

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
February 20, 2014

Members Present

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

Members Absent

Alternates Present

Tyler Whitehorn

Alternates Absent

Heather Evans

Code Enforcement

Robert Mackey

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. The Board introduced themselves for the record.

14-103 Cumberland Farms c/o Carolyn Parker
Owner: LHB Enterprises

Applicant is requesting a variance to the terms of Article XII, Section 165-101C of the Town of Derry Zoning Ordinance to allow the installation of a 4 ¼" x 60" "Smart Pay" alternator within the existing 3' x 8' LED price sign at 22 East Broadway Parcel ID 30065, Zoned TBOD

Carolyn Parker, representative, said that Cumberland Farms was seeing a variance to Article 165-101C of the zoning ordinance. She read the application for the Board. Ms. Parker said that Cumberland Farms has been installing this type of sign at their locations throughout the area. She said that they were currently down to the last forty that require variances in order for this type of sign to be installed. She said that the ordinance has been recently changed however the zone that this particular store is located does not allow this type of signage and that they would like to incorporate the smart pay program at this location. Ms. Parker said that she had a small video of the type of sign that they wished to install on her phone if the Board wished to view.

Board Questions

Mr. Virr asked if the Board wished to view the video.

Mr. Perkins said that he was familiar with the type of sign requested and did not feel he needed to view video.

Mr. Virr asked if the smart pay member flashed different for just the member. Ms. Parker said that the sign flashed a member price and a non-member price.

Mrs. Hampton said that she felt that there would be a major distraction if drive by and see \$3.49 for gas then then think that was a good price and she wasn't a member and didn't want to become one that the signage would be deceiving.

Mr. Virr said that the different prices would be posted at the pump.

Mr. Whitehorn said that he was familiar with this type of signage and said that it switches for member and then to a non-member price and there are a lot of these types of signs in Massachusetts.

Mr. Virr said that the comment was made that they were allowed in the ordinance. Ms. Parker said yes but not in the zone that this store is currently located.

Mr. Burgess said that the pictures did not show the changes. Ms. Parker said it was hard to show in a picture but her video does show full view.

Mr. Whitehorn asked if the size of the existing sign would be altered. Ms. Parker said no.

Code Enforcement

Mr. Mackey said the applicant is requesting approval to install an alternator placard within the existing 3' x 8' LED price panel which would allow the sign & prices to alternate from "Smart Pay Member" prices to "Non-member" prices. The alternator would be set to change every 8 seconds. Per Town Zoning Regulations (formally – Article XII, Section 165-101C) changing message signs are prohibited. The regulations have recently been changed to allow the installation of Electronic Message Center Signs but only in the General Commercial and Industrial IV Zoning District (See New Section – Article XII, Section 165-101.11). This property is located within the Traditional Business Overlay District which does not allow changing message signs. Therefore, a variance is being requested. If approved, a sign permit will be required. There are pictures in the file for review by the Board.

Mr. Burgess asked if technically this type of sign was not allowed in this district. Mr. Mackey said that was correct as this type of signage is not allowed in this district.

Favor

No one spoke in favor of the application.

Opposition

No one spoke in opposition of the application.

Mr. Carnevale motioned to go into deliberative session.

Seconded by Mr. Perkins.

Deliberative Session

Mr. Perkins said that the spirit of the ordinance would be to limit distractions to drivers and that the area has a high volume of traffic. A sign of this nature could create a distraction where a pedestrian could step out in front of a vehicle when the driver is watching the gas price change and someone could get injured.

Mrs. Hampton asked if Mr. Perkins knew of people getting hit in the past. Mr. Perkins stated not necessarily but potential exists because of the density of people at certain times of the day and heavy traffic volume. Ms. Hampton indicated a distraction could occur if she were driving by and saw gas for \$3.23 that she could pause in the flow of traffic and that she felt that could cause issues.

Mr. Virr said that he drove past the area in question tonight and could barely notice the sign and felt that he wouldn't have even noticed if he hadn't been looking for it. He said that there are a lot of statistics that could or could not happen.

Mr. Carnevale asked if the 8 second rule could be adjusted.

Mr. Virr said that the applicant has applied for 8 second change and the new ordinance now reads 5 second change.

Mr. Perkins said that verbal testimony has been stated and if a condition could be added that Code Enforcement could have the authority to monitor and have changed if it becomes an issue.

Mr. Virr said that he knew that Code Enforcement has worked with other signage in the area and feel that there would not be a need to set condition.

Mrs. Hampton said that were the Town just revised the ordinance that if grant this request feel that would be setting a precedence.

Mr. Virr said that this request is under the old ordinance and do not feel would be setting precedence as don't feel that there will be a noticeable sign change.

Mr. Perkins said that he concurs with Mr. Virr that do not feel that an 8 second change will make a huge change.

Mr. Burgess reviewed the conditions as follows for the Board:

1. Subject to obtaining all permits and inspections.
2. No more than 8 second change interval.

Mr. Perkins asked if could make condition that Mr. Mackey has the ability to adjust if the sign change becomes a safety issue.

Mr. Mackey said that it would not hurt to add the condition.

Mr. Carnevale motioned to come out of deliberative session.

Seconded by Mrs. Hampton.

Vote: Unanimous.

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

Mr. Burgess motioned on case #14-103, Cumberland Farms c/o Carolyn Parker, Owner: LHB Enterprises to Grant a variance to the terms of Article XII, Section 165-101C of the Town of Derry Zoning Ordinance to allow the installation of a 4 ¼" x 60" "Smart Pay" alternator within the existing 3' x 8' LED price sign at 22 East Broadway Parcel ID 30065, Zoned TBOD, with the following conditions:

1. Subject to obtaining all Town permits and inspections.
2. Sign to change no more than 1 time per every 8 seconds.
3. Code Enforcement Officer has ability to monitor and regulate sign change if become a disturbance.

Seconded by Mr. Perkins.

Vote:

Mrs. Hampton: No. Reason is have concern of flashing signs. Do not feel they are needed in Derry.

Mr. Carnevale: Yes.

Mr. Perkins: Yes.

Mr. Burgess: No. Feel there are safety issues.

Mr. Virr: Yes.

The application was Granted by a vote of 3-2-0. 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.

14-104 Paul C. Doolittle

Applicant is requesting an Appeal of an Administrative Decision of the Code Enforcement Officer in order to establish that the proposed use of the property is allowed per Article III, Section 165-14 (Churches) of the Town of Derry Zoning Ordinance at 33 Old Chester Road Parcel ID 09138, Zoned LMDR

Paul Doolittle, owner, said that his property was also known as Sunpoint Farm, he stated that he was also a member of the Derry Conservation Commission. Mr. Doolittle said that he had visited with Mr. Mackey with regard to his proposed use and was told by Mr. Mackey that he was unsure the proposal fell under the definition of a Church.

Board Questions

Mr. Perkins asked if Mr. Doolittle could clarify what it was that he was seeking. Mr. Doolittle said that what he was trying to do was get answer as Mr. Mackey was unsure that the use falls under the Church definition.

Mr. Doolittle said that the property has been Sunpoint Farm Sanctuary since 1970 and groups of people utilize the property for meditation and organic farming. In 1980 his parents retired and moved back into the house and the property has been utilized as Sunpoint Farm which is a retreat center and wish to return to utilizing as a sanctuary. Mr. Doolittle said that he is here tonight to explain the nature of a Church is a building that people gather and worship and that he is trying to model and promote spirituality and transformation and also support practice with assisting others in their spiritual journey. He said that he offers cooperative living where people staff the retreat center and learn about organic farming. Theme is representing earth care and utilize the property and keep as agricultural. The property consists of 9 acres of open field. He said that the Unitarian Church is about supporting people with spiritual journey and their own path with a shared set of principles. He said that Sunpoint Farm has been supportive in this lifestyle as he was raised as a Unitarian and has been involved with the Church his whole life. His motivation is to bring a retreat center to the property as concerned with the health of the planet as most people about being unsure of the health of the planet. The intent is to use less of resources and create less of a carbon footprint by utilizing natural resources.

Reverend Patrick McLaughlin, 118 Birch Road, Chester, said that he has been the minister of the Unitarian Church in Manchester and is a local representative with standing order. He said that he felt that Mr. Doolittle is working with early tradition of not to withdraw but to live together. Sunpoint Farm is seeking to do is to help find ways to live more harmonious together and supportive as possible. As for being a Church or Monastery with religious sense he said it is a place where one can go and follow their

own spiritual self. People are not tied to the past but are looking towards future. He said that the Southern New Hampshire Clergy are very supportive for this type of retreat center and model its values.

Mr. Doolittle said that the real issue is sequence to be able to have housing for staff and wish to have a small village type of cluster housing in the pine area of the property.

Code Enforcement

Mr. Mackey said that the applicant is appealing the decision of the Code Enforcement Officer in order to establish that his proposed use of the property falls within the definition of a church and, therefore, would be an allowed use per Article III, Section 165-14 of the Zoning Ordinance. I met with the applicant, Mr. Doolittle, and reviewed the proposal which includes the future use of the 28 acre property as a “Monastery/Retreat” facility possibly in conjunction with or through ownership by the Unitarian Universalist Church located in Manchester. The facility would include the construction of several small, non-traditional residential buildings and the construction of an addition to the existing farmhouse for residential use by guests of the facility. After reviewing the proposal and the definition of a “Church” contained in the Zoning Ordinance, I am unable to conclude that the proposed use of the property would fall within this definition. Mr. Doolittle believes that his proposed use of the property does fall within the definition of a Church and, therefore, should be allowed by right. The Board will need to establish if the proposed use of the property conforms to the definition of a Church along with its customary accessory uses and, therefore, is allowed per Zoning Article III, Section 165-14 or if a variance must be obtained in order to develop the property in this manner. There are pictures of the property in the file for review by the Board.

Favor

Tamara Gray, 70 North Shore Road, said that she was in favor of the request as felt it would be good for the community and felt that there were currently not enough natural resources in the area that what was currently in grocery stores.

Opposition

The following abutters appeared in opposition to the applicant’s request: Randall Cox, 54 Old Chester Road, Robin Olson, 56 Old Chester Road, Irene Lisavich, 58 Old Chester Road, Drew Olson, 56 Old Chester Road, had the following concerns:

- Concerns of who would own as Churches do not pay taxes.
- Concerned with proposed housing facilities and locations.
- Questions with use of a Church or retreat.
- Do not feel use falls under Church definition.
- Concerns of surrounding property values.

- What does the proposed buildings fall under for guidelines and setback requirements.
- Questions of what the type of use the request fell under.

Mr. Virr stated that Churches are not required to have buildings be attached. He said that currently St. Thomas has detached structures. Other places such as Star Island or the Isles of Shoals are retreat centers that fall under the Church as a religious use setting.

Rebuttal

Mr. Doolittle said first he would not be the owner as he was unable to afford to stay there. He said that it was a family tradition to keep the use of the land as a place of learning and where people can come to research their spirituality. He said at this time the property would not remain as his residence but he would be there periodically for guidance and teaching. The goal is to keep the large field to remain as agricultural and wish the property to remain as a farm.

Mr. Burgess asked if the deed would change as currently has 3 owners. Mr. Doolittle said that the property would be either to give or sell to the church and that they were still in discussion as they need to know if use can be established before they can go forward with the proposal.

Mr. Perkins said that he was aware of Mr. Doolittle's farm because of his parents, but asked if Mr. Doolittle could explain why the things that they do now at Sunpoint Farm could not continue without the change in the definition of the property. Mr. Doolittle said that he wished to be able to have people come to the property and pursue their own spirituality and keep the infrastructure as a farm. Unless he was able to redefine the property as a church he was unable to afford to keep the property as getting older and as such this change in ownership would keep the property as a place of worship.

Mrs. Hampton said that she did not understand why the definition would need to be changed except for a money factor as a church is not a taxed based property. Mr. Doolittle said that he was unable to afford the upkeep of the property and the Church is interested in acquiring and keeping property as a sanctuary.

There was some discussion as to the use and definition of a church.

Mr. Virr asked if it was correct to assume that any buildings for habitation would be required to meet present codes. Mr. Mackey said that was correct and in order to move forward there are certain criteria that needs to be met. Tonight here to see if the proposed use could be defined as a Church and the accessory buildings would fall under the same umbrella community. A lot of things are involved such as site plans, codes, etc.

Mr. Virr said that this is a work in progress and understand that a site plan needs to be drawn up and such but beforehand there needs to be some sort of commitment in place.

He said there are places in the rural parts of Maine that you can go and live in a yurt type structure and some are constructed out of hay bales etc.

Mr. Doolittle said that the plans are to create out buildings on the property with no water or electricity but would have a compost toilet and would be very small structures. The main house all rules would apply with running water, electricity etc.

Mrs. Hampton asked if the services could be offered as a rehab or half way house to take people in to help others engage back into society such as from prisons, etc. Mr. Doolittle said yes as there have been such people at his home. He was a sociologist by training and yes those were on the table.

Mr. Perkins said that Christian faith would not have limitations as to who they served or helped. As far as the buildings and yurts etc. that part will need to be reviewed by the Town Codes as habitable buildings need would need to be worked out with the Code Enforcement Office. He said that he wished to caution the Board that here tonight to define the use and if this property can be uses as a Church. There is a lot of work left to do but that would be with Planning, Fire and Code Enforcement Departments.

Mr. Doolittle said that the most important thing would be to put the buildings close together and not on the farming area so the land would have less impact.

Mr. Burgess asked if seeking to have a small village to be able to work in for the common good. Mr. Doolittle said yes.

Mr. Carnevale motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Deliberative Session

Mr. Virr said that he felt that the request first needed a commitment from the Unitarian Church. He said that he was not trying to define what type of Church could be and that this country was founded on religious freedom. But he felt that ownership of the property was a major concern.

Mr. Perkins said that this is an administrative appeal and where going.

Mrs. Hampton said that she has not heard a normal application.

Mr. Burgess said that the Board needed to approve or deny the applicant's request.

Mr. Perkins asked if would like to share duties and that he could make the motion.

Mr. Virr said motion in favor as seeking appeal to administrative decision or uphold decision of the Code Enforcement Officer or the Board could continue and have the applicant bring back a more definitive answer so we could give some guidelines.

Mr. Mackey said the applicant if amendable to requesting a continuance.

Mr. Virr said that the Board could continue without finding and allow to bring back an outline of process to see if the spirit and intent of decision was correct as he felt that the section of the ordinance was hung up on customary uses.

Mr. Burgess said that he felt that the definition did not apply to this type of use.

Mr. Virr said that education is part of the definition and there is education involved.

Mr. Perkins said that the application was about the property definition and it becoming a church and not about the buildings. He said that he feels the same pain in the taxes and that the first step with the Board is to choose if the property is a church or not.

Mr. Virr said that the request was seeking guidance. He said that Board could either uphold Mr. Mackey's decision would be to deny or to grant Mr. Doolittle a variance with conditions or continue with some direction as to how to approach request.

Mr. Burgess said that he felt that the appeal was to grant or deny.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mr. Carnevale.

Vote: Unanimous.

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

Mr. Burgess motioned on case #14-104, Paul C. Doolittle, to Grant an Appeal of an Administrative Decision of the Code Enforcement Officer in order to establish that the proposed use of the property is allowed per Article III, Section 165-14 (Churches) of the Town of Derry Zoning Ordinance at 33 Old Chester Road Parcel ID 09138, Zoned LMDR.

Seconded by Mr. Carnevale.

Mr. Virr advised the Board that a yes vote would to overturn the Code Enforcement Officers decision and a no vote would uphold.

Vote:

Mr. Carnevale: No. Agree with Administrative decision.

Mr. Burgess: No. Feel at the current time it does not fall into the definition of a Church.

Mrs. Hampton: No. Agree with Mr. Mackey's decision.

Mr. Perkins: No. Not comfortable with defining the property in such a broad sense.

Mr. Virr: No. Feel a lot of things need to happen with request before the Board can give a definitive answer. Ownership is a major issue.

The application for Administration Appeal was Denied by a vote of 5-0-0. Anyone aggrieved by a decision of the Board has 20 days to file appeal to Superior Court.

Approval of Minutes of January 16, 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

Adjourn

Mr. Burgess motioned to adjourn.

Seconded by Mr. Perkins.

Vote: Unanimous.

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

Adjourn at 8:16 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes March 6, 2014

Mr. Virr motioned to approve the minutes of February 20, 2014 as amended.

Seconded by Mr. Carnavale

Vote: Unanimous

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