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**VILLAGE OF ESSEX JUNCTION
ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
April 15, 2008**

MEMBERS PRESENT: Tom Weaver (Chairman); Ron Gauthier, Robert Walsh, Mary Gauthier, Bruce Murdough.

ADMINISTRATION: Jeff Arango, Development Director.

1. CALL TO ORDER and AUDIENCE FOR VISITORS

Chairman Tom Weaver called the meeting to order at 7 p.m. There were no comments from the public.

2. ADDITIONS/AMENDMENTS TO AGENDA

None.

3. MINUTES

January 15, 2008

MOTION by Mary Gauthier, SECOND by Robert Walsh, to approve the 1/15/08 with the following corrections:

Page 1, Members Present – add “Bruce Murdough”;

Page 1, Item #4, application by Essex Junction Vocational Corp. – add the statement: “Bruce Murdough recused himself from the Zoning Board.”

VOTING: 5 ayes; motion carried

4. PUBLIC HEARING

The function of the Zoning Board as a quasi-judicial board and the hearing procedure were explained. Individuals to give testimony before the Board were sworn in.

Conditional Use application for an accessory apartment in an unattached garage at 5 Maple Street Extension in the R-1 District by Richard Giard, agent for Scott Jeter and Nicole Giard-Jeter, owners

Richard Giard and Scott Jeter appeared on behalf of the application.

STAFF REPORT

Jeff Arango explained the proposal for a 1,021 s.f. one bedroom accessory apartment in a new unattached garage at 5 Maple Street Extension. Section 721.B.7 indicates an accessory apartment in an unattached structure needs conditional use and site plan approval. The application meets the R-1 zoning requirements. The garage will be 40' from the nearest property line. The accessory apartment will occupy 22.6% of the floor space in the principal dwelling (maximum allowance is 30%). There will be a garage, kitchen and living room on the first floor. The bedroom will occupy the second floor. There will be two dormers providing a residential appearance. The Vermont Department of Public Safety Fire Code must be met by the applicant. There are three parking spaces. The applicant is requesting a waiver from paving the driveway that extends from the existing paved driveway to the new unattached structure.

APPLICANT COMMENTS

Richard Giard stated the siding on the structure will be vinyl and as closely as possible match the color of the existing structure (beige tone). A standard roof rather than a hip roof will be built because that construction is more appropriate for the building. Square footage will not change. The dormers will remain. A gravel driveway is appropriate for the property to access the garage. The gravel will not extend into the roadway. Gravel will allow drainage to existing fruit trees on the property.

Mary Gauthier asked if there is an existing garage with the existing house. The applicant confirmed this. Ms. Gauthier questioned how the proposal is different from building another house on the property. Jeff Arango explained the size of the living unit is one reason. State law allows accessory apartments. If the structure is new and unattached with an apartment then conditional use approval is needed. The accessory apartment will be one bedroom with a maximum of two people living there. The main house must be owner occupied. These same conditions do not apply to a duplex.

Ron Gauthier suggested contacting the power company about the utility line right-of-way prior to construction of the garage.

PUBLIC COMMENT

None.

MOTION by Mary Gauthier, SECOND by Ron Gauthier, to close the public portion of the conditional use application for an accessory apartment at 5 Maple Street Extension. VOTING: 5 ayes; motion carried.

DELIBERATION/DECISION

Conditional Use, Accessory Apartment, 5 Maple Street Extension, Giard/Jeter

FINDINGS OF FACT:

1. The owners of record are Scott Jeter and Nicole Giard-Jeter.
2. The applicant is proposing a 1,021 s.f. one bedroom accessory apartment to be located above a new unattached garage.

3. The total floor area of the existing single family dwelling (3,500 s.f.) and the proposed accessory apartment (1,021 s.f.) is 4,521 s.f.
4. The proposed 1,021 s.f. accessory apartment is 22.6% of the principal dwelling and complies with the maximum size limitation of 30% of the principal dwelling floor space.
5. The site plan shows sufficient parking for three cars.
6. The existing driveway is paved and the applicant is requesting a waiver for a gravel driveway for the accessory apartment.
7. The proposed driveway is far enough from the street that gravel will not migrate into the street.
8. The proposed addition will bring total lot coverage on the subject property to 14.92%.
9. The addition will comply with the setback requirements in the R-1 District.
10. The principal dwelling will be owner occupied and the accessory apartment will be inhabited by no more than two individuals.
11. There were no public comments for or against the application.

CONCLUSION:

1. Findings #1-#11 satisfy the conditional use criteria of Section 502.C(a-i).

MOTION by Ron Gauthier, SECOND by Robert Walsh, based on the Findings and Conclusion to grant conditional use approval to Richard Giard for an accessory apartment at 5 Maple Street Extension with the following conditions:

1. **The accessory apartment shall be limited to no more than two individuals and the principal dwelling shall be owner occupied.**
2. **There shall be no parking on green spaces.**
3. **The garage and accessory apartment shall comply with the Vermont Fire Safety Prevention Code.**
4. **Construction of the gravel portion of the driveway is permitted.**

VOTING: 5 ayes; motion carried.

Conditional Use application for a daycare facility at 10 Cascade Street in the R-2 District by Pamela Richland, owner

Pamela Richland and Owen Jenkins appeared on behalf of the application. Bruce Murdough recused himself from the Zoning Board.

STAFF REPORT

STAFF REPORT

Jeff Arango explained the proposal for a daycare at 10 Cascade Street in the R-2 District. There will be a total of 10 children at the daycare, including up to two newborns, four toddlers (18 months to three years old) and/or preschoolers (three years and older) and four school aged children coming to the house after school. The daycare will operate Monday through Friday from 7 a.m. to 5:30 p.m. Children will be dropped off in the driveway or parents can park on Cascade Street. There is an existing in-ground swimming pool that will be filled in and the space used for an outdoor play area with supervision. Other outside areas will be used for outdoor play until the pool is filled in. The applicant is providing 524.75 s.f. of play space inside the house and 3,040 s.f. of outdoor play area in the backyard. The outside play area must be fenced. The fence must be at least 48" high. There is an existing chain link fence on the property. The applicant needs to provide information on number of staff, parking, and the timeline for filling in the pool. Regarding traffic, according to the ITE Manual traffic for a daycare of this size will generate .82 trips in the AM peak hour per client and .85 trips in the PM peak hour per client or 4.92 trips AM peak and 8.5 trips PM peak. There will not be a significant impact on traffic on surrounding streets.

APPLICANT COMMENTS

Owen Jenkins, attorney representing Pamela Richland, pointed out state statute supports daycare facilities. On April 11, 2008, Pamela Richland received a homecare registration certificate from the state (copies of the Family Child Care Home Registration Certificate #25224 were provided to the Zoning Board). The certification was effective March 30, 2008. State law says Ms. Richland can care for her family and an unlimited number of children, and two other families with an unlimited number of children without regulation by the state. Ms. Richland indicates she will have up to 10 children in her daycare. The state directed the pool to be filled in by July, 2008 (which will be done), but the daycare can begin operation immediately. The children can use Cascade Park for outdoor play as well as other areas of the yard. The children will only be in the backyard for a few hours at a time. There will be inside activities and naptime for the newborns and older children also. The property is in the R-2 District which is zoned high density, single family houses. Accessory uses are allowed. There will be no change in lighting or the curb cut. The fence is 48" high around the back of the property. The fence was installed by the previous owner as a requirement for the pool. Storm water drainage (Section 713) is not an issue with the application. There will be one staff member, Pamela Richland. The state will review the facility and use on an annual basis and if in compliance the certificate will be renewed. There will also be two unannounced inspections per year by the state to ensure compliance. Regarding noise (Section 718), there has been a pool in the backyard with a pump and light before Ms. Richland purchased the property. Pool use does generate noise, but the pool will be filled in and associated activities will no longer occur. Ms. Richland has five of her own children, three of which still live at home (two are grown and moved out). Mr. Jenkins reviewed the existing, mature screening around the property (pine and cedar trees). There is 140' on the north boundary line with 45' in common with 47 Greenwood Ave. (Kerner). The Kerners installed a six foot high fence on approximately 40' of their property line abutting Ms. Richland's backyard. The remainder of the back boundary is screened with mature cedar trees. The Kerners built a three or four season room on the back of their house that overlooks the Richland property. In order to screen Ms. Richland's yard from view trees over 30' high would have to be planted along the boundary line, stated Mr. Jenkins. There are five or six 35' tall pine trees along the western fence line off Cascade Street. Regarding traffic, Cascade Street is busy and built to standard so the road can handle additional traffic.

Tom Weaver asked about the 40' open area along the boundary line of the Richland and Kerner properties. It was confirmed there is a chain link fence on the Richland property and a stockade fence with lattice work on top on the Kerner property. Tom Weaver asked about attending the orientation session as required by the state. Ms. Richland said she has to reschedule the orientation because the date conflicts with the scheduled review of her application by the Village Planning Commission. Mr. Weaver asked about the number of children at the

daycare. Ms. Richland stated there will be six full time children during the day (newborns, toddlers, preschoolers) and four after-school children. Hours of operation are 7 a.m. to 5:30 p.m. Ms. Richland is the only staff member. Outside play time in the backyard is scheduled 10 a.m. to 11 a.m. Also, play time outside in the yard or at the park across the street or in the house will occur Noon to 1 p.m. Free play time indoor/outside at the house will occur 4:30 p.m. to 5:30 p.m. Mr. Weaver asked if the children will be supervised while outside. Ms. Richland stated per state regulations she could be inside changing a diaper and still watch the children outside, but most likely she will be outside with the children.

Owen Jenkins referred to noise decibels, noting 70 decibels is normal talking face-to-face. The children will be about 40' away from the neighbors' houses so noise will likely not be an issue. There are approximately 12 licensed daycare facilities in the village, nearby facilities include one at 9 South Street Lane and one on South Hill Drive in the village.

There was discussion of the pool. Ms. Richland stated the pool has a mesh safety cover to prevent anyone from falling into deep water. There is a triple lock on the terrace door for additional security and there will be a padlock on the gate. The children will not be in the backyard while the pool is there.

PUBLIC COMMENT

Brian Cantrell, 45 Greenwood Ave., stated the existing hedges do screen the yard, but do not stop the noise. Mr. Cantrell said his wife is a day sleeper due to her job in Hanover, New Hampshire. Noise from the Richland backyard has been excessive on several occasions, especially with the pool but at times noise from inside the Richland house can be heard outside.

Al Kerner, 47 Greenwood Ave., asked about the difference between the Zoning Board and the Planning Commission. Tom Weaver urged Mr. Kerner to read the ordinances for a better understanding of the function of the boards. Essentially the Planning Commission writes the zoning ordinances and the Zoning Board enforces them. Mr. Kerner expressed concern about noise from the Richland residence prior to the daycare. The noise tends to be excessive and loud, screaming at times. Mr. Kerner also mentioned the view from their backyard of the Richland yard, and contended with the daycare the noise and view will be worse. Tom Weaver pointed out the Zoning Board must focus on issues relative to the regulations for a daycare. Mr. Kerner stated the view from the back of their house will be of the backyard play area once the pool is filled in. There is very little space between the two lots (about 25' from the back porch to the Richland yard where the play area is proposed). Mr. Kerner felt the daycare and play area will cause problems and impact the quality of life at their house and the appraised value of their property. Their three-season room overlooks the Richland backyard. With children, the noise level and general appearance of the property will be negative for us, stated Mr. Kerner. Tom Weaver asked how the daycare will impact the view. Mr. Kerner stated it is not known what will be in the backyard (playground apparatus, for example) and if it will be well kept and taken care of. Past experience is the Richland house is not well cared for.

Denise Kerner, 47 Greenwood Ave., stated their house is a raised ranch style with the kitchen, bedroom, dining room, and porch on the second level. The cedar trees do not buffer or screen the view of the Richland property. Ms. Kerner asked the Zoning Board to consider character of the neighborhood and quality of life issues. Ms. Kerner asked about children in the summer and on vacation/snow days. Tom Weaver assured the state reviews the proposal and related scenarios as part of the certification process.

John Dolan, 2 Cascade Court (corner lot across from the Richland property), concurred with comments by the neighbors.

Owen Jenkins addressed the noise issue, stating there will be no change to the noise level. He stated there is no

Owen Jenkins addressed the view issue, stressing there will be no change to the view. As of now there is no playground apparatus in the yard, but there could be at some point in time. There is also the public park across the street that will be used by the children. The view of Ms. Richland's yard from the Kerner property is a function of the topography and the fact the Kerners built a raised ranch style house and three-season room on the second level extending toward the Richland property. The Kerners will have the same view with approval of the daycare as currently exists. Mr. Kerner interjected his point is the view now is not the greatest; the quality and appearance of the backyard is not good and will get worse with the daycare. Pam Richland stated she is legally choosing to have 10 children at the daycare (and be licensed by the state), but could have six children without having to register with the state or village or with the neighbors. The extra four children will provide needed additional income. Ms. Richland has an injury that does not allow her to work as an LPN. Tom Weaver clarified the Zoning Board considers the application based on facts and presented material relative to the regulations.

There were no further comments.

MOTION by Ron Gauthier, SECOND by Robert Walsh, to close the public portion of the conditional use application for a daycare at 10 Cascade Street. VOTING: 4 ayes; motion carried.

DELIBERATION/DECISION

Conditional Use, Daycare, 10 Cascade Street, Richland

FINDINGS OF FACT:

1. The subject property at 10 Cascade Street is 12,625 s.f. and located in the Residential-2 District.
2. The owner of record is Pamela Richland.
3. The applicant is requesting approval for a daycare facility to serve up to 10 children.
4. The driveway has parking for four vehicles and on-street parking is available on Cascade Street.
5. There will be one staff member.
6. The daycare facility will operate Monday through Friday from 7 a.m. to 5:30 p.m. with six full time children and four part-time children.
7. There is a 3,040 s.f. fenced outdoor play space provided in the backyard.
8. There is 524.75 s.f. of inside play space provided in the house.
9. Based on ITE numbers the daycare facility will generate 4.92 trips in the AM peak hour and 8.5 trips in the PM peak hour.
10. No changes to the building are proposed.
11. A letter was received at the Zoning Board meeting on 4/15/08 from the residents at 47 Greenwood Avenue (Kerner), 2 Cascade Court (Dolan), and 45 Greenwood Avenue (Cantrell) expressing concern about noise, the view, and traffic from the proposed daycare.

12. The pool will be removed by July 31, 2008 as required by the state permit.
13. State certification for the daycare was secured by the applicant.
14. The northern property line is predominantly screened with mature cedar trees with a 40% section having a stockade fence.
15. The pool is being replaced by a play area and there is an existing four foot high chain link fence around the backyard.
16. Outside play time in the outside play area in the backyard or at Cascade Park will occur 10 a.m. – 11 a.m., Noon to 1 p.m., and 4:30 p.m. – 5:30 p.m.
17. The applicant stated a daycare with up to six children is an allowable use by state statute with no further review required.
18. The application complies with daycare facility standards.
19. The applicant stated there is a safety mesh cover on the pool and the children will not be using the backyard until the pool is removed.
20. There was considerable comment from abutting property owners concerning noise, views, and traffic from the proposal.

CONCLUSION:

1. Findings #1-#20 satisfy the conditional use criteria of Section 502.C(a-i).

MOTION by Mary Gauthier, SECOND by Ron Gauthier, based on the Findings and Conclusion to grant conditional use approval to Pamela Richland for a daycare facility at 10 Cascade Street with the condition the backyard not be used as a play area until the pool is removed. VOTING: 4 ayes; motion carried.

Bruce Murdough returned to the Zoning Board.

5. OTHER BUSINESS

None.

6. ADJOURNMENT

MOTION by Bruce Murdough, SECOND by Ron Gauthier, to adjourn the meeting. VOTING: 5 ayes; motion carried.

The meeting was adjourned at 9 p.m.

RScty: M.E. Riordan