

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
September 19, 2013

Members Present

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

Members Absent

Alternates Present

David Thompson
Tyler Whitehorn

Alternates Absent

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.

13-117 White Knuckle Performance, LLC
Owner: Kachanian Two Realty Trust

Applicant is requesting a variance to the terms of Article VI, Section 165- 42.A and 165-42.C.2 of the Derry Zoning Ordinance to allow motor vehicle sales at the property at 8 Tinkham Ave, Parcel ID 35015-011, Zoned Industrial IV.

Philip LaTorre, applicant and co-owner of White Knuckle Performance, LLC, read his application and letter of explanation for the record.

Board Questions

Mr. Thompson asked if they would also be taking in vehicles for trade and where would they be stored and repaired there. Mr. LaTorre said that they may possibly take in a vehicle or two for trade of an item and if any repairs that need to be performed would be done inside.

Mr. Virr said that there was already a variance for the repair type facility and only seeking to expand to allow possible sales. Mr. LaTorre said yes.

Mrs. Hampton asked if extra fire safety would be required. Mr. LaTorre said that they were presently up to code with the fire department.

Mr. Virr said that the restrictions were revised last year to exclude the sale of vehicles and the intent was to prevent a situation similar to Ryan's Hill and said that was a hurdle. Mr. LaTorre said that they were seeking to be licensed by the State as they currently operate White Knuckle Performance from this site now and wished to expand. This type of activity required a variance from the Board as it was not allowed in this zoning district so they could possibly take in items such as ATV's and motorcycles for trade and possibly resell as.

Mr. Perkins asked if this was to establish a stationary office for the State requirements and if it applied to ATV's. Mr. LaTorre said yes as he did not know if it applied to ATV's and said that is where there was some concern as he knew it applied to motorcycles.

There was some discussion with a prior case that was similar to the present request.

Mr. Perkins said that the other issue with this is that it was located within the aquifer.

Mr. Virr said that was covered in the previous case and that they were precluded from washing vehicles and only a repair facility. He reviewed the conditions from the applicant's prior case for the Board.

Mr. LaTorre said that they are already currently handling a bulk of the business only seeking allowance for sales as to comply with State regulations.

Code Enforcement

Mr. Burgess read Mr. Mackey's report for the record as follows:

- The applicant is requesting a variance to allow motor vehicle sales at the property, 8C Tinkham Ave) in order to obtain a State Dealers License.
- The applicant has represented that the vehicles for sale will be primarily stored indoors and consist mainly of recreational type vehicles.
- They would like the ability to display a few items during the day.
- The zoning ordinance does not list vehicle sales an allowed use in the Industrial IV Zoning District and Section 165-42.C.2 specifically prohibits automobile vehicle sales. This change was incorporated into the Zoning Ordinance in order to prevent the proliferation of used car lots in the Industrial IV District.
- There are pictures in the file for the review by the Board.

Favor

Derek Kachanian, Trustee, 16 Bristol Hill, Windham, NH, said that he was in favor of the proposed request being granted a dealer type business as the tenant has been very clean and that they are here doing what is required so as to comply with zoning.

Mr. Virr asked why Dusty Old Cars did not utilize the space. Mr. Kachanian said that they had found another location and that they needed to be able to clean vehicles and were unable to do so at this location.

Mr. Virr asked if there were any floor drains in or rear exit. Mr. Kachanian said that there were no floor drains or rear exit.

Mr. Virr asked how the carbon monoxide was dealt with. Mr. Kachanian said that they already service vehicles and have large doors also have an Airmax circulating system.

Mr. Virr asked if the applicant was assigned parking. Mr. Kachanian said that they are assigned 5 spaces for their use only.

Mr. Whitehorn said that the applicant was anticipating to double in size so feel parking may become an issue.

Mr. Perkins asked how was the transition of vehicles purposed to bring in and if not sold what would be done with them. Mr. LaTorre said not seeking to jam 20 vehicles into the unit as would not fit and would also not be productive to what they were seeking to do. Only seeking to be able to comply with State regulations for the possible sale of a vehicle that they may take in trade.

Opposition

No one spoke in opposition of the application.

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

Seconded by Mrs. Hampton.

Vote: Unanimous.

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

Mr. Virr motioned on case 13-117, White Knuckle Performance, LLC, Owner: Kachanian Two Realty Trust, to Grant a variance to the terms of Article VI, Section 165- 42.A and 165-42.C.2 of the Derry Zoning Ordinance to allow motor vehicle sales at the property at 8 Tinkham Ave, Parcel ID 35015-011, Zoned Industrial IV, as presented with the following conditions:

- 1. No washing of vehicles on property.**
- 2. Subject to all State and local permits and inspections.**
- 3. No outside repairs.**
- 4. Display limited of 2 autos for sale outside during regular business hours of 8:00 am – 5:00 pm**
- 5. Water reclamation mat & cleaning materials subject to Town Department inspection and approvals.**
- 6. No parking in drainage swales or cul-de-sac areas.**

Seconded by Mr. Carnevale.

Vote:

Mrs. Hampton: Yes.

Mr. Carnvale: Yes.

Mr. Burgess: Yes

Mr. Whitehorn: 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.

**#13-114 Stephen Vadney
 Owner: David & Patricia Ferland**

Rehearing Request of the denial of a Special exception as provided in Article X, Section 165-80.A.4 of the Derry Zoning Ordinance to allow the construction of a multi-family townhouse within the 150 foot Prime Wetland setback, reducing the setback to 75 feet. 8 Ferland Drive, Parcel ID 31017-001, Zoned MHDR

Mr. Virr said that the majority of the items have not been met and that the ordinance A4 states that all criteria needs to be met in order to be granted and that the first condition has 4 no votes alone. He said that Board needs to create its motion in the affirmative.

Mr. Perkins motioned to Grant a Rehearing of case #13-114, Stephen Vadney, Owner: David & Patricia Ferland, Special exception as provided in Article X, Section 165-80.A.4 of the Derry Zoning Ordinance to allow the construction of a multi-family townhouse within the 150 foot Prime Wetland setback, reducing the setback to 75 feet. 8 Ferland Drive, Parcel ID 31017-001, Zoned MHDR.

- 1. No new evidence presented.**
- 2. No error in law or judgment on case was made by the Board.**

Seconded by Mr. Burgess.

Vote:

- Mr. Perkins:** No. Voted no on several areas of the criteria that needed to be met in order to be granted.
- Mr. Burgess:** No. Voted no on 1, 5 & 6 of criteria that needed to be met in order to be granted.
- Mrs. Hampton:** No. Based on special exception criteria not being met on page 127 of the ordinance.
- Mr. Carnevale:** No. Voted no on criteria 1, 5 & 6.
- Mr. Virr:** No. For the same reasons as stated. Did not meet criteria needed in order to be granted.

The application was Denied by a vote of 0-5-0. 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. Virr said that he received letter from Attorney Lynne Sabean with regard to changes that need to be made to the ZBA Policy & Procedures that became effective August 31, 2013 amending RSA 637:15.

Mr. Virr stated that the following changes would be considered as a first reading:

5. The following time limits shall apply to appeals to the Board of Adjustment and requests for rehearing:
 - a. Any appeal of a decision of the administrative officer, as authorized under RSA 676:5,I, shall be filed with the ZBA within twenty (20) days from the date of the decision and shall specify the alleged error or errors. Upon notification of such an appeal, the officer shall forthwith transmit to the ZBA all papers constituting the record upon which the action appealed from was taken.

- b. Any appeal of the zoning-related aspects of a Planning Board decision or determination, as specified under RSA 676:5, III, shall be filed with the ZBA within thirty (30) days from the date of the decision or determination and shall specify the alleged error or errors. Upon notification of such an appeal, the Planning Board shall forthwith transmit to the ZBA all the papers constituting the record upon which the action appealed from was taken.

Mr. Virr motioned to accept as first reading.
Seconded by Mr. Burgess.

Vote: Unanimous.
Mr. Whitehorn, Mr. Thompson, Mr. Carnevale, Mrs. Hampton, Mr. Burgess, Mr. Perkins, Mr. Virr

Approval of Minutes

Mr. Carnevale motioned to approve the minutes of August 15, 2013 as amended.

Seconded by Mr. Burgess.

Vote: Unanimous
Mr. Carnevale, Mrs. Hampton, Mr. Burgess, Mr. Perkins, Mr. Virr

Mr. Carnevale motioned to approve the minutes of September 5, 2013.

Seconded by Mrs. Hampton.

Vote: Unanimous
Mr. Carnevale, Mrs. Hampton, Mr. Burgess, Mr. Perkins, Mr. Virr

Adjourn

Mr. Carnevale motioned to adjourn.

Seconded by Mr. Burgess.

Vote: Unanimous.
Mr. Whitehorn, Mr. Thompson, Mr. Carnevale, Mrs. Hampton, Mr. Burgess, Mr. Perkins, Mr. Virr

Adjourn at 10:06 pm

Minutes transcribed by:
Ginny Rioux
Recording Clerk