

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
December 15, 2016

Members Present

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

Members Absent

Alternates Present

Donald Burgess
Randall Kelley

Alternates Absent

Joseph Carnevale

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.

16-128 Sam Patel
Owner: Harshad Patel

The applicant is requesting a variance from the terms of Article XIII, Section 165-108A of the Town of Derry Zoning Ordinance to construct a 30' x 40' addition on the back of the building at 50 East Derry Road, Parcel ID 39033, Zoned MDR

Attorney Andrew Myers, Law Office of Andrew D. Myers, said that he was representing the applicant Sam Patel who was also present this evening to help answer any questions that the Board may have. He said that Harshad Patel purchased the property in 2005 and Sam Patel has been the manager since then and has opened the store every day since. Attorney Myers read his letter of explanation and criteria requirements for the record. Attorney Myers said that he felt that the request meets all the criteria to be granted a variance. He cited a few case laws for the record. He said that the building was believed to have been constructed in 1880 and became Parkers store in 1892 and has been a store since then. Attorney Myers said that since the Patel's have owned and operated it has never closed in 12 years and is even open on Christmas and during power outages.

Board Questions

Mr. Burgess asked if the stairs in the rear of the building are where the proposed addition is to be placed. Mr. Patel said yes that they will be relocated.

Mr. Perkins asked if the drawings that were submitted could be reviewed for the record. Attorney Myers reviewed the plans for the record.

Mr. Perkins asked if the stairs were to a residence. Mr. Mackey said that he believed that the applicant resides over the store.

Mr. Patel said that he lives over the store.

Mr. Coppolo said that it was a good presentation. He said that he also resides in East Derry and have shopped at the store. Mr. Coppolo said that he feels that the conflict would be with traffic related problems and with parking access but that aspect is not going to change. He said that a condition of only storage and located in the back so did not feel would be a big impact. Attorney Myers said that as for parking the applicant or his employees do not park in front of the store as they have worked out an agreement with the Upper Village Hall and park in the rear of their property. Attorney Myers said that they were not looking to increase traffic but to increase the stores product inventory.

Mr. Patel said that he wishes to increase the stores product so his customers do not have to go to Shaw's or Walmart for their specialty products. He said that he wishes to carry lactose mil and other special products that his customers need.

Mr. Burgess said that a 30' x 40' addition could be a small house. Attorney Myers said that the addition will be located in the rear of the building and will meet the setbacks.

Mrs. Evans asked if it would be only for storage. Attorney Myers said it would be for retail area.

There was some discussion with regard to delivery's and use of proposed new space.

Code Enforcement

Mr. Mackey provided the following information for the record:

- The applicant is requesting a variance to construct a 30' x 40' addition on the back of the building.
- The building houses the East Derry Store as well as the East Derry Post Office. These businesses have existed for many years and pre-date the Town's zoning regulations. They are, therefore, considered legal, pre-existing, non-conforming uses.
- Per Article XIII, Section 165-108A of the Town of Derry Zoning Ordinance, a non-conforming use may not be expanded. Therefore, a variance is required for the proposed construction.

- The proposed addition will be utilized for additional storage and also proposed to comply with the applicable setbacks.
- There are pictures in the file for review by the Board.

Mr. Burgess asked if the stairs from the second floor would be installed before or after addition was built. Mr. Mackey said that has not been discussed yet but will be addressed.

Favor

Arthur Caras & David Mills, Upper Village Hall, said that they consider the Patel's a great neighbor and that there has been an agreement with regard to parking. Mr. Caras said that the Upper Village Hall has made a parking lot in the rear of their building and have allowed the Patel's and their employees to park there. He said that as for delivery trucks they have allowed the truck to park across the front of the hall so as not to block parking. Mr. Caras said that they have been speaking about parking and when paving in the future they are speaking of deeding parking spaces for the Patel's.

David Granese, Chairman of Derry Planning Board, said he was in favor of granting the proposed request. He said that he has seen a lot of changes for the better since the Patel's have owned the property such as new siding, flooring, roofing and the food service has been upgraded a great deal. Mr. Granese said that the property is a non-conforming use and that the Planning Board also does not have any problem with the request and he has also spoken to the abutters to the property and they are also in favor of granting the applicant's request.

Opposed

No one spoke in opposition to the request.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

Mr. Burgess, Mr. Coppola, Mrs. Evans, Mr. Virr, Mr. Perkins.

Deliberative Session

Mr. Coppolo said that he feels that this is a great concept as there is a need. He said that the area does have some traffic congestion but it has always been there.

Mr. Virr said that he moved to Derry in 1970 and the store was owned by Mr. Perrault and that the store has done many changes since then. Mr. Patel is always there and smiling.

Mrs. Evans said that she felt that the store is an asset to the community as it brings local vendor business to the area which is great.

Mr. Perkins said that the only issue is time and asked if the Board wished to add a sunset on the property.

Mr. Coppolo said that he did not feel that a sunset would need to be made as if the property ever became a future apartment it would require additional reviews and it already has an apartment over the existing store.

Mr. Burgess said that he agreed with Mr. Virr that a condition only be retail space and no future apartment so may want to state condition that the addition only be for retail space. He said that he has concerns of the stairs off the back was for safety concerns.

Mr. Perkins said that Mr. Patel would be taking the responsibility of the stairs. He said that the motion should have a condition of being subject to obtaining all permits and inspections.

Mr. Burgess motioned come out of deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Mrs. Evans motioned on case #16-128 Sam Patel, Owner: Harshad Patel to Grant a variance from the terms of Article XIII, Section 165-108A of the Town of Derry Zoning Ordinance to construct a 30' x 40' addition on the back of the building at 50 East Derry Road, Parcel ID 39033, Zoned MDR as presented with the following conditions:

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

Seconded by Mr. Burgess.

Vote:

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

Approval of Minutes

Mr. Virr motioned to approve the minutes of November 17, 2016 as amended.

Seconded by Mr. Coppolo.

Vote: Unanimous.

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

Other Business

Mr. Mackey said that the office has received 3 cases for the January 5, 2017 meeting and the cutoff date for submission is December 21, 2016 so there may be a full case load for the first meeting in 2017.

Mr. Virr said that the Board has been on the approval end on a couple of the court cases.

Mr. Perkins said that the Board will need to establish some workshop dates to review some upcoming changes with the ordinance.

Mr. Burgess said that the Board will need to review the sign ordinance so not to interfere with the pending changes.

Mr. Mackey said that the Planning Board is taking up the accessory apartment size requirements as the State is involved due to the size modifications being made. He said accessory size and the sign ordinance changes are due to Supreme Court rulings.

There was some discussion with regard to the proposed changes.

Mr. Perkins wished everyone a Merry Christmas and a Safe New Year.

Adjourn

Mr. Virr motioned to adjourn.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Adjourn at 8:08 pm

Minutes transcribed from tape:

Ginny Rioux

Recording Clerk

APPROVAL OF MINUTES January 5, 2017

Mr. Virr motioned to approve the minutes December 15, 2016 as amended.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Kelley, Mr. Burgess, Mr. Coppolo, Mrs. Evans, Mr. Virr, Mr. Perkins