

**CITY OF ESSEX JUNCTION
DEVELOPMENT REVIEW BOARD
PUBLIC HEARING AGENDA
DECEMBER 19, 2023
6:30 P.M.**

This meeting will be held in-person at 2 Lincoln Street and remotely. Available options to watch or join the meeting:

- **WATCH:** The meeting will be live-streamed on [Town Meeting TV](#).
- **JOIN ZOOM MEETING:** [Click here to join the meeting](#)
- **JOIN CALLING:** Join via conference call (*audio only*): 1(888) 788-0099 (toll free) | Conference ID: 839 2599 0985 Passcode: 940993
- **PROVIDE FULL NAME:** For minutes, please provide your full name whenever prompted.
- **MUTE YOUR MIC:** When not speaking, please mute your microphone on your computer/phone.

I. Additions or Amendments to Agenda

II. Public to be Heard

III. Minutes

- A. Regular Meeting - October 19, 2023
- B. Regular Meeting - November 16, 2023

IV. Public Hearing

- A. Appeal of Administrative Officer's Notice of Violation at 8 Taft Street in the R-1 District, by Jason Struthers, owner.
- B. Final plan for a two lot subdivision; Lot 1 to retain existing single family dwelling, Lot 2 to be single lot at 2 River Street in the R2 District by Yuning Liu, owner.
(Applicant requested continuance from November 19th meeting)
- C. Conceptual site plan for a proposed mixed use development to construct a 5 story building with 2 commercial spaces on the 1st floor and 52 apartments on the upper stories at 17 Park Street in the CV District by Milot Real Estate, agent for Handy Hotels and Rentals LLC, owners.

V. Other Development Review Board Items

VI. Adjournment

Members of the public are encouraged to speak during the Public-To-Be-Held agenda item, during a Public Hearing, or, when recognized by the Chair, during consideration of a specific agenda item. Public comments are limited to a three minute rule unless waived by the Development Review Board Chair.

This meeting will be held in the conference room of the Essex Junction municipal building at 2 Lincoln St., Essex Jct., VT and on Zoom at the link above. Reasonable accommodations will be provided upon request to the City, 802-878-6950, to assure that City meetings are accessible to all individuals regardless of disability.

For information please contact the Community Development Department from 8 – 4:30 at 802-878-6950 or the website www.essexjunction.org.

**CITY OF ESSEX JUNCTION
DEVELOPMENT REVIEW BOARD
MINUTES OF MEETING
OCTOBER 19, 2023
DRAFT**

MEMBERS PRESENT: John Alden, Chair; Robert Mount, Vice Chair;

MEMBERS PRESENT VIRTUALLY: Christin Gildea, Maggie Massey

MEMBERS ABSENT: Dylan Zwicky

ADMINISTRATION: Jennifer Marbl, City Planner

OTHERS PRESENT: Diane Clemens in person and Steven Eustis via zoom.

1. CALL TO ORDER/ADDITIONS OR AMENDMENTS TO AGENDA

Chair Alden called the meeting to order at 6:33 P.M.

There were no additions or amendments to the agenda.

2. PUBLIC TO BE HEARD

Diane Clemens and Steven Eustis specified that they both were interested in contributing to the discussion of 2 River Street. These will be presented at the next meeting, when the item is discussed.

3. MINUTES

A. Regular Meeting – September 21, 2023

MOTION by ROBERT MOUNT, SECOND by CRISTIN GILDEA, to approve the minutes as presented. The motion passed 4-0.

4. PUBLIC HEARING

2 River Street

On the recommendations of staff comments regarding property boundary compliance with Land Development Code, the applicant requested a continuance in order to prepare a suitable revision.

MOTION by ROBERT MOUNT, SECOND by CRISTIN GILDEA, to table the item for the following meeting. The motion passed 4-0.

5. OTHER DEVELOPMENT REVIEW BOARD ITEMS

None.

6. ADJOURNMENT

MOTION by JOHN ALDEN, SECOND by ROBERT MOUNT, to adjourn the meeting. The motion passed 4-0.

The meeting was adjourned without objection at 6:41 P.M.

**CITY OF ESSEX JUNCTION
DEVELOPMENT REVIEW BOARD
MINUTES OF MEETING
NOVEMBER 16, 2023
DRAFT**

MEMBERS PRESENT: John Alden, Chair

MEMBERS PRESENT VIRTUALLY: Robert Mount, Vice Chair; Christin Gildea, Maggie Massey

MEMBERS ABSENT: Dylan Zwicky

ADMINISTRATION: Jennifer Marbl, City Planner

OTHERS PRESENT: Carlton J. Houghton

1. CALL TO ORDER/ADDITIONS OR AMENDMENTS TO AGENDA

Chair Alden called the meeting to order at 6:30 P.M.

There were no additions or amendments to the agenda.

2. PUBLIC TO BE HEARD

None.

3. MINUTES

A. October 19th meeting minutes tabled.

4. PUBLIC HEARING

2 River Street

On the recommendations of staff comments regarding property boundary compliance with Land Development Code, the applicant requested a continuance in order to prepare a suitable revision.

MOTION by ROBERT MOUNT, SECOND by MAGGIE MASSEY, to table the item for the following meeting. The motion passed 4-0.

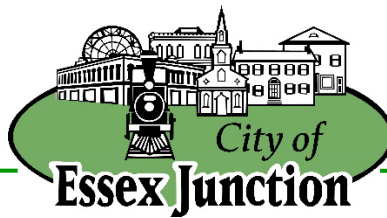
5. OTHER DEVELOPMENT REVIEW BOARD ITEMS

None.

6. ADJOURNMENT

MOTION by ROBERT MOUNT, SECOND by CRISTIN GILDEA, to adjourn the meeting. The motion passed 4-0.

The meeting was adjourned without objection at 6:37 P.M.



MEMORANDUM

To: Development Review Board
From: Christopher Yuen, Community Development Director
Hearing Date: December 19, 2023
Subject: Appeal of Notice of Violation regarding livestock on 8 Taft Street

Issue: The resident on 8 Taft Street has filed an appeal of a Notice of Violation of the Land Development Code, issued by the City's Administrative Officer.

Discussion:

At the September 21, 2023 Development Review Board (DRB) hearing on the Administrative Officer's zoning enforcement decision on 8 Taft Street, the DRB concluded that the City may enforce its Land Development Code (LDC) against Mr. Struthers with regards to his farming activities, specifically raising ducks. This decision is memorialized in the attached "Findings of Fact and Decision", signed by Development Review Board members on October 6, 2023.

The resident on 8 Taft Street, Jason Struthers, has continued to raise ducks on the property since the decision, despite receiving a letter from the Assistant Zoning Administrator requesting compliance, dated November 6, 2023.

On November 20, the Administrative Officer issued Mr. Struthers an official Notice of Violation, pursuant to 24 V.S.A. §4451. This Notice of Violation enables the City to initiate enforcement efforts against Mr. Struthers, with fines of up to Two Hundred Dollars (\$200.00) per day if the violation continues.

Mr. Struthers is appealing the NOV as provided in Section 1702 of the City of Essex Junction Land Development Code (LDC).

Given that this Notice of Violation was issued by Staff based on the DRB's Findings of Fact and Decisions from October 6, the DRB should consider whether those findings are still applicable and enforceable.

Recommendation:

If the DRB believes that the relevant Findings of Fact and Conclusions of Law signed by its members on October 6, are still applicable and enforceable, Staff recommends that the Zoning Officer's Notice of Violation be upheld.

Recommended Motion:

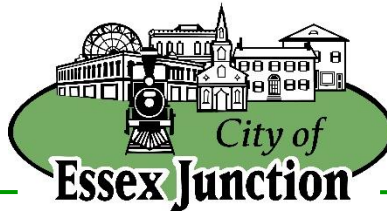
"I motion that the Development Review Board uphold the Administrative Officer's Notice of Violation for the Unlawful Condition of Property on 8 Taft Street, issued on November 20, 2023".

Attachments:

Appendix A: The DRB's October 6th Findings of Fact and Decision related to the Appeal of Administrative Officer's enforcement decision at 8 Taft Street in the R-1 District, filed by Stephen and Sharon Padnos, adjoining residents
Appendix B: Letter from City Staff requesting compliance, dated November 6, 2023.

Appendix C: Notice of Violation for the Unlawful Condition of Property on 8 Taft Street, issued on November 20, 2023

Appendix D: Notice of Appeal filed by Megan Nelson Esq., representing Jason Struthers



Development Review Board

Appeal of Administrative Officer's enforcement decision at 8 Taft Street in the R-1 District, by Stephen and Sharon Padnos, adjoining residents.

Findings of Fact and Decision

The City of Essex Junction Development Review Board ("DRB") held a Public Hearing on September 21, 2023 to review the Appeal of Administrative Officer's ("AO's") enforcement decision regarding property located at 8 Taft Street, in the R-1 Residential District ("Property"). The Property is being used for outdoor cannabis cultivation and for raising ducks. The City of Essex Junction, Vermont Land Development Code prohibits both uses within the R-1 zoning district.

A notice of hearing was provided to the Appellant and the Property owner.

Property Location: 8 Taft Street

Property Size: 22651 sq ft. (0.52 acres)

Existing Land Use: Residential, Agricultural, and Outdoor Cannabis Cultivation

Surrounding Land Use: Residential

Zoning District: Residential 1 (R1)

Appeal Description:

Stephen Padnos, resident at 6 Taft Street, by and through William B. Towle, Esq., submitted a letter dated August 4, 2023, timely appealing a July 20, 2023 decision by the AO to not enforce against Jason Struthers ("Struthers") the Land Development Code's ("LDC's") prohibition of Agriculture and Cannabis Cultivation in the R-1 District related to Struthers property at 8 Taft St.

Background Facts:

It is undisputed that Mr. Struthers raises ducks and cultivates cannabis on the Property. On or about May 4, 2023, the Vermont Agency of Agriculture, Food & Markets ("AAFV") issued a determination that activities occurring on .6 acres at 8 Taft Street, Essex Junction, Vermont meet the definition of farming per the State of Vermont's Required Agricultural Practices ("RAP") Regulations.

It was requested that the City take action to enforce its LDC. Specifically, Appellant has argued that Mr. Struthers is illegally engaged in agriculture on his property in violation of the LDC. Section 201(C)(11) of the LDC defines agriculture as "the use of property or structures for common farming-related activities

necessary for crop and animal production. A plant or tree nursery shall be deemed an agricultural related activity. The sale of agricultural products or by products on agricultural property is deemed an 'agriculture sales-related activity.'" Appellant argued that the Use Chart (Chapter 6, §622) in the LDC does not permit either cannabis cultivator establishments or agriculture in the R-1 zoning district. LDC p. 132-33.

The AO issued a memorandum dated July 20, 2023 opining on the issue, declining enforcement. The memoranda analyzed the question of whether the municipality was permitted by statute to enforce its LDC against the Property owner. The memoranda was distributed to residents who filed complaints concerning the activities on 8 Taft Street, including Mr. Padnos. The AO reasoned that 24 V.S.A. § 4413 prohibited the City from enforcing its regulations with respect to agricultural activities occurring on the Property. The AO cited, §4413(d), which provides in pertinent part:

(d)(1) A bylaw under this chapter shall not regulate:

(A) required agricultural practices, including the construction of farm structures, as those practices are defined by the Secretary of Agriculture, Food and Markets;

...

Mr. Struthers cannabis growing operation, d.b.a. TrichomeVT, received a State License as a Tier 1 outdoor cannabis cultivator (0-1000 sq ft canopy size) from the Vermont Cannabis Control Board in July 2022. The AO noted that the City of Essex Junction maintains a Local Cannabis Control Board and cannabis establishments must obtain a local CCB license.

The AO noted that, although the LDC limits cultivation to the PA, Planned Agriculture District and the Property is in the R1 District, municipal authority to enforce the LDC is limited by H270. Specifically, H270 (Act 65) amended 7 V.S.A. §869(f) to provide:

(a) A cannabis establishment shall not be regulated as "farming" under the Required Agricultural Practices, 6 V.S.A. chapter 215, or other State law, and cannabis produced from cultivation shall not be considered an agricultural product, farm crop, or agricultural crop for the purposes of 32 V.S.A. chapter 124, 32 V.S.A. §9741, or other relevant State law.

...

(f) Notwithstanding subsection (a) of this section, a cultivator licensed under this chapter who initiates cultivation of cannabis outdoors on a parcel of land shall:

(1) be regulated in the same manner as "farming" and not as "development" on that tract of land where cultivation occurs for the purposes of permitting under 10 V.S.A. chapter 151;

(2) not be regulated by a municipal bylaw adopted under 24 V.S.A. chapter 117 in the same manner that Required Agricultural Practices are not regulated by a municipal bylaw under 24 V.S.A. §4413(d)(1)(A);

(3) be eligible to enroll in the Use Value Appraisal Program under 32 V.S.A. chapter 124 for the cultivation of cannabis;

. . . .

Accordingly, the AO determined that 7 V.S.A. §869(f) limits the City's authority to enforce the provision of its LDC with regard to the location of outdoor cannabis cultivation in a particular zoning district in the same way as it does with farming. See AO July 20, 2023 memorandum.

Mr. Padnos's counsel filed a notice of appeal on or about August 4, 2023.

The following persons testified at the hearing:

Stephen Padnos; Rebecca Dwyer ; Greg Dwyer; Sharon Wille Padnos; Jason Hemenway; Pat Bouchard; Kelly Turman.

The following documents were submitted into evidence at the hearing:

Padnos Exhibits:

- Padnos 1-4 – Vermont Agency of Agriculture Farm Operation Determination for Jason Struthers;
- Padnos 5-23 – Jason Struthers Farm Determination application supporting documents and communications with Agency of Agriculture;
- Padnos 24-26 – Excerpt from Required Agricultural Practices Rule - Section 3. Required Agricultural Practices Activities and Applicability;
- Padnos 27 – Excerpt from Required Agricultural Practices Rule – Section 4. Small Farm Certification and Training Requirements;
- Padnos 28 – Excerpt from 24 V.S.A. § 4414 (d)(1);
- Padnos 29-30 – Aerial Imagery of 8 Taft Street property and neighborhood from Google Maps;
- Padnos 31 – Screenshot of Aerial View of 8 Taft Street property from Vermont Center for Geographic Information Parcel Viewer;
- Padnos 32 – Photograph of the front of 6 Taft Street taken from Taft Street;
- Padnos 33 – Photograph of the front of 8 Taft Street taken from Taft Street;
- Padnos 34-47 – Photographs of the 8 Taft Street side and back yard taken from the 6 Taft Street property.

No party raised objections to the admission of the above exhibits.

In accordance with Section 1702.C, the DRB held and closed the public hearing on September 21, 2023. The DRB then entered deliberative session. After concluding the deliberative session, the DRB re-entered open session and rendered a unanimous decision.

Based on the testimony and evidence submitted into the record, the Development Review Board memorializes its September 21, 2023 determination through the issuance of the following Findings of Fact and Conclusions of Law:

Findings of Fact:

1. Jason Struthers is the owner of residential property located at 8 Taft Street, Essex Junction.
2. Mr. Struthers raises ducks and grows cannabis on the Property.
3. Mr. Struthers obtained a farm designation from the AAFM on or about May 4, 2023.

4. Mr. Struthers cannabis growing operation, d.b.a. TrichomeVT, received a State License as a Tier 1 outdoor cannabis cultivator (0-1000 sq ft canopy size) from the Vermont Cannabis Control Board in July 2022.
5. 8 Taft Street, Essex Junction is located in the R-1 District.
6. The Use Chart (Chapter 6, §622) in the LDC does not permit either cannabis cultivator establishments or agriculture in the R-1 zoning district. LDC p. 132-33.

Conclusions of Law:

A. Agriculture.

1. 24 V.S.A. §4413(d)(1)(A) provides that “[a] bylaw under this chapter shall not regulate: (A) required agricultural practices, including the construction of farm structures, as those practices are defined by the Secretary of Agriculture, Food and Markets”
2. The City of Essex Junction’s LDC does not regulate required agricultural practices when it establishes the districts in which agriculture may take place. The City is merely setting forth the zoning districts where farming may be conducted. It is not regulating the farming activities themselves.
3. “The RAPs are standards to which all types of farms must be managed.” Vermont Required Agricultural Practices Rule November 23, 2018 at 2.
4. The RAP effectively regulates water quality.
5. By establishing zoning districts in which farming may be conducted, the City is not seeking to regulate the management of farms or water quality. It is merely prescribing where farming may and may not be conducted.
6. Accordingly, this DRB reverses in part the portion of the July 20, 2023 determination of the City of Essex Junction AO which concludes that the City may not enforce its LDC against Mr. Struthers with regards to his farming activities, specifically raising ducks.

B. Cannabis Cultivation.

7. 7 V.S.A. §869(f) addresses the regulation of cannabis cultivation and provides:
 - (a) A cannabis establishment shall not be regulated as “farming” under the Required Agricultural Practices, 6 V.S.A. chapter 215, or other State law, and cannabis produced from cultivation shall not be considered an agricultural product, farm crop, or agricultural crop for the purposes of 32 V.S.A. chapter 124, 32 V.S.A. §9741, or other relevant State law.

...

(f) Notwithstanding subsection (a) of this section, a cultivator licensed under this chapter who initiates cultivation of cannabis outdoors on a parcel of land shall:

(1) be regulated in the same manner as “farming” and not as “development” on that tract of land where cultivation occurs for the purposes of permitting under 10 V.S.A. chapter 151;

(2) not be regulated by a municipal bylaw adopted under 24 V.S.A. chapter 117 in the same manner that Required Agricultural Practices are not regulated by a municipal bylaw under 24 V.S.A. §4413(d)(1)(A);

(3) be eligible to enroll in the Use Value Appraisal Program under 32 V.S.A. chapter 124 for the cultivation of cannabis;

....

8. As 7 V.S.A. §869(f) specifically sets out that cannabis cultivation is not considered land development and may not be regulated by a municipal bylaw adopted under 24 V.S.A. chapter 117.
9. 7 V.S.A. §863(d) provides that “[a] municipality shall not: (1) prohibit the operation of a cannabis establishment within the municipality through an ordinance adopted pursuant to 24 V.S.A. §2291 or a bylaw adopted pursuant to 24 V.S.A. §4414, or regulate a cannabis establishment in a manner that has the effect of prohibiting the operation of a cannabis establishment”
10. The language of the statutes set forth in paragraph 6 and 8 above, along with the establishment of the State of Vermont Cannabis Control Board, suggests that the legislature did not intend to grant municipalities the authority to regulate the location of cannabis cultivation through zoning bylaws.
11. Applying the LDC use table to the Property and disallowing this cannabis cultivation establishment in the R-1 District would effectively prohibit a cannabis establishment within the municipality based on a bylaw established pursuant to 24 V.S.A. §4414.
12. Accordingly, the DRB upholds the portion of the AO’s July 20, 2023 determination that concludes that the City of Essex Junction lacks the authority to enforce against the Property owner for the operation of a cannabis cultivation establishment in the R-1 District in violation of the LDC.

John Alden, Chair

Date

Cristin Gildea, Board Member

Date

Maggie Massey, Board Member

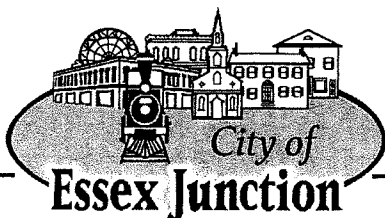
Date

Robert Mount, Board Member

Date

Dylan Zwicky, Board Member

Date



November 6, 2023

Jason Struthers
8 Taft Street
Essex Junction, VT 05452

Dear Mr. Struthers,

The City of Essex Junction is notifying you that the ducks on your property are in violation of the Essex Junction Land Development Code. Specifically, Section 724: Raising, Keeping, or Harboring Livestock provides as follows:

The raising, keeping, or harboring of livestock, wild animal or other domesticated farm animals for personal use or commercial purposes shall be prohibited in all Zoning Districts, except for the Planned Agricultural (PA) and Planned Exposition (PE) Districts. The raising, keeping or harboring of livestock, wild animals or other domesticated farm animal shall require a minimum of ten acres.

On September 26, 2023, the City of Essex Junction's Development Review Board held a public hearing on the appeal of the Administrative Officer's enforcement decision at 8 Taft Street. At this hearing, the DRB concluded that the City may enforce its LDC against your farming activities, specifically raising ducks. This decision is memorialized in the "Findings of Fact and Decision", signed by Development Review Board members on October 6.

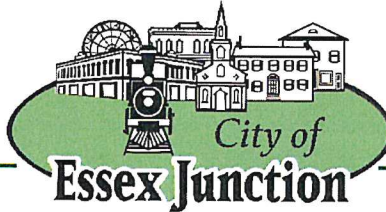
The City of Essex Junction appreciates your cooperation in bringing your property into compliance by removing all the ducks from your property by November 17, 2023. The City will be forced to issue a Notice of Violation, which can result in fines of as much as \$200 per day until the unlawful conditions are abated, corrected or removed.

The City of Essex Community Development Office can be reached at (802) 878-6944 or at 2 Lincoln Street, Essex Junction, Vermont 05452. You may also reach the Community Development Director at (802)878-6944 Ext: 1607 or cyuen@essexjunction.org.

Sincerely,

A handwritten signature in cursive script that reads "Teresa Hass".

Teresa Hass
Assistant Zoning Administrator



November 20, 2023

Jason Struthers
8 Taft Street
Essex Junction, VT 05452

Re: Unlawful Condition of Property – **NOTICE OF VIOLATION OF LAND DEVELOPMENT CODE**
Via Certified Mail

Dear Mr. Struthers,

Please be advised that the City of Essex Junction finds that you are in violation of Section 724 of the Essex Junction Land Development Code. Specifically, Section 724: Raising, Keeping, or Harboring Livestock provides as follows:

The raising, keeping, or harboring of livestock, wild animal or other domesticated farm animals for personal use or commercial purposes shall be prohibited in all Zoning Districts, except for the Planned Agricultural (PA) and Planned Exposition (PE) Districts. The raising, keeping or harboring of livestock, wild animals or other domesticated farm animal shall require a minimum of ten acres.

On September 26, 2023, the City of Essex Junction's Development Review Board held a public hearing on the appeal of the Administrative Officer's enforcement decision at 8 Taft Street. At this hearing, the DRB concluded that the City may enforce its LDC against Mr. Struthers with regards to his farming activities, specifically raising ducks. This decision is memorialized in the "Findings of Fact and Decision", signed by Development Review Board members on October 6.

You are in violation of Section 724 of the Land Development Code because as of November 5, the ducks continue to be on the property, located at 8 Taft Street, Essex Junction, Vermont. Several complaints have been made about the property and you were asked several times to remove the ducks from the property. You have failed to do so.

This Notice of Violation is being sent pursuant to 24 V.S.A. §4451. You have an opportunity to cure the violation and in order to do so, you must remove the above-mentioned ducks within seven (7) days from the date of your receipt of this Notice of Violation ("NOV"). If you have not cured the violation within 7 days, the City may initiate enforcement efforts against you and you may be fined up to Two Hundred Dollars (\$200.00) per day. Each day an offense occurs

constitute a separate offence. You are not entitled to an additional notice if the violation continues after those 7 days.

You may appeal this Notice of Violation to the Development Review Board within 15 days of your receipt of the NOV as provided in Section 1702 of the City of Essex Junction Land Development Code. A copy of the notice of appeal shall be filed with the administrative officer. The Notice of Appeal must identify the decision or action appealed and state why such decision or action is erroneous. Failure to appeal shall result in this NOV becoming final as to the violations addressed herein.

The City of Essex Community Development Office can be reached at (802) 878-6944 or at 2 Lincoln Street, Essex Junction, Vermont 05452. You may also reach the Community Development Director at (802)878-6944 Ext: 1607 or cyuen@essexjunction.org.

Sincerely,



Christopher Yuen
Community Development Director

Cc: Claudine C. Safar, Esq.
Megan T. Nelson, Esq.



A T T O R N E Y S

November 21, 2023

VIA Email and Hand Delivery

Susan McNamara-Hill
Essex Junction Town Clerk
2 Lincoln Street
Essex Junction, Vermont 05452

**In re. Jason Struthers
Notice of Violation of City of Essex Junction Land Development Code Section 724
(8 Taft Street)**

Dear Ms. McNamara-Hill,

Please find enclosed for filing with the Development Review Board a Notice of Appeal of the Notice of Violation dated November 20, 2023 sent to our client Jason Struthers and a copy of the Notice of Violation.

Also enclosed is a check for \$100 to cover the filing fee of the appeal. Thank you for your attention to this matter, and please be in touch with any questions.

Sincerely,

/s/ Megan Nelson
Megan Nelson Esq.
mnelson@mskvt.com

Encl.

cc: Chris Yuen (email)
Teresa Hass (email)

STATE OF VERMONT
City of Essex Junction, Development Review Board

In re. Jason Struthers
Notice of Violation of City of Essex Junction Land Development Code Section 724
(8 Taft Street)

NOTICE OF APPEAL

NOW COMES Appellant Jason Struthers (“Appellant”), by and through his counsel, MSK Attorneys, and hereby appeals, pursuant to 24 V.S.A. § 4465, the Community Development Director’s Notice of Violation (“the NOV”) of City of Essex Junction Land Development Code (“LDR”) Section 724 regarding 8 Taft Street. The NOV was issued on November 20, 2023. A copy of the NOV is attached hereto. Appellant is the owner of 8 Taft Street and therefore has a right to appeal pursuant to 24 V.S.A. § 4465.

First, the City of Essex Junction (“the City”), does not have authority to regulate Appellant’s duck farming operations at 8 Taft Street. Such issue is currently pending before the Superior Court Environmental Division (“Environmental Division”) in an appeal of this Development Review Board’s (“DRB”) decision to the contrary. The Vermont Agency of Agriculture, Food & Markets (“the Agency”) has determined that Appellant’s duck farm meets the definition of farming provided for in Section 2.16 of the Required Agricultural Practices Regulations (“RAPs”). The Agency has thus concluded that Appellant’s duck farm is regulated under the RAPs. 24 V.S.A. § 4413(d)(1)(A) states that:

(d)(1) A bylaw under this chapter shall not regulate: (A) required agricultural practices, including the construction of farm structures, as those practices are defined by the Secretary of Agriculture, Food and Markets;

By completely prohibiting agriculture regulated by RAPs in any zoning district, such as Appellant’s, the City regulates Required Agricultural Practices in violation of 24 V.S.A. § 4413(d)(1)(A). As the Legislature has not provided the City with the power to regulate RAPs,

the City has no authority to enforce its LDRs against Appellant's duck farm. Thus, the City also has no authority to issue this NOV to Appellant regarding his duck farm.

Further, the City does not have the authority to enforce the NOV at this time since the pending appeal has divested the City of its jurisdiction over the matter. The subject of the NOV is effectively identical to the matter currently before the Environmental Division. The matter in this NOV and appeal is whether the City may enforce its LDC against Appellant's duck farm or whether the City's prohibition of Agriculture within the R-1 zoning district constitutes the regulation of Required Agricultural Practices, in violation of 24 V.S.A. §4413(d)(1)(A). This is pending as Questions 1 and 4 of Applicant/Appellant's Statement of Questions in Docket No. 23-ENV-00120. Therefore, whether the City is allowed to issue an NOV at all to Appellant's duck farm is also currently under appeal. The City's Zoning Administrator and the DRB have been divested of jurisdiction over enforcement actions against Appellant's duck farm while this appeal is pending. *Cf. Freimour & Menard*, 2012 WL 8898500, at *5, slip op. at 7 ("when Neighbors filed their notice of appeal on April 26, 2011, jurisdiction over consideration of Applicants' conditional use approval application, CU #397, was conferred to the Environmental Division and the ZBA was divested of such jurisdiction"); *see also In re Dorset Meadows Associates LLC PUD*, No. 2-1-19 Vtec, 2019 WL 1423064, at *3, slip op. at 7 (Vt. Super. Ct. Env'tl. Div. Mar. 19, 2019) (Walsh, J.) (DRB divested of jurisdiction to consider preliminary plat and master plan applications while appeal was pending before the Environmental Court).

Because the City has been divested of jurisdiction over the matter and for the sake of judicial efficiency, Appellant requests the City stay any enforcement action against Appellant's duck farm while the appeal is pending before the Environmental Division. In addition to the lack of jurisdiction, to come into compliance in the next 7 days would cause unnecessary waste and

injustice. To come into compliance in the time given would result in the slaughter of 50 animals. There is no location that is suitable to move the ducks at this time so culling them would be the only form of compliance available to Appellant. Appellant's ducks produce eggs or are sold live, they are not approved for the sale of meat and have never been culled in large numbers. If the Environmental Division determines that Appellant may continue with his duck farming operation, then Appellants entire business will have been destroyed by an enforcement action the City did not have the authority to bring. If the Environmental Division determines that the City may bring such an action, Appellant will of course come into compliance. However, because of the severe and permanent consequences of coming into compliance and the ongoing appeal, Appellant requests the City stay any enforcement action regarding Appellant's duck farm until the Environmental Division reaches a decision.

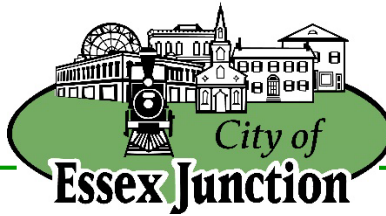
DATED at Burlington, Vermont this 21st day of November, 2023.

Respectfully Submitted,

MSK ATTORNEYS

By: /s/ Megan Nelson
Megan Nelson, ERN 6846
275 College Street, P.O. Box 4485
Burlington, VT 05406-4485
Phone: 802-861-7000
Fax: 802-861-7007
Email: mnelson@mskvt.com

Attorneys for Appellant



Staff Report

To: Development Review Board

From: Jennifer Marbl

Hearing Date: 12/19/2023

Subject: Final Plat review for a two-lot subdivision at 2 River Street in the R-2 District, by Bryan Currier of O'Leary-Burke Civil Associates for Yuning Liu, owners.

File: SP# 3.2023.1

EXISTING CONDITIONS AND GENERAL INFORMATION

Project Location: 2 River Street

Project Area Size: 17,800 sf

Lot Frontage: 158 feet

Existing Land Use: Residential

Surrounding Land Use: Residential

Zoning District: Residential 2 (R2)

Minimum Lot Size: 7,500 sf

Lot Coverage:

- Existing: 6%
- Proposed Lot 1: 14.1%*
- Proposed Lot 2: 0%*
- Permitted: 30% for Buildings; 40% total

Project Description:

The application received sketch plan approval from the Development Review Board on July 20, 2023. Subdivision of the 0.41 acre, 2 River Street. Plot. Lot 1 is currently proposed to be 7,381 s.f. and contain the existing structures and impervious surfaces. Lot 2 currently proposed to be = 9,044 s.f. The applicant will be making a minor adjustment to the property line between the two proposed lots to be compliant with minimum lot size requirements in response to staff comments.

SECTION 503: SUBDIVISIONS

H. Application Submittal Requirements

The applicant has provided all the Final Plan application submittal requirements.

- (e) Permanent Control points shall be shown on the Plat and tied to the Vermont Coordinate system NAD83 as defined in VSA1, Chapter 17, Section 671- 679. The surveyor shall

certify that the Permanent Control points have been set and the date that they were set.

Staff requests that Sheet PL1 of the Subdivision Plan should include permanent control points.

Chapter 7: General Development Standards - Section 720: Lot Frontage

A. Lot Frontage

The proposed lots have approximately 74.81' and 83.89' of frontage, respectively, which exceeds the minimum lot frontage requirement of 60 feet. The lot frontage may change slightly when the applicant revises the property line between the two proposed lots to be compliant with minimum lot size requirements in response to staff comments.

B. Required Frontage

Section 720.B states: *"In accordance with Section 4406 of Vermont Municipal Planning and Development Act (24 VSA, Chapter 117), no development shall be permitted on any lot which does not have either frontage on a public road or public waters or, without approval of the Development Review Board, access to such road or waters by a permanent easement or right-of-way at least twenty (20) feet in width."*

Both lots will have direct access to River Street and meets the frontage requirements of Section 720.B.

Chapter 9: Subdivisions - Section 905: General Standards

A. Conformity with Other Regulations

All subdivisions are required to be in conformity with all other regulations in the LDC. Section 503 and Sections 720 of the LDC are directly relevant to this application.

B. Site Suitability

Section 905.B states that *"No subdivision shall be approved on any land, which is unsuitable for development due to flood hazard, poor drainage, unstable soils, rock formations, slopes, or other conditions, which may be a hazard to the public health, safety or welfare unless sufficient measures are proposed to mitigate the identified risks."*

This lot is already zoned for residential use. Staff is not aware of any reason for it to be unsuitable for development.

C. Public Facilities

"All subdivision proposals shall demonstrate the adequacy of all public facilities and services including streets, drainage, stormwater treatment, water supply, sanitation facilities, lighting, emergency access, recreation facilities and similar services or facilities. All proposals shall include an analysis of any potential adverse impact of these services or facilities on adjacent land uses."

Both lots will be served by existing municipal water and sewer. The City has sufficient sewer and water capacity for this project. The applicant will be subject to all applicable sewer connection and sewer capacity allocation fees, as well as all applicable water service fees.

D. Protection of Significant Features

"In all subdivisions, to the maximum extent possible, efforts shall be made to preserve historic sites, scenic views, forested lands, and unique natural physical characteristics. The Development Review Board shall consider all alternatives available to preserve these significant features, including the donation of lands for public purposes."

There are no known significant features to be protected in this minor subdivision.

E. Subdivision Name

As a minor, 2-lot subdivision, a subdivision name is not necessary.

F. Lot requirements

1. *"Arrangement. Lot area, width, depth, orientation, and setbacks shall be arranged to minimize impact on adjoining properties and public streets. Double Frontage Lots shall be avoided whenever possible. Frontage on all corner lots shall be increased by a minimum of fifteen (15) percent."*

The arrangement of the proposed 2-lot subdivision has minimal impact on adjoining public streets and adjoining properties.

2. *"Shape. Side lot lines shall be as close as practical to right angles to street lines or radial to curving street lines. Lots shall be no more than twice as deep as the width of the lot."*

Due to the shape of the existing lot, the proposed subdivided lots would also have side lot lines that are not at right angles to the street. Based on the current plan submission, **the eastern edge of Lot 2 is 168', which is approximately equal to double the 83.86' width of the lot, and within the limits of the LDC requirements.** The shape of the lot may change slightly when the applicant revises the property line between the two proposed lots to be compliant with minimum lot size requirements in response to staff comments. Staff will confirm that the revised version is compliant with lot shape requirements.

3. *"Access. Each lot shall have direct access to a public street."*

The proposed lots would both have direct access to a public street.

Chapter 9: Subdivisions - Section 906: Streets

No new public streets are proposed.

Chapter 9: Subdivisions - Section 907: Easements

If determined to be necessary during final subdivision plan review, all drainage and utility easements will have to be specified on the plat. Easements shall be based upon standard engineering practices for the associated utility and a twenty-five (25) year design storm.

Chapter 9: Subdivisions - Section 909: Pedestrian and Bikeway Standards

- A. *“Concrete Sidewalks shall be constructed along both sides of major arterials and along one side of all other streets. The Development Review Board may waive this requirement in favor of a specific alternative, which provides equal or superior pedestrian access.”*

River Street does not currently have a sidewalk. However, River Street is a major access road for Global Foundries, which has over 2000 employees. Without a sidewalk and shoulder, motor vehicle traffic on River Street may make walking and cycling undesirable or unsafe.

Below: Picture taken by staff on October 10th, 2023 to show the condition of the existing sidewalk as it trails off to be just the shoulder on the side of the road.



Above: a Google Streetview screenshot showing the existing pedestrian access conditions at the site, facing East. 2 River Road is indicated by a yellow star in the picture above.

A sidewalk connection along River Street has been discussed by the Planning Commission in the past. During the site plan approval process for Riverside at the Village, the Planning Commission required that the developer install a sidewalk on Franklin Street to connect with a future sidewalk on River Street that would eventually connect with Park Street.

A sidewalk on River Street between Park Street and Stanton Drive, and another sidewalk from Stanton Drive to Riverside in the Village are both in the capital plan. This was always assumed to be on the north side, to minimize street crossings and to connect with the sidewalk on Park, and Franklin, both of which wrap around River Street. In 2017, the capital plan estimated that a new curb and sidewalk from Park Street to Stanton Drive (about 422 linear feet), would cost \$198,169.78, inclusive of engineering fees. These cost estimates are attached.

Staff believes this future sidewalk is important for pedestrian safety in this area. **In addition to accepting the proposed easement for a sidewalk** indicated on the plans, staff believes there may be several possibilities for satisfying the pedestrian standards in Section 909 of the Land Development Code:

- **Option 1: The applicant builds the equivalent length of sidewalk as the length of the frontage of 2 River Street, but builds it starting at Park Street instead directly along the length of the frontage, so that it connects with the existing sidewalk network without a gap.** The City would still require an easement for the unbuilt portion of the sidewalk on the eastern half of the 2 River Street property. The applicant has indicated that they believe this would be an unfair burden as they the trees and utility poles in this section may necessitate a curb sidewalk, which is about double the cost per linear foot than a typical sidewalk.
- **Option 2: The applicant pays a portion of the cost of the sidewalk already in the capital plan towards the City's capital budget, with those funds dedicated to this future project.** While this option is more cost-effective than Option 1, this solution is challenging as we are unsure of the City's legal authority to collect the fee in lieu of a sidewalk. Such a fee may potentially fall under the definition of "Impact Fee" [24 V.S.A. § 5201\(3\)](#), and may therefore be subject to the requirements of [24 V.S.A. § 5203\(a\)\(2\)](#), regarding a reasonable formula to assess the impact fees. Furthermore, 24 V.S.A. § 5203(e) requires that the municipality return the funds to the applicant if the collected fees are not spent on the capital project within six years of when the fee is paid. At its current position within the capital plan, staff believes this project is unlikely to be completed within this timeframe; however, it is possible that this project may be elevated in priority if the fee is collected.

The street frontage of the proposed subdivision totals 159 feet in length. This would be about 37.7% of the length of the Park Street to Stanton Drive sidewalk in the Capital Plan and would therefore be valued at about \$74,710.

- **Option 3: The applicant provides an easement for the sidewalk only.** If the other options are truly unfeasible, an easement by itself may be the only available option.

The DRB should consider whether to require Options 1, 2, or 3, as a condition of approval.

Staff Comments

Staff comments from the Public Works Department, Water Quality Department, Fire Department and City Engineer are summarized in the attached letter dated September 22, 2023. All staff comments in that letter have been addressed except for the following.

- The current plan specifies a “Proposed ¾” Water Service”. The plan should be revised to depict the location of a new curb stop on the “Potential 1” Water Service” for proposed Lot #2.

Recommendations

Staff recommends the DRB approve the final subdivision plat pending a DRB determination on the Section 909 sidewalk requirements.

Proposed Conditions

- All staff comments shall be addressed to the satisfaction of City staff
- Applicant shall submit record drawings for site utilities to the City of Essex Junction upon completion of construction, in both AutoCAD and PDF format.
- All new utilities shall be installed underground, per the LDC requirements in section 913.
- The applicant shall provide an easement to the City for future construction of a sidewalk along River Street

Here is my comment for the 12.19.23 DRB meeting. Thank you for distributing it to the DRB.

To the Design Review Board:

With this application for 2 River Street, the DRB has an opportunity to put another piece of the sidewalk network in place. There are objectives in the Comprehensive Plan to have all streets have a pedestrian way – a sidewalk – along public streets where possible. See below:

Objective 2.2: Require pedestrian and bicycle amenities in the creation of new development and public streets in the Village Center and Transit Oriented Development Districts. (page 49 Open space, etc)

(Transportation section)

Objective 1.3: Emphasize local access, public transit, bicycle facilities, pedestrian safety and access, and aesthetics in future streetscape projects. (page 99)

Objective 2.2: Review all development proposals to minimize traffic and pedestrian safety concerns.

Goal 3: Facilitate the use of sidewalks as a viable transportation alternative.

Objective 3.1: Review all development proposals for the efficient use of sidewalks.

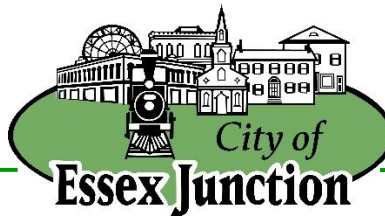
Objective 3.2: Consider alternative standards for sidewalks based upon location and potential usage.

I understand there is a master plan for sidewalks and a topic of conversation at the Capital Committee.

This application could require the space for the placement of a future sidewalk on this heavily travelled road to a major local employer. This applicant should be requested /required to have a sidewalk installed since the lot is being divided to ultimately construct another domicile. This applicant should be requested to work with Public Works to coordinate this addition to the sidewalk network. It is better to have the sidewalk as part of the plan now than to leave this pedestrian pathway to whims. We should be acting for public safety whenever possible.

Thank you for taking my comment. It is mine alone with the knowledge I have gained from positions I have held or currently hold. I would be at the meeting to present my comment but it conflicts with a EWSD Board meeting this evening. Should you have any questions, I am available.

Diane Clemens



Staff Report

To: Development Review Board
From: Jennifer Marbl
Date: 12/19/2023
Subject: 17 Park Street – Conceptual Site Plan Review for proposed 52-unit multi-family dwelling with 2 commercial spaces
File: SP# 8.2023

EXISTING CONDITIONS AND GENERAL INFORMATION

Project Location: 17 Park Street

Project Area Size: 20,000 sqft (0.46 acres)

Lot Frontage: 112 feet

Existing Land Use: Commercial

Surrounding Land Use: Mixed use

Zoning District: Village Center

Minimum Lot Size: 5,000 sqft (0.11 acres)

Lot Coverage: 81.1% (Existing); 90.1% (Proposed)

Project Description:

The applicant proposes the removal of the existing commercial building and the construction of a proposed **5-story**, mixed-use building, using the State of Vermont's Act 47 height bonus for qualifying affordable housing developments. The project includes 2 commercial units on the ground floor, and 52-unit multi-family residential units, including a mix of efficiency studio, studio, one-bedroom, and two-bedroom units. In this project, efficiency studios lack room divisions between living and kitchen areas while standard studios have a partial room division. The proposal includes 27 exterior ground parking spaces, 21 underground parking spaces, and 19 upper-level parking spaces for a total of 67 parking spaces. The upper level and underground parking are to be accessed from the ramps on the adjacent property through an agreement with that property's owner.

Section 604: Village Center (VC)

B. Lot Size/Lot Coverage

The minimum lot size shall be five thousand (5,000) square feet. The maximum total lot coverage shall be determined by the Development Review Board as part of Site Plan Review.

The lot is 22,190 sqft.

C. Setback Requirements

There are no requirements for commercial or mixed-use buildings in VC.

E. Design Review and Historic Preservation

2. Applicability

- a) Design review standards are applicable to this project
- b) Historic Preservation design Standards

This property is not on map 2 for historic sites and districts in the 2019 comprehensive plan and is not listed or known to be eligible for the national or state register of historic places.

4. *District Design Requirements. The Development Review Board shall review all development applications in the Village Center for compliance with the criteria listed below and in accordance with the character of the district as defined by the Essex Junction Comprehensive Plan.*

a.) Design Standards for the Village Center

The design standards include, but are not limited to: standards of building mass relevant to human scale, harmonious front façade, provide an active pedestrian space such as sidewalk cafes, connections to neighborhood bicycle paths, street edge creates a sense of enclosure, features promoting cycling/walking/and various transit options. As is appropriate, features shall include at least two or more of the following, or similar amenity with approval from the Development Review Board:

v. Site features

- a. *Pedestrian access directly from the building to the public sidewalk;*

As a design concern regarding the elevated sidewalk, as it makes the area more removed from the street. This is to align the finished floor and level of the underground parking to that of the adjacent building, as the two would share the connected underground parking area. However, this poses a challenge in terms of pedestrian access and the only ADA accessible ramp is situated at the rear of the business. **The DRB should determine if this is an impediment to pedestrian access.**

- b. *Pocket park with benches or similar amenities between the public realm and the private building;*

- c. *Public art, murals or interactive games;*

- d. *Covered bus shelter; and*

Property is located along Green Mountain Transit's Route 10, with service between the Town of Essex, Essex Junction, and Williston. Staff recommends the inclusion of a covered bus waiting area as a part of this development.

- e. *Shade trees.*

The Tree Advisory Committee recommends the use of three silva cells for the four trees (the middle two sharing one silva cell) along the street front to prevent compacting the soil and root systems. The

southernmost tree has the smallest available area due to the stairs on either side. If silva cells are used, the Committee recommends that the installation is inspected by a consultant from Deeproot, a landscape architect, or the City Public Works Department. **The final submission should include a more detailed site plan completed by a landscape architect which specifies the plants used.**

Staff finds the front façade harmonious and designed to human scale, although it is lacking a sense of enclosure or features promoting alternative transit options. As described in section 703, bike racks are required. Due to the location on a frequent bus route, staff recommends a bus shelter. Including these or other features specified above in the final submittal can improve site features for pedestrians. **The Development Review Board should determine if all the design standards listed above are met.**

6. Formula-Based Retail and Restaurants

c.) Review Standards

The applicant has not indicated an intent to host “Formula-Based Retail and Restaurants.

F. Parking

There are no minimum parking requirements in the VC District, however, the Development Review Board may require parking as a part of any Site Plan approval. The applicant has proposed 67 parking spaces. The adjacent parking lot is municipally owned and provides about 20 spaces for public parking. Currently, these are signed to prohibit overnight use. The DRB should determine if planned parking is acceptable according to Section 604.F.

H. Building Height

2. *In accordance with 24 V.S.A. § 4412, any affordable housing development, as defined in 24 V.S.A. § 4303(2), shall be permitted one additional floor for no more than five (5) stories or seventy-two (72) feet, whichever is less, provided that the structure complies with the Vermont Fire and Building Safety Code.*

“Affordable Housing Development is defined in 24 V.S.A. § 4303(2) as:

“a housing development of which at least 20 percent of the units or a minimum of five units, whichever is greater, are affordable housing units. Affordable units shall be subject to covenants or restrictions that preserve their affordability for a minimum of 15 years or longer as provided in municipal bylaws.”

“Affordable Housing” is defined in 24 V.S.A. § 4303 as *either of the following:*

- (B) *Rental housing for which the total annual cost of renting, including rent, utilities, and condominium association fees, does not exceed 30 percent of the gross annual income of a household at 80 percent of the highest of the following:*

- i. the county median income, as defined by the U.S. Department of Housing and Urban Development; **This is the highest for this area.**
- ii. the standard metropolitan statistical area median income if the municipality is located in such an area, as defined by the U.S. Department of Housing and Urban Development; or
- iii. the statewide median income, as defined by the U.S. Department of Housing and Urban Development.

Applicant has requested one additional floor with the above qualifications. Proposed height is listed as approximately 56 ft, so the number of stories is the deciding factor.

Staff recommends that the applicant be required to provide annual rent affordability reporting requirements requested by staff as a condition of approval. Staff also recommends that the applicant be required to provide the City with draft versions of all relevant affordability covenants and restrictions for review by the City Attorney. A covenant (or similar binding document) to ensure the units remain affordable for a minimum of 15 years as a condition of approval. The applicant should submit a draft covenant for the affordable housing requirements for review by the City Attorney prior to final site plan review.

SECTION 513: APPROVAL OF ACTIVITIES INVOLVING THE CONSTRUCTION OF A STORMWATER SYSTEM

A. Review Requirement

Activities involving construction of a stormwater system other than the public storm drainage system, or connection to any such system, shall require review in accordance with the procedures of this section.

C. Application Requirements.

Section 513.C requires that applications involving the construction of a stormwater system must include a stormwater management plan specifying pre-development and post-development drainage calculations for a two (2), ten (10), and twenty-five (25) year design stormwater flow which also specifies the entity responsible for non-municipal maintenance. This must include on-site drainage improvements like Green Stormwater Infrastructure including, but not limited to: rain gardens, buffer strips, filter strips, grass swales, infiltration basins or other infiltrating practices while also considering permeable pavement systems, cisterns or other structural/ non-structural best management practices. If required by local or state processes, a downstream analysis, including Total Maximum Daily Load considerations, is necessary.

The civil plan includes a stormwater infiltration area. The listed application requirements will need to be met in the final submission.

SECTION 514: APPROVAL OF ACTIVITIES INVOLVING THE DISTURBANCE OF MORE THAN 0.5 ACRE OF LAND

Construction activities on sites larger than 0.5 acres requires best requires that the applicant conform to State of Vermont Best Site Management Practices for erosion and sediment control. The proposed

project site is 0.46 acres in size and is not subject to these requirements. However, the applicant is encouraged to consider practices outlined in “The Low Risk Site Handbook for Erosion Prevention and Sediment Control” (as amended) or in the “Vermont Erosion Prevention and Sediment Control Field Guide” (as amended).

SECTION 620: DESIGN REVIEW OVERLAY DISTRICT (DRO)

This project is located within the design overlay district. Design review standards in this district are identical to those for the Village Center district. See Section 704.E.4 for details.

SECTION 703: PARKING AND LOADING

B. Loading Requirements

All uses shall provide off-street loading spaces except residential uses or other uses specifically waived by the Development Review Board in accordance with Subsection 7. Section 703.C stipulates that loading spaces must be situated on the same property as the primary use, emphasizing the reduction of conflicts in circulation. Loading areas should not be combined with required off-street parking. Additionally, these spaces must be adequately sized, measuring fifteen feet in width by twenty-five feet in length, to ensure smooth delivery maneuvering without encroaching on public rights-of-way, parking spaces, or internal circulation, unless a waiver is specifically approved by the Commission.

No loading space is shown on the plans. Applicant has stated the intention to require deliveries to the commercial suite to be limited to vehicles small enough to enter the covered parking areas.

C. Off-Street Parking Requirements.

1. The applicant is seeking a waiver of the LDC requirements to allow a 22’ wide travel aisle in the parking area due to spatial constraints. The LDC requires a minimum of 24’ wide travel aisle in parking areas for two-way traffic.

Staff does not see a narrower travel isle in the parking area as a safety issue, as travel speeds are expected to be low and because the proposed dimensions are common in spatially constrained areas. This is a tradeoff between compact, urban design, and the convenience of easier maneuvering for larger vehicles. With a narrower isle, drivers of vehicles with wider turn radii may find it difficult to park front-in and may have to back-in to spaces instead. Literature suggests that reverse parking is safer anyway.

The parking spaces appear to meet all other dimensional requirements. **The DRB should consider the relevant tradeoffs and determine the acceptability of including a 22’ parking travel isle.**

16. *Waivers. The Development Review Board may waive some or all parking requirements and may place conditions on a waiver as necessary to guarantee adequate parking.*

A waiver is available under section 703K.16 if other standards are not met.

L. Bicycle Parking and Storage Standards and Applicability

In the submitted drawings, the architectural plan shows bike storage in the underground parking, the applicant has confirmed that this version is correct, rather than the structural.

Long-term bike parking spaces are meant for residents and employees, and should be in a secure space. Short-term bike parking is meant for customers and visitors; and should be conveniently located near entrances.

Section 703.L requires a minimum of 1 short-term bike parking space per 10 residential units (or 6 spaces) and 1 per 5k s.f. for commercial units with a minimum of 4 short-term bike parking spots. Long term bike storage for residential units is required for 1 bike parking space per unit for residential developments and the commercial portion would require 50% of the short-term storage for long term storage (in this case, an additional 2).

With 52 residential units and 5,777 sf of commercial space, the minimum bicycle parking requirements are 10 short-term bike parking spaces and 54 long-term bike storage spaces. The site plan does not currently indicate short-term bicycle parking. The conceptual plans indicate areas for long-term bicycle parking in the underground parking lot, but this area will need to be secure and access controlled to meet the requirements of Section 703.L.2. Details on bike parking placement and hardware will be required as a part of the final site plan review will be required in future submittals.



Figure 1: Example of compact indoor bike parking racking

SECTION 704: LIGHTING

The applicant should provide a lighting plan for the final site plan review.

SECTION 705: CURB CUTS

This project does not require a new curb cut. Final plans should indicate the closure of existing curb cut that would be no longer necessary.

SECTION 706: ACCESSORY USES AND STRUCTURES

J. Dumpsters or Other Trash Containers:

Dumpsters or trash containers in any district must comply with specified standards or receive Site Plan approval. They should be screened from public view with a nontransparent fence or landscaping up to six feet high. Dumpsters must have covers and drainage plugs, must be constructed from non-combustible materials, and must be placed at specified distances from structures. These regulations do not apply to residential use for up to four family dwellings.

No dumpster or trash container is specified on plans. The applicant has stated that the original intention was to negotiate a shared-use agreement with an adjacent property. The applicant has stated that instead, the dumpster and its location will be stated in the final plans.

SECTION 707: FENCES

No fences specified on plans.

SECTION 708: SCREENING/BUFFERING

B. Standards

3. As a multi-family development within the VC district, not adjacent to a single-family use outside of the VC district, no buffer from adjacent buildings is required.

4. *Parking lots located adjacent to public streets shall be screened to minimize glare and vehicle light encroachment on the street. Screening may include berms and landscaping.*

The shape of the building screens most of the parking lot from street view. The main façade of the parking lot faces a side street that is adjacent to street parking.

SECTION 710: VISIBILITY TRIANGLES

The proposed upper level and basement parking is accessed through the adjacent property. The ground level parking lot would be accessed from the 21 Park Street municipally owned parking lot. Therefore, there are no visibility triangle issues.

SECTION 718: PERFORMANCE STANDARDS

G. Visual Impact

The Development Review Board may review visual impact of any proposed development located in any Commercial or Industrial District. The Development Review Board may place conditions on any approval or may require the alteration or relocation of any proposed structure, which in its opinion would significantly alter the existing character of the area.

1. *Factors for Evaluation. Visual impact shall be evaluated through analysis of the following factors and characteristics:*

(c) Harmony and compatibility of architectural character with surrounding structures.

Staff is concerned that the muted façade in grayscale may be disharmonious to the colorful center of town. Staff recommends that the final submission should give consideration for visual harmony.

The DRB should evaluate the proposed building’s relationship to the site and adjoining areas, building design, architecture, and finishes to determine compliance with Section 718.G.

SECTION 719: LANDSCAPE AND TREE PLANTING REQUIREMENTS

Section 719 outlines regulations aimed at protecting and improving the community's environmental, economic, and aesthetic quality to promote public health, safety, and welfare. It specifies requirements for tree protection during development, allowing for a credit of up to 50% of landscaping for preserving mature trees. Street tree regulations mandate one shade tree for every 40 feet of frontage. Landscaping requirements include a minimum of two percent of the total construction cost for new projects over \$250,000. The Development Review Board may allow improvements to public spaces as an alternative to on-site landscaping. Additionally, landscaping is required for new uses on existing developments or renovations to provide screening and environmental enhancement.

Applicant will be required to prepare a full landscape plan prepared by a licensed landscape architect including construction cost estimates compliant with section 719.E as part of final approval.

SECTION 720: LOT FRONTAGE

A. Lot Frontage Within any District, a minimum frontage of sixty (60) feet is required at the street, unless specifically stated otherwise.

The Lot frontage is 112 feet, this meets the requirement.

SECTION 1102: SEWER ALLOCATION

Final submission should specify the location of the connection to the public sewer system.

Applicant should submit Sewer Allocation Request and Water Service Forms along with associated fees as a condition of final approval; the applicant has submitted the forms.

Technical Review / Other sections of the LDC

The conceptual site plan review process focuses only on basic land-use and dimensional and aesthetic design aspects of the proposal. A full technical review of this application has not been conducted by City staff. Additional requirements of the LDC are applicable and will be reviewed during Final Site Plan Review.

NEIGHBORHOOD DEVELOPMENT AREA VILLAGE CENTER DESIGNATION BENEFITS

- This project is within the Village Center and Neighborhood Development Area state designated areas, which offer the following benefits. Some of these benefits include that qualified “mixed income” projects are exempt from Act 250 regulations.
- Act 250 projects not qualifying for the exemption receive a 50% discount on application fees.
- Agency of Natural Resources fees for wastewater review are capped at \$50.00 for projects that have received sewer allocation from an approved municipal system
- Exemption from the land gains tax
- Limitation on appeals of conditional use permits for residential development
- Pilot Downtown & Village Center Tax Credit

Applicants are encouraged to consider the use of any applicable State Designation Benefits. For more information, see:

<https://accd.vermont.gov/community-development/designation-programs/neighborhood-development-areas>

Additional Staff Comments

- Staff recommends that the applicant review the State of Vermont Best Site Management Practices for erosion and sediment control.
- The Public Works department encourages the applicant to work with Staff to pre-install new connections for water and sewer along Park Street in coordination with repaving work scheduled for the 2024 construction season as a part of the Crescent Connector project.

Recommendations:

Staff recommends the Development Review Board consider the approval of the proposed development based on a determination of the following LDC standards and applications of Act 24:

- The Development Review Board should determine if the applicant satisfies the requirements of Section 604.H.2 to allow for the additional story in accordance with 24 V.S.A. § 4412.
- The Development Review Board should require the applicant to provide a draft version of all relevant affordability covenants (or similar binding documents) ensuring the units remain affordable for a minimum of 15 years and restrictions for review by the City Attorney condition of approval.
- The Development Review Board should determine if all the design review standards from section 604.E.4 are met:
 - The Development Review Board should discuss a requirement inclusion of a covered bus shelter or covered waiting area at this location as one of the possible options for section 604.E.4.a.
 - The Development Review Board should determine if the raised sidewalk is an impediment to pedestrian access under the design review standards from section 604.E.4.A.v.a.

- The Development Review Board should determine if planned parking is acceptable according to Section 604.F.
- The Development Review Board should decide whether the two-lane parking isle with is sufficient, as it fails to meet the requirements of Section 705.D.3.
- The Development Review Board should evaluate the proposed building's relationship to the site and adjoining areas, building design, architecture, and finishes to ensure compliance with Section 718.G.
- The Development Review Board should consider discuss with the applicant the Tree Advisory Committee's recommendation for least three silva cells for the four trees (the middle two sharing one silva cell) along the street front to prevent compacting the soil and root systems. If silva cells are used, the Tree Committee recommends that the installation is inspected by a consultant from Deeprout, a landscape architect, or the City Public Works department.

Proposed Conditions

- All staff comments shall be addressed to the satisfaction of City staff
- Applicant shall submit record drawings for site utilities to the City of Essex Junction upon completion of construction, in both AutoCAD and PDF format.
- All new utilities shall be installed underground, per the LDC requirements in section 913.
- The final submission must include the details of the stormwater system compliant with the requirements in section 513.
- Bicycle parking shall be provided in accordance with the requirements of the Section 703.L
- Lighting shall be provided in accordance with Section 704.D.1 for the access drive, parking, and sidewalk areas.
- Additional information regarding the dumpster area should be provided to ensure compliance with the LDC requirements of Section 706.J.
- Applicant shall submit Sewer Allocation Request and Water Service Forms along with associated fees as a condition of final approval.
- Applicant will be required to submit a full landscape plan prepared by a licensed landscape architect including construction cost estimates compliant with section 719.E as part of the final approval.
- The applicant shall submit a draft covenant for the affordable housing requirements for review by the City Attorney prior to final site plan review as well as completing all associated forms to ensure offered affordable housing units meets state requirements.
- Final submission shall specify the location of a trash receptacle or a shared-use arrangement with an adjacent property compliant with section 706.
- Final submission shall specify the location of the connection to the public sewer system.

City of Essex Junction, VT

Affordable Housing Height Bonus Criteria and Reporting Requirements

The Vermont HOME Act of 2023, Act 47 (S.100) adds the allowance for an additional floor¹ for qualifying "affordable housing developments", defined in 24 V.S.A. § 4303 as:

*a housing development of which at least 20 percent of the units or a minimum of five units, whichever is greater, are **affordable housing** units. Affordable units shall be subject to covenants or restrictions that preserve their affordability for a minimum of 15 years or longer as provided in municipal bylaws.*

For rental units, 24 V.S.A. § 4303 defines Affordable Housing as:

housing for which the total annual cost of renting, including rent, utilities, and condominium association fees, does not exceed 30 percent of the gross annual income of a household at 80 percent of the highest of the following:

- (i) the county median income, as defined by the U.S. Department of Housing and Urban Development;*
- (ii) the standard metropolitan statistical area median income if the municipality is located in such an area, as defined by the U.S. Department of Housing and Urban Development; or*
- (iii) the statewide median income, as defined by the U.S. Department of Housing and Urban Development.*

Does your property qualify as an affordable housing development?

To qualify, the overall rent of the required "affordable units", inclusive of utilities and fees, must be no more than the maximum rent thresholds based on the criteria above. These limits are summarized on the Vermont Housing Finance Agency's monthly summary here:

<https://www.housingdata.org/documents/purchase-price-and-rent-affordability.pdf>

As of November 2023, the applicable maximum gross rent for affordable units, inclusive of utilities and fees are as follows:

Maximum Affordable Rent by unit type 2023, inclusive of utilities and fees²			
Studio / Efficiency	1 Bedroom	2 Bedroom	3 Bedroom
\$1,590	\$1,704	\$2,045	\$2,363

What if some utilities and fees are paid by the tenant?

If some or all utilities are excluded from the rent, refer to the Vermont State Housing Authority's current schedule of "Allowances for Tenant Furnished Utilities and Other Services". These utility allowances are subtracted from the maximum affordable rent.

¹ additional floor beyond what is otherwise allowed in a zoning district, in areas served by municipal water and sewer.

² Maximum gross rent are based on HUD guidance stipulating that homes have at least 1 bedroom for every 1.5 people in the household. This means that the affordable rent and purchase price of a 1-bedroom home are based on the average of the median incomes of 1 person household and of a 2-person household as a proxy for the median income of a "1.5-person household". The affordable rent and purchase price for a 2-bedroom home are based on the median income of a 3-person household (i.e., 2 bedrooms x 1.5 people/bedroom = 3-person household). For a 3-bedroom home, the rent and price are based on the average of the median incomes of a 4- and 5-person household.



As of November 2023, the following is a sample of the typical Allowances for Tenant Furnished Utilities and Other Services:

Utility or Service	0 BR	1 BR	2 BR	3 BR
Natural Gas Heating	\$ 93	\$ 105	\$ 111	\$ 118
Natural Gas Cooking	\$ 4	\$ 4	\$ 6	\$ 8
Other Electric	\$ 38	\$ 44	\$ 62	\$ 79
Electric Water Heating	\$ 28	\$ 33	\$ 42	\$ 51
Water and Sewer	\$ 55	\$ 58	\$ 77	\$ 105
Trash Collection	\$ 78	\$ 78	\$ 78	\$ 78

Reporting Requirements

For applicants who wish to utilize the Act 47 height bonus, these requirements may be included by the Development Review Board as a condition of approval. Upon site plan approval, applicants must:

1. Provide the Community Development Department with copies of any covenants or restrictions in place to preserve affordability for at least 15 years.
2. Fulfil annual reporting requirements by December 31 of each year during the 15-year period:
 - a. Submit a completed Affordable Housing Rent Reporting Form,
 - b. Submit copies of the lease documents for all affordable housing units on the property, or by random sampling as requested by the Community Development Department.



**City of Essex Junction, VT
Affordable Housing
Rent Reporting Form**

Reporting Period 11/2023 - 1/2024
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INSTRUCTIONS:

See City of Essex Junction, VT Affordable Housing Height Bonus Criteria and Reporting Requirements prior to completing this form. The report must include all Affordable Housing Units on the property.

Property description (address) for application: _____

General information

Applicant _____ Day Phone _____
 Address _____
 Email Address _____

Property Owner of Record (attach affidavit if not applicant)

Applicant _____ Day Phone _____
 Address _____
 Email Address _____

Property Management

Name of Company _____ Day Phone _____
 Email Address _____

Date of Report: _____ Total Units: _____ Total Affordable Units: _____

Minimum number of affordable units: 20% of Total number of units **OR** 5 units, whichever is greater= _____

Affordability Requirement Dates (minimum 15 years)

Date of original approval, if renewing (yyyy-mm): _____ Valid until (yyyy-mm): _____

What utilities are included in the rent? Circle all that apply, specify type if applicable:					
Utility	Not Included	-OR-	Type of Included Utility		
HEAT:	Not Included	Natural Gas	Bottle Gas	Oil/Electric	Kerosene
WATER HEATING:	Not Included	Natural Gas	Bottle Gas	Oil	Electric
COOKING:	Not Included	Natural Gas	Bottle Gas	Electric	Kerosene
ELECTRIC:	Not Included	other electric lights, appliances etc.)			
WATER	Not Included	Included			
TRASH COLLECTION	Not Included	Included			
OTHER					



Unit Number	Number of Bedrooms	Initial Lease Date	Monthly Rent

I certify that the information on this application is true and correct. I agree to abide by all the requirements specified in the Land Development Code and any conditions placed upon approval of this application.

Applicant

Date

Land Owner (if different)

Date

Staff Action

Date received _____ Approved _____ Denied _____

In compliance with affordable housing requirements? Yes _____ No _____

Explain (if denied) _____

Other approvals/conditions (note type/attach other signed approvals): _____

Staff Signature

Date

