

**MINUTES
PEMBROKE ZONING BOARD OF ADJUSTMENT**

October 27, 2008 Approved 6/22/09

MEMBERS PRESENT: William Bonney, Chair; Bruce Kudrick, Vice Chair; Dana Carlucci, Tom Hebert, Tom LoPizzo

ALTERNATES PRESENT: Paul Paradis

EXCUSED: Stephanie Burnham, Mick Pinard

STAFF PRESENT: Everett Hodge, Code Enforcement Officer; Susan Gifford, Recording Secretary

Chairman Bonney called the meeting to order at 7:00 p.m.

PUBLIC HEARING

Case #08-11-Z

Applicant(s):	Paris Valley 151 Buck Street Pembroke NH 03275
Property Owner(s):	same
Property Address:	151 Buck Street Pembroke, NH 03275 Tax Map 266, Lot 181 in the Business Residential (B1) Zoning District

Special Exception under §143-19 Table of Uses. The applicant, Paris Valley, is requesting permission to modify her present drive-in eating and drinking establishment to accommodate indoor seating. A Special Exception was granted to Paris and Rick Valley on June 23, 2004 for the conversion of an existing residential use to a drive-in eating and drinking establishment. The applicant, Rickey Valley, at the June 23rd hearing told the Zoning Board “there would be no indoor seating.” The Notice of Decision that was issued by the Zoning Board on June 25, 2004 states “no interior seating.”

Mr. Hodge confirmed that all abutters were notified and that cards were received back from most abutters. All the cards were returned except Rickey Valley, 360 Dowboro Road, Pittsfield NH, the other owner of the property and the business.

Chairman Bonney opened the public hearing at 7:05 p.m.

There were 5 regular members and 1 alternate member present; therefore, there was a full five member board present for this hearing. Chairman Bonney explained the rules of the hearing.

Mr. Hodge provided a copy of the assessor’s card, tax map, minutes from the June 23, 2004 ZBA hearing, Notice of Decision dated June 25, 2004 and a Warranty Deed dated February 9, 2005 conveying 151 Buck Street to Rickey and Paris Valley.

Ms. Valley presently has a year round State license with no indoor seating, and would like to provide indoor seating. She has been in business for 4 years. There is outside seating for 24 and she would like to move 20 of those seats indoors. The building meets code for an eating establishment. Paris Valley stated she has parking for six cars, and it could be more. Paris plans no physical changes to the existing business, except to add another entrance at the handicapped ramp and take an inside wall out to make room for indoor seating. Ms. Valley contacted the Pembroke Sewer Department and Commissioner Harold Martin, who was present at the 10/27/08 meeting, confirmed there was no problem providing additional capacity to the site.

Ms. Valley addressed the points necessary for a Special Exception as they applied:

Please describe how the requested use is essential or desirable to the public convenience or the general welfare. *The requested indoor seating would keep customers out of the cold weather.*

Please state how the requested use will not impair the integrity or character of the district or adjoining zones, nor be detrimental to the health, morals or general welfare. *The applicant is taking the same amount of outdoor seating and installing it inside the restaurant.*

Please describe how the specific site is an appropriate location for the proposed use and the character of adjoining uses will not be affected adversely. *The eating and drinking business is existing.*

Please show that no factual evidence is found that property values in the district will be adversely affected by such use. *The business is existing.*

Will undue traffic or no nuisance or unreasonable hazard result from your proposed use? *No, it is an existing business.*

Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use. *The proposal provides three fire exits, two bathrooms and a central fire station alarm system.*

Please show that there are no valid objections from abutting property owners based on demonstrable fact. *This is an existing business that is already in compliance.*

Please show that the proposed use has an adequate water supply and sewerage systems and meets the applicable requirements of the State. *This is an existing business that is already in compliance. A Pembroke Sewer Commissioner present at the 10/27/08 meeting confirmed the sewer capacity is adequate for the proposal.*

If the proposed use is for multi-family dwellings, will it be served by the town water system and by the town sewerage system? *N/A*

Tom LoPizzo asked for and received clarification from Paris Valley that at no time, would there be more than 24 seats provided for patrons. There would be no indoor seating in the summer as the picnic tables would be placed outdoors. Or would there be a mix of indoor and outdoor seating in the summer, as long as the total number of patrons does not exceed 24? The ZBA would be approving 24 seats as maximum seating capacity. How would the required one parking space per 4 seats be obtained? Dana Carlucci asked who regulates the amount of parking, and whether seats are indoors or outdoors. Planning Board site review of an indoor restaurant would address the parking need. The Code Enforcement Officer would inspect the number of parking spaces. A Special User permit would be required, as the site is in the Aquifer Protection District. An indoor restaurant is an allowed use in the B1 District. After the proposal received ZBA approval of a Special Exception, the applicant would need to go to the Planning Board. The original Special Exception on June 25, 2004 was approved as a three season business.

Valerie Lemay, 166 Buck Street, stated that two prior businesses were located at 151 Buck Street – a floral shop and a movie rental business. Why did this business need a Special Exception? Bruce Kudrick explained that a drive in eating establishment at that location needs a Special Exception.

Bethany Chase, 154 Buck Street, stated that staff and occupants of the home use the existing parking space. Bethany also provided a list of 28 police calls to 151 Buck Street during the period late 2004 through September 2008. Bethany stated that property values are adversely affected, due to the smells of food cooking and the number of police calls.

Paris Valley stated that none of the police calls involved the business, Double-Decker. The occupants of 151 Buck Street are the owners of Double-Decker. It was discussed whether it was a safe situation to put customers in when a home and business are in the same structure. Paris Valley stated that there were no

arrests for alcohol or drug use at the property. The current hours of operation are Thursday 3:00 p.m. to 9:00 p.m. and Friday, Saturday and Sunday 11:00 a.m. to 9:00 p.m.

Bethany Chase stated that property values have been affected by the smell of food cooking and the fact that there have been 28 police calls to 151 Buck Street from the end of 2004 through 2008, including an alarm-fire assist, unattended death, domestic violence, allegations of drugs in the house, drinking behavior, fighting, vandalism. Ms. Chase stated that Item H, no valid objections from abutters is not met. Ms. Chase stated that she has four small children, and fears that the Double-Decker will want an alcohol license next if indoor seating is approved. The bridge is fixed now and the traffic pattern is better. Ms. Chase stated she obtained the list of police calls under the Right to Know law, simply by calling the Pembroke Police Department. Seven or eight serious calls occurred over the summer of 2008.

Just for clarification, Tom LoPizzo stated that for the last four years, the applicant has been open April through Labor Day, a period of five or six months. She proposes to remain open twelve months as a restaurant with indoor seating.

Chairman Bonney summarized the case #08-11-Z. The applicant, Paris Valley, proposes to add indoor seating to an existing eating establishment. Paris Valley states that she has room to move 20 of the 24 outdoor seating spaces into the building. The Zoning Board of Adjustment did not allow indoor seating on the original Special Exception granted June 25, 2004. The Pembroke Zoning ordinance section 143-46 requires one parking space for every 4 indoor seats. The six required parking spaces could have more of an impact on the surrounding area. The same number of people will be served inside as outside. The maximum total seating capacity, indoor and out, will not exceed 24 patrons. The applicant proposes to take 20 of the 24 outdoor seating and move them indoors. The building has three fire exits, two bathrooms and a central fire alarm system. It was stated there would be no problem with additional sewage. Additional parking may be needed for staff use. Property values may have been adversely affected due to smells of cooking food and a number of police calls to the property. Finally, no physical changes to the building are planned, except to add a door and handicapped ramp.

There being no further input, Chairman Bonney closed the public hearing at 7:37 p.m.

Deliberations: Chairman Bonney led the ZBA members through a review of the Special Exception criteria. Item A, the applicant proposes to change an existing business to run 12 months rather than 6 months a year by adding indoor seating. Item B, the use is permitted by ordinance. Dana Carlucci noted the location is in the Business/Residential district; however any resident can ask to change that designation. Dana has observed families enjoying food at the Double-Decker in the summer. Item C, the site is in the Business/Residential B1 zone. Item D, the building has been improved and does look better than it has in the past. Item E, the ZBA has not heard of traffic issues. Islands and landscaping have been added by the State. Item F, the ZBA has full confidence that the police and fire departments can handle any situation that arises. The Police Department receives a copy of ZBA agendas.

Item G, the building has three fire exits, two bathrooms and an alarm system. Police and fire inspections would be required for indoor restaurant use. Item H, information from a resident listed 28 police calls to 151 Buck Street from 2005 through September 2008. The ZBA did not know how that compares to Main Street calls, but it was noted that police on bikes patrol the downtown area. There is a residence separate from the business at 151 Buck Street, but the areas commingle. The expansion of the current open time would become year round versus six months. The ZBA considered the operation as similar to Lang's Ice Cream stand when the initial Special Exception was granted in 2004. The dates of the relevant police calls would be April – September of each year when the business was operating. Parking is relevant. Six dedicated

parking spaces for patrons would be required for 24 seats. Does having 20 indoor seats change the traffic pattern? Would patrons linger longer if seated indoors? Everett Hodge noted of the three striped parking spaces, two are used by the owner. Everett Hodge noted that if parking were striped to the dimensions required by ordinance, there would not be enough room for six spaces. The inside of the structure is built out. The resident proposes to take out the ice cream window and knock down a wall to current office space to provide indoor seating. The State changed some of the previously paved area to grass and plantings. Item I, a Pembroke Sewer Commissioner present at the 10/27/08 meeting confirmed there is adequate sewer capacity for the proposal.

It was discussed that the applicant did not go to the Planning Board in 2004 after the Special Exception was granted June 25, 2004 because there was an existing business there. If the ZBA approves this Special Exception request, parking is more relevant with the proposal for indoor seating. Everett Hodge stated he believed that this request would go to the Planning Board if a Special Exception were approved, even though the drive in restaurant is an existing establishment. The Planning Board would need to see that adequate parking is available for an indoor restaurant. Three parking spaces would be required for 12 indoor seats. Choices such as use of paper plates and plastic silverware, or china and real silverware would affect water use. Have the applicants been good neighbors to their abutters up to now? The warranty deed dated February 9, 2005 shows the property at 151 Buck Street is owned by two people.

MOTION: Bruce Kudrick moved to approve a Special Exception at 151 Buck Street, Pembroke NH, Tax Map 266, Lot 181 in the Business Residential (B1) to provide indoor seating at an established eating and drinking establishment with the following conditions:

1. Hours of operation shall be 11:00 a.m. – 9:00 p.m. daily.
2. No music allowed on outside speakers.
3. Lighting must be kept pointed away from other homes in the area and must be shown on the site plan.
4. The sign, if lit up, must be shut off at 9 PM.
5. No alcohol shall be served or brought onto the business.
6. Area must be kept clean.
7. Six parking spaces strictly for patrons and travel lane must be marked out per 143-46 and approved by the Code Enforcement Officer/Public Works Director.
8. One parking space per every 4 seats is required for maximum seating capacity, inside or out, of 24 total seats.

Dana Carlucci seconded.

Discussion: The maximum seating capacity allowed, combining indoor and outdoor, would be 24 patrons. If the applicant cannot meet the six parking space requirement (for 24 seats), the seating capacity would be reduced proportionately – one parking space is necessary for each 4 indoor seating spaces. The whole area has changed since the double-decker bridge work was completed.

VOTE: BRUCE- Y TOM L - NO DANA -Y
TOM H - NO BILL - NO

MOTION TO GRANT A SPECIAL EXCEPTION AT 151 BUCK STREET, MAP 266 LOT 181 WITH CONDITIONS FAILED ON A 2-3 VOTE

Tom LoPizzo stated that the existing business, according to Special Exception #04-14-Z, is allowed to continue as it has in the past. Tom LoPizzo stated that the applicant was not as well prepared as he had hoped to explain what she wanted to do with the business. The striped parking, condition #8 of the original Special Exception granted June 25, 2004 with conditions has not yet been addressed. Promises made during

testimony are binding. Operating an indoor restaurant business is different from operating a take out business. An action plan with dates and details of how an indoor restaurant would be accomplished were lacking.

Tom Hebert stated that a big concern is that parking is inadequate, and there have been demonstrated documented issues with the existing business. Striping of parking spots that meet Section 143-46 has not been done since the original Special Exception was granted in June 2004. There are more potential problems for abutters if the restaurant operates 12 months. The ZBA has a duty to town's people to balance owner and neighborhood concerns.

The motion failed because criteria #3 and criteria #5 for a Special Exception were not met:

Please describe how the specific site is an appropriate location for the proposed use and the character of adjoining uses will not be affected adversely. *The eating and drinking business is existing.* ZBA members discussed that there is inadequate parking, and lack of sufficient information presented, or a business plan justifying the expansion of the business from operating 6 months to operating 12 months. There is no information given on the size or location of the proposed indoor seating area. The conditions of approval on the Special Exception granted #04-14-Z included #8 *Parking lines and travel lane must be marked out and approved by the Code Enforcement Officer/Public Works Director.* The parking spots have not been laid out and approved as of 10/27/08.

Will undue traffic or no nuisance or unreasonable hazard result from your proposed use? *No, it is an existing business.*

There was lack of a detailed business plan showing one parking space for each 4 indoor seats, and how such parking would be accomplished in the winter months without having an adverse impact on traffic or abutters.

The ZBA members discussed that with a Variance application, once denied, the applicant cannot return to the ZBA. However, the applicant could submit an application for a Special Exception again, if parking was thoroughly defined and the applicant had a more detailed business plan and presentation.

PUBLIC HEARING

Case #08-12-Z

Applicant(s):

Jeffrey Foy, Manager
J M Foy Family LLC
64 Portsmouth Avenue
PO Box 10300
Exeter NH 03832

Jeffrey Foy
4 Fox Hollow Court
East Kingston NH

Property Owner(s):

same

Agent:

Kevin Leonard
Northpoint Engineering
5 Sheep Davis Road
Pembroke NH 03275

Property Address:

570 Pembroke Street
Pembroke, NH 03275
Tax Map 634 Lot 45 in the Limited Office (LO), Architectural Design (AD)
and Aquifer Conservation Overlay District (AC)

Area Variance under §143-21 Table of Dimensional and Density Requirements. The applicant, Jim Foy Family LLC, is proposing to construct a roof with columns over the existing steps on the front of their building located at 570 Pembroke Street. An Area Variance is required because the existing steps are located in the front setbacks. Table 143-21 Note #10 allows only “steps or stoops” to project into the “required yards”. The proposed roof is defined as a structure under Section 143-8.

Mr. Hodge confirmed that all abutters were notified and that cards were received back from most abutters. All of the cards were returned except Dwayne D’Agnese and Jody Keeler, Trustee; 132 Portsmouth Street, Concord NH 03301.

Chairman Bonney opened the public hearing at 8:30 p.m.

There were 5 regular members and 1 alternate member present; therefore, there was a full five member board present for this hearing. Chairman Bonney explained the rules of the hearing.

Mr. Hodge provided a copy of the assessor’s card, tax map and a copy of Site Plan Exhibit plans prepared by Northpoint Engineering, LLC. Mr. Hodge noted that Jeff Foy had a conceptual meeting with the Planning Board for a Minor Site Plan. Because the existing building encroaches the front setback and only “steps or stoops” are allowed within the setback, the Planning Board advised Mr. Foy to meet with the Code Enforcement Officer first.

The proposed project involves some interior renovations and remodeling of the existing 2,171 square foot, two-story office building on the subject parcel, located in the LO Limited Office District. As part of the proposed work, an existing deck will be enclosed on the back side of the building and a covered 8’ x 8’ entry way is proposed to be constructed over the existing outdoor stairs on the front side of the building. A 30-foot front yard setback is required in the LO district. Presently, the existing building, including the stairs, encroaches into the front setback with the closest point of the stairs being 15.5 feet from the right-of-way line. The proposed covered entry over the existing stairs will include a new roof structure supported by two new posts constructed at the bottom of the stairs. The closest point of this proposed structure to the right-of-way line will be 13 feet.

Kevin Leonard stated that the covered entry way will provide cover from the weather, and the style is in keeping with the district. Since the proposed covered entry way constitutes an expansion of a non-conforming structure, a variance is required from Article V, Section 143-21 (Table of Dimensional and Density Regulations) to reduce the minimum front yard depth from 30 feet to 13 feet.

Jeff Foy stated that he has maintained an office in Concord NH since 2002. His company acquired Ayles Insurance and wants to combine the two companies into one building. There are nine Foy employees and 2.5 Ayles Insurance employees. The proposed site at 570 Pembroke Street meets the needs of both companies, with open space and enough room for nine desks. The newly merged company will fully occupy the building. There will be no leased space in the building.

Jeff Foy stated that the main reason for the covered entry way is safety for employees and clients. Granite steps ice up more quickly than concrete steps with a coating that can’t be seen, and can cause slips and falls. Another reason is for aesthetics, as the covered entry way will be attractive.

Everett Hodge noted that he has had positive inspections of the ongoing interior renovations. The carpenters, contractors and electricians on the job are excellent to work with. The building has not been up to code in the past. Mr. Foy noted that his crew has also found Everett Hodge to be an effective Code Enforcement

Officer.

Kevin Leonard of Northpoint Engineering addressed the 5 points necessary for an Area Variance:

Granting the variance would not be contrary to the public interest because *the variance would allow for a covered entry to be constructed over the existing stairs which serve as the primary entrance to the office building. The covered entry would be in the interest of the general public as it provides protection from the weather elements for anyone entering or leaving the building. Furthermore, the covered entry will be a pleasant aesthetic addition to the building for passers by.*

2 A) How does the Zoning Ordinance interfere with your ability to reasonably use your property, considering you property's unique setting in its environment? *The area variance is needed because the building is an existing, non-conforming structure that predates the specific zoning restriction. The special condition is that the existing building is located within the front yard setback and the entrance to the building is already in place.*

2B) Explain why the proposed use can not be achieved through some other reasonable method other than an area variance. *The existing stairs and entrance to the building are already in place and the covered entry way cannot be located any place other than at the main entrance. It is not reasonable to relocate the entire building or to relocate the main entrance. Therefore, the area variance is the only reasonable method. .*

How would granting the variance be consistent with the Spirit of the Ordinance? *One of the purposes of the Ordinance is "to promote health, safety and the general welfare of the citizens." The proposed covered entry is designed in part to provide a safer entrance to the building. In this respect, granting the variance would in fact be consistent with the spirit of the Ordinance.*

How would granting the variance ensure that substantial justice is done? *Granting the variance would result in a safer entry way to the existing building without injuring the public or private rights of others, which would result in substantial justice to the property owner, employees, and citizens who will visit the building. .*

Granting the variance will not diminish surrounding property values because: *the proposed entry way is located on the front side of the building and not within a side yard area that would have a potential impact on adjacent properties. Furthermore, it will be an aesthetic improvement to the existing building and it will increase the value of the subject property, which in turn will not cause a diminution in surrounding property values.*

Chairman Bonney summarized the case #08-12-Z. The applicant is requesting an Area Variance to construct a roof with columns over the existing front steps. The building encroaches into the 30 foot front setback. The building is 21.5 feet from the front property line. The steps are 15 feet from the front property line and the pillars will be 13 feet from the front property line, where 30 feet are required. The roof structure is approximately 8' x 8'. The structure could not be located in any other area. The safer entry way will benefit both employees and clients of the business. There are 5 Foy agency staff and 2.5 Ayles Insurance staff so they will fill the building with their office space needs. The two main reasons for covering the steps are 1) for the safety of employees and clients and 2) to blend in with the architecture of the neighborhood.

There being no further input, Chairman Bonney closed the public hearing at 8:45 p.m.

Tom LoPizzo recused himself from the vote. Paul Paradis was designated to vote for Tom LoPizzo on Case #08-12-Z.

Deliberations: Chairman Bonney led the ZBA member through a review of the Area Variance criteria.

Item #1, covering granite steps from the elements is a safety issue. Item 2, the building and the steps are already in the front setback. The proposed covered entryway will preserve the architectural style of the neighborhood. Item 3, there is no other entrance to the building for clients. There is no handicapped access to the building. The procedure of the company for a handicapped client to call his agent from his car, and the agent will come out to the parked car with the paperwork. Item 4, a covered entry way is better for employees and clients. Item 5, the covered entry way keeps the building looking like a house which enhances property values.

MOTION: Bruce Kudrick moved to approve an Area/Dimension Variance at 570 Pembroke Street, Pembroke NH Map 634 Lot 45 in the (LO) Limited Office, (AD) Architectural Design District, to construct a covered entry way structure over the existing stairs, including a new roof structure supported by two new posts constructed at the bottom of the stairs. The closest point of this proposed structure to the right-of-way line will be 13 feet. Dana Carlucci seconded.

VOTE: BRUCE- Y DANA – Y PAUL - Y
TOM H - Y BILL - Y

MOTION TO GRANT AN AREA/DIMENSION VARIANCE APPROVED ON A 5-0 VOTE

MINUTES OF PREVIOUS MEETINGS

Motion: Bruce Kudrick moved to approve the minutes of September 22, 2008 as amended. Tom Hebert seconded.

VOTE: BRUCE- Y TOM L - Y DANA –Y
TOM H - Y BILL - Y

MINUTES OF SEPTEMBER 22, 2008 APPROVED AS AMENDED ON 5-0 VOTE.

Miscellaneous

NH Local Government Center 67th Annual Conference – Save the dates November 12-14, 2008 at the Radisson, 700 Elm Street, Manchester NH.

OTHER

Date of next ZBA meeting – The November 2008 ZBA meeting will be on Monday, 11/24/08.

ADJOURN Motion: Bruce Kudrick moved to adjourn. Tom Hebert seconded. Vote was unanimous in favor of motion. Meeting adjourned at 9:15 p.m.

Respectfully submitted,

Susan P. Gifford
Recording Secretary