

# TOWN OF ESSEX ZONING COMMISSION

29 WEST AVENUE – ESSEX, CT 06426

**REGULAR MEETING MINUTES** – August 21, 2017

## **PUBLIC HEARINGS**

Present: Alvin Wolfgram, Chairman  
Larry Shipman, Vice-chairman  
Bill Reichenbach, Secretary  
Jim Hill, Regular Member  
Alternate Member Adrienne Forrest  
Alternate Member Jeffrey Lovelace  
Alternate Member Russ Smith

Absent: Susan Uihlein, Regular Member

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Also present: David Royston, Commission Legal Counsel  
Joe Budrow, Zoning Enforcement Official

**CALL TO ORDER:** Alvin Wolfgram, Chairman called the Public Hearing to order at 7:06 PM. Seated for the public hearing were Regular Members Alvin Wolfgram, Larry Shipman, Bill Reichenbach and Jim Hill. Alternate Member Russ Smith sat in for Susan Uihlein. Alternate Members Jeffrey Lovelace and Adrienne Forrest were also in attendance.

**Application 16-8A – Planning Commission** – A petition for a text amendment to the zoning regulations Section 45. Replacing existing section with new section.

**MOTION** made by Larry Shipman to continue to the next scheduled hearing on September 18, 2017. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**Application 17-11 – Calamari Recycling** – An application for a Special Exception to add a 2000 square foot roof addition (no walls) to an existing building.

Mr. Budrow read correspondence into the record from Lisa Fasulo, town Health Sanitarian. They have no objection to expansion of the storage plan.

Joel Nucci, applicant and owner, discussed wanting to put a pad down and an overhang for a machine that was recently purchased. He said that the overhang would be attached to the already existing building.

Members of the Commission asked a few questions in which the applicant answered. This piece of equipment will allow for the owner to get rid of 5 bailers, therefore having more space and allowing for more production.

Mr. Wolfgram asked why a previous permit issue had not been resolved before this applicant came to the board with this current issue. Mr. Budrow answered his question.

There were no questions from the audience.

There were no audience members for or against this application.

**MOTION** made by Larry Shipman to close this application. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

### **REGULAR MEETING**

1. **CALL TO ORDER:** Alvin Wolfgram, Chairman called the Regular Meeting to order at 7:17 PM. Seated for the meeting were Regular Members Alvin Wolfgram, Larry Shipman, Bill Reichenbach and Jim Hill. Alternate Member Adrienne Forrest sat in for Susan Uihlein. Alternate Members Jeffrey Lovelace and Russ Smith were also present.

2. **APPROVAL OF AGENDA**

**MOTION** made by Larry Shipman to approve the agenda of the July 17, 2017 meeting. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

3. **NEW BUSINESS**

**Application 16-8A** – **Planning Commission** – A Petition for a text amendment to the zoning regulations section 45 (ACCESSORY APARTMENTS). Replacing existing section with new section. **Continued to the next public hearing on September 18, 2017.**

Per Attorney Royston's recommendation, the following applications were deliberated on together but voted on separately. Attorney Royston suggested that the Commission start the discussion with Application 17-9.

**Application 17-7** – **Essex Boat Works, LLC, 9 Ferry Street** – An application for a Special Exception to construct a new building for a marina along with accessory site work on a lot known as Assessor's Map 47, Lot 21-1, Main Street, Essex.

**Application 17-9** – **Essex Boat Works, LLC, 9 Ferry Street** – An application for Special Exception to allow a restaurant as an accessory use at a marina located on a lot known as Assessor's Map 47, Lot 21-1, Main Street, Essex.

**Application 17-8** – **Essex Boat Works, LLC, 9 Ferry Street** – An application for Coastal Area Management site plan review for vacant property known as Assessor's Map 47, Lot 21-1.

Attorney Royston first spoke. He handed out a draft Memorandum of Decision for Application 17-9. (The draft Memorandum of Decision for Application 17-7 had not changed since the last meeting).

At the last meeting, the applications were left open until the findings from the Harbor Management Commission (HMC) were received. Mr. Reichenbach read the current findings prepared by the HMC into the record, in which the HMC feels that the Essex Boatworks property is in line with their plan.

**MOTION** made by Larry Shipman to close the public hearing for **Applications 17-7, 17-9 and 17-8** with a simple majority vote, being that all findings have been received. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** made by Larry Shipman to approve Section 71A.2.H of the Zoning Regulations for **Application 17-9**. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

Attorney Royston reviewed the Memorandums for each application. The Commission asked questions as Attorney Royston reviewed them.

**Motions made pertaining to the Memorandum of Decision for Application 17-9:**

**Findings:**

**MOTION** Larry Shipman to have the finding modified to indicate that withstanding the denial, the intervener raised matters under the regulations that were considered by the Commission. Jim Hill seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** made by Bill Reichenbach to ensure that the locations of the plantings on the layout and landscaping plan do not interfere with the restrictions on the property and the documents listed in Exhibit B to the warranty deed. Jim Hill seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** made by Larry Shipman that the parking plan dated June 5, 2017 be integral to the Grant of Special Exception, subject to the Conditions of Approval. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** by Alvin Wolfgram that the plans do not have a negative effect on the neighborhood, subject to the Conditions of Approval. Larry Shipman seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** made by Larry Shipman The proposed driveway access one-way from Main Street according to the plans will not constitute a safety hazard for pedestrian traffic on

Main Street, subject to the Conditions of Approval. Adrienne Forrest seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** made by Bill Reichenbach that the property can support a septic system subject to the Approval of Conditions. Jim Hill seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** made by Larry Shipman regarding the standards of Section 120G and 130A of the Zoning Regulations have been complied with, subject to the Conditions of Approval. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** made by Larry Shipman to accept and confirm the interpretation of the Zoning Enforcement Officer with respect to separating distances between the same uses. They apply to the liquor permit for those uses. By reasons of this finding, this approval will not affect the validity of the Steam Boat Dock liquor permit other than a restaurant permit. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** by Larry Shipman to amend #8 on the Memorandum by adding that the Commission accepts and confirms the application after consulting with counsel. Jim Hill seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** made by Larry Shipman that the Commission finds the application to be consistent with the policies and goals of the Coastal Area Management Act and involves no adverse impacts on the coastal resources on or adjacent to the restaurant property. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** made by Alvin Wolfgram that the Zoning Enforcement Office is to verify the date of each page of plans that are being referenced on the Memorandum. Larry Shipman seconded the motion. All in favor, **Motion carried, 5-0.**

#### **Conditions of Approval:**

**MOTION** made by Alvin Wolfgram that seating may be reconfigured or reallocated between such uses, subject to other applicable regulatory requirements, as long as the total shall not exceed 55 seats. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** made by Alvin Wolfgram stating that deliveries by trucks or other service vehicles may use the Main Street entrance, provided the applicant makes the improvements to the island on Main Street as shown on Striping Exhibit and adhering to the conditions set forth by the Commission. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** made by Larry Shipman that in the event the Board of Selectmen shall require any substantial change in the striping plan, or shall deny the application, the applicant shall be required to provide an alternate access plan for delivery truck and service vehicle access to the building on the Main Street property. The alternate plan

shall be submitted to the Zoning Enforcement Officer for review, who shall transmit the plan to the Zoning Commission as a minor modification to this Special Exception which shall not require a further Public Hearing. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** made by Alvin Wolfgram to amend the above motion to state that the Commission recommends that the applicant include for approval by the Board of Selectman a sign directing traffic around the island. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** made by Alvin Wolfgram stating that the Commission acknowledges that the applicant has not provided for a pedestrian access in the area where the walk and stairs are being removed, pursuant to the Layout and Landscaping Plan dated July 7, 2017. The applicant has agreed to discuss this topic at a later time, providing that there is a license agreement for a pedestrian crossing to connect the adjacent property (CT River Museum). The Commission encourages the applicant to provide such a license. Larry Shipman seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** made by Alvin Wolfgram that the application plans as revised through July 7, 2017 provide for improvements, including a storm water system, drainage, parking and driveway improvements on the Ferry Street property. Said improvements shall require a Declaration of Reciprocal Easement substantially in the form and content as set forth in the Draft Easements submitted. The parking plan for summer and winter, dated June 5, 2017 shall be incorporated into and made a part of said Declaration. Said Declaration shall be subject to review and approval by Commission counsel to assure its compliance with the terms and conditions of this Special Exception approval, which shall be obtained prior to the issuance of the Zoning permit for construction of the improvements. The said Declaration shall be filed on the Essex Land Records as an encumbrance on the Main Street property and the Ferry Street property, and the applicant shall provide a Certificate of Title demonstrating that the Declaration is a first encumbrance on the properties and enforceable by the Commission against the future owners thereof as long as this Special Exception shall remain in effect. Said Certificate of Title shall be provided prior to the issuance of the Certificate of Occupancy for the building on Main Street. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** made by Larry Shipman that any violations of the terms and conditions of the Parking Plan for Summer and Winter on either the Main Street property or Ferry Street property shall constitute a violation of this Special Exception and enforcement action may be taken with respect to this Special Exception and the Main Street property irrespective of on which property the violation occurred. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** made by Larry Shipman that certification shall be made by the applicant's engineer on the final application plan demonstrating that the plan complies with the provisions of Section 40T of the Zoning Regulations requiring that "the remaining 35% shall be landscaped or left in a natural state." In the event the applicant's engineer is unable to make such certification without a revision to the application plans, such

revision will be reviewed by the Zoning Enforcement Officer who may administratively approve the revision as a minor modification to this Special Exception, or the Zoning Enforcement Officer may refer the revisions to the Zoning Commission as a minor modification to this Special Exception which shall not require a further Public Hearing. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** made by Larry Shipman that the sign location as shown on the application plans revised July 7, 2017 is in a compliant location. The details of the sign shall be consistent with the sign shown on the video in the record and any lighting shall be LED “dark skies” compliant and will be reviewed by the Zoning Enforcement Officer who may administratively approve the revision as a minor modification to this Special Exception, or the Zoning Enforcement Officer may refer the revisions to the Zoning Commission as a minor modification to this Special Exception which shall not require a further Public Hearing. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** made by Larry Shipman that all conditions listed above are integral to this Grant of Special Exception. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** to adopt the reasons for approval, that with these conditions, proposal is consistent with Section 120G and 138 of the Zoning Regulations. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**Motions made pertaining to the Memorandum of Decision for Application 17-7:**

**Principal Use Authorized:**

**MOTION** made by Larry Shipman that a Special Exception is hereby granted for a principal marina use and accessory restaurant use pursuant to Section 71A.2.H of the Zoning Regulations, in combination with the contiguous property shown on Assessor’s Map 47 as Lot 21. This Special Exception authorizes the use of the Main Street property for parking, drainage and access to the building located on the Assessor Map 47, Lot 21-1. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** made by Larry Shipman that the principal use authorized by this Special Exception is in addition to the pre-existing use on the Main Street property. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**Findings:**

**MOTION** made by Larry Shipman that the use of the Main Street property for parking, drainage and access is consistent with the provisions of Section 120G and 130A, subject to the conditions of approval. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** made by Larry Shipman that the Commission has reviewed the plan under the Coastal Area Management Act, which proves that it does not have a negative coastal impact. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**Conditions of Approval:**

**MOTION** made by Larry Shipman that the application plans provide for improvements, including a storm water system drainage, parking and driveway improvements on the Ferry Street property. Said improvements shall require a Declaration of Reciprocal Easements substantially in the form and content as set forth in the Draft Sample of Declaration of Reciprocal Easements submitted for the record by the applicant. The parking plan for summer and winter dated June 5, 2017 shall be incorporated into and made a part of the Declaration. The Declaration shall be subject to review and approval by Commission counsel to assure its compliance with the terms and conditions of this Special Exception approval. The review and approval shall be obtained prior to the issuance of a Zoning Permit for construction of the building on the Main Street property. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** made by Larry Shipman that the said Declaration shall be filed on the Essex Land Records as an encumbrance on the Ferry Street and Main Street property and the applicant shall provide a Certificate of Title demonstrating that the Declaration is a first encumbrance on both properties and enforceable by the Commission against the future owners thereof as long as this Special Exception shall remain in effect and shall occur prior to the issuance of a Certificate of Occupancy for the combined use recording. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** made by Larry Shipman that any violations of the terms and conditions of the Parking Plan for summer and winter on either property shall constitute a violation of this Special Exception and enforcement action may be taken with respect to the Main Street property, irrespective of on which property the violation occurred. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** made by Larry Shipman that all the foregoing conditions are integral to this Grant of Special Exception and incorporation of those terms and conditions as relative to the property listed on Application 17-7. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** made by Larry Shipman that all of the aforementioned requirements are integral to the granting of this Special Exception. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** made by Larry Shipman that the proposal is consistent with Sections 130G and 120A of the Zoning Regulations. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** made by Larry Shipman to approve **Application 17-8** within the Conditions of Approvals for Application 17-9 and Application 17-7. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** made by Larry Shipman to allow Mr. Wolfgram to sign the Memorandum of Decisions once they are circulated amongst the Commission for review. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**Application 17-11 – Calamari Recycling** – An application for a Special Exception to add a 2000 square foot roof addition (no walls) to an existing building.

Mr. Budrow stated that the legal notice was published on August 10, 2017 and August 17, 2017.

Mr. Budrow is to write a Memorandum of Decision to list out the conditions that will be placed on this application.

**MOTION** made by Larry Shipman to approve this application with conditions. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION** made by Larry Shipman to amend the above motion by adding that a Certificate of Occupancy will not be issued to the applicant until a plan is submitted within 90 days to show that the remaining piece of property is in compliance with the Regulations. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

**MOTION made by Larry Shipman to allow Mr. Wolgram to sign the Memorandum of Decision when complete.** Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

#### **4. OLD BUSINESS**

Mr. Budrow mentioned that the Cumberland Farms Zoning permit was signed off on as of August 21, 2017 and all five conditions were met.

#### **5. RECEIPT OF NEW APPLICATIONS**

**Application 17-12 – Gary Dayharsh** – An application for a change to the Town Zoning map proposing to add two Ivoryton properties to the RUM District.

**MOTION** made by Larry Shipman to schedule this application for the next meeting on October 16, 2017. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

#### **6. VISITORS AND GUESTS**

None

#### **7. REPORT FROM LEGAL COUNSEL AND ZONING ENFORCEMENT AGENT**



None

## 8. OTHER BUSINESS

None

## 9. APPROVAL OF MINUTES

### **Corrections to minutes from the July 17, 2017 meeting:**

Mr. Muller's last name is spelt Mueller.

Application 17-9:

- First paragraph, last line: Insert "a" between "is" and "majority". Make same change in 17-7.

### Conditions of Approval:

- Item 2, paragraph 2d, last sentence: remove comma between "Officer" and "for".
- Item 3, first paragraph: add a comma between "discuss" and "at a later time".
- Item 3, paragraph 2d, first sentence: add commas before and after the portion reading "for the purpose of expediting approval of such a pedestrian crossing".
- Item 3, 2d para, last sentence – to be made clearer.
- Item 4, paragraph 3d, first line: suggest changing "on" to "in
- Item 5, 2d para change "revisions" to "revision" in third to last line.

### Application 17-7

### Findings:

- Changes made in 17-9 conditions 2 and 4 should be made in the italicized text in 17-7.
- Paragraph 2, sentence 2d: change "new" to "due" and omit the comma after "consideration".

**MOTION** made by Larry Shipman to approve the minutes of the July 17, 2017 meeting. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

## 10. CORRESPONDENCE AND PAYMENT OF BILLS

**MOTION** made by Bill Reichenbach to approve three bills from Attorneys Dzialo, Pickett and Allen, based on availability of funds. Jim Hill seconded the motion. All in favor, **Motion carried, 5-0.**

## 11. ADJOURNMENT

The next scheduled meeting is September 18, 2017.

**MOTION** made by Jim Hill to adjourn the meeting at 10:53 pm. Bill Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

Shannon DeLorso,  
Zoning Board Clerk