

**TOWN OF DERRY**  
**ZONING BOARD OF ADJUSTMENT MINUTES**  
**March 6, 2014**

**Members Present**

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

**Members Absent**

**Alternates Present**

Heather Evans

**Alternates Absent**

Tyler Whitehorn

**Code Enforcement**

Robert Mackey

Mr. Virr called the meeting to order at 7:03 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.

**14-105          Whitcher Builders – Michael D. Whitcher,  
Owner: Town of Derry**

**Applicant is requesting a variance to the terms of Article III, Section 165-20 (a) of the Town of Derry Zoning Ordinance to allow the construction of a single drive-up window Aroma Joe's Coffee facility where the building is less than 75 feet from the wetland at 13 Manchester Road, Parcel ID 08274, Zoned IND IV**

Steven Smith, of Steven J. Smith & Associates of Gilford, NH said that he was representing the applicant, Michael Whitcher of Whitcher Builders. Mr. Smith read the application for the Board. Mr. Smith said that several plans were submitted with the application and he proceeded to review them for the Board.

Mr. Smith said that the previous use of the property was a restaurant and had two means of egress along with parking in the rear of the property. The land before the taking for the Route 28 widening had a more buildable window and that has been substantially reduced so now the current setback requirements are unable to be met. Mr. Smith explained that the plan shows current boundaries and the wetland buffer and new building window. The proposed Aroma Joe's Coffee facility would be a drive-up facility with 1 drive-up window. The structure is proposed to be 840 square feet with 1 drive-up

and would allow for proper turning access. He said that the closest distances would be 36' 2" and 66'27" and the regulations require 75 feet for wetland over one acre. Mr. Smith said that there was no way to develop site without a variance and believed that the proposed use was reasonable. He also stated that there would be 38% more green space provided with the proposed use.

Mr. Smith explained the various plans that were submitted in detail for the Board.

### **Board Questions**

Mr. Virr asked if the entrance arrows coming in from the street were 314.6+. Mr. Smith said that the proposal was a 2 way entrance and the structure would be a 2 person operation.

Mr. Burgess said that there appears to be a 26' entrance which leaves 13' auto exit. Mr. Smith said that there would be two areas one to enter and one to exit drive thru of 11 feet each.

Mr. Burgess asked if there would be two lanes one for drive thru and one for parking to go in. Mr. Smith said yes.

Mr. Perkins said a normal driveway was 12 feet wide and this was only a drive thru as there would be no tables. Mr. Smith said that was correct.

Mr. Burgess asked if there would be walk ins or was this a drive up only. Mr. Smith said that this was a drive up facility but occasionally there are people that walk up to the window for a coffee.

Mr. Virr asked how deep the water retention pond was. Mr. Smith said that he was unsure as they have not done a full engineering report. He said that in viewing the plans he thought that the pond may be three to four feet deep but will do more studies if approved and if the area is more than four feet it will require a fence.

Mrs. Hampton asked if parking spaces were for employees Mr. Smith said yes.

### **Code Enforcement**

Mr. Mackey said The applicant is proposing to construct a single drive-up Aroma Joe's coffee facility on the property. Previously, this site housed the Pinkerton Tavern. The property was purchased by the Town of Derry as part of the recent Rte. 28 (Manchester Road) widening project. Approximately, 25 feet of width along the entire frontage of the lot was taken as part of the widening project leaving the lot with a very narrow buildable envelope after taking into the account all of the required setbacks. The wetland involved is not classified as a Prime Wetland and is not part of the 100 year flood zone. Therefore, only Article III, Section 165-20(a) applies with regard to the wetland building setback. Be advised that this setback applies to the building only and not the other features of the site i.e. pavement, retaining walls, etc. The building is proposed to be constructed 36.22

feet from the edge of the wetland. As the wetland is greater than 1 acre, a 75 foot setback is required and the applicant is seeking a variance. The applicant has signed a purchase and sale agreement with the Town contingent upon approval of the project. If the variance is approved, the applicant will then need to obtain Planning Board site plan approval. There are pictures of the property in the file for review by the Board.

### **Favor**

No one spoke in favor of the application.

### **Opposed**

No one spoke in opposition of the application.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous

Ms. Evans, Mr. Carnavale, Mr. Burgess, Mr. Perkins, Mr. Virr

### **Deliberative Session**

Mr. Virr said that the applicant presented a very good presentation and felt the proposal was a good use of a very small compact site. He said that conditions of being subject to obtaining all Town permits and inspections and Planning Board approval will need to be part of the conditions.

Mr. Burgess said that the previous structure was 20' x 40' and this structure is proposed to be 315 square feet which is substantially less. He said that the application also shows and they are removing a lot of the impervious surfaces and adding more green space so he felt it was a good fit for the area. He was concerned of roof drainage.

Mr. Virr asked if the applicant if the roof was to be flat or pitched. Mr. Smith said it was proposed as a pitched roof.

Mr. Virr said that the roof drainage etc. were matters for the Planning Board.

Mr. Perkins said that the building next door, Clearwater, encroaches more into the wet area than this proposal. Also, that property was much larger which was possibly dumping more into the book than this proposed use would do.

Mr. Virr reviewed the conditions for the Board.

Mr. Carnavale motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous

Ms. Evans, Mr. Carnavale, Mr. Burgess, Mr. Perkins, Mr. Virr

**Mr. Burgess motioned on case #14-105, Whitcher Builders – Michael D. Whitcher, Owner: Town of Derry to Grant a variance to the terms of Article III, Section 165-20 (a) of the Town of Derry Zoning Ordinance to allow the construction of a single drive-up window Aroma Joe's Coffee facility where the building is less than 75 feet from the wetland at 13 Manchester Road, Parcel ID 08274, Zoned IND IV, as presented with the following conditions:**

- 1. Subject to obtaining all permits and inspections.**
- 2. Subject to Planning Board approval.**

Seconded by Mr. Perkins.

Vote:

**Mr. Carnavale: Yes.**

**Mr. Burgess: Yes.**

**Ms. Evans: Yes.**

**Mr. Perkins: Yes.**

**Mr. Virr: Yes.**

**The application was Granted by a vote of 5-0-0. 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 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

### **Other Business**

Mrs. Hampton asked if there were any upcoming training seminars available.

Mr. Virr said that there were none that he was aware of at this time.

## **Adjourn**

Mr. Burgess motioned to adjourn.

Seconded by Mr. Carnavale.

Vote: Unanimous.

Ms. Evans, Mrs. Hampton, Mr. Carnvale, Mr. Burgess, Mr. Perkins, Mr. Virr

Adjourn at 7:40 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

## **Approval of Minutes April 24, 2014**

Mr. Perkins motioned to approve the minutes of March 6, 2014 as written.

Seconded by Mr. Carnavale

Vote: Unanimous

Ms. Evans, Mr. Carnavale, Mr. Burgess, Mr. Perkins, Mr. Virr