

TOWN OF ESSEX ZONING BOARD OF ADJUSTMENT
DRAFT MINUTES
AUGUST 4, 2022

Note: This meeting was held in-person and virtually on Microsoft Teams.

ZONING BOARD OF ADJUSTMENT (ZBA) MEMBERS PRESENT:

In Person: Nick Martin, Chair; Tom Yandow, Clerk; and Hubert Norton.

OTHERS PRESENT:

Sharon Kelley, Zoning Administrator; John Alden; and Simone _____.

VIRTUAL: No Attendance.

Chairman Martin called the hearing to order at 6:03 p.m; took roll call of the Board Members present and noted that Vice-Chair Plageman was unable to attend the hearing; and provided the public oath.

AGENDA ITEM 1: CONTINUED PUBLIC HEARING: CONDITIONAL USE: HDI REAL ESTATE, INC C/O RICK BOVE: PROPOSAL FOR OUTDOOR SEATING FOR MIMMOS RESTAURANT LOCATED AT 4 CARMICHAEL STREET IN THE MIXED USE-PLANNED UNIT DEVELOPMENT ZONE (MXD-PUD) (MXD-C SUBZONE) AND BUSINESS DESIGN CONTROL (B-DC) OVERLAY ZONES. TAX MAP 91, PARCEL 4-1.

It was noted that the Fact Finding/Public Hearing remained open from the August 4, 2022 hearing.

Sharon Kelley reported that the application was simple in that Mimmo's Restaurant was asking for 12-outdoor seats located in front of its unit and between two existing brick column enclosures at 4 Carmichael Street. Kelley noted that the request was minor; and the Staff Report detailed the proposal which included staff department comments.

Simone Spano referred to the plan showing the area where he would fill in a dirt area to create the seating area. He stated that the passage walkway would have no blockage, noting that this area is used to accommodate wheelchair space and had two ramps on each side of the walkway.

Board Member Norton asked for the configuration of tables and chairs and if umbrellas would be accommodated. Spano was not sure and suggested it could be 6 tables. He noted that they would figure it out once the space was created and that he would not overcrowd as the servers needed space. He also noted that he has been in this location for 7 years and he would not block the walkway. Spano suggested they may use umbrellas but was not sure.

John Alden noted that there is currently a building overhang for protection and umbrellas would not be needed. Board Member Yandow asked if the building comes out to the columns. Alden replied that there was a "bit of an overhang."

Chairman Martin asked for the dates the applicant wished to utilize the outdoor space. Spano stated that he was not sure and maybe into the first week of October. Kelley referred to the last sentence on Page 1 which read, "The proposed operations of the outdoor seating shall be between April 1, 2022, thru October 31, 2022."

A brief discussion ensued regarding the operating hours for outdoor seating and whether outdoor heaters would be utilized. It was determined to delete the dates and replace with “seasonal” and to have the applicant provide evidence to the Zoning Administrator that the State Fire Marshall finds heaters acceptable.

Board Member Norton MOVED and Board Member Yandow SECONDED a MOTION to close the Fact-Finding/Public Hearing. The MOTION passed 3-0.

Chairman Martin MOVED and Board Member Yandow SECONDED a MOTION to approve the application for outdoor seating located at 4 Carmichael Street, subject to the following Findings and Conditions:

- 1) The landowner is Rick Bove d/b/a HDI Real Estate Inc. The tenant is Simone Spano, d/b/a Mimmo’s Italian Pizzeria & Restaurant. The property is located at 4 Carmichael Street, Suite 102, in the Town of Essex, Chittenden County, State of Vermont (Tax Map 2:091-004-001.) The parcel lies within the Mixed-Use Commercial (MXD-C) Zone and the Business Design Control (B-DC) Overlay District.

Zoning Permit #2002-302 was issued on 12/10/2002 for a 1,620 sq. ft. restaurant; Sign Permit was issued on 12/10/02; and the Certificate of Occupancy was issued on 2/13/2003.

- 2) The application is being reviewed under the Town of Essex Outside the Village of Essex Junction Official Zoning Regulations, Article VIII, ‘Definitions’ and Article V, Section 5.7 Conditional Use.

Although this restaurant was approved as a ‘permitted’ use as it was within the 8,000 square foot requirement, the Zoning Regulations define ‘Restaurant’ as follows:

Restaurant: *An establishment whose primary operation accommodates food and drink preparation, service, and consumption primarily in designated locations on premises. A deli in a grocery store, convenience store, supermarket, or free- standing structure serving food and sandwiches for off premise consumption only, shall not be considered a restaurant. Restaurants shall be allowed in designated zoning districts under Article II, however, restaurants including any of the following additional facilities shall be considered a conditional use (in only those districts allowing restaurants) subject to Board of Adjustment approval: take out service, catering, drive-through window, live entertainment, outside seating, or other additional facilities deemed by the Zoning Administrator necessary to warrant approval by the Board of Adjustment. (emphasis added)*

The proposal is to allow for the existing Mimmo’s Restaurant to accommodate 12 outside seats. A patio will be constructed in between the two existing brick column enclosures. There is currently a concrete pad with two small sections of mulch and soil on either side of the concrete. The mulch and soil will be removed, and concrete will be infilled on either side to create a 20’8” wide concrete patio, along with a short wood wall on the inside of the curb to provide separation between the new patio space and the existing driveway. No changes are proposed to the existing building, curb or sidewalk. The proposed operations of the outdoor seating shall be seasonal.

The applicant should provide evidence to the Zoning Administrator that the State Fire Marshall finds outdoor heaters acceptable before they are utilized.

3) An 11x17 Plan Sheet A2.0, entitled, “Mimmo’s Patio, 4 Carmichael Street, Essex Junction, VT” was provided by John Alden, Architect, date-stamped received by the Community Development Department on 06/06/2022.

4) Pursuant to state statute a ‘Notice of Hearing’ was provided to the applicant for posting on the property.

5) The abutting property owners were notified of this meeting by certified mail.

6) The landowner and applicant were mailed a copy of this Staff Report prior to the meeting.

7) Simone Spano and John Alden spoke on behalf of this application. No one from the public commented on this application.

Simone Spano referred to the plan showing the area where he would fill in a dirt area to create the seating area; that the passage walkway and the two ramp areas would have no blockage by tables or outdoor storage; and that he planned to use the outdoor seasonally as weather allows.

John Alden noted that there is currently a building overhang for protection and umbrellas would not be needed.

8) In an email dated 6/28/2022, Public Works said,

The Town of Essex Public Works Department has reviewed the above referenced project and offers the following comments.

Transportation:

1. *Public Works is of the opinion that there will be no significant change in the overall traffic flows to and from the existing Town Center caused by the change and addition of 12 additional outdoor seats to the existing space at Mimmo’s restaurant. Staff does not see any significant impact to the surrounding transportation infrastructure throughout the Town Center area.*

Water and Sewer:

1. *The most recent accounting of water and sewer allocation for the Town Center has been reviewed and approved by Public Works. The existing flows assigned to Mimmo’s is currently 3,920 GPD. The applicant has requested to have 12 additional outdoor seats in addition to the existing seating inside and will not be required to apply for additional sewer allocation from the Town. The new outdoor seating will require 120 GPD for a total of 4,040 GPD.*

The applicant's engineer has reviewed the existing uses for the Town Center complex and there is currently 1,593 GPD of remaining allocation available for this proposal. After this new change of use, the complex will have 1,473 GPD of water and sewer allocation available for future uses.

9) In an email dated 6/8/2022, the Recreation Director said, *EPR doesn't have any concerns about this request.*

10) In an email dated 6/8/2022, the Police Chief said, *No comment as long as they are in compliance with DLC and safe from the parking lot.*

11) In an email dated 6/8/2022, the Fire Chief said,

The Fire Department requests that the signs be posted on all columns in front of the entire building identifying the front as a fire lane (previously identified so this is not new) with enforcement. There are several vehicles that frequently park in front of this business which will not be a pleasant experience for patrons using the outdoor patio area.

The only other comments are that the walk-way must be maintained at all times and not blocked with serving carts/tables/chairs, etc. and the walkway cannot be used as storage space during inclement weather.

12) Pursuant to Section 5.7 (Conditional Use) of the Zoning Regulations, the Zoning Board finds the following:

- a. There will be no adverse effect on the capacity of the existing or planned community facilities;
- b. There will be no adverse effect on the character of the area/neighborhood affected;
- c. There will be no adverse effect on traffic on roads and highways in the vicinity;
- d. The proposed use will be in compliance with the bylaws now in effect;
- e. The proposed use will not adversely affect utilization of renewable energy resources;
- f. The proposed use is in conformance with the Town Plan;
- g. The proposed use does not require site plan review; and
- h. The proposed use is in conformance with community character.

CONDITIONS:

1. The applicant shall secure a Zoning Permit and Certificate of Occupancy, and pay associated fees, prior to commencement of the use.
2. The fire lane shall remain clear of obstructions.
3. Each column along the fire lane shall be posted with 'Fire Lane - No Parking' signage.
4. The walkway shall be kept clear and not blocked with serving carts/tables/chairs, etc.

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194 5. All tables, chairs, and associated equipment shall be removed from the patio and stored
195 inside once the season has ended. No outdoor storage is allowed.
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197 6. The applicant shall secure any State permits, including an outdoor consumption license,
198 that may be necessary resulting from this approval.
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200 7. No outdoor storage is permitted at any time of the year and the walkway shall be kept
201 clear at all times.
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203 8. By acceptance of the conditions of this approval without appeal, the applicant confirms
204 and agrees for himself and all assigns and successors in interest that the conditions of this
205 approval shall run with the land and the land uses herein permitted and, will be binding
206 upon and enforceable against the applicant and all assigns and successors in interest.
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208 **The MOTION passed 3-0.**
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210 **AGENDA ITEM 2: POSSIBLE DISCUSSION ON ZONING REGULATION USES.**
211

212 Sharon Kelley asked the ZBA if they had an opportunity to meet as a working group and if they
213 reviewed the permitted and conditional uses listed in the Zoning Regulations. Kelley provided
214 the ZBA with a new request from Peter Parkinson for specific uses that was previously submitted
215 to the Planning Commission for consideration and to be added to the Industrial (I1) Zone,
216 specifically for his father's lands located in Fort Ethan Allen. Kelley also provided the ZBA
217 with another copy of Al Senecal's request of added uses to the RPD-I zone. After a brief
218 discussion on uses, the ZBA determined that they will start with these two letters and review the
219 Regulations so that when they meet for its September meeting, they will come back with what
220 each member has agreed upon so a recommendation can be formed to forward to the Planning
221 Commission. In addition, this will allow for Vice-Chair Plageman to also be involved with the
222 review and discussion. Kelley noted that the Planning Commission is now looking to start its
223 workshop on amending the Regulations to catch up with statutory requirements and minor
224 housekeeping items.
225

226 Board Member Norton asked to be taken off the category of 'Inclusionary Zoning' as he felt this
227 group was already established and far into the development of same. He also noted that he was
228 the only person listed under the 'Performance Standards' category.
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230 **AGENDA ITEM 3: MINUTES: July 7, 2022**
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232 **Board Member Yandow MOVED and Board Member Norton Seconded a Motion to**
233 **approve the 7/7/2022 minutes as written. The MOTION passed 3-0.**
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236 **AGENDA ITEM 4. OTHER BUSINESS:** Kelley reported that there will be a meeting in
237 September.

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239 The meeting adjourned at 7:17 p.m.

ZONING BOARD OF ADJUSTMENT

240
241 By:

Nick Martin, Chair

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