

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
June 5, 2014

Members Present

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

Members Absent

Joseph Carnavale

Alternates Present

Heather Evans
Stephen Coppolo

Alternates Absent

Michael Demeo

Mr. Perkins 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.

The Board introduced themselves for the record.

**14-108 Kevin Duggan, Metro Sign & Awning
 Owner: Parkland Medical Center**

Applicant is requesting a variance to the terms of XII, Section 165-101.11 of the Town of Derry Zoning Ordinance to allow the installation of an LED message center sign, 1 Parkland Drive, Parcel ID 05043-001, Zoned OMB

Kevin Duggan, representing Metro Sign & Awning & Parkland Medical Center, read the application for the record. Mr. Duggan said that the proposed sign was a small message board that would present ED waiting times for the public.

Board Questions

Mr. Virr asked why was this type of sign needed. Mr. Duggan said that it would give the public an idea of wait time of the emergency room and also to get information out to the public so they would know the wait time was not long.

Mr. Virr said that would not want to go if having a heart attack and see a 2 hour wait. Mr. Duggan said that a person presenting with a life threatening condition would be taken first. He said that the intent was for non-life threatening emergencies to give the public an idea their visit to the emergency room would have a quick ER visit.

Mr. Burgess asked if the sign would have other services and time posted also. Mr. Duggan said that there may be more items posted other than wait times.

Mr. Perkins asked if the existing structure was not changing as currently 9' wide. Mr. Duggan said that the width was not changing.

Mr. Virr said that he has some difficulty with the applicant meeting the 5 points of criteria especially with the public interest.

Mrs. Hampton asked if other hospitals had similar signage. Mr. Duggan said that Portsmouth was in line to install and that Lowell General had installed but recently took down as they changed their campus design.

Mr. Coppolo asked if it could be confirmed for record that this would not be a color sign. Mr. Duggan said that was correct that it was proposed for black and white.

Mrs. Evans said that it was already asked if it was a problem as far as additional services posted. Mr. Duggan said that if a condition was made that it had to post additional services that it would be acceptable.

Mr. Perkins said that he has seen wait times on signage in Hooksett advertising against each other and inquired if Parkland had other hospitals close by to be in competition with as he had a hard time seeing past the reason for need. Mr. Duggan said that the reason for need was that if you had a non-life threatening injury you might wait to be seen as feel would have a long ER wait and that this signage was available that you would have the matter checked as there was a less of a wait time.

Mrs. Hampton said that she would feel better if the message board was used as advertising community based benefits such as prenatal classes, etc. And if saw a wait time of 17 minutes and had chest pain that she would consider going someplace else. Mr. Duggan said that a patient presenting with chest pain would be seen first.

Mr. Perkins said that he felt there was a discrepancy with use.

Mr. Virr said that this area was also a residential neighborhood and asked if this sign would be LED. Mr. Duggan said yes that the existing sign was already LED.

Code Enforcement

Mr. Mackey said that the applicant, on behalf of the owner, is requesting approval to install an LED message center sign underneath the existing pylon sign. This sign would display the emergency room waiting time and would change each minute. The Town's sign regulations were recently amended and now allow electronic message center signs in the General Commercial and Industrial IV Zoning Districts only (see Article XII, Section 165-101.11). The new regulations require that the message be displayed for a time period of 5 seconds before changing and the text cannot scroll or flash. If approved, a sign

permit 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.

Opposed

No one spoke in opposition of the application.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous

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

Deliberative Session

Mr. Virr said that he did not see where this request was in the public interest in nature of message. He said if you felt that you had an emergency you would go anyway and did not feel there was a hardship shown.

Mrs. Hampton said that have ordinances that allow but do not feel it is in the best interest if it was to promote community benefit may have more use.

Mrs. Evans said that she agreed with Mrs. Hampton that if it had more community listed benefits it would be a possibility.

Mr. Mackey explained the districts where electronic message boards were allowed.

Mr. Burgess said that he did not feel that this type of signage was in the public interest as do not need to see wait times for the emergency room. If need to go to hospital going to go regardless if 17 minutes or longer of a wait. He said moving signs are not allowed in this district.

Mrs. Evans said she did not see a hardship and that cell phones can now look up wait times.

Mr. Virr said that the applicant states request is a reasonable use but that he did not see the necessity of this type of sign in this area. He said that the property across the street was residential and feels that the red light would be more evasive than the current sign.

Mr. Perkins said that his concern is that if allow it would create a situation for Hess and Shell to seek approvals

Mr. Burgess said the conditions that he has so far are to be subject to obtaining Town permits and inspections and asked if anything else should be considered.

Mr. Mackey said that they might want to include in motion to operate regulations listed under the electronic message regulations.

Mr. Perkins said that also a condition that Code Enforcement be allowed to correct any brightness or timing issues and also possibly limit the hours of use.

Mr. Virr said that hours of operation may defeat purpose for use.

Mr. Burgess reviewed the conditions as follows for the record:

1. Must obtain all necessary Town permits and inspections.
2. Must adhere to sign ordinance.
3. Code Enforcement Officer has discretion with regard to brightness and timing change.

Mrs. Evans asked if there were multiple accidents if Code Enforcement could request change in use of sign.

Mrs. Hampton said that she felt that the Board has covered all the areas of concern and that the ordinance has been established for a reason.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous

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

Mr. Burgess motioned on case #14-108, Kevin Duggan, Metro Sign & Awning, Owner: Parkland Medical Center to Grant a variance to the terms of XII, Section 165-101.11 of the Town of Derry Zoning Ordinance to allow the installation of an LED message center sign, 1 Parkland Drive, Parcel ID 05043-001, Zoned OMB as presented with the following conditions:

- 1. Must obtain all necessary Town permits and inspections.**
- 2. Must adhere to sign ordinance.**
- 3. Code Enforcement Officer has discretion with regard to brightness and timing change.**

Seconded by Mr. Virr.

Vote:

- Mrs. Hampton:** No. Not in the best interest of the public and no hardship shown.
- Mr. Burgess:** No. Feel it is not in the public interest.
- Mrs. Evans:** No. For the same reason as Mr. Burgess stated as no hardship shown.
- Mr. Virr:** No. Not in the public interest in nature of sign. Feel the spirit and intent of ordinance is to control LED signs. Not an adequate case and substantial justice not shown.
- Mr. Perkins:** No. Follow the Board with reasoning. Do not wish to rezone strip with special lighting.

The application was Denied by a vote of 0-5-0. Anyone aggrieved by a decision of the Board has 30 days to file a request for a rehearing. After that the recourse would be to appeal to Superior Court.

It was noted for the record that Mr. Coppolo would sit for the following case.

14-113 David Barka

Applicant is requesting a variance to the terms of Article III, Section 165-8 of the Town of Derry Zoning Ordinance to allow the consolidation of a lot containing an existing two family dwelling with a lot containing an existing multi-family dwelling at 17-19 South Ave, Parcel ID 30012 and 31137, Zoned MHDR

Mr. Virr said that before the Board could hear the case that need to have permission from owner as do not see a signed letter giving permission for someone to represent.

David Barka, owner, said that he gives permission for Doug MacGuire permission to represent case on his behalf.

Mr. Perkins said that he was asked by Mr. MacGuire if the Board could accept additional information such as photos that were taken of the property. The Board accepted the photos and they were made part of the record.

Mr. Burgess said that he was acquainted with Mr. Barka and asked if it would be a problem with his sitting on this case. Mr. Barka said that he did not feel that it would be a problem for him to sit on the case.

Douglas MacGuire, PE, Dubay Group, said that he was here representing Mr. Barka and that Mr. Barka was also present this evening. Mr. MacGuire read the request for the Board. He said that the applicant is seeking to merge the property as he currently owns all 3 properties and maintains them himself. Mr. MacGuire said that they consist of a w family in the lower left side and a single family on the lower right side. He said that the applicant is seeking to consolidate the 2-family property with the multi-family and then

will be proposing to the Planning Board to build an additional 5 unit structure on the property which feel will bring the properties together. Safety is proposing to eliminate 3 curb cuts down to one as currently the tenants pull into the area and then back out into the street. Mr. MacGuire said that currently the corner from the west lacks site visibility and the proposal is to help clean up the area. He described the photos presented to the Board.

Board Questions

Mr. Coppolo asked what was the function of the consolidation and why a variance was necessary as sounds like a waiver was needed. Mr. MacGuire said if multi-family developing falls under the site plan regulations and the particulars in this case is a 2-family not considered a multi-family so need a variance to allow the 2-family to exist on the lot.

Mr. Coppolo asked if consolidate the lots without adding would still require a variance. Mr. MacGuire said yes.

Mr. Coppolo asked when was the zoning changed. Mr. Barka said approximately 2-3 years ago.

Mr. Mackey said that the CBD district was established in 1987 and then changed to MHDR approximately 2-3 years ago.

Mr. Coppolo asked how many units would be allowed without consolidation. Mr. MacGuire said without consolidation it would allow 12 and consolidation would allow 1 more under density regulations.

Mr. Coppolo said no building can go within the sewer easement. Mr. MacGuire said that was correct but can put parking lot in but no building.

Mr. Perkins asked where the sewer easement was located. Mr. MacGuire described location for the Board.

Mr. Virr said that the applicant can have 12 units according to zoning but only seeking 11 which shows some ownership of working with the Board.

Mrs. Hampton said that the drawings for the 5 unit appears that the structure will be larger than the other structures. Mr. MacGuire said that they tried to make look of proposal for concept for location for the Board but the structure is proposed to be 18' x 30' and no larger than what is currently there as it will be the same design as the four unit that is currently there.

Mr. Virr asked if the property will be rentals or condex. Mr. MacGuire said that the property will be rentals.

Mr. Burgess asked if the 3rd parcel with the single family was not being added. Mr. MacGuire said that was correct that it was an existing single family with existing easements for parking that will remain in effect.

Mr. Virr said that this appears to be a positive aspect as eliminating 3 curb cuts in a very trying area and couldn't imagine having to back out onto South Ave.

There was some Board discussion with regard to surrounding properties.

Mr. Perkins asked if granting also allows side setbacks and if the proposed 5 unit will meet all setbacks. Mr. MacGuire said that they had provided a condition sheet that shows the setbacks and described for the Board.

Mr. Coppolo asked if there were no consolidation if they would be here for a setback variance. Mr. MacGuire said that was correct. He said that they were also seeking to work the parcels together to assist with parking issues that currently exist.

Mr. Perkins said that the tract of land on the front parcel has a dangerous situation and agree with Mr. Coppolo that the applicant would still require a variance without consolidation.

Mr. Coppolo asked if a condition would be acceptable that no further than the 11 units be made. Mr. MacGuire said that he was comfortable with this and did not anticipate changing the design.

Mr. Perkins asked if there was green space allowed. Mr. MacGuire said yes and also abuts the rail trail.

Code Enforcement

Mr. Mackey said that the applicant is proposing to consolidate a lot containing an existing 2 family dwelling with a lot containing an existing 4 unit condominium building. In addition, a 5 unit multi-family building is also proposed to be added to the site. Per Article III, Section 165-8, this consolidation is not permitted as it would result in more than one residential building on the lot (that is not a multi-family structure i.e. 3 or more units – which is permitted in the MHDR zoning district). Therefore, a variance is required. The consolidation is part of an overall site plan to add an additional multi-unit building to the site and improve access to the site by consolidating 3 driveways into 1 common access. If approved by the Board, Planning Board review and approval 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.

Opposed

No one spoke in opposition of the application.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous

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

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Deliberative Session

Mr. Virr said that he felt that this was a win win situation as could be developed further but seeking one less and also eliminates 3 curb cuts and pulls together the area to create a more appealing area.

Mr. Perkins said he agreed and will improve the safety in the area also.

Mr. Coppolo said felt it was a well kept building and would like to see more attention in area with some of the other properties. He said that the applicant has demonstrated less than what was allowed.

Mr. Virr said there has been considerable discussion with Town Council with regard to the number of school children that would impact taxes and he feels this is a good proposal.

Mrs. Hampton said she felt it was wonderful when more affordable housing is created in the community.

Mr. Perkins asked if there were any conditions to be made.

Mr. Virr said that a condition subject to obtaining all permits and inspections.

Mr. Burgess reviewed the conditions for the Board as follows:

Subject to Planning Board approval.

Must obtain all necessary Town permits and inspections.

Mr. Coppolo said that 2 more units more are allowed but could not build a duplex as this type of dwelling would not be allowed as per Mr. Mackey's testimony. He said that the Board should consider motion condition of 11 units as presented.

Mr. Virr said that the motion should be as presented and subject to as stated to be 11 units.

Mr. Virr motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Mr. Virr motioned on case #14-113, David Barka to Grant a variance to the terms of Article III, Section 165-8 of the Town of Derry Zoning Ordinance to allow the consolidation of a lot containing an existing two family dwelling with a lot containing an existing multi-family dwelling at 17-19 South Ave, Parcel ID 30012 and 31137, Zoned MHDR as presented with the following conditions:

- 1. Subject to Planning Board approval.**
- 2. Must obtain all necessary Town permits and inspections.**
- 3. Limited to the proposed 11 units only.**

Seconded by Mr. Burgess.

Vote:

Mr. Virr:	Yes. Feel the 5 criteria have been met.
Mr. Coppolo:	Yes.
Mrs. Hampton:	Yes.
Mr. Burgess:	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. Perkins said that the minutes of May 15, 2014 needed to be amended and read the changes for the record.

Mr. Burgess motioned to approve the minutes of May 15, 2014 as amended.

Seconded by Mr. Virr.

Vote: Unanimous

Mr. Coppolo, Mrs. Evans, Mrs. Hampton, Mr. Burgess, Mr. Virr, Mr. Perkins

Other Business

Mr. Perkins said that the Board needed to vote on a summer schedule and that typically the Board only met once during the months of July and August. He suggested that the Board meet on July 17th and August 21st which are the third Thursday's of each month.

Mr. Mackey said that the only item that would need to be taken into consideration is if a re-hearing request is submitted that the Board will need to meet within the 30 day appeal period.

Mr. Virr informed the Board that he would not be available for the August meeting and that an alternate could be appointed in his absence.

Mr. Burgess motioned to meet on the following dates for the Boards summer schedule:

July 17, 2012
August 21, 2012

Seconded by Mr. Virr.

Vote: Unanimous

Mr. Coppolo, Mrs. Evans, Mrs. Hampton, Mr. Burgess, Mr. Virr, Mr. Perkins

Adjourn

Mr. Burgess motioned to adjourn.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mr. Coppolo, Ms. Evans, Mrs. Hampton, Mr. Burgess, Mr. Virr, Mr. Perkins

Adjourn at 8:30 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes June 19, 2014

Mr. Virr motioned to approve the minutes of June 5, 2014 as amended.

Seconded by Mrs. Hampton.

Vote: Unanimous.

Mr. Coppolo, Ms. Evans, Mrs. Hampton, Mr. Burgess, Mr. Virr, Mr. Perkins