

TOWN OF JAFFREY
Jaffrey, New Hampshire
BOARD OF ADJUSTMENT
Meeting Minutes
May 6, 2014

Present: Chairman Sawyer, Members Belletete, Cournoyer, Dodge, Tieger and Webber

Absent:

Staff: Recording Secretary Lemire

MEETING MINUTES APPROVAL

On a motion by Belletete, seconded by Webber the minutes for the March 4, 2014 meeting were approved as submitted. (4-0)

PUBLIC HEARING

Chairman Sawyer called the public hearing to order at 7:30 p.m. The rules of procedure were read aloud. Notice of hearing for case No. ZBA 14-02 through ZBA 14-04 as advertised in the *Monadnock Ledger-Transcript*; copies were posted in the Town Office building, the Library and the town web site; copies were sent to the Planning Board, the Conservation Commission, and the Board of Selectmen; and notice of hearing was sent by certified mail to all abutters whose names were provided by the applicants.

Public Hearing - New Items

1. ZBA 14-02 The Park Theatre, 19 Main St., Map 238 / Lot 16, Zone: General Business (Main St. program area)

Variance – The applicant proposes a variance to construct a structure within the required side yard setback of fifteen feet. (Zoning Ordinance, Section V, 5.1)

Presentation: Jeff Kevan, TF Moran

Appearance: Caroline Hollister, Chairman, Park Theatre Board

By unanimous vote the board determined there was no regional impact.

Mr. Kevan explained that they have made some modifications and in order to not impact the number of seats in the theatre they are proposing a six foot bump out on the theatre building which would be in the direction of what is known as Stan's building now owned by the Park Theatre. The bump out would provide doors into the theatre and exterior emergency access doors.

Chairman Sawyer asked how far off the Old Fire Station property line would the addition be. Mr. Kevan estimated eleven feet. Member Cournoyer asked about an area on the plan labeled "saw cut". Mr. Kevan explained that they have construction easements and this is an area where they will cut and remove the pavement, construct the theatre and then re-patch the pavement.

Mr. Kevan reviewed the variance criteria stating that their proposal is very consistent with how the block has been built out. Redevelopment of the theatre would revitalize the area; the value of the building will increase significantly and with the exception of the proposed small addition the remainder of the building would be rebuilt to the existing structures and will be consistent with the adjacent store front buildings.

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Ms. Hollister addressed criteria 5A stating that keeping the number of seats originally proposed is important to not only the theatre's income but also to the downtown merchants.

On a motion by Dodge, seconded by Cournoyer the board waived the site visit.

There being no further discussion, Chairman Sawyer closed the public hearing for this item.

2. ZBA 14-03 Algav, LLC (property of 295 Squantum Rd., LLC) 295 Squantum Rd., Map 242 / Lot 45, Zone: Residence A

Variance – The applicant proposes a variance for a change of use to an existing commercial building for use as warehouse storage within the Residence A district. (Zoning Ordinance, Section III, 3.2, Section XI, 11.1.3)

Presentation: Ezra Ketola

Appearance: Mike Grenier, Hampsey and Grenier Associates, LLC

By unanimous vote the board determined there was no regional impact.

Mr. Ketola operates a foundation business. He is interested in purchasing the property to use for warehousing his equipment however he is in need of two variances. The building is an industrial building in a residential district. It has approximately 20,000 square feet and it would be used for cold storage only. This is a change in use from the previous business, King Manufacturing, which began in 1957 and manufactured tacks. The building was sold in March of 2012.

Member Dodge asked what type of equipment would be stored inside. Mr. Ketola stated it would be forms, form ties, nails, windows; mainly just cold storage. Member Belletete asked if there would be any other type of business inside or vehicle maintenance. Mr. Ketola replied it would only be for storage. Vehicle maintenance (ie: oil change) is done through local companies. Member Dodge asked if there would be compressors or fork lifts in use. Mr. Ketola explained that they would have a fork lift on site. They will try to keep as much as possible inside and out of the weather.

Member Dodge asked about hours of operation. Mr. Ketola explained that they work 7:00 a.m. to potentially 4:00 or 5:00 p.m. and they generally load up at the end of the day for the next day. Personal vehicles would be parked at the site during the day. Member Dodge asked if there would be any employees working at the facility. Mr. Ketola replied that there would not; it is mainly a storage facility with perhaps an exchange of forms from time to time. Member Dodge asked if there would be any hazardous materials. Mr. Ketola stated there would be none.

Member Cournoyer asked what time they would be leaving in the morning. Mr. Ketola answered that it depends on where the job is; they try to be at a job site by 7:00 a.m. If it is two hours away they would be leaving at 5:00 a.m. They could be returning as late as 7:00 p.m. but that would be rare. Member Cournoyer asked how traffic would enter the building. Mr. Ketola explained that the loading dock on the left side of the building would be used for the most part.

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Member Tieger had two questions. How will they ensure that any noise will remain inside and what will there be for lighting. Mr. Ketola stated inside is typical indoor lighting. He has no plans for exterior flood lights or over night lighting. Member Cournoyer asked if a loaded truck would access via the right side of the building. Mr. Ketola stated that it would not be feasible because of the width of the access.

Member Cournoyer asked how they would access the building. Mr. Ketola stated that the bigger form trucks would probably park under the loading dock where there is an overhang. Member Tieger asked if they would have any type of deliveries. Mr. Ketola replied they have a few suppliers who might stop in once a month. Member Cournoyer asked for the weight of the trucks. Mr. Ketola stated that the boom trucks are 55,000 pounds and the form trucks are approximately 32,000 pounds – loaded. Member Cournoyer asked if there was a weight limit on Squantum Rd. Mr. Ketola stated that during the winter when the roads are posted the limit is 12,000 pounds otherwise there is none. Their trailers are 12,000 pounds so they could be used during that five or six week period of time in the event that a form truck could not pass. Another option which has been discussed with the Board of Selectmen is that they would need to contact the Public Works Director for permission whenever they want to pass on the road.

Member Dodge, referring back to a question regarding how early the trucks would leave, asked if there would be an impact to the proposed business if a restriction was put on that there would be no activity before 7:00 a.m. Mr. Ketola stated that they may have a job two hours away but it doesn't mean that the truck will be coming back to Jaffrey and leaving again the next morning at 5:00 a.m. Often times the truck will remain at the job which could be for an extended period of time or move on to the next job site. If there is no job to go to the truck would return to Jaffrey. Member Cournoyer expressed some concern about a diesel truck leaving at 5:00 a.m. Mr. Ketola replied that leaving at 5:00 a.m. would be a rare occasion.

Mr. Gary Niskala spoke on behalf of his mother, Gwendolyn Niskala who resides directly across the street from the facility. They are not in favor of the proposed use. Mr. Niskala stated that the lower side is a shared access driveway with the abutting house which means trucks will not be allowed on the lower ramp. The only access for trucks to the facility will be directly across from his mother's house and her bedroom is a distance of 70 +/- feet from the parking lot. One of the problems experienced in the past with the large trucks was they were unable to make the turn onto the narrow road without constantly tearing up her front yard. Mr. Niskala asked how long a boom truck is. Mr. Ketola replied about fifty feet. Mr. Niskala does not feel there is ample room for a truck this size to maneuver a left or right hand turn onto the road without going onto his mother's property. Member Cournoyer pointed out that trucks from the facility should only turn left.

Mr. Mark Stone is an abutter directly behind the facility and after many years of enduring noise generated by King Manufacturing noise has become a very large issue for him. He is not necessarily opposed to the proposal. He does acknowledge that warehousing would be much quieter than manufacturing however he would not be pleased with hearing a diesel truck at 5:00 a.m. If hours of operation were set for after 7:00 a.m. he would be okay with the proposed warehousing. Mr. Stone mentioned that there used to be generators on the roof to supply the amount of power needed for their manufacturing and asked if these were still there. Mr. Ketola explained that they had been removed and the building is now serviced by Public Service.

Mr. Arthur Mills is an abutter concerned about the noise associated with diesel trucks, specifically when left running in the winter time. He is also concerned about traffic on Squantum Rd. It's a narrow road with a rise and a lot of traffic moving faster than it should. He has fears of an accident happening.

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Mr. Mike Grenier of Hampsey and Grenier Associates is the Real Estate broker for Mr. Ketola. He summarized the concerns of the abutters to be related to when King Manufacturing was a manufacturing facility with noise and traffic. Mr. Ketola plans to use the building primarily as storage and whether it's Mr. Ketola or another buyer they will run into a problem because the abutters have become accustomed to not having the activity at this location. Mr. Grenier understands that Mrs. Niskala pre-dates King Manufacturing but this has been a manufacturing facility since 1957 and it has grown through the years. Mr. Grenier feels if this is not approved it will become a burden on the current property owner because he will not be able to do anything with the building. Regarding when the business ceased operation, Mr. Grenier stated that the tack operation stopped sometime in mid 2012 and he has a letter from the current owner stating that until recently there have been on-going operations there such as selling equipment, maintaining the building and removing remaining stock. Mr. Grenier noted that they are currently trying to address the road issue during posting season; whether it's calling the DPW or posting a bond for the road they are trying to find an alternative. ~~Mr. Ketola is more than willing to listen to ideas and work with the neighborhood to make this work.~~

Building Inspector Rob Deschenes asked on average, how many employees would there be on site in the morning and at night. Mr. Ketola replied six or so.

Mr. Niskala asked what became of the hazardous waste that was dumped on the property many years ago. Mr. Grenier stated there has been monitoring of the wells and he believes it will continue for a couple more years.

Discussion continued regarding the issue of when operations actually ceased and whether or not it has been discontinued for one year. Mr. Grenier asked when does the clock start. Member Tieger speculated that if the primary use of the property was manufacturing then when they stopped manufacturing that would be it. Ms. Chris Lavery of Hampsey and Grenier asked if they determine that the business was still operating in late 2013, within the one year, would that mean that the building would go back to the non-conforming use in the residential district. The board explained that if within the one year the variance for a non-conforming use would no longer be needed. They would however still need a variance to address the change of use from manufacturing to warehousing.

Mr. Niskala stated that he is not trying to stop someone from running their business however there are other vacant commercial areas in town that can be leased or bought. Mr. Grenier replied that cost is a major factor and it is an existing building that is empty.

The board will make a site visit on Friday, May 9, 2014 at 6:00 p.m.

There being no further discussion, Chairman Sawyer continued the public hearing for this item.

Site Visit Summary:

The afternoon of Friday, May 9, 2014 a letter to the Board of Adjustment was received from Mr. Ketola requesting that the board continue the hearing and site visit to the June 3 meeting. The current owner, 295 Squantum Road, LLC has retained Attorney Tom Hanna and he needs time to familiarize himself with the application. The request was passed on to the board. Since the site visit had been announced at the public hearing the board chose to follow through with a site visit on their own in an attempt to become familiar

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with the building/neighborhood. The grounds and building were viewed from the outside. There were no abutters present nor was the applicant or a representative.

Prior to discussion the letter requesting a continuance was read aloud to the board. Although the hearing had been continued and announced publicly at the May 6 hearing the board recognized the request and agreed to continue the hearing/site visit to June 3. Additionally the board requested that all abutters be re-notified by certified mail at the applicant's expense.

At the board's request they would like to meet with the Town's Attorney for direction and clarification regarding the non-conforming use and whether or not it has been discontinued for one year.

3. ZBA 14-04 Chiasson, Gerard & Karen, Squantum Rd., Map 243 / Lot 7, Zone: Residence A

~~Variance – The applicant proposes to construct a rock retaining wall within the wetland conservation district and with less than the required thirty foot setback to the town road. (Wetland Conservation District, Section IV, Zoning Ordinance, Section V, 5.1)~~

Special Exception – The applicant proposes to construct a rock retaining wall within the shoreland conservation district. (Shoreland Conservation District, Section IV, B)

Presentation: Gerard Chiasson

Appearance:

By unanimous vote the board determined there was no regional impact.

Mr. Chiasson stated that he has owned the property since 1999 and every year they have had issues with beach erosion during rain storms. A few years ago a curb was constructed to help divert the run-off but it was knocked out during the winter. The current proposal is to construct a retaining wall to stop the erosion. During a rain storm they will have three to four foot gullies that are four feet deep and they have to keep filling them in; they are a hazard. Mr. Chiasson estimated the proposed rock wall to be four feet off the road and it will be two to two and a half feet tall when finished.

Building Inspector Deschenes visited the site; measurements and photographs were taken. The measurements have been noted on a survey map prepared for Mr. Chiasson and distributed to the board along with the photographs. Inspector Deschenes oriented the board to the map explaining that the wall was measured using the boundary pins. It is forty-five feet in length and ends approximately three feet from the pin that separates his land from the town's land. Member Cournoyer asked if Squantum road was a right of way. Inspector Deschenes replied yes adding that it is forty-nine and a half feet wide. The town owns the pavement and all activities and Mr. Chiasson, who also owns the abutting house lot (map 243/lot 40) owns under the pavement. Member Cournoyer asked where the center line is. Inspector Deschenes stated that he consulted with the Local Government Center and in the perfect world center line is where you would measure from however you also have to consider signage and utilities which may alter the measurement; it's not really determined where other than the forty-nine and a half feet. Inspector Deschenes added that he did speak with Public Works Director Randy Heglin and his opinion is if the road were to be expanded or widened the town, because of the topography, would most likely use the beach side of the road.

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Member Cournoyer asked if the wall was already there. Mr. Chiasson replied that he had started it but was told to stop due to the need of the variance. Member Cournoyer asked if the Conservation Commission had made any comment. Selectmen Tom Rothermel stated that he was at the ConCom meeting when this was discussed and although some had visited the site they did not take a stand on the project or submit a letter of opinion. Mr. Chiasson was asked if he had plans to lengthen the wall. He replied that there was no need to; the current length and design should address the affected area by not only redirecting the water but also allowing it to filter through. The last rain storm showed no signs or erosion on his property or the town beach.

Member Tieger asked if there had been any calls regarding the application. Recording Secretary Lemire stated there had been none. Member Cournoyer commented that if the town wants to cover the beach road with sand it costs them \$1,500 and causes the town to apply for a permit with the State. Why would they do that? Inspector Deschenes stated that he had been in contact with NHDES and they did not seem to have much of an issue with the Chiasson project. Pictures of the site, which also showed heavy equipment on the beach, were sent to DES and they were very relaxed about it. The town filed a complaint and after some time passed an e-mail was received basically saying that it was a town issue; it appeared that the machine had been removed and the work was being done by hand. The town does not have an ordinance about machines on the beach yet DES does. DES also has guidelines for building retaining walls which states that walls adjacent to certain great ponds or surface waters must be stamped by a licensed New Hampshire land surveyor. A copy was sent to DES highlighting the pertinent section but it did not seem to be of interest to them. Mr. Chiasson interjected that he spoke with Craig Day at DES and he said that as long as the tractor was gone in ten days "go ahead"; no permit was needed. Chairman Sawyer feels that by their (DES) response the decision is now up to the town. Member Tieger agreed.

Thinking about snow removal Member Tieger asked how far back the wall was from the road and is it an issue with DPW. Mr. Chiasson replied it is set back about four feet. Inspector Deschenes at one point had measured three feet and the response from DPW was build at your own risk. The other concern from DPW was the height of the wall. The suggested height was about where it is now which is two to two and a half feet.

Jaffrey resident Tom Rothermel was curious to know why this project did not have to abide by DES regulations. Is there anything in writing from them stating why this doesn't qualify?

The board will make their site visit on Friday, May 9, 2014 at 6:15 p.m.

There being no further discussion, Chairman Sawyer continued the public hearing for this item.

Deliberations:

Chairman Sawyer reconvened the public hearing at 6:45 and closed the public hearing.

The board was informed that on Friday, May 9, 2014 Inspector Deschenes received an e-mail from Jen Drociak at NHDES in response to his previous questions regarding erosion and whether or not there was a violation with the work being done. The response from DES stated "The work that was conducted on site with the machinery was required to be permitted through at least a Shoreland Permit by Notification. That being said, the machinery is off site, and the area is stable with no erosion. If the owner would like to continue moving the stones that were there already, and continue to build the wall, by hand, this would not

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require a permit. If the owner would like to use machinery on the site to conduct further work, this would require a permit. I did not contact the owner since the town was taking the lead. I don't plan on pursuing this, as there are no current violations on the site." A copy of the DES Fact Sheet regarding Bank and Shoreline Stabilization Project, specifically retaining walls, was shared with the board.

DECISION

1. ZBA 14-02 The Park Theatre, 19 Main St., Map 238 / Lot 16, Zone: General Business (Main St. program area)

Variance – The applicant proposes a variance to construct a structure within the required side yard setback of fifteen feet. (Zoning Ordinance, Section V, 5.1)

On a motion by Belletete, seconded by Webber the application to construct a structure within the required side yard setback of fifteen feet was granted as presented and per testimony given. (5-0)

2. ZBA 14-04 Chiasson, Gerard & Karen, Squantum Rd., Map 243 / Lot 7, Zone: Residence A

Variance – The applicant proposes to construct a rock retaining wall within the wetland conservation district and with less than the required thirty foot setback to the town road. (Wetland Conservation District, Section IV, Zoning Ordinance, Section V, 5.1)

On a motion by Dodge, seconded by Tieger the application proposing to construct a rock retaining within the Wetland Conservation District was granted as presented and per testimony given subject to the following condition. (5-0)

Condition:

The height of the stone wall is not to exceed two feet above the paved surface of the road.

On a motion by Dodge, seconded by Tieger the application proposing to construct a rock retaining wall on the front property line and with less than the required thirty foot front and side setback as depicted on the plan noted below and annotated by Building Inspector Deschenes on April 14, 2014 was granted as presented and per testimony given. (5-0)

Special Exception – The applicant proposes to construct a rock retaining wall within the shoreland conservation district. (Shoreland Conservation District, Section IV, B)

On a motion by Dodge, seconded by Tieger the application proposing to construct a rock retaining wall no closer than 10 feet from the high water mark as depicted as a line between the points "A", "B", "C" and "D" on the survey plan titled "Retracement Survey Plan prepared for land of Gerard J. and Karen Chiasson" signed and stamped by Edward C. Goodrich, Jr. on October 12, 2012 was granted as presented and per testimony given. (5-0)

Decisions of the Zoning Board of Adjustment are subject to a 30-day appeal period for rehearing.

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OTHER BUSINESS

Election of Officers:

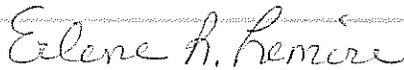
On a motion by Belletete, seconded by Webber, Member Sawyer was re-elected to the Chairman position.

On a motion by Belletete, seconded by Webber, Member Dodge was re-elected to the Vice Chairman position.

ADJOURNMENT

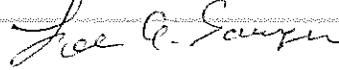
The meeting recessed at 9:20 p.m., reconvened on Friday, May 16, 2014 at 6:00 p.m. and adjourned at 7:55 p.m.

Submitted:



Erlene R. Lemire
Recording Secretary

Attest:



Lee A. Sawyer
Chairman
Jaffrey Zoning Board of Adjustment