

GPACT Conditional Use and Site Plan Review
November 30, 2015
Findings of Fact and Decision

Introduction and Procedural History

1. On October 29, 2015 a warning of the hearing was posted at the Greensboro Town Hall, located at 81 Lauredon Ave. in Greensboro and was available on the Town's official website that day.
2. Warnings were also posted at the Greensboro Post Office, the Greensboro Bend Post Office, and Smith's and Willey's stores on October 29, 2015.
3. The warning was sent to the following abutters and neighboring property owners on October 29, 2015: Mountain View Country Club; Town of Greensboro; Patricia, Jeremy and Jennifer Mercier; Gertrude Osterhout & Elizabeth Bishop; NEXT 1, LLC; Martha Niemi Revocable Trust (William & Martha Niemi trustees); David Allen; Hardwick Electric Department; and Arthur & Julie Brochu.
4. The warning was published in the Hardwick Gazette on Wednesday, November 4, 2015.
5. The application for an amended Conditional Use permit and a commercial Conditional Use permit was considered at a public hearing on November 30, 2015.
6. Development Review Board members present at that hearing and for the subsequent deliberations: Linda Romans, Nat Smith, Sean Thomson, Janet Travers, Jane Woodruff, and Wayne Young. Development Review Board members absent from both the hearing and deliberations: B.J.Gray, MacNeil, and Lee Wright (all recused because of a conflict of interest)
7. During the course of the hearing, the following exhibits were submitted to the DRB:
 - #1 A folder of the letters and emails, both pro and con, received by the Zoning Administrator before the hearing
 - #2 Greensboro Petitions submitted by Christine Armstrong
 - #3 Letter from James A. Dumont, attorney for Christine Armstrong, et.al.
 - #4 Letter from William & Martha Niemi
 - #5 Memorandum from architect, Jules Chatot, hired by Christine Armstrong
 - #6 Written comments from Rusty Newhouse

These exhibits are available at the Town Clerk's Office or on the Town website, www.greensborovt.org

Findings of Fact:

The following findings are facts that were entered into the record for this application and relied upon by the Board in formulating its conclusions and decisions. While other evidence may have been or is also entered into the record, if it is not included herein, the Board has determined that it is either not relevant evidence or that it is not a fact. The Greensboro Development Review Board is perhaps different from other similar Boards in that it is not a Design Review Board and therefore does not take the design or color of a building into consideration as other Boards may. The Board notes that the zoning regulations in the Rural Lands District where this project is located are less rigorous than those in the Shoreland Protection District. Based on the application, exhibits and testimony, the Development Review Board makes the following findings:

Project description

1. David Allen, land owner, and GAAR (Greensboro Arts Alliance & Residency) were the applicants for the original conditional use application in August 2014. After hearing the evidence at a duly warned hearing on September 16, 2014, the DRB decided that the conditional use application by GAAR for a theater and café was consistent with the Zoning By-law and granted the permit with 11 conditions, one of which was, the building would be no more than 35 feet high. Since the issuance of the original decision GAAR has assumed responsibility for providing the arts, cultural events, and performances associated with the Mirror Theater and GPACT (Greensboro Performing Arts Center Trust) has been formed to deal with the financial and operational aspects of the organization. It is this organization that purchased the land and has applied to amend the original Conditional Use application and build an accessory building for commercial use.
2. After obtaining the original local permit, the next step was to go through the Act 250 process. The Act 250

District Commission did not like the proposed flat roof on the cylindrical portion of the structure and wanted GPACK to submit an alternate design. GPACK's architect then designed the "collar" addition around the cylindrical portion of the theater and the District Commission approved the design.

3. On March 19, 2015, at a public meeting, the DRB approved a request to relocate the curb cut and driveway to the theater approximately 100 feet closer the intersection of Hardwick Street and Center Road. The curb cut had already been approved by the Greensboro Select Board pending approval by the DRB.

4. The proposed revisions asked for in this application add a one-story accessory structure for production and prop storage; change the outdoor lighting in the parking lot and drive from being on 3 – 4 foot bollards to being on 20 foot poles; add a design element to the theater cylinder (referred to as a collar, apron, skirt or cupola); and to reconfigure the site's parking area with no increase in parking spaces.

5. The addition of the "collar" on the cylindrical portion of the theater makes the height of the building 42' 2". GPACK's position is that the roof with the collar qualifies under By-law 3.12, which allows exemptions from the height limit for appurtenances higher than 35 feet, as it is not intended for human occupancy.

6. A 31 foot x 51 foot, one story (19 feet high) production and prop shed located behind and separate from the main building in a low point of the land is proposed as part of the amended application.

7. The new curb cut and drive approved in March 2015 also affected the parking area which was relocated and consolidated with no increase in the number of parking spaces.

8 The last change requested in this application is for the lighting on the drive and in the parking area. The lights in the first application were planned to be mounted on 3 or 4 foot bollards. When GPACK went through Act 250 and talked to lighting experts, there were some concerns that there would be many slip and fall lawsuits because of the low level of the lights and it was thought that snow plowing in the winter would interfere with the emission of light and might break the low bollards. GPACK is now proposing 12, 20 foot high light poles in the parking area and on the drive. The light fixtures themselves would remain the same regardless of the height of the supporting poles.

9. The property lies entirely in the Rural Lands District.

10. The amended conditional use permit requires a review under the following sections of the Greensboro Zoning By-Law: 2.5 Rural Lands District; 3.12 Height Exemptions; 4.4 Site Plan Review; 5.4 Conditional Uses.

2.5 Rural Lands District

There is adequate land in the lot for the theater, accessory structure, and the parking lot. Both the main structure (theater) and the proposed accessory structure meet all setback requirements in the Rural Lands District. The height limit in the Rural Lands District is 35 feet. The proposed height of the theater building itself is 35 feet; that has not changed. The request for the "collar" brings the combined height of both the building and attached collar to 42'2" which is below the maximum allowable height of 50' for a structure. Therefore, the "collar," proposed as an appurtenance, will be examined under the height exemption request (3.12 in the Greensboro Zoning By-Law). The accessory structure meets the height requirement. Commercial use is a conditional use in the Rural Lands District.

3.12 Height Exemptions

The height limitations of the Regulations shall not apply to barns and silos, private home antennae, spires, belfries, cupolas, water tanks, ventilators, chimneys, solar equipment, windmills (those over 35 feet require a conditional use review), transmission towers, flag poles, or other appurtenances not used for human occupancy up to a maximum of 50 feet.

The Board looked at condition number 10 in the original DRB decision of September 19, 2014. It states that the building may be no taller than 35 feet. The Board finds that the proposed cupola/collar/skirt/apron is being added for aesthetic purposes only, and will not be used for human occupancy. In the amended application, the theater building itself remains at 35 feet; the addition of the collar is solely for aesthetic reasons, and raises the structure to a maximum height of less than 43 feet. The Board finds that the cupola/collar/skirt/apron is an appurtenance and thus is allowed under 3.12 in the Greensboro By-Law.

Based on the above findings, the DRB unanimously (6 -0) approved the application for a height exemption for the proposed appurtenance on the cylindrical portion of the building as proposed.

4.4 Site Plan Review for Commercial Use

The applicant seeks an amendment to the 2014 decision for the parking area, lighting, and the addition of an accessory structure to the original plan. The Board takes judicial notice of its previous decision of September 19, 2014, and incorporates the conditions imposed therein by reference herein. The Board makes the following findings of fact in regard to the amended site plan, as set forth in 4.4 of the Zoning By-law.

(B) Site Development Map (SDP) and Supporting Data.

Two sets of the site plan maps were submitted with the required information as follows:

1. The map included the name and address of the firm that prepared it, the scale, north point, and date;
2. The map of the property depicted existing features, including contours, structures, large trees, streets, utility easements, rights-of-way, land use and deed restrictions.
3. A depiction of the proposed structure location and land use areas, driveways, traffic circulation, parking areas, landscaping plans, designs and screening as well as site grading. The amended map of the property includes the proposed accessory structure and reconfiguration of the drive, parking area, and lights. The maps and supporting data meet the requirements of 4.4 (B).

(C) Site Development Plan Review Procedure

1) A duly warned public hearing was held on November 30, 2015 to consider an amended application for the addition of a one story accessory structure for production and prop storage, the installation of 20 foot lighting poles in place of the previously approved 3 - 4 foot bollards, the addition of an appurtenance to the theater cylinder and reconfiguration of the parking area with no increase in the number of parking spaces.

An accessory structure is a permitted structure in all districts. This structure is subordinate to the theater building, will be used for production and prop storage, and conforms to the setback and lot size requirements. The building will not create undue noise or traffic in the area, strain the capacity of community resources, or have an adverse effect on the character of the area.

2) *The DRB may impose appropriate conditions and safeguards with respect to:*

a) The adequacy of parking, traffic access, and circulation for pedestrians and vehicles

The proposed amended parking lot and redesigned entrance/exit drive improve access, especially for larger delivery trucks and emergency vehicles, and reconfigures the parking area with no increase in the number of parking spaces.

b) Landscaping and screening

Screening was addressed in the original decision of September 19, 2014 and the changes proposed raise no additional concerns and require the imposition of no additional conditions.

c) The protection of the utilization of renewable energy resources

A geo-thermal heating and air conditioning system will be used in this energy efficient building.

d) Exterior lighting

Lighting in the parking area and on the drive in the original application was to be "dark-sky lighting" on three to four foot bollards. This amended request asks for the same "dark-sky" lighting fixtures mounted on 20 foot poles to provide patrons with a safer, better lit access to the parking area. The taller lights are also more practical in winter conditions which require snow plowing. The Board sets forth the condition that the light poles be a maximum of 20 feet in height and that light poles lower than 20 feet will be erected whenever the lower height will adequately illuminate the portion of the parking lot being illuminated by the lights on the particular pole, and the reduced height will not result in making the illumination insufficient to safely light the parking lot.

e) The size, location and design of signs

The size, location and design of the sign were approved in the original decision of September 19, 2014.

(D) Decision and conditions:

Based on the above findings and subject to the conditions below, the DRB unanimously (6 – 0) approved the application for a site plan review for a commercial enterprise as presented.

Conditions:

1. The light poles in the parking lot and on the driveway will be a maximum of 20 feet in height.
2. Light poles lower than 20 feet will be erected whenever the lower height will adequately illuminate the portion of the parking lot being illuminated by the lights on that particular pole, and the reduced height will not result in making the illumination insufficient to safely light the parking lot.
3. After hours lighting usage will be limited to necessary building-mounted security lighting, otherwise the exterior lighting will not be illuminated.

5.4 Conditional Uses

The Board first considered the one story accessory structure to be used for production and prop storage.

B) General standards

The proposed conditional use will not have an adverse effect on:

1. The proposed accessory structure will not have an adverse effect on *the capacity of existing or planned community facilities.*
2. The proposed accessory structure will not have an adverse effect on *the character of the area.*
3. The proposed accessory structure will not have an adverse effect on *traffic in the vicinity.*
4. The proposed accessory structure will not have an adverse effect on *the by-laws and ordinances presently in effect.*
5. Consideration of *the utilization of renewable energy resources* is not applicable.

The Board finds that the accessory structure would not have an adverse effect on any of the above general standards. A subordinate accessory structure is allowed in all districts.

C) Specific Standards:

1. *The lot must meet the minimum size required for the district unless other standards are given for conditional use lot size in the district.* The lot on which the structures are located is the minimum size required.
2. *Setbacks will be the same as for other permitted uses unless other standards are given for conditional use setbacks in the district.* The structure adheres to all setback requirements in the Rural Lands District.
3. *Fencing/ landscaping may be required for commercial and industrial uses to provide screening if the Board deems it necessary to protect the character of the area.* Fencing or screening is not necessary for this structure.
4. *Exterior signs shall not be internally lit and must be compatible in size, materials and workmanship to the area in which they are located.* Since no change in exterior signs is proposed, the imposition of no additional conditions is appropriate.
5. *The proposed structure is compatible with other structures in the area.* This structure is compatible with other structures in the area.
6. *The proposed structure adheres to the uses allowed in the relevant district.* Accessory structures are allowed in all districts.
7. *The proposed structure will not affect the noise or air pollution in the area.* The Board considered this and concludes that production and storage of props would not create undue noise or air pollution.

The Board finds that the accessory structure will not have an adverse effect on the specific standards. The lot is large enough for all planned structures and the accessory structure meets the setback criteria in the Rural Lands District. Landscaping and signs were addressed in the September 19, 2014 decision, and this structure does not require any further landscaping to provide screening. This building is to be located behind the main building, at a low point in the land. It will not be readily visible, create traffic, noise, or air pollution and it is compatible with the area. Accessory structures are allowed in the Rural Lands District.

The Board voted unanimously (6 – 0) to approve a Conditional Use permit for commercial use for a one story accessory structure for production and prop storage.

The Board then considered the proposal to install the previously approved light fixtures on higher poles rather than on the 3 – 4 foot bollards originally planned, in order to provide safer access to the parking area by theater patrons.

B) General standards

The proposed conditional use will not have an adverse effect on:

1. The proposed taller light poles will not adversely affect *the proposed capacity of existing or planned community facilities.*

2. The proposed taller light poles will not adversely affect *the character of the area.*

Although the Board understands that lighting is needed for the safety of the patrons, it is concerned about the effect of 20 foot high lights on the area. The Board urges the applicant to erect the lights on shorter poles whenever the lower height will adequately illuminate the portion of the parking lot being illuminated by the lights on the particular pole, and the reduced height will not result in making the illumination insufficient to safely light the parking lot.

3. The proposed taller light poles will not adversely affect *traffic in the vicinity.*

4. The proposed taller light poles will not adversely affect *by-laws and ordinances presently in effect.*

5. Consideration of *the utilization of renewable energy resources is not applicable.*

The Board finds that the taller light poles will not have an adverse effect on the capacity of community facilities, traffic in the area, the by-laws in effect or the utilization of renewable resources. Although the Board understands and agrees with the reasons taller poles were requested, it is concerned about the effect of taller lights on the area and would like to see the lights on shorter poles (8 – 12 ft.) whenever the lower height will adequately illuminate the portion of the parking lot being illuminated by the lights on the particular pole, and the reduced height will not result in making the illumination insufficient to safely light the parking lot. It also notes that the applicants assured the Board that the lights would only be on when it is dark and people were at a performance and would be turned off when everyone has departed.

C) Specific Standards:

1. *The lot must meet the minimum size required for the district unless other standards are given for conditional use lot size in the district.* The lot is the minimum size required.

2. *Setbacks will be the same as for other permitted uses unless other standards are given for conditional use setbacks in the district.* All setbacks have been met.

3. *Fencing/ landscaping may be required for commercial and industrial uses to provide screening if the Board deems it necessary to protect the character of the area.* No fencing or screening is required for the lighting.

4. *Exterior signs shall not be internally lit and must be compatible in size, materials and workmanship to the area in which they are located.* This is not applicable for the light poles.

5. *The proposed structure is compatible with other structures in the area.* This is not applicable for the light poles.

6. *The proposed structure adheres to the uses allowed in the relevant district.* This is not applicable for the light poles.

7. *The proposed structure will not affect the noise or air pollution in the area.* This is not applicable for the light poles.

The Board finds that the taller lights will not have an adverse effect on these specific standards.

The Board voted unanimously (6 – 0) to approve a Conditional Use permit for the taller lights with 3 conditions.

Conditions:

1. The light poles in the parking lot and on the driveway will be a maximum of 20 feet in height.

2. Light poles lower than 20 feet will be erected whenever the lower height will adequately illuminate the portion of the parking lot being illuminated by the lights on that particular pole, and the reduced height will not

result in making the illumination insufficient to safely light the parking lot.

3. After hours lighting usage will be limited to necessary building-mounted security lighting, otherwise the exterior lighting will not be illuminated.

The Board then turned its attention to the reconfiguration of the parking area.

B) General standards

The proposed conditional use will not have an adverse effect on:

1. The reconfigured parking area will not have an adverse effect on *the capacity of existing or planned community facilities.*

2. The reconfigured parking area will not have an adverse effect on *the character of the area.*

3. The reconfigured parking area will not have an adverse effect on *traffic in the vicinity.* The reconfigured parking area will make access to the theater and café easier.

4. The reconfigured parking area will not have an adverse effect on the *by-laws and ordinances presently in effect.*

5. Consideration of *the utilization of renewable energy resources* is not applicable for the reconfigured parking lot.

The Board finds that the reconfigured parking lot and access drive will not have an adverse effect on any of the specific standards. The reconfiguration of the driveway and parking lot improves traffic access and parking, especially for larger vehicles such as delivery trucks and emergency vehicles.

C) Specific Standards:

1. *The lot must meet the minimum size required for the district unless other standards are given for conditional use lot size in the district.* The lot meets the minimum size required.

2. *Setbacks will be the same as for other permitted uses unless other standards are given for conditional use setbacks in the district.* The reconfigured parking lot meets the setbacks in the Rural Lands District.

3. *Fencing/ landscaping may be required for commercial and industrial uses to provide screening if the Board deems it necessary to protect the character of the area.* Fencing and screening were addressed in the September 19, 2014 decision and the changes proposed raise no additional concerns and require the imposition of no additional conditions.

4. *Exterior signs shall not be internally lit and must be compatible in size, materials and workmanship to the area in which they are located.* This was addressed in the September 19, 2014 decision and since no change in exterior signs is proposed, the imposition of no additional conditions is appropriate.

5. *The proposed structure is compatible with other structures in the area.* This is not applicable for the parking area.

6. *The proposed structure adheres to the uses allowed in the relevant district.* This is not applicable for the parking area.

7. *The proposed structure will not affect the noise or air pollution in the area.* This is not applicable for the parking area.

The Board finds that the reconfigured parking area and access drive will not have an adverse effect on these specific standards.

The Board voted unanimously (6 – 0) to approve the Conditional Use permit for the reconfigured parking area and access drive.

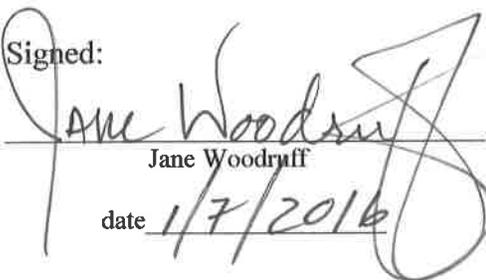
Decision and Conditions

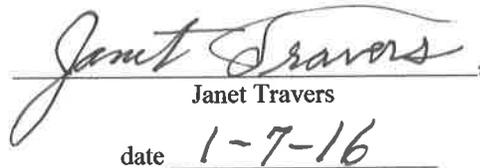
Based upon these findings, the Development Review Board voted unanimously (6 – 0) to approve the GPACK requested revision of the GAAR application approved on September 19, 2014 for the addition of a one story accessory structure for production and prop storage, the installation of taller lighting poles in place of the previously approved 3 - 4 foot bollards, the addition of an appurtenance to the cylindrical portion of the theater and reconfiguration of the parking area with no increase in the number of parking spaces as proposed during the hearing on November 30, 2015.

The Board finds that the project revisions and subsequent changes in the size, orientation of the theater, and the number of seats in the theater are not substantial enough to warrant a new application. These changes have also not violated any regulations. The character, uses, and impacts of the project have not changed.

Conditions:

1. The light poles in the parking lot and on the driveway will be a maximum of 20 feet in height.
2. Light poles lower than 20 feet will be erected whenever the lower height will adequately illuminate the portion of the parking lot being illuminated by the lights on that particular pole, and the reduced height will not result in making the illumination insufficient to safely light the parking lot.
3. After hours lighting usage will be limited to necessary building-mounted security lighting, otherwise the exterior lighting will not be illuminated.
4. The height of the structure, including the appurtenance shall not exceed 43 feet.
5. Except as otherwise provided within this decision, all conditions imposed by the September 19, 2014 decision shall remain in full force and effect.

Signed:  chair
Jane Woodruff
date 1/7/2016

 clerk
Janet Travers
date 1-7-16

NOTICE:

This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding (in person or in writing) before the Development Review Board. Such appeal must be made within 30 days of the date of this decision, pursuant to 24 V.S.A. #4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.