

**VILLAGE OF ESSEX JUNCTION
ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
January 20, 2009**

MEMBERS PRESENT: Tom Weaver (Chairman); Ron Gauthier, Jim Moody, Mary Gauthier. (Bruce Murdough was absent.)
ADMINISTRATION: Robin Pierce, 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

Add under "Other Business": Acceptance of withdraw of the application by Tanner Palmer for 173 Pearl Street.

3. MINUTES

September 16, 2008

MOTION by Ron Gauthier, SECOND by Mary Gauthier, to approve the 9/16/08 as written. VOTING: 4 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.

Appeal by Owen Jenkins, 22 Prospect Street, of the Administrative Officer's decision relative to issuance of a zoning permit for parking lot pole lights at Fleming School, 21 Prospect Street, in the R-2 District

Owen Jenkins appeared on behalf of the appeal. Tom Weaver clarified the hearing is to determine if the appeal was filed in a timely manner. The hearing is not on the appeal itself. Owen Jenkins is the appellant. The Village Development Director (Robin Pierce) is not staff support for the Zoning Board for the appeal. Chairman Weaver said Zoning Board member, Bruce Murdough, recused himself from the hearing and decided not to attend the meeting.

STAFF COMMENTS

Robin Pierce reviewed the chronology of events per his record as follows:

- October 30, 2008 the permit that is being appealed was issued.
- The appeal deadline for the permit was November 14, 2008.
- Staff has been directed to accept only complete applications.
- On November 13, 2008, Owen Jenkins submitted a letter in appeal of the permit. The letter was not the official village appeal form.
- There is a fee for appeals. Mr. Jenkins did not submit payment of the fee when he submitted his letter on 11/13/08.
- There was correspondence with Owen Jenkins on this matter.

- The Village Attorney advised the appeal must be denied because receipt of the village form occurred beyond the appeal period. Correspondence was sent to Mr. Jenkins to this regard.
- The applicant did some site work within the appeal period at their own risk.
- The appellant completed the necessary paperwork by November 19, 2008 which was five days beyond the appeal deadline.
- During the process there was discussion between Robin Pierce and Owen Jenkins about scheduling a meeting. Mr. Jenkins indicated he would not attend the meeting unless the letter of denial is rescinded.

APPELLANT COMMENTS

Owen Jenkins said he tried to avoid making the matter an issue before the Zoning Board and having to subsequently go before the Planning Commission, and that is why a meeting was scheduled with Robin Pierce. Mr. Jenkins felt there was reckless disregard for his rights as a resident and interested person with the application. Mr. Jenkins said he was appalled by the action of Robin Pierce and the actions taken by Bruce Murdough who works for the school district. Mr. Jenkins recalled his past employment with the school district as a teacher as well as operating the hockey rink, giving Bruce Murdough is first job there. Mr. Jenkins said he has lived across from the school on Prospect Street since 1982. The school has been a good neighbor as has the school district. Mr. Jenkins disclosed his wife works for the school district. Mr. Jenkins expressed hope there will be some changes within the Planning and Zoning Office. These feelings have been made known to Robin Pierce, Bruce Murdough, and Dave Barra, but they have been disregarded.

Mr. Jenkins provided the Zoning Board with language from state statute Title 24, Chapter 117, Sections 4465 and 4466 relative to appeals of zoning and planning decisions. Mr. Jenkins recalled the renovations at Fleming School in 1995 that he closely followed due to potential impact on his house which was built in the late 1800s. Mr. Jenkins felt the renovations for the schools in the district were necessary and done well. Regarding the appeal, Mr. Jenkins provided the following time line of events:

- On November 12, 2008 Mr. Jenkins witnessed large concrete structures (eight to 10øtall) on the western portion of the original parking lot at Fleming School while on his way to work and immediately contacted Robin Pierce. Mr. Pierce showed the permit that was issued on October 30, 2008 which was approved administratively. Mr. Pierce indicated at that time that the lights met the lighting standards in the Land Development Code and the parking lot is an existing structure. Mr. Jenkins countered that the area is not a parking lot and has not been used as such since the 1995 renovations.
- Mr. Jenkins said he could not find the permit on display at Fleming School or on trees or telephone poles in the project area. Mr. Jenkins said he knew of the 15 day appeal period, but felt inadequate notice was given. Title 24, Chapter 117, Section 4449(a)(3)(b) of state statute was cited regarding posting a permit within view from the public right-of-way. Mr. Jenkins said he did not want to argue about the posting of the permit in public view of the right-of-way and wanted to submit his appeal within the time frame.

- Time was taken by Mr. Jenkins from work to review state statute and the Land Development Code to ensure the Notice of Appeal procedure was followed correctly.
- The appeal letter was drafted.
- Mr. Jenkins said he reviewed the record at the Planning and Zoning Office, reviewed the Land Development Code, and hand delivered his notice of appeal letter on November 13, 2008 to the Village Clerk.
- On November 13, 2008, the Village Clerk gave the correspondence to Robin Pierce who read the appeal right there and made no comment. Mr. Jenkins said he then left the Village Office.
- Mr. Jenkins said he did not see in his review of the Land Development Code that there was a fee for appeals.
- An email from Mr. Jenkins to Robin Pierce was sent at 11:54 a.m. on November 13, 2008 asking about the application fee.
- At 8:41 a.m. on November 14, 2008 Robin Pierce replied by email that the fee for an appeal is \$108.
- Mr. Jenkins said he paid the amount by check in person on November 14, 2008. Susan Hill handled the transaction.

Mr. Jenkins reviewed state requirements regarding notice of appeal. Ch. 117, Section 4465 says an interested party can file an appeal. Section 4466 outlines six legal requirements in the Notice of Appeal (essentially the written appeal must include the appellant's name and address, a brief description of the property under appeal, reference to applicable regulations, relief requested, and justification for relief). Mr. Jenkins pointed out he met all six requirements. The relief requested considers the approvals for the 1995 renovations which show a tennis court and basketball court that have been since converted to a parking lot. Lighting is important as is the green space, tennis court, and basketball court.

Mr. Jenkins stated Section 1702 of the Land Development Code is applicable, noting the language in Section 1702(b) 6 Notice of Appeal is virtually identical to state law. The written notice of appeal must identify the decision or action under appeal which was done, reiterated Mr. Jenkins. The notice of appeal which met state law and the Land Development Code requirements was given to Robin Pierce on 11/13/08. An email about the fee was sent. Mr. Pierce emailed a response on November 14, 2008, the final day of the appeal period. A check for the fee was hand delivered on that day. Mr. Jenkins pointed out he had two occurrences of contact with Mr. Pierce about the appeal and Mr. Pierce did not make comment regarding any deficiencies with the submittals (i.e. the notice of appeal letter which actually says "Notice of Appeal" in the heading or that a fee was required). According to Section 1601 of the Land Development Code the Trustees can establish and revise fees for applications for permits. The section does not mention fees for appeals. Mr. Jenkins contended Mr. Pierce had an obligation to inform him of the required fee.

Mr. Jenkins said he checked the school for display of the permit after November 14, 2008 and contacted the Village Office to ask if the school district was aware of the appeal. Mr.

Jenkins said he was concerned about repercussions toward his wife who works for the school district. Terry Hass in the Planning and Zoning Office said the permittee is not notified until an application to the Zoning Board has been filed. Mr. Jenkins said he clarified with Ms. Hass that he filed a notice of appeal of the permit issued to the school district illegally because the project did not go through site plan approval. Ms. Hass indicated an application needs to be filled out which can be done at any time. On November 19, 2008 Mr. Jenkins said he went into the Village Office to complete the application only to find that the application does not apply and is confusing to the situation. Mr. Jenkins said he referenced his notice of appeal letter on the application. Subsequently there was discussion with Robin Pierce, Bruce Murdough, and Dave Barra. Mr. Jenkins said he suggested a meeting at the school to resolve the matter before it becomes a full blown contest. Mr. Jenkins said he offered the meeting out of a sense to be fair and to avoid litigation and being before the Zoning Board. A meeting was scheduled. On November 25, 2008, Mr. Jenkins said he met with Robin Pierce to discuss the planned meeting. At that time Robin Pierce said a letter of denial of the appeal was sent to Mr. Jenkins on November 24, 2008 due to the appeal not being filed in a timely fashion. Mr. Jenkins said he tried very hard to be a facilitator over the matter, but village staff was not cooperative. The Village Attorney, Dave Barra, supported Robin Pierce's actions. Mr. Jenkins contended it is a mockery of the process to say the notice of appeal letter he submitted was not filed on time and to have a hearing before the Zoning Board, involve the Village Attorney, and incur those associated expenses. In addition there has been a pattern with the school district to not follow the process properly. Mr. Jenkins requested the Zoning Board reject the decision by Village Development Director, Robin Pierce, regarding the notice of appeal filed in an untimely manner and confirm that state law and the Land Development Code requirements were followed with the appeal. Mr. Jenkins asked that the appeal regarding pole lighting in the school's project be granted because the application should have been properly noticed and the project should have gone through site plan review, not approved administratively.

Ron Gauthier pointed out in the most current version of the Land Development Code, dated December 2007, the fee schedule mentions applications being complete. Mr. Gauthier asked when the tennis court and basketball court became a parking lot at the school. Mr. Jenkins said the conversion occurred over a period of time. The area was a parking lot about five or six years ago. Mr. Jenkins added it is a pattern by the school district. The tennis court and recreation area were used by the neighborhood.

Jim Moody stated staff should have informed Mr. Jenkins specifically that there is a fee per reference to the section in the Code.

Tom Weaver asked if the fee was paid on November 14, 2008. Mr. Jenkins stated he paid the fee the morning of November 14, 2008 after receiving the email from Robin Pierce. Mr. Weaver showed the notice of appeal document submitted by Owen Jenkins (titled "Notice of Appeal"), dated stamped by the Village Office "received November 13, 2008". Tom Weaver commented the appellant could not see the permit displayed on the premises, but knew of the permit's existence. Mr. Weaver asked where the permit was located when it was seen on November 17, 2008. Mr. Jenkins said the permit was posted

in a window of the school facing Summit Street, a window by one of the entrances. The permit was an 8.5x 11 piece of paper and facing to the east. The permit was not conspicuous. The door to the school is approximately 80' from the public right-of-way. Mr. Jenkins said he suggested to Robin Pierce that the permit be laminated and of a color that will stand out. The permit should be posted in an obvious place. Robin Pierce noted village permits are on colored paper. It was thought the school district's permit may have been bleached out by the sun, but upon investigation it was confirmed the permit was a photocopy. Mr. Jenkins said he urged communicating with the applicant and the appellant to avoid problems later. Also, the school district started construction before the appeal period ended. Construction was started when the permit was issued. It was apparent, continued Mr. Jenkins, that the school district was going to do the project no matter what. The school district violated the process. Mr. Jenkins questioned why the Village Administration has not brought enforcement action against the school district for violating state statutes, the Land Development Code, and the terms of the permit by substantially completing the project before the appeal period ended.

It was pointed out the Land Development Code in the fees and permit section indicates a fee for appeals. Applications and related information are posted on the village website as well. Tom Weaver asked if this information was pointed out to the appellant. Robin Pierce said he did not talk to Mr. Jenkins about the information, but believes that the office staff did inform him of it, but it was after the fact.

Mary Gauthier asked the definition of "application". Owen Jenkins said on November 12, 2008 he went through the Land Development Code and could not find a definition. There is a difference noted between notice of appeal and application for permit though. Robin Pierce stated staff is trying to standardize applications to avoid people submitting their own forms. Tom Weaver questioned why staff did not direct Mr. Jenkins to the village form, especially once Mr. Jenkins submitted his distinct "Notice of Appeal" letter. Mr. Pierce said he was in contact with the Village Attorney for a legal opinion before the letter of denial was sent to the appellant. Mr. Jenkins confirmed Mr. Pierce did rely on the Village Attorney's advice, but the advice was poor.

Mary Gauthier asked if the application was complete except for the form. The website says it is village policy to submit the form, but there is question whether people are directed to the website because the Land Development Code does not direct people there. Ms. Gauthier observed no one would know about the village's application form being different from the "written application" indicated in the Land Development Code unless told by staff. With the Jenkins appeal, continued Ms. Gauthier, the fee was paid on time by the appellant and the notice of appeal was received on time. The appellant's notice of appeal was considered incomplete because it was not the village's form for appeal and this particular form was not complete and submitted by the deadline.

Tom Weaver asked if any staff member told Mr. Jenkins about the appeal form prior to November 14, 2008. Mr. Jenkins said he was told on November 17, 2008 about the form when he asked if the school district was aware an appeal had been filed on November 13, 2008, and Robin Pierce on Dave Barra's advice felt the appeal was too late at that point.

Jim Moody questioned why Robin Pierce did not clarify the matter with Owen Jenkins at the time the email was received regarding required forms, and urged in the future to communicate this information. Owen Jenkins noted there were many emails between parties, and if the permit had been properly displayed by the school district doing an appeal at the 11th hour would have been avoided.

PUBLIC COMMENT

Cristin Gilden, 20 Prospect Street, testified she did not see a permit on the school building. At her past residence on Spear Street, residents were given notice of anything being done around them and it was assumed the same practice occurred in the village. Ms. Gilden said she was concerned when she saw the concrete blocks at the school but did not see a permit posted, and was happy to receive the notice regarding the appeal for the opportunity to express concern about the project. Ms. Gilden said she prefers to have knowledge about what is happening at the school and would prefer not to have the pole lights. Ms. Gilden spoke in support of having customer service from the village staff.

There were no further comments.

MOTION by Mary Gauthier, SECOND by Ron Gauthier, to close the public portion of the appeal hearing by Owen Jenkins. VOTING: 4 ayes; motion carried.

DELIBERATION/DECISION

Appeal of Administrative Officer's Decision, Zoning Permit at Fleming School, Parking Lot Pole Lights, Owen Jenkins

It was again clarified that the original appeal is being disputed based on adequate display of the permit. If the Zoning Board upholds appeal of the denial of the original appeal of the permit, then the original appeal will move forward.

FINDINGS OF FACT:

1. Zoning permit #167 was issued on 10/30/08 for 21 Prospect Street. The permit was issued to the Essex Junction School District.
2. A permit is not valid until 15 days from the date of issue. The last date of appeal for permit #167 was 11/14/08.
3. The appellant is Owen Jenkins owner of 22 Prospect Street.
4. The appellant testified he contacted Robin Pierce regarding permit #167 on November 12, 2008.
5. The appellant hand delivered a written notice of appeal to the Planning and Zoning Office on November 13, 2008.
6. The appellant paid the appeal fee on November 14, 2008.
7. The appellant was told on November 17, 2008 that his application was incomplete because the village appeal form was not filled out.
8. Section 1702(b) of the Land Development Code does not reference the village appeal form or fee.

9. On November 24, 2008 the appeal was denied by the Village Development Director because all the required documentation was not complete and submitted prior to the end of the 15 day appeal period.
10. The fee schedule, Appendix B in the Land Development Code, dated 12/12/07, sets the fee for appeal of an administrative determination at \$100.

CONCLUSIONS:

1. Based on the notice of appeal letter submitted by the appellant and payment of the fee on the last day of the appeal period, the appeal was done in a timely manner and meets the requirements.

MOTION by Ron Gauthier, SECOND by Mary Gauthier, based on the Findings and Conclusion to affirm the appeal of the Administrative Officer's decision regarding the issuance of a zoning permit for parking lot pole lights at Fleming School, 21 Prospect Street. VOTING: 4 ayes; motion carried.

5. OTHER BUSINESS

Tanner Palmer Application for 173 Pearl Street

MOTION by Ron Gauthier, SECOND by Jim Moody, to accept withdrawal of the application for 173 Pearl Street by Tanner Palmer which was tabled at the 9/16/08 Zoning Board meeting. VOTING: 4 ayes; motion carried.

Photo for Annual Report

Robin Pierce took a picture of the Zoning Board for the Annual Report.

6. ADJOURNMENT

MOTION by Ron Gauthier, SECOND by Mary Gauthier, to adjourn the meeting. VOTING: 4 ayes; motion carried.

The meeting was adjourned at 8:40 p.m.

RScty: M.E. Riordan