

TOWN OF ESSEX ZONING COMMISSION

29 WEST AVENUE – ESSEX, CT 06426

MEETING MINUTES – Monday, September 21, 2020

PUBLIC HEARING

Present: Larry Shipman, Chairman
Russ Smith, Vice-chairman
William Reichenbach, Member
Jim Hill, Regular Member
Mark Reeves, Member
Robert Day III, Alternate Member
Jeff Lovelace, Alternate Member
Tom Carroll, Alternate Member

Also present: Joe Budrow, Zoning Enforcement Official. Christopher Smith, Esq., David Royston, Esq., Ruth Ann Paulin and Peter Glyman, and others

CALL TO ORDER: Larry Shipman, Chairman, called the public hearing to order at 6:58 p.m. Seated for the public hearings were regular members Larry Shipman, Russ Smith, William Reichembach, Jim Hill, Mark Reeves, Robert Day III, Jeff Lovelace and Tom Carroll.

Introduction of New Board Clerk. and qualifying Mr. Reichembach on 20-9 as he has reviewed the recordings.

Application No. 20-6 – Essex Zoning Commission - A Petition for a Text Amendment to Section 20 (Definitions) of the Zoning Regulations to add a number of definitions.

The hearing was continued from August. Question of if it should be continued to October, as The Zoning Board is still waiting on referrals, it was determined to be open for public hearings, but the Zoning Board will not be closing it.

Mr. Budrow updated the committee on his attending a meeting of the Planning Commission on the Sept 10, to verbally introduce and to answer any questions re: Applications: 20-6 and 20-7. He reported that it yielded no questions or changes to the language on either application.

MOTION made by Larry Shipman to close discussion and continue the public hearing for **Application No. 20-6** to the October 19, 2020 Meeting. William Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

Application No. 20-7 – **Essex Zoning Commission** - A Petition for a Text Amendment to Section 121 (Zoning Permits) of the Zoning Regulations.

As per above Mr. Budrow's visit to the Planning commission re: Applications: 20-6 and 20-7. It yielded no questions or changes to the language.

MOTION made by Larry Shipman to close discussion and continue the public hearing for **Application No. 20-7** to the October 19, 2020 Meeting. William Reichenbach seconded the motion. All in favor, **Motion carried, 5-0.**

Application No. 20-8 – **Essex Zoning Commission** - A Petition for a Text Amendment to Section 140 (Zoning Board of Appeals) of the Zoning Regulations.

Opened last month. Mr. Budrow stated the Planning Commission heard this at their last meeting and had one recommendation, made by Al Wolfgram to remove the word "*inland*" from section 140J : which is a regulated referral to the Wetland Commission when there is a variance to the Gateway Buffer, and amend it to read "*function and value of the wetlands and watercourses*". He noted that the Wetlands Chairman and Vice Chairman had the same comment and recommendation to change the language. It will go to the commission next month for a vote.

Mr. Shippman asked for a clarification of the reasoning for the text change. The change is being made to avoid confusion with comments concerning the costal jurisdiction line, (the buffer between land and the tidal wetland or the water). The Inland Wetlands Commission has definitions for *function and value* and the change will help focus what their comments will be.

Comment from Mr. Lovelace (who has sat on the Inland wetland committee) as to if the wording was appropriate and has it been run past the Inland Wetland and Zoning commission due to jurisdiction concerns. Mr. Budrow stated it had been presented to the Inland Wetlands commission and it was their idea to make the changes. There was discussion as to the jurisdiction over wetlands and watercourses not being in their jurisdiction. Mr. Budrow confirmed they do not have jurisdiction in or over tidal wetlands and gave up jurisdiction over the first 100 ft of land leading up to them and would like to make comment on them.

Mr. Shipman opened the floor for comments by the public. There where none.

MOTION made by Mark Reeves close discussion and continue the public hearing for **Application No. 20-8** to the October 19, 2020 Meeting. Jim Hill seconded the motion. All in favor, **Motion carried, 5-0.**

Application No. 20-9 – Essex Zoning Commission - A Petition for a Text Amendment to Sections 40L, 45 and 70 of the Essex Zoning Regulations to discuss properties in different districts.

Mr. Shipmann open the public hearing for 20-9 by recognizing Mr. Budrow and requesting he update the Commission.

Mr. Budrow opened the discussion by stating he and Atty Royston's Had met to discuss the zoning items, and decided that Attorney Smith's proposal as it had been written was dealing with and pointing at their entire characteristic chart, across the board with the crux of the situation being setbacks and building coverage. They are focusing the new language to be on setbacks and building coverage.

He presented background concerning Rob Days mathematical approach and noted that Attorney Smith built on that and came back with a proposed section 70E which was discussed at the previous meeting, Mr. Budrow upon inserting Attorney Smiths language into the code for review under Special provision relating to Multiple uses when a property in in both the Village Residence District and the Essex Village District. as 70D noted that the language as presented would possibly work in a different way as a section 70D. He prepared two alternative options for review, as follows:

Presented as the two drafts for review. Mr Shipman asked if Mr. Budrow had done an example with a property to show how this would impact. He had not sketched one but would prepare one for the next meeting.

The Floor was opened for questions and comments.

Robert Day spoke concerning the formula to be used to determine the average of the two areas in determining set-backs. It would be the split of the two, but for building coverage it would be up to app 15-20% or are we using the weighted average. He proposed the Devil's Advocate view. Proposing a hypothetical of someone who has a sliver of the Essex Village District, which has favorable coverage and setbacks using that to Modify their Village Residence District to increase their building coverage. He noted that he did not have a preference but would recommend a weighted percentage.

Mr. Reichenbach stated weighted average sounds great but expressed concerned that weighted averages for those close to the park based on the size of the lot incorporated would be much smaller and doesn't provide a good solution.

Mr. Budrow, Mr. Shipman ,Mr. Day and Mr. Carrol discussed Weighted Average for Setbacks and Building Coverage where discussed as Applied to the Village Residence Zone.

Mr Carrol: expressed concern about if you own a Village Residential District property and your neighbor owns one in two zones, you can now have different setbacks than your immediate neighbor. He does not understand why we would want this.

Mr Reichenbach: expressed concerns about the possible abuse of this provision and its potential for destroying the beauty of Village Residential District by allowing for Urban sprawl by allowing someone to buy a sliver of land Essex Village District. He felt we must protect the esthetics of the Village and the Residential District and the harmonious whole must be protected. He noted that Attorney Smiths blended proposal was something he got from properties along Boston Post Road, Rt 7 in Norwalk ,and Rt 5 in North haven where there are Strip Malls and poorly maintained and isolated houses behind them and that is not what we have here. He submitted that people should not be able to play the ordinance, and water down the setback ordinance to their advantage. He is concerned about the serious harm to our community and the ability of people to construct allot of new stuff in the residential area right up to the property line. If allowed, we would lose the lawns and trees and the esthetics and historic contexts of buildings we find here and that is the heart of Essex. He stated we have a responsibility not to mess that up.

Mr Shipman : Noted that the only use permitted would be those permitted within the districts . Mr. Budrow noted that the Essex Village District regulation would not change.

Mr Reichenbach: Added he was not worried about EVD his concern is the VRD where the regulations would be watered down and that there would be bigger houses on smaller lots, like suburban NJ. There could be McMansions built right up to the property line in the Village Residential District. Also noted that only the properties in both districts will have the advantage in this and it makes for a third district with different hybrid rules, sort of like spot zoning. He believes this in unfair to the neighbors who do not have split lots and are subject to the current appropriate regulations. While the others have quasi commercial restrictions. His concern is that we could be built wall to wall in these areas and that this language opens the door to that.

Mr. Lovelace asked what is to prevent someone who lives in the Village Residential District could buy an adjacent property in the Essex Village District and therefore change their lot lines and coverage. It would be changing the town without control

Attorney David Royston,. Regarding the text amendment...Noted they attempted to put it in the right place within 70D and clarify that there was no change in the Essex Village district. It is a Policy decision for the commission to determine if it is good or bad. The point was just to put the language in the right place and understand what it does. It does allow for a reduction for the setbacks and coverage restrictions on split lots. He noted that Attorney Smith did not submit an application, but is he is here he can speak to the policy issue as an advocate for the reduction of setbacks and coverage for split lots.

Chairman Shipman opened it up for public comment and recognized Attorney Smith

Attorney Chris Smith spoke on behalf of Tom Evans, who is the Trustee of 26 Main Street, Essex. He reminded the Commission that he was invited to draft something on the subject of split lots. Speaking to context he noted that there were several applications before the

Commission, one from his client and another from a younger couple, grappling with how to supply some flexibility and relief for the limited amount of applications where the properties are located in the Essex Village and Village Residential Districts. He noted we do not have all of properties that match that description. They are limited and on Main street.

When he was invited to look at this and made reference to the Boston Post Road, Route 5 and 7... he made reference to the fact that they are examples of the fact that other areas have the front areas as commercial and the back as residential and that very myopically is similar to Essex. He was referring to the fact that it is not uncommon throughout the state.

He feels that working from the format that Commissioner Day had come up with that what he, Tom and Mr. Budrow came up with was splitting the difference to find some relief for the Village Residential District. He noted it the smallest setback will be 15 ft front and side yard, the rear yard will be 17.5 ft and coverage will be 17.5 ft (Increasing the coverage by 7.5%). and it doesn't apply throughout the town. He respectfully submitted that this really isn't spot zoning. It would be relief for a limited number of properties. 5-6 or a dozen and you would not be losing control of anything. There would be established setbacks and coverages applying to this limited number of properties. He further noted that this a zone text amendment. It is up to the commission and at their discretion to modify and them will be voted on as a policy issue. Right now it is just a text amendment.

Attorney Smith made an additional comment with a hypothetical regarding Mr Carroll's expressed concern about if you own a Village Residential District property and your neighbor owns one in two zones .

What if someone has a 2 acre parcel in the VRD and acquire a sliver of 2000 square feet in EVD, then say well I use these reduced bulk area coverages across my VRD . A way to deal with this would be to have a minimum percentage requirement (proposed 20%) to be within the VRD when this occurs. So that someone cannot acquire a 20 ft strip along the property line in EVD then try to take advantage of it.

Attorney Smith felt the language and format created by Attorney Royston, Mr. Day and Mr Budrow was spot on and a good way of incorporating and codifying the issue. Should the commission choose to move forward with this concept.

Chairman Shipman called for any other comments from the public. Chair Recognized Ruth Ann Paulin and Peter Glyman, the younger couple also seeking relief in Zoning for their split district property

Mrs Paulin spoke regarding their 10 month journey they have been on to resolve their issue. She commented on how she does not feel that is fair to them that they don't have the same setbacks as their EVD neighbors have. And there are not that many properties that fall into this limited issue. She feels that the current proposition is thoughtful and fair.

Chair recognizes Mark Rollins who lives on 10 Megs Lane and states he lives down the hill from the Paulin's and is a 4 yr resident who has made changes in his property and is aware of the restrictions in place for making improvements to a property. He stated he is aware of their choice to build an outbuilding on their property and is all for it. He feels the changes proposed by the Paulin's would greatly enhance their property and therefore the community.

He expressed concern regarding Attorney Smith who represents Mr. Evans, the trustee of the 26 Main street, Essex property, in that he has a clear view of the property question and while the grass is being cut ...etc... he has not heard anything about what he (Mr. Evans) intends to do with the property. He would like to hear what their plans are.

Chair notes that it is only possible to the extent that Attorney Smith would like to respond.

Attorney Smith responds that it would be a conversation to be had offline with his client if Mr Rollins is interested. He reminded the commission that this was not his or his client's idea. They came in with a zone change. It came to mind because of the accessory apartment from the Paulin's and the discussion regarding the same. He noted it would provide some relief but not all the relief his client was originally looking for with the Zoning change. He stated his client had not come up with a site development at this time.

Mr. Rollins also noted that many of the neighbors were against the changes.

Call for other comments or questions.

Mr. Reichenbach expressed concerned about the broad based approach to giving a great deal of freedom to split lots areas. He feels that 26 Main St. Essex should have been addressed based on an individual basis determining if there was a hardship and moved forward with plans on an individual basis. He expressed concern that this was kicked down to the Zoning Commission and that there is an danger of people gaming it in the future. It will become more complicated. He would like to have the ability to address them separately and not have a wholesale redo of the Zoning. It was stated the only way to do that is if you are on the Zoning board of appeals. ZBA would get a specific plan when all we have is the general request to build something.

Attorney Royston noted the problem is that ZBA can grant relief on and individual basis the law is very difficult regarding the idea of hardship. Unless the regulation you are dealing with will be confiscatory under your property. He noted that the Paulins were already turned down by ZBA and told they could not get the variance because they didn't have a hardship (as per Mrs. Paulin) and were told to come to the zoning commission for a regulation change. This position on how difficult hardship is to acquire in the courts was reinforced by Attorney Smith , that it is not a realistic alternative due to the recent rulings in the courts.

Mr. Paulin spoke to the Commission to remind them that they have been to ZBA and couldn't prove hardship. Went to Planning got their building approved and where sent to Zoning again and it has been a full circle process. He believes that as homeowners it should not take a year to figure it out and expressed that if there is the opportunity to improve the text related to people

like them with split lots in a way that allows them to do some of the small things that they want to do and still protect the integrity of the town that they are all for it.

Mr. Shipman noted they are still waiting on comments so cannot vote on the text amendment Mr. Shipman made the suggestion to identify the properties in the Zone that are split and request Mr. Budrow provide a map. Mr. Budrow stated that there is already a village map and believes that there are 8-11 possible parcels affected and he can draw up a map showing how the proposal would effect the setbacks. It was generally agreed it was a good idea to have that example drawn up or the next meeting. Mr. Budrow will be creating the map as requested to assist in clarifying the issue.

Mr. Reichenbach wanted to know if we were going to address Section 45 question regarding Rob Days language as a precursor to the language of 70 D and E. Rob Day stated his approach was less permissive and more defined on the mathematical equations in regard to lot coverage but did not address the set backs as they are much harder to deal with as the mathematical formula for creating weighted setbacks would be very cumbersome. There was discussion on how a weighted average stating the point was to prevent the sliver issue that was previously addressed. There was a request by Mr. Reichenbach for a hypothetical based on the original language. Mr. Day went on to explain the Hypothetical percentages and how it would affect a lot in regard to district boundary lines.

MOTION: Larry. Shipman made a motion to continue Application No. 20-9 – Essex Zoning Commission to October 21, 2020. Mr. Hill seconded the motion. All in favor, **Motion carried, 5-0.**

REGULAR MEETING

1. **CALL TO ORDER:** Larry Shipman, Chairman called the regular meeting to order at 8:15 p.m. Seated for the public hearing were regular Larry Shipman, Russ Smith, William Reichembach, Jim Hill , Mark Reeves, Robert Day III,, Jeff Lovelace and Tom Carroll.

2. APPROVAL OF THE AGENDA

The agenda had one change made. Application No. 20-10 came in on Friday

MOTION: Larry Shipman made a motion to amend the agenda to add under receipt of new applications Application No. 20-10 - A Petition for a text Amendment to add self-storage use to be located in an existing structure. Into todays the agenda. William Reichenbach seconded Motion. **All in Favor, Motion Carried 5-0**

Agenda so modified

Mr. Royston requested to be excused. Granted

3. RECEIPT OF NEW APPLICATIONS

Application No. 20-10 - A Petition for a text Amendment to add self-storage use to be located in an existing structure.

Mr. Shipman opened the floor to the applicant to present.

Attorney Rob Avena spoke for the applicant petitioners who has one of the Applicants CJ Bardy on call in case we have any questions about his operation . He provided background on the search for a space for the business in Essex and looking into the existing structures available in the LI District but concerned with one sentence in 90A-1 that allows certain uses but specifically excludes self-storage facilities. They worked with the Zoning office to determine why the particular usage was out, to no conclusion so they have moved forward with the Application and presented new language for discussion added to the bottom of attachment 1. To add language to allow for self-contained climate controlled storage within an existing structure, It would be to renovate a structure (as suggested by Mr Budrow) to have very few doors and hallways to proceed down to your storage unit and store and un-store. He stated that from the street he is not sure people would even notice that their use is any different from any of the other building next to them. He then put it back up for discussion.

Mr. Shipman noted that asked Mr. Budrow if everything was in order to accept the application, Noting that we have to send it to planning. Mr Budrow confirmed we had to send it to Planning and Gateway and River COG. Stating he will have those referrals out tomorrow. He also noted it is an order because when you do a text amendment you only have to show proposed text with a statement as to why. He will check to see if there is a fire code for minimum number of access and egress and he will also submit replacing the last line with “ the minimum number of access and egress required by the CT State Building Code and State Fire Code”. He has sent that language to the building official and fire Marshall and is awaiting their opinion.

Mr. Shipmann opened this for opinion asking that we bear in mind this has to be scheduled for public Hearing as it is a text amendment.

No comments.

MOTION: by Mark Reeves to amend agenda to accept **Application No. 20-10** –A Petition for a text Amendment to add self-storage use to be located in an existing structure. William Reichenbach seconded Motion. Application to be scheduled for next month’s meeting. **All in Favor, Motion Carried 5-0**

4. NEW BUSINESS

No new business.

5. OLD BUSINESS

There was no old business discussed.

6. VISITORS AND GUESTS

Tom R Evans

7. REPORT FROM LEGAL COUNSEL AND ZONING ENFORCEMENT OFFICIAL

He has several items to address:

- a. Stated he will be moving forward with an action on 70 Plains Road, The Inland Marine who owes us two fences and has gone silent when called or requested correspondence.
- b. Essex Glenn drainage issue on Zoning Commission approved drainage area on the SW corner that was working well but has since turned into a flume. He will be meeting the excavator there with Stu Fairbanks by Friday to get it buttoned up.
- c. Fence Issue on Scholes Lane someone has built a fence along multiple rear lots and on two of the lots it is over 8 ft. It also borders the entire sideline of another Scholes lane property who has contacted him because the fence goes to 8 ft and beyond. They need to shorten it to 8 feet or go to ZBA .
- d. Tom Carrol shared a concern last month regarding 175 Saybrook Road . It looks pretty high he went to Hemlock Road to check it out and with the bare earth it looks abrupt but going back to the site plan with proposed grades. He is not alarmed, as it appears to be within parameters... but he will monitor it.
- e. Cross Trees Hill road has a new home is being built. The owners of the house called because across the street trees were removed and they are concerned it is an erosion issue. He will be out there on Friday to review. If trees where cut and the stumps where left it will not be an erosion issue. But he will check to see if they called Zoning first as Gateway would have a problem with the tree removal.
- f. There is a property for sale as you are leaving Essex on North Main Street, Heading out of Ivoryton heading toward Deep River . Just before you get to the property line there is an access way to an interior lot that was split off in the 80's. It has been getting allot of buzz. There is a right of way for the town going over it to north main from Mitchell terrance. It is making his phone go off the hook every day.
- g. Sunset Terrace a home rented to a nice couple who received a notice from Mr Budrow , due to complaints from 5 residents in regard to the chickens on the property (which all have to be relocated as they are not allowed on the property)

8. OTHER BUSINESS

None

9. APPROVAL OF MINUTES

MOTION: made by Larry Shipman to approve the August 17, 2020 minutes. William Reichenbach seconded Motion. **All in Favor, Motion Carried 5-0**

10. CORRESPONDENCE AND PAYMENT OF BILLS

Invoice from Dzizlo, Picket and Allen , for Dave Royston's legal review to prepare for and attend out last commission meeting and a conference with Mr. Budrow soon after for 3 hrs. educating us on the definition of a lot and the potential to have more than one principal building on it, if the lot is big enough. Recommendation to pay the bill for \$1295.00 to go to the first selectman for payout.

MOTION: made by Larry Shipman to approve payment of Legal Invoice #36031. Mark Reeves Seconded Motion. **All in Favor, Motion Carried 5-0**

11. ADJOURNMENT

MOTION made by Jim Hill to adjourn the meeting at 8:32 pm. Mark Reeves seconded the motion. All in favor, **Motion carried, 5-0.**

Respectfully submitted,

Sharon Marie
Zoning Board Clerk