

**VILLAGE OF ESSEX JUNCTION
ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
December 20, 2011**

MEMBERS PRESENT: Tom Weaver (Chairman); Ron Gauthier, Jim Moody, Martin Hughes, Bruce Murdough.
ADMINISTRATION: Robin Pierce, Development Director.
OTHERS PRESENT: Russell Bibens, Richard Hamilton, Esther Lote, David Burke, Howard Snider, Lane Williams, John Stawinski, Mike Hopwood.

1. CALL TO ORDER and AUDIENCE FOR VISITORS

Chairman Tom Weaver called the meeting to order at 6 PM. There were no comments from the audience.

2. ADDITIONS/AMENDMENTS TO AGENDA

There were no changes to the agenda.

3. MINUTES

September 20, 2011

MOTION by Ron Gauthier, SECOND by Bruce Murdough, to approve the 9/20/11 minutes as written. VOTING: unanimous (5-0); 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.

Variance application for an eight foot high stockade fence at 5 Nicholas Court in the R-2 District by Russell Bibens and Linda Bradley, owners

Russell Bibens appeared on behalf of the application.

STAFF REPORT

The Zoning Board received a written staff report on the application, dated December 20, 2011. Robin Pierce explained the request for an eight foot high fence to screen the D&C Transportation commercial fuel storage and distribution site. Commercial fuel storage and distribution is a nonconforming use in the R-2 Zone. Mature vegetation that served as a natural screen was removed by D&C Transportation and replaced with young stock when upgrades were done to the site. The fence if located outside of the 15' setback would be in the middle of the applicant's yard so the request is to install the fence on the property line. The distance from the house to the property line is less than 40'. Limited common area in the PRD (planned residential development) is about one-third acre. The length of the fence will be 97'x110' along the back and 97'x 70' on the side and front of the lot. There is limited frontage on the street. Five lots make up the PRD of 70,000 s.f. plus the common area (entry road). There is an existing fence on the D&C Transportation property that is six feet high with barbed wire on top (total of about 7' in height). The dimensional variance being requested must meet the criteria of Section 1703.C (1-7).

APPLICANT COMMENTS

Russell Bibens stated his request is based on visual and noise pollution from the D&C Transportation site. The application is made under personal protest. Topography of the D&C Transportation site includes a seven foot drop at the property line. The replacement plantings do not provide the screening that the mature vegetation did. Mr. Bibens noted there are now two companies operating on the D&C Transportation site (the fuel storage/distribution business and a construction company operating seven days a week beginning with trucks leaving at 5 AM and returning at 7 PM). During fuel deliveries D&C trucks are idling at 10 PM, 11 PM, Midnight, 2 AM, and 5 AM. Mr. Bibens said if an eight foot fence is not approved then a six foot fence is requested. Tom Weaver pointed out a six foot fence can be installed on the property line without a variance. Also, D&C Transportation did get a permit to replace a tank and at that time was advised against allowing idling trucks. It was noted the requested fence if constructed does not abut any neighbors except D&C Transportation or the vehicle right-of-way so there are no visibility issues with traffic.

PUBLIC COMMENT

Richard Hamilton, 1 Nicholas Court, spoke in support of the proposal by Russell Bibens.

There were no further comments from the public.

MOTION by Ron Gauthier, SECOND by Martin Hughes, to close the public hearing on the variance application for a fence at 5 Nicholas Court by Russell Bibens. VOTING: unanimous (5-0); motion carried.

DELIBERATION/DECISION

Variance, Fence, 5 Nicholas Court, Bibens/Bradley

FINDINGS OF FACT:

1. The subject property is a Planned Residential Development (PRD) in the R-2 District with a lot size of approximately 70,043 s.f which consists of five separate limited common areas and the common road.
2. Minimum lot size in the R-2 District is 7,500 s.f.
3. The applicant stated his limited common area is one third acre.
4. The rear setback requirement in the R-2 District is 25' for the principle structure and 15' for an accessory structure.
5. Section 707.B.1 of the Land Development Code allows a fence not to exceed a height of six feet to be located along all side and rear property lines.
6. An existing chain link fence is six feet high with an additional 12" to 18" of barbed wire on top.
7. Pursuant to Section 707.B.a any fence over six feet in height shall be deemed a structure and must meet the applicable setback requirements.
8. The chain link fence separates the applicant's property from the commercial fuel storage and distribution business.
9. An eight foot high fence would not pose any vehicle visibility problems.
10. There was public comment in support of the application.

CONCLUSION:

1. Findings #1-#10 satisfy the variance criteria of Section 1703.C (1-7).

MOTION by Ron Gauthier, SECOND by Martin Hughes, based on the Findings and Conclusion to grant a variance to Russell Bibens and Linda Bradley for an eight foot high stockade fence at 5 Nicholas Court in the R-2 District. VOTING: unanimous (5-0); motion carried.

Conditional Use application to convert a church use to a personal services establishment and professional office use and Variance application for relief of two front setbacks and to exceed maximum lot coverage at 56 Main Street in the R-O District by John Stawinski for Unity Church, owners

John Stawinski, David Burke, Howard Snider, and Rev. Lane Williams appeared on behalf of the application. Tom Weaver announced his firm uses O'Leary Burke for engineering services. The Board did not feel a recusal was necessary.

STAFF REPORT

The Zoning Board received a written staff report on the application, dated December 20, 2011. Robin Pierce reported the Planning Commission granted approval of the application subject to Zoning Board approval. The applicant is proposing a personal services establishment which is a change of use so conditional use approval is needed. In addition, the property is a corner lot with two front yards (one on Grove Street and one on Main Street). Parking encroaches on the front yard setback so a variance is needed. The Planning Commission recommended a parking proposal similar to the parking in front of the church on the other side of Main Street. Traffic circulation on the site is proposed to be one-way, entering from Main Street and existing onto Grove Street. There will be a five foot high hedgerow planted along Main Street to screen the parking that works with the visibility triangle. The Village Engineer and Public Works Director had no problems with the proposal.

APPLICANT COMMENTS

David Burke, engineer with O'Leary Burke, reviewed past parking layouts for the church (14 spaces off Grove Street that were never built, on-street parking, use of the parking area at the neighboring attorney's office on weekends). The parking is six feet off Main Street and on the lot line on Grove Street. Lot coverage is 59.7% which exceeds the 40% maximum. The parking proposal is for 10 parking spaces fronting Main Street and two spaces along the side of the building which will only be built if needed. Approval to build the spaces will be needed from the village. The large mature maple tree on Main Street will be retained. The existing building is 3,500 s.f. on a 12,000 s.f. lot. Options with the site include granting approval of the proposed uses and parking, removing the building and rebuilding (only 1,500 s.f. would be allowed with parking), or doing nothing and allowing the building to dilapidate.

There was discussion of the parking layout. Robin Pierce explained the regulations require 12 spaces, but the proposed business may not require that number. The parking configuration is due to the size of the structure and the lot. Tom Weaver recalled a variance was granted for on-site parking along Grove Street when the building was the Masonic Temple, but over the years grass has covered the parking area. David Burke stated the lot coverage for prior parking approvals can

be used to offset the current proposal. It was noted the two spaces along the side of the building do not necessarily have to be paved; the intent is not to use the spaces. Two spaces could be located off Grove Street in the same area of the parking for the former Masonic Temple. Signage will be important to direct the one-way traffic flow. John Stawinski assured he will address people using the parking lot and advise against using the neighbor's parking lot. The flow of patrons to the rehabilitation physical therapy and strength/conditioning services will be fairly steady and on an hourly basis (by appointment) rather than big groups arriving at once. Hours of operation are 7 AM to 7 PM.

PUBLIC COMMENT

Mike Hopwood, 48 Main Street, expressed concern about the two parking spaces on the side of the building infringing on his driveway and presenting difficulty with snow plowing/removal. The idea of parking spaces not conflicting with the right-of-way and cars entering/exiting 48 Main Street without excavation of the grassy bank is impossible, said Mr. Hopwood, adding there is also concern about people using the gravel parking lot that is for the tenants at 48 Main Street. Mr. Hopwood suggested given all the variances needed that the proposed use is not right for the building at 56 Main Street. Mr. Hopwood said he has an interest in the building himself and owns the adjacent building which has more available parking.

Rev. Lane Williams testified since the time the building was a Baptist Church and Masonic Temple people have been parking on the lawn off Grove Street.

There were no further comments from the public on the application.

MOTION by Jim Moody, SECOND by Martin Hughes, to close the public portion of the conditional use and variance applications for 56 Main Street by John Stawinski for Unity Church. VOTING: unanimous (5-0); motion carried.

DELIBERATION/DECISION

Conditional Use and Variance, Personal Service Establishment and Professional Office with Parking, 56 Main Street, Stawinski for Unity Church

FINDINGS OF FACT (conditional use):

1. The property at 56 Main Street is approximately 12,750 s.f.
2. The project site is located in the Residential-Office (R-O) District where the minimum lot size is 7,500 s.f.
3. Section 620 of the Land Development Code requires conditional use approval for a change of use in the R-O District.
4. The use will be a personal services establishment and professional office which are conditional uses in the zone.
5. The project site abuts the R-O District to the east, south, and west, and Multi-Family-3 District to the north.
6. The site at 56 Main Street is located adjacent to an apartment building and bordered by Main Street and Grove Street on two sides.
7. There was public comment in support of the conditional use application.

CONCLUSION (conditional use):

1. Findings #1-#7 satisfy the conditional use criteria of Section 502.C (a-i)

MOTION by Martin Hughes, SECOND by Bruce Murdough, based on the Findings and Conclusion to grant Conditional Use approval for a personal services establishment and professional office at 56 Main Street in the R-O District by John Stawinski for Unity Church. VOTING: unanimous (5-0); motion carried.

FINDINGS OF FACT (variance):

1. The property is in the R-O District with a lot size of approximately 12,750 s.f.
2. Minimum lot size in the R-O District is 7,500 s.f.
3. The existing property recently received site plan approval for 10 parking spaces from the Planning Commission with the potential for two more spaces as shown on the site plan.
4. The front setback requirement in the R-O District is 20'.
5. Maximum lot coverage in the R-O District is 40%. Current lot coverage is 44%. The site plan shows 59.7% of the property covered by the building and parking.
6. With the parking lot being gravel and not impervious the percent of lot coverage does not change from the 44%.
7. The applicant is requesting a variance of the maximum lot coverage to exceed the 40% maximum by an additional 19.7%.
8. The applicant is requesting a variance of the front yard setback on Main Street and Grove Street.
9. The site plan shows 12 parking spaces with two spaces labeled "future" and if the applicant decides not to use two 'future' spaces a variance from the parking requirement must be sought within one year.
10. There was public comment for and against the variance application.

CONCLUSION (variance):

1. Findings #1-#10 satisfy the variance criteria of Section 1703.C (1-7).

MOTION by Bruce Murdough, SECOND by Ron Gauthier, based on the Findings and Conclusion to grant the Variance request for relief from two front yard setbacks and to exceed maximum lot coverage at 56 Main Street by John Stawinski for Unity Church. VOTING: unanimous (5-0); motion carried.

5. OTHER BUSINESS

None.

6. ADJOURNMENT

MOTION by Ron Gauthier, SECOND by Jim Moody, to adjourn the meeting. VOTING: unanimous (5-0); motion carried.

The meeting was adjourned at 7:30 PM.