

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
May 2, 2019

Members Present

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

Members Absent

Alternates Present

Donald Burgess
Evan Rathburn
Crystal Morin
Craig Corbett
Allan Virr

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.

Mr. Perkins said the first order of business was the election of officers that had been postponed from the previous meeting.

Mrs. Navarro said she would like to vote to keep the Board positions the way they are.

Mr. Perkins said that the Board needed to vote on each position individually.

Mr. Coppolo said he also wished for Mr. Perkins to remain as Chair.

Position of Chairman

Mrs. Evans nominated Mr. Perkins for the position of Chair.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

Position of Vice Chair

Mrs. Navarro nominated Mrs. Evans for the position of Vice Chair.

Seconded by Mr. Kelley.

Vote: Unanimous.

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

Position of Secretary

Mr. Perkins nominated Mr. Coppolo for the position of Secretary.

Seconded by Mrs. Navarro.

Vote: Mr. Coppolo concurred.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

It was noted for the record that Mr. Coppolo would step down and Mr. Rathburn would sit for the following case.

19-114 Brian & Gisele Mercier

The applicants are requesting a Variance to the terms of Article VI, Section 165-46.C.4 of the Town of Derry Zoning Ordinance to construct an attached 2 car garage less than 15 feet from the side property line at 42 Beaver Lake Avenue, PID 51068, Zoned MDR

Brian & Giselle Mercier, owners were present. Mrs. Mercier reviewed the application criteria for the record.

Board Questions

Mr. Perkins said that he sees the photos and drawings that have been submitted and asked if there was anything else that they wished to review for the record. Mrs. Mercier said that they were getting older and that walking in the winter months was becoming unsafe. She said that they had reviewed several options and that that a detached garage would not work for what they were seeking to achieve.

Mrs. Evans asked if the proposed garage would be 2 stories. Mr. Mercier said yes that there would be storage above the garage and would be in line with he existing home.

Mr. Rathburn asked if they were building 7' into the paper street. Mr. Mercier said no that their property went 3 to 4 feet beyond the fence.

There was some discussion with regard to the paper street status.

Mr. Perkins asked if the encroachment would be to the setback and not street. Mr. Mercier said yes.

Mrs. Evans asked if keeping in the fence area how many feet was there to fence. Mr. Mercier said it was 28' from the house to the fence and they would be building in that area.

Code Enforcement

Mr. Mackey supplied the following information for the record:

- The applicant is requesting a Variance to allow the construction of a 24' x 32' attached garage to be located within 8 feet of the side property line.
- The applicant's property abuts a private way (Adams Ave) in this area.
- The proposed structure is two story with a storage area to be located on the second floor.
- As the proposed construction is within 250' of Beaver Lake, a State Shoreland permit is required.
- There are pictures in the file for review by the Board.

Favor

Brenda McEvoy, 34 Beaver Lake Ave, said if the fence was going to be moved then she would not totally be in favor but if staying then she has no issue.

Opposed

No one spoke in opposition of the request.

Mr. Kelley motioned to go into deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Deliberative Session

Mr. Perkins said that he did not see much conflict after the applicant described the property and actual location and feel normal request. He said that the fence will possibly come down during construction and reinstalled after. He said that the standard condition of being subject to obtaining all State and Town permits and inspections.

Mr. Rathburn said that the Shoreland Protection Act has strict rules so if anything was of concern they will contact the applicant and have it corrected.

Mr. Kelley said that he always has a hesitation of buildings to fences due to concern of fire safety.

Mr. Kelley motioned to come out of deliberative session.

Seconded by Mr. Rathburn.

Vote: Unanimous.

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

Mrs. Evans motioned motion on case #19-113 Brian & Gisele Mercier to Grant a Variance to the terms of Article VI, Section 165-46.C.4 of the Town of Derry Zoning Ordinance to construct an attached 2 car garage less than 15 feet from the side property line at 42 Beaver Lake Avenue, PID 51068, Zoned MDR presented with the following conditions:

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

Seconded by Mr. Kelley.

Vote:

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

#19-115 Craig & Linda Boulanger

The applicant is requesting a Special Exception as provided in Article VI, Section 165-46.B of the Town of Derry Zoning Ordinance to allow a handyman service business to be operated from the property at 9 Mundy Lane, PID 56053-001, Zoned MDR

Craig & Linda Boulanger, owners were present. Mrs. Boulanger read application criteria for the record.

Mr. Boulanger said that he was here to apply for a home business and that he used to live off Warner Hill Road on a larger piece of property. He explained that his work is done at client's home and does not work at his home. Mr. Boulanger said that the garage is for his cars and toys and he also has a van with tools. He said that there would be no clients coming to his home and as for equipment he owns a van, trailer and a man lift which he has to build his home. Mr. Boulanger said that he may occasionally paint a some doors but most of his work is commercial such as Walmart and Target with some residential and some other box stores.

Board Questions

Mr. Perkins asked where were they currently living. Mr. Boulanger said they were currently living in Windham.

Mr. Perkins asked how long before construction on new house would be constructed. Mr. Boulanger said he hopes to be completed within 9-10 months.

Mr. Perkins asked why requesting the exception now. Mr. Boulanger said that he had a meeting with the Code Enforcement Officers about the garage and at that time was advised to request a special exception to operate his business.

Mr. Perkins asked if the proposed garage was designed for the business use. Mr. Boulanger said no as he collects cars and was building it to keep them in along with his other toys.

Mr. Coppolo asked if he was a DBA. Mr. Boulanger said no he was a sole proprietor not incorporated just sole proprietor.

Mr. Burgess said that the applicant has no residence or anything in the Town at this time and was under the understanding that had to be a resident and living in the property to be able to have a Special Exception so he did not feel the request could be granted as the applicant has not established residency where the home is not constructed.

There was some discussion with regard to the applicant's residency.

Code Enforcement

Mr. Mackey supplied the following information for the record:

- The applicant is requesting a Special Exception to allow the operation of a Handyman business to be operated from the premises.
- Currently, the applicant has obtained a building permit and will be constructing a new residence on the property.
- The proposed business will be run from a portion (20' x 25') of a new 36' x 64' garage that will also be constructed.
- There are pictures in the file for review by the Board.
- There are pictures in the file for review by the Board.

Mr. Kelley asked if they Board could make a decision on a speculation. Mr. Mackey said that the applicant could withdraw and come back at a later date but regardless approval will be required.

Mr. Coppolo said that it does not sound like he wants to operate the business from the home but have an address and a place for his tools.

Mr. Mackey said that a contractor business sitting at home is not making money and that they typically leave in the morning does job and come back at night so basically storing items and paperwork.

Mr. Boulanger said that the garage is for housing his tools and he wants to do the right thing but he does not work from the property as his work is performed at the clients place.

Mr. Perkins said that the use is permitted but the focal point is that the actual residence has not been established at this time. He said that the request is acceptable but the Board needs to sort out whether they can grant without residence being established.

Mr. Kelley said that the Board should here the pros and cons as here tonight and also hear from any abutters that might be present.

Mr. Perkins said he agrees that the Board should hear from the abutters and that the Board has some options available to them.

Mr. Burgess said that the Board could table the case until the applicant obtains an occupancy permit.

Mr. Corbett said that he did not see a problem to put a condition of occupancy permit being obtained first.

Mrs. Evans said that a motion making contingent to occupancy could possible work.

Mr. Coppolo reviewed RSA 21.6 and stated that it reflects the 9 criteria and the first criteria is legal occupancy and that today the applicant is unable to provide at this time as legal residence.

Favor

No one spoke in favor of the request.

Opposed

Patrick Mullaney, 6 Orchard Drive, said that he was concerned with the size of the proposed garage as it is commercial in size and feels that the applicant fails to meet the criteria based on the size. Mr. Mullaney said that he was also concerned with run off as he already has issues during rain storms. He said that he has no objection to parking a van or trailers but does object to operating a business and a concern of storing supplies is and general size of the proposed garage is a concern.

Mr. Perkins said that the applicant could build the proposed garage regardless of running a business.

There was some discussion with regard to the size of the garage and section 165.46A.

Holly Trevter, 16.55 North Shore Road, said that she was concerned with noise and more traffic as the neighborhood is quiet and feel if granted will change the residential character of the neighborhood. Ms. Trevter said that if the applicant performs work away from the home she felt that the request to operate his business from the home was unnecessary and that if granted would be one step closer to commercial use.

John Gill, 17 Worthley Road, said he has had several conversations with the applicant and he is very cordial and as stated this is a very quiet neighborhood. Mr. Gill said he was not saying that have been told that there would not be heavy equipment. His property looks at the rear of the proposed garage and a 2300 square foot garage is very large and any successful business grows so what would happen if all of a sudden needs to have a dump truck or other heavy equipment what would be the recourse if things change.

Mr. Coppolo said that the applicant is requesting a specific use and if change it would be up to Code Enforcement to inform the applicant of the non-compliance.

Mr. Perkins said that the Board is here to hear the applicants request and address the points and that the Board has the ability to address the abutter concerns with conditions.

John Kenney, 4 Orchard Drive, said that he was concerned with what business is and what it could be as the applicants website says he is an experienced and licensed contractor and reviewed the website information for the record. Mr. Kenney said that he felt that there were red flags indicating intent of growth as handyman and licensed contractor are different and he was also concerned with equipment growth.

Mr. Burgess said that the applicant has stated no sign and there were no employees on his application.

Joan Bostwick, 12 Mundy Lane, said that there has been a disruption of her home and son due to the construction taking place as they are clearing the property. She also has a concern with run off and where snow placement will go in the winter as it is a dead end road of only 11 feet wide. Mrs. Bostwick said she doesn't mind a handyman business but concern with such as it is a quiet neighborhood and her property is called Serenity Hill but it isn't so quiet at the moment. She also has concerned if any equipment was stored on the property she would like to have some sort of sound barrier in place. She said that the area is wet and the well company actually got stuck going to the property.

Mr. Coppolo asked if the road was a Class V. Mr. Mackey said it was formally a private way but the Town recently accepted it a few years ago and it is not a standard Town approved road.

Mr. Mackey said that the property is post development and it is not unreasonable to request that Promised Land review the pre and after run off. The property is serviced by Town sewer and that noise is going to happen during construction.

Mrs. Bostwick said that she was not aware of the Planning Board meeting where the applicant purchased an additional piece of property and merged it with his as she would have liked to have purchased. Mr. Mackey said that lot mergers are not public hearings and no actual subdivision occurs where abutters are notified.

Neil Weatherbee, 18 Worthley, said his property is nearby and his sunroom overlooks the property. He said his concern is that the road is not up to public standards and feel that equipment will damage the area. Mr. Weatherbee said that he felt that the applicant did not meet the first 2 parts of the criteria in order to be granted an exception.

Diane Gallagher, 30 North Shore Road, said she knows that handymen do things at home as she used to work at Home Depot and she did not want to hear construction all the time as like other people stated this was a quiet neighborhood.

Rebuttal

Mr. Boulanger said that he would like to explain the website and licensed people as he was not licensed in New Hampshire but he did hold a Massachusetts license. Mr. Boulanger said he works on kitchens, baths, etc and do have licensed people work with electric and plumbing that he subcontracts to. He said that he mostly works at night at Walmart or Target department stores and does not bring work home.

Mr. Kelley asked if he did not get emergency response service calls. Mr. Boulanger said he does get calls for broken pipe but it was not his primary work. He said in the 15 years he has been doing this he has not changed what he does as he enjoys doing it.

Mr. Kelley asked where the pavement would be going on the lot. Mr. Boulanger said that they are only paving to the lot and home the other area will be gravel and the property will be swaled to disapte water. He said that he has worked with Alan Cote for the driveway opening and paving to the lot.

Mr. Coppolo asked what type of heavy equipment would there be and would there be any type of deliveries. Mr. Boulanger said that he owns a van, a manlift, 8' x 5' trailer, 7' x 16' trailer and he does have personal cars, boats, scooters, hot rod and his sons hot rod. He said as for deliveries that everyone gets UPS or Amazon deliveries.

Mr. Corbett said that a statement was made that may do some work at home. Mr. Boulanger said that he may possibly stain some wood or paint doors or trim.

Mr. Perkins said that a motion for growth and definition of handyman may need to be established to put people at ease. Mr. Boulanger said that he was not interested in getting a dump truck and that he purchased the lot from the Town and look forward to building his home and retire there.

Mr. Perkins said that it was discussed earlier to possibly table or approve with stipulation of occupancy.

Mr. Corbett said that the reason the applicant is here was because the inspectors told him to come and here now and abutters were noticed.

Mr. Perkins said that the first part of the criteria is that residency is established and there is not currently a residence so poses a problem.

Mrs. Navarro asked if denied would the garage still be constructed. Mr. Boulanger said yes.

Mr. Coppolo motioned to go into deliberative session.

Seconded by Mrs. Navarro.

Vote: Unanimous.

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

Deliberative Session

Mr. Perkins asked how the Board wished to proceed in going forward. He said that the Board could vote and set conditions or table the case to another time.

Mr. Coppolo said that the application is a bit premature as vote no as the applicant does not meet the first part of the criteria of residence is not met. He said that he felt the applicant was a victim of timing and when come back a lot of uncertainties will be resolved. Mr. Coppolo said that he felt unable to grant until a legal residence was established and feel not right to deny.

Mr. Kelley said that he would rather table now so the applicant could establish where things would be and residency would be established.

Mrs. Navarro said she agrees with tabling the case.

Mr. Coppolo said that in the interm maybe the abutters could talk to the applicant and some of the items could be addressed.

Mr. Kelley motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Mr. Coppolo motioned motion to Table case #19-#19-114 Craig & Linda Boulanger to Grant a Special Exception as provided in Article VI, Section 165-46.B of the Town of Derry Zoning Ordinance to allow a handyman service business to be operated from the property at 9 Mundy Lane, PID 56053-001, Zoned MDR until a certificate of occupancy is established.

Seconded by Mrs. Evans.

Vote:

Mr. Evans:	Yes.
Mrs. Navarro:	Yes.
Mr. Kelley:	Yes.
Mr. Perkins:	Yes.
Mrs. Evans:	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 and reconvened at 8:57pm

**19-115 Alfred R. Arcidi
 Owner: Jarrell Revocable Trust**

The applicant is requesting a Modification of condition #3 (regarding hours of operation) for the variance granted in case #18-133, dated December 20, 2018, to allow the operation of an auto sales dealership at the property.

Mr. Perkins said that he wished to go to Code Enforcement before hearing the applicants testimony.

Code Enforcement

Mr. Mackey supplied the following information for the record:

- On December 20, 2018 the Zoning Board of Adjustment granted a variance to Savvy Motors, LLC to operate an auto sales dealership at the currently vacant building located on the property (see the “Notice of Decision” and meeting minutes in your folders).
- The variance was approved by a 5-0 vote and 3 conditions were imposed as part of that approval.
- Condition #3 – specifies the hours of operation to be 9:00 am to 5:00 pm Monday-Saturday.
- The original applicant, Savvy Motors, is no longer going to lease the property. The new applicant, Alfred R. Arcidi, is now proposing to operate the same type of business as what the variance was approved for except that he would like to change the hours of operation that were imposed by the Board.
- He was advised that as the hours were specified in the conditions of the variance, only the Zoning Board could modify the hours.
- The variance is transferable i.e. “runs with the land” provided all aspects of the approval are followed.

Alfred R. Arcidi, applicant, was present and said that he wished to modify the hours of operation to 9:00 AM to 8:00 PM and add Sundays. He said that he does his business by appointment and has been a used car dealer for many years and would like the flexibility to meet customers later than what was previously granted.

Mr. Coppolo asked if abutters were renoticed. Mr. Mackey said yes.

Mr. Coppolo asked what the intention of what looking for as as 5-8pm and adding an extra 12 hour is a significant change. Mr. Arcidi said that he would not be there 12 hours a day or 7 days a week and not a major operation and most sales are done online and set up an appointment to see the car. He said that the State needs actual hours on paper to approve his license and there would be no extreme activity as all done by appointment. He said that the request is for the State licensing and also to let the abutters know that someone might be there at 7pm or may be there on a Sunday as he wished to be able to accommodate his clients. Mr. Arcidi said the former occupant was a hair salon that operated 8am to 8pm and probably had more foot traffic than he would have.

Mr. Perkins asked if there would be 8 vehicles on display. Mr. Arcidi said that he had no issue with the number of vehicles as he usually moves vehicles within 48 hours and was not looking for a large dealership activity. He said it would be by appointment only and not a busy business as he purchases collector cars.

Mr. Virr said that there was a letter from the owner with regard to the hours of operation. He also said that the former hair salon was not open on Sundays or Mondays as his wife went to the former salon.

There was some discussion with regard to hours of operation and make up of the general area.

Favor

Tim Harding, 1 Pond Road, said that the applicant is stating by appointment only and on occasion open up and run until 8pm if this request goes to the next person. Mr. Harding said that the garage closes at 5pm and someone may be there after but the doors are closed and that the tire place is closed on the weekends.

There was some discussion with regard to business operations in the area and traffic generated.

Opposed

No one spoke in opposition of the request.

Mr. Perkins said that the Board could put a sunset clause to the applicant.

Mr. Kelley said he agrees as it would give the abutter a piece of mind.

Mr. Mackey said that given the type of property any type of use will need to come before the Board so should another car dealer come in they would not need to come back before the Board unless the Board puts a special condition of a sunset. If another person moves out and a dentist office wished to occupy they would require their own variance.

Mr. Corbett said that a condition by appointment only should be made as part of the motion.

There was some discussion with regard to operating on Sunday.

Mr. Arcidi said that the allowance of 7 days till 8pm is for the State licensing as hours need to be reflected on paper as if they show up for an inspection and he is conducting business he would be legal.

Mr. Perkins asked if the 8 vehicle condition was any issue. Mr. Arcidi said no as it would pay the rent as he was an Attorney by trade. He said that this was not a large business and small scale so 8 cars would be okay but he still needs the 8pm 7 days a week allowance. Mr. Arcidi said that if he sold 17 vehicles a week he would leave his attorney job.

Mr. Kelley motioned to go into deliberative session.

Seconded by Mrs. Navarro.

Vote: Unanimous.

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

Deliberative Session

Mr. Perkins said that a motion to amend with a sunset to accommodate this applicant is being requested. He said that the applicant has stated it was not a full time job and expressed that it was to meet client and legally conduct business so motion to amend hours of operation be specific to seven days a week from 9:00 AM to 8:00 PM.

Mr. Kelley motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

Mr. Coppolo motioned motion on case #19-115 Alfred R. Arcidi Owner: Jarrell Revocable Trust a Modification of condition #3 (regarding hours of operation) for the variance granted in case #18-133, dated December 20, 2018, to allow the operation of an auto sales dealership at the property presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Hours of operation amended to 7 days a week, 9:00 AM – 8:00 PM.**
- 3. Amended hours of operation expire when this applicant vacates this location.**

Seconded by Mrs. Evans.

Vote:

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

Mrs. Evans motioned to approve the minutes of March 21, 2019 as amended.

Seconded by Mrs. Navarro.

Vote: Unanimous.

Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Rathburn, Mr. Burgess, Mrs. Navarro, Mr. Coppolo, Mrs. Evans, Mr. Perkins.

Mrs. Evans motioned to approve the minutes of April 4, 2019 as amended.

Seconded by Mr. Kelley.

Vote: Unanimous.

Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Rathburn, Mr. Burgess, Mrs. Navarro, Mr. Coppolo, Mrs. Evans, Mr. Perkins.

Other Business

Mr. Perkins informed the Board that there was an issue of Town & City magazine available if anyone wished to review.

Adjourn

Mrs. Evans motioned to adjourn.

Seconded by Mrs. Navarro.

Vote: Unanimous.

Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Rathburn, Mr. Burgess, Mrs. Navarro, Mr. Coppolo, Mrs. Evans, Mr. Perkins.

Adjourn at 9:41 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

Approval of Minutes June 6, 2019

Mrs. Evans motioned to approve the minutes of May 2, 2019 as written.

Seconded by Mr. Kelley.

Vote: Unanimous.

Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Rathburn, Mr. Burgess, Mrs. Navarro, Mr. Kelley, Mr. Coppolo, Mrs. Evans, Mr. Perkins