ZBA PN – 7-11-16

Town of Wolfeboro

ZONING BOARD OF ADJUSTMENT

ABUTTER NOTICE
ZONING BOARD OF ADJUSTMENT
WOLFEBORO, NEW HAMPSHIRE

Notice is hereby given that the Zoning Board of Adjustment will meet on **Monday, 11 July 2016** at **7:00 PM** in the Wolfeboro Public Library Meeting Room to conduct the following business:

TM# 218-17-1 **Case # 12-V-16**
Applicant: Zimmerman Family Ltd. Partnership

Public Hearing for a Variance from XIV, Section 175-92.1.A (3) of the Wolfeboro Planning & Zoning Ordinance to allow for a retail building with multiple tenants including a bank with drive thru that makes use of an existing foundation that lies between 27' and 41.6' from the front boundary line with Center Street versus the 15' maximum setback required. This property is located at 29 Center Street. A site visit will be held at approximately 6:05 pm prior to the hearing.

Copies to:

- Town Manager
- Codes Officer
- Police Chief
- Fire Chief
- Conservation Commission
- Assessor
- Public Works Department
- Municipal Electric
- Department of Water & Sewer
- Planning Department
- File

Zimmerman Family Limited Partnership
Colbalt Properties NH Corp.
Crawford/Brockney
7 Pine Street LLC
F & L Development, LLC
MacLean
White Mountain Survey & Engineering, Inc.

If there is anyone needing modifications and / or auxiliary aid to access this meeting, please notify the Planning Department at least 72 hours prior to this meeting.

Posted: 30 June 2016: Wolfeboro Town Hall & Public Library: Granite State News

South Main Street Post Office Box 629 Wolfeboro, New Hampshire 03894
(603) 569-5970

WOLFEBORO the Oldest Summer Resort in America

25 June 2016

Dear Applicant;

The Wolfeboro Zoning Board of Adjustment has scheduled a joint meeting on Tuesday, July 11, 2016 at 7 pm in the Wolfeboro Public Library Meeting Room relative to your submitted application. A site visit has been scheduled at approximately 6:05 pm the day of the meeting. It is advisable that either your or a representative be present at the time of the site visit to answer questions the Board may have. As a site visit is not a public hearing and no additional comments will be accepted,

If you have any questions, please feel free to contact me at 603-569-5970.

Sincerely,

Robin Kingston
Administrative Assistant

TOWN OF WOLFEBORO

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ZONING BOARD OF ADJUSTMENT

JUN 16 2016

ZONING
BOARD OF ADJUSTMENT

VARIANCE

Section II -- (To be prepared by Applicant)

Date: 6-16-16

NOTE: Additional information may be supplied on separate sheet if the space provided is not inadequate.

TO: Zoning Board of Adjustment
Town of Wolfeboro
P.O. Box 629
Wolfeboro, New Hampshire 03894-0629

1. Having been denied a permit by the Wolfeboro Building Official for the reason specified in Section I: NOTICE OF ZONING DECISION (Copy Attached). I hereby appeal the decision and request the Board of Adjustment to schedule a public hearing to consider this appeal.

2. I realize that providing the complete information requested below is the responsibility of the undersigned applicant and must be provided before a public hearing can be scheduled by the Board. I understand that it is my responsibility to present this appeal to the Board.

a. Type of Appeal: Variance X

b. Basis for Appeal is Article XIV, Section 175-92.1.A.(3) of the Wolfeboro Planning and Zoning Ordinance

c. Location of property in question: 29 CENTER STREET

d. Tax Map number: 218 Lot Number: 17 Sub Lot: 1

e. Zoning District: C1 CBD

f. Name of Applicant: ZIMMERMAN FAMILY LTD. PARTNERSHIP

g. Mailing Address of Applicant: P.O. BOX 300

TOWN OF WOLFEBORO

ZONING BOARD OF ADJUSTMENT

WOLFEBORO FALLS, NH 03896-0300

h. Phone Number of Applicant: 569-5818

i. E-mail Address: pz@pznh.net

j. Name of Company (if applicable): N/A

k. Legal Owner of the Property: SAME

l. Mailing Address of Property Owner: SAME

m. Proposed use of property or modification of existing use: RETAIL BUILDING W/ MULTIPLE TENANTS INCLUDING BANK W/ DRIVE THRU.

n. Directions to the property from the Wolfeboro Town Hall: TAKE MAIN ST SOUTH TO CENTER ST. TURN LEFT ON CENTER ST & FOLLOW CENTER ST. TO PINE ST. THE LOT IS IN THE N.E. CORNER OF CENTER ST. & PINE ST.

o. Are there any current Zoning Violations on the property other than those that may be listed on this Application? (If Yes, please fully describe below).

NONE TO MY KNOWLEDGE

I understand that I must appear in person at the public hearing scheduled by the Board of Adjustment to present this appeal. If I cannot appear in person, I will notify the Board in writing of the name of the individual I designate to represent me at the hearing. I also understand that it is my sole responsibility, as the applicant, to provide ALL of the information required to the Secretary of the Board of Adjustment before a hearing can be scheduled.

WHITE MOUNTAIN SURVEY & ENGINEERING, INC.

by: James G. Rice — 6-16-16

Applicant's Signature — Date

AGENT

TOWN OF WOLFEBORO

ZONING BOARD OF ADJUSTMENT

VARIANCE REQUEST:

The undersigned hereby requests a Variance from Article XIV Section 175-92.1.A(3) and asks that said terms of the Zoning Ordinance be waived to permit THE PROPERTY OWNER TO MAKE USE OF AN EXISTING FOUNDATION THAT LIES BETWEEN 27.0' AND 41.6' FROM THE FRONT BOUNDARY LINE WITH CENTER STREET VERSUS THE 15' MAXIMUM SETBACK REQUIRED PER ART XIV § 175-92.1.A.(3).

The undersigned alleges that the following circumstances exist to support this variance request.

1. The variance will not be contrary to the public interest because:

(SEE ATTACHED SHEET)

2. The spirit of the ordinance is observed because:

(SEE ATTACHED SHEET)

3. Substantial justice is done because:

(SEE ATTACHED SHEET)

4. The values of surrounding properties will not be diminished because:

(SEE ATTACHED SHEET)

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because:

The "Special Conditions" of this property that distinguish it from other properties in the area are as follows:

(SEE ATTACHED SHEET)

USE (A) or (B):

(A) Owing to the special conditions of the property, set forth above, that distinguishes it from other properties in the area:

(i) No fair and substantial relationship exists between the purposes of the ordinance applicable to the application and the specific application of that provision to the property because:

(ii) The proposed use is a reasonable one because:

OR, if the criteria is subparagraph (A) are NOT established, an unnecessary hardship will be deemed to exist, if and only if:

(B) Owing to the special conditions, set forth above, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it because:

TOWN OF WOLFEBORO

ZONING BOARD OF ADJUSTMENT

The undersigned acknowledge that to the best of their knowledge all the above information is true and correct. I understand that I must appear in person at the public hearing scheduled by the Board of Adjustment to present this appeal. If I cannot appear in person, I will notify the Board in writing of the name of the individual I designate to represent me at the hearing. I also understand that it is my sole responsibility, as the applicant, to provide the information required to the Secretary of the Board of Adjustment before a hearing can be scheduled.

WHITE MTN. SURVEY & ENGINEERING, INC.

Applicant's by: James F. Rice Date: 6/16/16
AGENT

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BOARD OF ADJUSTMENT

Variance Application – Tax Map 218, Lot 17-1
Zimmerman Family Ltd. Partnership
June 16, 2016

The undersigned alleges that the following circumstances exist to support this variance request.

1. **The variance will not be contrary to the public interest because:** As is noted in the "Board of Adjustment in New Hampshire, a Handbook for Local Officials dated November 2015", for the variance to be contrary to the public interest, "it must unduly and to a marked degree violate the basic zoning objectives of the zoning ordinance." To determine this, the Handbook suggests you ask yourself the question; "does the variance alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public?"

   The purpose of the Central Business District zone expressed in Section 175-88.7 states that ***"The Central Business District is designed to protect the character of the existing downtown, maintaining its pedestrian scale, while promoting a healthy mix of retail, professional office, medical and residential uses within the district and promoting mixed uses on individual properties. It is intended to enable the downtown to remain a vibrant, compact commercial center, serving the needs of community residents, the region and tourists as the economic center, and to promote a complementary and diverse mix of commercial and residential uses."***

   I submit that making use of an existing specialized foundation that was approved and installed for a prior project for a nearly identical building footprint will not alter the essential character of the neighborhood, nor will it jeopardize the health, safety or general welfare of the public. The soil conditions of this site are quite "plastic", meaning the more you work them, the less weight they support. The present foundation required the installation of 245 geo-piers to support the existing foundation. It is my position that removing the existing foundation, to relocate a new foundation for the purposes of complying with a more recently enacted setback requirement would not advance the purpose of the Zoning Ordinance nor would it unduly and to a marked degree, violate the basic zoning objectives of the Zoning Ordinance.

   Furthermore, removal of the existing foundation is a waste of the resources already expended and will result is the consumption of solid waste space for the disposal of the existing foundation and that disposal space is not infinite. Both of these actions are contrary to the general welfare of the public and therefore, retaining the existing foundation, it could be argued, is actually in the interest of the general public.

   For these reasons, the requested variance will not be contrary to the public interest.

2. **The spirit of the ordinance is observed because:** As is noted in the "Board of Adjustment in New Hampshire, a Handbook for Local Officials dated November

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ZONING
BOARD OF ADJUSTMENT

2015", one way to ascertain whether granting a variance would violate the basic zoning objectives is to examine whether it would alter the essential character of the locality. As demonstrated above, it is clear that this variance request would not alter the essential character of the locality by granting relief for this use.

Another approach this handbook suggests to determine whether granting the variance would violate the basic zoning objectives is to examine whether granting the variance would threaten the public health, safety, or welfare. Again as demonstrated above, it is clear that this granting this variance request would not threaten the public health, safety, or welfare of the citizens of Wolfeboro.

3. **Substantial justice is done because:** As the referenced handbook suggests, "perhaps the only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice." It is my position that the loss to this property owner, if they were required to abandon and remove this existing foundation and replace it with another conforming foundation is most definitely a greater loss the property owner than any potential gain to the general public. Therefore, by this measure, it is clear that granting of the variance would do substantial justice.

4. **The values of surrounding properties will not be diminished because:** A large component of a commercial property's value is generally determined by roadside visibility, and all of the abutting properties and the vast majority of the "surrounding properties" are commercial. By retaining and constructing upon the existing, previously approved and constructed foundation, you will create greater visibility for the surrounding properties as one travels along Center Street. This will, at a minimum, maintain the surrounding property values and therefore, the granting of the requested variance will diminish the surrounding property values.

5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because:**

The "Special Conditions" of this property that distinguish it from other properties in the area are as follows: This parcel of land was the subject of a detailed approval process that resulted in the granting of a site plan approval and the issuance of a building permit for a proposed bank with a drive-thru. Action was taken by the owner of the lot at that time to commence construction on the building, through the installation of 245 geo-piers which were capped with a foundation for the proposed structure. Unfortunately, the project never came to fruition and so the foundation was covered to prevent anyone from injuring themselves on the exposed foundation and anchor bolts. It is this "Special Condition" that distinguishes the property from other properties similarly zoned.

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BOARD OF ADJUSTMENT

USE (A) or (B):

(A) Owing to the special conditions of the property, set forth above, that distinguishes it from other properties in the area:

(i) No fair and substantial relationship exists between the purposes of the ordinance applicable to the application and the specific application of that provision to the property because:

As stated above, the purpose of the ordinance is to ... ***"maintain the character of the existing downtown maintaining its pedestrian scale, while promoting a healthy mix of retail, professional office, medical and residential uses within the district and promoting mixed uses on individual properties***." It is my opinion that there is no fair and substantial relationship that exists between the purpose of the ordinance applicable to this application and the specific application of that provision to the property because the provision we are requesting relief from is a dimensional relief and not a use relief. If the building were moved another 12 feet closer to the front setback, it wouldn't alter the character of the downtown or impact its pedestrian scale.

(ii) The proposed use is a reasonable one because:

The proposed use is an allowed use and, therefore, by definition is a reasonable one.

OR, if the criteria is subparagraph (A) are NOT established, an unnecessary hardship will be deemed to exist, if and only if:

(B) Owing to the special conditions, set forth above, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it because:

This section is not applicable to this request.

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BOARD OF ADJUSTMENT

APPOINTMENT OF AGENT

Zimmerman Family Ltd. Partnership authorizes White Mountain Survey & Engineering, Inc., to represent it before such boards and agencies in the Town of Wolfeboro and State of New Hampshire as may be necessary to complete applications on its behalf in connection with seeking approvals. White Mountain Survey & Engineering, Inc. is further authorized to sign applications as may be required to complete such representations on Zimmerman Family Ltd. Partnership's behalf.

Zimmerman Family Ltd. Partnership

Date: 5/18/16 By: _____

Paul Zimmerman, General Partner

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Zimmerman Family Limited Partnership
Abutters List
June 15, 2016

Tax Map/Lot	Owner of Record
218-017-001 (subject parcel)	Zimmerman Family Limited Partnership PO Box 300 Wolfeboro Falls, NH 03896
218-014	Cobalt Properties NH Corp. c/o Irving Oil Limited Att: Corporate Real Estate PO Box 868 Calais, ME 04619
218-015 218-017	P&D Zimmerman Family Limited Partnership Paul Zimmerman, General Partner PO Box 300 Wolfeboro Falls, NH 03896
218-098	Lucille C. Crawford Gary A. Brockney PO Box 814 Wolfeboro Falls, NH 03896
218-099	7 Pine Street, LLC 28 Dewitt Drive Alton, NH 03810
218-100	F & L Development, LLC 552 Adams Street Milton, MA 02186
218-111	Theodore Ian MacLean 82 Pulpit Rock Road Chester, NH 03036
Agent	White Mountain Survey & Engineering, Inc. PO Box 440 Ossipee, NH 03894-0440

TOWN OF WOLFEBORO

ZONING BOARD OF ADJUSTMENT

NOTICE OF ZONING DECISION OF CODES OFFICER

Section I -- (To be prepared by the Wolfeboro Building Official)

To: Name: Zimmerman Family L+D. Partnership

Address: P.O Box 300

Wolfeboro Falls, NH 03896-0300

Your request for a permit to (specify use): Use an existing foundation that does not meet current setbacks

on property located at: 29 Center Street.

is DENIED for the following reason: The foundation encroaches into the setbacks for C1-CBD district.

You have the right to appeal this decision under Article 175.187 of the Wolfeboro Planning and Zoning Ordinance after completing the Section II of this form.

Craig Ryll
Building Official

6/17/16
Date

WHITE MOUNTAIN SURVEY & ENGINEERING, INC.

1270 ROUTE 16, POST OFFICE BOX 440
OSSIPEE, NH 03864-0440
TELEPHONE (603) 539-4118 FACSIMILE (603) 539-7912
WEB ADDRESS: www.whitemountainsurvey.com

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ZONING
BOARD OF ADJUSTMENT

Via Hand Delivery

To: Town of Wolfeboro
Zoning Board

Date: June 16, 2016

Re: Zimmerman Family Limited Partnership
Variance Application
Tax Map 218, Lot 017-001

Enclosed, please find the following:

No. of Copies	Date	Description of Item
1	06/15/2016	Check for $150 for Application Fees
1	06/16/2016	Cover Letter
1	06/16/2016	Variance Application
1	5/18//2016	Appointment of Agent
1	06/15/2016	Abutters List
1 set		Envelopes Addressed to Each Abutter, Postage Affixed, Certified Slips Prepared and Attached
1	02/08/2016	Site Plan Parking Calculations (Prepared by TMS Architects) 11" x 17" copies
1	02/08/2016	Plaza Side Perspective and Birds View (Prepared by TMS Architects) 11" x 17" copies
1	02/17/2016	Perspective View Near Corner of Center Street + Pine Street (Prepared by TMS Architects) 11" x 17" copies
1	03/15/2016	First Floor Plan (Prepared by TMS Architects) 11" x 17" copies
1	03/15/2016	Exterior Elevations Sheet A2.0 (Prepared by TMS Architects) 11" x 17" copies
1	03/15/2016	Exterior Elevations Sheet A2.1 (Prepared by TMS Architects) 11" x 17" copies
1	03/15/2016	Foundation Plan Sheet A1.0 (Prepared by TMS Architects) 11" x 17" copies
1	Rev. 6/16/2016	Variance Application Plan prepared for P & D Zimmerman Family Ltd. Partnership 24" x 36"
1	02/08/2016	Site Plan Parking Calculations (Prepared by TMS Architects) 24" x 36"

1	02/08/2016	Plaza Side Perspective and Birds View (Prepared by TMS Architects) 24" x 36"
1	02/17/2016	Perspective View Near Corner of Center Street + Pine Street (Prepared by TMS Architects) 24" x 36"
1	03/15/2016	First Floor Plan (Prepared by TMS Architects) 24" x 36"
1	03/15/2016	Exterior Elevations Sheet A2.0 (Prepared by TMS Architects) 24" x 36"
1	03/15/2016	Exterior Elevations Sheet A2.1 (Prepared by TMS Architects) 24" x 36"
1	03/15/2016	Foundation Plan Sheet A1.0 (Prepared by TMS Architects) 24" x 36"
1	Rev. 6/16/2016	Variance Application Plan prepared for P & D Zimmerman Family Ltd. Partnership 24" x 36"

The above items have been submitted for your review and approval. Thank you.

Sincerely,
White Mountain Survey & Engineering, Inc.

James F. Rines, PE, LLS, CPESC
President

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ZONING BOARD OF ADJUSTMENT

Zimmerman Family Limited Partnership
Abutters List
June 15, 2016

Tax Map/Lot	Owner of Record	T	A
218-017-001 (subject parcel)	Zimmerman Family Limited Partnership PO Box 300 Wolfeboro Falls, NH 03896	✓	
218-014 PO Box 5830 St John, NB E2L 4K1	Cobalt Properties NH Corp. c/o Irving Oil Limited Att: Corporate Real Estate PO Box 868 Calais, ME 04619		
218-015 218-017	P&D Zimmerman Family Limited Partnership Paul Zimmerman, General Partner PO Box 300 Wolfeboro Falls, NH 03896	✓	✓
218-098	Lucille C. Crawford Gary A. Brockney PO Box 814 Wolfeboro Falls, NH 03896	✓	✓
218-099	7 Pine Street, LLC 28 Dewitt Drive Alton, NH 03810	✓	✓
218-100	F & L Development, LLC 552 Adams Street Milton, MA 02186	✓	✓
218-111	Theodore Ian MacLean 82 Pulpit Rock Road Chester, NH 03036	✓	✓
Agent	White Mountain Survey & Engineering, Inc. PO Box 440 Ossipee, NH 03894-0440		

WHITE MOUNTAIN SURVEY & ENGINEERING, INC.
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ZONING
BOARD OF ADJUSTMENT

June 16, 2016

Via Hand Delivery

Fred Tedeschi, Chairman
Zoning Board of Adjustment
Town of Wolfeboro
PO Box 629
Wolfeboro, NH 03894-0629

Re: Variance Application
29 Center Street – Wolfeboro, New Hampshire
Tax Map 218, Lot 17-1

Dear Chairman Tedeschi and Members of the Board:

Enclosed please find what we believe to be a completed application package for variance applications to allow the property owner the ability to make use of the existing foundation on this lot which was previously approved and installed, but now violates the front yard setback more recently adopted. Presently the existing foundation is no closer than 27 feet from the front boundary line and the current zoning requires structures to be no greater than 15 feet from the front boundary line.

Assuming we are successful in obtaining the requested use, we will of course move on to site plan approval with the Planning Board and obtaining any necessary state permits.

I look forward to presenting this application at your earliest convenience and remain

Sincerely,
White Mountain Survey & Engineering, Inc.

James F. Rines

James F. Rines, P.E., L.L.S., C.P.E.S.C.
President

ZONING BOARD OF ADJUSTMENT

Town of Wolfeboro

WOLFEBORO ZONING BOARD OF ADJUSTMENT

Planning Board Review TM# 218-17-1

Date; June 1, 2010 PB Case #200814
Applicant: Wolfeboro Clocktower, LLC
Site Plan Review – New Building - Recinded

Zoning Board of Adjustment Review

Date: July 7, 2008 ZBA Case #24-AV-08
Applicant: P & D Zimmerman Family LTD Partnership
Area Variance – to install an exterior elevator that encroaches into the side yard setback.
Date: July 6, 2015 ZBA Case #02-V-15
Applicant: The P & D Zimmerman Family LTD Partnership
Variances to allow for the construction of two self-storage building

9 Union Street Post Office Box 629 Wolfeboro, New Hampshire 03894
(603) 569-5970

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INCORPORATED 1770

Planning and Development

Town of Wolfeboro

MEMORANDUM

DATE: July 6, 2016
TO: Zoning Board of Adjustment
FROM: Robert Houseman, Director of Planning and Development

SUBJECT: **Variance**

INITIATED BY: P and D Zimmerman Family LTD Partnership
PRESENTED BY: James Rines, PE, White Mountain Survey and Engineering.

CASE #: **12-V-16**
TM #: **218-17**

DESCRIPTION: The applicant is seeking a variance from Sections 175-92.1 A (2) of the Wolfeboro Planning and Zoning Ordinance in order construct a building on the existing foundation, originally installed for the Great Waters Bank. The variance is required since the ordinance states:
"***(3) Building setback. The front wall of the principal building shall be located within 15 feet of the front property line."***

It should be noted that at the time of the bank approval the property was zoned C-2 Commercial and the building location complied with the setback requirements.

Below please find the applicable section of the Wolfeboro Zoning Ordinance.
§ 175-92.1. Other requirements.
[Added 3-9-2010 ATM by Art.3]
A. Development standards.
(1) Parking. No new parking shall be located on the portion of the lot between the front wall of the principal building and the front property line. This restriction shall apply to the full width of the lot. For corner lots, this

WOLFEBORO the Oldest Summer Resort in America

restriction shall apply to all frontages abutting a public street.
(2) Vehicular access. No new vehicular access or driveway shall be located or pass between the front wall of the principal building and the front property line.
(3) Building setback. The front wall of the principal building shall be located within 15 feet of the front property line.
(4) Pedestrian area. The area directly in front of the front wall of the building and extending to the front property line shall be maintained as a pedestrian area and shall be improved with appropriate amenities to link the building with the sidewalk and to encourage pedestrian and/or customer use of the space.
(5) Front entrance. The front wall of the principal building shall contain a front door providing access to the building for tenants, customers, or users of the building.
(6) Treatment of the front facade. The front wall of the principal building shall be designed to include windows appropriate to the proposed use. On the first floor, not less than 20% of the surface area of the front wall shall be windows. On upper floors, not less than 10% of the surface area shall be windows.

B. For additional requirements, see:
(1) Article XXII, Off-Street Parking and Loading Requirements.

If the Board, after its deliberations on the case, considers approving this application Staff would recommend that the ZBA consider the following conditions of approval:

1. All of the documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of this approval unless otherwise updated, revised, clarified in some manner, or superseded in full or in part. In the case of conflicting information between documents, the most recent documentation and this notice herein shall generally be determining.
2. The Notice of Decision shall be recorded at the Carroll County Registry of Deeds and the applicant shall pay all recording fees.
3. This Variance shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause.
4. This approval does not eliminate the need for Site Plan approval and this application, as submitted to the ZBA, does not satisfy all applicable requirements for Site Plan Review application.

I hope this information provides you with some assistance. Please call me if you have any questions or need additional information.