

**CITY OF ESSEX JUNCTION
DEVELOPMENT REVIEW BOARD
MINUTES OF MEETING
SEPTEMBER 21, 2023
APPROVED OCTOBER 19, 2023**

MEMBERS PRESENT: John Alden, Chair; Robert Mount, Vice Chair; Christin Gildea, Maggie Massey, Dylan Zwicky.

MEMBERS ABSENT: None.

ADMINISTRATION: Jennifer Marbl, City Planner; Chris Yuen, Community Development Director.

OTHERS PRESENT: Anna Berg, Pat Bouchard, David Burke, Marcus Certa, Greg Dwyer, Rebecca Dwyer, Mary Jo Engel, Daniel Goltzman, Gabe Handy, Jason Hemenway, Sharon Wille Padnos, Stephen Wille Padnos, Linda Paroline, Robert Paroline, Ken Signorello, William Towle, Kelly Tuman, Doug Viehmann.

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. Regular Meeting – July 20, 2023

MOTION by CHRISTIAN GILDEA, SECOND by ROBERT MOUNT, to approve the minutes as presented. The motion passed 5-0.

4. PUBLIC HEARING

Chair Alden opened the public hearing and began by swearing in all individuals who anticipate giving testimony during the hearing.

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

Mr. Padnos said that this is an appeal of a decision to not enforce zoning rules that prohibit agricultural use of a property in the R-1 Zoning District.

Mr. William B. Towle, the appellant's legal representative, said that the primary question is whether the City has the legal authority to enforce the Land Development Code (LDC)'s prohibition of agriculture and cannabis cultivation in the R-1 District or whether state statute preempts municipal zoning bylaw through 24 V.S.A §4413.(d)(1). He said that there is not precedent for prohibiting municipalities from regulating agriculture generally, but that statute is intended to prohibit the double-regulation of water quality related to agricultural practices and the construction of farm structures. He said that the Development Review Board (DRB) is tasked with enforcing the zoning laws as set forth in the LDC and approved by the City Council and voters, and that any discrepancies between municipal bylaws and

State statute should be deliberated by the State's Environmental Court. He argued that it is relatively easy for anyone to obtain farming operation designation from the Agency of Agriculture, and expressed concern that this could be a loophole for municipal regulation.

Chair Alden asked how long the farm has been in existence. Mr. Padnos replied that Mr. Struthers began growing cannabis in 2019 or 2020. He said that Mr. Struthers requested a variance from the Planning Commission in March of 2022. Mr. Padnos then said that he and his wife lodged a complaint with the Zoning Department in August, and that the application for the farm determination was submitted six months after that. He said that if the rules had been enforced from the beginning, this situation would not have occurred.

Mr. Padnos then spoke about the conditions around his property. He said that he is not able to use his property due to odors from hay and duck feces and that they are not able to open their windows. He said that the ducks are also very loud. He also spoke about the odor from the cannabis cultivation operation and that it has been detrimental to his quality of life. He expressed concern that these operations are occurring in a residential area.

Ms. Gildea asked if a complaint has been filed with the State. Mr. Padnos replied that he lodged a complaint about odors with the State.

Mr. Padnos showed an aerial shot of the neighborhood, as well as photographs of the Struthers property from his own property, noting that the duck enclosures directly about his property.

Mr. Zwicky said that it appears that the State has not limited the scope of their regulation when it comes to cannabis operations, and asked whether the Appellant would argue that the municipality has the authority to regulate cannabis operations. Mr. Towle replied that the revised statute could allow for municipal regulation, because it is no longer a blanket prohibition. He said that municipalities could zone for cannabis, but not in a way that it completely prohibits cannabis operations. Mr. Zwicky agreed that the legislature's intent was to allow municipalities to regulate retail cannabis, but not to prohibit cannabis cultivation.

Rebecca Dwyer, an adjacent neighbor, said that the property in question is impacting the quality of life for everyone on the street in terms of odor and activity. She said that her daughters are not able to use her backyard and that she is unable to host Girl Scout meetings in her home due to the proximity to cannabis. She said that she does not think Essex Junction is enforcing laws that promote family living.

Greg Dwyer, an adjacent neighbor, expressed concern that this decision not to enforce bylaws would allow for other residents to pursue commercial or other opportunities and would lower the property values in this and other residential zoning districts.

Sharon Wille Padnos, the co-Appellant, spoke about the odors and other activities that are impacting her quality of life in the neighborhood.

Jason Hemenway, an adjacent neighbor, spoke about the condition of the neighborhood due to the cannabis cultivation operation. He spoke about the black screening that was put up on the property in question to screen the cannabis operation from the street, and said that it is an eyesore and that property

values in the neighborhood are decreasing. He expressed concern about criminal activity in the neighborhood, and that the cannabis operation could be targeted by addicts.

Pat Bouchard, an adjacent neighbor, expressed concern about the DRB's position of not enforcing zoning. She said that the smell from the animals and plants at the Struthers property is overwhelming. She asked the DRB to enforce the regulations for the residential neighborhood.

Kelly Turman, an adjacent neighbor, noted the proximity to the school, and asked about zoning regulations for cannabis cultivators that are near schools. Chair Alden replied that they would need to look into this further. She also expressed concern about humane treatment of animals and piles of dead ducks on the property. She urged the DRB to overturn the decision.

MOTION by ROBERT MOUNT, SECOND by MAGGIE MASSEY, to close the public hearing. The motion passed 5-0.

MOTION by DYLAN ZWICKY, SECOND by MAGGIE MASSEY, to close the deliberative session and enter into executive session. The motion passed 5-0.

The Development Review Board exited executive session.

MOTION by JOHN ALDEN, SECOND by ROBERT MOUNT, that the Development Review Board overturn the Administrative Office's enforcement decision and require that the resident of 8 Taft Street cease to operate a farm. However, the Development Review Board finds that cannabis cultivation is subject to different rules and upheld the Administrative Office's portion of the decision on cannabis cultivation. The motion passed 5-0.

B. Conceptual site plan to construct 4-story mixed-use building with commercial on 1st floor and 34 residential units with parking at 8 Railroad Street in the VC District, by Franklin South, LLC, owner.

David Burke noted that they have elected to come in for a concept plan, and that the proposal was denied in July due to the 15-foot buffer for residential district. He said that Gabe Handy modified that plan so that it staggers the building and brings it into compliance with the 15-foot buffer. He outlined the change, which was primarily to the façade and footprint of the building. He said that this is a 0.5-acre parcel with 66 feet of frontage and meets the minimum lot size in the VC District is 5,000 feet. He said that there is no existing lot coverage, since the previous building has been removed. He said that the permitted percent coverage is at the discretion of the DRB. He said that the current proposal is for a 4-story mixed-use building with 39 units, comprised of 18 one-bedroom and 21 two-bedroom units. He said that the proposal is in line with zoning for this district.

Mr. Burke then reviewed staff comments. He said that the Applicant feels that their parking proposal is sufficient and that they would not be asking for a waiver for parking, noting that there is no minimum parking requirement in the Village Center District. He said that they are within the building height requirements. He spoke about residential pedestrian access, noting that there is a front door on the façade for pedestrian entrance, and that the 20-foot entrance to the driveway is safe enough for pedestrian access. He said that they take exception to the minimum of 38 bicycles, saying that they don't see the demand for this quantity of bicycles, and that they would seek a waiver of this requirement at final review, if necessary. He noted that an easement on Railroad Street has been acquired for garbage

truck access. He noted that staff is recommending another easement to the north of the building but said that this isn't feasible. He noted that the Town attorney determined that the 15-foot buffer applies for the entire property line of the first single family home, which is the second lot in on Gaines Court. He noted that they have not had a survey or structural conducted, but that the Applicant does not want a waiver and will ensure that they abide by the attorney's opinion. He acknowledged that a full landscape plan is required for final plat review.

Community Development Director Yuen noted that the Fire Chief has conducted a review of the property and does not have specific comments, though the City Engineer may have comments at final review (but no concerns upon preliminary review).

Mr. Burke noted that if there are concerns about maneuverability for garbage trucks or other delivery trucks off of Railroad Street, they could explore extending the parking area to the east to give extra space by the dumpster for trucks to maneuver.

Mr. Zwicky said that he would be more inclined to be flexible about bicycles if there were additional allowances for electric vehicle charging, and Mr. Burke noted that if this site plan triggers an Act 250 review, they will need to look into that further.

Dan Goltzman spoke about the changes to the façade of the building. He said that because the project scheme was altered, they decided to pursue a Dutch Colonial style that references other buildings in the Village Center, such as buildings on Railroad Avenue. He said that it has a residential quality to it, but that this style is found in mixed-use buildings throughout New England. He said that this design projects historical architectural details while increasing density in the Village Center and increases access to pedestrian spaces. Chair Alden noted that the rear portion of the building is rendered in a single color but recommended that some variation may help break it up. He noted that the drive-through bay may benefit from being increased in height slightly, to combat the illusion that it is shorter than the frontage windows. He expressed support for the façade design generally.

Ms. Massey asked about the requirements for bicycles and whether a waiver is feasible. Community Development Director Yuen replied that the requirement is for one bicycle parking space per unit and that he is not aware of a waiver, and that the rationale for this limit is to address security concerns with long-term bicycle storage. Mr. Goltzman said that the regulation calls for a significant number of bicycle spaces, and said that it may require a 1,000 square foot room, and that it may be difficult to accommodate that many bicycles. He noted that in other projects, they have had to clear out many unused bicycles that were chained to racks. Chair Alden said that the DRB can try and regulate its way into better behavior (in terms of trying to incentivize multi-modal transportation), but that it doesn't always occur as intended.

Mary Jo Engel, an adjacent neighbor, provided several comments about the proposed site plan. She expressed concerns about the building height. She said that her house is in line with the currently-existing property and asked about the scale of the new building, given height. Chair Alden said that they won't know until there is a formalized survey. She asked that sight lines be visually protected from Gaines Court. She also expressed concerns about the right-of-way for snow removal, and Chair Alden noted that the project will have a snow removal plan.

Community Development Director Yuen spoke about parking, noting that staff comments were referencing a parking dimensions waiver, rather than a parking quantity waiver. He also spoke about the 15-foot buffer and noted concern about the severe corner on the south side of the proposed building structure (along Gaines Court). Chair Alden said that he would agree that the buffer is more than one-dimensional, and that there is a three-dimensional ability to landscape to soften that buffer. He said he would encourage the applicant to look at how that corner of the building in question could be softened or buffered in terms of screening or vegetation. The DRB determined that the current design as proposed is meeting the intent of the 15-foot buffer and isn't encroaching on the locations in question.

MOTION by ROBERT MOUNT, SECOND by MAGGIE MASSEY, to close the public hearing. The motion passed 5-0.

MOTION by JOHN ALDEN, SECOND by DYLAN ZWICKY, to approve the conceptual site plan. The motion passed 5-0.

C. Conceptual site plan to remove existing structures and construct 4-story 18 unit residential building with parking at 132 Pearl Street in the HA District by Paroline Real Estate, LLC.

Mr. Paroline said that they have two buildings in the setback at 132 Pearl Street and said that they would like to build out to the setbacks to give more bicycle space. He said that in their plan they have not shown electric vehicle charging but they plan to do so, and that they would like the Development Review Board to consider this as a Planned Unit Development (PUD), given that they would like to pursue having these units be condominiums. He said that in terms of waivers, they would be looking for waivers on the setbacks (back and front), and for total square footage. He said that they are at 6,700 square feet and that the maximum is 6,500 square feet. Chair Alden asked for confirmation that they would not be looking to develop within the railroad space, and Mr. Paroline confirmed this. He said that they have more flexibility with the back setback than the front setback.

Mr. Viehmann noted that the intent with the setbacks in the front is that they are trying to be transitional to the Highway Arterial District. He said that if their intent is to put a bus stop into the plan, they should do so in tandem with the landscape architect and landscape plan. He spoke about features that would accommodate stormwater infrastructure, public spaces, and garbage truck accommodations. Chair Alden asked about infrastructure on the roof, and Mr. Viehmann replied that it would be infrastructure and solar panels.

Chair Alden said that he likes the proposed amenities near the front setbacks, and said that the Applicant should keep looking at this proposal with an eye to that. He also said that in terms of architectural design, it would be good to see a design that looks like more of a residential structure than a parking garage with residential units on top. He said that he does not have an issue with the setbacks. He said that he is generally supportive of this plan.

MOTION by ROBERT MOUNT, SECOND by MAGGIE MASSEY, to close the public hearing. The motion passed 5-0.

MOTION by CHRISTEN GILDEA, SECOND by DYLAN ZWICKY, to approve the conceptual plan. The motion passed 5-0.

5. OTHER DEVELOPMENT REVIEW BOARD ITEMS

None.

6. ADJOURNMENT

MOTION by ROBERT MOUNT, SECOND by MAGGIE MASSEY, to adjourn the meeting. The motion passed 5-0.

The meeting was adjourned without objection at 9:43 P.M.

RScty: AACoonradt