

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
December 1, 2022

Members Present

Lynn Perkins, Chairman
Craig Corbett, Vice Chair
Allan Virr
Donald Burgess

Members Absent

Crystal Morin

Alternates Present

Gaspar Obimba
Richard Tripp
James Dietzel

Alternates Absent

Michael Donlon

Code Enforcement

Robert Wentworth, Assistant Building Inspector

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 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. 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. Tripp would sit for the following case.

22-151 Kenneth Foley

The applicant is requesting a special exception as provided in Article VI, Section 165-47.A.1 of the Town of Derry Zoning Ordinance to allow the operation of an electrical contracting business from the residence at 6.5 Floyd Road, Parcel ID 09036, Zoned LMDR

Kenneth Foley, applicant, reviewed the required criteria for the record.

Board Questions

Mr. Perkins asked if he was an electrical contractor that worked out of the van. Mr. Foley said yes.

Mr. Perkins asked how many vehicles were there and if they were all lettered. Mr. Foley said he has 3 and only one is lettered but all were registered.

Mr. Virr said that you stated that the driveway will hold 10 vehicles. He said that the property is listed as a 2-family and when he drove down Floyd Road he noticed 3 trucks with electrical services on them parked close to the street and asked if could be explain the 3 vehicles in front of the garage. Mr. Foley said that he has a personal pick up, wife's car, and his van.

Mr. Corbett asked how many employees were there and where do they park. Mr. Foley said he has 1 employee that parks at his home and they ride together to job site.

Mr. Tripp said that no employees reside there and that the 10 vehicles were not parked in the road. Mr. Foley said that the vehicles were parked on the side of the garage off the road.

Mr. Perkins asked if the parking was located 25 feet or greater from the roadway. Mr. Foley said at the moment they were not but did have ability to conform.

There was some discussion with the number of vehicles parked on the property.

Code Enforcement

Mr. Wentworth said that the applicant was here due to a complaint received with regard to the number of vehicles and business operation from the property.

Mr. Perkins reviewed the information provided by Mr. Mackey with regard to the property for the record.

- The applicant is requesting a special exception to operate an electrical contracting business from the residence.
- The residence is assessed as a two-family dwelling and is located in the Low Medium Density Residential District (LMDR).
- The business, which is currently operating, was brought to the attention of the Code Enforcement Office which resulted in formal code enforcement action. The applicant is now applying for the special exception to gain approval for the business in order to address the issue.
- Multiple vehicles associated with the business are stored at the property.
- There are pictures in the file for review by the Board.

Mr. Perkins asked what part of the home was utilized for the office. Mr. Foley said that he works off a tablet.

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 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

Joseph Stowers, Mecca Lane, said he was representing the Mecca Lane residents. He said he built the home that they are living in and when he built the garage it required a variance and was granted with the understanding that it would not interfere with traffic. Mr. Stowers said that the problem is exiting Mecca Lane due to a visibility issue due to the number of vehicles parked on the property. He said he that the applicant does not need 5 vehicles to make a living. Mr. Stowers said that it is creating a safety issue as parking on road and blocking sight distances when exiting Mecca Lane.

Mr. Corbett asked if applicant eliminated 2 of the vehicles would it help situation. Mr. Stowers said that he has pictures to show the Board that clearly show safety issues. He said that the pictures show 5 vehicles that are a safety issue.

Mr. Tripp motioned to accept the pictures as part of the record.

Seconded by Mr. Virr.

Vote: Unanimous.

Mr. Tripp, Mr. Burgess, Mr. Virr, Mr. Corbett, Mr. Perkins

Mr. Perkins asked if the variance was granted for the garage. Mr. Stowers said yes as it is to close to the right-of-way. He said in a snow storm 10 vehicles parked there makes it difficult to see when exiting Mecca Lane.

Mr. Perkins asked if there were not any concerns with noise, fumes, etc. but concern with safety but not deny making a living. Mr. Stowers said yes, he was concerned with safety as difficulty exiting Mecca Lane due poor visibility.

Mr. Perkins asked if there were any other concerns other than safety. Mr. Stowers said that he felt that would set precedence with 5 vehicles.

Mr. Tripp asked how often were the cars in the road. Mr. Stowers said it was a daily issue.

Mr. Tripp asked how would remedy concerns. Mr. Stowers said that he could eliminate plow truck, bucket truck and trailer as have not moved in over a year. He said that all 7 residents of Mecca Lane have safety issue leaving as the vehicles are always blocking visibility.

There was some discussion with regard to setbacks and parking.

Mr. Perkins said that the Board needs to determine if applicant can operate a business from the residence and hearing concerns if the abundance of vehicles is excessive and may need to be reviewed.

Mr. Tripp said feel number of vehicles potentially injurious to neighborhood but if parking could be resolved could meet the exception criteria.

Mr. Virr said separate business from operation as can operate a business from the home without a safety hazard.

Mr. Corbett asked if 2 vehicles not moved in over a year then argument of potentially to many vehicles could be made. Mr. Stowers said that a business in a residential area affects everyone in the area and their property values.

Rebuttal

Mr. Perkins asked when the home was purchased. Mr. Foley said he purchased the home in 2015.

Mr. Foley said that he purchased the van and had it lettered. The reason that the plow truck has not moved as have not had any snow.

Mr. Perkins said that the concern is several vehicles and what the property looks. The bucket truck no moved or used the Town ordinance permits one unregistered vehicle but as for vehicles parked on roadside is a different matter. Here to seek forgiveness does not set well with what is being shown and is there a way to address concerns. Mr. Foley said that the vehicles parked on the side near the tree line is a stretch saying that he's blocking view.

Mr. Burgess asked if could make the service vehicles parked 25 feet off property line. Mr. Foley said yes.

There was some discussion with regard to vehicles and who they belonged to.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mr. Corbett.

Vote: Unanimous.

Mr. Tripp, Mr. Burgess, Mr. Virr, Mr. Corbett, Mr. Perkins

Deliberative Session

Mr. Virr said that the applicant is a self employed electrician and that the parking appears to be a problem and needs to be addressed as he understands abutter concerns.

Mr. Corbett said that the business use needs to be addressed. The concern of the location of trucks parked at the end of the day is why before the Board.

Mr. Perkins said that 10 vehicles could comply as private residential property could have 10 vehicles if all registered unable to change number of vehicles as vehicle position not a purview of the Board.

Mr. Burgess said that the Board could not address the personal vehicles but business vehicles should be moved back off the road.

Mr. Perkins said that the Board does have purview of employee vehicles and abundance of other apparatus and that need to focus on the business vehicles.

Mr. Corbett said that see vehicles where parked and struggle with number of vehicles. Possibly need to see if off street parking could be provided off Mecca Lane.

There was some discussion with the number of vehicles.

Mr. Perkins asked Mr. Wentworth if the Board chose to deny opportunity to operate business and that the applicant could be fined potentially \$275 per day. Mr. Wentworth said if applicant pursued to operate that it could be a possibility.

Mr. Perkins said that if deny would create an infraction which could generate fines of \$275 per day. He said that the Board could limit the number of employee but then do we want to impose that on the Town.

Mr. Virr said that he would like to see that Mr. Foley works something out to clear up some of the concerns before the next meeting.

Mr. Perkins said that the Board has the right to table and structure it's decision more cohesively. He would ask Mr. Foley to come up with a remedy to resolve the matters discussed this evening and present a plan addressing concerns for the next meeting.

Mr. Virr motioned to come out of deliberative session.

Seconded by Mr. Tripp.

Vote: Unanimous.

Mr. Tripp, Mr. Burgess, Mr. Virr, Mr. Corbett, Mr. Perkins

Mr. Virr motioned to table the case to the next meeting.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Tripp, Mr. Burgess, Mr. Virr, Mr. Corbett, Mr. Perkins

Approval of Minutes

Mr. Corbett motioned to table the minutes of November 17, 2022 to the next meeting.

Seconded by Mr. Obimba

Vote: Unanimous.

Mr. Dietzel, Mr. Obimba, Mr. Tripp, Mr. Burgess, Mr. Virr, Mr. Corbett, Mr. Perkins

Adjourn

Mr. Corbett motioned to adjourn.

Seconded by Mr. Virr.

Vote: Unanimous.

Mr. Dietzel, Mr. Obimba, Mr. Tripp, Mr. Burgess, Mr. Virr, Mr. Corbett, Mr. Perkins

Adjourn at 8:00 PM

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

APPROVAL OF MINUTES December 15, 2022

Mr. Burgess motioned to approve the minutes of December 1, 2022 as written.

Seconded by Mr. Virr.

Vote: Unanimous.

Mr. Dietzel, Mr. Obimba, Mr. Tripp, Mr. Burgess, Mr. Virr, Mr. Corbett, Mr. Perkins