

`TOWN OF DERRY  
ZONING BOARD OF ADJUSTMENT MINUTES  
December 3, 2020

**Members Present**

Lynn Perkins, Chairman  
Craig Corbett – Vice Chair – via remote  
Crystal Morin  
Allan Virr

**Members Absent**

Heather Evans

**Alternates Present**

Donald Burgess

**Alternates Absent**

Gaspar Obimba

**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 will also be 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](http://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.

Mr. Perkins stated that in keeping with the mask mandate it has been reviewed that if all parties can maintain 6' distances then do not require to wear, however, if more comfortable to wearing then also have that option.

The Board members introduced themselves.

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

**The applicant is requesting a variance to terms of Article VI, Section 165-45.A and Article XIII, Section 165-108.E of the Town of Derry Zoning Ordinance to allow the reestablishment of commercial/mixed use at the property at 1 Pinkerton Street PID 37043, Zoned MHDR**

Muharem Mahmutovic, owner, reviewed the application criteria for the record. Mr. Mahmutovic stated that has owned the building for 2.5 years and in that time has done a lot of research on the history of the building. He said that he was seeking to try to restore the structure to what some of the uses that have been allowed to operate in the past. Mr. Mahmutovic described the floor layout for the record and what he hopes to possibly bring in some types of business utilization into some of the space. Mr. Mahmutovic also reviewed some of the past uses that have operated out of the building.

### **Board Questions**

Mr. Perkins asked if there were any plans of the top floor. Mr. Mahmutovic said that he did not have any plans at this time as that area requires the most work and has the most history. He said that he hopes to be able to focus on the outside of the structure in the spring.

Mr. Virr said that he was familiar with the building as it used to house Saint Marks who left in 1924 to relocate into the building now on East Broadway.

Mr. Burgess asked if there were stairways to access the second floor. Mr. Mahmutovic said that unit 1D has access to the second floor.

There was some discussion with proposed uses for the area.

Mr. Burgess said that he had some concern with the parking spaces as typically require one and a half spaces per apartment. Mr. Mahmutovic said that the parking worked for over 150 years and is what it is. He said that he has hired an engineer to review the parking. The 10 spaces are the most he could get possibly 11. Mr. Mahmutovic said that parking will be addressed with the building and planning departments as he knows the rules are 9 to 10 feet wide spaces. He said that he may possibly approach the Town to see if additional parking with limited 2 hours could be allocated on the left side of his building.

Mr. Burgess asked how would snow be handled. Mr. Mahmutovic said it was going to be a challenge and he was unsure at this time. He said that he may need to truck off the property.

Mr. Corbett said the 10 possibly 11 spaces were of concern for him and feels that 10 spaces would be tough to get access in or out of the property. Mr. Mahmutovic said that he has been reviewing the parking the past few days and may need to make wider as

number 10 may become a handicap space. He described his potential parking for the record.

Mr. Virr said that parking would fall under the Planning Board and not purview of the Board.

Mr. Perkins said he felt that was true but also felt that the questions are fair to ask and to what uses may be intended for the building. He said that 10 spaces may make it easier and will also need to follow ADA requirements.

Mr. Corbett asked how confident was the mortgage company leasing space. Mr. Mahmutovic said they are very interested and will be just an office for underwriting which would help with parking. He said that he may have another tenant lined up that may wish to have a sales/show room that would fall under more of a retail but would be more of an office with some sale of merchandise. Mr. Mahmutovic said it would be less impact than an actual store.

### **Code Enforcement**

Mr. Mackey provided information with regard to the property for the record.

- The applicant is requesting approval to reestablish commercial use in a portion of the structure.
- The property is located in the Medium High Density Residential Zoning District (MHDR) which does not allow commercial use.
- The property originally a Masonic Hall, has had commercial uses for many years, most recently an antique business, but as this business closed and the commercial space has been vacant for over a year, the non-conforming status of the use has expired. Therefore, the owner has applied for a variance to allow commercial/office/retail use in a portion of the building.
- There are currently 2 occupied apartments in the building with the rest of the building vacant.
- If approved by the Board, prior to any new occupancy, appropriate approvals must be obtained by the Building, Fire and Planning Departments. Items such as proper fire separations, egress and adequate parking will need to be established.
- There are pictures of the property in the file for review by the Board.

Mr. Mahmutovic said that the parking for the building is existing and endured for many years. He has doubled the parking since purchase as the antique shop only had 5 spaces. He said his wish is to improve the building is what he was seeking to do.

Mr. Mackey said any potential new tenants will need to apply for a change of use which goes around to the various departments for their comments so parking will be reviewed and input will be made.

Mr. Virr said he would love to see the building back in use and bring business to Derry.

Mr. Perkins said the building has an interesting heritage and history information was provided from Mr. Holmes of the Derry Historic Society.

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

### **Favor**

Karen Anderson, 12 Village Brook Lane, said she was here on behalf of the Heritage Commission. Mrs. Anderson said that they have been working to get the building listed on the historical site. She said that the Historical Society saw what happened with the Pinkerton Tavern and do not wish to see the same happen to this building. They are seeking to assist the owner and behind him 100 percent in his venture to rehab the existing building to its former glory.

Mark Marino, 16 North Main Street, said he was a grateful abutter as the owner since his purchase of the building in September 2019 has been an exemplary neighbor. Mr. Marino said that they had a few problems in the beginning but have assisted each other. He said that the Matthew Thornton tree that was removed has made some nice furniture. Mr. Marino said that Mr. Mahmutovic has been doing a nice job with the building and hopes the revitalization of the building continues.

Mrs. Morin 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. Virr.

Vote: Unanimous.

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

### **Deliberative Session**

Mr. Virr said that the Town is down to 9 buildings on the historical registry and hopefully they can add another. This building has been there so long once was an elegant lady now

turned shabby. Unfortunately, the antique shop was unable to support the building and feel the need to preserve the heritage of the building is important.

Mr. Burgess said he wished there was more parking but the lot is what it is.

Mr. Corbett said he agrees with Mr. Virr and it is an iconic building that holds lots of history. He said he felt the types of business that the applicant is seeking to bring to the building is less of an impact than other types of business.

Mrs. Morin said she also agrees with the Board and loved hearing about the history and neighbor support.

Mr. Perkins said that he also would like to see something brought back to life and benefit the community and give the applicant an opportunity. He said that residential use would not be practical and also supports the request. Mr. Perkins reviewed the condition for the record.

Mr. Perkins said the Technical Review Board would be reviewing each tenant and address the parking.

Mr. Burgess said that Mr. Mackey had stated possible Planning Board would possibly need to be a condition to review also.

Mr. Mackey said that each potential tenant would be required to submit a change of use application that would then be reviewed with TRC meetings to review and discuss parking so feel the general motion covers.

Mr. Burgess motioned come out of deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

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

**Mrs. Morin motioned on case #20-150 Muharem Mahmutovic to Grant a variance to terms of Article VI, Section 165-45.A and Article XIII, Section 165-108.E of the Town of Derry Zoning Ordinance to allow the reestablishment of commercial/mixed use at the property at 1 Pinkerton Street PID 37043, Zoned MHDR as presented with the following conditions:**

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

**Seconded by Mr. Virr.**

**Vote:**

**Mrs. Morin: Yes.**  
**Mr. Virr: Yes.**  
**Mr. Burgess: 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. Morin motioned to approve the minutes of November 19, 2020 as written.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

**Adjourn**

Mr. Corbett motioned to adjourn.

Seconded by Mrs. Morin.

Vote: Unanimous.

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

Adjourn at 7:55 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

**Approval of Minutes January 7, 2021**

Mr. Virr motioned to approve the minutes of December 3, 2020 as written.

Seconded by Mrs. Evans.

Vote: Unanimous.

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