr

Deliberative Session

Mr. Perkins asked if there were any concerns from the Board.

Mr. Virr said that the motion needs to indicate that the sign was not to exceed 3 square feet and be subject to all Town, State and Local permits and inspections.

Mr. Carnavale reviewed the conditions as follows for the Board.

1. Subject to all Town & State permits and inspections.
2. Sign allowed – must be permitted and not to exceed 3 square feet.

Mr. Burgess motioned to go come out of deliberative session.

Seconded by Mr. Carnvale.

Vote: Unanimous.

Mr. Carnvale, Mrs. Hampton, Mr. Burgess, Mr. Perkins, Mr. Virr

Mr. Carnavale motioned on case #14-107, Riana & Scott Von Asch, Owner: Deirdre Taylor to grant a Special Exception as provided in Article VI, Section 165-47A to allow the operation of a family group day care at the residence, 40 Lawrence Road, Parcel ID 06004, Zoned LMDR as presented with the following conditions:

1. Subject to all Town & State permits and inspections.
2. Sign allowed – must be permitted and not to exceed 3 square feet.

Seconded by Mr. Carnavale.

Vote:

Mr. Burgess: Yes.
Mr. Coppolo: Yes.
Mr. Carnvale: Yes.
Mr. Virr: Yes.
Mr. Perkins: 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.

Approval of Minutes

Mr. Virr motioned to approve the minutes of April 24, 2014, as written.

Seconded by Mr. Carnavale.

Vote: Unanimous

Mr. Carnvale, Mr. Burgess, Mr. Virr, Mr. Perkins

Other Business

Mr. Perkins said that the next training was in Whitefield, NH which will be missed due to location. He said hopefully will be able to attend the fall session as these are very helpful tools for the Board.

Mr. Perkins said he appreciated the Board's vote and it was an honor to be sitting as Chair. Thank you!

Adjourn

Mr. Carnavale motioned to adjourn.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Coppolo, Mr. Carnavale, Mr. Burgess, Mr. Virr, Mr. Perkins

Adjourn at 9:08 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes May 15, 2014

Mr. Virr motioned to approve the minutes of April 24, 2014, as amended.

Seconded by Mr. Carnavale.

Vote: Unanimous

Mr. Carnavale, Mr. Burgess, Mr. Virr, Mr. Perkins