

TOWN OF DERRY  
ZONING BOARD OF ADJUSTMENT MINUTES  
May 18, 2023

**Members Present**

Lynn Perkins, Chairman  
Craig Corbett, Vice Chair  
Crystal Morin, Secretary

**Members Absent**

Donald Burgess  
Richard Tripp

**Alternates Present**

Michael Donlon  
James Dietzel  
Gaspar Obimba

**Alternates Absent**

**Code Enforcement**

Robert Wentworth, Assistant Building Inspector Code Enforcement Director

Mr. Perkins called the meeting to order at 7:00 p.m. with the salute to the flag. Mr. Perkins stated that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 this public body is authorized to meet now physically and also electronically. As such this meeting is being held and will also be providing public access to the meeting by telephone with additional access possibilities by video utilizing the ZOOM app for the electronic meeting. To participate in this meeting, you can be present or by dialing 323-909-140 or by clicking on the website address: [derrycam.org/TuneIn](http://derrycam.org/TuneIn) the phone numbers are 646-558-8656 or 312-626-6799 meeting ID: 323-909-140 or if anybody has a problem, please call 603-845-5585 or email at: [ginnyrioux@derrynh.org](mailto:ginnyrioux@derrynh.org). In the event that the public is unable to access the meeting, the meeting will be adjourned and rescheduled otherwise the meeting will end at 10:00 PM. Mr. Perkins said that all votes taken are taken during this meeting shall be done by roll call vote.

The Board members introduced themselves.

It was noted that Mr. Obimba and Mr. Donlon would sit for the following case.

**23-112 Philip J. & Trayce M. Litchfield Joint Revocable Trust**  
**Philip J. Litchfield, Trustee**

**The applicants are requesting a variance to the terms of Article VI, Section 165-48.B.4 of the Town of Derry Zoning Ordinance to allow the construction of a 8' x 35' farmers porch less than 35' from the front property line at 4 Heather Lane, Parcel ID 12028-001, Zoned LDR**

Philip Litchfield, owner, reviewed the required criteria for the record. Mr. Litchfield said that he had dropped off letters of approval from some of his abutters in favor of his request and also has some neighbors present that also support his request. He reviewed the photos he submitted for the record.

Mr. Corbett said that the Board had letters from

**Board Questions**

Mr. Perkins asked where would the proposed farmers porch be located. Mr. Litchfield said he was hoping to build it across the front of the home but not in front of the family room.

Mr. Corbett asked if could explain on the photographs provided where. Mr. Litchfield said that the proposed farmers porch would be where the existing front stairs are currently located.

**Code Enforcement**

Mr. Wentworth said that this was a straightforward case.

It was noted that Mr. Mackey provided the following information with regard to the property for the record.

- The applicant is requesting a variance to construct a farmers porch in the front side of the home.
- The property is located in the Low Density Residential Zoning District (LDR) which requires a 35 foot front setback.
- The proposal is to construct a 35' x 8' farmers porch which will be located 31 feet from the front property line at its closest point. The stairs leading off the porch will be located 26 feet from the front property line. Side and rear setbacks will be in compliance.
- If approved, appropriate permits and inspections will be required.
- There are pictures in the file for review by the Board.

Mr. Corbett informed the public that now would be the time to call in favor of the proposed request. He said if wish to speak press star 9 and someone will answer your call.

### **Favor**

Judy McCarthy, 2 Twilight Path, said she was in favor of the request and feels that it would enhance the property.

Linda Weber, 8 Twilight Path, that where Mr. Litchfield was looking to build is on a hill so feel it would look good on his home and she was in favor of the request.

Stephan said he has lived in the area for 24 years and did not see any issue and feel it would be a nice addition as platform where looking to build is elevated so feel that the porch would fit better.

Mr. Corbett informed the public that now would be the time to call in opposition of the proposed request. He said if wish to speak press star 9 and someone will answer your call.

### **Opposed**

No one spoke in opposition of the request.

Mr. Corbett motioned to go into deliberative session.

Seconded by Mr. Donlon.

Vote: Unanimous.

Mr. Obimba, Mr. Donlon, Mrs. Morin, Mr. Corbett, Mr. Perkins

### **Deliberative Session**

Mr. Corbett said he felt that given the slope in the front of the property that he felt is would be a benefit and provide safety so feel it is a good decision.

Mr. Obimba said he felt that the applicant has met the required criteria.

Mrs. Morin said she also agrees with what was stated by Mr. Corbett and Mr. Donlon and that it would allow the applicant to enjoy his 7 grandchildren.

Mr. Donlon said he also felt that it was a straightforward case and did not see any issues with granting the request.

Mr. Perkins said that the property is elevated and the proposed porch would be away from the road so as not to create a safety issue. He reviewed the condition for the record.

Mrs. Morin motioned to come out of deliberative session.

Seconded by Mr. Donlon.

Vote: Unanimous.

Mr. Obimba, Mr. Donlon, Mrs. Morin, Mr. Corbett, Mr. Perkins

**Mrs. Morin motioned on case #23-112 Philip J. & Trayce M. Litchfield Joint Revocable Trust , Philip J. Litchfield, Trustee to Grant a variance to the terms of Article VI, Section 165-48.B.4 of the Town of Derry Zoning Ordinance to allow the construction of a 8' x 35' farmers porch less than 35' from the front property line at 4 Heather Lane, Parcel ID 12028-001, Zoned LDR as presented with the following conditions:**

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

Seconded by Mr. Obimba.

**Mr. Perkins noted the findings of fact as follows for case #23-112:**

- The parcel is zoned Low Density Residential (LDR).
- The applicant is seeking relief from the setback requirement to add a farmers porch
- The relief is for 26 feet from the property line where 35 feet is required.

**The Board also includes all facts found in the meeting minutes for this application and incorporates all meeting minutes into its finding of fact and decision.**

**Vote:**

**Mr. Donlon: Yes.**

**Mr. Obimba: Yes.**

**Mrs. Morin: Yes.**

**Mr. Corbett: Yes.**

**Mr. Perkins: 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.**

It was noted that Mr. Dietzel and Mr. Donlon would sit for the following case.

## **23-113 Two Fifty Six Investment Associates, LLC**

**The applicants are requesting a variance to the terms of Article VI, Section 165-32.1.B.3 of the Town of Derry Zoning Ordinance to allow, as part of the redevelopment of the property, the construction of a commercial building which will be located less than 35 feet from the front property line and less than 20 feet from the side property lines at 56 Crystal Ave, Parcel ID 31043, Zoned GC**

Nicole Duquette, PE with Greenman-Pederson, Inc. (GPI), said she representing Two Fifty Six Investment, LLC and also present is Attorney Ari Pollock, Gallagher, Callahan & Gartrell, P.C.. Ms. Duquette said the site is the former Wendy's Restaurant location and reviewed the surrounding area for the record.

Attorney Ari Pollock reviewed the required criteria for the record.

Ms. Duquette said that the site has easement restrictions that encumber the site and reviewed for the record.

### **Board Questions**

Mr. Corbett asked if the 20' easement went across the property. Ms. Duquette reviewed the plan submitted for the record.

Mr. Donlon asked what was the square footage for the proposed structure. Ms. Duquette said approximately 4,970 square feet.

Mr. Perkins asked what the exits for the restaurant would be under the canopy. Ms. Duquette said they were at the 35 foot setback.

### **Code Enforcement**

Mr. Wentworth said that the proposed use was allowed in the zone and have provided access in and out.

It was noted that Mr. Mackey provided the following information with regard to the property for the record.

- The applicants are requesting approval to redevelop the property by removing the existing building (former Wendy's Restaurant) and constructing a sandwich shop/convenience store and a gas pump canopy.
- The property is located in the General Commercial Zoning District (GC) which requires a 35 foot front setback and a 20 foot side and rear setbacks.
- The applicants are seeking a variance to allow the sandwich shop/convenience store to be located 9 feet from the right side property line and 15 feet from the left side property line. They are also seeking relief to allow the building to be situated 20 feet from the front property line at it's closest point.

- If the variance is approved, this project will also require Technical Review Committee (TRC) review and Planning Board Site Plan approval.
- There are pictures in the file for review by the Board.

Mr. Corbett informed the public that now would be the time to call in favor of the proposed request. He said if wish to speak press star 9 and someone will answer your call.

### **Favor**

No one spoke in favor of the proposal of the request.

Mr. Corbett informed the public that now would be the time to call in opposition of the proposed request. He said if wish to speak press star 9 and someone will answer your call.

### **Opposed**

No one spoke in opposition of the request.

Mr. Donlon motioned to go into deliberative session.

Seconded by Mr. Corbett.

Vote: Unanimous.

Mr. Dietzel, Mr. Donlon, Mrs. Morin, Mr. Corbett, Mr. Perkins

### **Deliberative Session**

Mr. Donlon said that he had a hard time seeing a drive-thru at this location.

Mr. Corbett explained the proposed location of the drive-thru area. He said he was not against more restaurants versus a gas station.

Mrs. Morin said that this side of the road needed improvements but wished it was a Dairy Queen.

Mr. Diezel said that he believes that the criteria have been met and would be an improvement to the area.

Mr. Perkins said that the property was pinned in by utilities that support the community and that the sewer and drainage easements create difficulty with design constraints. He said that he felt that it would be an improvement to the area and did not see any conflict with relief and that the applicant has utilized the space as best as possible. Mr. Perkins reviewed the conditions for the record.

Mr. Corbett said that the difficulties were setbacks on all sides.

Mr. Perkins said also hardship with utilities.

Mr. Corbett motioned to come out of deliberative session.

Seconded by Mr. Donlon.

Vote: Unanimous.

Mr. Dietzel, Mr. Donlon, Mrs. Morin, Mr. Corbett, Mr. Perkins

**Mrs. Morin motioned on case #23-113 Two Fifty Six Investment Associates, LLC to Grant a variance to the terms of Article VI, Section 165-32.1.B.3 of the Town of Derry Zoning Ordinance to allow, as part of the redevelopment of the property, the construction of a commercial building which will be located less than 35 feet from the front property line and less than 20 feet from the side property lines at 56 Crystal Ave, Parcel ID 31043, Zoned GC, as presented with the following conditions:**

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Subject to Technical Review Committee and Planning Board Site Plan approval.**

Seconded by Mr. Corbett.

Mr. Perkins noted the findings of fact as follows for case #23-113:

- **The parcel is zoned General Commercial District (GC).**
- **The applicant is looking to replace the existing building restaurant with a convenience store/sandwich shop/gas station.**
- **The relief sought is for setbacks on 2 sides and frontage relief.**

**The Board also includes all facts found in the meeting minutes for this application and incorporates all meeting minutes into its finding of fact and decision.**

**Vote:**

**Mr. Dietzel: Yes.**  
**Mr. Donlon: Yes.**  
**Mrs. Morin: Yes.**  
**Mr. Corbett: Yes.**  
**Mr. Perkins: 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.**

It was noted for the record that Mr. Dietzel and Mr. Obimba

**23-114            Rodney & Laurie Daily Revocable Trust  
Rodney K. Daily, Trustee**

**The applicant is requesting a special exception as provided in Article VI, Section 165-48.A.1 of the Town of Derry Zoning Ordinance to allow the operation of an artisan gift shop at the property at 4 Beaver Lake Road, Parcel ID 09045-002, Zoned LDR**

Rodney Dailey, owner, reviewed the required criteria for the record.

**Board Questions**

Mr. Perkins asked if performed woodworking and made product that wished to sell. Mr. Daily said yes.

Mr. Perkins said that the photographs submitted show very niche work.

Mr. Corbett asked if there would be online sales and shipping. Mr. Daily said not at this time but maybe in the future.

Mr. Corbett asked if seeking a sign. Mr. Daily said yes, and would be advertising by word of mouth and Facebook.

Mr. Perkins said that the property was a ways off the road. Mr. Daily said yes.

Mr. Corbett asked where the crafts would be located. Mr. Daily said that they would be in a small shed and his woodworking shop is approximately 500 feet away.

**Code Enforcement**

Mr. Wentworth said that the property was located 500 feet plus off the road so did not feel that there would be any noise generated.

Mr. Perkins said that an artisan was an approved use allowed by Special Exception and if approved would there need to be code safety review. Mr. Wentworth said yes.

It was noted that Mr. Mackey provided the following information with regard to the property for the record.

- The applicants is requesting a special exception for a home occupation to operate a small gift shop on the property to sell wooden items that have been created on the property.
- The types of home businesses allowed by special exception specifically include “artist, artisan, or craftsman.”



- If approved by the Board, the applicant will need to arrange for an inspection of the building by this office to verify compliance with appropriate codes.
- If a sign is being requested, a permit will be required.
- There are pictures in the file for review by the Board.

Mrs. Morin asked if the abutter with the same last name was related. Mr. Daily said yes that was his mother.

Mr. Perkins asked if had been before the Board before for an ADU. Mr. Daily said yes.

Mr. Corbett informed the public that now would be the time to call in favor of the proposed request. He said if wish to speak press star 9 and someone will answer your call.

### **Favor**

No one spoke in favor of the proposal of the request.

Mr. Corbett informed the public that now would be the time to call in opposition of the proposed request. He said if wish to speak press star 9 and someone will answer your call.

### **Opposed**

No one spoke in opposition of the request.

Mr. Corbett motioned to go into deliberative session.

Seconded by Mr. Obimba.

Vote: Unanimous.

Mr. Dietzel, Mr. Obimba, Mrs. Morin, Mr. Corbett, Mr. Perkins

### **Deliberative Session**

Mr. Dietzel said that he reviewed the application and that he felt that the applicant met the required criteria. He said he feels that it would be a wonderful business use.

Mr. Obimba said he felt that the request meets the criteria and was an allowed use for the area.

Mrs. Morin said she also agrees that the applicant meets the criteria.

Mr. Corbett said he also felt that it meets all the required criteria.

Mr. Perkins said that he concurs with the Board and does not feel that it would be a detriment to the public. He said that the hours of operation were not discussed and if 8:00 AM – 5:00 PM Monday – Friday would work?

Mr. Daily said that if they were home then he would be open.

Mr. Corbett said that he felt that 8:00 AM – 7:00 PM seven days a week would be acceptable due to the nature and location as you honestly would not know the difference.

Mr. Perkins said he also agreed.

Mrs. Morin said that any hours would not necessarily mean more traffic.

Mr. Dietzel said that they could be open 24 hours a day and would not know.

Mr. Obimba said that the property was so far from the neighbors that would not know.

Mr. Dietzel said that he felt it was a micro use and did not feel hours of operation would be a concern as a small business and doing what enjoys and only seeking to make a few bucks.

Mr. Corbett motioned to come out of deliberative session.

Seconded by Mr. Obimba.

Vote: Unanimous.

Mr. Dietzel, Mr. Obimba, Mrs. Morin, Mr. Corbett, Mr. Perkins

**Mrs. Morin motioned on case #23-114 Rodney & Laurie Daily Revocable Trust, Rodney K. Daily, Trustee to Grant a special exception as provided in Article VI, Section 165-48.A.1 of the Town of Derry Zoning Ordinance to allow the operation of an artisan gift shop at the property at 4 Beaver Lake Road, Parcel ID 09045-002, Zoned LDR with the following conditions:**

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Hours of operation 8:00 AM – 8:00 PM, 7 days per week.**
- 3. Sign permit to be no greater than 3 square feet and not to be internally illuminated.**

**Seconded by Mr. Obimba.**

**Mr. Perkins noted the findings of fact as follows for case #23-114:**

- The parcel is zoned Low Density Residential (LDR).**

- The request is for a home occupation to operate a gift shop to sell crafts.

**The Board also includes all facts found in the meeting minutes for this application and incorporates all meeting minutes into its finding of fact and decision.**

**Vote:**

**Mr. Corbett: Yes.**  
**Mr. Obimba: Yes.**  
**Mrs. Morin: Yes.**  
**Mr. Dietzel: Yes.**  
**Mr. Perkins: 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.**

**Approval of Minutes**

Mr. Donlon motioned to approve the minutes of May 4, 2023 as amended.

Seconded by Mr. Corbett.

Vote: Unanimous.

Mr. Obimba, Mr. Dietzel, Mr. Donlon, Mrs. Morin, Mr. Corbett, Mr. Perkins.

**Other Business**

Mr. Perkins said that the Board has received a copy of the May/June NH Town and City.

Mr. Corbett said that the order of operations of the finding of facts needs to be listed before the vote.

Mr. Perkins said that the findings of fact were to create a flow and important to read for the record and can be amended by any Board member. He said that the process on a variance is that the request needs to meet all 5 criteria and reviewed by each member. Mr. Perkins said that they have reviewed the process with attorney and can make improvements and add to findings of fact by point of order or by adding to points.

Mr. Corbett said that he wishes to express condolences to Randall Kelly's family. Mr. Kelly was a former member of the Derry Zoning Board and had an active roll in the community and will be missed by many.

## **Adjourn**

Mr. Corbett motioned to adjourn.

Seconded by Mr. Donlon.

Vote: Unanimous.

Mr. Obimba, Mr. Dietzel, Mr. Donlon, Mrs. Morin, Mr. Corbett, Mr. Perkins.

Adjourn at 8:08 PM

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

## **Approval of Minutes June 1, 2023**

Mrs. Morin motioned to approve the minutes of May 18, 2023 as written.

Seconded by Mr. Obimba.

Vote: Unanimous.

Mr. Obimba, Mr. Dietzel, Mr. Donlon, Mrs. Morin, Mr. Corbett, Mr. Perkins.