

TOWN OF JAFFREY
Jaffrey, New Hampshire
BOARD OF ADJUSTMENT
Meeting Minutes
March 5, 2013

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

Absent: Member Belletete

Staff: Recording Secretary Lemire

MEETING MINUTES APPROVAL

On a motion by Dodge, seconded by Webber the minutes for the October 2, 2012 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 13-01 through ZBA 13-03 as advertised in the *Monadnock Ledger-Transcript*; copies were posted in the Town Office building and the Library; 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. Member Tieger voted.

Prior to the presentations Member Sawyer acknowledged that Recording Secretary Lemire had been informed by Architect, Mr. Jay Purcell that his applicant Mr. Gomes (application number ZBA 13-02) would not be available due to an unexpected family obligation. Although public notice was made abutter notifications had not been mailed and the application fee had not been paid. According to Mr. Purcell the applicant does intend to move forward with his project and will return to the board at a future time.

By unanimous vote the board determined that both applications before them did not have regional impact. (5-0)

Public Hearing - New Items

1. ZBA 13-01 The Park Theatre; 19 Main St., Map 238 Lots 14 and 16; Zone: General Business

Variance - The applicant proposes a variance to permit the construction of a structure within the required side and rear setbacks of 15 feet. (Zoning Ordinance, Section V, 5.1)

Presentation: Jack Belletete

Appearance: Caroline Hollister

Mr. Belletete is representing The Park Theatre and they are requesting relief from the fifteen foot side and rear setbacks. Packets of information were distributed to the board. Mr. Belletete explained that in the back of the building they need to have a higher end section for what is called the "fly loft". This is the area where the equipment used to raise and lower screens is housed. Although the fly loft will not require expanding the existing footprint (side or rear) it will need to be raised eleven feet higher than the existing theatre to the forty-five foot height limit.

Mr. Belletete explained that a variance is also necessary for the top right and left front of the building. The expanded area is approximately four feet wide and four feet high on both sides. On the left side however there is an additional four feet six inch space in which the theatre is proposing to construct an emergency

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only exit to be used by the second floor apartment above The Country Bridal and The Park Theatre. The stairway would lead to an exit door at the front of the theatre building.

Member Tieger asked if the stairway would be covered. Mr. Belletete stated that he believes it will have to be covered although the preference is to leave it open allowing more sunlight and airflow into the second floor apartment.

In summary Mr. Belletete explained that they are not expanding the foot print; they are only going up in three sections.

Ms. Furze, owner of The Country Bridal, is in favor of the project however she does have an issue regarding the proposed egress. She is not in favor of the door opening up against bedroom windows even though it is only for emergency use and she feels that a cover over the stairway takes away the privilege of the tenant putting any type of AC unit in the window. She does recognize that leaving it uncovered has problems relating to snow and water run-off as well. Could any settling water have a negative impact on the basement of her building and the two commercial tenants there?

Ms. Hollister stated that the theatre has offered to install a wall mounted air conditioning unit in their bedroom wall at the theatre's expense should the Fire Marshall's office say that the stairway needs to be covered. Ms. Hollister stated that when that time comes the theatre will make whatever adjustments to accommodate the tenants and Mr. & Ms. Furze. Additionally, if they prefer not using blinds or curtains the theatre would apply a new window that would allow you to look out but you cannot look in. It was reiterated that the stairway is an emergency exit only with an alarmed door to be used for the second floor of both buildings. The door at the bottom will not be obvious from the outside and will only be able to open from the inside. The stairway leading out would remain the theatre's building so the maintenance and handling of it would totally belong to the theatre. It was noted that a letter from Fire Chief Chamberlain speaking in favor of the concept was submitted to the board.

Chairman Sawyer asked Ms. Furze if the response addressed her concerns. She nodded yes stating that she would like to see the concrete plans and what this board arrives at. Chairman Sawyer explained that they are not the Planning Board and an approval by the Zoning Board will only allow them to move forward to the Planning Board. Ms. Furze understood.

Mr. Belletete commented that he feels some of Ms. Furze's concerns are Planning Board related.

Mr. Rob Stephenson spoke in favor of the project.

A site visit was scheduled for Thursday, March 7, 2013 at 3:00 p.m. The board will meet at the site.

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

Member Sawyer began by closing the public hearing. There was discussion amongst the board about the fly loft area and how it applied to the variance request. Following some discussion the board agreed that the two (left and right) front areas applied to the variance request for setbacks. It was felt that the loft area was an expansion of a non-conforming use (Section XI of the Zoning Ordinance) rather than a variance for set back.

Member Tieger asked if the variance was for expanding a pre-existing non-conforming use or is it to permit the construction of a structure. Recording Secretary Lemire replied that the application was prepared by the

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applicant requesting a variance to permit the construction of a structure. Member Tieger feels a separate variance to expand a non-conforming use should have been applied for.

Member Webber did not agree with the variance request. The areas in question will not be expanding beyond the buildings footprint; they are not changing the setback. Even the emergency stairway will replace a section of existing building and will be within the buildings footprint. As for the fly area he feels it is expanding a non-conforming use. The request for a variance can be granted but it does nothing for the expanding a non-conforming use issue. If someone appeals the non-conforming use issue then they would rehear and consider it. Member Dodge agreed with granting the variance but only for the two front areas.

2. ZBA 13-03 Associated Design Partners, Inc. (property of TD Bank), 28 Main St., Map 238 / Lot 170; Zone: General Business

Variance – The applicant proposes a variance to install a new ATM kiosk approximately twelve feet into the required thirty foot front setback.

Presentation: Warren Gerow

Appearance:

Mr. Gerow is representing TD Bank. A letter of authorization was submitted into the record. He explained that the bank is proposing to place a new ATM machine in front of the existing drive-up which is approximately thirty feet from the sidewalk. There is currently an ATM in a third lane at the drive-up but it is not completely undercover and must pull out into the drive lane when being serviced allowing snow and rain to get into the machine. The Brinks people will no longer service an ATM anywhere if it is not covered by a roof. As a result TD Bank is replacing all ATM's and kiosks.

At this site if the present ATM location was to be used they would need to extend the canopy which would still encroach on the setback and require a variance. The proposed idea will place a new stand alone kiosk on a concrete slab in front of the drive-up building. Approximate size is six feet six inches and it fits around the actual ATM.

Member Cournoyer asked if this would cause a problem with traffic backing up in the first lane. Mr. Gerow stated that it is common practice. Another bank representative stated that TD typically tries not to do this unless it's a case where the transaction count is not high.

On a motion by Dodge, seconded by Cournoyer the board voted to waive the site visit. (5-0)

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

Public Hearing - Continued

None

DECISION

1. ZBA 13-01 The Park Theatre; 19 Main St., Map 238 Lots 14 and 16; Zone: General Business

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Variance - The applicant proposes a variance to permit the construction of a structure within the required side and rear setbacks of 15 feet. (Zoning Ordinance, Section V, 5.1)

On a motion by Webber, seconded by Tieger the application to permit the construction of a structure within the required side and rear setbacks of 15 feet was approved as submitted and per testimony given.
(5-0)

2. ZBA 13-03 Associated Design Partners, Inc. (property of TD Bank), 28 Main St., Map 238 / Lot 170; Zone: General Business

Variance – The applicant proposes a variance to install a new ATM kiosk approximately twelve feet into the required thirty foot front setback.

On a motion by Dodge, seconded by Webber the application to install a new ATM kiosk approximately twelve feet into the required thirty foot front setback was approved as submitted and per testimony given.
(5-0)

OTHER BUSINESS

ADJOURNMENT

The meeting recessed at 8:15 p.m., reconvened on Thursday, March 7, 2013 at 3:00 p.m. and adjourned at 4:15 p.m.

Submitted:

Attest:

Erlene R. Lemire
Recording Secretary

Lee A. Sawyer
Chairman
Jaffrey Zoning Board of Adjustment

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