

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
October 19, 2023

Members Present

Lynn Perkins, Chairman
Craig Corbett, Vice Chair
Crystal Morin, Secretary
Donald Burgess
Richard Tripp

Members Absent

Alternates Present

James Dietzel
Michael Donlon
Gaspar Obimba

Alternates Absent

Code Enforcement

Robert Mackey, Code Enforcement Director

Mr. Perkins called the meeting to order at 7:00 p.m. with the salute to the flag. To participate in this meeting, you can be present or by dialing 323-909-140 or by clicking on the website address: derrycam.org/TuneIn the phone numbers are 646-558-8656 or 312-626-6799 meeting ID: 323-909-140 or if anybody has a problem, please call 603-845-5585 or email at: ginnyrioux@derrynh.org. In the event that the public is unable to access the meeting, the meeting will be adjourned and rescheduled otherwise the meeting will end at 10:00 PM.

The Board members introduced themselves.

23-130 Promised Land Survey, LLC
Timothy A. Peloquin, LLS
Owner: McMaster Development, LLC

The applicants are requesting a variance to the to the terms of Article VI, Section 165-45.1.A of the Town of Derry Zoning Ordinance to allow the construction of a 2-family dwelling on the property at 8 Hillside Ave, Parcel ID 29050, Zoned MHDR-II.

Timothy Peloquin, Promised Land Survey, LLC, said he was representing McMaster Development and that Steve McMaster was also present this evening. He reviewed the required criteria for the record.

Board Questions

Mr. Burgess said that in 1999 the area was multi-family and changed 5 years ago to single-family so he asked why unable to do what zoning allows. Mr. Peloquin said that 5 years ago 4A was not in the equation and post COVID also today has a shortage of affordable housing.

Mr. Burgess said that 4A was in the network of Planning stages.

Mr. Perkins asked if could expand more of reasonable verses excessive return and expand on the hardship as social aspect is not what statute allows. Mr. Peloquin said that the value of land has skyrocketed and in order to meet comps would need to build a much smaller home so that is why feel a duplex would best suit the area.

Mr. Perkins said deed transfer was in August so was not caught up in zoning changes so knew what purchasing. Mr. Peloquin said that they feel the hardship is that proposal would benefit the housing shortage for affordable housing.

Code Enforcement

Mr. Mackey provided the following information with regard to the property for the record.

- The applicant is requesting approval to operate a small automotive service and sales facility at his residence.
- The property is located on Hampstead Road is zoned Low Density Residential (LDR) and contains .62 acres.
- The proposal is to operate the business out of the existing detached garage.
- If approved, a State of NH DMV retail dealers license will be required.
- If approved, applicable State regulations must be followed with regard to waste oil, accidental spills, etc.
- There are pictures in the file for review by the Board.

Mr. Perkins asked in the development regulations what stipulates size. Mr. Peloquin said that 10,000 sq. ft. was a 100 x 100 lot.

Mr. Perkins asked what was the size of the construction. Mr. Peloquin said that he believes a floor plan was included in the packet but do not have a plan of the duplex.

Mr. Donlon asked if MHDR would not require a variance so why here. Mr. Mackey said that the requirements are 10,000 sq. ft. per unit so a duplex would require 20,000 sq. ft.

Mr. Mackey reviewed the ordinance criteria for the record.

Mr. Tripp asked what the front setback was. Mr. Peloquin said it was 14 feet.

Mr. Mackey said that the setback is 35' or average setback of 300 feet per either side and the applicant has provided a map showing the average front setbacks for the area.

Mr. Peloquin said that they designed the layout so that they could add a possible garage.

Mr. Tripp asked if the sheds etc. would be removed. Mr. Peloquin said yes.

Mr. Tripp asked if proposal was to only build a duplex. Mr. Peloquin said yes with garages per unit.

Mr. Perkins asked if would be 1 bay per unit. Mr. Peloquin said yes.

Mr. Tripp asked what was the setback with the garages as do not see garages on the plan. Mr. Peloquin said 14' and distance to pavement was 28' and described the plan for the record.

Mr. Perkins asked if the 1,300 square feet living space included the garage. Mr. Peloquin said no that was without the garage.

Mr. Corbett said a single family home would work here why not just do a single family structure. Mr. Peloquin said feel that the need for housing and allows the opportunity to build for rental property. He said that the neighborhood has many multi-family structures and reviewed the area for the record.

Mr. Corbett informed the public that now would be the time to call in favor of the proposed request. He said if wish to speak press star 9 and someone will answer your call.

Favor

No one spoke in favor of the request.

Mr. Corbett informed the public that now would be the time to call in opposition of the proposed request. He said if wish to speak press star 9 and someone will answer your call.

Opposed

No one spoke in opposition of the request.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mr. Tripp.

Vote: Unanimous.

Mr. Tripp, Mr. Burgess, Mrs. Morin, Mr. Corbett, Mr. Perkins.

Deliberative Session

Mr. Burgess said that he did not see any hardship presented.

Mr. Tripp said he knows of the housing needs and warrant to the applicants request as would clean up the property. He said that he was inclined to feel that it was a reasonable request.

Mrs. Morin said that she agrees with the Board's concerns and that the area does present a good mix of single-family and multi-family structures. She said that she did not see where the spirit of the ordinance has been shown.

Mr. Perkins said historically provide more work force housing and is basis for need but have concern of impact of the amount of square footage per dwelling and feel would be an over impact of the lot excessive verses reasonable use.

Mr. Tripp asked if only 2 bedroom units or would be 3 with a master bedroom.

Mr. Perkins said structure is proposed to be 1 car attached garage with parking for additional vehicle outside.

Mr. Burgess said that technically would not be 2 parking spaces if had a truck with a plow.

Mr. Perkins reviewed the condition for the record.

Mr. Corbett motioned to come out of deliberative session.

Seconded by Mr. Donlon.

Vote: Unanimous.

Mr. Donlon, Mr. Tripp, Mr. Burgess, Mrs. Morin, Mr. Corbett

Mrs. Morin motioned on case #23-130 Promised Land Survey, LLC, Timothy A. Peloquin, LLS, Owner: McMaster Development, LLC to Grant a variance to the to the terms of Article VI, Section 165-45.1.A of the Town of Derry Zoning Ordinance to allow the construction of a 2-family dwelling on the property at 8 Hillside Ave, Parcel ID 29050, Zoned MHDR-II as presented with the following conditions:

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

Seconded by Mr. Burgess.

Mr. Perkins reviewed the findings of fact as follows:

- Request is to convert the lot to a 2-family development.**
- Property is zoned MHDR-II**

- The lot is just under 10,000 square feet.

Vote:

Mr. Tripp: Yes.
Mr. Corbett: No. Feel that it is against the spirit and intent of the ordinance.
Mr. Burgess: No. Spirit of the ordinance is not observed. Hardship has not been shown.
Mrs. Morin: No. Feel the spirit of the ordinance criteria has not been met.
Mr. Perkins: No. Do not see hardship criteria has been proven and the spirit and intent of ordinance has not been met.

The application was Denied by a vote of 1-4-0. 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. Perkins would step down and Mr. Donlon would sit for the following case.

23-131 Adam M. Stowell

The applicant is requesting a special exception as provided in Article VI, Section 165-48.A.1 of the Town of Derry Zoning Ordinance to operate a small automobile service and sales facility out of the detached garage located on the property at 241 Hampstead Road, Parcel ID 10054, Zoned LDR

Adam Stowell, owner, reviewed the required criteria for the record and described what he was seeking to do at his property.

Board Questions

Mr. Corbett asked if work only on classic cars. Mr. Stowell said no that he used the photos for reference and he created the logo.

Mr. Corbett asked how many vehicles would be on the property. Mr. Stowell said no more than 12-15 at any one time. He said that the he has ample parking and 3 would be in the garage with 6 to 8 outside.

Mr. Burgess said that 12-15 vehicles was a lot and asked if would be doing oil changes etc. Mr. Stowell said no that he has established a service agreement with another shop and he would only be doing performance work.

Mr. Burgess asked if there would be a possibility of doing an oil or antifreeze change. Mr. Stowell said possibly and any hazards would be properly disposed of as would have bins and drums and he also heats by waste oil.

Mr. Burgess asked how a spill would be treated. Mr. Stowell said that he would utilize absorbent mats and speedy dry.

Mr. Burgess asked if the garage doors would be open while working on vehicles. Mr. Stowell said sometimes the doors are open but in the winter he has heat in his garage so the doors would be closed. He said no obnoxious fumes would be omitted and he does have a small exhaust fan.

Mr. Corbett asked what type of custom work would be performed. Mr. Stowell said mainly engine work and appearance upgrades.

Mrs. Morin asked what was the size of the garage. Mr. Stowell said it was 26' x 32' and that he would only be utilizing half for his business as other half would be for his personal use. He would have a small office space and will adapt the floor plan to meet the criteria.

Mr. Tripp asked if sales or performance work would be primary. Mr. Stowell said that he would have both sales and performance work.

Mr. Tripp asked if service work was onsite. Mr. Stowell said he would have some service work but not main agenda as have an agreement with other shops for service work.

Mr. Donlon said that stated 12-15 vehicles and have own personal vehicles. How many would be possibly turned around in a month. Mr. Stowell said hopefully 5 per month as not primary job at this point but wish to have someday. If reach that point will seek to locate a facility location as unable to do 40 hours a week at this time.

Mr. Corbett asked what hours of operation would there be. Mr. Stowell said 8:30 – 5:00.

Mrs. Morin said that the State would require a set of hours.

Mr. Tripp asked if the display area is part of the business 12- 15 cars feel would take considerable area. Mr. Stowell said that the garage is the physical part of the business and not looking to be Route 28 as would mostly be utilizing online sales for advertising.

Mr. Tripp said that the area was residential and 12-15 vehicles at a time was a bit much. Mr. Stowell asked what would be a reasonable number.

Mr. Corbett asked if could possibly work with 6 vehicles. Mr. Stowell said that he would possibly drive 1 or 2 of the vehicles and have 2 personal and 6 business vehicles.

Mr. Corbett asked if would feel comfortable with a condition of only 6 vehicles not being excessive. Mr. Stowell said that was reasonable.

Mrs. Morin said that a dealers license requires to be open a certain number of hours. Showing vehicles on lot and asked if any would be on the road. Mr. Stowell said that he would be no closer to the road than what was pictured.

Mr. Obimba asked how far from street would the vehicles be located and how do the vehicles get to the property. Mr. Stowell said 75-100 feet to road and that he has a flat bed car trailer for transporting vehicles.

Mr. Corbett asked if vehicles were purchased at auction. Mr. Stowell said he purchases via websites and auctions.

Mr. Burgess asked what happens to spare parts. Mr. Stowell said that he has a scrap guy and also have sufficient storage on side of garage and would not have a junk yard.

Mr. Burgess asked how far was the garage to the road. Mr. Mackey said possibly 75-100 feet possibly more.

Code Enforcement

Mr. Mackey provided the following information with regard to the property for the record.

- The applicant is requesting approval to operate a small automotive service and sales facility at his residence.
- The property is located on Hampstead Road is zoned Low Density Residential (LDR) and contains .62 acres.
- The proposal is to operate the business out of the existing detached garage.
- If approved, a State of NH DMV retail dealers license will be required.
- If approved, applicable State regulations must be followed with regard to waste oil, accidental spills, etc.
- There are pictures in the file for review by the Board.

Mr. Perkins asked if limit performance to vehicles what is the motorcycle and if that was also part of the performance enhancements to be conducted from the property. Mr. Stowell said he sold the motorcycle and typically do not work on motorcycles.

Mr. Perkins said that the purchase vehicles at auction and do performance for future sales. Mr. Stowell said yes as stick to performance work and like all types of vehicles but primary focus is Japanese vehicles or classic performance cars.

Mr. Perkins asked if upstairs utilization to be balance of 750 square feet to meet the State criteria if can meet space and is garage large enough. Mr. Stowell said yes for office area and car storage and would have a sitting area consisting of a desk and chair for title services.

Mr. Donlon asked what long term intention would be. Mr. Stowell said he hopes to grow and expand. His long term is in 5 years be able to expand into a commercial property and import vehicles from other countries.

Mrs. Morin asked how far was wetlands to the garage. Mr. Stowell said 20 feet or more.

Mrs. Morin asked what type of flooring was in the garage. Mr. Stowell said it was concrete and not sealed.

Mr. Corbett informed the public that now would be the time to call in favor of the proposed request. He said if wish to speak press star 9 and someone will answer your call.

Favor

No one spoke in favor of the request.

Mr. Corbett informed the public that now would be the time to call in opposition of the proposed request. He said if wish to speak press star 9 and someone will answer your call.

Opposed

No one spoke in opposition of the request.

Mr. Corbett asked if the hours requested was Monday – Friday 8:00 AM – 5:00 PM and Saturday and Sunday by appointment only. Mr. Stowell said yes.

Mr. Tripp asked if condition of no vehicles to be stored outside would be a problem. Mr. Stowell said would possibly have a project vehicle outside but would respect Board's decision and could possibly arrange for off site storage if needed.

There was some discussion with number of vehicles to be stored onsite.

Mr. Donlon asked if there was an ability to establish a sunset requirement. Mr. Burgess said that already has in the special exception request.

Mr. Mackey said that a special exception is unique to the individual and does not go with the land so once move away the use goes away.

Mr. Obimba asked if testimony confirms neighbor approval if they could appeal. Mr. Corbett said legal testimony.

Mr. Tripp said he was struggling with display and number of vehicles.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mr. Tripp.

Vote: Unanimous.

Mr. Donlon, Mr. Tripp, Mr. Burgess, Mrs. Morin, Mr. Corbett

Deliberative Session

Mr. Tripp said that Mrs. Morin stated that to hold a dealer license have to have 750% of space and appears that maximum space is 390 square feet and unspecified area of display and storage. He said that the ordinance states can not exceed 25% of what considered as a home business.

Mrs. Morin said that is based on the Board's decision as the State will work with Code Enforcement regarding requirements. To hold a dealers license requires 750% then applicant has to go to the next step. She said that she did not feel that the applicant will be keeping parts on the property.

Mr. Corbett said that he understands the sunset concerns and do not see a need as the applicant has stated his long term objective was to move to a commercial location.

Mr. Donlon said long term goals are reasonable but no way to manage and before you know it then have 50 or more vehicles on the property.

Mr. Corbett said that would need to rely on neighbors to take notice and inform the Code Enforcement Office.

Mr. Mackey said that the Town limits a sign of 3 square feet and that the State typically waives and goes by Town regulations.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mrs. Morin.

Vote: Unanimous.

Mr. Donlon, Mr. Tripp, Mr. Burgess, Mrs. Morin, Mr. Corbett

Mr. Corbett asked if the hours of operation 9:00 AM – 6:00 PM Monday – Friday and hours by appointment only on Saturday & Sunday work. Mr. Stowell said yes.

Mrs. Morin motioned on case #23-131 Adam M. Stowell to Grant a special exception as provided in Article VI, Section 165-48.A.1 of the Town of Derry Zoning Ordinance to operate a small automobile service and sales facility out of the detached garage located on the property at 241 Hampstead Road, Parcel ID 10054, Zoned LDR as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Hours of operation 9:00 AM – 6:00 PM Monday – Friday and hours by appointment only on Saturday & Sunday.**
- 3. No more than 6 vehicles for business use on property at a time.**
- 4. Sign limited to no more than 3 square feet and not to be internally illuminated.**

Seconded by Mr. Burgess.

Mr. Corbett reviewed the findings of fact as follows:

- **The property is located in the Low Density Residential zone (LDR)**
- **Applicant is requesting approval to operate a small automotive service & sales facility out of an existing detached garage.**
- **Property is 0.62 acres**
- **State of NH DMV retail dealers license will be required to be obtained.**
- **State regulations must be followed with regard to waste oil, accidental spills, etc.**
- **No more than 6 vehicles related to the business allowed at a time.**
- **Hours of operation 9:00 AM – 6:00 PM Monday – Friday and hours by appointment only on Saturday & Sunday.**

Vote:

Mr. Burgess: Yes.
Mrs. Morin: Yes.
Mr. Tripp: Yes.
Mr. Donlon: Yes.
Mr. Corbett: 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.

23-132 Kenneth & Tunde Eyring

The applicants are requesting a one year extension of the variance granted on October 7, 2021 to the terms of Article VI, Section 165-32.1.A of the Town of Derry Zoning Ordinance to allow the conversion of the existing two-family dwelling into a three family dwelling at 4 Lenox Road, Parcel ID 32033, Zoned GC

Mr. Mackey said that the applicants request is for an extension to their variance as per State statute a variance expires after 2 years. The applicant submitted their request prior to the expiration date.

Mr. Eyring said that he submitted his request for extension as Covid impacted their plans. He said that they had tried to retain an engineer to survey the property and found a surveyor in April but they did not survey the property so had to hire another surveyor to survey the property.

Mr. Perkins said that a 2 year extension is allowed. Mr. Eyring said he feels that they will be ready to submit their plans to Planning Board within a year.

Mr. Mackey said that a formal submission will stop the clock.

The Board reviewed the 2 year statute with the applicant.

Mr. Eyring said he would be willing to accept 2 years but is hoping that they only need one year.

Mr. Perkins asked if a one year extension could be made. Mr. Mackey said that the State statute is 2 years or void or can be extended for good cause and does not specify.

Mr. Tripp motioned to go into deliberative discussion.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Perkins, Mr. Corbett, Mrs. Morin, Mr. Burgess, Mr. Tripp

Deliberative Session

Mr. Perkins reviewed the motion for the record.

Mr. Tripp motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Perkins, Mr. Corbett, Mrs. Morin, Mr. Burgess, Mr. Tripp

Mrs. Morin motioned on case #23-132 to Grant a variance extension for Kenneth & Tunde Eyring, 4 Lenox Road, Parcel ID 32033 as allowed per State statute.

Seconded by Mr. Corbett.

Mr. Perkins reviewed the findings of fact as follows:

- **The applicant is requesting an extension for variance dated October 7, 2021.**
- **The property is located in the General Commercial zoning district (GC).**

Vote:

Mr. Corbett: Yes.

Mrs. Morin: Yes.

Mr. Burgess: Yes.

Mr. Tripp: 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.

Vote:

**Mr. Dietzel: Yes.
Mr. Corbett: Yes.
Mr. Obimba: Yes.
Mr. Donlon: Yes.
Mr. Perkins: Yes.**

The application was Granted by a vote 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.

Other Business

Mr. Mackey said that the office had not received any case submissions for the November 2, 2023 meeting so there will be no meeting held that evening.

Approval of Minutes

Mr. Corbett motioned to approve the minutes of October 5, 2023 as amended.

Seconded by Mr. Donlon.

Vote: 7-0-1

Yes: Mr. Perkins, Mr. Corbett, Mrs. Morin, Mr. Burgess, Mr. Donlon, Mr. Dietzel, Mr. Obimba

Abstain: Mr. Tripp

Adjourn

Mr. Dietzel motioned to adjourn.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Perkins, Mr. Corbett, Mrs. Morin, Mr. Burgess, Mr. Tripp, Mr. Obimba, Mr. Dietzel, Mr. Donlon

Adjourn at 8:54 pm

Minutes transcribed from notes & tape:

Ginny Rioux
Recording Clerk

Approval of Minutes January 4, 2024

Mr. Corbett motioned to approve the minutes of October 19, 2023, as amended.

Seconded by Mrs. Morin.

Vote: Unanimous.

Mr. Obimba, Mr. Dietzel, Mr. Tripp, Mrs. Morin, Mr. Corbett, Mr. Perkins.