ZONING BOARD OF ADJUSTMENT
BELMONT, NH

Wednesday, June 24, 2020
Belmont Corner Meeting House
Belmont, NH 03220

Members Present: Chairman Peter Harris; Vice Chair Norma Patten; Members Mark Mastenbrook and John Froumy.
Members Absent: David Dunham (E).
Staff: Elaine Murphy and Dari Sassan.

The Chairman opened the meeting at 6pm and welcomed those in attendance.

The chairman explained that there is not a full 5-member Board present. An affirmative vote of 3 members is necessary to approve any application. All applicants have the option to be heard by the short Board or to request to be tabled until the next regular meeting. If the applicant chooses to proceed, and their application is denied, the fact that the denial was by a short Board is not grounds for a rehearing.

The chairman stated the following definition will be used to determine if the applications before the Board tonight have a regional impact. He explained that in order to provide timely notice, provide opportunities for input and consider the interests of other municipalities, the Board shall act to determine if the development has a potential regional impact as defined by RSA 36:55. Impacts may include, but are not limited to: relative size or number of dwelling units as compared with existing stock; proximity to the borders of a neighboring community; transportation networks; anticipated emissions such as light, noise, smoke, odors, or particles; proximity to aquifers or surface waters which transcend municipal boundaries; shared facilities such as schools and solid waste disposal facilities.

ABUTTERS HEARING – TAP PUBLIC HOUSE, INC.: Request for:

A. A Variance of Article 5 Table 2 of the Zoning Ordinance to construct a deck closer (5’) to the side property line than allowed (15’). ZBA # 0420Z
B. A Special Exception of Article 11.A.3.d to construct a deck closer (42.3’) to the front property line than allowed (50’) but not closer than the existing structure. ZBA # 0520Z

Property is located at 930 Laconia Road in a “C” Zone, Tax Lot 122-057-000-000.

Atty. Phil Brouillard stated that he accepts a short Board and will move forward with the application.
P. Harris stated that he is a friend and patron of the Tap House and wanted to know if any Board member has any concern with him sitting on the Board for this case. It was the consensus of the Board that there is no conflict with P. Harris remaining on the Board for this case. Atty. Brouillard stated he will not contest the Board’s decision because P. Harris heard this case.

MOTION: P. Harris moved that the proposal does not have a potential regional impact.

The motion was seconded by N. Patten and carried. (4-0)

Atty. Phil Brouillard and Mr. Mike Campione presented the application. The members that viewed the site were: Peter Harris, Norma Patten, Mark Mastenbrook and John Froumy.

Atty. Brouillard explained that Mr. Campione is a second-generation family business owner. He explained that he purchased the property in 2003 and Mr. Lazos owned the pizza restaurant. He has been involved with the property for 20 years initially managing the property for Mr. Kumar. The business that has been constant through the years is the pizza restaurant and the Tap. The Tap House is very charitable to the community and has been his best tenant. They are asking for a small outside deck on the northerly side of the building 42.3’ from the road. The building is closer to the road than the deck will be. They need a setback variance. Outdoor dining space is a benefit to Belmont.

Mr. Campione stated that he has been in business in Belmont since 1999. He has reached the 25-year growth plateau and can’t grow anymore at this location and keep up with other bars and restaurants in the surrounding towns and communities. Prior to Covid-19 they had no outdoor seating. They put up a 60’ by 30’ tent in the parking lot and they were able to handle outdoor seating with no issues. Parking was not an issue and there were no cars parking on the side of the road. Business was up 20% and they handle it the best they could and had no issues. The deck would be 35’ x16.5’ and is 5’ back from the building’s edge. There will be double doors on the side wall and the wall will be brick.

M. Mastenbrook wanted to know what the assembly capacity is. Mr. Campione stated inside at the bar is 65 and the restaurant is 45 for a total of 110 inside. The total for the tent is 78 and the deck will hold 45 people. During Covid-19 they were allowed 78 in the tent but they never allowed more than 68 at a time. Now the Governor has allowed them to open at 50% capacity. M. Mastenbrook wanted to clarify they are operating at 50%. Mr. Campione stated that was correct. They can check with the Fire Department to verify the numbers. They have 8 picnic tables outside for a total of 115 both inside and out.

J. Froumy asked Mr. Campione what would happen as a business owner if they failed to get approval for the deck. Mr. Campione stated he doesn’t know and won’t know until his lease is up. He has limited space and it is tough. He did everything to grow the business and may be maxed out.

Mr. Campione stated the deck is 5’ back from the edge of the building and 43.3’ from the road. The deck adds outdoor seating for the Tap House which has been in operations for years. The deck is smaller than the tent and will not have any impact. The tent has operated flawlessly. The deck is small enough that it doesn’t impact parking or other activities. It is a reasonable size to offer more seating. Outdoor seating is popular and is a small seasonal use. It will not increase traffic.
Traffic and parking will be addressed when they do a site plan review. They are planning on adding more parking spaces. The tent has more capacity than the deck. Stormwater will drain through the deck floor.

Attv. Brouillard explained that they want to put an outside deck on the northerly side of the Tap Public House. The deck will be seasonal and the hours of operation will be 11:00 am to 10:00 pm. There are other bars and restaurants in the area that have outdoor seating. The deck is necessary to allow for modest growth of the business. Allowing the business to grow will provide additional employment for Belmont’s residents.

The proposal is not incompatible to other uses in the area through the creation of noise, fumes, dust, odor, lighting, smoke or other impacts because the deck services the Tap Public House and adds outdoor seating on nice days and is seasonal. The deck is not incompatible to other uses in the area. It will not create noise, fumes, dust, odor lighting, smoke or other impacts.

The proposed location is of adequate size because the deck is small enough to fit nicely into the proposed location. The deck is away from parking and other activities. The deck and stairs will provide additional egress from the Tap Public House. It is a reasonable size providing additional seating outside on nice days. Outdoor seating is a reasonable amenity.

The proposal does not create undue traffic congestion or unduly impair vehicular or pedestrian safety because the deck is small, a seasonal use and will not be used on rainy days. On nice days the patrons will be outside not inside such that the increase in patrons will not be excessive. There will be no increase in traffic congestion or impaired vehicular or pedestrian safety. The site plan adds parking spaces to avoid traffic congestion.

The proposal does not overload any existing water, drainage, sewer or other system, nor will there be any significant increases in stormwater runoff onto adjacent property or street because the deck will allow water to drain through for stormwater absorption into the existing lawn/grass/vegetation under the deck. There is no significant increase in stormwater runoff cause by the deck.

The proposal does not create excessive demand for municipal services and facilities because the deck is small and is a simple amenity for seasonal use in conjunction with the existing restaurant. The additional seating will not create excessive demand for municipal services or facilities.

The proposal does not create hazards to the health, safety or general welfare of the public because the deck is small, seasonal and will not be used on rainy days. On nice days patrons will be outside not inside such that the increase in patrons will not be excessive or create any hazards to the health, safety or general public.

Attv. Brouillard stated the proposed size is moderate and fits in the available space. There is a guardrail that prevents cars from hitting the deck. It is a good use for the area and is not incompatible with others uses in the area.
M. Mastenbrook wanted to know if the deck has railings all around. Atty. Brouillard stated the railings go all around the deck. You have to go in the restaurant and get carded before you can access the deck. There is a set of egress stairs off the back in case of emergency. J. Froumy wanted to know where the other means of egress is. Atty. Brouillard stated it is through the double doors to the building.

M. Mastenbrook wanted to know if they could place conditions on deck. M. Campione stated the deck will be used from March 31st to October 31st.

P. Harris stated the property has been built out for years. He is concerned about the distance to the side property line and the State highway. Atty. Brouillard explained that they are going backward 5’ and less nonconforming than the existing building. P. Harris stated he is concerned about build out and that it may start to look like exit 20. Atty. Brouillard stated they are moving the structure back. The density issue will be addressed with the variance application. P. Harris stated the area that is a concern is on the abutting Penguin side with the deck being right next to the gas tank and dumpster. Atty. Brouillard stated the abutting owners are not here to make any complaints. When you drive by the site you can only see the railings as the deck floor is at ground level. P. Harris stated there is concern for the health, safety and general welfare of the public. Atty. Brouillard stated he addressed the concerns about the propane tank with the Fire Department and the Fire Chief stated he would contact him if there was a safety concern with the propane tank and he hasn’t heard from him so that means he didn’t have any concerns.

The chairman opened the hearing to public comment.

Mr. Jon Pike stated as a Town representative it is important that the Board listens and act diligently. By today’s standards the building would be illegal but it was constructed prior to zoning. They want to move the deck further back than the building. Atty. Brouillard has an agreement for parking between the Tap House and the Yolk Restaurant. When one business is open the other is closed so that they can share the parking. The Tap House has been generous to Town Officials during elections providing food for the election workers. The election worker pays for the food that the Tap delivers. The Tap House also helps out the General Assistance Director, Ms. Donna Cilley, whenever she has a client in need of food.

It is a disgrace that the Fire Department and the Police Department are not here tonight if they have concerns about the safety of the propane tank and parking. He would be remiss if he did not mention that the abutter, who is not here tonight, dumps snow over the fence in the winter and he is not here tonight. Where is Mr. Condodemetrakys?

Mr. Pike stated some of the issues have been resolved by Covid-19. They closed off an entrance and put up a tent for outdoor seating. There have been no complaints from anyone. They are a small community family business and are not leaving Belmont and should not have to go into debt to survive. The Board needs to use discretion and have a little consideration. The access to the deck is through the middle of the building. The deck is not closer to the road and the State of NH DOT hasn’t said a word. The hardship is if they don’t allow this it would hurt the town and surrounding towns. Planning Board members and other people use the building. This is the meeting center for the town.
MOTION: J. Froumy moved to grant a Special Exception of Article 11.A.3.d to construct a deck closer (42.3’) to the front property line than allowed (50’) but not closer than the existing structure as it meets all the criteria.

1. The proposal is specifically authorized as a special exception by the ordinance.
2. The proposal satisfies applicable Special Exception criteria set forth in Ordinance Article 13.F. does not apply.
3. The proposal is not incompatible to other uses in the area through the creation of noise, fumes, dust, odor, lighting, smoke or other impacts. This is in a commercial area and the restaurant use is not changing. They are not creating additional noise, fumes, dust, odor, lighting, smoke or other impacts.
4. The proposed location is of adequate size. The front setback is acceptable because it is further back than the existing building and fits on the property. The deck is not changing the proximity from the road and parking as it sits further back than existing structure.
5. The proposal does not create undue traffic congestion or unduly impair vehicular or pedestrian safety. The size of the deck does not affect the parking in front. There is sufficient area to handle the pedestrian traffic.
6. The proposal does not overload any existing water, drainage, sewer or other system, nor will there be any significant increase in stormwater runoff onto adjacent property or street. The purpose of the deck is the same as the restaurant. There is no drainage issue as the deck sheds water.
7. The proposal does not create excessive demand for municipal services and facilities. The purpose is to expand the existing use and there is no evidence of any additional demand for municipal services or facilities.
8. The proposal does not create hazards to the health, safety or general welfare of the public. There will be no impact on traffic and no hazards are created.

Additional conditions:

1. All setbacks certified at the commencement of construction and as may otherwise be required.
2. Comply with Aquifer Protection Ordinance.
3. All decks, steps, landings & stairs must be shown on the building permit application and no other structures or additions (incl. decks, porches, landings, etc.) that do not meet setback are allowed by this approval.
4. All representations made by the applicant during the public hearing are incorporated as a condition of this approval.
5. The applicant and owner are solely responsible to comply with the approved plan and conditions of approval. Contractors should be sufficiently warned regarding same.
6. Approval expires on 6/24/2022 if use is not substantially acted on and if an extension is not granted. Approval also expires if use ceases for more than two years.

The motion was seconded by M. Mastenbrook and carried. (4-0)
Atty. Brouillard addressed the criteria for the variance. He used pictures to show the Board where the deck is going. The deck will be seasonal and operate 11:00 am to 10:00 pm. They will be competing with other bars and restaurant in the area that have outdoor seating. It is necessary to allow modest growth of the business and provide the same amenities that other area restaurants can provide. Allowing this pro-business variance would provide additional employment opportunities to Belmont residents.

The variance will not be contrary to the public interest because it does not affect the health, safety or general welfare of the community. The area impacted is between two commercial buildings and the parking lot. It is out of the way and a safe place to put a deck. It will have no impact on the subject or abutting property. Granting the variance will provide a benefit to the general public because it will provide residents of Belmont a restaurant with outdoor dining.

The spirit of the ordinance is observed because this Board can grant adjustment to setbacks in appropriate areas and circumstances when health, safety or general welfare of the community will not be affected.

Substantial justice will be done because although the deck is within 5’ of the abutting property it is located next to the parking lot and driveway of the abutting property and is 100’ from the building on the abutting lot. The ZBA can determine that justice would be done by allowing the deck because loss of the deck would be greater than any gain to the general public. Also, the public would gain by adding an outdoor dining area.

The variance would not diminish the value of surrounding properties because the deck is located next to the driveway and parking lot of the abutting property and at least 100’ from the building on the property. No diminution of property values would be suffered by any abutter since the proposed deck would not adversely affect property values in the immediate area.

Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because of the following. No fair and substantial relationship exists between the general public purpose of the ordinance provisions and the specific application of that provision to the property because the setback in this case is unnecessary to accomplish a legitimate public purpose due to the guard rail and parking area. The gain to the public is slight but the harm to the applicant and his tenant is great such that the exercise of the police power of enforcing setbacks becomes unnecessary and unreasonable such that this Board can grant relief.

The proposed use is a reasonable one because the property line is marked by a guardrail and is over 100’ to the building. The proposed deck is low and out of the way such that a deck in this area would have no impact on health and safety, light, air view or separation of buildings.

The Board reviewed Department Heads’ concerns about the application. Land Use Technician, R. Ball, had concerns that the setback ordinance is to limit congestion between abutting properties and this application increases congestion. The spirit of the ordinance is to reduce congestion but this increases congestion. Substantial justice is not done because it increases congestion along the property line. R. Ball’s comments also included wanting to know what
differentiate this lot from other lots? The lot is already overdeveloped. The property cannot be reasonable used in strict conformance with the ordinance is not true. There are at least five separate spaces that already operate on this lot.

Atty. Brouillard stated the Fire Chief had no concerns about the deck’s proximity to the propane tank. The Fire Chief came out to the site and did measurements and told him he would get back to him if there were any problems. He never heard back from the Chief so there can’t be any issues. J. Froumy stated if the motion passes then any fire and life safety codes will have to be observed. They will need a full set of building plans for the deck to ensure that it will not collapse and meet all codes.

Atty. Brouillard stated they are a long way to the nearest similar restaurant/pub. They are the “Cheers” of Belmont.

P. Harris stated each variance has to stand on their own merit. Atty. Brouillard stated this is a unique hole that needs to be filled. The deck is on the ground level of the building.

J. Froumy stated that several times it was mentioned that the new structure will be 100’ or more to the adjacent building. Variances on the adjacent building should not be consider because buildings change. Atty. Brouillard stated density and mass are what needs to be looked at. J. Froumy stated the density now is what needs to be looked at not what might or might not be in the future. The future density is not being considered as part of this decision.

J. Pike stated they are putting doors on the side of the building out to the deck and the deck has back stairs off of it. If a fire starts in the building and the front doors are tight the deck gives them greater egress. J. Froumy stated there are double swing doors in the middle of the deck and stairs out back. The deck is not visible, it is at ground level. They may want to consider adding stair in the front of the deck for more fire egress so they won’t have to go back in the building in the event of a fire. Atty. Brouillard agreed with that idea. P. Harris wanted to know how far off the ground the deck will be. Mr. Campione stated it is 5’-6’ maximum. Atty. Brouillard stated it improves egress from the building.

There being no more questions or comments the chairman closed the public hearing.

**BOARD ACTION – TAP PUBLIC HOUSE, INC:**

**MOTION:** J. Froumy moved to grant a Variance of Article 5 Table 2 of the Zoning Ordinance to construct a deck closer (5’) to the side property line than allowed (15”) as it met all the criteria.

1. The variance will not be contrary to the public interest because otherwise there is limited use of the property. There is no impact on pedestrian traffic or the parking lot because of the grade of the land. There will be minimum congestion and the use will remain the same. The intent of the ordinance is not violated.

2. The spirit of the ordinance is observed because otherwise there is limited use of the property. There is no impact on pedestrian traffic or the parking lot because of the
grade of the land. There will be minimum congestion and the use will remain the same. The intent of the ordinance is not violated.

3. Substantial justice will be done because any loss to the individual is not outweighed by a gain to the general public. The public will not pay a higher price than the gain the applicant will get by granting the variance.

4. The variance would not diminish the value of surrounding properties because they will continue the present use and it does not affect the adjacent property or aesthetics.

Owing to special conditions of the property, that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because of the following:

a. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because the hardship imposed distinguishes the property due to the property grade in the parking area. The property is not used to it fullest extent. Denial would make that area of the property unusable.

and

b. the proposed use is a reasonable one because the intent of the ordinance is for the continued use of the property in the commercial zone. There is no negative affect.

Additional conditions:

1. All decks, steps, landings & stairs must be shown on the building permit application and no other structures or additions (incl. decks, porches, landings, etc.) that do not meet setback are allowed by this approval.

2. All setbacks certified at the commencement of construction and as may otherwise be required.

3. All representations made by the applicant during the public hearing are incorporated as a condition of this approval.

4. Any safety Building Code requirements for egress along with any egress requirements as discussed at the meeting must be met.

5. The applicant and owner are solely responsible to comply with the approved plan and conditions of approval. Contractors should be sufficiently warned regarding same.

6. Approval expires on 6/24/2022 if use is not substantially acted on and if an extension is not granted. Approval also expires if use ceases for more than two years.

The motion was seconded by P. Harris and carried (4-0)

M. Mastenbrook left the meeting.

OTHER BUSINESS:

BOARD'S ACTION -MINUTES:
MOTION: On a motion by J Froumy, seconded by Norma it was voted unanimously to accept the minutes of January 22, 2020 with the following correction: Page 2 second paragraph. They are using 2” x 6” lumber to construct a wall on top of the existing concrete wall.
Page 7 paragraph 12 should read J. Froumy stated that the abutting lot is across the street and can’t be built on. Therefore, the height of the structure will not obstruct or block anyone’s view. (3-0)

ADJOURNMENT:

MOTION: On a motion by J Froumy seconded by N. Patten it was voted unanimously to adjourn at 7:15pm. (3-0)

Respectfully submitted,

Elaine M. Murphy
Administrative Assistant