

**TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
November 19, 2015**

Members Present

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

Members Absent

Teresa Hampton

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.

It was noted for the record that Mrs. Prudhomme-O'Brien would sit for the cases this evening due to the absence of Mrs. Hampton.

Mr. Perkins noted for the record that case #15-127 Mitchell P. Poirier as requested to be tabled to the next available meeting so he would entertain a motion.

Mr. Coppolo motioned to table case #15-127 Mitchell P. Poirier to December 5, 2015.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

**15-126 Andrew Hilker
 Owner: James & Linda Hilker**

The applicant is requesting a variance to the terms of Article VI, Section 165-46A of the Town of Derry Zoning Ordinance to allow a landscaping business (the parking of a pickup truck, trailer and associated equipment only) at the property. 3 Jeff Lane, Parcel ID 08041-005, Zoned MDR.

Andrew Hilker, 6 Hills Farm Road, Chester, said that he was the applicant and that 3 Jeff Lane was his parents address. Mr. Hilker read his application for the record. He said that he has been doing landscaping since he was 15. He said that he operates a small business and has one employee. Mr. Hilker said that he keeps the area at his parents neat and clean and the income generated helps provide income for his family and his employee.

Board Questions:

Mr. Coppolo asked what type of equipment is kept on the trailer. Mr. Hilker said that he has two zero turn mowers as mow residential lawns.

Mr. Virr asked how long the trailer was. Mr. Hilker said that it was 22' that was towed by a F250 Ford truck.

Mr. Coppolo asked if alternative space had been considered. Mr. Hilker said yes but they were approximately \$1,500 per month and he was unable to bring to his home as he realized after he purchased his home in Chester that there were covenants that restricted him from running his business from his home.

Mr. Virr asked if there were covenants in the deed for his Chester property. Mr. Hilker said yes there was a whole packet of what can and can't do in Chester.

Mr. Perkins asked if they also split wood. Mr. Hilker said yes for his personal use and also for his parents. He said he did not sell wood.

Mr. Coppolo asked that in reference to the tax map how far spaced was the gravel area from the abutter and if this gravel area was in reference to the abutter. Mr. Hilker said approximately 200-250 feet between and that he shuts off his lights at night when backing in to the area.

Mr. Virr asked if the parking of the trailer was 3 feet from the lot line. Mr. Hilker said no that it was approximately 10-15' from the lot line.

James Hilker, owner, 3 Jeff Lane, said that he has resided at the property for 31 years and that the gravel area is approximately 10-15' from the boundary and is not a driveway. He said that he has Christmas trees and raspberry bushes along the same area.

There was some discussion with regard to the size of the property and location of the gravel area.

Mr. Perkins asked if there were 15' setback requirements in the area. Mr. Mackey said yes however there were no setback requirements for driveways.

Mr. Virr said that mowing is only done certain months of the year what is done in the winter months. Mr. Hilker said that he plows snow. He said that his pickups have plow

attachments one on the one that he takes home and another on the truck that is parked at his parents.

Mr. Virr asked if the trucks were gas or diesel. Mr. Hilker said they were gas pickups.

Mr. Coppolo asked if there were 2 pickups. Mr. Hilker said yes that one stays at his parents and one he takes home daily.

Favor

Lester Chase, 84 Tsienneto Road, said that he did not see any reason that Andrew should be unable to operate his business as he has known him since he was 16 years old and that he was an honest young man.

Mr. Coppolo asked if there was any disruption from lights or noise or was there a fence blocking. Mr. Chase said no that he owns 35 acres and there were just woods between the properties.

Eric Dow, 18 Birch Street, said that he works for Andrew and that he depends on his job and paycheck to support his family so he was in favor of the proposed use.

Linda Hilker, 3 Jeff Lane, said that her son started his business during his sophomore year when he did not have a license. She said that she used to drive him around to his customers and since then Andrew has got married and moved. Mrs. Hilker said that her son has a big heart and always first to help someone in need and that he has worked hard and has built a small cliental of customers that he has maintained and should be allowed to keep. She said that she has never had any problems with their neighbors and was not aware that anyone was offended by her son's mowing business.

Opposed

Kathy Blouin, 4 Jeff Lane, said that she was not here to put anyone out of business but live in a residential area across from where the additional driveway was installed is directly across from their picture window. She said that the headlights shine in their front window and had asked them to please shut off and was told that they couldn't. She said that business has grown and used to have a 25' box trailer parked in the street and on occasion has had her driveway blocked. In the past three months has gotten better since seeing Mr. Mackey and made complaint. She said that they start their equipment and do maintenance on them at any given time. She said that she was unable to go home and relax without hearing noise or having lights in her living room window. Mrs. Blouin said that she has contacted a real estate agent who informed her that her property value would be diminished with a business across the street. She said that when Mrs. Hilker stated that no one came to her with any concerns she also never came to them to see if they had any concerns with her son operating a business from the property. Mrs. Blouin presented the Board with pictures of vehicles in the road in May of 2014.

Christopher Blouin, 4 Jeff Lane, said that at one time all the equipment had been removed from the property only to come back a year later. He said that when Andrew had started mowing lawns there was only a small trailer and a small lawn mower since then it has grown and expanded to a 25' box truck, 2 pickups, mowers, blowers, 4 or more people including Andrew. Mr. Blouin said that the box truck is no longer there but do still see trailer, 2 mowers, snow plows, fertilizer on pallets and various other items. He felt that with any business the main objective is to grow which if this business was granted he could see the potential for a problem if it grew. He said that he felt that he didn't want to put out of business but maybe just put vehicles to the other side of the property would help.

There was some discussion with where the Blouin's property was located in relation to the applicant's property.

Code Enforcement

Mr. Mackey provided the Board with the following reference:

- The applicant, Andrew Hilker, is requesting approval (a variance) to allow the parking of landscaping equipment (the parking of a pickup truck, and associated equipment) on the property which is owned by his parents.
- The applicant does not reside at the property, therefore, does not qualify for a Special Exception.
- The office for this business is not located at this residence.
- This matter was brought to the attention of Code Enforcement through complaints received from an abutter and it was determined that this activity constituted a commercial use of the property and must cease unless a variance was obtained.
- There are pictures of the property in the file for review by the Board.

Mr. Perkins asked if there were repeated complaints. Mr. Mackey said there were several inquiries of status.

Mrs. Evans asked if where the business has operated for 9 years and complaints just started to come this year. Mrs. Blouin said that they have complained in the past but was told that nothing could be done. She said that they had also called the police department about the lights and parking in the roadway. She said that it wasn't until the escalation of blocking her driveway that once again went to the Town for some sort of help to resolve the matter and that is when they spoke with Mr. Mackey. Mrs. Blouin said it has gotten a bit better since Mr. Hilker was notified by the Town.

Mr. Perkins asked if gravel could be spread on a lawn. Mr. Mackey said yes but it utilizing as a driveway would need a permit from the Department of Public Works.

Mr. Coppola asked what stipulates a permit and if that also took into consideration of lights. Mr. Mackey said if there was a permanent cut onto a Town road it would require a

permit from the Public Works Department and lights were not under the consideration that it was more of a grade and water issues that were reviewed.

John & Susie Dao, 8 Jeff Lane, said they have resided on Jeff Lane for 30 years and have a safe street with no commercial traffic. They said that they were concerned with safety issues as when the truck is parked in the road with the lights on they are usually parked facing the wrong way. If they grow there will be more trucks and equipment and create more traffic. They said that they strongly feel that allowing the operation of this business would bring down the market value of the homes in the area.

There was some discussion with who resided where in relation to the applicant's property.

Mike Bertrand, 1 Jeff Lane, he said that he had moved there in 1988 and it is a stable residential neighborhood. He said that he was neither in favor or opposed but that he has seen Andrew grow up into a nice young man nice to see that the business has grown. Mr. Bertrand said that he knows the Blouin's for all these years also and they are also nice people who wouldn't have complained if didn't feel they had genuine concerns. He said that if he was correct in understanding how this process worked that in order for a variance to be granted certain criteria needs to be met and that he also believes that the Board can set restrictions on it with limits to where vehicles and equipment could be parked. He said that the way that Jeff Lane was built it was set up that the driveways were not directly across to the other neighbor's house. Mr. Bertrand said that he sees both sides and supports his neighbors and also respects the issues that had been raised by all the neighbors and that he hopes that can find a solution that is acceptable to all parties.

Rebuttal

Andrew Hilker said that he apologizes to the Blouin's as had previous employees that who hadn't been respectful and they no longer work for him. He said that he also no longer has the box truck and also with regard to the headlights and the statement made about not being able to turn off he did have a truck that the lights could not be turned off but he no longer has that vehicle.

Mr. Perkins asked how many employees were there. Mr. Hilker said that he used to have 3 employees as things were going well. He said that he now turns off lights at night and not because of Town.

Mr. Perkins asked what was the size of the business. Mr. Hilker said that he wants to operate a small business and does not wish to get bigger. He said that he has a commitment to his customers and that there is no place to put more equipment.

Mr. Virr said that he supports entrepreneurs but also need to know rules and laws and that should have gone to Town to see if needed any permits and pay attention to laws. Mr. Hilker said that he didn't know as he was 16 when he started his business.

Mr. Coppolo asked when was the Chester property purchased. Mr. Hilker said that he purchased the home in Chester 2 years ago and did not know when he purchased that there were covenants on the property.

James Hilker said that when his son was 16 old that he had co-signed and was co-owner with Andrew thru the State for a short period of time and when Andrew got married that the co-ownership was dissolved. He said that they were respectful neighbors and people grow up and also realize that need to respect each other. Mr. Hilker said that he keeps his yard neat and there was nothing abusive and if gets out of control then will need to relocate. He said that they have an agreement that it is one truck and one trailer.

Mr. Perkins asked why not park in the driveway. Mr. Hilker said that there was no room. He said that the gravel was put there for convenience so no mud would be in the road. When the Town redid the road they put the apron there but it was not intended as a driveway.

Mr. Perkins asked why not angle the area so not infringe on neighbors. Mr. Hilker said that there were fruit and Christmas trees in the area so could no angle it.

Mr. Perkins asked Mr. Blouin if there was any suggestion to help resolve the matter. Mr. Blouin said that if the vehicles were relocated to the other side could possibly help if the business was to be kept there.

Mrs. Evans motioned to go into deliberative session.

Seconded by Mrs. Prudhomme-O'Brien.

Vote: Unanimous

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

Deliberative Session

Mr. Virr said that it was the task of the Board to construct variance in favor of the request as required with conditions.

Mrs. Evans said a condition of no on-street parking be made.

Mr. Coppolo said that the Board may wish to create motion to define what the other equipment may be limited to.

Mr. Virr said if mowers are on the trailer why was the truck there and where did employee park. He said he was not in favor of additional driveway and if allowed would require Town approval. He said that when his children needed space for their vehicles they had installed gravel along the existing driveway to accommodate for their vehicles.

Mr. Coppolo said that possibly no operation or parking on Jeff Lane.

Mrs. Evans said most landscape businesses park on the street to mow their customer's lawns.

Mr. Perkins said that driveway issue will need to file for permit so subject to obtaining driveway permit from highway department. He said that he would like to have seen driveway angled but testimony said unable due to location of fruit trees.

Mr. Coppolo said the applicant could opt to park in existing residential driveway and then would not need to have additional driveway permit.

Mr. Virr said the neighborhood is residential area that ends in a cul-de-sac and felt that it should not have a commercial business so a restriction of use should be made.

Mr. Perkins said that the applicant's office is in Chester and that he utilizes this property just to park vehicles.

There was some discussion with regard to conditions and limitation of variance.

Mrs. Evans reviewed the conditions as follows for the Board:

1. No on-street parking.
2. Subject to obtaining permit for use of gravel driveway.
3. Variance terminates after 1 year of abandonment or conditions are not met.

Mrs. Evans motioned to come out of deliberative session.

Seconded by Mr. Virr

Vote: Unanimous

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

Mrs. Evans motioned on case #15-126 Andrew Hilker, Owner: James & Linda Hilker to grant a variance to the terms of Article VI, Section 165-46A of the Town of Derry Zoning Ordinance to allow a landscaping business (the parking of a pickup truck, trailer and associated equipment only) at the property. 3 Jeff Lane, Parcel ID 08041-005, Zoned MDR as presented with the following conditions:

- 1. No on-street parking.**
- 2. Subject to obtaining permit for use of gravel driveway.**
- 3. Variance terminates after 1 year of abandonment or conditions are not met.**

Seconded by Mrs. Prudhomme-O'Brien.

Vote:

Mr. Virr: No. No substantial justice has been shown. Spirit and intent of ordinance has not been met. Applaud a high school boy starting a business but feel should have looked into Town regulations when business started to grow.

Mrs. Evans: Yes.

Mrs. Prudhomme-O'Brien: No. Feel will diminish property values.

Mr. Coppolo: No. Feel contrary to public interest. Not in spirit and intent of ordinance. Feel will diminish surrounding property values.

Mr. Perkins: No. Feel not in spirit of ordinance has not been met.

The application was Denied 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.

The Board took a short recess and reconvened at 8:50 pm.

15-128 Ralph Berube

The applicant is requesting a variance to the terms of Article VI, Section 165-46C.4 of the Town of Derry Zoning Ordinance to construct a two car garage with less than the required 15 foot setback from the side lines. 42 Coles Grove Road, Parcel ID 51048, Zoned MDR

Ralph Berube, applicant, read his application criteria for the record.

Board Questions:

Mr. Perkins asked if Coles Grove intersects with other road. Mr. Berube said that Adams Way did not connect to Coles Grove Road.

Mr. Virr asked if lot was separate but owned. Mr. Berube said yes.

Mr. Virr said that the Shoreland permit speaks to a 18' x 35' structure but only asking for 22' x 21' structure. Mr. Berube said he was seeking a smaller structure with a loft area as the garage will not have a basement. He said that the Shoreland was concerned with run off not with setbacks.

Mr. Virr asked if there was a building on the lot now and resides year round. Mr. Berube said yes that he utilizes it year round and it was constructed in 1974 single family with an accessory.

Mr. Coppolo said that the deed was older and asked if property was this way when acquired. Mr. Berube said yes.

Mr. Virr said that camp lots were notorious for odd shapes. Mr. Berube said that Promised Land said it was a nightmare to finding monuments.

Mr. Coppolo asked where are vehicles parked now. Mr. Berube explained the property and layout for parking and plowing during the winter months.

Mr. Mackey said the GIS print out was not an accurate layout as lots are plotted out but not for survey purposes.

Mrs. Prudhomme-O'Brien asked during the winter months for snow plowing was it difficult for turning around. Mr. Berube said that the Town plows the street and then he hires someone to plow his driveway.

Code Enforcement

Mr. Mackey provided the Board with the following reference:

- The applicant is applying for a variance to construct a 21' x 22' two car garage less than 15' from the side property lines (approximately 5' setback at the closest point on each side).
- The property is located on Beaver Lake in an area of undersized lots and non-conforming structures that pre-date zoning.
- The proposed construction falls within 250' of Beaver Lake and is subject to the Comprehensive Shoreland Protection Act. A State Shoreland Impact permit has been granted by DES
- If approved, appropriate permits & inspections will be required.
- 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. Virr motioned to go into deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous

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

Deliberative Session

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

Mr. Virr asked if a flood elevation certificate would be required. Mr. Mackey said unsure of zone but Board could make as part of condition.

Mrs. Prudhomme-O'Brien motioned to come out of deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous

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

Mrs. Evans motioned on case #15-128 Ralph Berube to grant a variance to the terms of Article VI, Section 165-46C.4 of the Town of Derry Zoning Ordinance to construct a two car garage with less than the required 15 foot setback from the side lines. 42 Coles Grove Road, Parcel ID 51048, Zoned MDR as presented with the following conditions:

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

Seconded by Mrs. Prudhomme-O'Brien.

Vote:

Mrs. Prudhomme-O'Brien: Yes.

Mr. Coppolo: 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.

Other Business

Mr. Perkins said that he would like to review and amend his vote for the MVP case as felt he erred in his vote as he was reconsidering his vote on Section 165.39A where he voted yes and should have voted no. He provided the Board with information and reviewed it for the Board as to why he felt he should have voted no instead and explained his reasoning for the Board. He said that he would like the opportunity to rehear the case and asked the Boards feelings.

Mr. Virr said sounds as if could be a Superior Court matter. He said that there was testimony that the parcel was subject to vandalism and property was described that everything else surrounding it was MHDR. He said that testimony said that the property was left as industrial as it was being utilized at the time during the zoning change and the owner had requested that it remain industrial. Mr. Virr said that the roads in the area were very narrow for tractor trailer access. He was not aware of the intent of the applicant at the time of purchase. He said that he felt that the only reason that the zoning was not changed to MHDR was that it was being utilized as Industrial at that time.

Mr. Perkins said that the Industrial zoning matched the mills before they burned down and then a machine shop operated there for many years.

Mrs. Prudhomme-O'Brien said that the machine shop was there long after shoe shops and there is a potato peeling business on the same street. She said that it could possibly utilize the landscape business that was just before the Board. She asked why did the Board not know before the property was put up for auction.

Mr. Perkins said that there was testimony with regard to putting the property back onto the tax rolls and spoke in reference to lost students so the applicant felt there was no impact on the school system.

Mr. Coppolo said that he was not in favor of rehearing the case. He said that he felt that it met the unnecessary hardship and would not change his mind. The parcel was zoned industrial and no one was actively seeking to develop it as industrial so the applicant came to Board to change so as could use residentially. He said that there were a lot of dilapidated properties on South Ave and feel that applicant is willing to invest money on the street which will cause tax revenue to Town. Mr. Coppolo said that the presentation given was not to build substandard housing and respect Mr. Perkins view but not in favor of rehearing case.

Mr. Virr said that he agreed with Mr. Coppolo as he had listened to the testimony and also would not be in favor of rehearing the case. He said that any motion could change that portion of the original vote only.

Mrs. Evans said her vote was under the assumption that other businesses did not fare well in the area but still stand by her original vote and not in favor of rehearing the case.

There was some discussion with regard to zoning and a suggestion that the Planning and Zoning Board should possibly get together to blend the Master Plan.

Approval of Minutes

Mr. Perkins said that the vote on motions for the MVP case should reflect numbers 1 through 3 not 4, 5, 6.

Mrs. Evans motioned to approve the minutes of November 5, 2015 as amended.

Seconded by Mr. Coppolo

Vote: 4-0-1

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

Abstain: Mr. Virr

Adjourn

Mr. Virr motioned to adjourn.

Seconded by Mrs. Prudhomme-O'Brien.

Vote: Unanimous.

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

Adjourn at 9:49 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes on December 3, 2015

Mr. Coppolo motioned to approve the minutes of November 19, 2015 as amended.

Seconded by Mrs. Evans

Vote: Unanimous

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