

**TOWN OF DERRY**  
**ZONING BOARD OF ADJUSTMENT MINUTES**  
**September 3, 2015**

**Members Present**

Lynn Perkins, Chairman  
Allan Virr, Vice Chairman  
Heather Evans, Secretary  
Teresa Hampton  
Stephen Coppolo

**Members Absent**

**Alternates Present**

Katherine Prudhomme-O'Brien

**Alternates Absent**

Dana Nauerz  
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.

**15-118        Mary Kendall**

**The applicant is requesting a Special Exception to the terms of Article VI, Section 165-47A.1 of the Town of Derry Zoning Ordinance to allow the operation of a quilting business at the residence, 43 Stark Road, Zoned LMDR, Parcel ID 03120-003002**

Mary Kendall, 43 Stark Road, read her application and letter of explanation for the record.

**Board Questions:**

Mr. Perkins asked if a sign was being requested. Mrs. Kendall said yes.

Mr. Coppolo asked if it was 3 square feet total in size or 3 x 3 or a 1 x 3. Mr. Mackey said that the sign is limited to 3 square feet total so a 1 x 3 is regulation.

Mr. Perkins said if approved to operate the applicant will still be required to obtain a sign permit.

Mrs. Hampton asked if there would be any special fire protection needed for the quilting business. Mrs. Kendall said that she did not think so.

### **Code Enforcement**

Mr. Mackey provided the Board with the following reference:

- The applicant is requesting approval to operate a quilting business at the residence including quilting classes.
- The total living area of the dwelling is listed as 2,352 sq. ft., so therefore, the area requested for the business is within the 25% allowance for a home occupation.
- The driveway would appear to provide adequate parking for the proposed use.
- A sign is being requested which must be limited to 3 sq. ft.
- There are pictures in the file for review by the Board.

Mr. Virr asked if there was ample parking. Mrs. Kendall said yes that she had a very long driveway and could possibly park 12 vehicles.

Mr. Coppolo asked how many people would be in a class attendance. Mrs. Kendall said possibly 5 to 10.

Mr. Perkins asked with variable vehicles if there was ample room for vehicles so people would not block street access. Mrs. Kendall said yes that her class schedule would be possibly 5-8pm during the week and possibly 10-2pm weekends.

Mr. Virr asked if there would be retail products for sale. Mrs. Kendall said that there would be some on-line sales but mostly people would be dropping off quilts.

### **Favor**

No one spoke in favor of the application.

### **Opposed**

No one spoke in opposition of the application.

Mrs. Evans motioned to go into deliberative session.

Seconded by Mr. Coppolo.

Vote: Unanimous

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

## **Deliberative Session**

Mr. Virr said that the standard condition of being subject to all Town permits and inspections be made.

Mr. Perkins said approval would be subject to customary permits and inspections. Sign permit will need to be obtained from Code Enforcement. Also, would like to stipulate no parking on street as if quilting studio takes off it may pose an issue.

Mr. Virr said that possibly stipulate no on-street parking allowed.

Mrs. Hampton asked if there would be an electrical concern as quilting machines run by electric and possibly would need to know if service would handle it.

Mrs. Hampton motioned to come out of deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous

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

**Mrs. Evans motioned on case #15-118, Mary Kendall to Grant a Special Exception to the terms of Article VI, Section 165-47A.1 of the Town of Derry Zoning Ordinance to allow the operation of a quilting business at the residence, 43 Stark Road, Zoned LMDR, Parcel ID 03120-003002 as presented with the following conditions:**

- 1. Subject to obtaining all permits and inspections.**
- 2. Sign permit required.**

**Seconded by Mr. Virr.**

**Vote: Unanimous.**

**Mr. Coppolo: Yes.**

**Mrs. Evans: Yes.**

**Mrs. Hampton: Yes.**

**Mr. Virr: Yes.**

**Mr. Perkins: Yes.**

**The application was Granted 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.**

**The applicant is requesting a variance to the terms of Article VI, Section 165-45B.d.ii of the Town of Derry Zoning Ordinance to allow the construction of a 10' x 20' cold storage addition to the existing garage, less than 15 feet from the side property line. 31 Jefferson Street, Zoned MHDR, Parcel ID 29016**

Lorraine Peterson, owner, read her application for the record. Mrs. Peterson described her property for the Board. She said that her husband had recently acquired a 1937 Chevy Sedan that he wished to restore and would like to put it into their garage but in order to do so would need to create the addition to the garage to allow them to relocate the items that are currently located in the existing garage.

### **Board Questions**

Mr. Virr asked how far would the proposed addition be from the lot line. Mrs. Peterson said that there would be no issue to the rear property line but the side would be 6' to the fence. She said that she believed that the neighbor had sent a fax to the office earlier today in favor of her request.

Mr. Perkins said that there was a letter in the file from James Lanthier of 27 Jefferson Street indicating no objection to the location of the applicant's request.

Mr. Virr asked how long have they resided at the property. Mrs. Peterson said that they purchased their home in 2000 and have done some improvements to their home and loves the house and the neighborhood.

Mr. Coppolo asked if the proposed addition was going to be up against the existing garage and coming out 10'. Mrs. Peterson said yes

Mr. Virr asked if the garage was attached to the home. Mrs. Peterson said no.

Mr. Perkins asked what was the 5' x 9' area and if the shed could be placed there. Mrs. Peterson said that was where the wheelchair ramp was located to access the rear apartment.

Mr. Coppolo asked if there would be Planning Board review for the roof line. Mr. Mackey said not for a single family dwelling.

Mrs. Peterson said that her husband was very crafty and would be building the addition himself.

## **Code Enforcement**

Mr. Mackey provided the Board with the following reference:

- The applicant is requesting a variance to allow the construction of a 10' x 20' addition to the existing garage to be used for storage of items. The addition will be located 6 feet from the side property line where 15 feet is required. Therefore, a variance to Article VI, Section 165-45B.d.ii is required.
- If approved, a building permit must be obtained from the Code Enforcement Office.
- There are pictures in the file for review by the Board.

Mr. Perkins asked how far off the road was the structure. Mr. Mackey said that it was possible it was closer than the 35' as property is located in an older section of Town.

Mr. Perkins asked why couldn't it be built out onto the driveway portion. Mrs. Peterson said that they still needed the parking area for vehicles.

Mr. Perkins asked why not a lean to or a carport. Mrs. Peterson said that have done a ten type canopy a metal one and a tarp which have all been destroyed by weather and that they wished to build something rather than waste money so they could relocate their snow blower, motorcycle, tractor and various lawn equipment into the area. She said that the garage also has a woodstove inside which was utilized in the colder months so her husband could work on his equipment and stay warm.

Mrs. Evans asked if there would be any heat or electric in the storage area. Mrs. Peterson said no electric but possible that the wall might be open and have some heat to it.

Mr. Virr said that the reason for building the shed would be to have room to park the 37 Chevy in garage. Mrs. Peterson said yes that she would rather have her car inside but the Chevy would be in there instead. She said that the woodstove is there to allow her husband to be outside during the cold weather and still be comfortable as he cannot be outside in the cold due to a medical condition. She said that the boat was being removed and also the jeeps are being sold or junked. Mrs. Peterson said that she has spoken to her neighbor, James Lanthier, who has no objection and believe that he faxed a letter to the office giving his permission.

Mr. Virr asked if James Lanthier was on the other side of the fence and if the property was pitched in the landscape. Mrs. Peterson said yes.

There was some discussion with regard to the property and what was previously done to the property with regard to additions.

Mr. Perkins asked if she had been before the Board for any expansions or if this was the first time before the Board. Mrs. Peterson said that this was her first time before the Board and that Mr. Kelley has always worked with them and knows what they have done to their home.

Mr. Virr asked if purchased the home in June of 2015. Mrs. Peterson said no that was when they redid their mortgage.

Mr. Perkins said that it was just noted that Mrs. Peterson was not on the deed.

Mrs. Hampton said that they were still married.

Mr. Virr said that she would still be required to have authority to represent case and did not feel that the Board could proceed without letter for permission to represent. He said that he felt that the house as small as it is and now getting to 6' to lot line is a bit of a worry about congestion. Mrs. Peterson said that they have a large yard and only seeking to allow her husband to be able to work inside his garage. She said that she did not feel it was a negative factor as not seeking to go all the way to the lot line.

Mr. Perkins said that still would be attaching a structure to a structure. Mrs. Peterson said that she loves Derry and that when her parents passed that she used her inheritance to build a master bedroom and later brought home her aunt who required 24 hour care and built handicap ramp and accessory apartment to allow her to have her own space.

Philip Peterson, owner, said that they had purchased the property in 2000.

Mr. Virr reviewed the information that the Board had been reviewing for Mr. Peterson. He said that concern that about the additions to build as keep going on and on and that the requirement from lot line is 15' and the request is to be 6'. Mrs. Peterson said that they have done everything that has been asked and have had all inspections done.

There was some discussion with regards to shed vs being attached and locations with property landscape.

Mr. Virr asked if the 37 Chevy ran. Mr. Peterson said yes it did and he found it listed in an auto magazine and located in Amherst, MA.

Mr. Perkins said that there were two options the first is that they could proceed and see how it goes and if voted down could still come back with a different request or could withdraw and resubmit with a different type of request. Mr. Perkins asked if he wished to proceed with the hearing or withdraw the application at this time. Mr. Peterson said he wished to proceed.

### **Favor**

Mr. Perkins said that there was a letter in the file from James Lanthier of 27 Jefferson Street stating no objection.

Nancy Turcotte, 20.5 Cedar Street, said that she did not know where the proposed structure was going to be built but know that her property is at a lower elevation than the Peterson's property and did not feel that it would affect her property so did not have any objection to the request.

## **Opposed**

No one spoke in opposition of the application.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Coppolo.

Vote: Unanimous

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

## **Deliberative Session**

Mr. Coppolo said that he understands concerns but have unnecessary hardship as do not see any special conditions that exist as why it needs to be 6' to the lot line as could be located anywhere on the property. Esthetically would fix things up rather than having a tent in the front yard but the law is the law and have to meet the criteria and at that he said that he did not see unnecessary hardship. He said that the property does slope to some extent but have other options.

Mrs. Hampton said that she had reviewed other ways that they could put the shed and have found that it would block a window. She explained various locations for the Board. She said that she felt that snow blowers, lawnmowers etc. need to be someplace for convenient access. She said that the man was a builder and felt that he would put up a solid structure and make esthetically pleasing and either way a shed or an addition is taxed and it was their property.

Mrs. Evans said that she shared the same concerns as Mr. Coppolo as she also did not see any unnecessary hardship. She said that they could add onto the front and still meet requirements. She said that she also sees Mrs. Hampton's viewpoint as it was their property.

Mr. Virr said that he has reviewed the criteria for a variance and feels that the hardship is in the making of the owner and not in the land. He said that he was concerned with being contrary to public interest as the garage is heated by a wood stove and 6' to fence he felt was to close. He said that he also felt that it was contrary to the spirit and intent of the ordinance.

Mr. Perkins said that he shared the same thoughts and would like to see a motion structured with the following condition of being subject to obtaining all local permits and inspections.

Mr. Coppolo asked it would be subject to review from fire.

Mr. Virr said that it would be up to the office for review.

Mr. Perkins said that he did not believe that the building department needs to outsource and have fire review.

Mrs. Evans motioned to come out of deliberative session.

Seconded by Mrs. Hampton.

Vote: Unanimous.

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

**Mrs. Evans motioned on case #15-119, Philip & Lorraine Peterson to Grant a variance to the terms of Article VI, Section 165-45B.d.ii of the Town of Derry Zoning Ordinance to allow the construction of a 10' x 20' cold storage addition to the existing garage, less than 15 feet from the side property line. 31 Jefferson Street, Zoned MHDR, Parcel ID 29016 as presented with the following conditions:**

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

Seconded by Mr. Virr.

**Vote:**

**Mr. Virr:** No. Believe his reasons for denial are covered in the deliberative session. Believe it will not be in the public interest due to the appearance. Will not benefit neighbors as no value in aesthetic appearance. Hardship is in property owners making as not unique in land.

**Mrs. Evans:** No. For the same reasons as stated by Mr. Virr. Also, hung up on unnecessary hardship.

**Mrs. Hampton:** Yes.

**Mr. Coppolo:** No. Do not see unnecessary hardship no evidence shown.

**Mr. Perkins:** No. Feel conflict with public interest and no hardship issue due to size of property.

**The application was Denied by a vote of 1-4-0. 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.**

Mrs. Peterson asked if the Board could explain unnecessary hardship as their property slopes on all areas.

Mr. Perkins said that the Board could not get into the design of the property at this time.

Mr. Virr said that the Board has heard their case and that they have the right to come back before the Board with a different proposal.



### **Other Business**

Mr. Perkins read a letter from Ms. Gentile, 8 Grove Street, requesting an extension of hearing due to the fact that their surveyor was not able to survey the property until September 10<sup>th</sup> which will not allow enough time to submit the requested information to the office. Mr. Perkins asked for a motion to grant an extension.

Mrs. Evans motioned to Grant and extension to Alan, Marianne & Jennifer Gentile of 8 Grove Street, until the first meeting in October 2015.

Seconded by Mrs. Prudhomme-O'Brien.

Vote: Unanimous.

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

### **Approval of Minutes**

Mr. Coppolo motioned to approve the minutes of August 20, 2015 as written.

Seconded by Mrs. Hampton.

Vote: Unanimous.

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

### **Adjourn**

Mr. Virr motioned to adjourn.

Seconded by Mrs. Hampton.

Vote: Unanimous.

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

Adjourn at 8:26 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

**Approval of Minutes October 1, 2015**

Mr. Virr motioned to approve the minutes of September 3, 2015 as amended.

Seconded by Mrs. Evans.

Vote: Unanimous.

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