

**VILLAGE OF ESSEX JUNCTION
ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
August 20, 2019**

MEMBERS PRESENT: Tom Weaver (Chair); Aaron Martin, Rob Mount, Martin Hughes. (Bruce Murdough was absent).
ADMINISTRATION: Robin Pierce, Community Development Director.
OTHERS PRESENT: Andre LaChance, Evelyn Burns, Herb Noyes, Joe Kudrle, Richard Villamil, Denise Perraudin, Jeff Moreau, Tammy Charbonneau, Helmut Lenes, Torrey Mitchell, John Valley, Abraham Sender, Gavin Wallace, Kim Hathaway, Travis Hathaway, Catherine Shearer, Thomas Shearer, Barb Puls, Gloria Charbonneau, Tom Valley.

- AGENDA:**
- 1. Call to Order and Audience for Visitors**
 - 2. Additions/Amendments to the Agenda**
 - 3. Minutes**
 - A. Regular Meeting – September 20, 2016
 - 4. Review and Sign Ethics Policy**
 - A. Elect Chairperson and Vice-chairperson
 - 5. Public Hearing**
 - A. Variance application for a cooling system three (3) feet from side property line at 135 Pearl Street in the HA District, by Helmut A. Lenes, owner.
 - B. Conditional Use application for an after-the-fact approval of a group home at 29 North Street in the R-2 District, by Jack Valley, agent for Turning Leaf Homes, LLC, owners.
 - 6. Other Business**
 - 7. Adjournment**

1. CALL TO ORDER AND AUDIENCE FOR VISITORS

Tom Weaver called the meeting to order at 6:01 PM. There were no comments from the audience at this time.

2. ADDITIONS/AMENDMENTS TO THE AGENDA

There were no additions or amendments to the agenda at this time.

3. MINUTES

September 20, 2016

MOTION by Aaron Martin, SECOND by Martin Hughes, to approve the minutes of September 16, 2016 as written. VOTING: unanimous (3-0); motion carried (Mr. Mount was absent for this motion).

4. REVIEW AND SIGN ETHICS POLICY

The ZBA members reviewed and signed the policy.

Election of Chair

MOTION by Aaron Martin, SECOND by Rob Mount to nominate Tom Weaver as Chair of the Zoning Board of Adjustment. There were no other nominations. VOTING: (3-0) with one abstention by Mr. Weaver, motion carried.

Tom Weaver is Chair of the Zoning Board of Adjustment.

Election of Vice-chairperson

MOTION by Aaron Martin, SECOND by Martin Hughes, to nominate Bruce Murdough as Vice Chair of the Zoning Board of Adjustment. There were no other nominations. VOTING: (4-0); motion carried.

Bruce Murdough is Vice Chair of the Zoning Board of Adjustment.

5. PUBLIC HEARING

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

A. Variance application for a cooling system three (3) feet from side property line at 135 Pearl Street in the HA District, by Helmut A. Lenes, owner.

Submittals:

- Variance Application for 135 Pearl Street, dated June 20, 2019
- Staff Report on the Application, dated August 20, 2019
- Site Plan
- Letter from Performance Chiropractic expressing conditional support for placement of condensing unit

STAFF REPORT:

The Zoning Board received a written staff report detailing the variance application, dated August 20, 2019. Robin Pierce explained that the applicant is requesting to place a cooling system for an ice rink within the ten foot side yard setback on the 135 Pearl Street property. The applicant explored several other options for the location of the cooling system, including on the roof of the building, but that their current proposed location is the most feasible option.

APPLICANT COMMENTS:

Torrey Mitchell, business partner of Helmut Lenex, stated that they are starting a new business involving an ice rink on Pearl Street, and they would like to request a variance from the current 10-foot setback to install a cooling system as close to the ice rink as possible. The best option for this placement would be an offset zone in between the two buildings, in that it would be the most energy-efficient option for the building. The alternative option is to place the system on the roof. This option would be unfeasible because the system needs to be checked on a daily basis. He also stated that the cooling unit would not be exposed to the street or the parking lot and that it would not be detrimental to foot traffic. Mr. Mitchell finally stated that he and Mr. Lenex have already received support from the chiropractic practice adjacent to the property, and have submitted for the Zoning Board's consideration a letter expressing this support from the practice. Mr. Lenex added that the noise level of the proposed cooling system would be similar to that of an industrial air-conditioning unit.

Martin Hughes noted that there is currently a satellite dish near the proposed location of the cooling system and that the system must be placed alongside that or further to the back of the property. Mr. Mitchell agreed.

Aaron Martin stated that he is comfortable with the proposed variance, especially given the support from the adjacent chiropractic practice.

PUBLIC COMMENT:

Andre LaChance noted that he appreciated the letter regarding the placement of the condensing unit that had been sent to the neighborhood residents. He asked how late at night the ice rink would be in operation, and Mr. Mitchell replied that he does not anticipate the rink being open past 10:00pm. He stated that any night noise would most likely arise from car traffic at the facility, not from the facility itself. Mr. Mitchell also added that the outside lighting would not change drastically, though new fixtures will be added. Mr. Pierce noted that any new lighting must be dark sky compliant.

There were no further public comments or testimony.

MOTION by Martin Hughes, SECOND by Aaron Martin, to close the public portion of the hearing on the variance application for 135 Pearl Street. VOTING: unanimous (4-0); motion carried.

B. Conditional Use application for an after-the-fact approval of a group home at 29 North Street in the R-2 District, by Jack Valley, agent for Turning Leaf Homes, LLC, owners.

Submittals:

- Conditional Use Application for 29 North Street, dated May 3, 2019
- Staff Report on the Application, dated August 20, 2019
- Letter of support from Turning Leaf
- Floor Plan (hand drawn)

Tom Weaver noted that he sold property on behalf of the applicant's family and that he is divulging this information as a potential conflict of interest. However, Mr. Weaver does not believe there to be a conflict of interest due to absence of fiduciary relationship and lack of personal conflict of interest. Mr. Martin stated that he does not believe there to be a conflict of interest if Mr. Weaver presides over the hearing as the chair. Mr. Hughes concurred. The applicant was satisfied with this response.

STAFF REPORT:

The Zoning Board received a written staff report dated August 20, 2019 regarding the conditional use application. Mr. Pierce explained that the home is located in the R2 district, which is zoned for single family residences, and that the applicant was sent a Notice of Violation on June 24, 2019 for converting the single family home into a group home without prior approval from the Zoning Board of Adjustment. He also noted that the Village had an appointment to inspect the property on July 9, 2019, but that the applicant was not present at that time and the tenant at the property refused entrance. He finally noted that the Lister's card on file stated that the property was a 4-bedroom dwelling, but plans of the building submitted by the applicant showed one bedroom on the first floor and five bedrooms on the second floor.

APPLICANT COMMENTS:

Jack Valley, the conditional use applicant for 29 North Street, stated that the property was purchased as a foreclosure in the fall of 2018 and was set up as a sober home. He stated that the definition of a single-family residence states that up to five unrelated individuals may live in a single home, that the property currently houses five individuals, and that he is interested in moving more residents into the property. He noted that the property fills a gap in the community as a form of transitional housing for people who are discharged from detoxification and rehabilitation centers for alcoholism, and that they are a vital resource as a stepping stone back into the community. He also stated that one of the bedrooms on the second floor is small and could be considered an office. He went on to state that he is unsure of the best definition of this property, and believes it falls under the definition of a group home. He further noted that neither care nor treatment are provided on-site for the residents.

Mr. Weaver stated that the question at hand is whether the property at 29 North Street is considered a single family residence or group housing. Mr. Pierce noted that because there are currently five individuals living in the residence, it is still considered a single family property. However, if the applicant wishes to house additional residents, then he would need approval for group housing for the 29 North Street property.

Mr. Martin asked the applicant if he had had a chance to meet on site with Mr. Pierce. Mr. Valley responded that he has not, but he would be more than willing to do so. At the time of notification of violation Mr. Valley did not think an inspection was relevant, and that he did not know the house was only approved for four bedrooms. Mr. Martin stated that the Lister card contained that information.

PUBLIC COMMENT:

Evelyn Burns noted that she lives in the property in front of the property in question, and has been impacted by increased traffic in the parking lot and driveway (for which she has received complaints from tenants), that there is high turnover in the 29 North Street property, and that she is concerned that additional residents will heavily strain existing parking options in the shared driveway. She additionally expressed concern that Mr. Weaver has had a number of personal interactions with the applicant and his family, and she requested that he recuse himself from decisions regarding this application. She additionally noted that she herself had attempted to purchase the property at 29 North Street when it was foreclosed in order to convert it into a duplex, was told that it was zoned in a single-family residence district, and that the current conditional use application is inconsistent with the zoning district.

Catherine Shearer asked the applicant if this residence is being run as a for-profit business, and the applicant answered in the affirmative. She also noted that a property at 10 North Street (also in the R2 zoning district) applied several years ago to be able to continue to own and rent out the property, but was denied.

Tammy Charbonneau stated that her family had owned the 29 North Street property prior to it being subdivided, and that the footprint of the property does not support the number of people currently living on the property. She expressed concern that too many residents would result in too much crowding of the outdoor space on that and adjacent properties.

Jeff Moreau, Executive Director of Vermont Alliance for Recovery Residences, stated that his organizations certifies properties that are used as sober homes, and that part of that certification includes a complaint process that could result in decertification if violations occur.

Richard Villamil requested to submit evidence in for testimony, including research he has conducted on the 29 North Street property, Turning Leaf (which owns the property), and sober homes in general. He noted that a group home is operating at 29 North Street without zoning approval, that there are two other existing group homes in the area that are appropriately zoned in multi-family, mixed use residences, and expressed concern that the outcome of this hearing could create a precedent for additional zoning variances in this neighborhood, which would alter the character of this neighborhood. He also had additional questions regarding whether background checks are performed, whether medication-assisted therapy is performed at the residence, whether public or private payers cover this type of housing, how problems are monitored, and whether there are requirements for being a resident.

Abraham Sander expressed support for this type of housing in the area, but expressed concern about the process around the property in question. He stated that the Village had attempted to inspect the property but were not able to, and is concerned about lack of oversight. He also expressed concern that if this property is approved as a group home, the bedrooms could become double or triple occupied, increasing the number of residents in the house.

Travis Hathaway asked for clarification of the definition of a single family home, and whether or not that includes individuals who are paying rent. He stated that the residents of the property in question are paying to live there, which would qualify the residence as an apartment. However, he noted that property owners are not required to demonstrate how the property will be used when they purchase it. Mr. Weaver noted that the definition of a single family residence is a residence with up to five unrelated people, and that the ordinance is silent on intended use. He also noted that if an ordinance needs to be changed, that would go through the Village Planning Commission and Village Trustees for approval.

Denise Perraudin stated that increasing the number of residents at the property in question is going against the intent of the ordinance. Mr. Weaver replied that the applicant is requesting that the residence be approved as a group home, which has different requirements than a single-family home.

Tom Shearer noted that the sober house operating at the property in question seems more like a boarding house than a group home, as residents are only living there for short periods of time. He urged the board to focus on the resident turnover rate when considering whether to approve this conditional use application.

Kim Hathaway asked if there was a cap on how many residents could live at the property if group home zoning was approved, and Mr. Weaver replied that the Zoning Board would need to decide what was appropriate and include that in stipulations to the approval. He noted that there is no precedent for the current conditional use application under consideration.

Mr. Villamil urged the Zoning Board to carefully review lot size and coverage requirements for the property in question, in case the house and pavement cover more than the 40% allotted.

There were no further public comments or testimony.

MOTION by Martin Hughes, SECOND by Rob Mount, to close the public portion of the hearing on the conditional use application for 29 North Street. VOTING: unanimous (4-0); motion carried.

DELIBERATION/DECISION:

Variance application for a cooling system three (3) feet from side property line at 135 Pearl Street in the HA District, by Helmut A. Lenes, owner.

FINDING OF FACT:

1. The subject property is located at 135 Pearl Street in the HA District with a lot size of approximately 45,491 square feet.
2. The minimum lot size in the HA District is 10,000 square feet.
3. Section 605.C.2 of the Code requires a minimum side yard setback of 10 feet for all structures.

4. The applicant requests a variance of 7 feet for the cooling system location.
5. The maximum permitted total lot coverage in the HA District is 65% (80% with a waiver); the total lot coverage is 69%.
6. The subject lot is 191 feet wide at the rear and 190 feet wide at the front.
7. The proposed location of the condensing unit is the only practical and safe place that it can be located.
8. The requested variance is the minimum applicable variance that the applicant could obtain.
9. The applicant's neighbor (Performance Chiropractic) submitted a letter expressing support for the applicant's variance request, but requested that the condensing unit be located at least 20 feet from the corner of the parking area adjacent to their practice.
10. There was no testimony in opposition to this application.

Findings 1-10 above satisfy the criteria set forth in Section 1703(c) 1-6.

MOTION by Martin Hughes, SECOND by Rob Mount, based on the Findings of Fact the Zoning Board approves the variance application of 7' for a cooling system at 135 Pearl Street. VOTING: unanimous (4-0); motion carries.

Conditional Use application for an after-the-fact approval of a group home at 29 North Street in the R-2 District, by Jack Valley, agent for Turning Leaf Homes, LLC, owners. There was discussion around whether the property in question can be classified as a single family residence or a group home. The Zoning Board determined that the property would not be considered a boardinghouse, because meals are not provided to residents. The Board also determined that the property would not be considered a family care home or facility, because the residents are not considered a family and there is no care provided on site. The Board also noted that each resident has their own bedroom and access to a shared kitchen facility. Mr. Martin noted that there is no limit to the number of residents that can live in a group home and asked whether any approval could be conditioned on a maximum number of residents per square foot. Mr. Weaver replied that the Zoning Board is considering whether to grant conditional use, not dimensional requirements. He also stated that the applicant is not currently operating a group home, since there are five residents living in the home, but he is advertising that he will be increasing the number of residents, which would in turn be a zoning violation.

FINDING OF FACT:

1. The property is located at 29 North Street in the R2 District with a lot size of approximately 8,455 square feet and includes a residential 4-bedroom home.
2. The property has a lot frontage of 0.
3. The property is a single family home that is currently being utilized as a group home (its existing use as a group home).
4. Group home is a conditional use in the R2 zone.
5. Occupancy is currently 5 unrelated individuals, based on submitted conditional use application.
6. Residence is 2,426 square feet.

7. Applicant stated that they wish to add additional occupants to residence.
8. Public comments included issues of traffic, type of use, intensity of use, concerns about high rate of resident turnover, suitability of lot size for intended purpose, issues of parking spaces, proximity to high school, and positive comments about the mission of the applicant for the intended use of the property.

Findings 1-8 above do not satisfy the granting of conditional use for approval, based on the criteria set forth in Section 502(c)(3) of the Village of Essex Junction Land Development Code.

MOTION by Martin Hughes, SECOND by Aaron Martin, based on Findings of Fact the Zoning Board denies the application for conditional use as a group home at 29 North Street. VOTING: unanimous (4-0); motion carries.

6. OTHER BUSINESS

None.

7. ADJOURNMENT

MOTION by Tom Weaver, SECOND by Aaron Martin, to adjourn the meeting. VOTING: unanimous (4-0); motion carried.

The meeting was adjourned at 8:39PM.

RScty: AACoonradt