

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
October 2, 2014

Members Present

Lynn Perkins, Chairman
Allan Virr, Vice Chairman
Donald Burgess, Secretary
Teresa Hampton
Heather Evans

Members Absent

Alternates Present

Stephen Coppolo
Katherine Prudhomme-O'Brien
Dana Nauerz

Alternates Absent

Michael Demeo

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.

#14-118 Keith Shepard

Variance to the terms of Article VI, Sections 165-42A and 165-42C2 of the Town of Derry Zoning Ordinance to allow the operation of an auto sales business (internet driven) at the property. Parcel ID 08001-009, 6 A Street, Zoned IND IV

Keith Shepard, applicant, read his application for the record. He said he would like to sell high end vehicles one at a time with dealer plate^s as a part time job. This would be internet driven only and by appointment with no employees as he just -needs-just an office space to be able to keep files and complete state transactions. Mr. Shepard said that he would also be networking with other auction sites for transfers.

Board Questions

Mr. Perkins asked if this property was in the main aquifer. Mr. Mackey said that he believed it was in the aquifer but this did not involve auto repair. He said that the Planning Board revised the zoning ordinance and no longer allowed car sales as they did not want to a proliferation of car sales in the area.

Mr. Virr asked [the applicant](#) to explain the purpose and where the vehicles would be stored. Mr. Shepard said that he would be an internet provider who deals strictly with on-line sales and there would be no display of any vehicles on site. He would have a dealer plate and would drive the vehicle to the office and process paperwork. If needed he could store the vehicle inside the building.

Mr. Coppolo asked if he would be performing repairs to the vehicles on site. Mr. Shepard said no that if [a vehicle](#) needed repairs that [they repairs](#) would be performed at a shop elsewhere.

Mr. Burgess said that if he understood correctly that the vehicles would be purchased and driven to the site and there would be no outside display. Mr. Shepard said that was correct as he currently has a full time job and this would be done during the evenings by appointment only.

Mr. Perkins asked if renting [the](#) office to do this in the evening and [his](#) intent is to meet [the](#) -client there and complete the registration transfer. Mr. Shepard said yes.

Mr. Burgess said that if driving the vehicle to [the](#) site and selling the vehicle to the customer how would [he](#) get back home. Mr. Shepard said that he may have to have his own vehicle there prior and park inside if needed.

Mr. Perkins asked if there would be any concerns with storage of a vehicle inside the building. Mr. Mackey said that it may need to have fire [inspection review](#)-. If approved [the Board](#) may want to make a condition to have fire review for ventilation etc.

Mrs. Hampton asked if there would be any oil changes or washing of vehicles on site. Mr. Shepard said no.

Mrs. Evans asked where this was a lease agreement would it be subject to approval for the building as the lease expires in 2015.

Mr. Perkins said that if approved a change of use would need to be followed. Mr. Shepard said yes.

Mr. Coppolo said that his initial concern was with traffic flow but testimony states it would be customer based by appointment and asked how many cars would there be. Mr. Shepard said possibly 3 vehicles per month.

Mr. Virr asked if there were overhead garage doors on the building and if the landlord was aware of the possible parking of a vehicle inside. Mr. Shepard said yes on the back side of the building and that the landlord has a signed permission letter located in the file.

Favor

No one spoke in favor of the application.

Opposition

No one spoke in opposition of the application.

Code Enforcement

Mr. Mackey said that the applicant is requesting approval to operate a non-display auto sales business in a portion of the currently vacant building. The property is located in the Industrial IV zoning district. The zoning regulations were amended a couple of years ago and no longer permit automobile vehicle sales in the district. The purpose of this change was to avoid the proliferation of used car lots in this area. The applicant has represented that there will be no outside display of vehicles for sale and if the variance is approved, I request that the Board make this a condition. There are pictures of the property in the file for review by the Board.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

Deliberative Session

Mr. Perkins said that Mrs. Evans pointed out an interesting point with regard to the lease date.

| Mrs. Evans said that she was concerned if this could be allowed [because of the to](#) date on the lease agreement.

| Mr. Perkins felt that a condition [should be made](#) that site be monitored and also no outside display.

| Mr. Virr said that he felt that a condition could be made [the variance was only](#)~~that only~~ concurrent with [the](#) -lease agreement as to what Mrs. Evans stated.

| Mr. Burgess said that the only problem that he could see with that is that the applicant would have to come back and questioned if [a condition #](#) could be made that as long as this applicant leases this space that it runs concurrent with him.

| Mr. Virr said that there was no way to [monitor a](#) -limit of one vehicle to monitor as dealer plates can be on streets and in a parking lot.

Mr. Perkins said that he was uncomfortable with making a retractable variance and felt if a limit to the number of vehicles was imposed and no outside display it would assist in the future.

Mr. Virr said that he was breaking protocol and asking the applicant if there would be a problem if they restrict to only one vehicle or storage. Mr. Shepard said that he would like the ability to be able to park inside if necessary and did not state that he would have only one vehicle at a time just that there would be no outside display.

Mrs. Hampton said that this application is usually what the Board sees in a home situation and limit space.

Mr. Burgess said that the applicant stated that he would have dealer plates and be driving the vehicle.

Mr. Virr said that this type of internet driven application has been seen before with inside storage as Dusty Old Cars does the same type of operation. Feel that the Board could continue the variance as long as the lease utilizes the property and if lease is abandoned then the variance shall be void.

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

1. Subject to obtaining all State & Town permits and inspections.
2. No outside display of vehicles.
3. No outside repair or washing of vehicles on property.
4. Abandonment of lease will terminate variance.

Mr. Virr motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Mr. Burgess motioned on case #14-118, Keith Shepard to Grant a Variance to the terms of Article VI, Sections 165-42A and 165-42C2 of the Town of Derry Zoning Ordinance to allow the operation of an auto sales business (internet driven) at the property. Parcel ID 08001-009, 6 A Street, Zoned IND IV as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. No outside display of vehicles.**
- 3. No outside repair or washing of vehicles on property.**
- 4. Abandonment of lease will terminate variance.**

Seconded by Mrs. Evans.

Vote:

Mrs. Hampton: Yes.
Mrs. Evans: Yes.
Mr. Virr: Yes.
Mr. Burgess: Yes.
Mr. Perkins: Yes.

The application was Granted by a vote of 5-0-0. Anyone aggrieved by a decision of the Board has 20-30 days to file a request for a rehearing. After that the recourse would be to appeal to Superior Court.

It was noted for the record that Mrs. Hampton would step down for the following case and that Mrs. Prudhomme-O'Brien would sit.

14-119 David Thompson
Owner: Laura Lane Properties

Variance to the terms of Article VI, Sections 165-46C.4 to allow renovation/completion of construction of a garage with room over that does not meet the applicable building setbacks. Parcel ID 58084, 4 Karen Avenue, Zoned MDR

Attorney Conrad Cascade, representing applicant and Richard Fauteau who are also present this evening introduced themselves for the Board. — Attorney Cascade read the application for the record. He said that Mr. Thompson's daily work is purchasing dilapidated structures and then get remodel them for resale. The applicant purchased this property from a bank. The property was originally constructed in around the 1950's along with a 12' x 15 shed located to the rear of the property. Attorney Cascade said that somewhere in 2009 the prior owner applied for a permit for the attached garage but believe that they never followed through with their application but continued to build the structure. Mr. Thompson purchased the property from the bank and the tax card shows that the property has been being taxed with the structure in question that is currently before the Board. The applicant only found out there was a problem with the property when his electrician went in to apply for an electrical permit. Attorney Cascade said that the cost of tearing the portion of this structure down was costly and have several letters from abutters in favor of the structure staying to submit to the Board.

Mr. Perkins said that the Board does not allow additional submission from the applicant unless it is submitted 10 days prior to the meeting but they can be elaborated on for the record.

Board Questions

Mr. Coppolo asked if the addition was built in 2009ish and connected to the shed and ~~to~~ garage to make it out of compliance. Attorney Cascade said that he only knows that at this time the garage and room over was not in compliance as they recently learned by Town about the problem. He said that one of the conditions on purchase of the property was that there were no liens and when reviewed prior to closing it showed that the lien amount by the Town was zero dollars and that this problem was realized when an electrical permit was applied for.

Mr. Coppolo asked if the work being performed was to improve the existing structure or expanding. Attorney Cascade said the property was trashed and that Mr. Thompson was working on the property and went for an electrical permit and found there to be this problem with the garage addition portion of the structure.

There was some discussion with regard to the floor layout of the structure.

Mr. Perkins asked if currently working on this part of the structure. Mr. Fauteux said that they have obtained a permit to renovate the main structure only and not the garage portion.

Mr. Perkins asked if any wiring has been done on the garage or room over. Attorney Cascade said that no work has been done to this part of the structure.

Mr. Burgess asked if currently this portion of the structure was just a frame status. Mr. Fauteux said that was correct.

Mr. Perkins asked how repair cost was needed for finishing the addition and what would be the estimated cost for removal. Attorney Cascade said approximately \$6,000.00 to finish. Mr. Thompson said that the estimated cost to remove would be approximately \$20,000 of which \$5,000 would be for tear down and then the rest for reconstruction.

There was some discussion with regard to the square footage of the structure and size of the property.

Mrs. Prudhomme-O'Brien asked if the map was accurate of where the lot line was. Mr. Virr said no that an exact plot plan was not available.

Mrs. Prudhomme-O'Brien asked if there was accessibility to maintain the septic system. Mr. Thompson said that the septic system was located in the front of the home.

Code Enforcement

Mr. Mackey said the applicant is requesting approval to allow an addition, constructed by the former owner without permits or approvals from the Town, to remain approximately 6 feet from the side property line. The Code Enforcement Office had taken the former owner to Superior Court and received a judgment with regard to this matter. (Therefore,

an Equitable Waiver cannot be sought). The applicant is seeking to rectify this situation by applying for a variance and, if approved, acquiring the appropriate permits to complete the interior of the addition as they are also rehabbing the rest of the dwelling. The applicant will also be installing a new, State approved septic system for the residence. There are pictures of the property in the file for review by the Board.

Favor

No one spoke in favor of the application.

Opposition

No one spoke in opposition of the application.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Deliberate Session

Mr. Virr said that he heard testimony that the applicant purchased the property to rehab and sell and feel that the first part before purchasing would be to do homework and find out if there are violations on the property before purchasing.

Mr. Perkins said that he had seen property and it was a mess and a shame no one provided up keep to the property.

Mr. Burgess said that he understands that there is a pre-existing non-conforming shed located to the rear of the property but this is a whole different matter.

Mr. Perkins said that [are](#) currently looking at a 2,100 square foot structure on a quarter of an acre consisting of 4 bedrooms but the septic system can only support a 3 bedroom septic. [He said he understands](#) that they are stating [that they will advertise an extra room as a -only utilizing as a den or office so someone purchasing could at some point add a fourth bedroom](#) but goes against [what the](#) board [does](#).

Mr. Burgess said that they should have a 4 bedroom septic.

Mrs. Evans wanted to know if [a](#) purchase & sales stated a 4 bedroom structure.

Mr. Perkins said that regardless of what [the purchase and sales](#) stated it only has a 3 bedroom septic and [I am](#) unsure of what dollar value would be [for losing the square footage](#) but the question [remain](#) is how can [you](#) justify a 2,100 square foot home on a small lot such as this.

Mr. Virr said that setbacks are so not to overcrowd and that is the reason for setback requirements.

Mrs. Prudhomme-O'Brien asked if the fence was the lot line. Mr. Mackey said that he felt it was a close proximity.

Mr. Virr said a stipulation of the space over the garage to remain unfinished and utilized as storage only could be made but the fact would be that the structure is still too close to the lot line.

[Mr. Perkins explained that ordering the structure to stay would be of no value.](#)

Mr. Burgess asked if [allow](#) would they need a permit for a garage door. Mr. Mackey said that it currently has a rough opening that could be utilized as a garage and if so would require a permit.

Mr. Perkins said a condition of being subject to obtaining all State and Town permits and inspections.

Mr. Virr motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Mr. Burgess motioned on case #14-119, David Thompson, Owner: Laura Lane Properties, to Grant a variance to the terms of Article VI, Sections 165-46C.4 to allow renovation/completion of construction of a garage with room over that does not meet the applicable building setbacks. Parcel ID 58084, 4 Karen Avenue, Zoned MDR as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**

Seconded by Mr. Virr.

Vote:

Mrs. Prudhomme-O'Brien: No. Believe granting would be contrary to the zoning ordinance.

Mrs. Evans: Yes.

Mr. Virr: No. Do not see hardship. Applicant stated that they are a professional remodeler and feel that they should have done some homework before purchase.

Mr. Burgess: No. For the same reasons as stated by Mr. Virr.

Mr. Perkins: No. Admire applicant's attempt but feel request is contrary to the zoning ordinance interest as 6' is too close.

The application was Denied by a vote of 1-4-0. Anyone aggrieved by a decision of the Board has 20-30 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 8:33 pm

Mr. Perkins stated that the following case is a de~~novonebo~~ case and will be heard from the beginning.

14-120 Crom, LLC

Variance to the terms of Article III, Section 165-8 of the Town of Derry Zoning Ordinance to allow the consolidation of lots 01023-001, 01023-003 and 01023-004, which will result in more than one residential building being located on the consolidated lot. (This is a re-hearing of Case #14-116) Parcel ID 01023-001, 125 Windham Road, Parcel ID 01023-003, 119 Windham Road, Gregory Leduc, Parcel ID 01023-004, 117 Windham Road, Zoned Industrial V

Attorney John Cronin, Cronin, Bisson & Zalinsky, said he was representing the applicant and that Eric Mitchell, Mitchell Associates was also present this evening. Attorney Cronin read the application for the record.

Mr. Mitchell explained the proposed plan for the Board and indicated where Ms. Rose's property was located in relation to the property. He indicated that the north access would be gated. The site is zoned for self-storage which is a less intensive use for the property and fits in the area. The applicant originally proposed to build closer to the road but after discussions with ~~the conservation~~ Conservation Commissioner plans were redrawn for the structures to be located further back so as to keep some of the natural buffer in the front of the property. There was some discussion with regards to the two buildings on the site so hence it was determined that a variance would be required. Mr. Mitchell explained that the southern portion entrance was a controlled entrance and that the proposed climate controlled structure will only be accessible during open hours. The dwellings are currently located more than 600 feet apart and are serviced by their own well and septic's. During the technical review it ~~was where it~~ was noted that there would be 2 dwellings on one lot. He said that he felt the use was a reasonable use for the property and that there would be firewalls and a 30,000 gallon cistern installed on the property that would be available to the fire department if there was ever a need.

Attorney Cronin stated that he had 30 years in doing land use variances and usually studies the ordinance. In reviewing Section 165.8 of the ordinance it states only one dwelling per lot. Researching this he felt that it came into being as duplexes were being developed in several areas. He said that the next question came in as to how would this proposal jeopardize the health and safety of the area.

Attorney Cronin went over the points as follows:

- Proposed use is industrial building which fits zoning and is allowed.
- The actual buildings pre-exists on the property.
- Planning issues with buffer.
- If variance is denied what can lot be used for – machine shop, etc.
- Feel proposal makes sense and less impact use for property.
- Substantial justice – looking at entire package as applicant will be building a cistern that will support use and also be able to be utilized for the Town if needed.
- Hardship – to Simplex it relaxes law – particular use questions use as being a reasonable one as residence already exists.
- If granted will not diminish property values and they have brought a person that can speak with professionally with respect to real estate values.

Brian Healey, Hathaway Real Estate, licensed by State of NH Real Estate Commission, said that he has been selling real estate over 10 years with over 500 homes sold in New Hampshire.

Attorney Cronin asked if in his training and expertise if there would be any detrimental diminishment of property values if this proposal were to be constructed in this area. Mr. Healey said no.

Board Questions

Mr. Perkins asked Mr. Healey if his explanation could be clearer. Mr. Healey said that the structure allowance if granted would be less of an impact than if removed.

Mrs. Hampton called for a point of order as she says that she currently works with Mr. Healey and wanted to know if anyone would have a conflict with her sitting on this case.

There was no conflict found from the Board.

Mr. Virr asked what was the use of the large barn located across the road as it appears to be a workshop. Mr. Mitchell said that he was unsure of the status but knew it was formally a chicken coop.

Mr. Mackey said that the property located across the street was currently vacant and the property is being cleaned up by the family and will possibly be placed on the market for sale.

Mrs. Prudhomme-O'Brien said that when the railroad was here there was a large chicken facility in this area.

Mr. Virr reminded the Board that this application is for a variance to allow two residential structures on one lot and ~~discussion of that not the Board's discretion~~ of cistern or buffer areas ~~as this~~ was not part of the Board's consideration.

Mr. Perkins asked if the driveways could be explained. Mr. Mitchell said that the property currently has 2 State approved 2 curb cuts, one for the existing storage facility and one with the residential structure.

Mr. Virr asked Attorney Cronin if it was fair to assume that the proposed storage structures all fit into the area with no setback issues on the same lot unless combined. Attorney Cronin said that was correct.

Mr. Perkins asked if house was part of consolidation. Mr. Mitchell said yes and it would be located within the buffer line.

Mr. Perkins asked what was the size of the peak of the proposed building. Mr. Mitchell said that it was proposed to be a 44,000 square foot structure with a 14' high peaked roof.

Mr. Perkins asked if it would also have air conditioners located on the roof. Mr. Smith said that there would be no air compressors on the roof as they would have a sloped pitch roof line.

Mr. Virr said a 14' structure was less than a 2-story home.

Mrs. Evans asked if bathrooms would be located in the structure. Mr. Mitchell said no that they would only be in the office area.

There was some discussion with regard to size of the proposed structure and location to property lines.

Favor

~~Brown~~Gregory Leduc, 117 Windham Road, said that he had moved here a year ago and would like to continue to reside on the property. When he was approached with regard to possible purchase they spoke of clearing the lot as it was a flat area. ~~W then~~ where it is already established as a residential property he asked if possibly remain residing on the property if the structure ~~were was~~ allowed to remain. He said that he understood the buffer issue and such but would like it to remain a resident ~~ee in this home~~ and also if allowed it would also keep some sort of residential character to the property area.

Opposed

Maureen Rose, 115 Windham Road, said that she had statements from abutters in the area that she would like to review and then present to the Board and then go over her concerns.

Mr. Perkins asked the Board if it was okay for Ms. Rose to review the letters for the Board and then present. The Board agreed.

Mrs. Hampton said that previously Mr. Virr stated that the buffer zones were not purview for the Board but according to the Zoning Ordinance dated February 7, 2014 page 33 Section 165:23 does speak to buffers. Mr. Virr said that the Planning Board considers [the](#) same statute and regulates buffer requirements.

Ms. Rose read letters from the following abutters in opposition:

- Dennis & Mary Cappotto - 10 Towne Drive
- Peter Austin – 113 Windham Road. Ms. Rose said that she had notified the office that this abutter did not receive a notification as he was new to the area.

Mr. Mackey said that the abutter located at 113 Windham Road was not a direct abutter and as such would not have received notification.

Ms. Rose said that she had the following concerns:

- Plan did not indicate where the drive around was going to be located.
- Board just denied previous case on a ¼ acre home.
- Climate controlled building not sure where it is located on [the](#) property and concerned with noise that will be generated.
- Unnecessary hardship as the merging of the lots is a self-created hardship.
- House lot not purchased yet so there is no financial loss as the property can still be purchased and rented as a residential property. When house was built new it was built as a residential structure not industrial.
- Town changed zone
- If merger is allowed now creating all 3 lots industrial use.

Mr. Virr said that all 3 properties are currently zoned industrial and that the residential structure is a legal non-conforming use in the zone.

Ms. Rose asked the Board to understand where she was coming from as she purchased her home in a residential zone. The Board has choices and she does not [and](#) if the Board chose to deny the variance they still have choices she ~~does~~[does not](#). There would possibly be 600 storage customers coming and going at all times. Currently the trees along 93 filter the noise. [She feels it](#) will change [the](#) character of the neighborhood and the photos she submitted show how close ~~her to~~ home ~~and her~~ property [the building would be](#).

The existing home is a grandfathered use and feel that variances should be hard to get and not self-created. Ms. Rose said that the proposal is contrary to the public interest as the buffer requirements ~~does~~ not allow structures to be located in the buffer zone.

Mr. Perkins said that the Board was unable to approve or disapprove with a blanket condition and feel that some of the points may have been lost. He asked Ms. Rose what she was specifically requesting of the Board. Ms. Rose said she was requesting the Board to deny the request and leave the house as a residence.

Mr. Virr said that property was an industrial lot and a legal non-conforming use. Ms. Rose said she was not arguing residential use but the lot is currently is a separate property and would be located within the 50' buffer.

Mr. Burgess said that the property was currently 164.57 feet with the house not including the buffer. Ms. Rose said that the plan shows a fence along the line and that she felt the Board did not understand what was happening. The allowance of 600 storage units will increase ~~more~~ traffic and noise in the area.

Mr. Perkins said that the traffic volume has already changed over the past several years and asked if the house were to remain on the lot what will it do to resolve the traffic. Ms. Rose said that the property would still have a buffer and they could still expand use and would be a win win for everyone.

Lee Bernard, 1 Towne Drive, said he had a question as he did not know what was being asked of the Board and if there was any way of knowing the applicants intention in advance. Mr. Perkins said no but that the Planning Board would have more information when it comes before them.

Mr. Perkins said that the Board is only here tonight for the request of 2 houses to remain on one lot that will be 600' apart.

Ken & Dawn Thompson, 3 Towne Drive, said they are opposed to the request because of a as concern with increase of traffic and noise in the area. Also not sure of what a cistern consists of.

Mr. Mackey said that a cistern was a large underground water tank filled with water that in the event of an emergency the Fire Department has access to utilize.

Rebuttal

Attorney Cronin asked if Mr. Mitchell could review a few of the points raised by abutters.

Mr. Mitchell said that the variance request was for 2 buildings on one lot if the lots were to be merged. The particular zone allows the proposed use of storage facilities and the houses are existing. The fact that the area is zoned industrial use is permitted and can make more intensive but have chosen a less intensive use. If the lots are not merged they

can have several uses and he reviewed the allowed uses for the Board. Mr. Mitchell said he felt to request that the house be removed would be an injustice.

Attorney Cronin said that he was sympathetic to the abutters concerns with expansion but the fact remains that the home can be removed and a lot of other things more intensive can be put in its place. He said that the applicant would not be opposed to a condition to limit the structure to remain a residential use. Attorney Cronin reminded the Board that they are not here to review the site plan and only to the purpose to allow 2 residential structures to remain on one lot. Feel that the proposal has met the criteria needed to be granted a variance.

Attorney Cronin said that the applicant is receptive to a condition that the structure remain residential use but not preclude that if the applicant wants to remove and develop later that they could.

Mr. Burgess asked where pavement would be located on the residential portion. Mr. Mitchell said that have a 50' buffer and a 10' entrance area which would be approximately 60' away.

Code Enforcement

Mr. Mackey said that he previously had read his report for the Board and it was located in the file if the Board wished to review.

Mr. Perkins asked Ms. Rose if the requirement of a fence was still part of her request for when the Board drafts it's conditions. Ms. Rose said she would like to address the fence to ~~keep~~-compartmentalize [the use](#) and go along the lot line with some trees. She said that she feels that the applicant has a self-created hardship as currently [they](#) have reasonable use of their property.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Deliberative Session

Mr. Perkins said that he did not wish to keep going back and forth with the same argument that has been heard.

Mr. Virr said that the removal of lot lines will result in 2 residences on one lot. Feel reasons of zoning are for health and safety reasons but feel that 600' between residences is not against the spirit and intent of the ordinance.

Mr. Burgess said that currently there is 85' to edge of pavement and currently there is 165' of frontage and the buffer is 2 lots.

Mr. Virr said that the buffer zone is not a purview of the Board and that the Board needs to review if 2 residential structures on 1 lot with 600' between them would be against the spirit and intent of the ordinance.

Mr. Perkins said that the applicant was not opposed to a condition that the residential structure remain residential.

Mrs. Hampton said that the applicant could still remove the structure and create a more intensive use on the property.

Mr. Virr motioned to extend tonight's meeting until 10:10 pm.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Mr. Perkins said that the building bumps back ~~from on~~ 117 Windham Road and with regard to the criteria ~~to of~~ the buffer is very rigorous and he is unsure of specifications but feel that the setup was to be protective to the abutter according to Section 165-23 as a courtesy to Ms. Rose's home. The Board could possibly make some considerations to the Planning Board as a curtesy to Ms. Rose's situation.

Mr. Burgess asked if they could increase the -buffer to accommodate the residential zone.

Mr. Perkins said that the objections heard tonight wereas with regard to traffic and noise. He said that there is more traffic now than there was when the existing structures were built.

Mr. Burgess said that the entrance to be utilized by public was to be located 600' away and the second entrance was to be a gated access.

Mr. Virr said that he felt that the spirit and intent of the ordinance was to eliminate overcrowding of residential structures. He said that a real estate broker has given testimony that there would be no decrease in property values so the only hardship is commercial if the property is merged and it would have 2 houses on one lot. If they remove one home then they would not require a variance.

Mr. Virr motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

Mrs. Evans motioned on case #14-120, Crom, LLC to Grant a variance to the terms of Article III, Section 165-8 of the Town of Derry Zoning Ordinance to allow the consolidation of lots 01023-001, 01023-003 and 01023-004, which will result in more than one residential building being located on the consolidated lot. (This is a rehearing of Case #14-116) Parcel ID 01023-001, 125 Windham Road, Parcel ID 01023-003, 119 Windham Road, Gregory Leduc, Parcel ID 01023-004, 117 Windham Road, Zoned Industrial V as presented with the following conditions:

- 1. Subject to Planning Board approval.**
- 2. Subject to obtaining all State & Town permits and inspections.**
- 3. 117 Windham Road to remain a residential structure.**

Seconded by Mr. Virr.

Vote:

Mrs. Hampton: Yes.

Mr. Burgess: No. Feel property values would be diminished. Against the spirit and intent of the ordinance.

Mr. Virr: Yes.

Mrs. Evans: Yes.

Mr. Perkins: Yes.

The application was Granted by a vote of 4-1-0. Anyone aggrieved by a decision of the Board has 20-30 days to file a request for a rehearing. After that the recourse would be to appeal to Superior Court.

Approval of Minutes

Mrs. Evans motioned to approve the minutes of September 18, 2014.

Seconded by Mr. Burgess

Vote: Unanimous

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

Adjourn

Mr. Burgess motioned to adjourn.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Adjourn at 10:10 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Minutes approved as amended on October 16, 2014