

TOWN OF DERRY  
ZONING BOARD OF ADJUSTMENT MINUTES  
June 1, 2017

**Members Present**

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

**Members Absent**

Joseph Carnevale

**Alternates Present**

Donald Burgess

**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.

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

**17-113            Mark Lundgren – Boston Burn  
                         Owner: Phillip Jarrell**

**The applicant is requesting a variance to the terms of Article VI, Section 165-46.A of the Town of Derry Zoning Ordinance to allow a glass blowing studio in a residential zone at 46 East Derry Road, PID 39031, Zoned MDR**

Mark Lundgren, applicant representing Boston Burn, said that he was also here with Kyle LaPointe and that he also had a letter of authorization to speak on behalf of Boston Burn. Mr. Lundgren read the 5 criteria and letter of explanation for the record. He said that they were not looking to advertise and that the main purpose was to provide merchandise for their 11 retail shops and a few nationally.

## **Board Questions**

Mr. Perkins asked what it was that they do and if there would be tours. Mr. Lundgren said that they are seeking to operate a glass blowing studio that would fabricate various items to be sold in their shops in Boston. He said that there was no space to accommodate tours as it was just big enough to facilitate their existing stores and may occasionally have a few items for sale.

There was some discussion with size of the building.

Mrs. Evans asked how many parking spots were available. Mr. Lundgren said there were 60 spots on the lot but they would only possibly utilize 3-4 vehicles for their employees.

Mr. Burgess asked what was the heat source used for the glass blowing. Mr. Lundgren said they use liquid oxygen and the tank size was approximately 300 lbs.

Mr. Kelley asked what form of distribution would be utilized. Mr. Lundgren said they would either go to the postal service or UPS would pick up.

Mr. Coppolo said that the area has 4-5 roads connecting it which leads to traffic concerns.

Mr. Kelley said that he has been to the property and that UPS comes in via the side road and not the front area which is less of an impact.

Mr. Coppolo asked if the product line was limited to pipes or other items. Mr. Lundgren said that they do some decorative items all glass but mostly smoking pipes and some necklaces.

Mr. Coppolo said that testimony was stated that there was no gallery for walk in traffic and if there was any possibility for teaming up with some of the local shops in Derry. Mr. Lundgren said that would be a possible consideration.

Mr. Kelley asked if there would be any classes. Mr. Lundgren said not at this time

Mr. Coppolo said that Artisan Gallery is interesting and asked if there was any special training required for the oxygen. Mr. Lundgren said yes and that they only hire qualified artist and it is not their intention to educate and train. He said that they have a full studio in Boston but need more room for production of merchandise.

There was some discussion with regard to ventilation and possible omission of fumes.

Mrs. Evans asked if there has ever been any complaints or violations with their other shops. Mr. Lundgren said there have been no complaints and Boston has very strict laws and that their company goes above and beyond regulations.

## **Code Enforcement**

Mr. Mackey supplied the following information in his absence for the record.

- The applicant is requesting approval to operate a glass blowing studio in a vacant building located on the property which formally housed a hair salon.
- The property is zoned Medium Density Residential (MDR).
- The hair salon existed by virtue of a variance granted in 1993 which also involved several years of subsequent litigation after the variance was challenged.
- The auto collision shop and auto service shop located on the property are considered legal, pre-existing, non-conforming uses that date back to the mid 1940's. Over the years, several variances have been granted to allow additions to be constructed to the buildings associated with these uses, the most recent in 2014 to allow the construction of a storage building (never constructed).
- It approved, appropriate permits and inspections will be required and applicable building and fire code regulations must be met.
- There are pictures of the property in the file for review by the Board.

## **Favor**

No one spoke in favor of the application.

## **Opposed**

Timothy Harding, 1 Pond Road, said that he was not familiar with type of manufacturing and had concern with noise from the furnace and what hours of operation would there be. He also had concerns if there would be foul odors coming from the building.

Mr. Noel said that there would be no foul odors omitted and that they burn propane which is expelled via fan from the building. He said that the fans have a sort of muffler attached to them so helps limit the noise level to a minimum. Mr. Noel said that there may occasionally be a liquid oxygen vent noise but that would be minimal. He said that the typical hours of operation are 8-5 or 8-6pm Monday through Saturday and not sure if they would operate on Sunday.

Mr. Perkins asked if there was a furnace. Mr. Noel said there was no furnace as that was a different type of production. They utilize a small kiln which is less involved and runs off electricity.

## **Rebuttal**

Mr. Lundgren said that the kiln and fans are on the inside and vent outside. He said that the venting odor outside would be very low and would not be of concern. Mr. Lundgren said that the hours would not be beyond 7:00 pm.

Mr. Kelley motioned to go into deliberative session.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

### **Deliberative Session**

Mr. Coppolo said that he appreciated the gentleman asking about the hours of operation as it was not addressed. He said that he did not feel as a Board member or community to have operating hours to 10:00 at night as he was more concerned with hours of operation and not days of the week.

Mr. Perkins said a condition of hours of operation 8:00 am – 8:00 pm be part of the motion and asked about hours of operation on Sunday.

Mr. Kelley said that he felt the Board should deter from Sunday as keeping in mind that there is a Church in the neighborhood.

Mr. Coppolo said a condition of hours of operation 8:00 am through 8:00 pm Monday through Saturday with no hours of operation on Sunday be made.

Mr. Perkins asked if there was any shipping concerns and UPS trucks and asked if there should be any stipulations made.

Mr. Kelley said that he felt comfortable with UPS shipping as if they get bigger he felt that they would seek other methods of transportation.

Mr. Burgess said that a tractor trailer could navigate the area if needed with no issues.

Mr. Kelley motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

**Mr. Coppolo motioned on case #17-113 - Mark Lundgren – Boston Burn, Owner: Phillip Jarrell to Grant a variance to the terms of Article VI, Section 165-46.A of the Town of Derry Zoning Ordinance to allow a glass blowing studio in a residential zone at 46 East Derry Road, PID 39031, Zoned MDR as presented with the following conditions:**

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Maximum hours of operation limited to 8:00 AM - 8:00 PM**

**Monday through Saturday with no Sunday operation**

**Seconded by Mrs. Evans.**

**Vote:**

**Mr. Kelley: Yes.**  
**Mr. Coppolo: Yes.**  
**Mr. Burgess: 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.**

**17-114 Cheryl Waitt & Jesse Jean  
Owner: Cheryl Waitt**

**The applicant is requesting a variance to the terms of Article III, Section 165-9 of the Town of Derry Zoning Ordinance and an exception to NH RSA 674:41 to allow the construction of a single family residence on a lot without frontage on an approved public street, 7 Circle Drive PID 50009, Zoned MDR**

Cheryl Waitt, owner, said she was here tonight to request a variance for 7 Circle Drive. She said Jesse Jean was also present as he wishes to purchase the property if the variance was granted. Ms. Waitt read the criteria for the record. She said that she has owned the property for approximately 16 years and that this is the last lot in the subdivision to be built. The road is off of Route 102 but is listed as a private road with the Town of Derry.

**Board Questions**

Mr. Burgess asked Mr. Mackey if the applicant was here due to not a public road. Mr. Mackey said that was correct.

Mr. Coppolo asked if the requirement for the MDR zone was 1 acre. Mr. Mackey said that this lot was a pre-existing lot of record. If the lot had frontage on a public street it would not need to be here as the proposed location of the home appears to meet all the setbacks.

Mr. Coppolo asked what was the frontage of this lot. Ms. Waitt said that the lot has 60' of frontage. She said that the home will be set back and meet all the required setbacks.

Mr. Burgess asked if the abutters take care of snow plowing and maintaining the road. Ms. Waitt said that there are 5 lots on the private road which each have 20% interest in the maintenance of the road which she at the present time maintains.

Mr. Coppolo asked if there was any talk of paving the road. Ms. Waitt said that she had asked if she could pave the road but was told she could not as would bring too much water onto Route 102.

Mr. Coppolo asked what was the width of Circle Drive. Ms. Waitt said that the road starts out as 18' and at the curve is 20'. She said that the septic design that was submitted with their request was true to form.

Mr. Coppolo asked what the requirement for a road was with the Town. Mr. Mackey said that it was 24'.

Mrs. Evans asked if the property on the other side was owned by them. Ms. Waitt said no but did at one time.

### **Code Enforcement**

Mr. Mackey supplied the following information in his absence for the record.

- The applicants are requesting approval to construct a single family dwelling on a pre-existing lot of record located on Circle Drive. Circle Drive, which is located off Chester Road (Rte. 102) is a private road and is not maintained by the Town.
- Currently, the road is gravel and the responsibility for maintenance is through the residents living there by an agreement recorded at the Registry of Deeds.
- There are 3 other homes located on Circle Drive (the others front on Chester Road). Two homes received variances in 2004 and the other pre-dates the current zoning requirements.
- A 2 bedroom home and State approved septic designs are being proposed for the lot.
- If approved, a Waiver of Municipal Liability and Responsibility must be recorded at the Registry prior to issuance of a building permit.
- There are pictures of the property in the file for review by the Board.

Mr. Jean said that he did bring another plan showing a garage with a different floor plan of the home if the Board wished to review. Mr. Perkins said that the plan could be distributed but if the home meets all the setback requirements does not need to be a requirement.

### **Favor**

No one spoke in favor of the application.

## **Opposed**

Michael Strules, 5 Circle Drive, said that he has concerns with the construction of the proposed home as he owns the parent lot of the subdivision and his home was very close to the side lot line.

Mr. Perkins asked if there was a variance for his home to be too close to the lot line. Mr. Strules said no and he had just purchased the home last year.

Mr. Coppolo asked where was his property in relation to the applicant's property. Mr. Strules showed the Board his property. He said that there was a current thin tree line that he would like to keep so as to have some sort of privacy.

There was some discussion with regard to location of the two properties

Kristin, 5 Circle Drive, said that she resides at the home but her name is not on the deed. She said that she is currently up at 4am and is concerned with construction times and construction vehicles interfering with them accessing their property as the road was very narrow. She said that Saturday and Sundays are their rest days and would like quiet as the main reason for purchasing the home was that it was quiet and peaceful. She said that she also has concerns of the applicant encroaching or damaging their property during construction. She said that she has a ½ acre lot and concerned with the number of vehicles, etc. to the property.

Mr. Coppolo said that from a legal perspective unable to trespass onto neighboring properties.

Mr. Kelley said that the road is private and that they would need to speak with the applicant as the Board is unable to govern the roadway.

Mr. Perkins said that he heard there were concerns with setbacks, buffers and construction times. He asked if there were any other concerns. Mr. Strules said no.

Mr. Burgess said most times construction trucks are on the property and that the proposed home does not appear to be close to the road and indicating that the proposed home will be 15' from the side lot lines.

## **Rebuttal**

Ms. Waitt said that she currently owns the center lot and that trucks can be parked on the property. The adjacent side lot is currently owned by the person on Route 102 and sure if speak to them they would have ability to park equipment on that lot during construction so as to not block the road.

Jesse Jean, applicant, said that this intention is to push the proposed home back onto the lot but there is not a lot of wiggle room. He said that he would also like to have a view and that he was seeking to live there. Mr. Jean said that he was in construction field of a

family owned and operated business and not seeking to make bad neighbor scenario. He said his goal is to be moved in as soon as possible.

Mr. Perkins asked if the construction window was 90-100 days and if relocating location of home would the septic system be revised. Mr. Jean said that he would home to be completed within 90 days and that if they decide to relocate the home the septic system would need to be revised.

Mr. Perkins asked if concern of Mr. Strules home location and repositioning home would be restricted with ledge. Ms. Waitt said that the test pits have been done and have found no ledge on the property.

Mr. Jean said that his intent is to push the home back and that the ledge has been located on the lot next to his and in the back.

Mr. Burgess said that the neighbor has concerns with location of home with regard to theirs. Mr. Jean said that the property did not have a lot of room but would review location of home.

There was some discussion with regard to proposed location of home and abutting property.

Mr. Kelley motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

### **Deliberative Session**

Mr. Perkins reviewed the conditions for the record.

Mr. Kelley said he would like to see the home set back from the neighbor but it would also require additional engineering with regard to the septic system.

Mr. Burgess asked if the approval for construction on the septic system would extend until the home was completely constructed.

Mr. Mackey said that a building permit was good for one year and a septic system design typically has a 4 year window for construction with the State however they can apply for an extension.

Mr. Coppolo said that he was sympathy to the neighbors' concerns but the proposed plan submitted does meet all the setback requirements.

Mr. Perkins said that he heard testimony from Ms. Waitt that there is some ability to keep construction vehicles on the property so as not to interfere with blocking roadway. He said that a motion could be made with regard to construction not to start before 7am and not after 7pm.

Mr. Coppolo said that denying the variance would deem an unbuildable lot which to date has been taxed as a buildable lot.

Mr. Perkins said that he agreed that the property is of non-conformity and unable to take rights away.

Mr. Kelley motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

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

**Mr. Coppolo motioned on case #17-114 - Cheryl Waitt & Jesse Jean, Owner: Cheryl Waitt to Grant a variance to the terms of Article III, Section 165-9 of the Town of Derry Zoning Ordinance and an exception to NH RSA 674:41 to allow the construction of a single family residence on a lot without frontage on an approved public street, 7 Circle Drive PID 50009, Zoned MDR as presented with the following conditions:**

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Subject to waiver of municipal liability to be recorded with the Rockingham County Registry of Deeds.**

Seconded by Mrs. Evans.

**Vote:**

<b>Mr. Coppolo:</b>	<b>Yes.</b>
<b>Mr. Kelley:</b>	<b>Yes.</b>
<b>Mr. Burgess:</b>	<b>Yes.</b>
<b>Mrs. Evans:</b>	<b>Yes.</b>
<b>Mr. Perkins:</b>	<b>Yes.</b>

**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**

Mr. Kelley motioned to approve the minutes of May 18, 2017 as written.

Seconded by Mrs. Evans.

Vote: Unanimous.

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

### **Other Business**

Mr. Perkins said that the Board typically meets once in July and once in August on summer schedule. Those meeting dates would be scheduled to the following:

**July 20, 2017**  
**August 17, 2017**

Board voted unanimously.

Mr. Mackey said that there had been one case submitted to the office for the June 15, 2017 meeting.

### **Adjourn**

Mr. Kelley motioned to adjourn.

Seconded by Mr. Evans.

Vote: Unanimous.

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

Adjourn at 8:30 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

### **APPROVAL OF MINUTES June 15, 2017**

Mr. Perkins motioned to approve the minutes of June 1, 2017 as written.

Seconded by Mrs. Evans.

Vote: Unanimous.

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