

**TOWN OF DERRY**  
**ZONING BOARD OF ADJUSTMENT MINUTES**  
**August 20, 2020**

**Members Present**

Lynn Perkins, Chairman  
Craig Corbett – Vice Chair  
Heather Evans, Secretary  
Crystal Morin

**Members Absent**

Allan Virr

**Alternates Present**

Donald Burgess

**Alternates Absent**

**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. Mr. Perkins stated that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 this public body is authorized to meet now physically and also electronically. As such this meeting is being held and providing public access to the meeting by telephone with additional access possibilities by video utilizing the ZOOM app for the electronic meeting. To participate in this meeting you can be present or by dialing 323-909-140 or by clicking on the website address: [derrycam.org/TuneIn](https://derrycam.org/TuneIn) the phone numbers are 646-558-865 or 312-626-6799 meeting ID: 323-909-140 or if anybody has a problem please call 603-845-5585 or email at: [ginnyrioux@derrynh.org](mailto:ginnyrioux@derrynh.org). In the event that the public is unable to access the meeting, the meeting will be adjourned and rescheduled otherwise the meeting will end at 10:00 PM. Mr. Perkins said that all votes taken are taken during this meeting shall be done by roll call vote.

The Board members introduced themselves.

Mr. Perkins provided the information to the public on how to access the case for the record.

It was noted for the record that Mr. Burgess would sit for the following case.

**20-132            35 West Broadway, LLC**

**The applicant is requesting a variance to the terms of Article VI, Section 165-33.B of the Town of Derry Zoning Ordinance to allow the expansion of the Granite House Sober Living Treatment Facility located at 35 West Broadway to include an additional twelve (12) bedrooms to be located in the existing residential building located at 37 West Broadway, PID 29138, Zoned CBD**

Attorney David LeFevre, Tarbell & Brodich, P.A, said he was representing the applicant who was also present this evening. Attorney LeFevre read the submitted application criteria for the record. He explained that the use will be primarily residential and may have a small office area in the rear of the structure for staff.

Eric Spofford, applicant, said they were simply trying to expand what they have at 35 West Broadway as there is a great need for service in the area. He explained that they have acquired this building and expanding the Granite House treatment program would be an added benefit in Derry.

**Board Questions**

Mr. Perkins asked if parcel 138 was the building located further down West Broadway. Attorney LeFevre said yes and described the area for the record.

Mr. Perkins asked if the property was still currently a boarding house. Attorney LeFevre said it is listed as a boarding house on the tax card but currently used as a 3-unit structure.

Mr. Burgess asked if there were any floor plans for the proposed uses and wanted to know what would happen to the current occupants. Mr. Spofford said that the property is currently occupied by current graduates of the Granite House that are renting.

Mr. Perkins said that there was a floor plan provided. Mr. Mackey said that the floor plan says 35 West Broadway but it is for 37 West Broadway.

**Code Enforcement**

Mr. Mackey supplied the following information for the record:

- The applicant is requesting a variance to allow the property located at 37 West Broadway to be utilized as part of the Granite House Sober Living Facility located next door at 35 West Broadway.
- The property is located in the Central Business Zoning District (CBD) which does not list a sober living treatment facility as a permitted use. Therefore, a “use” type variance is being requested.

- The property located at 35 West Broadway, a former boarding house was granted a variance to operate a sober living facility (with 31 residents) in 2011.
- The property at 37 West Broadway is currently being assessed as a 9 unit boarding house.
- If approved, appropriate inspections and licensing will be required and all Fire & Life Safety regulations must be followed.
- There are pictures of the property in the file for review by the Board.

Mr. Spofford said that in 2011 they obtained a 31 bed variance for 35 West Broadway which has been operating consistently as a Sober Living Facility. He said that they strive to be a good neighbor and that the staff and the residents have volunteered at the annual Derry town clean up for the past several years.

Mr. Perkins said that he recalled the previous case having resistance when it came before the Board and glad to see have been able to bring into a better light.

Mrs. Evans asked since operation began in 2011 have there been any complaints. Mr. Spofford said they originally had an issue with an abutter but since then have had no other incidents except a few with fire but other than that no problems.

Mrs. Evans asked if the need would be utilized for out of Town people. Mr. Spofford said that all residences are from New Hampshire and they have a waiting list.

Mrs. Evans asked if the waiting list was more than 10. Mr. Spofford said that they currently have 76 people on the waiting list.

Mr. Burgess said he recalled when first came before the Board the room was full. He said that at time the Police Department had only 1 incident there verses abutting property. He said that the plan provided shows all offices not rooms. Mr. Spofford said that was the wrong plan that the rooms should be listed as bedrooms.

There was some discussion with regard to the floor layout.

Mr. Corbett asked how many occupants per room would there be. Mr. Spofford said that there would be no more than 2 occupants per room.

Mr. Burgess asked if there would be for all men. Mr. Spofford said that they have both and there had been a change in need so have made to accommodate both men and women.

Mr. Perkins informed the public that now would be the time to call in opposition of the proposed request. He said if wish to speak press star 9 and will answer your call.

### **Favor**

No one spoke in favor of the request.

Mr. Perkins informed the public that now would be the time to call in opposition of the proposed request. He said if wish to speak press star 9 and will answer your call.

### **Opposed**

No one spoke in opposition of the request.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mr. Corbett.

Vote: Unanimous.

Mr. Burgess, Mrs. Morin, Mrs. Evans, Mr. Corbett, Mr. Perkins.

### **Deliberative Session**

Mr. Corbett said he could see what the applicant was seeking as plan does show a lot of bedrooms and that the main building is located right next door to monitor the proposed use. He said that he felt it was a reasonable request.

Mrs. Evans said that it was an unfortunate that there was a dire need for this type of use and the applicant has brought a source of stability to the area.

Mr. Burgess said that the prior meeting there were many people that were in favor and many opposed and tonight do not see any one so feels that this request was reasonable.

Mrs. Morin said she also agrees that there was an unfortunate need for this type of service and it is hard to get help but the applicant is here willing to do it so feel should be granted.

Mr. Perkins reviewed the condition for the record.

Mrs. Evans motioned to come out of deliberative session.

Seconded by Mr. Corbett.

Vote: Unanimous.

Mr. Burgess, Mrs. Morin, Mrs. Evans, Mr. Corbett, Mr. Perkins.

**Mrs. Evans motioned to Grant case #20-132 35 West Broadway, LLC to Grant a variance to the terms of Article VI, Section 165-33.B of the Town of Derry Zoning Ordinance to allow the expansion of the Granite House Sober Living Treatment**

**Facility located at 35 West Broadway to include an additional twelve (12) bedrooms to be located in the existing residential building located at 37 West Broadway, PID 29138, Zoned CBD as presented with the following conditions:**

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

**Seconded by Mrs. Morin.**

**Vote:**

**Mr. Corbett: Yes.  
Mrs. Evans: Yes.  
Mrs. Morin: 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.**

Mr. Perkins provided the information to the public on how to access the case for the record.

It was noted that Mr. Burgess would sit on the following case.

**20-133 John & Shannon Joyce**

**The applicants are requesting an equitable waiver to the terms of Article VI, Section 165-48.B.4 of the Town of Derry Zoning Ordinance to allow the existing pool and deck to remain less than 15 feet from the side property line. 9 Buttonwood Drive, PID 11084-006, Zoned LDR**

John Joyce, owner, read his application criteria for the record.

**Board Questions**

Mr. Perkins asked if property was on a septic system. Mr. Joyce said yes and was approximately 5 feet away. He said that there would be an additional cost to move the pool. He said that he had the pool put on the left as the leach field was on the right. He said that as for the encroachment was not intentional as had an understanding with the neighbor of where the property line was.

Mr. Perkins said that the pool was installed in 2016 and recently added a deck. Mr. Joyce said yes.

Mr. Perkins said that the pool sort of creates line for rest of what could potentially be there and the question is issue of depreciation to surrounding properties. Mr. Joyce said that he did not feel other properties would be affected.

Mr. Burgess asked why pool could not be moved over 5 feet. Mr. Joyce said that when the pool was installed, he had to have the property graded to have the pool placed.

Mr. Perkins asked how would the cost to correct out way relocation is a valid question and need to focus on criteria points. Mr. Joyce said he paid \$2,200 to have the pool installed if have to move he would possibly be over \$2,500.

Mrs. Evans asked if the pool was 10 feet off the property line and the deck was 14' 6". Mr. Joyce said yes.

Mr. Corbett asked if there was any way to take 6 more inches off the deck. Mr. Joyce said he already had tubes poured.

### **Code Enforcement**

Mr. Mackey supplied the following information for the record:

- The applicants are requesting an equitable waiver to allow an existing above ground pool and deck to remain less than 15 feet to the side property line.
- Records indicate that a permit was issued in 2016 for the above ground pool and in 2020 for the deck. Both of these structures were represented by the applicant as being in compliance with the setback requirements.
- When construction was started on the deck, the abutter raised a concern regarding it being too close to the property line. A subsequent survey showed that both the pool and deck were encroaching into the setback.
- The applicant has since removed part of the deck to align with the pool and is seeking an equitable waiver to allow them to remain as is.
- As these structures have not existed for 10 years or more, item #2 in the criteria for an equitable waiver does not apply.
- There are pictures of the property in the file for review by the Board.

Mr. Burgess asked if there were permits for the pool and deck. Mr. Mackey said yes and that it was represented to be 15 feet from the property line.

Mr. Burgess asked if that was allowed. Mr. Mackey said yes as it was based on represented plan submitted.

Mr. Burgess said that the pool was only 4 years old and why not variance. Mr. Mackey said that it did not predate setback requirement. This type of situation is usually discovered when selling a property.

Mr. Perkins said that every Town was different on how accept and application to build and misunderstandings do occur. He said that statue is allowed under criteria as a permit had been issued.

Mr. Mackey said that new house construction we do require certified foundations but minor projects do not require.

Mrs. Morin said that before pool installation the property had been maintained to the bushes. Mr. Joyce said yes.

Mrs. Evans said that it was stated on application that went off a survey before installing the pool. Mr. Joyce said that he had had a conversation with his neighbor and went off their shed. He said that the lawn had always been cut the same area off a survey that they had had in 2004.

Mr. Burgess asked what would the potential cost to relocate the pool and deck. Mr. Joyce said \$2.5k or more with electric.

Mr. Perkins informed the public that now would be the time to call in favor of the proposed request. He said if wish to speak press star 9 and will answer your call.

### **Favor**

No one spoke in favor of the request.

Mr. Perkins informed the public that now would be the time to call in opposition of the proposed request. He said if wish to speak press star 9 and will answer your call.

### **Opposed**

Linda & Anthony Saitta, 11 Brookview Drive. Mrs. Saitta said that they had been asked permission to install the pool and he was told no and he installed it anyway. He asked permission to build the deck and again we said no and he continued to build. She said that the arborvitaes were on their land not the applicants. Mrs. Saitta said that she had made several calls to the Code Enforcement Office and Mr. Wentworth provided Mr. Joyce a cease and desist order but he kept building even after he had a survey done. She said that it was unfortunate that it would be a considerable cost to relocate the pool and deck but he knew he was in violation and kept building. Mrs. Saitta said they have lived in the area for 16 years and if he is required to take down or it is allowed to stay, they would still be a bad neighbor for bringing it to the attention of the Board. She said that she wishes to have the pool and deck relocated according to the code requirements.

Mrs. Evans said that the applicant stated that there was a 2004 survey of your property. Mrs. Saitta said she did not know the year but was told that they were required to have the property surveyed to build a shed.

Mrs. Evans asked if when the pool had been installed if it was disputed at the time. Mrs. Saitta said no.

Mr. Burgess asked if the neighbor had ever been told where the lot line was located. Mrs. Saitta said that he had asked if the arborvitaes were the lot line and was told unsure of where the property line was and that he would need a survey.

Mr. Perkins asked how many cease & desist orders were issued. Mr. Mackey said he was unsure of any actual cease & desist orders were issued but it was noted that the permit had expired and had been renewed.

Mr. Corbett asked if there had been a discussion with regard to the arborvitaes and deck. Mrs. Saitta said yes.

Mr. Perkins asked how close to home was the pool. Mrs. Saitta said it was very close and was disruptive to their privacy and feels it would devalue their home. She said that the law was the law and the pool should be relocated.

There was some discussion with regard to statute of law and infringement rights.

Mr. Burgess asked if the building department had measured the area. Mr. Mackey said no one from Code Enforcement has measured the property.

Mr. Perkins informed the public that now would be the time to call in opposition of the proposed request. He said if wish to speak press star 9 and will answer your call.

Ronald Anker, 7 Buttonwood Drive, said that he lived on the other side of Mr. Joyce and was fine with the location of the deck and pool and he was in support of the applicant. He said that a deck increases the utilization of the pool better than a ladder and was also safer and polite way for a family to enjoy their investment.

### **Rebuttal**

Mr. Joyce said that the claim of being issued a cease & desist was not valid. He said that he did have a discussion with the inspector and had an agreement that as long as inside the area he was okay to proceed. Mr. Joyce said that he got the survey and have continued to build and have built a bench on the deck to sit. He said that he got an emergency survey for just the one line.

Mr. Perkins asked how the position of the pool and deck not devalue neighbors' home. Mr. Joyce said that this all results out of a personal attack on a disagreement and the pool has existed for 4 years already and the deck is only encroaching by 6 inches.

Mr. Corbett asked how knew of a 2004 survey. Mr. Joyce said that the that the area had been discussed on several occasions.



Mr. Burgess motioned to go into deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mr. Burgess, Mrs. Morin, Mr. Corbett, Mrs. Evans, Mr. Perkins

### **Deliberative Session**

Mr. Perkins said that the validity of a survey has been questioned by abutter and questions have been raised of depreciation of property values. He said that he felt it reasonable to request a copy of survey as was paid for so he would like to request to table this to the next meeting so the applicant could provide the survey copy.

Mr. Corbett said he agrees he would like to see both surveys so the Board could see where things were actually located.

Mr. Burgess said he agrees as he would like to see both surveys also.

Mrs. Evans said she would also like to see both surveys and showing the shed location.

Mrs. Morin said she agrees with everyone on seeing the surveys and maybe they could do some sort of a lot line adjustment.

Mr. Perkins said they need to come out of deliberative session and request surveys to be provided for the next meeting.

Mr. Corbett said that maybe the construction should stop in the interim.

Mr. Burgess asked if it was possible to have an estimate of relocation.

Mr. Perkins said that relocating would be costly as would need to break down and new liner and electrical work would need to be redone.

Mrs. Morin said that a survey does not always come with paper and that it may take time to obtain so may need more than the next meeting.

Mrs. Evans motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Burgess, Mrs. Morin, Mrs. Evans, Mr. Corbett, Mr. Perkins

**Mr. Corbett motioned to table case #20-133 John & Shannon Joyce, 9 Buttonwood Drive until both property surveys are provided to the Board for review for the September 3, 2020 meeting.**

**Seconded by Mrs. Evans.**

**Vote: Unanimous.**

**Mr. Burgess, Mrs. Morin, Mrs. Evans, Mr. Corbett, Mr. Perkins**

Mr. Perkins said that he would like to recall case # 20-130 Muhammed Umit under the 80 days consideration in order to consider motion on the vote. This is not a denial but to ask for additional condition to be added. Mr. Perkins said he would need a motion to go into deliberative session and discuss.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mr. Burgess, Mrs. Morin, Mrs. Evans, Mr. Corbet, Mr. Perkins.

### **Deliberative Session**

Mr. Perkins said that public input was not allowed at this time. The reason for the recall of the case is to put a sunset clause as part of the conditions. Mr. Perkins said that this is put on the variance which expires when the applicant leaves the building. Every applicant has different needs and the Board sculpts very carefully each condition to assist the Code Enforcement Office means to monitor each request.

Mrs. Evans said she agrees that a sunset needed to be added.

Mr. Perkins said that it was listed as part of conditions but was missed.

Mrs. Morin said that typically there are abutters that raise concerns of which the Board then imposes conditions in the motion.

Mr. Perkins reviewed the additional condition for the record.

Mrs. Morin motioned to come out of deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

Mr. Burgess, Mrs. Morin, Mrs. Evans, Mr. Corbett, Mr. Perkins

**Mr. Corbett motioned to include the following condition #5 to be added to case #20-130 Muhammed Umit Owner: Jarrell Revocable Trust to variance granted on July 16, 2020 at 46 East Derry Road, Bld A Suite 2, PID 39031, Zoned MDR.**

**5. Variance is to expire when business vacates premises.**

**Seconded by Mrs. Evans.**

**Vote:**

**Mr. Burgess: Yes.**

**Mrs. Morin: Yes.**

**Mrs. Evans: Yes.**

**Mr. Corbett: 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 table the minutes of July 16, 2020 to the next meeting.

Seconded by Mr. Corbett.

Vote: Unanimous.

Mr. Burgess, Mrs. Morin, Mrs. Evans, Mr. Corbett, Mr. Perkins

### **Adjourn**

Mrs. Morin motioned to adjourn.

Seconded by Mr. Corbett.

Vote: Unanimous.

Mr. Burgess, Mrs. Morin, Mr. Corbett, Mrs. Evans, Mr. Perkins

Adjourn at 8:30 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

**Approval of Minutes September 3, 2020**

Mrs. Evans motioned to approve the minutes of August 20, 2020 as amended.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Burgess, Mr. Virr, Mrs. Morin, Mrs. Evans, Mr. Corbett, Mr. Perkins