

TOWN OF ESSEX ZONING BOARD OF ADJUSTMENT
DRAFT MINUTES
JUNE 1, 2023

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

ZONING BOARD OF ADJUSTMENT (ZBA) MEMBERS PRESENT IN HOUSE:

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

VIRTUAL: NONE

OTHERS PRESENT:

Sharon Kelley, Zoning Administrator; Sam Bellavance (applicant); and Jeff Davis (applicant).

Chairman Martin called the hearing to order at 6:02 p.m; provided the oath to those testifying; and took roll call of the Board Members present. Board Member Plageman was absent.

AGENDA ITEM 1: CONTINUED PUBLIC HEARING: VARIANCE: Jeff Davis, d/b/a Mountaineer Properties of Essex: Request for a variance to return an existing commercial structure to a single-family house located at 6 Carmichael Street, in the Mixed Unit Development – Commercial (MXD-C) Zone & Business Design Control Overlay (B-DC) District. Tax Map 91, Parcel 3.

Vice-Chair Plageman MOVED and Board Member Norton Reaffirmed the Public Hearing was open by vote. The MOTION passed 4-0.

Sharon Kelley reminded that the ZBA continued the Public Hearing in order to obtain additional information from the departments on their recommendation of keeping the property as commercial. She noted the only changes to the Staff Report were made to Findings 9, 10, 11 & 12.

Robert (Brownie) Adsit, 190 Cheen Green, Charlotte, VT, made the following points:

- Has had occasion to go to the property site and was not happy with the way the tenants kept the property. He had to get assist in clean-up.
- He reported that it took him 1 day and 4 dumpsters to clean out the house after the last tenant departed.
- He stated that the previous use was a coffee house and thought that they lived in the upstairs.
- He reported that the market for commercial use has been very bad and they tried hard to find a commercial use.
- He stated that to make the existing house into two unit would destroy the house and be very expensive, noting that more plumbing would be required on the second floor and that would not work, and would be “very expensive”.
- He noted the taxes are \$5,000-\$6,000 per year and they can’t do anything with the house.
- He noted they were asking for a variance. He spoke with the Police Chief, Public Works and the Fire Chief and reported that the Police Chief does not have a strong opinion and left the decision with the ZBA; the Fire Chief has an issue with a single-family house as they would not be able to inspect a single-family and he was not in favor of granting variances. Brownie noted that they would volunteer inspections.

- He reported that he was a former ZBA member for the Town of Charlotte. He stated that he did not like the idea of variances, however at times, a variance was needed. He believes not granting a variance in this case is not a good decision business-wise. He noted that if the ZBA put conditions on the approval requiring the lot to be maintained, he felt this would resolve the issues for Public Works and the Fire Chief. He noted that such conditions would make all 5 criteria met.
- He stated that Jeff (the landowner) wants to make a dollar doing this and hope to make a dollar before he dies. He hopes the ZBA will grant the variance, with conditions.

Board Member Norton, noted Brownie's service on the Charlotte Zoning Board and that Brownie was familiar with the variance criteria. Norton read through the 5 criteria and asked Brown if he felt the applicant has met all the criteria. Brownie believed so and stated that the parcel is a small and feels a single-family house would have less of an impact. Brownie stated that because of the acreage requirements multi-family does not work. Brownie reported that Jeff doesn't want to be a part of it due to cost, and "another old house would be wacked."

Board Member Yandow asked the applicant if he has gone to an architect to determine the cost. Jeff Davis replied, "No." Board Member Plageman asked, "why not". Davis asked if he was asking about turning the house into multi-units? Brownie stated that Jeff works for a developer and has a good handle on cost, noting that the cost of everything has gone up. However, if the ZBA is implying that would "make a variance work", then they will obtain a quote, however he has "no doubt it will a lot."

A brief discussion ensued regarding the 15-spaces that are dedicated to the structure and if 15-spaces were needed. Kelley reported that the parking spaces are a part of an easement and should not be altered.

Vice-Chair Plageman MOVED and Board Member Yandow SECONDED a MOTION to close the Fact-Finding/Public Hearing. The MOTION passed 4-0.

Chairman Martin asked the ZBA members how they want to move forward. Vice-Chair Plageman did not believe they met criteria #1 & 2 and felt granting a variance "is going to open Pandora's box." Board Member Norton agreed with Plageman. Chairman Martin noted they wanted town feedback from the departments, not support.

Board Member Norton stated that the reason he asked the departments to respond again was he felt the initial comments went beyond what was asked and the second set of comments clarified and stated what was in their capacity.

Brownie asked if he could make another comment.

Board Member Norton MOVED and Vice-Chair Plageman SECONDED a Motion to Re-Open the Public Hearing. The MOTION passed 4-0.

Brown stated that he understands that the department heads have their opinion and all said that they do not like a variance, however this is an unusual deal. He believes if the ZBA places a condition that requires a fire inspection for a single-family, it would satisfy the Fire Chief. He stated that the

junk and trash can also be resolved with conditions. He asked what they will do if the building remains empty, noting that it will bring in homeless people to get into the unit. He stated that more than a single-family was not feasible for Jeff to do what he wants to do. He does not believe granting a variance will set a precedent.

Chairman Martin asked if they would be interested in converting the unit into a potential multifamily use. Kelley stated that the applicant previously stated that the cost is too high to convert into multifamily.

Kelley asked if the house was on the market. Brownie said yes. Brownie asked what they could do from here. Kelley suggested they could reduce the sale price or offer a rent-to-own.

Board Member Norton MOVED and Board Member Yandow SECONDED a Motion to Close the Public Hearing. The MOTION passed 4-0.

Vice-Chair Plageman MOVED and Board Member Norton SECONDED a MOTION to deny the request for a variance to return an existing commercial structure to a single-family house located at 6 Carmichael Street, subject to the following Findings and Conditions:

FINDINGS:

1. The applicant/landowner is Jeff Davis, d/b/a Mountaineer Properties of Essex, LLC.
2. The property is located at 6 Carmichael Street (formerly known as 87 Upper Main Street) in the Mixed-Use Commercial (MXD-C) & Business Design Control (B-DC) Overlay District. Mr. Davis owns the house and land underneath, the creamee structure and land underneath and a .25-acre exclusive use easement. HDI, Inc. retains ownership of the land. A 75-foot Greenway exists on this property however it has not yet been accepted by the town.
3. The applicant has requested a Variance to allow the commercial building to return to a single-family use. The applicant's application submittal contained 3 black and white photographs of the structure and a copy of the Warranty Deed referencing the easements, rights-of-way, and parking spaces.

The applicant's narrative reads as follows:

The property is not currently allowed to be occupied as a single family home under the "Mixed Use Commercial District". Duplexes and Multi-units are allowed. However these are not permitted due to the lot size being under 7000 SF.

The building is listed on the National Historic Register. It has been used almost exclusively since the 1820's as a single family residence.

We believe we meet the criteria outlined in Section 7.5 of the regulations as follows:

A(1) The Essex Zoning Regulations require 7,000 sq. ft. of land per residential unit. This

property only contains 4,356 sq. ft. of land. Therefore a duplex or multi-family cannot be permitted here. Only a single family home will meet the regulations.

A(2) As outlined in A(1) above the property cannot conform with the zoning regulations due to the amount of land owned.

A(3) Mountaineer Properties of Essex has owned the property since 2011 and did not create the parcel.

A(4) This zoning change will not alter the essential character of the neighborhood or effect the development of adjacent property. It will also not reduce access to renewable energy sources and will not be detrimental to the public welfare. This single family use will complement the neighboring development.

(A5) This variance will permit the use of a single family home which will be the minimum deviation possible from the zoning regulations.

(B) & (C) Not applicable.

4. Staff provided pictures taken in 2019 resulting from previous residential tenants on the premises; an email from the abutting restaurant dated 4/16/21; and the previously approved Site Plan entitled, Plan Sheet 1, "Site Plan, Lands of Mountaineer Properties of Essex, LLC", prepared by O'Leary-Burke Civil Associates, PLC, dated 5/3/12.
5. Pursuant to state statute a 'Notice of Hearing' was provided to the applicant for posting on the property; and the abutting property owners were notified of this meeting by first-class mail.
6. The site has 15 dedicated deeded parking spaces on HDI property. Pursuant to Table 3.3 of the Zoning Regulations, a residential use requires 2.3 parking spaces per dwelling unit. Sufficient parking exists to accommodate one single-family unit.
7. The landowner was provided a copy of the Staff Report prior to the meeting.
8. Jeff Davis and Robert Ipsa spoke on behalf of this application.
9. No one from the public commented on this application.
10. In an email dated 3/9/2023, the Police Chief said,
No comments from PD. In a follow-up email, the police chief said, Looking at our records, we only have had two calls at 6 Carmichael, both in July 2021. While it does seem to make sense that the property stay in a commercial fashion, I did not feel that it was EPD's place to be recommending that. I assumed it would be the ZBA or yourself who should decide what is appropriate. When I look at these, I view them from a law enforcement perspective and not how I feel as a generality.

11. In an email dated 3/28, Fire Chief Cole said,
I would recommend that this parcel remain as a commercial property and not be allowed to revert back to a single-family residence.

In a follow-up email dated 5/26/23, the Fire Chief said, *By keeping this property as commercial, it does allow the building (and related uses) to fall under the purview of the State Fire Marshal (NFPA Life Safety Code 101) should we have an issue, whereas a single family residence does not.*

12. In an email dated 3/21/2023, the Recreation Director said,
EPR recommends that this stay within the BDCO District as it is more in line with the commercial aspect.
If it were to get approved for residential, it would be assessed the recreation impact fee.

In a follow-up email, as requested by the ZBA, Public Works said, *The Parks and Recreation Department's previous comments remain unchanged. While this property is within the mixed-use commercial district, a single-family residence is out of place in the overall concept. The Department believes the ZBA/Zoning Administrator takes authority when making these sorts of decisions based on the opinions provided by the department's feedback.*

13. In an email dated 3/27/2023, Public Works said,
Public Works does not support the application to allow a variance for a single-family home within the Mixed-Use Commercial District.

In a follow-up email, as requested by the ZBA, Public Works said, *Public Works does not have any further comment on this. We continue to have the opinion that although the property is within the Mixed-Use Commercial district, a single-family home would be out of place here. Also, looking forward to the future and knowing what has been presented in the ETC Next plan, a single-family home would just stand out and will have trouble fitting in to the vision outlined in the plan.*

That said, Public Works is of the opinion that the ZBA and/or Zoning Administrator has the authority to make these kinds of decisions and that the opinion of Public Works is just that, our opinion.

14. Lighting is not regulated with single-family homes unless the development went through a site plan review before the Planning Commission and conditions were established.

15. Pursuant to Section 7.5 of the Zoning Regulations, the ZBA shall review the following criteria of the Zoning Regulations relating to 'Variances'.

The Board of Adjustment may grant a variance from the provisions of these Regulations only in accordance with the Act [§ 4468].

(A) The Board shall grant a variance, and render a decision in favor of the appellant, only if finds that **all** of the following criteria are met, and the findings are specified in its written decision:

- (1) There are unique physical circumstances or conditions, including irregular topography, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the Zoning Regulations in the neighborhood or district in which the property is located.
- (2) Because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- (3) Unnecessary hardship has not been created by the applicant.
- (4) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially nor permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare.
- (5) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from these Regulations and from the plan.

16. THE ZBA FINDS:

- (1) There are not unique physical circumstances or conditions, including irregular topography, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property.
- (2) Because of such physical circumstances or conditions, there is a possibility that the property can be used for commercial uses and remain in strict conformity with the provisions of the zoning regulation.
- (3) Unnecessary hardship has been created by the applicant.
- (4) The variance will alter the essential character of the neighborhood or district in which the property is located.
- (5) The variance will not represent the minimum variance that will afford relief and will represent the least deviation possible from these Regulations and from the plan.

Chairman Martin asked the Zoning Administrator to take a role call vote, as follows:

Chairman Martin – yes.

Vice-Chair Plageman – yes.

Tom Yandow, Clerk – yes.

Hubert Norton – yes.

The MOTION to Deny passed 4-0.

AGENDA ITEM 2: MINUTES: May 4, 2023

Chairman Martin Moved and Board Member Norton Seconded a Motion to approve the 5/4/2023 minutes grammatical changes. The Motion passed 4-0.

AGENDA ITEM 3. OTHER BUSINESS: None.

The meeting adjourned at 7:08 p.m.

ZONING BOARD OF ADJUSTMENT

By: _____
Nick Martin, Chair