

**TOWN OF DERRY**  
**ZONING BOARD OF ADJUSTMENT MINUTES**  
**September 1, 2022**

**Members Present**

Lynn Perkins, Chairman  
Craig Corbett, Vice Chair  
Crystal Morin, Secretary  
Allan Virr  
Donald Burgess

**Members Absent**

**Alternates Present**

Michael Donlon  
Gaspar Obimba  
Richard Tripp  
James Dietzel

**Alternates Absent**

**Code Enforcement**

Robert Wentworth, Assistant Building Inspector

Mr. Perkins called the meeting to order at 7:00 p.m. with the salute to the flag. Mr. Perkins stated that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 this public body is authorized to meet now physically and also electronically. As such this meeting is being held and will also be providing public access to the meeting by telephone with additional access possibilities by video utilizing the ZOOM app for the electronic meeting. 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](http://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](mailto: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. Mr. Perkins said that all votes taken are taken during this meeting shall be done by roll call vote.

The Board members introduced themselves.

**The applicants are requesting a special exception as provided in Article VI, Section 165-46.B.1 of the Town of Derry Zoning Ordinance to allow the operation of a small automotive repair business using one bay of the applicants' three bay garage at 27 Wentworth Lane, Parcel ID 08034-017, Zoned MDR**

Attorney Brian Germaine, Germaine & Blaszk, PA, said he was representing Michael Potucek & Kara Potucek who were also present. Attorney Germaine reviewed the required criteria and exhibits provided for the record.

### **Board Questions**

Mr. Burgess asked if there was a lift being installed. Mr. Potucek said that he had installed a lift in the garage.

Mr. Burgess asked what type of work would be performed and hours of operation. Mr. Potucek said he specializes in Hondas and works at a dealership now and wished to work from his home. He said that he would be doing brakes, rotors, timing belts, oil changes, etc. Mr. Potucek said that he would be by appointment only and normal business hours of 8:00 AM to 5:00 PM Monday through Friday.

Mr. Burgess asked what type of tools would be used. Mr. Potucek said that he runs Mac tools with lithium batteries.

Mr. Burgess asked if there would be a compressor. Mr. Potucek said yes and it was new and does not run constantly.

Mr. Corbett asked if there would be weekend hours. Mr. Potucek said no weekend hours.

Mr. Tripp asked if only utilizing 500 square feet. Mr. Potucek said yes as he would be utilizing only one bay. His garage was 36' x 40' with a concrete floor.

Mr. Tripp said that would be 2,800 square feet. Attorney Germaine said that was the outside dimensions.

Mr. Tripp asked if there was an upstairs and if it was also 36' x 36'. Mr. Potucek said the upstairs has a subfloor and was only 16' x 40'

Mr. Perkins said he would like to caution the Board to stay with the request as 25% pertains to the residence aspect not construction of the garage.

Mrs. Morin asked what the intentions are for waste oil and tires. Mr. Potucek said that he has a certified waste oil burner so will use the waste oil for heat and the tires he would be utilizing Bob's Tire or Town Fair Tires that take the tires when purchase tires.

Mrs. Morin asked if would be getting deliveries or pick up parts. Mr. Potucek said that he would pick up parts but some delivery from online stores.

Mr. Perkins asked if could explain Honda Tech history. Mr. Potucek said he has worked on Hondas since 2002 at several dealerships over the years and does not like their customer service so he feels he could make a living by going on his own and provide better customer service and at the same time spend more time with his family.

Mr. Perkins said that the tire changes and waste oil questions were answered but concern is how tires would be stored until picked up. Mr. Potucek said that he hopes to operate a clean business and nothing would be kept outside so would not indicate business use.

Mr. Perkins asked if there would be a dumpster for trash removal. Mr. Potucek said no that he would utilize the transfer station as they take cardboard, plastic and metal as create revenue so any water pumps would go into the metal pile so there would be no need for a dumpster.

Mr. Virr asked when was the garage built and why so big. Mr. Potucek said that he started building in July of 2020. He said that he owns a 21' boat, a Ford Tundra and a CRV and installed the lift so he could do his own maintenance on his vehicles. Mr. Potucek said that when he first got his boat shrink wrapped it was \$350 the first year then the next it was \$450 so he built the garage to put the boat inside.

There was some discussion with size of garage and current use.

Mrs. Morin said that 5 customers per day is a good number but some jobs can take 2 to 3 hours each so how would you accommodate. Attorney Germaine said that the cover letter states will only have 3-5 customers per day.

Mr. Virr said supply chain may take time to get parts so have concern of where vehicles would be stored if waiting for parts.

Mr. Burgess asked where would oil filters be disposed and coolants. Mr. Potucek said that he burns waste oil so would hot drain filter and crush it then it would go into metal pile at the transfer station and that Clean Harbor would provide a container for coolants.

There was some discussion of location of home and garage on the property.

Mr. Perkins asked where would vehicles waiting for parts be stored. Mr. Potucek said that they would be under the lift and described for the record.

Attorney Germaine said that the entire front of the garage to the home was paved so allows ample room for parking.

Mr. Tripp asked if the garage would be used for vehicle storage. Mr. Potucek said that only one bay would be used for the business the other would be used for personal storage.

Attorney Germaine said that the applicant can keep 2 vehicles inside overnight if needed.

Mr. Tripp asked how far off the street was the home located. Mr. Potucek said he was approximately 50' from the street and there would be no parking on the street.

Mr. Burgess asked how potential oil spills would be controlled. Mr. Potucek said that he would utilize speedy dry and pig mats.

### **Code Enforcement**

Mr. Wentworth said that Mr. Mackey provided the following information with regard to the property in the Board's folders for the record.

- The applicants are requesting to operate a small automotive repair business using one bay of the applicants three bay garage. The intent is to use the far bay at the southeasterly corner of the garage for the business.
- The expected volume of customers is 3-5 cars per day.
- Parking for the business will be directly in front of the garage and adjacent to the garage between the garage and the house (see Exhibit #2).
- If the special exception is granted, a sign permit must be obtained through Code Enforcement.
- On Page 2 of the application, there is a typo, the address is listed as 21 Wentworth Lane but their residence is at 27 Wentworth Lane.

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**

Barbara Lambert, 29 Wentworth Lane, said she requests that the Board deny the request as her property rights should be protected by law as she has lived in the area for 35 years and does not wish to live next to a business. She said that one week notice is not enough time to prepare research so feel notification is in violation. Mrs. Lambert said that she also has concerns about the permit issued as states for residential use only. Feel intent on building garage was to open business and neighborhood has been deceived as lift is already been installed. Mrs. Lambert said that she lives on a dead end street and having 3-5 or more vehicles plus delivery vehicles goes against the character of the neighborhood and violates her rights to her property. She said she does not understand

how it is alright because he spent money installing a lift so now makes ok to operate a business.

Mr. Perkins asked if Mr. Wentworth would explain note on permit. Mr. Wentworth said that a garage gets standard statement as residential neighborhood and any request to change would require a variance.

Mr. Perkins said that some people build garages and install lifts and unable to determine premediated 2 years ago and concerns of traffic is what Board needs to hear. Mrs. Lambert said that the cul-de-sac is one way in and one way out. She said that she feels that they were already proposing operation of business and that it is unfair to be up to the neighbors to police the area to say that he is doing what is allowed.

Mr. Corbett said that the Board makes conditions for the Code Enforcement Officer to enforce. Mrs. Lambert said that she feels that her concerns do not count and that the Board does not live there she does.

John Berner, 31 Wentworth Lane, said he lives at the end of the cul-de-sac and that there has been a flatbed wrecker deliver a truck and heard the backup noise and the lights shined into his windows and heard the chains dragging etc. He said if a timing belt goes you need a flatbed to bring it for repairs so feel that would be a disruption for the neighborhood. Mr. Burner said he built his home in 1982 for retirement and does not want to hear chains or backup noises from flatbed trucks and have test drives up and down cul-de-sac area and have strangers in the area. He said he respects his neighbors ideas but feel wrong area for this type of use as it is not Island Pond or Scobie Pond Road but a half mile street.

Karen Caouette, 30 Wentworth Lane, said she lives across the street and did not purchase her home on a dead end street to have a business next door. She said that she walks the street with her kids and animals as do many other families. Feel that the applicant has other options available and should not be allowed to run a business in a residential area.

### **Rebuttal**

Attorney Germaine said that Mr. Potucek that does have the right to apply for a special exception and feel has met the criteria and is part of law for Derry and State. He said that he understands tow truck concern and that Mr. Potucek is willing to limit number of cars and he has no intention of having an inspection station and intends to keep clean. Mr. Potucek is willing to restrictions and willing to abide by and if Code sees 7 vehicles they will address the issue.

Mr. Potucek said he understands tow trucks are loud and have bright lights and do not plan on having vehicles come in at night but if his own personal vehicle broke down at 2am he would have a tow truck bring it to his home.

Mrs. Morin asked if would be doing body work. Mr. Potucek said no.

Mr. Tripp asked if a tow truck came to the property and what was wrong. Mr. Potucek said yes for a broken alternator in the winter.

Mr. Tripp asked if a vehicle were to arrive and new issue that you would have the ability to accept or not. Mr. Potucek said yes.

Mr. Tripp asked what would happen if someone just showed up for an oil change and found something else wrong. Mr. Potucek said that he would adjust his schedule to either fix or have them bring back at a later date.

Mr. Tripp asked if intention was to do certain repairs and if something more then possible storage be required and also stating no one would be waiting on site. Mr. Potucek said that was correct.

There was some discussion with the number of vehicles per day and possible storage.

Mr. Corbett motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

### **Deliberative Session**

Mr. Virr said that Wentworth Lane is a nice area located on a cul-de-sac and feel that this type of activity does not work for the area and that there would be an increase in traffic. He said that an accountant can schedule a 2:00 PM appointment and has no noise and no one would know there but an automotive repair business is a different type of use. Code Enforcement is unable to be everywhere and rely on abutters to police area.

Mr. Corbett reviewed the exception use and feel being more of a doctor, lawyer or real estate agent aspect.

Mrs. Morin said that it was unfair to assume ones business plan.

Mr. Burgess said a vehicle being towed in for repair and unable to obtain parts that vehicle would stay at the property until repaired. The difference of an accountant verses an auto mechanic is noise etc. and feel that it would be in conflict with criteria and reviewed criteria number 3 for the record.

Mr. Perkins said that the Board needs to break down the variable concerns. He said that the applicant has said that he can preplan and diagnostic trouble shooting addressed that he can make allowances to next business day. The aspect of lose rights to give reasonable rights of business model practical and work with restrictions as Attorney Germaine pointed out. The Board can make conditions to the number of customers and

such per day. The question raised with regard to an Attorney Office or Repairman feel that a repairman just park there leave to another location verses customers coming to location for repairs. Comparison of business model and criteria feel speaks to travel repair versus stationary repair.

Mr. Burgess said that criteria number 5 speaks to not change residential character but feel the business would change due to emission of noise, odor, fumes etc. due to the use of hydraulics and tools.

Mr. Virr said he also has concerns of increase in traffic, noise and odors from repairs. 5 cars per day leads to 10 trips or more to property not counting deliveries in a residential zone.

Mr. Perkins reviewed the conditions for the record.

Mr. Virr said an additional condition of no more than 5 vehicles per day and no more than 3 vehicles overnight.

Mr. Burgess said that the applicant stated he can store 2 in the garage.

Mr. Corbett said he would like a condition of no outside storage.

There was some discussion with regard to storage.

Mr. Corbett said that there was no waiting room and what would prevent the upstairs area to be utilized for a waiting room and would that require a modification.

Mr. Perkins said that the applicant stated not looking to have a waiting room and if things change then would need to come back before the Board for a modification.

Mr. Perkins reviewed the conditions for the record.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mrs. Morin.

Vote: Unanimous.

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

**Mrs. Morin motioned on case #22-140, Michael I. Potucek & Kara H. Potucek to Grant a special exception as provided in Article VI, Section 165-46.B.1 of the Town of Derry Zoning Ordinance to allow the operation of a small automotive repair business using one bay of the applicants' three bay garage at 27 Wentworth Lane, Parcel ID 08034-017, Zoned MDR as presented with the following conditions:**

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

2. **Hours of operation 8:00 AM – 5:00 PM Monday – Friday**
3. **No more than 5 customers per day.**
4. **Sign not to exceed 3 square feet and not to be internally illuminated.**
5. **No customer vehicles to be stored outside overnight.**
6. **No dumpsters or used parts to be stored outside.**

**Seconded by Mr. Burgess.**

**Mr. Burgess** No. Feel home business will change residential character of the neighborhood.

**Mr. Virr:** No. Use would create an unreasonable amount of traffic and would be contrary to criteria #3 with noise, odors etc.

**Mrs. Morin:** Yes.

**Mr. Perkins:** No. Feel the category of repairman speaks to a travel repair man not an automotive repair business and would change the residential character of the neighborhood.

**Mr. Corbett:** No. Believe as Mr. Virr stated it would be injurious to the neighborhood by emission of odors, noise, etc.

**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.**

### **Approval of Minutes**

Mr. Corbett motioned to approve the minutes of August 18, 2022 as amended.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

### **Other Business**

Mrs. Morin motioned to go into discussion of HB 1661.

Seconded by Mr. Corbett.

Vote: Unanimous.

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

Mr. Perkins said that the Planning Board held a workshop regarding HB 1661. Elizabeth Robidoux, Assistant Town Planner put together and provided the fold out table for the



Board's review. He said that RSA 674:73-A speaks to written findings and the Board needs to address how to proceed with written finding of fact.

There was some discussion with regard to changes.

Mr. Virr said that the Annual Spring Training was great and encourage the members of the Board to review.

Mr. Corbett said that the Board is able to change the Policy and Procedures and it should be required that all members and alternates attend training. He said that there are online courses with quizzes available.

Mr. Perkins said that the Board has done in its notice of decision when a denial has occurred but need to make some changes to adapt to the new law. He said that if anyone on the Board does not participate in the training then need to ask why on the Board. As for making changes to the current Policy and Procedures the Board needs to hold 2 separate meetings noting changes and then vote on.

Mr. Perkins said that also noted RSA 673:16.3 states fees need to be posed on the Town website. Mrs. Rioux said that the fees are now posted on the Town website.

Mr. Perkins said that he has made a sample of the Notice of Decision for the Board's review. The law stipulates that now need to point out all reasons for decision. The Board does give reason in denial on the back of the notice but now needs to give reasons for yes votes.

There was some discussion with regard to criteria and motions.

The Board went into non-public session at 9:35 pm. and adjourned at 9:52 pm

### **Adjourn**

Adjourn at 9:52 pm

Minutes transcribed from notes & tape:  
Ginny Rioux  
Recording Clerk

**APPROVAL OF MINUTES SEPTEMBER 15, 2022**

Mr. Corbett motioned to approve the minutes of September 1, 2022 as amended.

Seconded by Mr. Virr.

Vote: Unanimous

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