

TOWN OF DERRY  
ZONING BOARD OF ADJUSTMENT MINUTES  
January 21, 2016

**Members Present**

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

**Members Absent**

**Alternates Present**

Dana Nauerz

**Alternates Absent**

Katherine Prudhomme-O'Brien

**Code Enforcement**

Robert Mackey

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.

**16-101          James M. Battye**

**Applicant is requesting approval to modify the conditions of the Special Exception granted on February 20, 2003 to the terms of Article VI, Section 165-48A.1 of the Town of Derry Zoning Ordinance to allow the operation of an auto wholesale business at the residence. Parcel ID 04110, 406 Island Pond Road, Zoned LDR**

James Battye, owner, reviewed his criteria points and letter of explanation for the record.

**Board Questions:**

Mr. Perkins asked approximately how many vehicles are sold each month. Mr. Battye said that he sells approximately 2-4 per month.

Mr. Perkins asked in the past 10 years approximately how many cars per year were sold. Mr. Battye said that the last 3 years have been his best with an average of 60-80 vehicles per year.

Mr. Perkins asked what was the restriction for wholesale license. Mr. Battye said that at the time he did not meet the state requirements of 1,200 square feet and he was given a bonded retail license.

Mr. Perkins commented so not seeking to do wholesale. Mr. Battye said no.

Mr. Coppolo said that he was confused with display of vehicles at the street and heard testimony that vehicles did not need to be displayed at the street. Mr. Battye said that he has to have at least one vehicle displayed visibly for sale on the property when the State Inspector comes to inspect.

Mr. Coppolo asked if he was requesting a sign. Mr. Battye said no and that he doesn't need a sign and that the State has waived before as long as the Town stipulates restriction but he does have it marked on his mailbox.

Mr. Perkins said that in the past the State will exempt if the Board stipulates no sign in its conditions.

Mr. Virr said that the strategy of Craigslist and the internet must be effective as travel the area frequently and never knew the business existed.

Mrs. Evans asked if the retail vehicle dealer and its 750 foot requirement was for an office. Mr. Battye said no that it was for the entire area of which he would use his garage and have his desk and filing relocated there to do paperwork.

Mr. Virr asked if the garage was heated. Mr. Battye said that the garage has electric and a heat source that had not been utilized in a while so it would need some maintenance.

Mr. Virr asked if this business was his sole income. Mr. Battye said no that it was secondary.

Mr. Virr asked what were the other vehicles in the rear field. Mr. Battye said that he resides on the property with his brother and sister-in-law and they have a number of vehicles as there is currently 3 licensed drivers at the property. They are in the process of being registered with the Town.

Mr. Virr said that since his 2003 license was issued the property has not always been in compliance with conditions. Mr. Battye said that the unregistered vehicles is the reason for seeking the request. In the past he was able to leave the vehicles at exit 4 and now unable to do that so he has had to relocate to the house.

Ms. Nauerz said that she agrees with Mr. Virr as she also travels the road frequently and did not know that he was a car dealer.

Mr. Perkins asked if the garage and office space of 750 square feet was to be dedicated for selling of vehicles. Mr. Battye said yes and that the State reduced the square footage as it used to be 1,200. He said that there was no requirement when he first became licensed and now they require 750 square feet to be for a retail license.

Mr. Perkins said that under the current special exception it was approved as a wholesale, not bonded dealer and that the motor vehicle description was selling dealer to dealer and if selling to the public at that time the 2003 agreement was invalid. And also in 2003 a condition of no unregistered motor vehicles were to be stored on property and keep deviating from conditions. Mr. Batty said when he originally applied for the license back then it was granted but he never acted as a wholesale dealer.

Mr. Mackey said that in reviewing the building file the applicant was advertised as wholesale but he received a bonded retail dealer license in 2003.

Mr. Perkins said that the applicant complies as in conditions Mr. Wiseman noted exception to have office only. Mr. Mackey said the zoning was different but yes that he complies with the State.

Mrs. Hampton asked if saying grandfathered is because bonded license was what was available at the time. Mr. Mackey said yes. Now, if you are going to sell more than 5 vehicles per year to the public, a retail dealer's license is required.

Mr. Perkins said that there was still a record of unregistered motor vehicles being stored on the property. Mr. Batty said that his biggest problem was due to the lack of area to store vehicles and that is one of the reasons for seeking permission tonight.

Mr. Perkins asked if it was practical to comply with the exception. Mr. Batty said that he has tried to comply and the reason that the last letter was generated was that around that time we had the 2 foot snow storm and he had to move the vehicles closer to the front of the property so he could clean out and he was unable to park them at the local parking area near exit 4 as they would have been towed.

Mr. Virr asked if he could handle the cost of surety bond. Mr. Batty said yes as the amount depends on credit and if there had been any judgements against an individual and that he has never had any judgements so the cost should be minimal.

Mr. Coppola asked how many acres was the property and how much of it was usable. Mr. Batty said he has 2.4 acres of which was wooded up to the rock wall and some possible wet areas as his property does abut the golf course.

Mr. Coppola asked if there would be a change to the fencing. Mr. Batty said that the fences are existing and would change if the State requires.

Mr. Coppola said that the applicant's letter of explanation was very clear of what was being requested.

## **Code Enforcement**

Mr. Mackey provided the Board with the following reference for the Board:

- The applicant is seeking to amend the conditions imposed by the Zoning Board in 2003 when they approved the request to operate a wholesale auto business from the residence.
- The applicant wishes to obtain a retail vehicle license that would allow vehicles to be sold directly to the public, as opposed to a wholesale license that allows vehicle sales between dealers. According to recently amended State regulations, the applicant must have the ability to have at least 1 vehicle for sale visible from the street and have a sign visible from the street (with at least 10" lettering). These requirements are in conflict with the Special Exception approved in 2003 (see attached), specifically items 3, 4 & 5.
- If approved, a State Retail Dealers license is required which must be approved by the Town.
- There have been some issues with unregistered motor vehicles being stored on the property over the years.
- There are pictures of the property in the file for review by the Board.

Mr. Perkins asked if square footage area was for the number of vehicles. Mr. Mackey said no that the 750 square feet could be for 1 vehicle or 50 and that it was up to the Board.

Ms. Nauerz said that the applicant stated that he could store up to 8 vehicles without changing the residential character of the property.

Mrs. Hampton asked how many vehicles were needed. Mr. Battye said 8 was ok.

## **Favor**

No one spoke in favor of the request.

## **Opposed**

No one spoke in opposition to the request.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Coppolo.

Vote: Unanimous.

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

## **Deliberative Session**

Mr. Virr said that he felt that the Board could find a way to accommodate the applicant as not much different to what he is actually doing now and only difference seems to be that his office would be relocating to the detached garage.

Mrs. Hampton said that he would be coming out of a grandfathered situation and into this century and that the property has a fence.

The Board reviewed the previous conditions made in the 2003 request.

Mr. Virr said that rather than modify that it would be best to change and list new conditions.

Mr. Mackey said that legal notice originally said auto wholesale so it would probably be a good idea to change rather than modify.

Mr. Perkins asked what conditions should be subject to granting.

Mr. Virr said that a condition of no non-resident employees and not more than one sign permitted and not to exceed 3 square feet in size and no internal illumination.

Mr. Perkins said that the State allows the Town to supersede sign requirements.

Mr. Virr said no repair of vehicles performed on the property.

Mr. Perkins said a condition of a limit of no more than 8 unregistered motor vehicles on the property at any time.

Mr. Coppolo said that a condition should be made that the 2003 Special Exception is void.

Mrs. Hampton said that she felt that the supersede condition should be listed as number 1.

There was some discussion with regard to State requirements for hours of operation.

Mr. Coppolo said a condition of hours of operation be noted as 8:00 am to 8:00 pm.

Mrs. Hampton said she believes that State should be as required by State as standards and not retail and that this would not be a normal retail store.

Mr. Virr said that he was concerned that 37 ½ hours week requirement was not a maximum and that if the property ever changed hands was a concern.

Mr. Perkins said that retail could be 24-7 as there were no guidelines.

Mrs. Hampton said that a restriction of only 8 vehicles allowed and applicant will be working from a computer is not the same as a large auto place.

Mr. Virr said that if someone purchased the property that it could pose a problem.

Mr. Perkins said that a condition that the use sunsets with the sale of the property be made.

Mrs. Evans reviewed the following conditions for the Board as follows:

1. Subject to obtaining all State and local permits and inspections.
2. No auto repair to be done at property.
3. Limit of 8 unregistered motor vehicles at any one time.
4. This Exception supersedes the 2003 Special Exception granted on February 20, 2003.
5. Hours of operation are 8:00 am – 8:00 pm.
6. This Special Exception expires upon sale of the property.
7. No junk vehicles to be stored on property

Mr. Virr motioned to come out of deliberative session.

Seconded by Mrs. Hampton.

Vote: Unanimous.

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

**Mrs. Evans motioned on case #16-101, James M. Battye to Grant Special Exception to the terms of Article VI, Section 165-48A.1 of the Town of Derry Zoning Ordinance to allow the operation of a retail auto business at the residence. Parcel ID 04110, 406 Island Pond Road, Zoned LDR with the following conditions:**

1. Subject to obtaining all State and local permits and inspections.
2. No auto repair to be done at property.
3. Limit of 8 unregistered motor vehicles at any one time.
4. This Exception supersedes the 2003 Special Exception granted on February 20, 2003.
5. Hours of operation are 8:00 am – 8:00 pm.
6. This Special Exception expires upon sale of the property.
7. No junk vehicles to be stored on property.

Seconded by Mr. Coppolo.

**Vote:**

**Mrs. Hampton: Yes.**

**Mr. Coppolo: Yes.**

**Mrs. Evans: Yes.**

Mr. Virr: Yes.  
Mr. Perkins: Yes.

**The application was Granted by 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.**

**15-130 Carrigg Commercial Builders, LLC**

**Request for Re-Hearing of Variance Denied on 12/17/2015 to the terms of Article VI, Section 165-45B.2.b & c of the Town of Derry Zoning Ordinance to allow the construction of an eight unit multi-family building on the property which has 129.70 feet of frontage and lot width where 150 feet is required. 1 Davis Court, Zoned MHDR, Parcel ID 27108**

Mr. Perkins said that the Board has received a rehearing request from Carrigg Commercial Builders, LLC of case #15-130.

Mr. Virr asked if the Board wished to take a few moments to review the information presented as there were a lot of pages submitted.

Mr. Perkins asked the Board if they wished to take a few moments to review the information or wish to table the request for 2 weeks as to have time to review information provided.

Mr. Coppolo said that he has read the material provided and feels okay to proceed tonight.

Mr. Virr said that there was a lot of material but did not see any new evidence that the Board had not addressed during the original meeting.

Mrs. Hampton asked if the Board if was possible to have the Town Attorney review the information.

Mrs. Evans said that she also has read the information and it is a lot of material but still feel that the Boards did not make any error in judgement in their original vote.

Mr. Coppolo said that there were a lot of statistics provided which were not procedural and feels that the Board had not erred in its original judgment. He felt that there were multiple criteria not met and that was the reason for denial.

Mr. Virr said that if the Board finds only one part of the 5 criteria not met it is enough reason for denial and that the Board had found multiple parts not met. He said he felt that rehearing the case would not change his original vote.

Mrs. Hampton said that she remembers the meeting and feels that the criteria was reviewed thoroughly and that the Board did not make an error in judgement or law.

Mr. Coppolo said that he agrees with the attorney that the applicant meets unnecessary hardship but also believe that 4 out of the 5 criteria were not met.

Mr. Perkins said that he did not believe that he needs to look at statics as he believes that no error in law or judgement was made.

Mr. Virr noted that the information submitted was stamped received February 19, 2016.

Mr. Mackey said that should read January 19, 2016 and it will be corrected.

Mr. Perkins said that he believes that each member has had time to review the information presented and he will accept a motion.

**Mr. Virr motioned to Grant a Re-Hearing Request for case #15-130 Carrigg Commercial Builders, LLC of Variance Denied on 12/17/2015 to the terms of Article VI, Section 165-45B.2.b & c of the Town of Derry Zoning Ordinance to allow the construction of an eight unit multi-family building on the property which has 129.70 feet of frontage and lot width where 150 feet is required. 1 Davis Court, Zoned MHDR, Parcel ID 27108.**

**Seconded by Mrs. Evans.**

#### **Vote**

**Mrs. Evans: No. Stand by original judgement.**

**Mr. Coppolo: No. Believe information presented would not change original vote.**

**Mrs. Hampton: No. Do not believe there is an unnecessary hardship and feel it would diminish surrounding property values.**

**Mr. Virr: No. Stand by issues identified at the original hearing. No new material or facts presented to warrant a rehearing.**

**Mr. Perkins: No. No error or judgement in law was made by the Board.**

**Request for Re-Hearing has been Denied by a vote of 0-5-0. Recourse is Superior Court.**

#### **Approval of Minutes**

Mr. Virr motioned to table the minutes for January 7, 2016 to the next meeting.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

### **Other Business**

Mr. Perkins said that he had submitted a note to all Board members with regard to meeting protocol and said that tonight's meeting had gone much more smoothly than previous meetings.

### **Adjourn**

Mrs. Hampton motioned to adjourn.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Adjourn at 8:30 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

### **Approval of Minutes February 4, 2016**

Mr. Virr motioned to approve the minutes for January 21, 2016 as amended.

Seconded by Mrs. Hampton.

Vote: Unanimous.

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