

**VILLAGE OF ESSEX JUNCTION
ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
April 30, 2013**

MEMBERS PRESENT: Tom Weaver (Chairman); Ron Gauthier, Jim Moody, Bruce Murdough. (Martin Hughes was absent.)
ADMINISTRATION: Terry Hass, Assistant Zoning Administrator; Ray Weed, Assistant Fire Chief.
OTHERS PRESENT: Heidi Dahlberg, Sherry Baker, Bradd Rubman, Scott Homsted, Carl Lisman, Bill Dalton, Mike McGettrick, Ina Hladky, Vlad Hladey, Carol Rubman, Robert Fonseca, Linda Fonseca, Deborah Richardson, Scott Richardson, Wes Pastor, Scott Baker, Agnes Cook, Bill Nedde, Greg Rabideau, Claudine Safar, April Numar, Ron Saxon, Tim Cook.

1. CALL TO ORDER and AUDIENCE FOR VISITORS

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

2. ADDITIONS/AMENDMENTS TO AGENDA

There were no changes to the agenda.

3. MINUTES

December 12, 2012

MOTION by Ron Gauthier, SECOND by Bruce Murdough, to approve the 12/12/12 minutes with the following correction(s)/clarification(s):

Page 1, Jordan Application, Applicant Comments, 1st paragraph, 2nd sentence – change “an engineer” to “a surveyor” and replace “the plans for” with “the location of”;

Page 2, top of page, sentence beginning “Mr. Jordan said...” – replace “to the left” with “from zero to”, and under Public Comment, Jamie Hardy, 1st sentence – insert “granting” before “variance and change “are closed” to “are decided”.

VOTING: unanimous (4-0); motion carried.

4. PUBLIC HEARING

The function of the Zoning Board as a quasi-judicial board and the hearing procedure were explained. Individuals to give testimony before the Board were sworn in.

Zoning permit approval involving development activities within 200' of a waterway, floodplain, or wetland for an emergency access per the Land Development Code, Section 516 at 38 Thasha Lane in the M-F2 District by Green Meadows Apartments, LLC
Bradd Rubman, Scott Homsted, Bill Nedde, Greg Rabideau, and Carl Lisman appeared on behalf of the application.

STAFF REPORT

The Zoning Board received a written staff report on the application, dated 4/30/13. Terry Hass read the report. There was discussion of the emergency access on Athens Drive.

Ray Weed, Assistant Fire Chief, stated the emergency access on Athens Drive will reduce response time by mutual aid from the Essex Fire Department by three to five minutes. Athens Drive and Autumn Pond will benefit from the reduced response time. The emergency access will be locked and only the Fire Department will have the key. The emergency access is envisioned to be similar to the emergency access at the end of Iroquois Ave. (grassed over access with a locked gate). The larger 8" water line will double the water supply to fight fires and the line will be in a loop providing more water and better water pressure. The existing 6" water line ends at the cul-de-sac on Athens Drive. Tom Weaver observed the water line improvement can be installed at any time. Ray Weed said it makes sense to install the water line at the same time the emergency access is being built, but the water line could be installed separately.

Bruce Murdough disclosed Jeff Rubman met with him in the fall to discuss the potential of an access road through the high school property. The discussion covered the impact of an emergency event with responding vehicles going through high school property during sporting events at the school.

APPLICANT COMMENTS

Greg Rabideau, architect, reviewed the proposed development that will replace the existing 112 units on Thasha Lane with 300 units in 10 buildings. The intent is to create a high quality community with market rate, one and two bedroom units which will be an improvement over what is there now. The structures are outside of the wetlands and the wetland buffer. The access issue is due to a request by village staff and the Fire Department for a secondary/emergency access to the site. Other options for an emergency access to the site have been fully explored (tree farm, high school). According to input from the Fire Chief access from the other side of the site plus a water service system with a loop feature was wanted.

Bill Nedde, engineer, referred to Sections 516.A(f),(g), and (h) of the Land Development Code relative to storm water treatment facilities, the water line, and emergency access for the proposed development and noted the following:

- Features on the site include a tributary of Indian Brook, Class 2 wetlands, and the 50' buffer.
- The Army Corps of Engineers and the state wetlands division have already or will be reviewing the site.
- When the existing development was built there were few regulations and as a result there is much encroachment into the buffer. The proposed project will have less impact on the stream than the existing development due to current regulations.

- There will be a nature walkway designed to migrate in/out of the 50' buffer zone. There is an existing path on the east side of the stream that goes into the natural area.
- The stream crossing is designed in full compliance with the Land Development Code. Approximately 30 days is slated for construction. There will be a stream bypass in place during construction. Once the culvert is installed (10' diameter embedded 3' into the stream bottom to mimic the streambed) and the backfill is done then the bypass will be removed and topsoil and mulch put in place. Erosion control will be done. The culvert will comply with all applicable regulations. The culvert will be larger in capacity than the Old Colchester Road box culvert.
- The emergency access will be an "S" shaped road sloping to a concrete curb to collect drainage to be piped to the storm water storage facility to avoid direct discharge into the stream. The back slope of two-on-one will be vegetated and landscaped so there is not an open corridor.
- The 6" water line is located along the same corridor as the emergency access so it makes sense to use the same disturbance area to install the 8" water line. The larger water line is needed for hydrant and fire requirements.
- Storm water requirements now include recharge, water quality, channel protection, pre/post 10 year, 24 hour storm event for flood retention. The project will be compliant with all. The storm water designs are in full compliance with the Agency of Natural Resource and Vermont Storm Water Manuals, Volumes 1 & 2.
- The applicant is requesting permission to discharge storm water in the rip-rap area that eventually discharges into the stream. There are three locations of discharge, including adjacent to the rip-rap and part of the stream crossing and culvert, three storm water ponds, and a cleared, mowed area and sanitary easement for the village sanitary line.
- The site plan shows the location of existing buildings in proximity to the stream and areas of lawn and mowed area that the project proposes to naturalize. The area encompasses approximately one acre of land.
- The water line extension is the only construction activity on Athens Drive. All other activity is on the applicant's property.

Tom Weaver asked about a second gate on the access road mentioned during a prior review of the project. Bill Nedde explained the Planning Commission recommended evaluating a second gate on the emergency access. The road must be maintained and plowed in the winter. A second gate only restricts maintenance, not traffic, however if a second gate is required by the village the gate will be installed. Mr. Weaver asked if the road will be grassed or paved. Mr. Nedde said there was discussion of a gravel roadway, but gravel is difficult to maintain and plow plus there is potential for sediment getting into the stream which is an impaired waterway. With a paved road there can be curbs and the road is easier to plow. The access road will be 12' wide with a two foot wide gravel shoulder on the non-curbed side. The 14' road width can support a fire truck. The roadway will be fully treated at the surface and maintained in winter as needed. The use of salt/sand will be minimized yet a safe surface for pedestrians and emergency vehicles will be provided. The road will meet regulations.

PUBLIC COMMENT

Claudine Safar, attorney representing the Athens Drive Citizens Committee, submitted for the record a synopsis of a position statement, dated 4/30/12, focused on Section 516.A of the Land Development Code, and noted the following:

- Language in the village Code relative to the 15' buffer is mandatory (“shall”) rather than aspirational (“may”, “would”, “could”) and the municipality is bound by the language. Court cases were cited where the ordinance was interpreted and enforced according to the plain meaning of the words.
- The Zoning Board is urged to look closer at Section 516.H of the Code relative to encroachment on stream buffers being discouraged and subsection (b) relative to clearing of vegetation being allowed only when there is no practicable alternative.
- Other issues needing closer review by the Zoning Board are the access drive and stream buffer [subsection (g)], and utilities [subsection (h)] to confirm there are no feasible alternatives for the roadway because there appears to be both a feasible and practicable alternative (which is an emergency access through the tree farm).
- The court case of Atwood-Hood shows where the court determined the town could require the applicant to “make every effort” to find a feasible alternative in order to protect important natural areas including wetlands.
- There is concern about possible conflict of interest with Bruce Murdough, a member of the Zoning Board, discussing with Mr. Rubman, the applicant, the potential of access through the high school property. Mr. Murdough does not speak for the school and if the applicant has not talked directly to the proper school officials and received an answer about access then the applicant has not done due diligence on the matter. The Zoning Board should pursue this point.
- The MOU with the Tree Farm does not prohibit the type of use (i.e. emergency access). There is no prohibitive language in the document. The language refers to preserving open space and natural resource protection and that is at issue with the proposed emergency access through Athens Drive - impact on wetlands and the impaired stream. The practicable way for a secondary access is through the tree farm. The access will be locked and only used for catastrophic events so there would not be an impact on the MOU. There is no development proposed on the tree farm so the deed is not violated either. The Zoning Board should have the applicant approach the village and town regarding access through the tree farm.
- The development in 1974 was previously permitted with the condition of no connection with Athens Drive as ingress/egress. There has never been a Stowe Club analysis regarding abrogating prior permit conditions.

April Numar, consultant for the Athens Drive Citizens Committee and professional wetlands scientist with Western Ecosystem Technologies, reported the following:

- There are Class 2 wetlands at the site of the access road and crossing. The area is significant for wildlife, erosion control, ground surface protection, and water storage.
- The stream is impaired due to storm water discharge. The stream is not meeting water quality requirements.

- The access road will add fill to the stream and the culvert. The culvert can contribute to erosion of the streambed. After construction of the crossing it will take time for vegetation to grow so there is potential for sediment to get into the stream.
- Alternatives analyses need to be done. Not all alternatives have been explored by the developer.

Wes Pastor, 8 Athens Drive, asked how to ensure the emergency access will not become a through road and requested the applicant consider locking down an agreement with the application that the road conversion will never happen. Tom Weaver said the warning is for an emergency access and if the road is approved and used for otherwise then there would be a violation of the Zoning Board approval. A new application would have to be submitted if the developer wanted to convert the access road and the Zoning Board would review the access and change of use. Planning Commission review/approval would also be needed. Ray Weed reiterated there will be a lock box on the access road gate and only the Fire Department will have a key. The applicant can maintain the road to the gate or ask the Fire Department to open the gate for plowing.

Kate Soules, 27A Athens Drive, commented on the following:

- Wording in the staff report says access by any village staff and the Fire Department for purpose of maintenance requirements so the road will be used for access.
- Side streets can be used as alternatives to Athens Drive for mutual aid response so the issue is not just to save time. (Ray Weed stated it is faster for the large trucks to make only one turn instead of several when responding to a call.)
- Evidence is needed on the water quality at the end of Athens Drive compared to other places in the village (in reference to the proposed 8" water line) and whether the water pressure is any different unless there is an emergency.
- How much backfill will be needed to construct the road should be provided. (Bill Nedde said the information can be provided. The slope of the road is two foot horizontal to one foot vertical which meets the Code. The peak is higher than the end of Athens Drive.)
- The existing units at Green Meadows are in disrepair. Plus there are many calls to Thasha Lane by the police. The developer of the new proposal is the owner of Green Meadows Apartments. There is concern the new development will be kept the same way the current housing complex was maintained.

Deborah Richardson, 25 Athens Drive, expressed concern about the proposed walking path which will be very close to the back of her house in light of the three recent break-ins in the neighborhood including her house. The walking path was not part of the original sketch plan. Attorney Safar added the path does encroach on the wetlands buffer. Ms. Richardson also expressed concern about the lack of pride in ownership and upkeep of the property with people who are renting units rather than owning the units.

Ron Saxon, 19 Athens Drive, questioned saving response time by having a locked gate on the emergency access when the fire truck would have to stop so the gate can be unlocked for passage and then re-secured. Ray Weed replied very minute is a savings.

Bob Fonseca, 17 Athens Drive, expressed little faith in the emergency access remaining as such because the 1974 condition promised no access to Athens Drive and yet the matter is under discussion now. Mr. Fonseca mentioned the apartments if built to code would have sprinkler systems which eliminate the need for an emergency access to save three to five minutes in response time. Also, to date there have not been any occasions where assistance was needed for a fire at Thasha Lane. Ray Weed noted mutual aid is always called for an event at Thasha Lane whether the trucks make it there in time to assist or not.

Tim Cook, 23 Athens Drive, said he walks his dogs by the wetlands which do need some work. There is much silt. Having construction and run off will not help the situation. The law says the access should only happen if there are no alternatives so why make the wetlands worse for no good reason, questioned Mr. Cook, stressing the wetlands are reason enough to not build the access. The access to the proposed complex should go another route. An access through the tree farm could be a recreational asset for walking, biking, skiing.

Heidi Dahlberg, Athens Drive, stated there is already a road through the tree farm so there is already access. Also, this is the fourth or fifth time Mr. Rubman has tried to do a development in the area. The residents feel betrayed that the 1974 ruling protecting Athens Drive is being rescinded. The residents pay taxes to the village and town to make a vibrant community and the benefit of the access road is not apparent when there are other options. Ms. Dahlberg called for a more thorough investigation of the matter.

Sherry Baker, Athens Drive, recalled the Planning Commission wanted dirt, gravel, or grassed road, not paved.

Carl Lisman, attorney for the applicant, stated Section 516 of the Land Development Code addresses activities within 200' of a waterway, wetlands, or floodplain. The Zoning Board is authorized to allow encroachment under certain circumstances. There are three areas of encroachment: emergency access, larger water line, and storm water. The ordinance says "shall", but also that there are exceptions. The applicant is proposing exceptions that are the least threatening to the water route. The waterway is impaired due to storm water and the proposal will improve the stream situation. Construction will be in full compliance with the ordinance. The Fire Department, not the applicant, asked for the emergency access through Athens Drive, and the proposed access is the only practical way and feasible alternative to satisfy that requirement. The applicant offered a deed restriction to ensure the access remains an emergency access only and that offer still stands. With regard to the 1974 approval, the language says Athens Drive will not be used for ingress/egress. A fair reading is ingress/egress for vehicular traffic and that is the case. The roadway will be for emergency access only. With the evidence submitted the applicant requests affirmative findings under Section 516 of the ordinance.

Claudine Safar, attorney for the Athens Drive citizen group, stated according to the applicant what is presented is the best alternative, but the best alternative is not to go into the wetlands in the first place. The Athens Drive citizen group has presented a best and most practicable alternative. There is question whether other alternatives for access were explored by the applicant. The residents of Athens Drive feel the least expensive route is to go through Athens Drive so therefore that is the most appealing to the applicant. Regarding the comment by the Assistant Fire Chief about the difficulty turning large fire trucks, there is question about making the turn off Route 15 onto Athens Drive with a large fire truck.

There was a question about the status of the application. Bill Nedde noted conceptual plan approval was received. Documents for preliminary and final plan review are being prepared. Discussions with the state regarding storm water and wetlands have begun. An Act 250 application has not yet been filed for the proposal.

There was continued discussion of the access way. Bruce Murdough asked if there have been any conversations with other abutting property owners about access that would not require crossing the brook. Greg Rabideau stated coming from the high school or the road adjacent to Athens Drive requires crossing the brook and wetlands. Access by the tree farm adjacent to the cemetery or through the parking areas are the only possibilities to avoid crossing the brook, but the applicant was told the roadway would not be sufficiently remote to Thasha Lane. Deborah Richardson suggested crossing the stream by the high school if necessary to avoid adversely impacting residential property values. Bob Fonseca pointed out 99% of developments have only one access road. The proposed emergency access was not needed then and is not needed now. There is question of the number of times a road is blocked by a fire truck. Heidi Dahlberg added new construction requires sprinklers in buildings which are designed to put out fires and buy the fire department some time so a second means of access may not be necessary.

There were no further comments on the application.

MOTION by Ron Gauthier, SECOND by Jim Moody, to close the public portion of the permit application for 38 Thasha Lane. VOTING: unanimous (4-0); motion carried.

DELIBERATION/DECISION

Zoning Permit, Residential Development, 38 Thasha Lane, Green Meadows Apartments, LLC

FINDINGS OF FACT:

1. The Zoning Board of Adjustment is being asked to authorize development activities including the access road within 200' of a waterway, floodplain or wetland for an emergency access per the Land Development Code, Section 516.
2. Evidence of an approved permit from the Agency of Natural Resources for coverage under the applicable permitting requirements shall be required to meet

the criterion for encroachment into a stream buffer with regard to storm water runoff.

3. Essex Junction Fire Department is requesting an emergency access through Athens Drive.
4. There is an existing six inch (6") water line roughly in the same area as the proposed access road and the proposal is to upgrade the line to eight inches (8").
5. There is an existing overhead electric utility line through the area.
6. The only construction traffic through the access road will be that necessary to build the access road.
7. The applicant stated there will be a nature walk designed to migrate in/out of the 50' wetland buffer zone. There is an existing path on the east side of the stream that goes into the natural area.
8. The Village Attorney stated that the condition relating to Athens Drive in the 1974 approval simply prohibits public access to the development via Athens Drive. There is no prohibition in the condition against an emergency access.
9. Five pieces of evidence were submitted into the record including the following:
 - o Memo from Donald L. Hamlin Consulting Engineers, Inc., dated 4/8/13, from Jeffrey P. Kershner, P.E. to Robin Pierce, Development Director, re: Autumn Pond
 - o Email from David Barra, dated 11/9/12, to Robin Pierce re: Thasha Lane
 - o Letter from Monaghan Safar Dwight, PLLC, dated 4/30/13, from Claudine Safar to Village of Essex Junction Zoning Board of Adjustment re: Redevelopment of Green Meadows Apartments by Dr. Jeffrey Rubman
 - o Letter from Krebs & Lansing Consulting Engineers, Inc., dated 3/11/13 from William H. Nedde, III, P.E. to Robin Pierce re: Autumn Pond Zoning Application
 - o Memorandum of Understanding for the Management of the Tree Farm Recreation Facility between the Town of Essex and the Village of Essex Junction, signed 2/15/10.
10. There was public testimony against granting the permit.

Jim Moody spoke strongly that the feasibility of other access alternatives should be thoroughly investigated before making a decision. Ron Gauthier pointed out the Fire Department, not the applicant, is requesting the emergency access through Athens Drive. Following further discussion the Zoning Board agreed to take action on the water line upgrade and table action on the access drive pending further information.

Water Line

MOTION by Bruce Murdough, SECOND by Jim Moody, based on Finding of Fact #4 the Zoning Board authorizes the upgraded water line in the wetland buffer from a 6" water line to an 8" water line. VOTING: unanimous (4-0); motion carried.

Emergency Access Road

MOTION by Jim Moody, SECOND by Ron Gauthier, to table the decision on an emergency access road per the LDC, Section 516 for 38 Thasha Lane pending

further information from the Fire Department and/or the applicant, village staff, the public on the issue of the feasibility of the location of the emergency access route.

DISCUSSION: There was mention of a target date of May 21, 2013 to take up the matter.

VOTING: unanimous (4-0); motion carried.

5. OTHER BUSINESS

None.

6. ADJOURNMENT

MOTION by Jim Moody, **SECOND** by Ron Gauthier, to adjourn the meeting.

VOTING: unanimous (4-0); motion carried.

The meeting was adjourned at 8:45 PM.

RScty: M.E. Riordan

