

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
December 19, 2013

Members Present

Allan Virr, Chairman
Lynn Perkins, Vice Chairman
Donald Burgess, Secretary
Teresa Hampton
Joseph Carnevale

Members Absent

Alternates Present

Tyler Whitehorn
Heather Evans

Alternates Absent

Mr. Virr 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.

Mr. Virr informed the public that this was not a regular meeting and that there would be no input from the public as it was a re-hearing request only.

13-122 Accurate Transport, Inc.

Re-hearing Request of the Zoning Board's Decision on November 7, 2013 granting the appeal of John T. O'Connor and finding that the Derry Planning Boards erred in its August 21, 2013 decision to grant Accurate Transport's site plan approval of the property located at 41 Ashleigh Drive, Parcel 08017.

Mr. Virr said that the Board was required to review the case and needed to establish if there was anything new presented by Attorney Hollis that would change the Boards decision and warrant a rehearing.

Mr. Virr said that he had reviewed the information submitted and it was his opinion that everything had been addressed and no point of law was made that would change his original vote.

Mr. Burgess said that he felt also that the Board had not made any error in judgment or law. Felt that the applicant missed the point of decision of the meeting that Mr. Mackey does not have the right to make the decision. Mr. Burgess said that the Planning Board makes the final decision and that the TRC committee does not make the actual

determination and only looking to see if it complies and that it was that was up to the Planning Board and Mr. Mackey is only making a recommendation and does not have the right to make decisions for the Planning Board. Mr. Burgess said that he felt that the Board made the right decision and no error of law was made.

Mr. Virr said that Mr. Burgess had actually watched and reviewed all of the DVD's and read all the material that had been presented to the Boards which is far beyond what most of us did.

Mrs. Hampton said that there appeared to be a misunderstanding by the Planning Board and not an intentional error. She said that she felt that **after viewing the videos of the planning board it appeared that** the statement **about what** Mr. Mackey **said** was only a recommendation and not a decision. Mrs. Hampton said that she felt that the information provided does not meet the definition of **a contractors yard and so her decision was not to change her original vote.**

Mr. Perkins said that Mrs. Hampton made a good point. He said that the TRC does not establish permission but advice which in turn goes to the Planning Board and Attorney Hollis points were addressed. Mr. Perkins said that he felt that there was no new evidence presented to change his mind and that the request was redundant on what was already presented. He felt that the Board had made a good decision and no error in law was made.

Mr. Carnevale said that he felt no new material had been presented and would keep his original decision. ~~as what~~

Mr. Virr said that it was established by the Board that no new material and no errors in law or judgment had been made by the Board.

Mr. Perkins motioned to deny the request.

Seconded by Mr. Carnevale.

Mr. Virr said that the Board needs to make a motion to grant request and that a vote of yes would grant a rehearing and no would deny the request.

Mr. Perkins motioned to withdraw his motion.

Seconded by Mr. Burgess.

Mr. Virr motioned on case #13-122, Accurate Transport, Inc. to Grant a Re-hearing Request of the Zoning Board's Decision on November 7, 2013 granting the appeal of John T. O'Connor and finding that the Derry Planning Boards erred in its August 21, 2013 decision to grant Accurate Transport's site plan approval of the property located at 41 Ashleigh Drive, Parcel 08017.

Seconded by Mr. Burgess.

Vote:

Mrs. Hampton: No. No new evidence was presented.
Mr. Burgess: No. No new evidence was presented.
Mr. Perkins: No. No new evidence was presented.
Mr. Carnevale: No. No new evidence was presented.
Mr. Virr: No. No new evidence was presented. There was a lot of things brought forward but had been discussed at original hearing. Felt that there was no error in law or judgment had been made by the Board.

The application was Denied by a vote of 0-5-0. Anyone aggrieved by a decision of the Board has 30 days to file a request for a rehearing to Superior Court.

Approval of Minutes

Mr. Virr said that he had only seen one area that required to be changed on page 1 paragraph, second sentence required to be reworded.

Mrs. Hampton motioned to approve minutes of November 7, 2013 as amended.

Seconded by Mr. Burgess.

Vote: Unanimous

Mr. Carnevale, Mrs. Hampton, Mr. Burgess, Mr. Perkins, Mr. Virr

Other Business

Mr. Virr informed the Board that the next meeting was scheduled for January 2, 2014 and that there had been a case filed.

Adjourn

Mr. Perkins motioned to adjourn.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Whitehorn, Mr. Carnevale, Mrs. Hampton, Mr. Burgess, Mr. Perkins, Mr. Virr

Adjourn at 7:19 pm

Minutes transcribed by:
Ginny Rioux
Recording Clerk