

**CITY OF ESSEX JUNCTION
DEVELOPMENT REVIEW BOARD
MINUTES OF MEETING
DECEMBER 15, 2022
APPROVED JANUARY 12, 2023**

MEMBERS PRESENT: John Alden, Chair; Robert Mount, Vice Chair; Cristin Gildea (via Zoom), Maggie Massey, Dylan Zwicky.

MEMBERS ABSENT: None.

ADMINISTRATION: Regina Mahony, City Manager/Acting Zoning Administrator; Wendy Hysko, Library Director/Staff Liaison for Local Cannabis Regulation; Jeff Kershner, City Engineer.

OTHERS PRESENT: Malachi Brennan, Doug Cheeseman, Diane Clemens, Bryan Currier, Adrian Lanza, Elise Martin, Eric Stone.

1. CALL TO ORDER

Mr. Alden called the meeting to order at 6:30 PM.

2. ADDITIONS OR AMENDMENTS TO AGENDA

No additions or amendments.

3. PUBLIC TO BE HEARD

None.

4. MINUTES

A. Regular Meeting – November 17, 2022

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

5. PUBLIC HEARING

A. Appeal of Administrative Officer’s decision to deny a Home Occupation permit for the cultivation of cannabis at 5 Shawn’s Way in the R-1 District, by Adrian Lanza, Passionfruit Farms, LLC, owner.

Chair Alden swore in all individuals who intended to speak during this hearing under the following oath: “I hereby swear that the evidence I give in the cause under consideration shall be the whole truth and nothing but the truth under the pains and penalties of perjury.”

Mr. Brennan, legal counsel to the Appellant, Mr. Lanza, said that he agrees that cannabis cultivation is not a permitted use in the R-1 zoning district. However, he noted that the zoning code and state statute say that no bylaws in the code may restrict homeowners’ right to have a home occupation so long as it meets the home occupation criteria. He said the question is whether that designation as a home occupation is met and trumps the permitted use table. He cited Section 11 of the zoning regulations, which states that “nothing in this code shall infringe upon the right of any resident to use a minor portion of a dwelling for an occupation which is customary in residential areas and which does not change the character thereof.” He said that state statute has similar language. He said that there will be no impacts of this use outside of the house that are noticeable, since it is on a dead-end road and is a small

occupation and use. He said that this is around a minor home occupation in one's own home. He said that the special protections in State statute for a homeowner's ability to have a home occupation in their house means that they can have a home occupation in their residence that is not otherwise permitted in that district. He additionally said that the staff report identified the changes made to the City's Land Development Code (LDC) in response to licensing of cannabis establishments and noted that Tier 1 manufacturing is allowed by definition as a home occupation (though cultivation is not). He said that under the LDC, cultivation is a broad category.

Cannabis Regulation Liaison Hysko noted that everything was filed in a timely manner, but that the LDC does not allow Tier 1 cultivation for cannabis in the R-1 district, which is why the home occupation was denied. She noted that the City's attorney has been supportive of the decision. Chair Alden noted that most uses in the City are regulated through use requirements in districts; however, the Appellant is arguing that because it is a home occupation, it is allowed. He asked whether this would be permitted if the Appellant could prove that they meet the definition of a home occupation.

Mr. Brennan reviewed the definition and requirements around home occupations and asked the Appellant how they met each of the 14 criteria:

1. Use shall be conducted within the dwelling and by residents of dwelling and no outside employees: Mr. Lanza confirmed that the use would be conducted within the dwelling. He confirmed that use would only be conducted by residents.
2. No more than 20% of total area of dwelling may be used by home occupation: the calculated area for this home occupation is 18.7% of the total area.
3. Merchandise offered for sale shall be samples only, and orders may be taken for delivery off premises: Mr. Lanza confirmed that there is no merchandise on site, and that it is sold to either retailers or wholesalers.
4. Delivery of products to the home for business shall not occur more than 1 time per day: Mr. Lanza confirmed that deliveries occur twice per year, and consist of soil, which arrives on a box truck.
5. Hazardous materials: Mr. Lanza confirmed that no hazardous materials will be stored on site.
6. Mechanical equipment: Mr. Lanza confirmed that no mechanical equipment other than household/hobby purposes will be used, and will consist of lights, air conditioner, dehumidifier, and fans. He confirmed that the lights are not visible from the outside of the dwelling.
7. No activity shall be conducted that interferes with radio/television reception, noise, smoke, dust, or heat: Mr. Lanza confirmed that nothing will interfere with radio or television reception and that there will be no noise, smoke, dust, or heat.
8. No home shall require external alteration of show other evidence of the conduct of the home occupation: Mr. Lanza confirmed that the only visible outside piece of equipment will be the air conditioner which will be located behind the garage.
9. Use shall not cause or encourage vehicular traffic other than normal: Mr. Lanza confirmed that there is no public access to the home occupation and no other parties or meetings. He said that business meetings will be conducted by phone and that there will be no increased vehicular traffic.
10. Advertising: Mr. Lanza confirmed that there will be no advertising.
11. Includes classes or instructions: Mr. Lanza said that there are no classes on site.

12. Business hour requirements: Mr. Lanza confirmed that his home occupation is never open to the public.
13. Parking or storage of commercial vehicles: Mr. Lanza confirmed that there are no commercial vehicles associated with this home occupation.
14. State permits shall be obtained prior if applicable: Mr. Lanza said that he will obtain all required permits prior to operating.

Mr. Brennan asked a number of questions of Mr. Lanza around whether the occupation is one that is customary in that area. He asked how long Mr. Lanza has resided in Vermont (48 years), whether Mr. Lanza knows others with a home occupation (Mr. Lanza listed a number of individuals), whether Mr. Lanza knows others who grow plants as a home occupation (Mr. Lanza noted a number of individuals who grow vegetables on their property), whether Mr. Lanza's cannabis equipment could be used to grow other plants (yes, it could, for a variety of plants). Chair Alden asked how someone could tell that Mr. Lanza has a home occupation by looking at the exterior of the house. Mr. Lanza replied that he will post the state-issued cannabis permit on the window of his garage, but there is no other indication of the home occupation. Chair Alden asked how the community character would be harmed if there are very few visible exterior signs of Mr. Lanza's home occupation. Cannabis Regulation Liaison Hysko replied that when the City developed its cannabis code requirements, smell was a significant concern that other states had raised when they legalized this form of cultivation. Chair Alden noted that smell does not seem to be an issue, and Mr. Lanza confirmed that he does not want smells outside of the house indicating that he is cultivating cannabis. He described the carbon filters he uses to scrub the air of odors.

Ms. Gildea asked whether neighbors on the street have the right to know that this is occurring or whether they are already aware of it. Acting Zoning Administrator Mahony replied that the neighbors are notified of the appeal application. Ms. Gildea asked how the City enforces the requirement that only 20% of the residence can be used for a home occupation. Chair Alden replied that they would likely hear about it from the neighbors and then the City would conduct an enforcement visit.

Acting Zoning Administrator Mahony said that the State has laid out a process for municipalities to use zoning to regulate cannabis. She said that regulations define the zoning districts and each of their allowed uses. She said that the City has allowed each of the cannabis establishments in districts throughout the City, and that the intent of the Council in its LDC updates was to allow cannabis cultivation only in the Planned Agricultural District. She acknowledged that home occupations are allowed a level of consideration within zoning, but said that cannabis is not customary in residential areas because it is a brand new use and a controlled substance (and therefore does not meet the definition of a home occupation).

Elise Martin, the partner of the Appellant, said that they have met the requirements to be considered a home occupation.

Acting Zoning Administrator Mahony said that in terms of process, the DRB has 45 days to render a decision on this appeal. She recommended that the DRB seek legal advice in its deliberations.

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

B. Conceptual site plan to remove an existing duplex and construct 18 residential units with parking at 161 Pearl Street in the HA District, by 161 Cheeseman, LLC, owner.

Mr. Currier introduced the project, which is proposed as an 18-unit apartment building at 161 Pearl Street on a 0.32-acre lot. He noted that the Applicant also owns the adjacent property at 159 Pearl Street. He said that they are proposing to reconstruct an existing parking space in front of the new apartment building with 5 parking spaces. He noted that the project is located in the Highway Arterial District, which does not have a density requirement. He said that the building is a 4-story building and that it meets height requirements. He noted an entrance to the building on Pearl Street and an entrance along the rear. He said that the parking lot for the adjoining commercial space is to the south of the proposed building. He noted that the building would have municipal water and sewer utilities. He said that most of the landscaping is concentrated along the front parking space and that there is a sidewalk connection in the rear. He noted some wetlands delineated on the property, adding that the district wetland ecologist has weighed in and said that the project seems approvable. He noted that they will need to obtain a wetland permit from the State of Vermont.

Chair Alden asked how the Applicant is obtaining the required amount of parking. Mr. Currier said that the adjacent property, which is also owned by the applicant, is a commercial building with 81 spaces, 54 of which are being used. He said that 5 additional spaces are being proposed along with this project, for a total of 86 spaces altogether. He said they are requesting a parking waiver for the project, since the LDC requires 2 spaces for each unit, and they are proposing 1.25 parking spaces for each unit. He said that his firm did a study at 235-241 Pearl Street, and it showed that one space per unit is adequate. Also did a parking study at the 159 Pearl Street commercial space, and it showed that only 32 of the spaces were being used.

City Engineer Kershner said that this was a fairly complete set of plans for the sketch plan application. He reviewed the following outstanding staff comments:

1. Parking in setbacks: staff noted that there is one space in the side yard setback that isn't allowed by the LDC.
2. Parking waiver: the staff report requested additional data to support the waiver request, which Mr. Currier presented tonight.
3. Shared parking agreement: staff recommend a formal, legal agreement codifying the shared parking arrangement as one of the conditions of approval.
4. Building height and stories: staff noted that the initial plan showed grading around the perimeter of the building but that subsequent filings showed a retaining wall, and asked for clarification about which approach the Applicant will take. Mr. Currier said that they will do grading, and further noted that they meet the height requirements.
5. Front parking area: staff noted that there is no drainage shown on the plan, and the Applicant should include that in their final plat submission. Staff also noted that they would like to see drainage computations for it, since the City accounts for all stormwater as part of its MS4 permit.
6. Accessible provisions: any accessible parking spaces need to show documentation that the grading for those spaces meets Americans with Disabilities Act (ADA) requirements. Staff also requested confirmation that the units have the required number of accessible spaces, per the LDC.
7. Lighting: staff noted that lighting in the back of the commercial property is recommended, given that there will now be residential parking spaces there. Mr. Currier said that there is lighting

- under the canopy, but said that they could add an additional pole in the rear closest to the building.
8. Landscaping: staff said that the DRB should ensure that the landscaping meets LDC requirements.
 9. Sidewalk: staff requested the inclusion of the sidewalk in the front of the building in the Applicant's next submission.
 10. Amenities: staff recommend bicycle racks be installed at the front and rear of the building (near the entrances).
 11. Circulation in parking area: staff asked about the intent of circulation, noting that if it is intended to be a two-way entrance/exit, then it needs to be widened to 24 feet. Mr. Currier said that they will widen it to 24 feet, since they would like it to be two-way.
 12. Curb cuts: staff noted that the LDC states that curb cuts need to be 25 feet from the property line and that the DRB would need to waive this for the application. Engineer Kershner noted that the application is reducing the existing two curb cuts on this lot to one, and therefore improving access management. A waiver of the 25' distance is in the DRB's purview. He further noted that staff recommends granting the waiver.
 13. Dumpsters: staff noted that dumpsters need to be covered and drainage plugs need to be installed in them.
 14. Stormwater management: staff said they would like to see stabilization and erosion controls for the slope on which the footing drain pipe will be installed, to prevent erosion during and after construction.
 15. Visual impact of building: staff noted that the visual impact determinations are under the purview of the DRB. Chair Alden noted that the proposed version of the LDC has design review in this district but that the current version does not, and asked which requirement applies to this application. City Manager Mahony replied that the application would fall into whatever requirements are in place when the Applicant submits their final application. Staff noted that while there is no design review currently, this section of the LDC, includes standards around visual impact.
 16. Landscaping cost requirements: staff noted that landscaping cost requirements are based on construction costs, but that construction costs are not known at this time. City Engineer Kershner said that there were some proposed figures for landscaping costs in the submission, but that the City needs to ensure that they meet the amount requirement.

City Engineer Kershner finished by noting that this is a complete set of documentation for sketch plan. He recommended that the sketch plan be approved, pending the DRB's decisions on the following: the parking waiver, the curb cut exception, reviewing the landscaping for sufficiency, the building itself, and the landscaping budget.

Chair Alden recommended providing some kind of green space amenities for residents in the back of the building.

Eric Stone, an adjacent property-owner, expressed concern that visitors may use all of the front parking, which could negatively impact business for the businesses on his lot. He said he would like assurances that people will not be parking in the adjacent lot and impeding the restaurant business (Red Panda) that is currently there.

Diane Clemens, a nearby landowner, noted that there had previously been a concrete walkway between the buildings. She also said that the sketch plan does not mention snow removal. She expressed support for the shared parking arrangement. She agreed that green amenities in the back would be nice, but said that the grade is relatively steep and is mostly a ravine and a wetland. She stated that it can be hard to make a left on Pearl St and asked how this will be addressed when adding even more drivers to the area. City Engineer Kushner stated that he looked at this and traffic mitigation measures are not needed.

Chair Alden said that they may want to increase screening in the northeast corner of the lot, to screen car lighting from the other side of the ravine.

The DRB then discussed the building itself. Chair Alden said that there is a strong pattern along Pearl Street to orient the buildings along the street, but that this building does the opposite and presents a different type of façade and orientation to the street. He said that he supports the color scheme and use of materials.

MOTION by ROBERT MOUNT, SECOND by DYLAN ZWICKY, to approve staff recommendation to approve conceptual plan with proposed stipulations within the staff report as well as the following additional stipulations:

1. Applicant needs to include landscape buffering at the back of the existing parking lot;
2. Applicant should consider additional residential amenities on the residential lot, specifically in green areas;
3. Applicant should consider including a sidewalk or path along the side of the building between 159 and 161 Pearl Street;
4. Applicant must show a management strategy for the high-demand parking spaces in front of the building to accommodate visitors;
5. If there is two-way access in the front of the building, the access must be widened to 24 feet;
6. Applicant must address snow storage;
7. Applicant shall have a formal shared parking agreement in place, with accompanying parking management narrative included in final submission.

The motion passed 5-0.

6. OTHER DEVELOPMENT REVIEW BOARD ITEMS

The Board discussed scheduling a deliberative session on the home occupation appeal. Staff will work to obtain a legal opinion on the appeal.

MOTION by JOHN ALDEN, SECOND by ROBERT MOUNT, to enter into deliberative session to discuss the cannabis home occupation appeal. The motion passed 5-0.

7. ADJOURNMENT

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

The meeting was adjourned at 8:54 PM.

RScty: AACoonradt