

TOWN OF DERRY  
ZONING BOARD OF ADJUSTMENT MINUTES  
February 4, 2016

**Members Present**

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

**Members Absent**

Stephen Coppolo

**Alternates Present**

Dana Nauerz

**Alternates Absent**

Katherine Prudhomme-O'Brien

**Code Enforcement**

Robert Mackey

Mr. Perkins called the meeting to order at 7:01 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.

**16-102          Jessie D. Aseltine**

**The applicant is requesting a Special Exception as provided in Article VI, Section 165-46.B of the Town of Derry Zoning Ordinance to allow the operation of carpentry and remodeling business from the residence at 21 Chester Road, Parcel ID 43020 , Zoned MDR**

Jesse D. Aseltine, owner, reviewed his criteria points and letter of explanation for the record.

**Board Questions:**

Mr. Perkins asked if the area inside was less than 8% use for the office. Mr. Aseltine said yes.

Mr. Aseltine said that he loves Derry and the school district. He said that he recently performed the renovations at the Grind. He said that his customer cliental has told him that when they have called contractors to perform work he was the only person that

returned the customers call. He said that he has no plans to grow as he feels that he can give a more personal touch and that quality control was an essential part of his work.

Mr. Virr asked how long has he resided in Derry. Mr. Aseltine said he moved to his home in 2010 and had previously rented in Derry in 2009.

Mr. Virr asked what types of vehicles and how many were being requested to park where on the property. Mr. Aseltine said that he has one pick up and 2 trailers of which one is a small enclosed utility trailer and the other is a small dump trailer that would be parked in his driveway.

Mr. Virr asked how did he become a carpenter for a trade. Mr. Aseltine said that it started with playing with Legos as a kid and in his senior year he had to do a project so he constructed a 12' x 20' porch on his parents' home and fell in love with working with wood.

Mrs. Hampton asked if the vehicles were diesel as that could possibly create noise and odor. Mr. Aseltine said that no, that he has a Toyota Tundra which he felt was not obnoxious to the neighborhood.

Mr. Virr asked what the small red vehicle in the pictures was. Mr. Aseltine said that was his subcontractor's vehicle who was visiting and he sometimes parks at the home and that they ride together to a job.

Mr. Virr said that he was familiar with the home and was impressed with the changes.

Mrs. Hampton said that they have had previous cases in past with safety issues regarding egress. Mr. Aseltine said that Rte. 102 was a busy road and somedays he may have to wait to back his trailer into his driveway.

Mr. Virr asked what was the length of the trailers and if there was advertising on them. Mr. Aseltine said that his utility trailer has advertising and was 10' and he has an 8' open trailer.

Mrs. Evans asked if there was demolition or construction material being stored on-site. Mr. Aseltine said that there is some material but it was for his own home.

Mrs. Evans asked if the sub-contractor parks at the property. Mr. Aseltine said he operates solo and his subcontractor typically meets him on the job site but does park at his home on occasion.

Mrs. Evans asked if the remodeling is done at his home or other places. Mr. Aseltine said that he works at the customer's property.

Ms. Nauerz asked if there was no display for customer viewing at the home. Mr. Aseltine said that there were no customer's display at his home and he directs people to view his website.

Mrs. Hampton asked where was business being conducted up to this point in time. Mr. Aseltine said he has been operating from his home.

Mr. Virr asked if the deed has been recorded at the Rockingham County Registry as he sees the home was purchased from parents but do not see recording. Mr. Aseltine said that it was a private mortgage and it has been recorded at the registry.

Mr. Virr asked if the property was in their name and they were receiving a tax bill they may want to check on recording. Mr. Aseltine said that he does receive a tax bill and will check into the recording.

### **Code Enforcement**

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

- The applicant was previously sent 2 letters of non-compliance and that is how the applicant is here this evening.
- The applicant is requesting approval to operate carpentry and remodeling business from the residence.
- The request includes an in-home office and the parking of a pick-up truck, a small lettered open trailer and a small, lettered enclosed trailer on the property.
- If a sign is being requested, a sign permit will be required.
- If approved, this office would request that the Board consider limiting the amount of construction related material that can be stored or deposited on the property.
- Tradesman allowed – up to Board to determine if 9 criteria are met.
- There are pictures of the property in the file for review by the Board.

### **Favor**

Arthur Learnard, 23 Chester Road, said that he was a unique abutter as he owns property along the north side and east side of the applicant and also have an acre of woods across the street so essentially the only abutter aside from the nursing home across the street. Mr. Learnard said that the applicant is the 5<sup>th</sup> family to live in the home and is by far the best neighbor. He said that he is also a restoration contractor in Massachusetts so he was sort of biased. Mr. Learnard said that he has not witnessed any lumber trucks or deliveries to the property. He does have 3 active boys who are very busy but other than that there has been no disturbance and he was in support of granting the request.

### **Opposed**

Roberta Robie, 25 Chester Road, said that she was concerned with the safety issues as Route 102 is a very busy road and the speed limit is not adhered to and there are numerous accidents in the area. Mrs. Robie said that she wished to provide the Board with pictures of the area. Mrs. Robie explained the pictures for the record. She said that the nursing home across the street has a number of fire trucks, ambulances, staff and

visitors at all times of the day and night which at times can make it difficult to enter or exit her property. She said that there is also a bus company that operates from 6:30 am until 4:00 pm that has a large number of busses entering and exiting. She said that at times she is unable to see to exit her driveway in a safe manor as the applicant parks in front along the road. She said that the property has a large amount of construction debris which sometimes covers the driveway and is unsightly. Along the rear and side usually has a huge pile of construction debris in the shape of a Teepee which is burned. She said that the fire department has been there due to a large fire when they have burned the debris. She said that she was concerned that the homes are very close and should a fire occur it could wipe out all of their homes. Also concerned with regard to the parking of 25' of lot line as photos show vehicles parked along the highway which is not 25' so she has a question as to what it means. She said that the construction debris scattered about the property changes the residential character. If approved she would like the Board to make conditions of no burning of construction debris and no storage of construction materials. She said that the applicant has received 2 letters from Code Enforcement, one on April 21, 2015 and one on December 30, 2015 for non-compliance and it is now close to a year where the applicant has done nothing. She said if he was granted approval and the Board puts restrictions on she felt that the applicant would not adhere to them where didn't comply with letters from the Code Enforcement Office. Mrs. Robie stated that she maintains her own yard and provided the Board with photos of her property. She said that she spends many hours maintaining her own yard and enjoys her property and being outside. She said that she feels that the burning of construction debris is hazardous to her health.

### **Rebuttal**

Mr. Aseltine said that he appreciates Mrs. Robie's concerns and would like to address the fires and burning. He said that he burns firewood for heat and does have a large pile of firewood located on the property. He said he has 4 children and feels that there are more toys on the property than construction debris. Mr. Aseltine said that he has met with the Fire Chief with regards to outside burning and has agreed to burn after dark when Mrs. Robbie is in her house. He said that he had not seen the pictures that Mrs. Robbie had submitted and feels that the construction material that she was referring to is a stack of pavers that are located next to his driveway for a future patio that he would be installing on his property. He said that he does not have clients or customers coming to his home and on occasion a subcontractor does park in his driveway and rides to the job site with him. He said that as far as obstructing view and parking along roadside that his wife does have medical issues but he will address that issue and try to limit to a minimum.

Mr. Perkins said that the photos that Mrs. Robbie submitted were of her property.

Ms. Nauerz asked if a burning permit had been obtained from the fire department and if it was a seasonal permit which only allows burning after 5pm. Mr. Aseltine said yes he has a seasonal permit and only burn after dark.

Mr. Virr said that he understands Mrs. Robie's concerns with traffic as people do go through the rotary very fast.

Mrs. Hampton said that there was a question previously asked where was the business conducted and response was said at the home. She said that testimony was made that he had received two notices of violation and asked why was there a disregard to notices for such a long time. Mr. Aseltine said that when he was first notified that they were considering moving and looking at houses. He said that he found it difficult to find something to meet his families criteria needs. He said that he waited as he thought he would have been moving.

Mr. Learnard said that the construction debris on the applicants property is what is he is utilizing for his own home. He said that he knows what it's like to be self-employed as he has he had steel staging on his own home for two years as it is hard to find time to work on own home as own projects take time. He said he understands his neighbor's health concerns and also has a neighbor that enjoys bonfires. He said that the Nursing Home is a problem in itself as people do not slow down for turning. The police do periodically park along the roadway and it does have people go slower but the police are not there every day so it does get busy at times. He said that he lives in an area where it is busy as they live near the bus company and a chemical toilet company that are grandfathered.

Mr. Perkins asked when working on own home how much of the construction debris on the property was his from own projects. Mr. Aseltine said 90 %.

Mr. Perkins asked when burning what was the materials being burned and what are the teepees. Mr. Aseltine said not sure of what the teepee was and he does have a pile of wood in the rear yard.

Mrs. Robbie said that firewood is different than burning of construction debris. She said that the applicant does have 2 trailers along with an enclosed trailer on the property not just one trailer.

Mr. Learnard said that he owned the other trailer that Mrs. Robbie was referring to.

Mr. Perkins asked if could speak to hours of operation and potential growth. Mr. Aseltine said that he did not see growth but maybe 1 employee as he said he was proud of quality control and personal touch. If he grows beyond that he will look for commercial space but did not see that happening.

Ms. Nauerz asked what would be the hours of operation. Mr. Aseltine said 7:30 to 5:30 Monday – Saturday.

Mrs. Hampton motioned to go into deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

## Deliberative Session

Mr. Virr said that the case was a typical self-employed carpentry business that falls under the Special Exception of a tradesman. He felt that the case was a bit hampered with the parking of vehicles and feel that they should be restricted to parking only one vehicle.

Mrs. Hampton said that a possible restriction of no on-street parking of business vehicles be a condition.

Mr. Perkins said the standard condition of being subject to all State and local permits and inspections be noted as a condition. He said that the applicant did not request a sign but if he wishes to have one then he would be required to obtain a permit from Code Enforcement.

Mr. Virr said a condition of no construction debris except what is being utilized for own home repairs be stored on property and a condition of hours of operation to be 7:30 am – 6:00 pm Monday – Saturday.

Mr. Perkins said that the applicant has 1 truck and 2 trailers and sometimes a second truck is at the property and that there was room in the driveway for the possibility of a 2<sup>nd</sup> truck to be parked in the driveway if needed.

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

1. Subject to obtaining all State and local permits and inspections including burn permits.
2. No construction debris not pertaining to residence to be stored on property.
3. Hours of operation are 7:30 am – 6:00 pm Monday - Saturday.
4. No on-street parking of business related vehicles

Mrs. Hampton motioned to come out of deliberative session.

Seconded by Ms.Nauerz.

Vote: Unanimous.

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

**Mrs. Evans motioned on case #16-102, Jesse D. Aseltine to Grant a Special Exception as provided in Article VI, Section 165-46.B of the Town of Derry Zoning Ordinance to allow the operation of a carpentry and remodeling business from the residence at 21 Chester Road, Parcel ID 43020 , Zoned MDR with the following conditions:**

- 1. Subject to obtaining all State and local permits and inspections including burn permits.**

2. **No construction debris not pertaining to residence to be stored on property.**
3. **Hours of operation are 7:30 am – 6:00 pm Monday - Saturday.**
4. **No on-street parking of business related vehicles.**

**Seconded by Mr. Virr.**

**Vote:**

**Mrs. Evans: Yes.**  
**Mr. Virr: Yes.**  
**Mrs. Hampton: Yes.**  
**Ms. Nauerz: 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.**

**15-131 Joshua Lane**  
**Owner: Joshua Lane & Jordan A. Doherty**  
**Chester Road Realty Trust**

**Request for Re-Hearing of Special Exception Denied on 1/7/2016 as provided in Article VI, Section 165-48A.1 of the Town of Derry Zoning Ordinance to operate a roofing business from the residence. 115 Chester Road Parcel ID 12020 Zoned LDR**

Mr. Perkins said that the Board has received a rehearing request with regard to case #15-131 and wanted to know the Boards thoughts.

Mr. Virr said that he had concerns with the request being submitted on February 2, 2016 and wished that rehearing requests were subject to the ten day review rule. He said that the information provided did not have pictures labeled and he also has not had time to review the information submitted as it was a complex case. Mr. Virr said that he wished to postpone until the next meeting in order to have time to review the information that has been provided.

Mr. Perkins said that Mr. Coppolo had also sat on the case and was absent this evening. He said that he would entertain a motion to take up the rehearing request at the next meeting on February 18, 2016.

**Mr. Virr motioned on the Request for Rehearing of case #15-131, Joshua Lane, Owner: Owner: Joshua Lane & Jordan A. Doherty Chester Road Realty Trust of Special Exception Denied on 1/7/2016 as provided in Article VI, Section 165-48A.1 of the Town of Derry Zoning Ordinance to operate a roofing business from the residence. 115 Chester Road Parcel ID 12020 Zoned LDR to be tabled to January 18, 2016.**

**Seconded by Mrs. Hampton.**

**Vote: Unanimous.**

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

### **Approval of Minutes**

Mr. Virr motioned to approve the minutes for January 7, 2016 as amended.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

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

### **Other Business**

Mr. Perkins said that Notice of Decision with regards to Accurate Transport case from the Rockingham Superior Court granting the Town's Partially Assented To Motion to Cancel Status Conference and in granting this the Court has now closed this matter.

Mr. Perkins said that the 22<sup>nd</sup> Annual Spring Planning & Zoning Conference will be held on April 23, 2016 and registration opens on February 22, 2016.

### **Adjourn**

Ms. Nauerz motioned to adjourn.

Seconded by Mrs. Evans.



Vote: Unanimous.

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

Adjourn at 8:24 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

**Approval of Minutes February 18, 2016**

Mr. Virr motioned to approve the minutes of February 4, 2016 as amended.

Seconded by Mrs. Evans.

Vote: Unanimous.

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