

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
June 15, 2017

Members Present

Lynn Perkins, Chairman
Heather Evans, Vice Chairman
Stephen Coppolo, Secretary
Randall Kelley

Members Absent

Alternates Present

Donald Burgess

Alternates Absent

Code Enforcement

Robert Mackey

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 Mr. Burgess would sit for the following case.

17-115 Jay Goga Realty, LLC
By its President, Sam Patel

The applicant is requesting a variance to the terms of Article XIII, Section 165-108A of the Town of Derry Zoning Ordinance to expand the pre-existing, non-conforming use to include the new use of a sit down facility for food service with a liquor license in the basement of the addition approved by the ZBA on December 15, 2016 at 50 East Derry Road, PID 39033, Zoned MDR

Timothy Peloquin, Promised Land Survey, LLC, said that he was here to represent the applicant this evening as Attorney Myers was unable to attend due to illness. He said that he also has a letter of authorization to represent Jay Goga Realty, LLC and a letter from an abutter in favor of the request for the Board.

Mr. Perkins accepted the letters and provided the Board copies for their review.

Mr. Peloquin read the application criteria and letter of explanation for the record. He also described the proposed plan for the record. Mr. Peloquin said that when Mr. Patel started building the addition his customers started asking him for a small restaurant area so hence proposal for a small 25 seat restaurant. He stated that the restaurant would only be open when the store was open which was not past 10:00 pm. Mr. Peloquin said that there is already an easement in place for the leach field and the Upper Village Hall is willing to expand the easement for a parking lot. He said that there is a plan for parking proposed for 87 parking spaces for Upper Village Hall already. He said that Mr. Patel also wishes to speak to the Board with regard to the parking.

Sam Patel, President of Jay Goga Realty, LLC, said that there was currently 10 parking spaces located in the front of the store and the proposal is to have 20 parking spaces in the rear. He said that he will be placing 20 minute parking signs in the front and have all others park out back. Mr. Patel said that the store serves 95% of regular customers and will educate them to the parking routine. He described the parking plan for the Board. The proposal is to provide seating for his customers to have somewhere to go for their lunch breaks as currently they sit in their car or next door on the Upper Village's porch. Mr. Patel said that the use will not be visible from the street and will provide a beautiful view of the Alan Shepard lot behind the Upper Village Hall. He said that he has never sold to anyone underage or intoxicated customers and that the store is very family friendly as he does not sell adult magazines, drug paraphernalia, and have caught 12 fake id's.

Mr. Peloquin said that Sam Patel is a very good person and is well liked in the community and that he feels that this proposal will be good for the area.

Board Questions

Mrs. Evans asked where was the 15' access located. Mr. Peloquin said that is along the side of the Upper Village Hall and they are in agreement to make improvements as necessary.

Mrs. Evans asked if there have ever been any complaints or citations on the property. Mr. Patel said no.

Mr. Coppolo asked if the access would be a one way or two way. Mr. Peloquin said it would be a two way entrance along the Upper Village Hall and that the 15' is a pedestrian easement and that the dumpster will be relocated to the rear of the property.

Mr. Coppolo said that Mr. Patel runs a terrific business but his main concerns are with traffic backing up onto East Derry Road but presentation addresses those concerns with proposal of signage and Mr. Patel's monitoring to organize vehicles. Mr. Peloquin said that there is a possibility of paving in the future and he provided the Board with a plan that was submitted to the Planning Board for TRC in 2005 of a parking plan for the Upper Village Hall.

There was some discussion with regard to the parking and easement location and agreement.

Mr. Burgess asked if there would be entrance from the store to the restaurant. Mr. Peloquin said yes.

Mr. Burgess said that the 15 minute parking signs are only useful if policed. Mr. Peloquin said that Mr. Patel knows his customers and will educate them to the parking requirement as he wants safety for his customers so will police the parking.

Mr. Burgess asked if the unnecessary hardship could be addressed as said that the Board just granted a variance for the storage area and now seeking more. Mr. Peloquin said that the previous variance was for the storage area and that the reason here now for this request is that it was asked from Mr. Patel's customers as there is no area to sit and eat. He said that there is already a parking problem in the front as people currently sit now and eat out front and feel that this is a hardship.

Code Enforcement

Mr. Mackey supplied the following information in his absence for the record.

- The applicants are requesting a variance to utilize the lower level of the 30' x 40' addition, which is currently under construction, as a dining/seating area with a full liquor license to be used in conjunction with the existing kitchen.
- The current business, which consists of a convenience store and kitchen area serving take out items, has existed for many years and is considered a legal, pre-existing non-conforming use.
- On December 15, 2016, the Board granted a variance to allow the construction of a 30'x 40' addition to the rear of the building. It is in the lower level of this building that the applicant is requesting approval to install 25 seats.
- The requested addition of seating as well as the proposed outdoor patio and parking modifications are considered an expansion of the current non-conforming use.
- If the proposed expansion and site modifications are approved by the Board, Planning Board review will also be required where issues such as the proposed parking, site lighting, etc. will need to be discussed.
- There are pictures of the property in the file for review by the Board.

Mr. Coppola asked if the restaurant would utilize the same kitchen and if this would bump up the requirements for the Department of Health or Fire Department. Mr. Mackey said that it would change the classification for the health license as Derry is self-inspecting self-licensing. If approved the area will need to be inspected by the Health Officer. He said that the Fire Department will review the egress and other matters if approved.

Mr. Kelley asked if pavement is done will it require the septic system to be upgraded. Mr. Mackey said yes as will need to upgrade to accept paving. Mr. Burgess asked if there would be restrooms. Mr. Peloquin said that there are 2 handicap bathrooms.

Mrs. Evans said that she likes the idea of parking in the rear and express parking and deliveries to be out back.

Favor

David Mills, 12 Bonnie Lane, Treasurer for East Derry Improvement Society, said that the area located behind the Upper Village is known as Pearson's Park that extends behind both buildings. He said that there are plans to pave the parking area and that the Upper Village will do whatever it takes to assist Mr. Patel with his proposal as feel that it is will be a benefit to the community.

Mr. Coppolo asked if this was possibly an interim step for a larger more unified parking area. Mr. Mills said yes but there are several different grades to the area and Mr. Patel will have some work ahead of him.

Mr. Perkins asked if there was any future for lot to the rear of the property. Mr. Mills said that there was an 87 proposed parking area on the 5 acres to the rear of the lot for expansion.

Allan Virr, 20 Ballard Road, said that he supports Mr. Patel's proposal as General Stores in New Hampshire are a dying breed as most have closed. He said that Robies in Hooksett just reopened as a restaurant and the Bath Store in Bath, NH recently closed. Mr. Virr said that he complements Mr. Patel's efforts for coming up with ideas to keep the local stores going. He is a frequent visitor to the store and Mr. Patel is very friendly and helpful.

Opposed

No one spoke in opposition of the request.

Board Questions

Mr. Coppolo asked what the dashed line in the easement represented. Mr. Peloquin said that was showing the culvert which is for the drainage off East Derry Road and will be expanded to the rear of the lot if approved.

Mr. Perkins asked if there was an agreement for the easement drawn out. Mr. Peloquin said that will be required at the Planning Board level. He said that there was testimony from the treasurer of willingness to help happen but a stipulation will be ok.

Mr. Coppolo said that would want easement recorded for everyone's best interest.

Mr. Perkins asked if Mr. Mills could elaborate on future plans for the parking expansion. Mr. Mills said that in 1902 the organization was started and chartered by Alan Shepard's grandfather with a \$500.00 endowment. He explained the conditions of the endowment for the Board. Mr. Mills said that the building was purchased for \$1.00 with a 10 year improvement plan which is currently up to date improvements. He said in order to put in the kitchen there are updates that need to be implemented to the fire suppression system. He said that there was a plan drawn up to be submitted to the Planning Board detailing 13 spaces and a 20' wide access easement and are prepared to do and implement upon approval. He said that they will sign and implement an agreement and have recorded at the registry. Mr. Mills said that there is also an agreement with their insurance company if the property ever burns that it could not be rebuilt and that there would be a plaque placed on the property where the building currently stands.

Mr. Burgess asked why the insurance wouldn't pay for replacement. Mr. Mills said that the insurance does cover but it does not cover the historic factor as that would be lost.

Mr. Burgess asked if there would be a joint partnership in the rear to pave. Mr. Mills said yes.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mr. Kelley.

Vote: Unanimous.

Mr. Burgess, Mr. Kelley, Mr. Coppolo, Mrs. Evans, Mr. Perkins

Deliberative Session

Mr. Burgess said that he does not see the unnecessary hardship as already received a variance for the storage area. He said that he has concerns with future if later on needs another addition for storage what prevents further expansion. He said that he felt that it is possibly contrary to the public interest as expanding on a pre-existing non-conforming use.

Mr. Perkins said that he had concerns of effect of returning for additional variances are not a valid reason for denial. He said that there was support testimony from the Upper Village in favor of the proposal. Mr. Perkins said that service and safety aspect were addressed in the testimony and that the plan still requires Planning Board approval before proceeding. Mr. Perkins said that the building historically outdated zoning dilemma as the store has been passed along but not in meeting the growth of the community. He said that the non-conformity is an issue but no has a chance to grown and meet the needs of the community.

Mr. Coppolo said that initially he was skeptical of the idea but the applicant is offering something to better his business and to Town. He said that there was testimony that the applicant will organize parking to the rear and feel that would be beneficial to the area as well.

Mr. Kelley said that he has heard testimony from neighbor in support and that he felt is a big hurdle. He said that the felt that the proposal will be beneficial for both buildings.

Mr. Perkins said that the non-conforming uses in the area are largely due to growth in the area and to put all of these buildings in a more unified design he felt would be beneficial to both parties involved.

Mr. Coppolo said that the area is mostly commercial and that the Town may need to review the area and do some sort of an overlay district.

Mr. Burgess said that he still has concerns with what might come next. He said that the additional parking is a great idea which he believes was discussed at the prior meeting.

There was some discussion with regard to use and parking.

Mr. Perkins reviewed the conditions as follows for the record:

1. Subject to obtaining all State & Town permits and inspections.
2. Subject to Planning Board approval.
3. Recommend easement for parking area to be recorded with the Rockingham Registry of Deeds.

Mrs. Evans motioned to come out of deliberative session.

Seconded by Mr. Kelley.

Vote: Unanimous.

Mr. Burgess, Mr. Kelley, Mr. Coppolo, Mrs. Evans, Mr. Perkins

Mr. Coppolo motioned on case #17-115 - Jay Goga Realty, LLC By its President, Sam Patel to Grant a variance to the terms of Article XIII, Section 165-108A of the Town of Derry Zoning Ordinance to expand the pre-existing, non-conforming use to include the new use of a sit down facility for food service with a liquor license in the basement of the addition approved by the ZBA on December 15, 2016 at 50 East Derry Road, PID 39033, Zoned MDR as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Subject to Planning Board approval.**
- 3. Recommend easement for parking area to be recorded with the Rockingham Registry of Deeds.**

Seconded by Mrs. Evans.

Vote:

Mrs. Evans: Yes.
Mr. Coppolo: Yes.
Mr. Burgess: Yes.
Mr. Kelley: 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. Perkins motioned to approve the minutes of June 1, 2017 as written.

Seconded by Mr. Coppolo.

Vote: Unanimous.

Mr. Burgess, Mr. Kelley, Mr. Coppolo, Mrs. Evans, Mr. Perkins.

Adjourn

Mr. Burgess motioned to adjourn.

Seconded by Mr. Coppolo.

Vote: Unanimous.

Mr. Burgess, Mr. Kelley, Mr. Coppolo, Mrs. Evans, Mr. Perkins.

Adjourn at 8:30 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

APPROVAL OF MINUTES July 20, 2017

Mrs. Evans motioned to approve the minutes of June 15, 2017 as written.

Seconded by Mr. Kelley.

Vote: Unanimous.

Mr. Burgess, Mr. Kelley, Mr. Coppolo, Mrs. Evans, Mr. Perkins.