

**CITY OF ESSEX JUNCTION  
DEVELOPMENT REVIEW BOARD  
MINUTES OF MEETING  
JULY 21, 2022  
APPROVED NOVEMBER 17, 2022**

**DEVELOPMENT REVIEW BOARD MEMBERS PRESENT:** Cristin Gildea, Maggie Massey, Robert Mount, Dylan Zwicky.

**ADMINISTRATION:** Robin Pierce, Community Development Director; Regina Mahony, Chittenden County Regional Planning Commission.

**OTHERS PRESENT:**

- AGENDA:**
1. Welcome/Audience for Visitors
  2. Additions or Amendments to Agenda
  3. Minutes
  4. Public Meeting
    - A. Discussion with CCRPC of roles and responsibilities of the DRB
    - B. Review and sign Ethics Policy
    - C. Elect Chair and Vice-Chairperson
    - D. Conceptual plan to remove existing structures and construct 18 residential units with parking and 1 retail space at 132 Pearl Street in the HA District, by paroline Real Estate, Inc., owner.
  5. Other DRB Items
  6. Adjournment

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**1. WELCOME**

Robin Pierce called the Development Review Board meeting to order at 6:30 P.M. The order of the agenda was modified.

**2. ELECT CHAIR AND VICE-CHAIRPERSON**

A. Elect Chair and Vice-Chairperson

**MOTION by Robert Mount, SECOND by Cristin Gildea, to approve John Alden as the Development Review Board Chair. The motion passed 4-0.**

**MOTION by Maggie Massey, SECOND by Cristin Gildea, to approve Robert Mount as the Development Review Board Vice-Chair. The motion passed 3-0 (Robert Mount abstained).**

**3. AUDIENCE FOR VISITORS**

An architect for Gabriel Handy spoke before the Board about 195-197 Pearl Street. He said that Mr. Handy obtained approval some time ago for the plan for that property, but then work on the plan was paused for some time. He said that some of the elements now being proposed differ from the approval that was previously received, and that there have been questions about the currently-proposed color scheme.

Mr. Pierce noted that there is not currently design review in the district in question, though there will be when the new Land Development Code (LDC) is approved. He said despite that, he felt it important for the DRB to review what is being proposed.

They showed what was approved, which includes hues of yellow, green, and red. He said that the new plan would have much more muted colors in varying shades of grey. Mr. Pierce noted that it would be the same footprint and same number of dwelling units, though there have been some changes to the design and colors.

DRB members confirmed that the new design looks good.

Mr. Zwicky requested copies of the digital files of the drawings that were presented. Mr. Pierce said he will work with the architect to have those drawings distributed.

**MOTION by Robert Mount, SECOND by Cristin Gildea, to approve of the new design as presented. The motion passed 4-0.**

#### **4. PUBLIC MEETING**

##### A. Discussion with CCRPC of roles and responsibilities of the DRB

Ms. Mahony reviewed material around the roles and responsibilities of the DRB in the context of meetings, public hearings, and due process.

She began by providing an overview of the public notice requirements for meetings, legislative hearings, and quasi-judicial hearings. She said that the agenda must be posted in adherence with Open Meeting Law, and that notice requirements are different depending on the type of hearing. She said that subdivision revision and Planned Unit Development (PUD) applications, as well as conditional use and variance requests require 15-day notices, and that site plan applications require a 7-day notice. She said that meeting information is posted in 3 or more public places and in the newspaper of record, and that notices are mailed to applicants and adjoining properties.

She walked through the process of opening a quasi-judicial hearing. Steps include reviewing the order of events, reminding participants of the importance of order, making copies of the rules of procedure and ethics policies available, review the definition of interested persons and ensure documentation of participants, administer the oath, and request disclosure of conflicts of interest or ex parte communications.

She briefly reviewed the definition of an interested person. She said that because the DRB is a quasi-judicial board, they are not required to allow public comment and can limit comments to the applicant, the municipality and any adjoining municipality, property owners in the immediate neighborhood of the subject proposal, any petition of ten persons (combination of voters or property owners), and any department or administrative subdivision of the state owning property or any interest, and the Agency of Commerce and Community Development (ACCD). She said that these people have statutory rights to bring evidence before the DRB and have a legal right to appeal DRB decisions. She said that general public doesn't have that right. Mr. Zwicky asked whether the DRB would need to define interested

persons for every meeting or whether they would adopt a blanket policy. Ms. Mahony suggested articulating that decision in their policies and procedures documentation.

Ms. Mahony then reviewed conflicts of interest within the quasi-judicial hearing process. She noted that these can include financial interest (direct or indirect), personal interest, known bias or prejudice, and ex parte communication. She said that members can recuse themselves prior to the start of the hearing, but that it is a personal choice whether to do so. She said that if DRB members recuse themselves, alternate members (which still need to be identified) would step in as voting members for that hearing. She said that applications cannot be discussed outside of the hearing, to avoid ex parte communication and maintain due process. She spoke about managing conflicts of interest, which could include adopting rules of procedure and ethics, disclosing ex parte communication where appropriate, recusing oneself when necessary, and using alternates.

She then walked through the flow of a quasi-judicial public hearing. In brief, the chair will open the hearing, the applicant will present their proposal or request, board members will then have a chance to ask questions in relation to conformance with the provisions in land use regulations, there is a period for comment from interested parties (and/or the public), the chair will close the public hearing and open deliberations, and then the board will decide on an application and issue a written decision. Mr. Pierce noted that DRB members could implement a time limit on public comment, which has been adopted by other municipalities.

She spoke about the role of the board chair during quasi-judicial hearings, which is to administer the agenda, keep board members focused on the issue at hand, and ensure that the Board finishes on time. She said that best practice for chairs is to state the question where necessary, ask for discussion without giving their own opinion, and bring the board to resolution after discussion has occurred.

She then spoke about the role of board members during quasi-judicial hearings. She said that these entail listening to testimony and evidence, asking questions, referring to regulations (on which all decisions should be made), avoiding conflicts of interest, basing decisions on evidence presented, and not prejudging a matter. She emphasized the importance of asking questions during the hearing, because once the hearing is closed, the conversation with the applicant is over. She noted that once a hearing is closed, a decision is issued, which typically contains conditions of approval.

Ms. Mahony then provided detail on deliberative sessions, what they are, and when they can be used. She said that they can be used once all evidence and testimony have been taken, they are exempt from Open Meeting Law, they don't require advanced notice or minutes, they can be public or private, and they don't need to reveal how board members voted (though some DRBs choose to list how each member voted on a decision). She said that though decisions can be arrived at during deliberative sessions, any decision must be stated in an open and public session.

She spoke about requirements around regulatory decisions made during quasi-judicial hearings. She said that decisions must be in writing and contain findings of fact and conclusions of law, must be based on the review standards in the bylaw, that minutes can suffice as a written decision, and that they should clearly memorialize the concurrence of the majority of the Board. She said that decisions also need to outline how an Applicant or interested persons could appeal the decision.

Ms. Mahony outlined the different types of applications and reviews. She noted that it is staff's role to determine which type of review a development proposal falls under prior to it coming to the DRB. She noted that of all of the review types, Planned Unit Developments (PUDs) and subdivisions may come to the DRB more than once (multiple hearings), since they are laid out as either a two- or three-step process. She noted that for PUDs, the steps typically include conceptual plan review, preliminary plat review, and final plat review, all of which entail three distinctly separate hearings (or more, if any of these stages are continued).

Ms. Massey asked why voting by each member is disclosed. Ms. Mahony replied that because members are basing their decisions on the review standards, voting is usually transparent. Mr. Pierce noted that previously, every deliberation has taken place in public and board member voting has been disclosed.

B. Review and sign Ethics Policy

Board members will sign the policy and email it to Mr. Pierce.

C. Conceptual plan to remove existing structures and construct 18 residential units with parking and 1 retail space at 132 Pearl Street in the HA District, by Paroline Real Estate, Inc., owner.

Mr. Pierce noted that this presentation was postponed.

**5. OTHER DEVELOPMENT REVIEW BOARD ITEMS**

None at this time.

**6. ADJOURNMENT**

**MOTION by Robert Mount, SECOND by Cristin Gildea, to adjourn the meeting.**

The meeting was adjourned at 7:32 PM.

*RScty: AACoonrad*