

**TOWN OF DERRY**  
**ZONING BOARD OF ADJUSTMENT MINUTES**  
**November 21, 2019**

**Members Present**

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

**Members Absent**

Randall Kelley

**Alternates Present**

Crystal Morin  
Allan Virr

**Alternates Absent**

Donald Burgess  
Craig Corbett

**Code Enforcement**

Robert Mackey, Code Enforcement Director

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 members introduced themselves.

It was noted for the record that Mrs. Evans would step down and that Mr. Virr and Mrs. Morin would sit for the following case:

**19-130          Kenneth Vigeant**

**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 automobile detail business at the residence at 2R Homestead Drive, PID 03103-016R, Zoned LMDR**

Kenneth Vigeant, applicant, reviewed the required criteria for the record. Mr. Vigeant said that he has been detailing cars for most of his life and currently works part time at Royal T for the past 4 years. He said that he built his garage and his plans were to detail cars in his garage. Mr. Vigeant said that his business consists of buffing and polishing customers vehicles and it was by appointment only. He said that he does not utilize any flammables and utilizes a vacuum and air compressor. He explained that his garage was approximately 132-136 feet off the road and that he has a letter signed by all but one of his neighbors in favor of his request.

## **Board Questions**

Mr. Perkins asked how far away was his closest abutter. Mrs. Vigeant said that she had brought a picture display and described the area for the record.

Mr. Vigeant said that there would be no great increase in traffic as there would possibly be 5-6 details per month.

Mrs. Morin asked what the hours of operation would be. Mr. Vigeant said that it would be by appointment only and it also would depend on what the client was looking for as a full condition could take 2-3 hours. He said that he would not operate on nights or weekends.

Mr. Coppolo asked which side of the duplex he was located as driveway appears room enough for a 3 point turn around. Mr. Vigeant said the right side and his neighbor did not sign his petition to grant. He said that his driveway was originally built as a double driveway for both sides of the duplex but the other side now has their own driveway.

Mr. Coppolo asked how long a detail takes. Mr. Vigeant said it could be as much as 2-3 hours and that this would be a part time business by appointment only.

Mrs. Morin asked if there would be clients waiting on property. Mr. Vigeant said no that he has gone and picked up clients vehicles or clients.

Mrs. Navarro asked if garage was built by him. Mr. Vigeant said yes.

Mrs. Navarro asked if there would be any types of motor oil or leakage repairs done. Mr. Vigeant said no as he was only set up for detailing and utilizes an air compressor and vacuum.

Mr. Coppolo asked if an impact gun would be utilized. Mr. Vigeant said he has an impact gun that he uses for his own personal use but does not utilize it for detailing cars.

Mr. Virr asked if a sign was intended to be posted on the property. Mr. Vigeant said no.

## **Favor**

Keith Vigeant, 2A Homestead Drive, said that his son started this endeavor and he was pleased that he was doing on his own. He said that you would never know that he was doing a detail as you only hear occasional air compressor or vacuum other than that there is no noise. He said that only washing and waxing cars at the property and it did not impact him.

## **Opposed**

Sarah Clough, 20 Lesley Circle, said that they were here before the Board 8 months ago regarding another business that was denied and that they were seeking the same for this request. Mrs. Clough said that this area is located 3 minutes from Route 28 where businesses were allowed and that it would be more convenient for it to be located there instead of a residential area. She said that she was concerned with chemical contamination as they all have wells in the area. Mrs. Clough said that they purchased their home and it was a large investment. They live on a quiet street and the area is picturesque and did not feel a commercial business should be located in the area.

Mr. Coppolo asked what was the nature of the last business before the Board. Mrs. Clough said it was an automotive business.

Mr. Perkins asked how far away was she located and if she was a direct abutter. Mrs. Clough described where she was located for the record and that she was not a direct abutter but was very concerned with traffic as if business grows more traffic would be generated. She said that if she decides to sell her home, she sees that a business in the area would be a major concern with sale.

There was some discussion with types of businesses and traffic concern.

Mr. Coppolo asked Mr. Mackey if the applicants request would be invalidated if decided to add an employee or would need to come back before the Board. Mr. Mackey said that they are allowed 1 non-resident employee so it would not invalidate the request.

Mrs. Clough said that if he has an employee he would not have to come back before the Board. Mr. Mackey said only if the Board choses to make a condition of no non-resident employees then they would have to come back to modify the request.

Mandy Gearing, 4 Homestead Drive, said that she lives directly next door to the applicant and has been doing this prior to coming to the Board as been doing all summer and, on several weekends, she has heard air compressors etc. and conversations while she was sitting on her deck. Mrs. Gearing said as the applicant stating not growing and not space, they have had more than one car at a time as several have been there. She said that this is a neighborhood and wants to keep as a neighborhood and not a business zone. Mrs. Gearing said that Route 28 has several areas where this type of business could be operated and it did not belong in a residential area. She said that an attorney's office is much different than cars coming in and out.

Mr. Perkins said that the reference of attorney verses a garage painted a broad picture and shouldn't be nimby and owner has ability to have a small business from their home. He said that the Board can constrict growth and allow property owners to operate constitutional rights. Mrs. Clough said that there are different types of businesses that disrupts quiet time. She said that some are more constant and more complex and number of times per week are loud and noisy and not for this area. She said that they are all on septs and wells in the area and unsure of what type of waste would be discharged. Mrs. Clough said that she was concerned with noise and environmental impact to the area.

Mr. Coppolo reviewed criteria for the record.

Mr. Virr said that he also enjoys going out and sitting on his deck and also hears lawn mowers, leaf blowers, etc. as all live with noise. Mrs. Clough said lawn mowers are home sounds not air compressors.

Mr. Perkins said leaf blowers are something that adapted to. Mrs. Clough said home maintenance is one thing and air compressor, dryer, etc. isn't upkeep to a home and out of place in a residential neighborhood.

Mr. Perkins asked if she had noticed neighbor from Lesley Circle coming to property. Mrs. Clough said yes that he has dropped vehicles off on more than one occasion. She said that she has also noticed vehicles coming and going and more than one vehicle at a time as stated by the applicant.

Robert Clough, 20 Lesley Circle, said he was in opposition to the request due to the increase in traffic flow and that it would alter the residential character of the neighborhood as outlined in the ordinance and that an automobile detailing business does omit noise. He said that the Board denied a prior business 8 months ago and that there were several neighbors against this request but were unable to be present this evening. He said that the person that was denied prior has brought vehicles over to this person to have detailed recently.

Paula Alger, 14 Lesley Circle, said that their home was on the backside of circle and was an original home buyer as purchased her home 30 years ago as it was residential and off beaten path. She said that the road does not have lines and that there was one entrance to their road and one exit so feel that potential clients would use their area to turn around so there would be an increase in traffic. Mrs. Alger said that the automobile repair person was still operating and feeds this person too. She said that she realizes a lawyer and such could operate from a residential area but this type of use is not residential and should be located on Route 28. Mrs. Alger said that she purchased her home as residential and want to keep the area that way.

James Gearing, 4 Homestead Drive, said he was opposed to the request as the garage was located approximately 10 feet from the lot line and he did not want to deal with the noise that would be generated from the proposed business. He said that any run-off from the property drains from yard and forms in puddles in his yard. Mr. Gearing said that he was also concerned for devalue of home with a business next door as it would deter any potential buyers.

### **Code Enforcement**

Mr. Mackey supplied the following information for the record:

- The applicant is requesting approval to operate a car detail business in a detached garage located on the property.

- The applicant is proposing to utilize a portion of the detached garage recently constructed on the property for the business. There is also a mobile component to the business.
- The property is located in a neighborhood comprised of a mix of two-family and single family homes.
- There are pictures in the file for review by the Board.

### **Rebuttal**

Mr. Vigeant said that his cleaning products held no chemicals and were biodegradable. He said that he has had Dan at the shop a few times. Mr. Vigeant said that he has only detailed 5 maybe 7 cars since April as he also has a part time job.

Mrs. Morin asked where else did he work. Mr. Vigeant said that he has worked part time of 18 hours a week for Royal T carwash.

There was some discussion with regard to abutter concerns and neighbor on Lesley Circle.

Mr. Mackey said that the applicant from Lesley Circle was a different type of business where he would purchase vehicles wholesale and repair them for resale.

Mr. Coppolo asked if he had priced any areas to rent. Mr. Vigeant said that he was only seeking to do this as a part time business and it would be by appointment only. He said that he has done about 15 cars all summer and everyone has air compressors and vacuums.

Mr. Coppolo said that everyone has the right to make extra income and everyone has the right to a quiet home so he understands both sides. He asked if the concern of noise could be addressed. Mr. Vigeant said that the air compressor was an 80 gallon tank that probably only turns on 2 or 3 times during a detail.

Mr. Coppolo said the concerns were traffic flow, odor, fumes, dust, noise, chemical use and run off but more concern of noise generated. Mr. Vigeant said that his detailing was performed inside his garage.

Mr. Perkins asked if he had customers on weekends. Mr. Vigeant said yes on Saturdays and he worked part time at Royal T on Tuesday and Thursdays.

Mrs. Vigeant said that there are multiple vehicles in the area daily and not just coming to their residence. She said that they started a neighborhood watch group in the area. Mrs. Vigeant said that as far as the noise is concerned her husband has not ever detailed at 9:00 PM and when they received the letter from the Town to stop he stopped. She said that as for the neighbors beef with Dan that it was a personal agenda of which has no concern of theirs.

Mr. Perkins asked when was the notice to stop work sent. Mr. Vigeant said it was received over a month ago.

Mr. Perkins asked if a restriction of only weekdays and no weekends would be a problem. Mr. Vigeant said no problem.

Mr. Virr asked what hours of operation would be requesting. Mr. Vigeant said that his schedule is by appointment only of which nothing is booked after 5:00 pm and that if someone wanted to drop off a vehicle at 8:00 AM they could. He said that he does mostly interior cleaning but does do exterior detailing on occasion.

There was some discussion with regard to the number of vehicles and hours of operation.

Mr. Virr asked if a special exception did not run with the property. Mr. Perkins said that was correct.

Mrs. Navarro motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

Mr. Virr, Mrs. Morin, Mrs. Navarro, Mr. Coppolo, Mr. Perkins.

### **Deliberative Session**

Mr. Perkins said that the Board needs to find balance between the request and concerns of neighbors. He said that it was a sideline business for the applicant to support what he already does in the testimony given. Mr. Perkins said it was not unreasonable to restrict no non-resident employees.

Mr. Coppolo said that he felt the use was fair on the testimony given.

Mr. Perkins asked if there was any aspects to address from abutter testimony.

Mr. Virr said that the hours of operation should be clear as not actually given. Feel that a possible 9:00 AM – 4:00 PM would not be an unreasonable condition.

There was some discussion with regard to hours of operation.

Mr. Perkins said that a condition to the number of vehicles should be made so Code Enforcement would have something if the business were to grow.

Mr. Virr said a condition of no more than 2 client vehicles be at the premises at any given time.

Mr. Perkins reviewed the conditions for the record.

Mr. Virr motioned to come out of deliberative session.

Seconded by Mrs. Morin.

Vote: Unanimous.

Mr. Virr, Mrs. Morin, Mrs. Navarro, Mr. Coppolo, Mr. Perkins.

**Mr. Coppolo motioned on case #19-130 Kenneth Vigeant to Grant 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 automobile detail business at the residence at 2R Homestead Drive, PID 03103-016R, Zoned LMDR as presented with the following conditions:**

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Hours of operation – Monday – Friday, 9:00 AM – 4:00 PM**
- 3. No sign allowed for business.**
- 4. No non-resident employees.**
- 5. Limit of 2 client vehicles on premises at any one time.**

Seconded by Mrs. Navarro.

Vote: Unanimous.

Mr. Virr, Mrs. Morin, Mrs. Navarro, Mr. Coppolo, Mr. Perkins.

**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. Navarro motioned to approve the minutes of October 3, 2019 as written.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mr. Virr, Mrs. Morin, Mrs. Navarro, Mr. Coppolo, Mrs. Evans, Mr. Perkins

### **Other Business**

Mr. Perkins said that the Town Council is requesting all Board members to attend a joint session on December 12, 2019 to review the Policy and Procedures.

Mr. Mackey said that no cases had been received for the December 5, 2019 meeting so there will be no meeting.

### **Correspondence**

Mr. Perkins said that this months Town and Country has the Derry Municipal Center featured on its cover.

### **Adjourn**

Mr. Virr motioned to adjourn.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mr. Virr, Mrs. Morin, Mrs. Navarro, Mr. Coppolo, Mrs. Evans, Mr. Perkins

Adjourn at 8:40 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

### **Approval of Minutes January 2, 2020**

Mrs. Evans motioned to approve the minutes of November 21, 2019 as written.

Seconded by Mrs. Navarro.

Vote: Unanimous.

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