

Town of Lenox
Zoning Board of Appeals

June 22, 2020

7:00 p.m.

Present: Robert Fuster, Jr., (RF) Albert Harper (AH), Shawn Leary Considine (SLC), Clifford Snyder (CS), Clayton Hambrick (CH)

From Shakespeare & Company: Lori Robbins, Kelley Vickery, Stephan Ball, Allyn Burrows, Creative Director, Adam Davis, Managing Director, Ken Werner

Also present: Gwen Miller (GM), Clarence Fanto

70 Kemble Street, Continuation of the Shakespeare and Company Hearing for a Drive-In Movie Theater

RF opened the meeting with some concern that not enough people were on the Zoom hearing, given the significant scale of the hearing

Lori Robbins began by introducing the Shakespeare and Company representatives. She noted that representatives had reached out to abutters.

SLC asked how many abutters were on the Zoom. There were none, and GM said there had been no correspondence.

CS noted that he did not like conducting business on Zoom.

AH noted that many don't think they can participate via Zoom; that's why he isn't eager to host big hearings on Zoom. He doesn't think this is a specifically controversial hearing.

Allyn described their conversation w/ Stephen Peters, abutter with the longest extent of shared property line.

They discussed parking (how many people could go come) and where people would use bathrooms. Allyn said he seemed assuaged.

Adam Davis had fielded comments and concerns from Anne Lowry, Rob Miller, and Mindi Morin. After conversations, they were in favor.

Lorri Robbins explained permitting history of Shakespeare and Company.

She explained that that Shakespeare and Co. wanted to provide entertainment during Covid-19; and would not be making money on this endeavor.

She continued onto explain why the why she thought a variance was justified, citing two cases of case law : Johnson v. Board of Appeals of Wareham.

She further explained the configuration for how people would be parked and where the films would be projected.

Lori noted that this would be a temporary, limited run of drive-in theater. She cited the purpose of the Lenox ZBL; just for a portion of the property.

There will be no alcohol served or provided; there will be restaurants partnering to provide ordered food delivered to the venue.

Lori Robbins also suggested that the ZBA could grant a Special Permit under Pre-Existing Nonconforming Uses, noting that this would be an extension for the nonconformity by switching from indoor performance to outdoor performance. She describes how they can meet all of the six criteria for a Special Permit.

Adam Davis explained the economic impact of Covid-19. He noted that Shakespeare and Company is going to lose 1.3 million dollars in ticket sales; this will not be made up by 40 cars. There will be a safety professional on grounds for safety and circulation needs.

Stephen Ball explained how the bathrooms would be provided and managed. The safety agent will be there to enforce social distancing. There will be signs saying that the bathrooms will be for emergency use only.

Lori explained that restaurants now are able to be open; the requirement is that restrooms need to be cleaned once a day. Stephen Ball said they will comply with CDC standards and go above: will provide Chlorox wipes in the restrooms to use on common surfaces.

Kelly Vickery explained the programing will be different. She said there will be a BIFF (Berkshire International Film Festival) presence. Explains films that will be shown.

Robert asked how many movies would be shown a night. Kelley indicated one film per evening.

Lori Robbins concluded that this would be beneficial to the neighborhood and suggested the ZBA could grant a Special Permit OR a Variance for this use.

No correspondence was received; no members of the public were present.

Board members had questions.

AH: in order to approve this permit, we have to justify a variance. The Use table in the ZBL doesn't allow. Al does not think they do so

He states the ZBL doesn't allow movie theaters in ANY district. Al explains concern over becoming complacency in increasing risk of people spreading the virus. He thinks this is a serious public health issue.

CS asked how will sound be projected: into the cars via FM radio.

Also: Cars will be in parking lot; most people don't want to leave radio on for four hours w/o turning cars on. People might want to turn on A/C. Will cars be idling for four hours at a time?

Allyn Burrows said that on newer cars, the radios can play w/ the engine shut off. We won't encourage people to idle their engines for four hours. He emphasized that this will be about the experience of a drive in-theater and patrons won't expect a commercial movie theater experience. Allyn says they have also explored other methods to transmit the sound. They need to be able control decibel levels.

The patrons will be asked to keep their windows ½ way to ¾ way down.

SLC shared that she thinks Lenox is one of the few towns that doesn't explicitly prohibit use variances; in fact, the ZBL allows them.

GM pointed out that movie theaters are allowed in one zoning district, as is commercial recreation outdoors or indoors.

The hearing was concluded and the Board moved into the decision meeting.

AH still is not comfortable with the situation but was appreciative of Lorri Robbins' effort to answer questions.

CS noted the Town needs entertainment right now; he thinks it's a worthwhile venture to try. He can see a hardship for the entire community with the Covid-19 pandemic; he thinks in the spirit of the law, they should try this. He wishes them well.

CH says he appreciates the effort to do this and supports it.

SLC says she is trying to find the section of the ZBL that allows the ZBA to grant variances. She isn't convinced that they need to grant a variance, she thinks a Special Permit suffices. However, she finds that a Variance can be justified, and that the Wareham case allows for such a Variance; and that there have been movie theaters in Lenox before. She also finds it's not detrimental to the neighborhood. She notes it is a short-term use and if things don't go well, it won't go beyond the summer.

RF agrees w CS, CH, SLC and in some ways, AH.

He noted that so much has been cancelled for the summer and that giving everybody something to look forward to is important.

AH noted that listening to the other board members and having GM point out that movie theaters are allowed in one district has changed his mind. He still wants people to be careful and mindful to the risk of the virus. The virus is still amongst us and very dangerous and deadly. He knows Shakespeare and Company is very responsible and will work hard to keep things very clean.

Robert agreed w/ the call for safety and extra precautions, asked what the Board thought abt SP or Variance. Everybody agreed it could be a Special Permit.

Motion to grant a Special Permit: made by CH; Cliff seconded. All in favor (5-0)

Conditions:

Robert suggests...

- 1) Parking spaces must be marked so they are more than six feet apart; suggests a minimum of 10' apart. All voted in favor. Discussion ensued between the Board and Shakespeare and Company regarding this condition...I think it was relaxed? Verify.
- 2) Volunteers w/ masks and gloves to sanitize after each use? Rest rooms should be cleaned to the CDC restaurant standards. All voted in favor.
- 3) No outdoor viewing stand allowed (agreed to by petitioners).
- 4) People must wear masks if not in their cars (will be enforced).

RF asked: Will two restrooms be enough for 42 cars x at least four occupants? Adam Davis said Tina Packer Playhouse will be open for ADA restroom availability. There will be ushers on site to assist with this need.

Viewing table—as state relaxes restrictions on public gathering, this would allow some people to sit outside. The earliest Phase 3 will happen is July 20th (as reported in Boston Globe). Allyn says that they will be following all state regulation and they will be doing nothing to put peoples' health at risk.

RFJr will write decision.

Briefly discussed agenda for July 1st meeting.

Motion to adjourn at 8:24. All in favor.