

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
October 1, 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.

15-121 21st Century Development Corporation
Owner: The Mental Health Center for Southern New Hampshire

The applicant is requesting a variance to the terms of Article XIII, Section 165-106A of the Town of Derry Zoning Ordinance to allow the replacement of the existing assisted living/mental health facility with a new assisted living facility and building having a larger footprint. Parcel ID 09090, 38 North Shore Road, Zoned Low Density Residential

Karl Dubay, Dubay Group, said that he was representing 21st Century Development Corporation, Tony Maseo was also present. Mr. Dubay said that the existing structure had existed for decades and is now a non-conforming structure. He read the application criteria and letter of explanation for the record. Mr. Dubay explained the exhibits that were submitted and said that the proposed structure is a one story structure and slightly larger so that according to 165-106A a variance is required. He said that the existing 2 story structure does not work for assisted living and that a one story structure was being proposed. Mr. Dubay said that he had met with the Code Enforcement and Fire Departments who were very familiar with facility and would like the building brought into code compliance which would be very costly.

Board Questions:

Mr. Perkins asked if being faced with overwhelming cost to bring into code compliance was a factor in tearing down. Mr. Dubay said yes and that the pad on the ground can be worked with and the property does have access to town sewer and context of proposed new structure will meet 30' setbacks and meet wetland setbacks and buffer requirements.

Mr. Dubay said that he has exhibits of what the proposed structure will look like if the Board wishes to view.

Mr. Perkins asked if the Board objects to submission of new information. Hearing no objection Mr. Dubay presented the Board with the exhibit and explained the layout for the record.

Tony Maseo, Windham NH, said that he currently owns and operates an assisted living facility in Windham known as Pine Hill which consists of a 16 bed facility. He said that he went before the Town and his intention is to tear down the existing structure down at a later date and bring it into code compliance. He said that he received a call with regard to this structure and he looked into renovating it but the cost of bringing it into ADA compliance was very costly. Mr. Maseo said that the proposed structure is more user friendly for our senior members being located on one level than utilizing stairs or elevator.

Mr. Coppolo asked if he currently owned or was the property under a purchase and sales agreement. Mr. Maseo said it was currently under a purchase and sales agreement and the thought was to start here and then go to Planning Board with full site plan. He said that they were trying to fast track and working with Center of Life Management so can get onto the Planning Board agenda. He said that the footprint could be a bit smaller and he felt that this proposal was best suited as he knows the limitations of the elderly and that an elevator can be difficult and that a single story is the best way to go. He said that his hopes were to obtain approvals and be operating by 2016. He said that he would be relocating his residents from Pine Hill to this facility temporarily while rebuilding the facility in Windham.

Mr. Perkins asked if left as 2 story could footprint be fit into. Mr. Maseo said could do a 2 story but would be difficult.

Mr. Dubay said existing structure is very cut up.

Mr. Maseo said that it could be converted but would be costly and that the proposal is to build new facility and code compliant.

Mrs. Hampton said that encourage people to utilize property. She said that during the recent law lecture series one of the topics was grandfather use and vested rights. Mrs. Hampton said that a variance on a grandfathered property would lose the grandfathering if rebuilt. Mr. Dubay said would need to also go to State for licensing and that the existing building is not conforming now and that the State would not approve the proposal in its current state.

There was some discussion with regard to building and fire codes versus grandfathering use.

Mr. Maseo said that other companies are interested in the property and one is for multi-family proposal. He said that CLM is interested in his proposal for assisted living so that is why he was here this evening to discuss his proposal of a one story structure and hopes of obtaining a variance so he can then proceed to Planning Board with a site plan.

Mr. Virr asked Mr. Mackey if the proposal meets all the setbacks. Mr. Mackey said yes.

Mr. Coppolo asked if there was an existing license from State to operate as proposed use. Mr. Maseo said that the building needs to be licensed through State of NH and have submitted proposed floor plan. He said that the State was interested in type of sprinkler system would be used and if meet all the requirements the State will issue license.

Mrs. Evans asked if the septic and water would require updates. Mr. Mackey said that the property is serviced by town sewer.

Mr. Dubay said that the water system is adequate and is existing legal use.

Code Enforcement

Mr. Mackey provided the Board with the following reference:

- The applicant is requesting a variance to demolish the existing assisted living/mental health facility and replace it with a new single story building to be utilized as an assisted living facility for the elderly.
- The pre-existing, non-conforming use of the property pre-dates zoning regulations and is allowed to continue as long as the use is not abandoned for more than one year.
- As the applicant is seeking to replace the existing 3 story building with a single story building having a larger footprint, a variance is required from Article XIII, Section 165-106A which deals with enlargement of non-conforming uses. Tax records indicate that the existing building was constructed in 1870.
- If approved, Planning Board site review will be required as well as Town and State permits and inspections..
- 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.

Mrs. Hampton asked where the property was so close to Beaver Lake if there were any conservation concerns. Mr. Dubay said that he met with Conservation and had flagged all wetlands and that the lake itself was outside of the Shoreland buffer and that Conservation did not have any concerns with the proposed outlined plan.

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 he reviewed the criteria and did not see any conflict with any existing buildings and felt that it was a suitable project for the property.

Mr. Coppolo said that he was always on the side of preserving property and that the existing footprint looks like a nightmare but see why this would not be beneficial as it exists and a 1 story structure makes perfect sense. He said that he also was aware that there were no concerns from abutters this evening.

Mrs. Evans said that she agrees with both points of view from Mr. Virr and Mr. Coppolo and felt it meets the criteria.

Mrs. Hampton said she agrees with her colleges and agree with structure proposal of a 1 story structure as it would cost more to renovate existing structure.

Mr. Perkins said that the existing facility is grandfathered if utilized but this project appears to suit the proposed use in a more convenient fashion.

Mr. Virr said that conditions of being subject to obtaining all Town and State permits and inspections be made.

Mr. Coppolo said that he drives the road a lot and at times could be congested with vehicles as North Shore Road was narrow may wish to see something done there.

Mr. Perkins said that would be addressed via Planning Board.

Mr. Virr motion motioned to come out of deliberative session.

Seconded by Mr. Hampton.

Vote: Unanimous

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

Mrs. Evans motioned on case #15-121, 21st Century Development Corporation, Owner: The Mental Health Center for Southern New Hampshire to Grant a variance to the terms of Article XIII, Section 165-106A of the Town of Derry Zoning Ordinance to allow the replacement of the existing assisted living/mental health facility with a new assisted living facility and building having a larger footprint. Parcel ID 09090, 38 North Shore Road, Zoned Low Density Residential as presented with the following conditions:

- 1. Subject to Planning Board Approval.**
- 2. Subject to obtaining all State and Town permits and inspections.**

Seconded by Mr. Coppolo.

Vote:

Mrs. Hampton:	Yes.
Mrs. Evans:	Yes.
Mr. Virr:	Yes.
Mr. Coppolo:	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.

**12-122 JJ Shaw Revocable Trust
 John Shaw, Jr.**

The applicant is requesting a variance to the terms of Article VI, Section 165-42A of the Town of Derry Zoning Ordinance to allow the operation of a used car sales business at the property. Parcel ID 08003-001, 42 Manchester Road, Zoned Industrial IV

David Morin, Commercial Broker, said that he was representing the applicant this evening and that John Shaw, III was also present.

Mr. Perkins said that a letter was provided from John Shaw, Jr. to authorize representation in the file for the record.

Mr. Morin read the application and letter of explanation for the record. He said that he had been marketing the property for approximately a year and that the property was located in the Industrial IV District which could implement a beef rendering facility but not used car sales. He said that improvements to Route 28 have made it difficult for retail access and that people shopping for cars could easily walk from one facility to another.

Board Questions:

Mr. Virr said that he did not see beef rendering but could have a sand and gravel pit and store chemicals at the property. He said that it was a hard area and have some traffic dangers. Mr. Virr said that the area is similar to the vehicle sales than on Ryan's Hill.

Mr. Coppolo asked if the property is where the Martial Arts was located. Mr. Morin said that the Martial Arts studio was located in the front building. This property currently has 2 buildings on the property and the building in question is located in the rear consisting of approximately 15,000 square feet.

Mr. Perkins asked if property was located in the aquifer. Mr. Morin said he believed it was out of the aquifer.

Mr. Perkins asked how long has the property been owned. Mr. Morin said that the he believes the rear building in 1972 and the front building was around 1978. He said that a machine shop hardware manufacturing was not big in the area anymore.

Mrs. Hampton asked if there was any parking issue. Mr. Morin said no that there was more than ample parking.

Mrs. Evans asked if there would be mechanic & repairs or just sales. Mr. Morin said used cars do require some servicing so will have repairs on site.

Code Enforcement

Mr. Mackey provided the Board with the following reference:

- The applicant is requesting a variance to allow the sale of used cars at the property.
- It is the intention of the applicant to be able to lease space to tenant(s) for the purpose of selling used cars.
- Be advised that the definition of "Retail Sales Establishment" excludes vehicle sales.
- If approved, a change of use form will be needed to be filled out by the tenant prior to establishing the business. Planning Board review may be required.
- There are pictures of the property in the file for review by the Board.

Mr. Coppolo asked if there had been any consideration given to the building structure wise. Mr. Morin said that the 2 buildings are still functional and speaking of major redevelopment and client is not looking to do that at this time.

Mr. Perkins asked who would operate. Mr. Morin said it would be leased out and have already been approached but could draw out a contract as use is not permitted in zone so here seeking a variance to allow.

Favor

No one spoke in favor of the application.

Opposed

No one spoke in opposition of the application.

Mr. Coppolo asked how long has attempt to market the property. Mr. Morin said that he said possibly since December of last year but had been listed with another company before.

Mr. Coppolo asked if only interested in car sales. Mr. Morin said that a small church had interest but was also not an allowed use.

John Shaw, III, Barrington, NH, said that the property had also been listed with Summerview Realty.

Mrs. Prudhomme-O'Brien asked if the church was still an option. Mr. Morin said no that they had decided that the building was to small.

Mrs. Hampton motioned to go into deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous

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

Deliberative Session

Mr. Virr said that the area has many auto sales outlets and also if you turn right onto Scobie Pond Road there is also car sales. He said that he believes ordinance change was to eliminate car sales in the area. He said that the Industrial IV was a strange category.

Mrs. Hampton said that the allowed uses for the zone are smelly and dirty but felt that churches and vehicle sales was not.

Mr. Coppolo said that he was reviewing the allowed uses

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 #12-122, JJ Shaw Revocable Trust, John Shaw, Jr. to Grant a variance to the terms of Article VI, Section 165-42A of the Town of Derry Zoning Ordinance to allow the operation of a used car sales business at the property. Parcel ID 08003-001, 42 Manchester Road, Zoned Industrial IV as presented with the following conditions:

- 1. Subject to Planning Board approval.**
- 2. Subject to obtaining all State and Town permits and inspections.**
- 3. Variance pertains to #42 Manchester Road ONLY.**

Seconded by Mr. Virr

Vote:

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.

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

15-116 Alan Gentile, Marianne Gentile & Jennifer Gentile

The applicant is requesting a variance to the terms of Article VI, Section 165-45.1.B.1.d of the Town of Derry Zoning Ordinance to allow the placement of a replacement shed 4' from the property lines where 15 feet is required. 8 Grove Street, Zoned MHDR II, Parcel ID 30199 (Continued from August 20, 2015).

Board Questions:

Code Enforcement

Mr. Mackey provided the Board with the following reference:

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

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#15-116, Alan Gentile, Marianne Gentile & Jennifer Gentile to Grant a variance to the terms of Article VI, Section 165-45.1.B.1.d of the Town of Derry Zoning Ordinance to allow the placement of a replacement shed 1.7' & 1.9' from the property lines where 15 feet is required. 8 Grove Street, Zoned MHDR II, Parcel ID 30199 (Continued from August 20, 2015) as presented with the following conditions:

- 1. According to property survey submitted.**

Seconded by Mr. Virr.

Vote:

Mrs. Hampton:	Yes.
Mrs. Prudhomme-O'Brien:	Yes.
Mrs. Evans:	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.

Approval of Minutes

Mr. Coppolo motioned to approve the minutes of September 2, 2015 as amended.

Seconded by Mrs. Hampton.

Vote: Unanimous.

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

Other Business

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