

**TOWN OF DERRY**  
**ZONING BOARD OF ADJUSTMENT MINUTES**  
**January 7, 2016**

**Members Present**

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

**Members Absent**

**Alternates Present**

Katherine Prudhomme-O'Brien  
Dana Nauerz

**Alternates Absent**

Michael Demeo

**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.

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

**Applicant is requesting a Special Exception 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**

Joshua Lane, owner, read his application request and criteria points for the record. He said that he operated a shop in Hampstead and wished to relocate his business to his home. He said that the nature of his work is done on-site and that the shingles are taken to an asphalt facility plant. Mr. Lane said that he plans to keep property and will it will be kept presentable.

### **Board Questions:**

Mr. Perkins asked why this application was a Special Exception. Mr. Mackey said that one of the criteria is that the person has to reside at the property

Mr. Coppolo asked how long has the business been operating. Mr. Lane said he has operated for 3 years.

Mr. Coppolo asked if material will be brought home. Mr. Lane said that 99% of the time the shingles are brought to the shingle yard. He said possibly may have some shingles in the truck at times or bundles on pallet in the shed but not visible.

Mr. Virr asked how many vehicles are seeking to be parked at the property. Mr. Lane said 3 trucks and a trailer.

Mr. Virr asked what size was the trailer and trucks. Mr. Lane said that he had a 28' enclosed trailer, dump truck and a pickup with dump.

Mrs. Hampton said request is for an office not for trucks to be parked in the yard. Mr. Lane said that he was seeking to have both. He said that 50% of the time the trucks are at the job sites at most they may be in the yard possibly 3 to 4 days a week.

Mr. Coppolo said that he believes that have to apply that way due to the request being submitted. Mr. Mackey said that the applicant put request for an in-home office but believe seeking to have equipment parked also.

Mr. Virr said the parking of 3 trucks and a trailer and another area for storage does not sound like just an office.

### **Code Enforcement**

Mr. Mackey provided the Board with the following reference:

- The applicant is requesting approval to operate a roofing business from the residence. The scope of the business includes an in-home office and the storage of vehicles and a trailer on site.
- A sign is being requested, a sign permit will be required from the Code Enforcement Office.
- A large gravel parking area has recently been created on the site.
- There are pictures of the property in the file for review by the Board.

Mr. Perkins asked if the structure was torn down. Mr. Lane said no that he fixed it up and cleaned up the property.

Mr. Mackey said the property currently has a large quonset hut on the property for storage.

Mr. Lane said that the tent was a temporary structure.

Ms. Nauerz asked if the property was under a real estate trust and if he was one of the trustees. Mr. Lane said yes he was part of the trust.

### **Favor**

No one spoke in favor of the request.

### **Opposed**

The following abutters Eleanor Sarcione, 134 Chester Road, Nulifer & Taylor Harris, 109 Chester Road, Michael Gee, 113 Chester Road, had the following concerns:

- Concerned for safety and noise generated from business use.
- Increase in traffic as property located on an incline and has a blind spot for traffic.
- Feel will decrease the property values of surrounding homes as their equity is extremely important.
- Wetland disturbance and possibly filling in the wetlands.
- Cut down a large number of trees
- Vehicles are not normal size vehicles and are very loud.

Mrs. Prudhomme-O'Brien asked if the Conservation Commission should be notified if they were disturbing the wetlands. Mr. Mackey said that he was unaware and has not walked the property but will check.

### **Rebuttal**

Mr. Lane said that mess and clearing come with any type of construction and it was not related to his request to operate his business from his home. The previous status of the property was thick and overgrown and yes they did cut down trees and open it up as he plans on building a new home towards the rear portion of the property and plans on living at 115 Chester Road for a long time and will be working on the esthetics of the property. He said that the brook wasn't flowing before is now running and he has built a bridge over it. As for the concerns of safety Mr. Lane said that he has purchased a 36" safety mirror that will be mounted to a pole so will be able to see around corner. With regard to the noise he said that his truck is diesel and that the noise is no different than any other vehicle that utilizes the road as his current home is located 6' from the road as he can hear all the different types of vehicles. Mr. Lane said that he takes pride in owning his home and that it will not be a dumping ground and that his trucks will be on the property occasional as they are mostly on the job sites. He keeps his vehicles in good running condition as also take pride in his assets.

Mr. Coppolo asked what time do the trucks start and how long are they left to idle. Mr. Lane said that he typically starts them at 6:00 am and as for the length of idling depends on the temperature and being plugged in.

Mr. Coppolo asked what amount of time does the vehicles idle. Mr. Lane said that it varies and depends on the temperature and that he keeps them plugged in so they do not need to run for very long it is just to get the fluid temperature up. He said that his trucks do not have air brakes and that he never hears Phil's trucks.

Mr. Coppolo asked if he comes and goes out of the property several times a day. Mr. Lane said that he comes and goes typically out in the morning and back in the evening.

Mr. Perkins asked how many employees and if they come and go from the property. Mr. Lane said that he has 3 full time employees and they sometimes come and get the truck and leave from the property.

Mrs. Hampton asked if the vehicles are washed or oil changes are done on the property. Mr. Lane said that no mechanics are performed on the property but that he will be pressure washing the vehicles at home as they do not fit in the car wash facilities.

Mr. Perkins said that his is a Special Exception for office space in the home and had he no vehicles no one would have known he was there. Like anyone that commutes elsewhere to their job.

Mr. Virr said that it would be known if abutters brought it up.

Mr. Coppolo asked where the employees live. Mr. Lane said one is Derry; one is Hollis and one in Londonderry.

Mr. Lane said that his pickup truck was stock that there have been no modifications as it is a standard diesel F-650 pickup. He said that as for the trees and kids has no relevance as trees needed to be removed to create a yard. He has children so safety is also a concern for him. He is new in business and in process of cleaning up his yard.

Mr. Perkins asked what were the long term plans for the property. Mr. Lane said that he evidentially would like to build a new house to the rear of the property.

Mr. Coppolo asked what types of vehicles requesting to park at the property. Mr. Lane said he has an F-350, F-550 dump, F-650 pickup and a 28' trailer.

Mr. Perkins asked how many times is the 28' trailer at the property and how is it put there. Mr. Lane said that the trailer is mostly at the job sites and possibly there 3 to 4 times a week. He said that he has constructed a large driveway so he could pull in and out of his property.

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. Virr said that he knows the area and there have been fatalities at the English Range Road and Route 102 intersection. He said that he was concerned for cars coming over the rise and coming up onto a large truck pulling a trailer out of the driveway. He said that F-550 and an F-650 are not your standard passenger vehicles.

Mr. Coppolo said that there are hay and tractor trailer trucks up the street. He said that can have a farm in an LDR zone. Sympathetic of trees and neighbor concerns but do not feel cut trees down to have a business.

Mr. Virr said that the applicant needs to meet the nine criteria and said that he felt that he does not meet #3 with regard to noise and odor and possible dangers and #5 as he feels it will change the residential character of the neighborhood.

Mr. Perkins said that it could change the property as seeking to use 25% for office space and park street legal vehicles.

Mrs. Hampton said that she had lived in an area where a large nursing home was built and it does affect property value.

Mr. Virr said the request is for parking of 3 trucks and a 28' trailer and a home business use is for 25%. He said that he did not feel that it fits into the criteria and would be opening for more trucks and trailers if the business were to grow. The Board had just recently denied a case for 1 truck and a trailer.

Mr. Coppolo said that it is not the fault of the applicant that the road is treated as a highway and could possibly craft a motion with a vehicle limitation for the number of trucks on the site.

Mr. Virr said that it would be hard to control expansion.

Mr. Perkins said that recommendation of vehicles and subject to obtaining all local and State permits and inspections as part of conditions.

Mr. Virr said that he would like no pickup trucks exceeding one ton capacity.

Mr. Coppolo said that he felt the Board should vote on applicants request.

Mr. Perkins asked the Board if they should frame a motion with what presented or craft with restrictions.

Mrs. Hampton said that she felt the 2<sup>nd</sup> part should be drafted.

Mr. Coppolo said he felt 2<sup>nd</sup> part also.

Mrs. Evans said 2<sup>nd</sup> part as she agrees a motion should be drafted with conditions.

Mr. Virr said he felt a home office only with no work vehicles.

Mr. Perkins said he would go as presented with conditions.

There was some discussion with regard to possible vehicle restriction.

Mr. Perkins asked why was this was not a variance request.

Mr. Mackey said that a contractor falls under the Special Exception criteria such as plumbers and electricians have vehicles and equipment. He said that where the line is drawn for requiring a Special Exception or Variance is up to the Board.

Mrs. Hampton said possible motion to 1 truck and 1 trailer.

Mr. Virr said that he felt the request as presented does not meet all 9 criteria and that the Board needs to review the 9 points needed to be approved. If one criteria point doesn't fit it was sufficient for denial. He felt that the Board should construct the motion on the actual request.

Mr. Perkins said conditions to be made as follows:

1. Subject to obtaining all State and local permits and inspections.
2. Sign permit required.
3. As presented.

Mr. Coppolo 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 #15-131, Joshua Lane - Owner: Joshua Lane & Jordan A. Doherty, Chester Road Realty Trust to Grant a Special Exception 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 with the following conditions:**

- 1. Subject to obtaining all State and local permits and inspections.**
- 2. Sign permit required.**
- 3. As presented.**

**Seconded by Mrs. Hampton.**

**Vote:**

**Mrs. Hampton:** No. Feel does not meet exception criteria items 1-9 as with #3 believe it will be offensive and noisy. Feel there is a residential safety issue and it will change the character of the neighborhood.

**Mr. Coppolo:** No. Feel it will be injurious to neighborhood as outlined in the third test.

**Mrs. Evans:** No. Feel it does not meet criteria #5 as it will change the residential character of the neighborhood.

**Mr. Virr:** No. Feel does not meet criteria #3 for reasons of noise, odor and fumes. Does not meet criteria #5 as it will change the residential character of the dwelling. And feel it is not in the public interest.

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

The Board took a brief recess and reconvened at 8:35 pm.

**15-124          Derry Town Council**

**Request of Rehearing on case #15-124, MVP Development, LLC, for Variance Granted to the terms of Article VI, Section 165-39A, Section 165-45B.2.b and Section 165-45B.2.c of the Town of Derry Zoning Ordinance to construct multifamily (townhouses) on an industrially zoned parcel of land. Parcel ID 27094, 3 Nutfield Court, Zoned IND I**

Mr. Perkins said that the Board has received a letter from Derry Town Council requesting a rehearing of case #15-124. He read the letter of request for the record.

Mr. Virr said that there were minutes' accompanying the packet notes that the Chair had requested that the Council rehear the case. Mr. Virr said that Mr. Perkins may want to recuse himself from the vote.

Mr. Perkins said that he has seen the Council meeting minutes and feel that they do not accurately portray what was said. He said that he did go on record to change his vote and that the Town Council request is not going to change his vote. He said that he felt he could be impartial and sit for the case.

Mr. Virr motioned to accept Mr. Perkins testimony to make a fair decision on case and be impartial and sit on case.

Seconded by Mr. Coppolo

Vote: Unanimous.

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

Mr. Perkins said he accepts and thanked the Board. He said that he has reviewed the information submitted and has same objectivity and that the Board needs to weigh out criteria.

Mr. Virr that he gives due respect to the Town Councilors but the Boards standards are a bit higher as need something to vote on. He said that the sale of the property did generate income as the property was sold. He said that he did not feel that there was enough information submitted to warrant a rehearing request.

Mr. Coppolo asked what the property sold for.

Mrs. Hampton said it was in the 80's.

Mrs. Hampton said that she did not feel anything submitted here tonight would change her original vote.

Mr. Coppolo said he feels had a hearing and the Board discussed case. He said that he felt that the letter does not show any new information that was not previously discussed by the Board.

Mrs. Evans said that she appreciates the Town Council but the letter submitted would not change her original vote on the 5 points of the criteria.

Mr. Perkins said he did not agree with several points of the application.

Mr. Virr said that the letter alone does not warrant a rehearing and he feels that the Board had not made and error in law or judgement.

Mr. Coppolo said that he agrees that the letter alone doesn't warrant a rehearing.



**Mr. Coppolo motioned to Grant the Derry Town Council a Request of Rehearing on case #15-124, MVP Development, LLC, for Variance Granted to the terms of Article VI, Section 165-39A, Section 165-45B.2.b and Section 165-45B.2.c of the Town of Derry Zoning Ordinance to construct multifamily (townhouses) on an industrially zoned parcel of land. Parcel ID 27094, 3 Nutfield Court, Zoned IND I.**

**Seconded by Mrs. Hampton.**

**Vote:**

**Mr. Virr: No. Letter does not cause questions to warrant rehearing. Feel no error in judgement or law was made.**

**Mrs. Evans: No. For the same reasons as stated by Mr. Virr.**

**Mrs. Hampton: No. No new evidence presented to warrant rehearing and same reasons as stated by Mr. Virr.**

**Mr. Coppolo: No. No new information presented warranting a rehearing.**

**Mr. Perkins: No. Feel not right to move forward on what was presented.**

**Re-hearing request has been denied by a vote of 0-5-0. Recourse is Superior Court.**

### **Approval of Minutes**

Mrs. Hampton motioned to approve the minutes for December 17, 2015 as amended.

Seconded by Mrs. Prudhomme-O'Brien.

Vote: Unanimous.

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

### **Adjourn**

Mrs. Prudhomme-O'Brien motioned to adjourn.

Seconded by Ms. Nauerz.

Vote: Unanimous.

Ms. Nauerz, Mrs. Prudhomme-O'Brien, Mr. Coppolo, Mrs. Evans, Mr. Virr, Mr. Perkins

Adjourn at 8:52 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

## **Approval of Minutes February 4, 2016**

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