

**TOWN OF DERRY**  
**ZONING BOARD OF ADJUSTMENT MINUTES**  
**June 20, 2013**

**Members Present**

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

**Members Absent**

**Alternates Present**

Tyler Whitehorn

**Alternates Absent**

David Thompson

**Code Enforcement**

Robert Mackey

Mr. Virr 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.

**#13-109      Elie N. Touma**

**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 an automobile wholesale business (office only) at the residence, 5 Old Chester Road, Parcel ID 09114, Zoned LMDR.**

Elie Touma, owner, read his application for the Board. He said that he wished to have an office in his home and that there would be no commercial parking or storage of vehicles on his property. He says that he currently purchases vehicles at auction and then they are taken to repair and cleaning and resold.

**Board Questions**

Mr. Virr asked if the vehicles are bought at one auction and resold at another. Mr. Touma said yes or dealers.

Mr. Burgess asked if a sign was requested and if there was a restriction placed that no sign be allowed. Mr. Touma said he would place a sign only if necessary and that no sign allowed would ok.

Mrs. Hampton asked if the mailbox would have the business name on it. Mr. Touma said no unless it was required.

Mr. Burgess said that the U.S. Postal Services typically requires that the names be visible on the inside of the mailbox door.

Mr. Thompson asked if the vehicles were purchased at auction then to repair what was in between for storage. Mr. Touma said that the vehicles that he purchases at the auctions are sent out for cleaning and repairs if needed and during that time they are offered to dealers or re-auctioned. He said that he has his own repair business.

Mr. Virr asked if there was another place that he utilized for repairs. Mr. Touma said yes that he has a place in Methuen.

Mr. Virr said that if in the future a sign was needed then would be required to come back before the Board. Mr. Touma said that was ok.

### **Code Enforcement**

Mackey said the applicant is requesting approval to operate an office at his residence in order to obtain a wholesale auto dealers license. He has represented that no vehicles associated with the business are to be stored or displayed for sale at the residence. If approved by the Board, I would request that this be made as a condition included in the motion. No sign is being requested. There are pictures in the file for the review by the Board.

### **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 an office at his residence in order to obtain a wholesale auto dealers license. He has represented that no vehicles associated with the business are to be stored or displayed for sale at the residence. If approved by the Board, I would request that this be made as a condition

included in the motion. No sign is being requested. There are pictures in the file for the review by the Board.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mr. Carnevale.

Vote: Unanimous.

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

### **Deliberative Session**

Mr. Virr said that the only conditions that he would recommend would be no vehicles stored or displayed for sale on the property and to be subject to all Town and State permits and inspections. And that no sign be placed on the property.

Mr. Burgess said that he agreed with the proposed conditions.

Mr. Virr asked if there are any points in the application that needed to be addressed and that he did not see any covenants in the deed. The applicant is only utilizing 10% of his living space and that there were no employees requested. He said that he did not see a problem with the request.

Mr. Perkins said that he felt that the applicant covered the points.

Mr. Perkins motioned to come out of deliberative session.

Seconded by Mr. Carnevale.

Vote: Unanimous.

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

**Mr. Burgess motioned on case ##13-109, Elie N. Touma to Grant a Special Exception as provided in Article VI, Section 165-47.A.1 of the Town of Derry Zoning Ordinance to allow an automobile wholesale business (office only) at the residence, 5 Old Chester Road, Parcel ID 09114, Zoned LMDR, as presented with the following conditions:**

- 1. No sign allowed.**
- 2. No vehicles displayed for sale or stored at property.**
- 3. Subject to obtaining all State & Town permits and inspections.**

**Seconded by Mr. Perkins.**

**Vote:**

**Mr. Carnvale: Yes.**  
**Mrs. Hampton: Yes.**  
**Mr. Burgess: 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. After that the recourse would be to appeal to Superior Court.**

Mr. Virr said that the next matter before the Board was a rehearing request of Case #106, Louis Saab - Variance to the terms of Article III, Section 165-9 of the Derry Zoning Ordinance to allow the subdivision of the property into 3 lots without frontage on a Town approved road. Parcel ID 08041-039, 35.5 Scenic Drive, zoned MDR.

The Board reviewed the information presented for the request.

Mrs. Hampton said that she had not had time to fully review the information provided as she had not received her email until late that evening.

Mr. Virr said that he did not feel that the Board had made any error in judgment or law with their decision of denial on May 16, 2013.

Mr. Perkins said that he remembered that the Board had a hard time getting answers and that the applicant missed speaking to the 5 criteria. He said that he felt that the ZBA laws for designed for balance and substantial justice is for balance of the neighborhood and he did not feel substantial justice would be a benefit and that what Mr. Saab was requesting was not equal to the abutters.

Mr. Virr said that the Board only needs to establish one criteria to defeat and in review of notes it references frontage on a Town approved road. He said that it was not uncommon for a developer to leave 50' right-of-ways to property for future development to other parcels. He said that there are other possible solutions to the property and did not close the door to them.

Mr. Burgess said that he felt that the 50' right-of-way was left if there was a decision to develop the property in the future. He said left to develop to Town standards with frontage and values and that he would not have concern if it was one house but 3 on one driveway was a big issue.

Mr. Virr said that the 50' right-of-way was for access to the back land and if proposing one home might have considered.

Mr. Perkins said that he had posed the question several ways on what was the hardship which was unable to be answered with only desire was to over develop with a single driveway entrance.

Mr. Virr said that the ZBA was for relief from ordinances. There also posed concern that what if the Saab children may not want to live there forever and sell to other people then there becomes a Town concern. He said that he felt that the Board made no error in judgment in law.

Mr. Virr motioned to Grant the Request for Re-hearing of Case #106, Louis Saab, Variance to the terms of Article III, Section 165-9 of the Derry Zoning Ordinance to allow the subdivision of the property into 3 lots without frontage on a Town approved road. Parcel ID 08041-039, 35.5 Scenic Drive, zoned MDR.

Seconded by Mr. Carnevale.

Mr. Virr informed the Board that a yes vote would grant a request for a re-hearing.

**Vote:**

**Mr. Burgess: No.**

**Mr. Perkins: No.**

**Mrs. Hampton: No. No error in judgment was made.**

**Mr. Carnvale: No. Feel that the Board got it right the first time.**

**Mr. Virr: No. Feel that the Board did not make an error in law.**

**The request for a rehearing has been Denied by a vote of 0-5-0. The recourse would be to appeal to Superior Court.**

**Other Business**

Mr. Virr said that the Board needed to vote on a summer schedule and that typically the Board only met once during the months of July and August. He suggested that the Board meet on July 18<sup>th</sup> and August 15<sup>th</sup> which are the third Thursday's of each month.

Mr. Burgess motioned to meet on the following dates for the Boards summer schedule:

**July 18, 2012  
August 15, 2012**

Seconded by Mr. Perkins.

Vote: Unanimous

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

### **Approval of Minutes**

Mr. Perkins motioned to approve the minutes of June 6, 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. Carnevale.

Vote: Unanimous.

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

Adjourn at 7:42 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

### **Approval of Minutes July 18, 2013**

Mr. Burgess motioned to approve the minutes of June 20, 2013 as amended.

Seconded by Mr. Carnevale.

Vote: Unanimous

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