

**VILLAGE OF ESSEX JUNCTION
ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
May 21, 2013**

MEMBERS PRESENT: Tom Weaver (Chairman); Ron Gauthier, Jim Moody, Bruce Murdough, Martin Hughes.
ADMINISTRATION: Robin Pierce, Village Development Director.
OTHERS PRESENT: Elizabeth Logan, Charles Parrott, Wendy LeBlanc, Heidi Dahlberg, Ina Hladky, Vlad Hladey, Robert Fonseca, Linda Fonseca, Scott Richardson, Kate Soules, Bill Nedde, Carl Lisman, Brad Rubman, Claudine Safar.

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. PUBLIC HEARING

Continued deliberation of 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

Chairman Weaver explained only testimony on the feasibility of other access alternatives will be heard at this point. Individuals who were sworn in at the last meeting continue to be under oath.

MOTION by Bruce Murdough, SECOND by Ron Gauthier, to reopen the public hearing and public portion of the zoning permit application for 38 Thasha Lane by Green Meadows Apartments, LLC. VOTING: unanimous (5-0); motion carried.

Brad Rubman, Bill Nedde, and Carl Lisman appeared on behalf of the application.

STAFF REPORT

The Zoning Board received the following:

- Written staff report on the application, dated 4/30/13, regarding approval of activities involving development within 200' of a waterway, floodplain, or wetland.
- Memo from Fire Chief, Chris Gaboriault, date stamped received May 20, 2013, listing reasons for an emergency access point to Autumn Pond from Athens Drive stating that no feasible alternative provides the level of safety as an emergency access point as Athens Drive.

APPLICANT COMMENTS

The applicant or his representatives had no further comments to the staff report.

PUBLIC COMMENT

Claudine Safar, attorney representing the Athens Drive Citizens Committee, submitted a map highlighting two measured routes to the applicant's site, one using the circ highway and one using Route 15. Attorney Safar made the following comments:

- Essex Fire Department passes the circ highway entrance no matter which route is taken to the applicant's site (i.e. circ highway or Athens Drive).
- According to the State Fire Marshall all municipalities have the ability to respond on a secondary basis to a fire call. Essex Junction does not just have to call Essex Town for assistance, but can call Colchester or Williston, for example.
- Measurement from the circ highway entrance to Athens Drive is 1.1 miles and travel time is 4.5 minutes to the end of Athens Drive. There are three traffic lights on the route. Athens Drive is a narrow, small residential street with a sharp corner at the entrance so a fire truck will not be able to gain a lot of speed.
- Measurement from the circ highway entrance to Old Colchester Road (using the tree farm to the existing road to the applicant's property) is 2.7 miles and travel time of 4 minutes.
- Measurement from the circ highway entrance to the cemetery road is 3.1 miles and travel time is 4.5 minutes.
- It appears there is little difference between the two routes (circ highway or Athens Drive) in terms of travel time so the argument of having a faster route through Athens Drive is not grounded in a factual basis.
- Village zoning regulations say wetlands should only be breached if there is no other feasible alternative, but there are other alternatives plus the proposed access is for a secondary response team.
- The village does not tell individuals who develop 4.5 miles from the village center that this cannot be done because it is too far away for emergency response.
- The applicant wants the permit filed and will agree to whatever the village wants, but this will cost them. There is no authority in the regulations for the Fire Chief to condition the application.

Tom Weaver asked how the data on travel time and distance was compiled. Claudine Safar said individuals in personal vehicles traveled the routes and measured the distance and travel time using a stop watch. The stop watch was stopped at all traffic lights and the speed limit was observed. Kate Soules, 27A Athens Drive, added two measurements were taken to compare results. The stop watch was also stopped when the test vehicles were stopped in traffic.

Bill Nedde, Krebs & Lansing Engineering, calculated using the data provided by the residents that the travel speed averages 14 miles per hour, but a fire truck responding to a call will certainly be traveling greater than 14 mph.

There were no further comments.

MOTION by Jim Moody, SECOND by Bruce Murdough, to close the public portion of the permit application for 38 Thasha Lane. VOTING: unanimous (5-0); motion carried.

DELIBERATION/DECISION

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

Tom Weaver noted the following submittals were added to the record:

- Correspondence from the Essex Jct. Fire Chief, received 5/20/13, regarding the emergency access from Athens Drive.
- Map submitted on 5/21/13 by Claudine Safar, attorney representing the Athens Drive Citizens Committee, showing two routes, distances and travel times to the applicant's site, one using the circ highway and one using Athens Drive.

The following was noted:

- The letter from Krebs & Lansing addressed storm water, the emergency access, and utilities.
- Authorization was provided at the last meeting to upgrade the water line to an 8" line, but actually the water line is in an area that is not a new use.
- A state permit is required for the wetlands so the Zoning Board does not need to rule.
- The length of road through the tree farm was not measured or timed by the Athens Drive group. The road through the tree farm is a gravel access road that gets narrower.
- The access road is being reviewed under Section 516.G of the ordinance: roadways or access drives for purposes of crossing a stream buffer area to gain access to land on the opposite side of the buffer or for purposes of providing safe access to an approved use in cases where there is no feasible alternative for providing safe access and the roadway or access drive is located at least 15' above the ordinary high water mark or measured from the top of bank, whichever is greater.
- Using 2-89 (circ highway) to Route 2A (Old Colchester Road) requires crossing the railroad tracks. A train on the tracks could cause delay.
- There is question of the travel times being measured using a stop watch as was done by the Athens Drive group. The distance using the circ highway is nearly three times greater than using Athens Drive so it is questionable that the travel times are nearly equal.
- The Zoning Board is being asked to determine whether to authorize an emergency access as a new use within the street buffer.
- Regarding feasible alternative as mentioned in Section 516.G, distance and time are two components of feasibility.
- A train on the railroad tracks could be a dynamic piece of travel time. The circ highway was designed to go over the tracks, but not Old Colchester Road. There are no railroad crossings on the Route 15 travel route and the 90° turn onto

Athens Drive is fairly wide. Fire trucks will have to slow down for the turn, but the route is the shortest and most direct.

- o Another component of feasibility per the dictionary is “likely” or “probable”. Whether the other suggested alternatives are likely or probable needs to be determined. The memorandum of understanding for the tree farm says permission from the town and village would be needed for the access. The access would have to be maintained and plowed in the winter. The purpose of the tree farm and the memorandum of understanding is to keep the area recreational and open space; even trails need approval. The likelihood of access through the cemetery is very low. The likelihood of access through the high school property is also questionable since the fields are always a myriad of sports activities and wetlands would have to be crossed. A connection through Taft Street would also require crossing wetlands.

FINDINGS OF FACT:

1. Additional information was provided by the attorney representing the Athens Drive Citizen Committee on the feasibility of other access routes by the Essex Fire Department starting at the circ highway interchange and ending at Athens Drive (1.1 miles), Old Colchester Road (2.7 miles), cemetery road (3.1 miles).
2. There was public testimony on the travel time/distance measurement methodology.

Emergency Access Road

MOTION by Ron Gauthier, SECOND by Martin Hughes, that the Findings of Fact from the April 30 and May 21, 2013 meetings support the authorization of the emergency access from Athens Drive per Section 516.G of the Land Development Code. VOTING: unanimous (5-0); motion carried.

The Findings of Fact from the April 30, 2013 and May 21, 2013 meetings will be consolidated into one document for signature by the Zoning Board.

5. OTHER BUSINESS

None.

6. ADJOURNMENT

MOTION by Martin Hughes, SECOND by Ron Gauthier, to adjourn the meeting. VOTING: unanimous (5-0); motion carried.

The meeting was adjourned at 6:45 PM.

RScty: M.E. Riordan

