

**TOWN OF DERRY**  
**ZONING BOARD OF ADJUSTMENT MINUTES**  
**January 16, 2014, 7:00 PM**

**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**

David Thompson

Mr. Virr called the meeting to order with the salute to the flag, and notice of fire and handicap exits and that this and all Zoning Board meetings are videotaped. He reviewed the procedures for this evening's hearings. Robert Mackey, Code Enforcement Officer was also present this evening.

The Board introduced themselves for the record.

**14-101          Anne F. Briand**  
**Parcel ID 50026, 5 Lake Street**  
**Zoned MDR**

**Applicant is requesting a variance to the terms of Article VI, Section 165-46.C.4 of the Town of Derry Zoning Ordinance to construct a dwelling less than 15 feet from the side lot lines and less than 35 feet from the front lot line. This application was postponed from January 2, 2014.**

James Lavelle, of James Lavelle Associates presented for the applicant. He provided larger copies of plans to the Board; they already had smaller versions in their packets. Mr. Lavelle they were seeking a variance for side lines and other setbacks. The lot is 43 feet by 75 feet. Mr. Virr asked Mr. Lavelle to read the five factors into the record. He did so; a copy of the application is in the file. Mr. Lavelle explained granting the variance would allow the construction of a home on the lot similar to those in the area. The lot is on Beaver Lake which has small lots. The other homes in the area are on lots that are equal to or less than their request. The spirit and intent of the ordinance would be met because again, this home would be similar to the others with regard to the area of the lot. Substantial justice is done because this would allow productive use of the lot that has been in existence for quite some time. Granting the variance would not diminish

surrounding property values. Regarding the hardship factor, the applicant has owned the property for quite some time and has paid the taxes for the land. Now, the owner would like to build a home and it would be reasonable to allow it.

Mr. Virr asked with regard to the lot of record. Mr. Lavelle said they did not follow the deed back to the lot's inception. Town hall has records relative to a variance request to allow the construction of a home on this lot in 1993. He is not sure when this lot was originally created. Mr. Mackey has researched the prior variance request. In 1993, a variance was granted to construct a home on a lot without frontage on a town road. The town road was platted in front of this lot with 43 feet of frontage with a reservation for Lake Street. The deed of the property behind it also read "to the end of Lake Street". The pavement does stop at the property prior to the front of this lot. There was a variance granted in 1993 to allow them to build on this lot without frontage on a town road. Because the variance was granted in 1993, the variance runs with the land; there is no time limit on the variance. Tonight they are seeking a variance to the setbacks as shown on the plan. The intent is to construct a 24 foot wide house, leaving an 11.5 foot setback on one side and 7.5 on the other side. Fifteen feet is the setback. A Board member asked how close to the front lot line would the home be? Another member noted the plan shows the house at 23 feet from the front lot line, and 18.8 feet from the rear. Mr. Lavelle noted the house right next to this lot has diminished setbacks. They would obviously need Shoreland approval. Sewer is available and there would be a well on the lot. They have not applied to Shoreland yet. They have submitted similar applications on Island Pond and Beaver Lake and feel they can obtain an approval for this lot. Obviously, any approval granted by this Board would be subject to all other applicable approvals. Mr. Virr asked that the record reflect that in 1993, a variance was granted allowing access the property on a non approved town road; at the same time, there was a split decision as the ZBA denied the variance request for the setbacks. That is what this application is requesting. Mr. Virr asked if there were any elevations or plans for the house for the Board to look at? For instance, if the house had an overhang on the side, the distance would not be 7.5 feet; it might be 5.5 feet. Mr. Lavelle said everything would be contained within that 24 foot width. There is an ordinance in town that allows one to match the other setbacks in the neighborhood. They would have to survey the other homes in the neighborhood, but as long as they met the average of those, they feel they would meet it on that lot; but they are here for a variance in lieu of doing a survey of the neighborhood. They felt it would be better to come before the Board so they could see what they were doing, rather than just trying to prove they can meet the average. Mr. Virr said what happens in the past stays in the past. Things can change such as density. Mr. Lavelle understood; but he said if the variance is not granted by the Board, that does not mean that the house won't be built. They may comply with the ordinance by virtue of surrounding setbacks. They have done very little preliminary work. The house next door would be work favor of their average setback argument. They have looked at others, but have not been on properties to perform surveys.

Mr. Perkins asked if the plan was to extend the road by way of a driveway to serve this lot? Mr. Lavelle said they would just put a driveway in. Mr. Perkins asked if the proposed home would go in front of any existing homes? Mr. Lavelle explained there is an existing home that sits about 10 feet or more in elevation above this lot. That lot "L" shapes around this lot and also has frontage on Beaver Lake. Mr. Perkins asked if he was

standing in the lake, where would that property be? Mr. Lavelle said the property would come down the right hand side of the applicant's property. He did have a copy of the tax map if the Board wanted to see it. Ms. Hampton asked if there had ever been anything built on the applicant's property? Mr. Lavelle did not believe so; there is no evidence of a previous foundation. Mr. Perkins noted a patio on the property of the lot located behind Parcel 50026; how close would the access drive be to the patio? Mr. Lavelle said the right of way is 25 feet wide; a driveway is normally 10 to 12 feet wide. He did not feel it would be near the patio. Mr. Burgess asked if there was a right of way there? The deed says it is on Lake Ave. Mr. Lavelle said the deed for Lot 50026 says it is on Lake Ave. The deed for parcel 50025 reads "around the end of Lake Ave". Their property line would be three feet further from the end than that one. Ms. Hampton asked what would this land have been used for? Why was it left undeveloped? Mr. Lavelle said that based on the deed, the previous owner also owned the house behind it closer to Route 102. That was sold. She was left with this lot by itself.

Mr. Burgess asked if for the 1993 application, if the person who owned the property (Briand) was opposed to development of this parcel during the hearing? Mr. Lavelle said that was correct. She purchased it after that denial and now she wants to develop it.

Mr. Virr noted the authorization for Mr. Lavelle to represent Mrs. Briand was signed by Richard Briand as power of attorney; he does not see the power of attorney form submitted with this. Does Mr. Lavelle have a copy of the power of attorney? He did not.

Mr. Mackey provided the following staff report. The applicant has requested a variance to construct what he assumes to be a year round dwelling. The variance is for the setback requirement. The lot itself is a little over 3000 square feet and measures 43 x 76. The records show that in 1993 there was a variance request. At that time the variance request was for the frontage requirement, because at that time there was no frontage on a town approved road, and for the setbacks. The Board performed a site walk in 1993 and split the decision into two votes with two separate notices of decision. With regard to the lack of frontage they approved that; then they denied the variance to the setbacks, which left the lot with a variance to build without frontage; but only if the setbacks could be met. On a lot that is 43 feet wide, it is difficult. That is where it stands now. The variance for the road frontage is still valid. Mr. Lavelle has shown some access to the property. The current access is down Reed Street, to Lake Ave which is essentially a driveway to the two existing homes. They would have to show the access over that and the extension to this lot. Mr. Virr noted Mr. Lavelle's plan shows a paper street going into the property. Mr. Mackey noted this application would be subject to a State Shoreland Protection permit and a variance would be required from the state because they can't meet the 50 foot primary setback required by the state. There have been quite a few Shoreland applications around Beaver Lake. They are typically approved with a lot of conditions. If the Board were to grant a variance tonight and the state did not grant a variance, the application would be dead. Along with that, they would be required to present an elevation certificate and keep the construction above the 100 year flood elevation of Beaver Lake, submit a flood elevation certificate and, because of the lack of frontage, they would record a Waiver of Municipal Liability and Responsibility with the deed so that it is clear the town is not responsible for maintenance of the access to the property.

## **Favor**

No one spoke in favor of the application.

## **Opposition**

Attorney Christopher Savastano represented Harry and Joette Kimball, Jr., who live at 14 Grandview Avenue. They live just behind the subject property. He has prepared a packet for the Board that he wished to submit. Mr. Virr advised the Board does not accept information if it is not received ten days prior to the hearing. Mr. Perkins recommended Attorney Savastano be allowed to present his testimony and the Board could discuss after that if it wanted to accept his packet; he is not the applicant. Normally the ten day restriction is for the applicant.

Attorney Savastano said most of the information has been addressed. The issue is that the applicant is requesting a variance for almost all of the lot lines. His view of the chain of deeds is that there is no right of way; there is reference to Lake Street. That does not in and of itself provide a right of way. The prior owner of his client's property is the applicant. Previously she owned 14 Grandview and the subject property. At that time, she had the option to either combine the lots or do something with the lot lines to make it work. He felt it important to note she was one of the main objectors at the 1993 variance hearing and presented a strong oppositional case. Essentially, what she is asking for today is in direct opposition to what she stated in 1993. She said then the house was too big, and the request was too much. That home was to be about 750 square feet; this one will be twice that size. His understanding is that the neighbor at 3 Lake Street, Robert Delitta, is the one who paved Lake Street and the pavement stops at the beginning of 3 Lake Street.

There is no access for emergency vehicles. In 2012 the fire apparatus had to stage on Grandview because they could not get down either Reed or Lake Avenue. He has pictures. It is a safety concern as well. He feels Lake Street ends at the beginning of 3 Lake Street. It is too narrow and there is no access to the property. He tried to transpose the plan on top of the aerial view. It looks like a taking of private property of another. The access would go on top of Mr. Kimball's patio. Mr. Virr noted the licensed Land Surveyor has shown the paper road going to the top of the property. Attorney Savastano said if an onsite view is required that can happen. He does have pictures however that demonstrate that. Mr. Virr was not sure that current conditions extinguish any right of way that may have existed. Attorney Savastano said there is nothing in the deeds that suggest a right of way. If there was one, it would carry forward to deeds. Mr. Virr said since they have a plan before them showing the right of way prepared by a surveyor, he has to assume it exists. Attorney Savastano said they can assume it exists but it is not demonstrated. Mr. Virr noted a variance is already in place which grants access to the property and he felt the Board should deal with the setback issue.

Mr. Kimball noted the 1993 variance dealt with a seasonal property; the request today is for a year round property. There had been conditions put in place that it was to only be seasonal and they had to maintain access for emergency vehicles. They have photos showing emergency vehicles cannot access the property and he has detailed photos of the

road that shows Reed Street is 8 feet wide. Mr. Virr said any motion made by the Board to grant would require that the applicant obtain all the appropriate state and local permits which means the Fire, Highway and Police Departments would need to provide input. Mr. Kimball asked if the variance that was granted in 1993 is still applicable since this is not seasonal? Mr. Virr said the Board will take that into consideration. Attorney Savastano noted that Lt. Pendergast of the East Derry Fire Department had submitted a note regarding the 1993 variance for a single family residence stating the Department had no issues with the application provided the residence remains a summer residence. In the event it became a year round home, the owner would need to build a road to town requirements. This was to be recorded in the conditions and on the deed. The deed was never changed and it is not recorded in any deed. If it were to be built upon, it would need to be modified. Mr. Burgess confirmed this was for the 1993 approval. The Board noted that 1993 conditions stated the structure was to be limited to one story and it was to be seasonal with access for emergency vehicles. It was noted those conditions do not apply in this case because this is not for a seasonal home and the setback variance with those conditions had been denied.

Mr. Perkins noted the applicant can't be criticized for changing her mind. Attorney Savastano commented the Board should be looking to see if there is any financial hardship the applicant may have incurred. She was very well aware this lot was not buildable when she purchased it, so she cannot claim hardship now. She purchased it in 1996 after the variance was denied. In addition, she has since sought abatement for tax purposes stating the land was unbuildable. She wants to build an oversized home and sell it; there is not hardship here. She is well aware of the problems of building on this lot. The other issue is the Shoreland Protection and the issue of the Beaver Lake Watershed. The standards have become more strict since 1993; and this was denied then. He did not feel that this application should get as far as applying to DES for Shoreland Protection. He also felt there was an issue with the well and the aquifer in this area. They can't get a truck in there to build a well. Mr. Kimball said he had a photo of Reed Street that may prove helpful to the Board. Regarding the variance that was denied, the Briands have self-created hardship as they spoke against a similar application for this lot in 1993. Now they are looking to financially benefit. Attorney Savastano wanted the record to reflect that the variance requested is on a lot that is 3286 square feet where the minimum required lot size is 15,000; the frontage requirement is 100 feet where they have 43 feet and no town road. Minimum lot width is 100 feet and they have 45. The minimum yard depth from the front is 35 feet and they have 23 feet; the side yard depth is 15 feet – on one side it is 11.5 and the other it is 7.5.<sup>1</sup> The requirement from the lake is 50 feet and they are seeking a variance to be 18 feet which is dealt with through Shoreland Protection. This area is already congested enough. Now a road would need to be put in as well as a place for vehicles to park. The road would need to be widened and lengthened and the lengthening would result in a private taking of real property belonging to Mr. Kimball. Mr. Kimball noted he has also been paying taxes on the area where the

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<sup>1</sup> The current minimum lot requirements for MDR are as follows: one acre or larger as determined by soil based lot sizing. The one acre lot area is not applicable to any legally existing or approved lots (11/21/2003) containing at least 25,000 square feet and having a width of at least 125 feet at the 35 foot front setback line, provided that lot meets the requirements of the Water Supply and Pollution Control Division of the NH DES; 125 feet of frontage, 35 foot front setback and 15 foot setback to the side and rear lot lines.

road would need to go. Mr. Virr did not know how that affected any decision of the Board. Mr. Kimball said he purchased the property from Briand and now she is looking to take it back by creating a road. The tax maps as far back as 1988 indicate his lot is .33 acres. To create this road would require a taking of approximately 20 x 30 feet of the property that Mrs. Briand sold to him. This is a right of way that does not belong to that property; it is on his deed and Mr. Delitta's deed and 1 Lake Street; but there is not right of way for 5 Lake Street. Mr. Perkins confirmed Mr. Kimball purchased the land on which the right of way sits and that can be produced. Attorney Savastano asked if the Board would be willing to accept the packets he has prepared? Mr. Virr said he did not believe so; it was part of their policy and procedures.

Robert Delitta, 3 Lake Street, stated he maintains the driveway which is not really a road. He plows, maintains it and paved it. He uses it as his parking spot. There is nowhere to put a vehicle. If this was granted and they were able to extend it, he would have no place to park. Mr. Virr said they can't do it unless it is legal for them to do so. They can't take land from Mr. Delitta without compensating him for that. He stressed the plan shows the right of way. He can't determine between the testimony what is accurate. Mr. Delitta said he could not imagine another house being constructed there with another two or three cars, 7 ½ feet from his house. It does sound like a difficult situation. He is definitely opposed. Mr. Kimball said he has 50 feet of shoreline; when he spoke with Mr. Lavelle, his survey is missing 8 feet of that. Mr. Virr said the Board cannot speak to that.

Mr. Mackey advised a letter was received today. Mr. Virr noted the letter was from a non-abutter. Mr. Burgess read the letter into the record. "Good evening, my name is Jack Harmon, I am the owner of the house at 2 Grandview Avenue and have lived there since 1999. I am writing to you in opposition to the requested variance Case #14-101. My opposition to the proposed variance is due to the fact that the area is already extremely congested, and I am concerned for the impact to the lake. As detailed in the Beaver Lake Watershed Protection Plan which is part of the Town of Derry Master Plan below. *'The rapid increase in human population and rate of development in the Beaver Lake watershed is placing significant stress on the native, aquatic, and terrestrial wildlife populations. Land that as once habitat for wildlife species in being converted into residential and commercial subdivisions, roads, and other uses. The development of land and related activities impact both the quantity and quality of wildlife habitat. The loss of aquatic and terrestrial habitat through the conversion of land from its natural state to a developed landscape represents the single greatest impact of increased human activity on native wildlife within the Beaver Lake watershed.'* As someone who enjoys the lake on a daily basis I feel that any new development has potential for grave impacts on the lake itself."

Lorraine and Richard Fabrizio, 16 Grandview, advised they are direct abutters to this proposal. They are opposed to the requested variance and their concerns are as follows. The additional development will harm them in a number of ways. First and foremost is the presence of the well. Development of the lot would result in doubling of daily automotive traffic. This is a doubling of potential contamination for their well. The NH Department of Environmental Services requires a 75 foot setback. Their well has been in existence since prior to the zoning board setback requirements. Reed Street is only 8 feet

wide with a grade of about 9% above the well. It is reasonable to assume the anything other than a four wheel drive vehicle would be unable to climb that grade without salting the road at times in the winter. This salt represents a very real threat of contamination to their well. Secondly, they currently maintain a garden in their backyard. Every year they share the fruits of the garden with their neighbors. The garden is located directly next to Reed and Lake Street, with approximately a 5 foot buffer between the driveway and the garden. Any increase in road traffic has the potential to contaminate the garden that they have long enjoyed. Finally, they grew up on Beaver Lake, having owned their house since 1975. They have long enjoyed looking out the window at the beauty of Beaver Lake. This development would substantially obstruct the view they have enjoyed all their lives. For this reason she is against any variance being granted.

Gina Hutchinson, 75 Chester Road, said she is on the corner of Chester and Grandview Avenue. She has been a resident on Beaver Lake since 1970; she thought that in order to build on a substandard lot, the building has to come before the ZBA before a shovel is put in the ground. There is a real estate ad out for 5 Lake Avenue in Derry that says there will be a full year round house on Beaver Lake and colors can be chosen to suit. She is curious as to how the ad was placed without anything coming before the ZBA first, and this is not truth in advertising. She felt the Board should be aware of it. Mr. Virr said the owner can sell the lot. Ms. Hutchinson said the ad is for a 3 bedroom, 2 bathroom house. She is opposed to the application.

Kelly Davidson, 12 Grandview Avenue is a direct abutter. She is opposed for reasons such as general congestion in the area and lack of general space to build. Her major concern is the water. 10 Grandview has no water; the well went dry. They obtain water from the Davidson lot. There is no way to bring a rig in to drill a new well. She believed that back in 1988, when the Briand's well was drilled, the well at their home went dry for a period of time. She is concerned the aquifer may not be able to support another home.

Pat Cefaly, 1 Grandview Avenue, stated that previously she owned 8 Grandview on the waterfront. At that residence, she had an 18 x 24 wood deck and went through multiple issues trying to get a sunroom added. It was a process. She owned that lot for 11 years and had multiple issues with dry wells. She had 3 grinder pumps replaced in the space of 11 years. The grinder pump takes the sewage up to the town sewer pipes located on Route 102.

Bonnie Schuscherbeba, 4 Grandview Avenue, just completed a new home in 2008. She advised they razed the existing home and had to stay with the same footprint. Because they fell under the grandfathering, they were able to do that. They have replaced two pumps in five years. She is opposed to this application and feels it would detract from the neighborhood and make it difficult to keep the lake clean.

Joette Kimball, 14 Grandview said this is a congested area. There are at least seven children between the ages of 5 and 10 surrounding this lot that use Grandview Avenue. There have been multiple accidents on Grandview. There is no place for people to park. It is a real danger for their children. Cars use this street as a cut through to avoid buses. Adding another house or more cars adds to the danger to her children.

## **Rebuttal**

Mr. Lavelle stated the safety aspect relating to whether the Fire Department could respond or not was addressed when Mr. Mackey spoke to the requirement for the waiver of municipal liability. This is in the RSAs. It holds the town harmless for emergency services should they not be able to get there because of the small access. Mr. Virr noted that did not make it safer. Mr. Lavelle agreed, but said it is often used when people are granted a variance to build on a Class VI road. Mr. Virr commented that is in place so that people can't sue the town. Mr. Lavelle spoke with regard to the access. Mr. Kimball's deed shows 50 feet of frontage on the lake, 75 feet by the Briand property, continuing on the same line 20 feet across Lake Street, and then 40 feet along Lake Street. That may be the right of way Mr. Kimball feels he bought from Mrs. Briand. The deed clearly excludes the paper street. He thanked the Board for its consideration.

Mr. Carnevale motioned to go into deliberative session.

Seconded by Mr. Carnevale.

## **Deliberative Session**

Mr. Perkins had a question regarding the power of attorney signing. He felt it was murky. That is a concern. Mr. Virr noted that statement meant Mr. Lavelle is vouching for the validity of the authority. Mr. Perkins said the power of attorney documents could be presented during an appeal. Mr. Virr said he felt that in 1993 the ZBA got it right; in addition the Board in 1993 did a site walk. It is not just the setbacks, it is the shoreland. The roof is an impervious surface and all the runoff will go into the lake. If this was to be approved, there would need to be the waiver of municipal liability and approval from Shoreland Protection; it needs a waiver on the frontage and there is a question regarding access. That would need to be resolved. Mr. Virr felt there would need to be a connection to municipal sewer and subject to all town inspections and permits. He would like to make it one story and seasonal; they have missed the opportunity in the past. He objects personally as a 40 year resident; it used to be there were nice views of the lake. The views are now blocked by tall homes and the lake is something that should be enjoyed by everyone. Mr. Perkins said he had concerns regarding how the sewer line will be connected and run. Mr. Burgess noted there is a sewer connection at the end of Lake Street about 10-15 feet from this lot. Mr. Virr explained sewer connections are at the applicant's expense, supervised by the town. Mr. Perkins felt there would be a lot of impact to the surrounding homes if this variance were to be granted. The well problem was a dynamic that had not been considered. Mr. Virr noted that the entire area around Beaver Lake is changing. People are purchasing more than one lot, combining them, and replacing two camps with one home. That is positive. In this case, the applicant would be adding to the density. Mr. Perkins agreed and the others that have been allowed all have direct access to a main road. Mr. Burgess said in 1993 the fire trucks were not as large as they are today. He does not feel the trucks today would be able to access this lot; that is a concern for him. He understands that it is not possible to always obtain water from the lake. Mr. Perkins said it is not so much the municipal waiver but the density



and how to access the lot for safety purposes. Mr. Burgess asked Mr. Mackey if he has researched to see if there is an actual right of way there? He has not. Ms. Hampton said she is very sensitive to this as she lives on a lake. This is a serious, sensitive subject for her. She said that on a lake, everything the homeowners do affects the lake. It is more than a body of water. Mr. Carnevale agrees with Mr. Perkins.

The Board crafted a motion. They discussed the ability to restrict the dwelling to one story, seasonal only. Mr. Virr felt the Board could do that; the Town of Hampstead does it. Mr. Virr said they are dealing with the side lot lines; he did not feel that 7.5 feet made it when the setback should be 15 feet. That is not like allowing 13 feet instead of the required 15 feet. Conditions should include the waiver of liability. Ms. Hampton recalled a prior discussion regarding access; Mr. Perkins said this is different because in this case there is no other means of accessing the lot; the other case had options. Mr. Mackey advised the Board that back in 1993, the proposal had been for a seasonal dwelling and the Board chose to make it only a single story to address the concerns of the abutter to the rear. In this case, they are looking for year round. Mr. Burgess noted the Fire Department in 1993 had asked for one story. Mr. Virr added in this case, one of the abutters has made the request for one story, seasonal use only; is that reasonable? Mr. Burgess felt if the original conditions were good enough, he does not see what has changed other than more congestion. Mr. Virr said the issue of access should be resolved. Lake Avenue appears to be to driveway standards and ends before this lot. The question as to whether the right of way exists is still out there. Mr. Burgess said that the access is very tight and two vehicles can't really pass and stay on the road. Mr. Virr noted they have a variance in place for the frontage and this Board is dealing with setbacks only. The Board continued to discuss potential conditions. The Board felt it could not restrict the year round status or height of the dwelling.

Mr. Carnevale motioned to come out of deliberative session.

Seconded by Mr. Perkins.

Vote: Unanimous.

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

**On Case #14-101, Anne F. Briand, Mr. Burgess moved to grant a variance to the terms of Article VI, Section 165-46.C.4 of the Town of Derry Zoning Ordinance to allow construction of a single family dwelling less than 15 feet from the side lot lines and less than 35 feet from the front lot line at 5 Beaver Lake Street, Parcel 50026, Zoned MDR, with the following conditions:**

- 1. Subject to all state and town permits and inspections**
- 2. A waiver of Municipal Liability and Responsibility must be recorded with the deed prior to obtaining a building permit**
- 3. Obtain permits from Shoreland Protection Act**
- 4. Access right is clearly established**
- 5. Connection to municipal sewer**

**Seconded by Mr. Perkins.**

**Vote:**

**Mrs. Hampton:** Yes, however this is not a vote that she agrees with this. The application should go to the state for approval or disapproval.

**Mr. Carnevale:** No, it does not meet the hardship requirement for the setbacks.

**Mr. Burgess:** No, it does not meet setbacks and there are several other reasons they have already discussed that seem to be objective to this

**Mr. Perkins:** No, public interest is lost based on testimony this evening. There is too much conflict and hardship falling onto the abutters in this case; the values of surrounding properties would be affected in this situation; the property behind would lose the view and that is a loss. The hardship is created partially by how the property was purchased by applicant. Compared to other similar properties as discussed by Mr. Lavelle, the other properties have had better and more direct access without having to infringe on the neighbors. As this speaks to three of the five criteria he votes no.

**Mr. Virr:** No, he echoes many of Mr. Perkins sentiments. This is a density issue. The Board will meet people halfway or partway when it comes to setbacks but these are the same conditions that existed in 1993. The lot is too small and the building is too big. He does not think a house will fit. He is concerned about the public interest factor based on what has been said by abutters this evening.

**The application was DENIED by a vote of 1-4-0. Anyone aggrieved by a decision of the Board has 20 days to file a request for a rehearing; after that the request is to Superior Court.**

The Board took a short break.

**14-102            Jonathan A. Giegerich  
                     Owner: Wayne and Karen Webster**

**Applicant is requesting a special exception as provided in Article VI, Section 165-47.A.1 of the Town of Derry Zoning Ordinance to allow the operation of a tax preparation service at the residence located at 1 Old Chester Road, Parcel ID 09112, Zoned LMDR.**

Mr. Perkins stepped down so that an alternate could sit. Mr. Virr sat Ms. Evans for this case.

Jonathan Giegerich, read his application for the Board. He would like to operate a tax preparation service. He read through the ten factors. He resides at 1 Old Chester Road and has resided there since 2009. The proposed business will not be injurious, noxious or offensive. The business will occupy approximately 168 square feet of the 1932 square foot residence, so will not exceed 25% of the finished living area of the home. The use

will not change the residential character of the dwelling. He would apply for one sign which would not exceed 3 square feet in area and there will only be one employee, himself. With regard to off street parking, there would only be one other car at a time and the current driveway has additional parking off to the side of the garage; no one will be backing into the road. No more than one business would be conducted from the home and it would not be contrary to any covenants or conditions listed in the deed. This is a small tax preparation service he would like to run from his home. Currently, he meets clients at their homes or in restaurants. He would like to centralize his business.

### **Board Questions**

Mr. Virr asked if the owners, Wayne and Karen Webster, lived at the residence? Mr. Giegerich said they do; they are his in-laws. Mr. Virr said the tax map states there is only one finished floor in the home. Mr. Giegerich advised the first floor is finished; the second floor has a bump out in the back. There are three bedrooms and a bathroom on the top floor. Mr. Virr had pictures of the lot. Mr. Giegerich advised this would be a part time job; he is fully employed as a CPA, and only conducts this business in the evenings. Mr. Virr noted if this application is approved, a sign permit would be required and the sign could not be illuminated and would be restricted to three square feet. Mr. Virr confirmed the percentage of the occupancy of the business using 1176 square feet and it meets the less than 25% requirement. He does not see traffic or parking issues. No permits or inspections are required.

### **Favor**

Wayne Webster noted the house is 1900 square feet; the second floor had been added at some point.

### **Opposition**

No one spoke in opposition of the application.

Mr. Carnevale motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Carnevale, Mrs. Hampton, Mr. Burgess, Ms. Evans, Mr. Virr.

### **Deliberative Session**

Mr. Virr said this was pretty straight forward. The only issue he can see would be the need for a sign. Ms. Hampton agreed there should be a sign. The Board reviewed wording for the motion.

Mrs. Hampton motioned to come out of deliberative session.

Seconded by Mr. Carnevale.

Vote: Unanimous.

Mr. Carnavale, Mrs. Hampton, Mr. Burgess, Ms. Evans, Mr. Virr

**Relative to Case #14-102, Jonathan A. Giegerich, Mr. Virr motioned to grant a special exception as provided in Article VI, Article 165-47.A.1 of the Town of Derry Zoning Ordinance to allow the operation of a tax preparation service at the residence, subject to the following conditions:**

- 1. Sign permit must be obtained from and approved by the Code Enforcement Officer.**

Seconded by Mr. Burgess.

**Vote:**

**Mr. Carnevale: Yes.**

**Mr. Burgess: Yes.**

**Ms. Evans: Yes.**

**Mrs. Hampton: Yes.**

**Mr. Virr: Yes.**

**The application was Granted by a vote of 5-0-0. Anyone aggrieved by a decision of the Board has 20 days to file a request for a rehearing. After that the recourse would be to appeal to Superior Court.**

### **Approval of Minutes of December 19, 2013**

Ms. Hampton stated she mailed suggested corrections to staff. The Board was reviewing amended minutes.

Mr. Virr motioned to approve the minutes of December 19, 2013 as amended.

Seconded by Mr. Carnevale.

Vote: Unanimous

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

### **Adjourn**

Mr. Burgess motioned to adjourn.

Seconded by Mr. Perkins.

Vote: Unanimous.

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

Adjourn at approximately 8:50 pm

Minutes transcribed by:

Elizabeth Robidoux

### **Approval of Minutes on February 20, 2014**

Mr. Burgess motioned to approve the minutes of January 16, 2014 as written.

Seconded by Mr. Perkins.

Vote: Unanimous

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