

**VILLAGE OF ESSEX JUNCTION  
ZONING BOARD OF ADJUSTMENT  
MINUTES OF MEETING  
April 21, 2009**

**MEMBERS PRESENT:** Tom Weaver (Chairman); Ron Gauthier, Jim Moody.  
(Mary Gauthier and Bruce Murdough were absent.)  
**ADMINISTRATION:** Robin Pierce, Development Director.

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**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**

February 17, 2009

**MOTION by Ron Gauthier, SECOND by Jim Moody, to approve the 2/17/09 as written. VOTING: 3 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. Tom Weaver explained with three members present a unanimous decision in support of an application is needed for approval. The applicant has the option to postpone the hearing until the full board is present.

Conditional Use application for a nonconforming use to construct a 20'x 42' gas station canopy at 16 Maple Street in the Village Center District (VCD) by Ron Bushey  
Ronald Bushey appeared on behalf of the application. Mr. Bushey stated he will proceed with the application before the Zoning Board with three members present.

**STAFF COMMENTS**

Robin Pierce stated the applicant is seeking conditional use approval for a canopy over gas pumps at an existing gas/service station in the village center. The use is a nonconforming use in the VCD. Other gas stations in the village center (i.e. 1 Main Street) have made application for a canopy without success. The applicant has not submitted an application to the Planning Commission for the canopy (this will depend on the action taken by the Zoning Board).

**APPLICANT COMMENTS**

Ronald Bushey explained the canopy is to provide protection from the weather for his customers. The canopy will help business and improve the look of the station. There are new signs and vinyl siding on the building. The yard has been cleaned up.

Tom Weaver explained the charge of the Zoning Board to interpret the existing ordinance. The Zoning Board cannot change zones. Gas/service stations are not permitted or conditional uses in the VCD and that is why the canopy application is considered a nonconforming use and before the Zoning Board. Mr. Bushey noted there is a convenience store at the station as well. Mr. Weaver said the store is a conforming use, but that does not negate the gas/service station use. It is understandable why a canopy is wanted for protection from the weather, acknowledged Mr. Weaver, and a customer is more likely to go to a station with a canopy if the weather is bad.

There was discussion of Section 801 – Nonconforming Uses. The section relative to expansion of nonconforming use was reviewed. It was noted the canopy is not actually an expansion, but rather a cover over existing pavement on the site so the nonconformance is not increasing (Section 801.A). Tom Weaver referred to Section 801.B regarding a nonconforming use changed to a conditional or permitted use in the district in which the use is permitted. A nonconforming use cannot be changed to another nonconforming use unless specifically receiving conditional use approval. The Zoning Board has to determine if the canopy is maintenance, repair or expansion, stated Mr. Weaver. If the canopy is determined to be an expansion then all provisions of the code must be met. Per Section 802 the addition of the canopy is creating a nonconforming structure because the canopy does not presently exist. Mr. Weaver noted all setbacks are met with the proposed canopy.

Mr. Weaver stated if the Zoning Board does not grant conditional use approval for the canopy, the applicant can ask the Planning Commission to make a change in the zone to allow gas/service stations as conditional or permitted uses and then the canopy would be allowed. If the Planning Commission does not support the change, the Board of Trustees can be asked to make a change in the ordinance. Ron Bushey said the former planner, Jeff Arango, indicated the canopy was allowed so money was spent on engineering and a lighting plan. Mr. Bushey said Mr. Arango told him everything for the canopy, siding, and Sunoco sign had to be in order before a permit would be granted. Now the new planner is saying the canopy needs approval from the Zoning Board. Mr. Bushey said he has spent \$10,000 in engineering and fees thus far on the project that has been ongoing for over a year. Tom Weaver stated the Zoning Board has to enforce the ordinance regardless. The applicant can try to convince the Board of Trustees to make a change in the ordinance.

#### PUBLIC COMMENTS

Tom McGoff, Sandri Co., noted in his experience some towns require only a majority of the criteria to be met rather than all the criteria or they will help find a way to approve the application. Tom Weaver reiterated the canopy is not a permitted use in the district. The applicant can ask the Planning Commission to change the zoning in the district. Mr. McGoff asked if this would constitute ‘spot zoning’. Robin Pierce said the zoning for the entire district would be changed, not just one site. Tom Weaver added the change could state the use is allowed as a conditional use. Mr. McGoff cited a case in Barre, Vermont where the zoning for a site was changed to allow a convenience store and canopy.

Joe Weith, village resident, stated the canopy is not a problem provided it is designed properly and in keeping with the village district and the goals for the village district. Mr. Weith asked if there is a design review process and review of the lighting plan. Robin Pierce stated if the Zoning Board grants conditional use approval the application will go before the Planning Commission for design review in the Village Center District.

There were no further comments.

**MOTION by Ron Gauthier, SECOND by Jim Moody, to close the public portion of the conditional use application for a canopy at 16 Maple Street by Ron Bushey.**  
**VOTING: 3 ayes; motion carried.**

#### DELIBERATION/DECISION

Conditional Use, Canopy, 16 Maple Street, Bushey

**MOTION by Jim Moody, SECOND by Ron Gauthier, to deny the conditional use application by Ron Bushey for a gas/service station canopy at 16 Maple Street because in order to be reviewed as a conditional use, the conditional use is required to be a designated use on the Use Chart and a gas/service station canopy is not designated as a permitted or conditional use on the Use Chart in the Village Center District. VOTING: 3 ayes; motion carried.**

#### 5. OTHER BUSINESS

##### Zoning Permits

Ron Gauthier urged using a large red letter "Z" on the zoning permits to be posted for better visibility. The yellow permits that are used now are not very visible. Robin Pierce assured staff is trying to resolve the permit visibility problem.

Ron Gauthier also mentioned the situation of an applicant receiving a variance and then adding to the project without notify the neighbors or village staff. Tom Weaver pointed out if what is done is conforming and a permit can administratively be issued that is acceptable. It was noted posted permits should be visible from the street and the neighbors should be able to go up and read the permit.

#### 6. ADJOURNMENT

**MOTION by Jim Moody, SECOND by Ron Gauthier, to adjourn the meeting.**  
**VOTING: 3 ayes; motion carried.**

The meeting was adjourned at 7:45 p.m.

*RScty: M.E. Riordan*