

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
October 19, 2017

Members Present

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

Members Absent

Alternates Present

Donald Burgess
Evan Rathburn

Alternates Absent

James Webb

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.

17-125 New England Pioneer Associates, LLC

The applicant is requesting a variance to the terms of Article XII, Section 165-101.A.12 of the Town of Derry Zoning Ordinance to erect up to a 120 foot high sign where a maximum height of 40 feet is permitted at 56 Kendall Pond Road, PID 02019-001, Zoned Industrial I

Robert Harris, Manager & Member of LLC, said that he had information available for the Board that had not been previously submitted if the Board wished to review.

Mr. Perkins said that typically the Board requests that all submissions be prior to meeting to allow ample time for review.

Mr. Harris said he understood submittal dates and he explained that he had available a letter of support and a letter showing that New England Pioneer Associates are seeking relief from NH DOT to allow cutting of the trees that they left. He explained that if the relief is granted they would not need variance as would stay with original request.

The Board accepted the information provided.

Mr. Harris read his application criteria for the record. He also presented a visual presentation for the Board.

Board Questions

Mr. Burgess asked if the top of the barrier was just below roof line.

Mr. Perkins said that the camera projectory was not over the roof line.

Mr. Harris explained that traveling north bound was completely obligated and traveling south bound side wall being completed the sign is also being diminished.

Mr. Coppolo said that it is the understanding that the tenant is not happy with minimal sight distance from the south bound traffic. Mr. Harris said that that was correct it was not completely gone but drastically diminished.

The Board reviewed pictures from a drone showing 60' high sign visibility.

Mrs. Navarro asked how many seconds of viewing from highway. Mr. Harris said 2 to 3 seconds.

Mr. Perkins asked what was the height of the tower across the highway. Mr. Harris said he believed it was 190' and that they were requesting to have a sign of 120'.

Mr. Burgess said that he was concerned with height of the requested sign and the fall zone. Mr. Harris said the proposed sign height will be engineered and designed for wind. He said that they want to keep their tenant and in order to do that they need the sign to be visible from the highway. He said that they are unable to go closer to highway as can only go 10' to the right-of-way.

Mr. Perkins said that the fall zones and anchoring are all part of engineering and will be reviewed for safety concerns.

Code Enforcement

Mr. Mackey supplied the following information for the record:

- The applicant is requesting a variance to allow the installation of a pylon sign up to 120 feet tall so as to be visible from I-93 which abuts this location.
- A previous variance request to allow a 60 foot tall sign was approved by the Board in June of 2016 (see attached). This request was made in order to allow the sign to be visible over the top of the sound wall to be constructed as part of the highway widening. At that time, it was anticipated by the applicant that all the trees would be removed in this area.

- The sound wall has now been completed in this area and multiple large trees have been left in the State right-of-way which is why this new variance is being requested. The height requested would allow the sign to be seen from the highway over the tops of the trees.
- If approved, the sign must comply with all other applicable Town and State regulations and be properly engineered.
- There are pictures of the property in the file for review by the Board.

Mr. Burgess said that 10' from the lot line appears to be close. Mr. Mackey said that it is 10' from the traveled portion of the roadway.

Mrs. Evans asked if tree removal could be done. Mr. Harris said that the trees were not on their property and that they have submitted a request to NH DOT to have removed.

Mr. Perkins said that Mr. Harris has submitted a copy of the letter of their request for the Board's review.

Mr. Coppolo said that he has had limited dealings with DOT and that they are very weary of allowing any releases.

There was some discussion with regard to distance to the sound wall and height allowance.

Mr. Coppolo asked how long has Daltille been at this location and what is the lease term in time. Mr. Harris said that they have been there since the beginning of 2003 and that the lease is for August 31, 2018 and they are currently in discussion of signing a renewal of 3 years.

Mr. Coppolo asked if the sign came up and if they would move. Mr. Harris said yes and that the signage is a major factor as they will move and it would not be in Derry.

Mr. Coppolo said double of sign height is of a concern but also a concern of losing a business. Mr. Harris said that they are a subsidiary of Mohawk Industries and integrated flooring and other products. He said that once established they typically stay 17 years and if this is granted believe that they will be here longer. Mr. Harris said that Daltille is not paying for the sign that they are in order to keep their tenant.

There was some discussion with regard to the neighborhood surroundings.

Mr. Coppolo asked if the sign would be a multi-tenant sign like the one 15 miles south in Methuen. Mr. Harris said that the sign is designed for only this tenant and pictures of the proposed sign was provided for the record.

Mr. Coppolo asked if permission had to be received from NH DOT. Mr. Harris said that he spoke with Walter Keunhuff, NH DOT Supervisor and was told that localized on own property was governed by the municipality.

Mr. Perkins asked if the request was to go from 60 to 120' so seeking to double in height. Mr. Harris said yes.

Favor

No one spoke in favor to the request.

Opposed

No one spoke in opposition of the request.

Mrs. Navarro motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Deliberative Session

Mr. Perkins said that he recommends that the motion be structured to only one business sign and all necessary permits and inspections be obtained with the Town.

Mr. Coppolo said that he felt single business sign was appropriate.

Mrs. Evans said she was sympathetic to the business having to deal with all of that construction of the 93 widening.

Mr. Kelley said that there is a hardship and the applicant has agreed to not put up the 120' sign if they don't have to.

Mr. Perkins said that Mr. Harris had commented to not installing the 120' sign if he received the waiver from the NH DOT.

Mr. Coppolo said that a condition of variance being void if the State allows the tree removal but should also allow the 80' sign.

Mr. Coppolo reviewed the conditions for the record.

Mrs. Evans motioned to come out of deliberative session.

Seconded by Mrs. Navarro.

Vote: Unanimous.

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

Mr. Coppolo motioned on case #17-125 - New England Pioneer Associates, LLC to Grant a variance to the terms of Article XII, Section 165-101.A.12 of the Town of Derry Zoning Ordinance to erect up to a 120 foot high sign where a maximum height of 40 feet is permitted at 56 Kendall Pond Road, PID 02019-001, Zoned Industrial I as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Single business sign use only.**
- 3. Variance granted in lieu of State of NH D.O.T. relief in clearing trees.**

Seconded by Mrs. Evans.

Vote:

Mr. Kelley:	Yes.
Mrs. Navarro:	Yes.
Mrs. Evans:	Yes.
Mr. Coppolo:	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.

The Board took a brief recess.

17-126 Rosa Snyder

Re-Hearing Request of case #-17-119 Andrew Lane, TTE, 84 West Broadway Revocable Trust variance to the terms of Article VI, Section 165-34.H of the Town of Derry Zoning Ordinance to allow a portion of the required buffer to be reduced from 10 feet to 5 feet and the installation of a 6' high stockade fence in this area rather than a single row of evergreen type trees at 84 West Broadway, Parcel ID 26045, Zoned OMB

Mr. Perkins informed the Board that the abutter has submitted a request for a rehearing and the Board needs to determine if there is any new evidence presented to warrant a rehearing of this case.

Mr. Perkins said that he has reviewed the material and has not seen any new material that had been overlooked during the original meeting. He said that he felt that the abutter is seeking relief to have them abide to newer conditions.

Mr. Kelley said that he felt that the Board had reviewed the case thoroughly and had not erred in their original decision.

Mr. Mackey said that the applicant came into the office as feels not noticed properly as their actual mailing address is in Alabama and our system has it as being 86 West Broadway.

Mr. Coppolo asked if the property was a multi-family property. Mr. Mackey said possibly a 2 family rental property.

Mr. Burgess said that he sees a couple of discrepancies where the applicant said that the neighbor removed the shrubs and that this person said that the owner removed them.

The Board reviewed what was presented from the applicant.

Mr. Kelley said that the Board reviewed the items addressed in the applicants request and feels that the Board did not err in judgement.

Mr. Coppolo said that he wished to thank Ms. Snyder for submitting a very detailed letter for reasons for feeling slighted. He said that he has reviewed the case and has not seen any new evidence that was presented to warrant a rehearing and that the Board addressed the variance appropriately and did not see where the Board erred in their judgement.

Mrs. Evans said that she did not sit on the actual case as she had spoken in favor of the applicant's request. She said that she reviewed the information submitted by Ms. Snyder and did not see any evidence that was not reviewed during the original hearing.

Mr. Coppolo motioned to Grant a Rehearing Request to Rosa Snyder of case #-17-119 Andrew Lane, TTE, 84 West Broadway Revocable Trust variance to the terms of Article VI, Section 165-34.H of the Town of Derry Zoning Ordinance to allow a portion of the required buffer to be reduced from 10 feet to 5 feet and the installation of a 6' high stockade fence in this area rather than a single row of evergreen type trees at 84 West Broadway, Parcel ID 26045, Zoned OMB.

Seconded by: Mrs. Navarro.

Vote:

Mr. Burgess:	No. Feel the Board considered all matters and do not find any new evidence presented that would warrant a re-hearing.
Mrs. Navarro:	No. For the same reasons as stated by Mr. Burgess.
Mr. Kelley:	No. Do not see any new evidence that had not already previously discussed.
Mr. Coppolo:	No. Feel variance was appropriately addressed and the Board did not err in judgement.
Mr. Perkins:	No. Feel all considerations were reviewed and addressed appropriately. No error or judgement in law was made by the Board.

The application was Denied by a vote of 0-5-0. Recourse would be to appeal to Superior Court.

Approval of Minutes

Mr. Burgess motioned to table the minutes of October 5, 2017 to the next meeting.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

Other Business

Mr. Kelley said to please join the festivities of the Salvation Army Chili Chowder cook off next weekend.

Mr. Burgess said that the Special Olympics will be doing a tootsie roll handout at MaryAnn's Restaurant this weekend from 8:00 am – 3:00 pm.

Adjourn

Mr. Burgess motioned to adjourn.

Seconded by Mr. Coppolo.

Vote: Unanimous.

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

Adjourn at 8:18 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

APPROVAL OF MINUTES November 16, 2017

Mr. Perkins motioned to approve the minutes of October 19, 2017 as written.

Vote: Unanimous.

Mr. Rathburn, Mr. Burgess, Mrs. Navarro, Mr. Kelley, Mr. Coppolo, Mr. Perkins.