

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
February 18, 2016

Members Present

Lynn Perkins, Chairman @ 8:05 pm
Allan Virr, Vice Chairman
Heather Evans, Secretary
Teresa Hampton
Stephen Coppolo

Members Absent

Alternates Present

Katherine Prudhomme-O'Brien @ 8:05 pm left

Alternates Absent

Dana Nauerz

Code Enforcement

Robert Mackey

Mr. Virr called the meeting to order at 7:04 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. Virr explained that due to the nature of tonight's meeting agenda, the request for rehearing would be taken up last due to a "Joint Meeting" for the AMK Auto Wholesale Brokers with the Conservation Commission and Planning Board.

Planning Board

John O' Connor, Vice Chair
Randall Chase, Town Admin Rep
Mark Flattes, Alternate

Conservation Commission

Margaret Ives, Chair
Eileen Chabot, Treasurer

It was noted for the record that Mr. Virr would sit as Chair and Mrs. Prudhomme-O'Brien would sit for the following case.

**16-103 AMK Auto Wholesale Brokers, Inc.
Owner: Kachanian Two Realty Trust**

The applicant is requesting a Special Exception as provided in Article VIII, Section 165-67 of the Town of Derry Zoning Ordinance to allow motor vehicle service and repair at the property which is located in the Groundwater Resource Conservation District (GRCD). This request requires a joint hearing of the Zoning Board of Adjustment, the Planning Board, and the Conservation Commission. 8 Tinkham Avenue, Zoned IND IV Parcel ID 35015-011

Alan Kachanian, owner, read letter of explanation and reviewed the 4 requirements as listed in section 165-67 for the record. He said that this building has been before all 3 Boards in the past and the last request was for a powder coating business.

Mr. Mackey said that he believed that White Knuckle was recently heard by the Boards and that this business also had sales along with some repairs to FedEx vehicles.

Mr. Kachanian said that business was no longer there and they also had dealer plates.

Board Questions:

Mrs. Evans asked if the property was serviced with Town septic or its own septic system. Mr. Kachanian said the property was serviced by Town water and sewer and also natural gas.

Mrs. Evans asked if sewer line easement would affect the aquifer. Mr. Kachanian said no that it goes straight to the sewage system.

Mr. Coppolo asked if operating business for 22 years was at a different location. Mr. Kachanian said yes he has been located in Windham, NH. He said that the DMV is all set and is just waiting for him to complete paperwork with the Town of Derry as his renewal is in March.

Mr. Coppolo asked if business was ever cited by the State or Environmental Services. Mr. Kachanian said no.

Mrs. Hampton asked if there have ever been any EPA violations. Mr. Kachanian said that he has never had any EPA violations and has been located in Windham for the past 12 years and before that he was in Hampstead near the Little Mexico Restaurant.

Planning Board

John O'Connor, Chair, said that this is the 3rd or 4th area on Tinkham Ave that they have reviewed. The property area is serious as for 7 months the drainage has a natural flow down to Franklin Street and comes in from the cinema area. He said that there are no drains in the building and would like to set some conditions such as a limit of outside storage and no steam cleaning of vehicles. Mr. O'Connor said the area is currently being

monitored by the EPA MS4 process and has been found satisfactory so far and he would not want the area to be contaminated. Mr. Kachanian said that he would not be doing any car washing and he does not clean car engines.

Mark Flattes, Planning Board, asked if he would be servicing his own vehicles as well as other outside customers and if so would there be commercial type vehicles such as F550 pickups, etc. Mr. Kachanian said that he would not be working on commercial type pickups but possibly box van type vehicles, but nothing larger. He said that he also was seeking an inspection station license.

Conservation Commission

Margaret Ives, Chair, asked what areas on the provided map was the aquifer boundary outlined. Mr. Mackey explained that the map showed the acquirer area in pink and outside the aquifer is noted in gray.

Ms. Ives asked where snow storage was being located. Mr. Kachanian said that the plowing of the area has always been contracted out and the snow has been put in the same location for a number of years.

Eileen Chabot, Treasurer, said during testimony it was stated that no floor drains were present and if he could verify that there were no floor drains. Mr. Kachanian said that he purchased the building in 1978 and it did have drains at that time but in 1980 he had them all sealed.

Ms. Chabot said that she understands own vehicles stored inside but if work on someone else's vehicle and their car comes in with snow on it and it melts onto the floor how would that be contained. Mr. Kachanian said that if they were to work on an outside vehicle it would be completely cleaned off outside before it came into the building.

Ms. Chabot asked if water collected in the catch basin how would it be contained. Mr. O'Connor said that the pig mats were containment mats with their own oil separators.

There was discussion with regard to storage of hazardous waste and how it was removed from the property for disposal.

Mr. O'Connor informed the Board that the purpose here was with regard to the aquifer. He described the area for the Board.

Mr. Coppolo asked what particular types of vehicles were serviced such as minis, diesel, etc. Mr. Kachanian said that he did not work on diesel vehicles but more of basic passenger type vehicles such as SUV's, pickups, etc. He said he was similar to Lolo's. He said that Buster at Motor Sports works on diesel so would send vehicles there.

Mr. Coppolo asked if he worked on typical commercial vehicles such as fleet type trucks or limos. Mr. Kachanian said no that he was a small business and did not work on that type of vehicle.

Mrs. Hampton asked if he was required to take courses with the EPA as he appeared to be up to date with requirements. Mr. Kachanian said that he keeps up with regulations on his own.

Mrs. Hampton said that knowing the property was located within the aquifer where would the vehicles be cleaned. Mr. Kachanian said that if a vehicle needed to be cleaned it would be taken to the car wash next door and that he worked on mostly high end vehicles that were mostly newer vehicles.

Mrs. Hampton said that it was stated that he would have spill kits available. Mr. Kachanian said that he does have kits but has never had to utilize them as he keeps his floor clean.

Mr. Virr asked what was currently in building E and that he also sees a lot of old vehicles outside. Mr. Kachanian said there was currently no tenant at the present time but he does have a few vehicles currently in the building. He said as for the vehicles outside they belong to another tenant and they have been spoken to.

Code Enforcement

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

- The applicant is requesting approval to operate a motor vehicle service and repair facility.
- The proposed use is a permitted use in the Industrial IV Zoning District.
- The property is located in the Groundwater Resource Conversation District (GRCD) or aquifer district which requires that a special exception be obtained for this particular use. (see Zoning Ordinance – Article VIII, Section 165-67A)
- The hearing for a special exception requires a joint meeting with the Planning Board and Conservation Commission in order to obtain advice from these Boards.
- In order for the special exception to be granted, the Board must find, in written findings of fact, that the four criteria as stated in Section 165-67B have been met (see attached)
- There are pictures in the file for review by the Board.

Favor

Donald Burgess, High Street, said that when he was previously on the Zoning Board that he remembers hearing 4 cases that were similar to what the applicant was requesting that the Board had granted those requests.

Opposed

No one spoke in opposition to the request.

Mrs. Evans motioned to go into deliberative session.

Seconded by Mrs. Hampton.

Vote: Unanimous.

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

Deliberative Session

Mr. Virr reviewed the following conditions for the Board as follows:

1. Subject to obtaining all State and local permits and inspections.
2. No outdoor washing of vehicles.
3. No steam cleaning or chemical cleaning of vehicles.
4. Water mats must be utilized.
5. All cleaning materials must be Eco-Friendly.

Mr. Coppolo asked if the wording of environmental safe chemicals was recognized as a class of chemicals and questioned the wording.

Mr. Virr said that it meant green and that he had taken the wording of conditions from a previous case. He said that he felt that the applicant knows the rules involved. He asked Mr. O'Connor if any other conditions were needed or any special classification requirements.

Mr. O'Connor said the State uses Eco-friendly as a term.

Ms. Ives said that Eco-friendly works.

Mr. Flattes said that he questioned how much waste was being stored as if it is more than one container it is required to be raised.

Mrs. Hampton said that was not covered in the testimony.

Mr. Virr said that was regulated by the State.

Mr. Coppolo asked Mr. O'Connor as to what context did DES use term the Eco-friendly as he was concerned of that listing items as conditions if they do not know what they are speaking to. Mr. O'Connor said that the website speaks to Eco-friendly when cleaning decks, garages etc.

Mrs. Hampton motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Mrs. Evans motioned on case #16-103, AMK Auto Wholesale Brokers, Inc., Owner: Kachanian Two Realty Trust to Grant a Special Exception as provided in Article VIII, Section 165-67 of the Town of Derry Zoning Ordinance to allow motor vehicle service and repair at the property which is located in the Groundwater Resource Conservation District (GRCD) at 8 Tinkham Avenue, Zoned IND IV Parcel ID 35015-011 with the following conditions:

- 1. Subject to obtaining all State and local permits and inspections.**
- 2. No outdoor washing of vehicles.**
- 3. No steam cleaning or chemical cleaning of vehicles.**
- 4. Water mats must be utilized.**
- 5. All cleaning materials must be Eco-Friendly.**

Seconded by Mr. Coppolo.

Vote:

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

Mr. Virr polled the members of the Planning Board and Conservation Commission.

Planning Board:

Mr. Flattes: Yes.
Mr. O'Connor: Yes.
Mr. Chase: Yes.

Conservation Commission:

Mrs. Chabot: No. Do not feel enough conditions. Was part of original group that developed rules and intent was to make sure this type of use was not in the aquifer zone.
Ms. Ives: Yes.

The application was Granted by vote of 9-1-0. 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 sit as chair for the following case. Mrs. Prudhomme-O'Brien dismissed herself.

**16-104 AMK Auto Wholesale Brokers, Inc.
Owner: Kachanian Two Realty Trust**

The applicant is requesting a Variance to terms of Article VI, Section 165-42A and 165-42C.2 of the Town of Derry Zoning Ordinance to allow motor vehicle sales at the property. 8 Tinkham Avenue, Zoned IND IV, Parcel ID 35015-011

Alan Kachanian, owner, read his application and letter of explanation for the record. He said that he was seeking to repair, sell and inspect vehicles at the property. He said that he works on SUV's and passenger type vehicles but not on tractor trailer trucks or diesel trucks and does not work on transmissions. He said that he deals mostly with sales and that his vehicles would be kept inside with an occasional vehicle outside. Mr. Kachanian said his vehicles are advertised on craig's list, car rules and internet sales so do not need outside display. He said that some vehicles may be outside but will always be locked up inside at night due to possible vandalism, etc. if left outside overnight.

Board Questions

Mr. Virr said that license changes imposed by the State stipulation bond requirements and the signage requires 10" letters. Mr. Kachanian said would go by State requirements and does not have any issues with bond requirements.

Code Enforcement

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

- The applicant is requesting a variance to allow motor vehicle sales at the property, 8E Tinkham Ave in order to obtain a State Dealers License.
- The applicant has represented that the vehicles for sale will be primarily stored indoors and the intention is not to have an exterior used car lot with vehicles advertised for sale.
- The zoning ordinance does not list vehicle sales an allowed use in the Industrial IV Zoning District and Section 165-42.C.2 specifically prohibits automobile vehicle sales. This change was incorporated into the Zoning Ordinance in order to prevent the proliferation of used car lots in the Industrial IV District.
- If approved, the applicant will be applying for a State Retail Dealers License for this location.
- There are pictures in the file for the review by the Board.

Board Questions

Mr. Kachanian said that the Dealer's License no longer requires 750 square feet but only requires office space. The new law just became effective.

Mr. Perkins asked if the 750 square feet was still covered under this request. Mr. Kachanian said yes as he has 7,000 square feet.

Mr. Perkins asked if the 10" high letters would be located in windows.

Mr. Coppolo said that he was under the understanding that they were not allowed.

Mr. Mackey said the applicant is entitled to have a sign and that given the size of the building and zone in which it is located, there should not be an issue so there is no reason to waive the requirement.

Mr. Coppolo asked if the 3 square foot sign only pertained to residential zones. Mr. Mackey said that was correct.

Mr. Virr asked how many employees would there be. Mr. Kachanian said it was himself and his son and 2 part time subcontractor employees. He said that he has downsized as used to have more employees.

Mr. Coppolo said that he already addressed number of vehicles and asked if there would be any significant changes to the building. Mr. Kachanian said no as he had just painted it 4-5 years ago.

Mr. Virr asked if there would be any outside display. Mr. Kachanian said that he may have a few cars outside but no signs posted on them for sale and they would always be brought in at night.

Mr. Perkins asked what was the parking area and if there would be any parking on the street. Mr. Kachanian said it was large he and also owned property across the street that has paving that has over 100 parking spaces and there would be no on-street parking.

Mr. Perkins said that he understands the no outside display and asked how many vehicles would there be at a time. Mr. Kachanian said that he has 2 lifts, 5 tool boxes and a tire machine so area would probably fit approximately 30-40 vehicles inside.

Mr. Perkins commented that an allowance of 4 to 5 vehicles outside would be sufficient. Mr. Kachanian said 4 to 5 outside would be good but will be brought inside at night.

Mr. Coppolo said if there would be 30-40 cars for sale inside how many would be under repair. Mr. Kachanian said approximately 3 or 5 depending on business.

Favor

No one spoke in favor to the request.

Opposed

No one spoke in opposition to the request.

Mrs. Hampton motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Deliberative Session

Mr. Perkins said that that he was not present for the first part of this case and suggested that a condition of being subject to obtaining all State and local permits and inspections be made.

Mr. Virr said that a condition of number of vehicles was suggested in the first case but was removed as it should be made as part of this case that no more than 5 vehicles be allowed for outdoor display.

Mr. Perkins recommended to change to 10 to allow for possible future growth.

There was some discussion with regard to conditions.

Mrs. Hampton motioned come out of deliberative session.

Seconded by Mr. Coppolo.

Vote: Unanimous.

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

Mr. Coppolo motioned on case #16-104, AMK Auto Wholesale Brokers, Inc. Owner: Kachanian Two Realty Trust to Grant a Variance to terms of Article VI, Section 165-42A and 165-42C.2 of the Town of Derry Zoning Ordinance to allow motor vehicle sales at the property. 8 Tinkham Avenue, Zoned IND IV, Parcel ID 35015-011 as presented with the following conditions:

- 1. Subject to obtaining all State & Local permits and inspections.**
- 2. Outdoor display of vehicles for sale not to exceed 10.**

Seconded by Mrs. Hampton.

Vote:

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

Mr. Perkins asked Mr. Ventura if he was familiar with all proceedings and asked if he was seeking wholesale or a retail license. Mr. Ventura said he was seeking a retail license.

16-105 Tommy Ventura

Special Exception as provided in Article VI, Section 165-46B of the Town of Derry Zoning Ordinance to allow an automobile sales business at the residence. 124 By-Pass 28, Zoned MDR, Parcel ID 11025-027

Tommy Ventura, owner, read his application criteria for the record. He said that he currently operates as a retail dealer at 11 Peabody Road for the past 2 years and was seeking to transfer his business to his home. Mr. Ventura said that he currently works full time for a fence company and sells vehicles on the side.

Board Questions

Mr. Perkins said that photos of the property show several vehicles on the property. Mr. Ventura said that he has his own personal vehicles and that there were 2 vehicles with dealer plates.

Mr. Virr asked what he was seeking for a sign as the State requires 10” letters. Mr. Ventura said that he currently has a 3 square foot sign that was approved by the Town and would utilize the same sign at his property.

Mr. Coppolo asked how many vehicles were being requested to have on the property. Mr. Ventura said 4-6 vehicles as he goes from auction to auction so he moves vehicles frequently.

Mr. Coppolo asked if was seeking a retail license and not a wholesale license. Mr. Ventura said that was correct.

Mrs. Evans said that the application request states office space and not intending to park vehicles. Mr. Ventura said that the application was confusing and will have an office in the home and no intention of advertising vehicles for sale on property.

There was some discussion with regard to the number of vehicles currently on the property.

Annette Colon, 124 By-Pass 28, said that they were not seeking to sell vehicles from their home but do have vehicles on there that go to auctions. She said that the copy that was submitted shows a small office on the 1st floor but the highlighting did not show up.

Mr. Ventura said that occasionally a customer may come to the home but do not advertise cars for sale on the property.

Mr. Virr said that the State may have changed its rules but the ordinance states no more than one vehicle on display for sale. The ordinance also states allowed 25% of living space and State requires 750 square feet to be dedicated to vehicle sales.

Mr. Mackey said that State requires 750 square feet or dedicated area and that the previous applicant stated that the State just recently changed requirement.

Mr. Ventura said that he has been doing retail sales for 3 years and currently where he is located there are 3 dealers in the area.

Mr. Coppolo said that Peabody Road was a different zone.

Code Enforcement

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

- The applicant is requesting approval to operate an automobile sales business at the residence.
- They have represented that the business will consist primarily of a home office although per State licensing requirements, they must have the ability to display at least one vehicle on the property. (It should be noted that at the time the photographs were taken by this office, there were 6 unregistered vehicles being stored on the property).
- If approved, the Code Enforcement Office would request that the total number of business vehicles allowed to be stored and/or displayed on the property be limited to a certain number deemed appropriate by the Board.
- There are pictures of the property in the file for review by the Board.

Mr. Coppolo said that he found the DMV website and reviewed the law for the Board.

Mr. Virr said that as the applicant lives there he doesn't mind office use of 25%, but to operate a wholesale/retail car dealer on a residential property changes things entirely.

Mr. Perkins asked if the applicant had established a bond. Mr. Ventura said yes.

There was some discussion with regard to property location and number of vehicles allowed.

Mr. Mackey suggested that the Board make a condition of number of vehicles allowed to be displayed or stored on the property.

Mrs. Evans asked what hours of operation are being requested. Ms. Colon said that the State requires 32 hours so seeking 4:00 pm – 8:00 pm Monday – Friday and 10:00 am – 7:00 pm Saturday and Sunday.

Mrs. Evans said that #7 asks about the number of employees and asked how many employees would there be. Ms. Colon said none as just themselves and brother who was a partial owner.

Favor

No one spoke in opposition to the request.

Opposed

Shane Lutkevich, 122.5 By-Pass 28, said that he had taken some pictures and a map of the area and presented them to the Board. He said that he believes that there was some encroachment issues near 126 By-Pass 28. Mr. Lutkevich said that the applicant has 6 cars in the driveway and his own vehicles. Now with the possibility of 6 more he felt that there was not enough room. He said that he has concerns with safety in the area with possible customers entering and exiting the driveway as there was no room to turn around. He said the property is 2 properties from English Range Road and having cars back out onto the By-Pass was very dangerous and there has been a number of accidents in the area. He said that the application states only one business currently being operated but there is a plow truck displayed on the property with phone number so question of running another business.

Mrs. Hampton said that in Mr. Mackey's notes it states that there were 6 vehicles on the property unregistered.

Mr. Coppolo asked if they expanded the driveway with a turn around and these were no people stopping by the property and the applicant was just operating via craigslist if that would alleviate concerns. Mr. Lutkevich said no as he did not feel could expand driveway. He said that there was a safety concern as there was a school bus stop is located in front of the property and there would also be an increase of traffic on an already busy street.

Rebuttal

Ms. Colon said that they can safely pull out of their driveway. She said that as far as the accidents, they occur mostly at the English Range intersection and not in front of their home. As for the number of vehicles they were all registered and 2 have dealer plates.

Mr. Ventura said that they can fit 20 vehicles on the property and they could expand their existing driveway to the fence line.

Mr. Coppolo asked if running a snow plow business. Ms. Colon said not running a snow plow business but do plow snow.

Mrs. Evans asked if the parking of vehicles was 10' from the lot line. Ms. Colon said that the vehicles were parked in their driveway.

Mr. Virr asked how far a driveway had to be from a lot line. Mr. Mackey said there was no restriction how far a driveway had to be from a residential lot line but the State did govern driveway cuts along the By-Pass.

Mrs. Hampton said that it was stated only 2 unregistered motor vehicles were on the property but Code Enforcement pictures dated February 19 and notes state that there were 6 unregistered motor vehicles. Ms. Colon said that there are only 2 unregistered and others were personal vehicles.

Mr. Mackey reviewed the picture for the Board.

Ms. Colon said that they were not seeking 12 vehicles. She said that 3 vehicles were personal and that they were seeking to have 3 to 4 additional vehicles.

Mr. Coppolo said that the neighbor has point regarding plow truck as business and ordinance states no more than one home business. Ms. Colon said that they just purchased the truck to plow own driveway and felt that there was a need for plowing so just put out a sign. They will remove sign.

Mr. Virr motioned to go into deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Deliberative Session

Mr. Perkins said he felt that there was a conflict between retail and wholesale and what permits were required. He said that he was also concerned with safety on the roadway as a legit concern of putting a retail business in the area.

Mr. Virr said that it was a very dangerous stretch of road. He said that the area is zoned Medium Density Residential and that he has concerns putting a used car lot in a residential zone.

Mrs. Hampton said that it is a difficult situation and feel it would change the residential character of the area.

Mr. Coppolo said that a condition of being subject to obtaining all State and local permits and inspections. He said that the snow plow business was a 2nd business and felt was an enforcement matter.

Mrs. Hampton said that a stipulation of no more than 6 vehicles be allowed on property. She said that a sign was being requested.

Mr. Virr said that there were two different issues as the applicant can he have an office and that part is yes but the second part of operating sales from the property he had concerns with. He said a condition of complying with State and Town requirements.

Mr. Perkins said a sign is required by the State but the zoning ordinance states no more than 3 square feet allowed in residential zone. He said removal of advertisement of other business.

Mrs. Evans stated testimony of only one home business.

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

1. Subject to obtaining all State and local permits and inspections.
2. No more than 4 unregistered motor vehicles to be stored on the property.
3. Sign to be no larger than 3 square feet.
4. No advertisement for secondary business.

Mrs. Hampton motioned to come out of deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Mrs. Evans motioned on case #16-105, Tommy Ventura to Grant a Special Exception as provided in Article VI, Section 165-46B of the Town of Derry Zoning Ordinance to allow an automobile sales business at the residence. 124 By-Pass 28, Zoned MDR, Parcel ID 11025-027 with the following conditions:

- 1. Subject to obtaining all State and local permits and inspections.**
- 2. No more than 4 unregistered motor vehicles to be stored on the property.**
- 3. Sign to be no larger than 3 square feet.**
- 4. No advertisement for secondary business.**

Seconded by Mr. Virr.

Vote:

- Mr. Virr:** No. Feel does not meet criteria #5 for home business use as a used car facility will change the residential character of the dwelling.
- Mrs. Hampton:** No. Feel does not meet criteria #5 as home business will change the residential character of the neighborhood. Also does not meet criteria #3 as feel business will be injurious to the neighborhood.
- Mrs. Evans:** No. Feel it does not meet criteria #5 as it will change the residential character of the property and also criteria #8 with regard to lot line setbacks.
- Mr. Coppolo:** Yes.
- Mr. Perkins:** No. Concerns with defining of wholesale/retail aspect and does not fit into the residential character of the area.

The application was Denied 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.

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. Virr said that he appreciated the time to review the material provided. He said he did not feel that the Board had made any error in judgement or law in its decision.

Mr. Coppolo said that he had read the letter and have some areas of concern. He said that the lawyer may be correct with regard to the 5th criteria but he questions to what the lawyer was speaking to with regard to the 3rd criteria. Mr. Coppolo said that the lawyer did not indicate any case law as if had it would have been stated. He said that the lawyer stated that 3 board members cited 3rd criteria and 1 board member misconstrued 5th criteria but still voted no. Mr. Coppolo said that it was a good letter but do not feel that there was any evidence presented to warrant a rehearing. He said he did not know where the lawyer could say Board made an error in judgement or law.

Mrs. Hampton said that she also appreciated the time to review the information provided but after reviewing did not feel there was any evidence provided that would change her original vote.

Mrs. Evans said that she also appreciated the review time and that she was quoted on page 4, second paragraph regarding the 5th criteria that she said neighborhood and should have said property. She said that there was no new evidence presented that would change her original vote.

Mr. Perkins said that he felt that there was some confusion with the request as the lettered vehicles restricted the applicant from driving in and out of his property. He said that a point made in the Accurate Transport case was a passenger vehicle and that he felt that the applicant could come back and request a variance. Heard testimony from abutters and that J&F Farms was just up the road with equal and significant to the request.

Mr. Virr said he felt the pictures of the properties provided did not take into consideration that they were grandfathered. He said that he never disagreed with the home office portion. He asked Mr. Mackey if it were to come back for a variance would it be subject to Planning Board and TRC review so a condition that it be remanded to Planning Board for site review would be required.

Mr. Mackey said yes as it is a residential property converting to commercial it would be subject to site review.

Mr. Perkins said that his vote was in favor of the application but agree the information submitted does not fall under criteria as what was submitted not completely accurate. He said he did agree with the lawyer that diesel vehicles are not what they used to be and only dispute with attorney cites is a quarter mile site distance.

Mr. Coppolo said that in a rehearing there is a lawyer saying you got it wrong and I'm suing you and states clear legal error and needs to convince us that we made an error. He said that he did not feel this warrants rehearing. Mr. Coppolo said that he heard the facts of the case and that the lawyer questions there was a legal deficiency but does not state legal citations or regulations to back those points so he rejects argument and votes against rehearing as feel the Board was right in its original judgement. He said that Towns are allowed to deal with cases before them on a case by case basis. Mr. Coppolo said he rejects the argument that this applicant is being treated differently than other properties which are not before the Board and is not a valid argument.

Mr. Virr said that he has resided in Derry for 46 years and has traveled that area a number of times and knows from experience that there have been a number of accidents in the area. He said that his opinion counts due to familiarity of area.

Mrs. Evans motioned to Grant Re-Hearing Request of case #15-131, Joshua Lane - 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

Seconded by Mrs. Hampton.

Vote:

Mr. Virr: No. Feel Board did not err in original decision as will change residential character of the property.

Mrs. Evans: No. Still stand by 5th criteria even though the minutes said neighborhood it should have said property.

Mrs. Hampton: No. For the same reasons as stated.

Mr. Coppolo: No. See no basis of assertions to warrant rehearing as have seen nothing in the request for rehearing that shows an error in judgement for a special exception.

Mr. Perkins: Yes. Feel it fits what is existing there in the area.

The application was Denied a vote of 1-4-0. The recourse would be to appeal to Superior Court.

Approval of Minutes

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.

Other Business

Mr. Virr asked when did the Annual Spring Planning & Zoning Conference registration open. Mr. Mackey said he would look into and send the information to the Board.

Adjourn

Mr. Virr motioned to adjourn.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Adjourn at 9:56 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes March 17, 2016

Mr. Coppolo motioned to approve the minutes of February 18, 2016 as amended.

Seconded by Mrs. Evans.

Vote: Unanimous.

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