

**VILLAGE OF ESSEX JUNCTION
ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
February 17, 2009**

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

There were no changes to the agenda.

3. MINUTES

January 20, 2009

MOTION by Ron Gauthier, SECOND by Mary Gauthier, to approve the 1/20/09 with the following corrections/clarifications:

Page 1, Jenkins Appeal, Staff Comments, 5th bullet – rewrite to read: “There is a fee for appeals. Mr. Jenkins submitted payment of the fee on 11/14/08.”;
Page 2, Jenkins Appeal, Appellant Comments, 1st paragraph, 4th sentence – change “...is first job...” to “...his first job...”; and in the 9th sentence – change “These feelings...” to “Mr. Jenkins said his feelings...”;
Page 4, Jenkins Appeal, Appellant Comments, 2nd sentence – change “Terry Hass in the Planning and Zoning Office said the permittee...” to “Mr. Jenkins stated that Terry Hass of the Planning and Zoning Office told him that the permittee...”; and in the 5th sentence – change to read: “On November 19, 2008 Mr. Jenkins said he went into the Village Office to complete the appeal application only to find that the application form does not apply and is confusing to the situation.”; and in the paragraph beginning “Tom Weaver asked if the fee was paid...”, 3rd sentence – change to read: “Tom Weaver commented that perhaps the appellant could not see the permit..”

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.

Appeal of the Administrative Officer decision regarding the issuance of a zoning permit to pave and stripe parking area at 39 Lincoln Street in the MF-MU2 District by Bruce Douglas

Tom Weaver clarified the Zoning Board will not alter a Planning Commission decision. The appeal is of the right of the Administrative Officer to make the decision that was

made. Deeded property rights of the Howard Center and Bruce Douglas are a civil matter and not the jurisdiction of the Zoning Board so testimony in that regard will not be heard.

STAFF COMMENTS

Robin Pierce, Administrative Officer, reported the appeal is of a modification to a permit issued for 39 Lincoln Street (Howard Center) subsequent to Planning Commission approval. Mr. Pierce said he met with Mr. Douglas and representatives from the Howard Center to see if the plan that was approved by the Planning Commission could be modified to the satisfaction of both parties (Bruce Douglas and the Howard Center). The modification was administratively approved (per Section 502.11.b.8 of the Land Development Code) and that is what is being appealed by the appellant, Bruce Douglas.

APPELLANT COMMENTS

Bruce Douglas referred to his letter, dated 2/13/09, which clearly states his position on the matter. Mr. Douglas said he has nothing further to add to what is in his letter. Mr. Douglas clarified his appeal is not questioning the Administrative Officer's ability, but is questioning the decision which should not be before the Village. The Village has the responsibility to forward the matter to the Environmental Court, said Mr. Douglas. Tom Weaver said he was not certain the Village should be forwarding the matter to the Environmental Court. An opinion from the Village Attorney on the matter would be needed.

Mr. Douglas said he has tried to remedy the situation civilly with the Howard Center and is sorry the matter had to come this far. Mr. Douglas said he measured the area and there is room for parking spaces without the raised planter (a component of the site plan approved by the Planning Commission). Mr. Douglas said he has a right to park there and would like to keep the parking spaces. Mr. Douglas stated the plan by the Howard Center for two handicap parking spaces and a raised planter takes away his parking. Robin Pierce interjected that the amendment to the plan which was an administrative decision included removal of the planter. Bruce Douglas countered the plans he received did not show the planter removed so the plans need to be updated. Mr. Douglas reiterated without the planter there is room for one handicap space and four 9' parking spaces with room to spare.

Robin Pierce noted the chairman of the Planning Commission said if a conclusion that is acceptable to both parties can be found then the Planning Commission approval can be amended. Bruce Douglas stated the change to the permit was after the initial appeal and there was no contact from the Village Office that the appeal was satisfied. Robin Pierce explained Mr. Douglas appealed the Planning Commission decision. Mr. Pierce said Mr. Douglas talked to him and Terry Hass and they felt Mr. Douglas might be able to resolve the matter if he (Mr. Douglas) talked to the Howard Center so the appeal was held waiting for the results of the conversation between Mr. Douglas and the Howard Center. Then a new permit was issued (for the amended plan) and Bruce Douglas appealed that permit.

It was confirmed zoning permit #173 was issued on 12/18/08 and has a footnote that reads: "Permit revised from original on 12/8/08." The updated site plan shows three parking spaces. There are two accessible parking spaces of which one is van accessible. The planter is not shown on the site plan. The area where the planter was located is large enough for a parking space. The original site plan reviewed by the Planning Commission did not include a planter. The Planning Commission made the decision to include a planter on the site as part determination.

Bruce Murdough confirmed the planter is not in place and the area is open for parking. Mr. Douglas stated the area is not striped. Today there were five cars parked next to the building with room to spare, said Mr. Douglas, adding he suggested striping the parking to include one full sized handicap parking space. Large buses load/unload passengers on the street which works fine. There is room for four additional nine foot parking spaces. Mr. Douglas asked that available parking spaces not be taken away.

PERMITTEE COMMENTS

Frank Kochman, attorney representing the Howard Center, said he filed a Motion to Dismiss that he would like the Zoning Board to consider. Attorney Kochman stated there is question about the appeal filed on 12/8/08 by Bruce Douglas. The letter from Mr. Douglas, dated 2/13/09, claims to be appealing the Planning Commission decision, but there is no evidence of this. The appeal application submitted by Bruce Douglas mentions appeal to the Environmental Court, but does not list grounds of the appeal, except a deed dispute which is beyond the jurisdiction of the Zoning Board, and the fee paid by Mr. Douglas was \$108 which is the fee amount stated in the Village Land Development Code for appeal of a decision by the Administrative Officer, not an appeal to Environmental Court (cost of which is \$250). When Mr. Douglas brought in the appeal application, continued Mr. Kochman, there was an agreement with staff to hold the application until Mr. Douglas and the Howard Center had a chance to speak. Terry Hass made a note on 12/11/08 to "call Bruce Douglas on Monday, 12/23/08, about filing the appeal." The date, 12/23/08, is 15 days from 12/8/08, the date the original permit #173 was issued. The date is also the deadline to advance the appeal. There is a letter from Bruce Douglas to Terry Hass, dated 12/23/08, advising her of his desire to continue his appeal of permit #173 revised 12/18/08. It was always a zoning permit being appealed, stated Mr. Kochman, not the Planning Commission decision and nothing was done by Mr. Douglas in that direction. To do so Mr. Douglas would have had to submit a certified letter to the Environmental Court with a copy to the clerk along with the correct fee. Mr. Kochman stated the Zoning Board has no jurisdiction to give relief to Mr. Douglas. Mr. Douglas wants the Zoning Board to change the plan, but has not cited anything in the Land Development Code showing where the Administrative Officer did anything wrong. If the Zoning Board feels the Administrative Officer did wrong in issuing a permit, the Board might alter the amendment or eliminate it. Tom Weaver speculated theoretically the Board could remand the matter to the Planning Commission on grounds that the Administrative Officer exceeded his authority. Attorney Kochman contended the original permit #173 would remain standing if the 12/18/08 permit is not valid. Ron Gauthier pointed out the permittee agreed to the amendment so if the change is deemed not valid then the original permit is no longer valid. Tom Weaver concurred.

Andy Rowe, engineer with Lamoureux & Dickinson working on the Howard Center project, stated the plan with the 12/18/08 permit after meeting with Bruce Douglas shows one 10' van accessible parking space, one 13' van accessible parking space, one 9' unrestricted parking space, and one wider space where the planter was to be located. Bruce Douglas interjected there could be five parking spaces in the area.

There were no further comments.

MOTION by Mary Gauthier, SECOND by Ron Gauthier, to close the public portion of the appeal by Bruce Douglas of the permit for 39 Lincoln Street.

VOTING: 5 ayes; motion carried.

DELIBERATION/DECISION

Appeal of Administrative Officer's Decision, Zoning Permit for 39 Lincoln Street, Bruce Douglas

The Zoning Board accepted the following into the record:

- Motion to Dismiss, dated 2/6/09, submitted by the attorney for the Howard Center.
- Letter from Bruce Douglas, dated 2/13/09, outlining his appeal.
- Letter from Bruce Douglas, dated 12/23/08, indicating his desire to continue his appeal.
- Appeal Application by Bruce Douglas, signed on 12/11/08 and received by the Village Office on the same date.

FINDINGS OF FACT:

1. The relevant zoning permit is #173 with an amended date of 12/18/08. This permit supersedes the permit under the same number (173), dated 12/8/08.
2. The original Planning Commission approval showed two accessible parking spaces and a planter in front of the building at 39 Lincoln Street, and also included one standard parking space.
3. The Administrative Officer after consulting with the chairman of the Planning Commission agreed to the removal of the planter to provide one additional parking space.
4. The Administrative Officer's authority is defined in Section 502.11.b (1-8) of the Village Land Development Code.
5. There was public comment on the appeal.

CONCLUSION:

1. Findings #1-#4 support that the Administrative Officer had the authority to make the decision regarding issuance of a zoning permit for 39 Lincoln Street.

MOTION by Mary Gauthier, SECOND by Ron Gauthier, based on the Findings and Conclusion, to deny the appeal of the Administrative Officer's decision regarding issuance of a zoning permit to pave and stripe parking area at 39 Lincoln Street by Bruce Douglas, 37 Lincoln Street. VOTING: 5 ayes; motion carried.

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

MOTION by Mary Gauthier, SECOND by Ron Gauthier, to accept the letter from Owen Jenkins, dated 2/17/09, withdrawing his appeal of the Administrative Officer's decision regarding issuance of a zoning permit for parking lot pole lights at Fleming School, 21 Prospect Street. VOTING: 4 ayes, 1 abstention (Murdough); motion carried.

5. OTHER BUSINESS

None.

6. ADJOURNMENT

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

The meeting was adjourned at 8 p.m.

RScty: M.E. Riordan