

**TOWN OF DERRY**  
**ZONING BOARD OF ADJUSTMENT MINUTES**  
**August 17, 2017**

**Members Present**

Lynn Perkins, Chairman  
Heather Evans, Vice Chairman  
Randall Kelley, Acting Secretary  
Michelle Navarro

**Members Absent**

Stephen Coppolo

**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 cases due to the absence of Mr. Coppolo.

**17-117            29 Ashleigh Drive, LLC**  
**(Owner) Yvon Cormier North Development, LLC**

**The applicant is requesting a variance to the terms of Article VI, Section 165-42.A of the Town of Derry Zoning Ordinance to allow the construction and operation of a facility providing short term inpatient care to individuals who are in need of residential detoxification services related to prescription drugs, addiction and alcoholism, and short term stabilization at 29-33 Ashleigh Drive, Zoned IND IV, PID 08280-006**

Attorney Brian Germaine, Germaine & Blaska, said he was representing the applicant and that a letter of authorization was on file. Attorney Germaine said that also present was John Buro, who is a Consultant and a Licensed Clinician, Chris Tymula of MHF Design, Dennis Sullivan, William Fougere, Brian Teague, who are also principals and

Attorney John Korbey to and to assist with any questions that the Board may have. He read the application criteria for the record. Attorney Germaine reviewed the tabbed document submitted for the record. He said that there are also letters from the Derry Police Department in favor of the proposed use and other facilities that would be affiliated with Portsmouth House stating that New England is in dire need for another treatment center. Attorney Germaine explained that a detox center is where one needs to go for medical detox and generally stays for 7 to 10 days then transferred to another facility. This center is a voluntary facility that is professional and licensed by the State of New Hampshire and is fully staffed and licensed by the State with nurses and other licensed clinicians. The only outdoor area would be a fenced in smoking area. Attorney Germaine said that he feels that this proposal meets the criteria and that the Industrial IV zone allows for professional offices and that the only difference is that this facility will have overnight accommodation which Mr. Mackey felt fell outside of the terms of definition for use.

### **Board Questions**

Mr. Kelley said that he felt that the State needs this type of facility and knows that parking availability has always been an issue at other facilities. He asked if there was emergency treatment availability. Mr. Buro said that the proposed facility is similar to the Boca Raton facility which has community resources available and have 10-20% scholarship availability.

Mrs. Evans asked if the proposal was for a professional center with beds for 24-7 care. Mr. Buro said that was correct as the facility would have a licensed clinician and a licensed nurse on staff 24-7.

Mrs. Evans said that most professional businesses are 9-5 not 24-7 so see where the use would not fit the zoning. She asked how long would a patient be there. Mr. Buro said that treatment was typically 5-7 days and then they would be transferred to another facility.

Mrs. Evans asked what was the rate of success of this type of facility. Mr. Buro said that detox is the first step and majority of people make it through the first step. He said that after the person is then assigned a case manager and linked up to the next step.

Mrs. Evans asked if there have ever been any violations in the other facilities. Mr. Buro said no neighbor calls have been received.

Mr. Burgess asked how many people would be on staff per shift. Mr. Buro said that there would be one nurse per shift, with a shift of 7am-7pm and 7pm-7am and a typical administration staff would consist of 12 people in the morning, 8 in the afternoon and 6 people in the evening.

Mr. Burgess said that he was concerned with the 32 parking spaces as felt that it would be inadequate. Mr. Buro said that the majority of clients are transported by the staff so there would be no client vehicles on the property.

Mr. Burgess asked if visitors would be there and if they would be working with the Granite House. Mr. Buro said that they typically do not have visitors and would love to work with the Granite House and Parkland Medical Center.

Mr. Perkins asked if there would be medicines used to help people in the detox process. Mr. Buro said yes that they typically use sub Oxone for detox treatment for severe opioid addiction. He reviewed some of the process used for alcohol and opioid detox for the Board.

Mr. Perkins asked why there was not a physician on site. Mr. Buro said that a physician will typically come to the facility and do an evaluation of the client and then subscribe the treatment plan.

Mr. Perkins asked if there would be utilization of needles. Mr. Buro said there is no needle medication used that they utilize pill form. He said that the only use of needles would be if a client was diabetic.

Mrs. Evans asked if there was ever a need for police. Mr. Buro said occasionally there may be a need for a combative patient but generally the staff can handle and that the patient is there voluntary and there is always a pre-assessment made prior to receiving any patient.

Mr. Burgess asked if the pharmacy would be secured. Mr. Buro said yes as pharmaceuticals are strictly regulated by the State. He said that they also do not keep a large stock pile of medications on site.

Mrs. Evans asked where would one go after treatment. Mr. Buro said that they work with the client and family and refer to various facilities.

Mr. Perkins asked how does the individual person arrive. Mr. Buro said that they transport 90% of the clients. He said on occasion a family member may do a drop off.

Mr. Perkins said that he understands the gray area and feels that it was a good decision of Mr. Mackey to send to the Board for clarification.

Mr. Perkins asked why was Derry chosen and this area where a movie theater and a store was nearby. Mr. Buro said that they chose this area due to the closeness of the highway, hospitals and that there was no direct residential property in the area. He said that the local facilities such as Keene and Nashua have typically a 90 person waiting list. He said that this facility was a much needed resource to the area.

Attorney Germaine said that there was a significant need for treatment as stated by the Plymouth House letter which states that they typically sent patients to Massachusetts or Maine. He said that the property has been vacant for a very long time and that he feels that the use is a low impact for the area and will bring jobs to Derry and increase the tax base. Attorney Germaine said that the parking and such would be Planning Board matters that would be reviewed at the site plan.

## **Code Enforcement**

Mr. Mackey supplied the following information for the record.

- The applicant is requesting a variance to construct a 2 story, 10,000 +/- square foot facility to provide short term inpatient care to individuals who are in need of residential detoxification services. It is my understanding that the proposal is a “for profit” facility.
- The property is located on Ashleigh Drive and is zoned Industrial IV. After a review of the proposal, I determined that due to the residential (in-patient) component, I did not believe the use could be allowed as a “professional office” which is permitted in the district. Therefore, the applicants are seeking a variance for the proposed use.
- It appears that the proposed use would be included under the definition of “hospital” in the Town’s Zoning Ordinance and, therefore, would be permitted by right in the General Commercial, General Commercial IV and Office/Medical/Business zoning districts.
- If the variance is approved, the project will require full site plan review by the Planning Board where site items such as parking, lighting and landscaping will be addressed.
- There are pictures of the property in the file for review by the Board.

## **Favor**

Richard Tripp, Windham Road and Town Council, said that the use is not strictly prohibited as a hotel is permitted. He said that he felt that the intent of the ordinance was to increase property values and that he feels that the proposed use is suitable and best use for the area and it would increase the tax base. He said that he has attended many meetings on opioid matters and that people show up at hospitals and wait for a detox facility. Here we have a justified use for a piece of property and is in favor of the proposal. He did have a question of how a patient would be transported or how would a patient be charged. He said that a hotel is permitted in this zone and that a 16-24 bed detox facility sort of fits into that description and that the use would provide value to the property and jobs for the community.

Mr. Buro said that clients are transported via an SUV and that they typically bill insurance or self-payment.

## **Opposed**

No one spoke in opposition of the request.

Mr. Kelley motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

### **Deliberative Session**

Mr. Kelley said that Mrs. Evans gave the best description of why the proposed use doesn't fit and understand the reasoning of the use. He said that he was in favor of the proposal.

Mr. Perkins said that he appreciates the caution given by the Board. He said that the key component is that the property is 2 acre industrial lot and that the proposed facility appears to sit fairly decent on the lot. He said that he did not see any offensive use of the proposal and with regard to substantial justice he did not see any infringement to the neighborhood.

Mr. Burgess reviewed 165-42 for the allowed uses and prohibited uses. He said he did not find where the proposed use would fall under any of the prohibited uses. He said that there are articles daily on some sort of opioid epidemic and that there is a definite need for facilities. Mr. Burgess said that where this is proposed to be located he did not see any other facility that would be harmed by its use. The 26-50 people employment opportunity and additional use and tax increase is beneficial to the area. He said that he reviewed the letter from the Derry Police Chief stating that they have not had any incidents for the Granite House other than a stolen computer on Brook Street. Mr. Burgess said that he felt that this type of facility does not have a problem and feels it would be beneficial to the area.

Mr. Perkins said that there are other locations that this use is allowed but they do have residential uses nearby.

Mr. Perkins reviewed the following conditions to be made for the motion:

1. Subject to obtaining all State & Town permits and inspections.
2. Subject to Planning Board approval.

Mr. Perkins asked if where the structure was in the aquifer if conservation would be consulted. Mr. Mackey said that the Conservation will sign at the Planning Board level.

Mrs. Evans said that she did not hear testimony of how medical waste would be handled.

Mr. Burgess said that they said that there was no medical waste as they did not use needles.

Mr. Kelley motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

**Mrs. Evans motioned on case #17-117 - 29 Ashleigh Drive, LLC, (Owner) Yvon Cormier North Development, LLC to Grant a variance to the terms of Article VI, Section 165-42.A of the Town of Derry Zoning Ordinance to allow the construction and operation of a facility providing short term inpatient care to individuals who are in need of residential detoxification services related to prescription drugs, addiction and alcoholism, and short term stabilization at 29-33 Ashleigh Drive, Zoned IND IV, PID 08280-006 as presented with the following conditions:**

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Subject to Planning Board approval.**

Seconded by Mr. Kelley.

**Vote:**

<b>Mr. Kelley:</b>	<b>Yes.</b>
<b>Mr. Burgess:</b>	<b>Yes.</b>
<b>Mrs. Navarro:</b>	<b>Yes.</b>
<b>Mrs. Evans:</b>	<b>Yes.</b>
<b>Mr. Perkins:</b>	<b>Yes.</b>

**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.**

The Board took a brief recess and reconvened at 8:00 pm.

**17-118            Elizabeth T. Keegan**

**The applicant is 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 12' x 20' shed less than 15' from the side lot line. 6 Germantown Road, Zoned LDR, PID 19007.**

Elizabeth T. Keegan, owner, read the application criteria for the record. She said that the shed is 7' from the lot line and that the lot is long and narrow. Mrs. Keegan said that all the lots in the area do not meet the required lot size and that she does have approval from her direct neighbor.

### **Board Questions**

Mr. Kelley asked why the shed could not be moved over another 8'. Mrs. Keegan said that the septic system is located there along with a raised garden and also a plum tree that she got for a wedding gift. She said that the rear of the property is all wooded.

Mr. Kelley asked if the fence was on the lot line. Mrs. Keegan said yes and that the shed is 7' from the fence.

Mrs. Evans asked what was the size of the old shed. Mrs. Keegan said it was approximately 9' x 11'.

Mrs. Navarro asked why not in the old location. Mrs. Keegan said that they placed here for more convenience so her husband could store his materials in closer to the home.

Mr. Perkins said that the testimony provided is that there is an elevated septic system and a plum tree that has been planted between the shed and the septic field. Mrs. Keegan said yes.

Mr. Burgess said that there appears to be 18' to the septic and building and he did not see a tree. Mrs. Keegan said that it is right in the middle of the shed and septic field.

Mr. Perkins said that the shed is already in process of being constructed and would like to hear from Code Enforcement.

### **Code Enforcement**

Mr. Mackey supplied the following information for the record.

- The applicant is requesting approval to allow a 12' x 20' shed, already under construction, to be built 7' from the side property line.
- After the construction was discovered by this office, the owners were advised that a building permit was required and that the shed must be located a minimum of 15 feet from the side property line.
- The applicant is requesting a variance to allow the shed to be completed in its current location. An Equitable Waiver is not applicable in this case.
- If approved, the applicant will need to obtain a building permit.
- There are pictures of the property in the file for review by the Board.

### **Favor**

John Cunningham, 16 Germantown Road, said that he owns 12 Germantown which directly abuts the property. He said he was in favor of granting the variance as the shed looks good and feels their request should be approved.

## **Opposed**

No one spoke in opposition of the request.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

## **Deliberative Session**

Mr. Burgess asked if there would be any Conservation or Shoreland regulations to be made as part of the condition.

Mr. Mackey said that the property is approximately beyond 250' from the high water mark so they would not be subject to the Shoreland regulations.

Mr. Perkins said that the condition of being subject to obtaining all State and Town permits and inspections be made.

Mr. Kelley motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

**Mr. Kelley motioned on case #17-118 - Elizabeth T. Keegan 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 12' x 20' shed less than 15' from the side lot line. 6 Germantown Road, Zoned LDR, PID 19007 as presented with the following conditions:**

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

**Seconded by Mrs. Evans.**

## **Vote:**

**Mrs. Evans: Yes.**

**Mr. Kelley: Yes.**

**Mrs. Navarro: Yes.**



**Mr. Burgess:**           **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 July 205, 2017 as written.  
Seconded by Mr. Burgess.

Vote: Unanimous.  
Mr. Burgess, Mrs. Navarro, Mr. Kelley, Mrs. Evans, Mr. Perkins.

### **Other Business**

Mr. Perkins said that there was an invitation from Southern New Hampshire Planning Commission to attend the 51<sup>st</sup> Annual Meeting on Friday, September 8, 2017.

### **Adjourn**

Mr. Burgess motioned to adjourn.

Seconded by Mrs. Navarro.

Vote: Unanimous.  
Mr. Burgess, Mrs. Navarro, Mr. Kelley, Mrs. Evans, Mr. Perkins.

Adjourn at 8:26 pm

Minutes transcribed from notes & tape:  
Ginny Rioux  
Recording Clerk

### **APPROVAL OF MINUTES September 7, 2017**

Mrs. Evans motioned to approve the minutes of August 17, 2017 as amended.  
Seconded by Mr. Burgess.

Vote: Unanimous.  
Mr. Burgess, Mr. Kelley, Mrs. Evans, Mr. Perkins.