

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
August 20, 2015

Members Present

Lynn Perkins, Chairman
Allan Virr, Vice Chairman
Heather Evans, Secretary
Teresa Hampton
Stephen Coppolo

Members Absent

Alternates Present

Dana Nauerz
Katherine Prudhomme-O'Brien

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.

Mr. Perkins informed the audience that the Board has a very full agenda this evening and may not be able to hear all the cases due to time restraints as the Board's meeting only goes to 10:00 p. He informed the public if that they are getting close to the 10:00 time they may motion to continue the cases remaining on the agenda to their next meeting on August 20, 2015.

It was noted for the record that Ms. Nauerz would sit for the following case.

**15-115 TJW Survey
 Owner: Arthur & Ruth Provencal**

The applicant is requesting a variance to the term to the terms of Article III, Section 165-9 of the Town of Derry Zoning Ordinance to allow the creation of a lot with 200' of non-contiguous frontage where the ordinance requires contiguous frontage. 246 Island Pond Road, Parcel ID 07012, Zoned LDR (POSTPONED from 7/16/2015)

Tim Winings, TJW Survey, said that he was representing Arthur & Ruth Provencal and that his client would like to request a variance to subdivide their property creating one lot to have non-contiguous frontage. He read the application for the record.

Mr. Winings stated that property is over 7 acres and that the applicant wishes to split into two lots. He explained that the smaller lot was split off in 1971 before the Provencal's

purchase. The Provencal's purchased the property in 2000. He said that the original home was close to Ballard Pond and due to the disrepair the Provencal's chose to remove and construct new home in 2001 where it currently is now. They have received DOT approval from the short frontage. Mr. Winings explained the layout of the property.

Board Questions

Mr. Perkins asked if the proposed lot would have 200' frontage. Mr. Winings said yes it would have over 230'.

Mr. Virr asked where the current driveway was located. Mr. Winings said that the Provencal's utilize the 50' frontage as their driveway which has been approved by State. The Provencal lot will have 200' of road frontage but not contiguous.

Ms. Nauerz said that she understood the line shift and configuration of proposal and had no questions.

Mrs. Evans said that she was curious when the previous subdivision creating the lot in the center but was answered.

Mr. Coppolo asked if there were any other non-contiguous frontage lots known of. Mr. Winings said that the first subdivision of the property occurred in 1971 and that he had done no research with regard to other non-contiguous frontage lots so he was unsure.

Mr. Virr said that the 1 acre parcel that was subdivided off has 153' frontage when zoning required 150'. Mr. Winings said yes and he was unsure why configuration of lot was created and that he had reviewed with DOT with regard to the proposal and they did not have an issue.

Code Enforcement

Mr. Wentworth provided the Board with the following references:

- This request is required prior a subdivision request through the Planning Board.
- The parent parcel is a 7.095 acre lot which is proposed to be subdivided into a 3.045 acre parcel and a 4.05 acre parcel.
- The 3.045 acre parcel will have a compliant 234.67 feet of frontage, while the 4.05 acre parcel will have two sections of frontage on Island Pond Rd.; to the west there is 163.54 feet and to the east there is 50 feet totaling 213.54 feet of frontage.
- Access to 246 Island Pond Rd. is via a driveway located in the 50 foot frontage area.
- These sections are separated by a single family residence on a 1 acre parcel.
- Section 165-9 requires that the minimum lot frontage be a continuous, unbroken line along one approved public street.

Favor

No one spoke in favor of the application.

Opposed

Kimberly Armstrong, 252 Island Pond Road, said that she had submitted a letter to the office on July 15, 2015 regarding her concerns with the proposed request. Mrs. Armstrong reviewed her letter to the Board for the record.

Mrs. Prudhomme-O'Brien asked for clarification of where she was located with regard to the applicant's request. Mrs. Armstrong said that she was the lot directly in front of the Provencal's residence.

Mr. Coppolo asked to explain the discrepancy of the lot length. Mrs. Armstrong said that the plan submitted shows her lot as having 247.9' frontage where she has 253.7'.

Mr. Perkins asked if the frontage difference was brought to the engineer's attention. Mrs. Armstrong said yes.

Ms. Nauerz asked if an explanation could be made with regard to the 7.9 vs 6 ½ acres. Mrs. Armstrong said that historically the property has always had 6 ½ acres according to records and that was before the initial subdivision creating her lot.

Mr. Coppolo asked if the property was a working farm. Mrs. Armstrong said yes that the Provencal's have had pigs, goats, chickens but she was unsure what was there now.

Rebuttal

Mr. Wining's said that the area was on record as having 6 ½ acres as an estimate but had never been surveyed. He said that the discrepancy of lot lines are correct and have been explained to her as dimensions hold as have found bounds and under law has what stated. With regard to drainage the property is grass land and not impervious. The Provencal's have chickens currently and in the past have had goats and horses. The property is all grass land and drainage runs down the middle of the lot and will follow new lot and not drain onto her lot.

There was some discussion with regard to drainage flow and elevations.

Mr. Virr asked when the zoning was changed from 150' to 200'. Mr. Winings said that he was unsure of when the frontage change was made in the zoning ordinance. He said that he believes that the intent for the 50' was for a future road.

Mr. Perkins asked if the proposal was to bring the divided lot into current zoning and that unable to add multiple housing. Mr. Winings said that was correct.

Mrs. Armstrong said that the zoning change with regard to frontage requirement was made in 1993.

Paul Armstrong, 252 Island Pond Road, said that deeds take precedence and would like the Board to recommend that the discrepancy be resolved before subdivided. He said that DES has been out to the property as water pools and runs into the pond which has created issues so he believes that the property has unusable frontage.

Mr. Winings said that the drainage issued with DES was during the Mother's Day flood and that was reviewed for 2 ½ years with environmental retention pond created to specifications and approved and since the water flow has been mitigated. Any drainage to dam was previous before in place.

Mr. Perkins asked where would well and septic be located. Mr. Winings explained layout for the record.

Mr. Perkins asked if exceed distances to wet areas. Mr. Wentworth said yes.

Mrs. Evans motioned to go into deliberative session.

Seconded by Ms. Nauerz.

Vote: Unanimous.

Ms. Nauerz, Mr. Coppolo, Mrs. Evans, Mr. Virr, Mr. Perkins

Deliberative Session

Mr. Virr said that both lots would exceed size requirements and that Mr. Winings was a licensed land surveyor. The request would still have to go before Planning Board so discussion of what goes where is not purview of Board. We are only here to review the request to grant a variance to create a lot with non-contiguous frontage. The zoning was previously 150' and now 200' feet of contiguous frontage.

Mr. Perkins said that the 50' established driveway was explained and feel that original intent was for a roadway and applicant is seeking to keep as driveway and not create road with more lots.

Mr. Virr said that the new proposed lot previously had a dwelling on it that was torn down.

Mr. Coppolo said that the 1800 property did not survive and that the proposal of a non-contiguous frontage lot he has never seen a request before. He did not feel that 75% was an extreme difference.

Mr. Perkins asked if discrepancy of frontage from abutter was a concern. He said that he did not feel that the discrepancy couldn't be resolved between the parties involved.

Mr. Virr said that the monument could have been moved.

Ms. Nauerz said that she agreed with Mr. Coppolo and has seen other cases with less frontage and those had been granted. Feel no issues as property is there it was just split up.

Mr. Perkins asked what could be done to resolve the lot line issue with regards to frontage discrepancy.

Mr. Coppolo said that there has to be answers as it was a slight discrepancy. He said that he has seen misprints on plans numerous times and he would have more concern if it was a large difference but that it was minimal.

Mr. Perkins said that he felt that this was not the place to iron out the conflict and if it was a 100' he would probably want to deny until resolved but as stated it was minimal.

Mr. Coppolo said could possibly file a law suit but did not feel worth it over a foot.

Ms. Nauerz asked if Ballard Pond was drinking water.

Mr. Virr said no it was the Taylor Mill dam area was conservation land.

Mr. Perkins said that the motion should include subject to Planning Board approval and subject to all State and local permits and inspections.

Ms. Nauerz asked if the Conservation Commission would need to be involved.

Mr. Virr said that they would be notified but was unsure if involved.

Mr. Virr motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

Ms. Nauerz, Mr. Coppolo, Mrs. Evans, Mr. Virr, Mr. Perkins.

Mrs. Evans motioned on case #15-115 TJW Survey, Owner: Arthur & Ruth Provencal to Grant a variance to the term to the terms of Article III, Section 165-9 of the Town of Derry Zoning Ordinance to allow the creation of a lot with 200' of non-contiguous frontage where the ordinance requires contiguous frontage. 246 Island Pond Road, Parcel ID 07012, Zoned LDR as presented with the following conditions:

- 1. Subject to Planning Board approval.**
- 2. Subject to obtaining State & Local permits and inspections.**

Seconded by Mr. Virr.

Vote:

Mr. Coppolo: Yes.
Mr. Virr: Yes.
Mrs. Evans: Yes.
Mrs. Nauerz: Yes.
Mr. Perkins: Yes.

The application was Granted 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.

15-114 Clement LaPlante

The applicant is requesting a variance to the terms of Article VI, Section 165-45.B.2.b of the Town of Derry Zoning Ordinance to allow the conversion of an existing duplex to a three family building. The applicant is also requesting a variance to the terms of Article VI, Section 165-45.B.2.a to allow for less than the minimum required lot area and Section 165-45.C.4 to allow for less than the required 15% recreational space in order to add a four unit multifamily dwelling to the rear of the lot. 5 Mt. Pleasant Street, Parcel ID 32071, Zoned MHDR

Timothy Lavelle, James M. Lavelle Associates, LLS, said he was representing Mr. LaPlante. Mr. Lavelle said he was here with two variance requests and the first request is to allow the conversion of an existing duplex to a three family structure.

Mr. Perkins asked if it was the understanding that there were 3 variance requests and if he would be reading the cases separate. Mr. Lavelle said yes.

Mr. Lavelle read the application for the record.

Board Questions

Mr. Perkins asked if there were any visuals could be explained. Mr. Lavelle said that he had dropped off maps prior to the meeting but nothing for the easel. He said that drainage would be a Planning Board matter as well as parking. He said that they are outlined on the plan as well as other amenities to show that the lot can support the request.

Mr. Perkins said that for the Board we are hearing the first part of the request is with regard to frontage only.

Mr. Virr asked what was the amount of frontage on Mt. Pleasant. Mr. Lavelle said 92' of frontage.

Mr. Coppolo asked if the surrounding properties meet the 150' frontage requirement. Mr. Lavelle said most of the properties do not.

Mr. Coppolo asked if Mt. Pleasant Street was a 2 way or 1 way street. Mr. Lavelle said it was a very narrow 2-way street.

Mr. Virr said that the area consisted of older homes that precede zoning requirements.

Mr. Wentworth said most of the properties are single or two family homes and the 150' frontage requirement applies to multi-family of 3 or more.

Mr. Perkins asked how was driveway going to be reconfigured. Mr. Lavelle said that the existing driveway would be removed and then a new 20' driveway would be created in the rear and then there would be parking for the existing dwelling. Existing is 16' wide at the street going to approximately 12' to the rear. The new driveway would be eliminated and replaced with a new modern 20' wide driveway and would also be creating an area so no one would be backing out onto the street.

Mrs. Hampton asked what was the difference of paved area to the abutting dwelling. Mr. Lavelle said approximately 5 or 6 feet.

Ms. Nauerz asked if the proposed driveway would allow for emergency vehicles and ample parking. Mr. Lavelle said yes but may change when Planning Board reviews and the idea was drawn for emergency vehicles at 20' wide.

Mr. Virr asked what was existing behind the structure. Mr. Wentworth said that was a Planning Board matter.

Mr. Perkins said only reviewing the frontage portion of the request at this time.

Mr. Coppolo said that he had no other questions with regard to frontage but concerns with congestion.

Code Enforcement

Mr. Wentworth provided the Board with the following references:

The applicant is requesting three separate variances in this case, each variance shall be voted on individually. The parcel is a 0.71999541 acre lot located in the MHDR zone which allows for multifamily dwellings and therefore must comply with all of the following zoning and LDCR requirements:

- Minimum lot frontage shall be 150 feet
- Each dwelling requires 5,000 square feet
- At least 15% of the net buildable area shall be provided for recreational space.
- A minimum of one third of the net buildable area utilized for any non-residential or multifamily development shall be reserved as open space

Mr. Perkins said that he would entertain abutters concerns to the frontage only portion at this time.

Favor

No one spoke in favor of the application.

Opposed

Bradford Ek, 2 Mt. Pleasant Street, John Banister, 4 Hood Road, Russ Maributo, 8 Mt. Pleasant Street, Mark , 9 Mt. Pleasant Street, had the following concerns:

- Safety concerns due to the width of the existing road as difficult for 2 vehicles to pass.
- Bus route and when school is open have to pull over to allow bus to pass due to road width.
- Increase of more vehicles would make dangerous situation as a lot of foot traffic on road.
- Property has always been a single family with a large yard and if allowing 7 units it would not be consistent with the neighborhood.
- 7 units on a shared driveway feel there would be a lot of people cutting threw.
- Location of telephone pole on the property for utilities would be into the proposed driveway.

Rebuttal

Mr. Lavelle said that the location of the utility pole would be reviewed at the planning stage.

Mr. Coppolo motioned to go into deliberative session.

Seconded by Mrs. Hampton.

Vote: Unanimous.

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

Deliberative Session

Mr. Virr said that with regard to the frontage standpoint he was not concerned with the location of the utility pole but 92' of frontage as opposed to 150' is a significant difference. Property is very narrow and not sure where it is sufficient.

Mr. Coppolo said he has concerns with the amount of frontage and driveway and number of vehicles utilizing the area.

Mr. Virr said that the property exists with 92' of frontage and the driveway meets as non-conforming standards the applicant is unable to add frontage.

Mr. Perkins said that likely hood of all 20 cars all moving at once from the parking lot was unlikely. He said he was concerned that Mt. Pleasant Street is very narrow.

Mrs. Hampton said that each case is case by case and if this request was out in the country it would probably be a non-issue but where this is located and Mt Pleasant street is very narrow and increasing the property to 7 units feel would be a major impact to the area.

Mr. Virr said that the driveway exists now with 2-family and now seeking to convert to 3-family and then build an additional building.

Mr. Perkins said that the density issue for the next prong of the request this request is for the small frontage and if do not pass this part feel there would be no need for the other 2 variances. He said that the conditions for this should include subject to Planning Board approval and subject to obtaining all State & Local permits and inspections.

Mr. Virr motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Mrs. Evans motioned on case #15-114, Clement LaPlante to Grant a variance to the terms of Article VI, Section 165-45.B.2.b of the Town of Derry Zoning Ordinance to allow the conversion of an existing duplex to a three family building at 4 Mt. Pleasant Street, Parcel ID 32071, Zoned MHDR as presented with the following conditions:

- 1. Subject to Planning Board approval.**
- 2. Subject to obtaining State & Town permits and inspections.**

Seconded by Mr. Coppolo.

Vote:

Mrs. Hampton: No. Feel does not meet criteria for a hardship.

Mr. Coppolo: No. Granting would be contrary to public interest. Don't feel substantial just would be done and feel values of surrounding properties would be diminished. Don't feel unnecessary hardship.

- Mrs. Evans:** No. Feel would be contrary to the public interest and no substantial justice has been shown and unnecessary hardship.
- Mr. Virr:** No. Granting the variance would be contrary to the public interest and increases density Also, disagree with item #4 applicant stated would be keeping with other structures in the area and allowed in the zone. However, feel it would be create a safety issue if allowed.
- Mr. Perkins:** No. Feel conflict with public interest and spirit and intent of ordinance.

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.

Mr. Lavelle said that he wished to respectively withdraw the two other variance requests.

Mr. Perkins accepted the withdrawal of the additional variance requests.

It was noted for the record that Mr. Coppolo stepped down from the following case and Mr. Perkins appointed Mrs. Prudhomme-O'Brien to sit for the following case:

15-116 Alan Gentile, Marianne Gentile & Jennifer Gentile

The applicant is requesting a variance to the terms of Article VI, Section 165-45.1.B.1.d of the Town of Derry Zoning Ordinance to allow the placement of a replacement shed 4' from the property lines where 15 feet is required. 8 Grove Street, Zoned MHDR II, Parcel ID 30199.

Jennifer Gentile & Alan Gentile, owners were present. Jennifer Gentile read the request for the record. Ms. Gentile said that their property was the smallest lot in the area and in researching the property believes it was subdivided in the 1920's and built in 1928.

Board Questions

Mr. Coppolo asked what was the acreage of the lot. Mr. Wentworth said it was approximately .05.

Mr. Virr asked if it was the understanding that the shed could be placed anywhere else on the lot. Ms. Gentile said that was correct as shown on the pictures submitted if it were to be placed to meet the lot line requirements it would be right in the middle of the property. Mr. Perkins asked if there was a previous shed there. Ms. Gentile said yes but the former shed had been destroyed and that they needed a shed so purchased a new shed and had it place slightly further off the neighbors fence so they could maintain it.

Mr. Wentworth said that he was incorrect on the lot size as it was .16 acres had previously stated it was .05.

Favor

Ellen Madigan, 12 Oak Street, said she was in favor of the proposal.

Opposed

Barbara Albright, 12 Park Ave, said that she was opposed to the request as the applicant has submitted the wrong information. She said that the applicant had stated in their submission that they would have a survey done and submitted to the Board and she did not see one in the file when she had reviewed it prior and asked if there had been one submitted. Ms. Albright said that she had had her property surveyed by Blasdell and that her garage was not located on their property and was several feet away. She said that she felt that if a plot plan was submitted that the applicant could conform to the setbacks and seeking to obtain a variance for the full 15' as shed was on the lot line.

There was some discussion with regard to location of garage and the fence.

Mr. Coppolo asked if the shed was too close to the garage and if any discussion was done before the new shed. Ms. Albright said that the previous shed was metal and that the new shed was taller. Mr. Blasdell notified them that the shed was encroaching onto the property line when he surveyed.

Mr. Perkins asked if the new shed was now on her property. Ms. Albright said no but it was taller than the previous shed.

Mr. Perkins said that the applicant has stated that they are 4' from lot line. Ms. Albright said that she was prevented to maintain the rear of her garage and believe that they are on her lot line. She presented the Board with pictures of the shed location. She said that she believes the request is for the entire 15' and 11' from the lot lines is an unreasonable request.

Mr. Coppolo asked if the view was from the fence. Ms. Albright explained the pictures for the Board.

Mr. Virr said that a survey was done but not shown. Ms. Albright said that the applicant had stated in their request that they were in the process of having the property surveyed and did not see their survey.

Mr. Perkins asked if the garage and fence overlap. Ms. Albright explained her property and said that she had hired Roscoe Blasdell to locate all her points of her property.

Mr. Virr asked if have a map showing points. Ms. Albright said no.

Mr. Virr said that the request is for 4' from lot line.

Mr. Coppolo said that if grant request and that the abutter is correct of where the lot line is that it would be a problem.

Rebuttal

Ms. Gentile said that they were unable to obtain the survey at the time of the meeting but will be having done. Mr. Blasdell survey said that one bound could not be found and stated corner marker behind the fence not a property marker. She said that they have never denied Ms. Albright access to maintain her garage just to ask beforehand as they have dogs and would not want someone hurt accidentally. She said that the shed is smaller than the previous shed but slightly taller.

Mr. Perkins asked who the fence belonged to. Ms. Gentile said the back fence believe it was the abutters and put in for the pool. The fence along the garage was theirs as they installed it in 2010 to keep their dogs in the yard. They offered to move the fence and have tried to do things right. She said that the shed could be moved slightly but will be difficult. Also, locating the shed to anywhere else on the lot would be a disadvantage as would not have a yard. She said that the surveyor said that the pin located on the other side of the fence was not a survey marker.

Code Enforcement

Mr. Wentworth provided the Board with the following references:

This parcel has a total area of 0.16 acres or 6969.6 square feet and is rectangular in shape. Given the size of the lot, the applicant is seeking relief from **Article VI, Section 165-45.B.1.d.i Minimum Yard Depths** in order to replace a shed which was damaged over the winter. The original shed was placed diagonally in relation to the right rear corner of the lot. The new shed has been placed squarely with the corner and now maintains a 4 foot space around the shed for maintenance purposes.

Mr. Perkins said that he suggest to table this case until the next meeting in 30 days so a survey could be conducted to verify lot lines.

Ms. Gentile said that her parents possibly would not be available to attend the next meeting and what would she need to do. Mr. Perkins said that she would need to provide a letter to have her represent them in their behalf.

Ms. Gentile asked if they were unable to obtain the survey by that date what would she need to do. Mr. Virr said that she would need to submit a letter to office to postpone meeting.

Mrs. Hampton motioned on case #15-116 Alan Gentile, Marianne Gentile & Jennifer Gentile to Grant a variance to the terms of Article VI, Section 165-45.1.B.1.d of the Town of Derry Zoning Ordinance to allow the placement of a replacement shed 4' from the property lines where 15 feet is required. 8 Grove Street, Zoned MHDR II, Parcel ID 30199:

TABLED FOR 30 DAYS UNTIL APPLICANT CAN OBTAIN A SURVEY

Seconded by Mrs. Evans.

Vote:

Mrs. Prudhomme-O'Brien: Yes.
Mrs. Evans: Yes.
Mrs. Hampton: Yes.
Mr. Virr: Yes.
Mr. Perkins: Yes.

The application was Tabled 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.

15-117 Lisa M. Spofford

The applicant is requesting a variance to the terms of Article VI, Section 165-45.A of the Town of Derry Zoning Ordinance to allow a convenience store (retail service establishment) where the use is not permitted by right. 34 South Avenue, Zoned MHDR Parcel, ID 26208

Lisa Spofford, owner, read application for the record. Mrs. Spofford said that they had purchased the property in hopes to rehab it back into a convenience/market store but not actual food production would be done on site but home goods would be transported to side and available for sale.

Board Questions

Mr. Virr asked if the reason here is due to the fact that the property has been vacant for more than a year. Mrs. Spofford said yes.

Mr. Virr asked how many vehicles could be parked on the property. Mrs. Spofford said 8 per Mr. DePaula and that the property had been a convenient store for over 30 years.

Mr. Coppolo asked if she currently owned and if so when purchased. Mrs. Spofford said they purchased the property in March or April of this year.

Mr. Perkins asked if proposal had been reviewed with the Code Enforcement Office. Mrs. Spofford said yes and was told they needed approval from the Zoning Board to reopen the property as a convenience store as it had been closed for more than a year.

Mrs. Hampton asked what type of baked goods would be sold. Mrs. Spofford said that there would possibly be Artisan Breads, Pizza, and other quick grab and go foods.

Mr. Perkins asked if they same similar products that were currently available in her other facility. Mrs. Spofford said yes.

Mrs. Evans asked when did the property go out of business. Mr. Wentworth said approximately 3 years ago.

Mr. Coppolo the property was pre-existing and stop using loses use. Mr. Wentworth said that was correct.

Mr. Virr said convenience stores are a tough business and hard to compete with gas stations. Mrs. Spofford said she agreed and that she owns several properties in the area and feel can add value to the area if allowed to reopen. She said that she has seen the numbers from the previous owner and that they were favorable. She said that beer and wine sales are a high market and that she is unsure about doing the lottery and was recommended that not do lottery as take up a lot of the parking that is available. She said that they have named it “Milk Run” as will be running deliveries of milk and such to people unable to get out to do shopping and such.

Mr. Coppolo said that he felt that the property needs something there as it is a shame just sitting vacant. Mrs. Spofford said that she believes that the corner needs life and that she is very community oriented and that a lot of people have made comments that the property needs life.

Mr. Virr asked if sell or transport food will any special permits be required. Mr. Wentworth said that the Health Department will be involved with food sales.

Mr. Perkins asked if the parking was only in the front and not the driveway to the rear of the property. Mrs. Spofford said that was correct that the driveway belonged to the abutting property.

Favor

Donald Bodwell, Sr., 22 Brook Street, said that he has lived in the area most of his life and that the store being open was convenient as close by and now have to go all the way uptown if need bread or milk. He said that he would love to have the store reopen.

Donald Bodwell, Jr., 22-24 Brook Street, said that he supports small businesses and that he has grown up in the area and known the Bartlett’s and before that it was owned by the Barker’s and the last owners only closed due to health issues. He said that he feels Rig-A-Tony’s is a great business and he would love to see them in the neighborhood.

Opposed

No one spoke in opposition of the proposal.

Code Enforcement

Mr. Wentworth provided the Board with the following references:

This parcel is the former Brothers Variety store located at the intersection of South Avenue and Brook Street. The building has been vacant since the closing of the store approximately 3 years ago and due to the time period since the closure the nonconforming use status has lapsed. The building sits on a 0.05 acre (2178 square feet) parcel which is not conducive to any use allowed in the MHDR district. Additionally, this lot does not conform to current frontage, area, width, or yard depth requirements.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Coppolo.

Vote: Unanimous.

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

Deliberative Session

Mr. Virr said that a condition of subject to all Town and State permits and inspections should be part of the motion.

Mr. Perkins said that he remembered the store growing up and feel that there was not much more that could actually be done on that corner but a small corner store.

Mr. Coppolo said that he feels wonderful that it would bring the property back into productive use.

Mr. Virr motioned to come out of deliberative session.

Seconded by Mr. Coppolo.

Vote: Unanimous.

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

Mrs. Evans motioned on case #15-117 Lisa M. Spofford to Grant a variance to the terms of Article VI, Section 165-45.A of the Town of Derry Zoning Ordinance to allow a convenience store (retail service establishment) where the use is not permitted by right. 34 South Avenue, Zoned MHDR Parcel, ID 26208 as presented with the following conditions:

- 1. Subject to obtaining all State and Town permits and inspections.**

Seconded by Mrs. Hampton.

Vote:

Mr. Virr: Yes.
Mrs. Hampton: Yes.
Mr. Coppolo: Yes.
Mrs. Evans: Yes.
Mr. Perkins: Yes.

The application was Granted 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 July 16, 2015 as amended.

Seconded by Mrs. Hampton

Vote: Unanimous.

Mrs. Prudhomme-O'Brien, Ms. Nauerz, Mr. Coppolo, Mrs. Hampton, Mrs. Evans, Mr. Virr, Mr. Perkins

Correspondence

Mr. Virr informed the Board that the case of Accurate Transport/Dumpster Depot on Ashleigh Drive the Zoning Board of Adjustment had voted not to allow and had appealed the Planning Board's decision. This went to Superior Court who stated that we were wrong due to timing. The case was appealed to Superior Court ruled that the Zoning Board was correct in its appeal with regard to timely manner. Mr. Virr said that there was some question whether the Zoning Board could convert a Planning Board decision and the Superior Court ruled that there was no law stating it can and nothing states that can't.

Mr. Perkins said that Mr. Virr had handled the case with the lawyers and noted that he had done a wonderful job.

Mr. Virr said that this case has established precedence and is now one for the books.

Mrs. Hampton said that she recalled the case and that the Board had consulted with the Town Attorney several times.

Mr. Perkins said that this case has significance and will be one to remember for a long time.

Mr. Virr said that Mr. O'Connor had filed a decision that stated that Mr. Mackey had made a decision but that Mr. Mackey had not and that the Zoning Board filing was made within the proper time frame.

Adjourn

Mr. Virr motioned to adjourn.

Seconded by Mrs. Hampton.

Vote: Unanimous.

Mrs. Prudhomme-O'Brien, Ms. Nauerz, Mr. Coppolo, Mrs. Hampton, Mrs. Evans, Mr. Virr, Mr. Perkins

Adjourn at 9:10 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes September 3, 2015

Mr. Coppolo motioned to approve the minutes of August 20, 2015 as written.

Seconded by Mrs. Hampton.

Vote: Unanimous.

Mrs. Prudhomme-O'Brien, Mr. Coppolo, Mrs. Hampton, Mrs. Evans, Mr. Virr, Mr. Perkins