

TOWN OF ESSEX ZONING BOARD OF ADJUSTMENT
DRAFT MINUTES
July 2, 2024

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

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

In Person: Michael Plageman, Vice-Chair & Acting Chairman; Hubert Norton; and Stephanie Bixby.

VIRTUAL ZBA & PUBLIC ATTENDANCE: None.

IN HOUSE ATTENDANCE:

Sharon Kelley, Zoning Administrator; John Stuart, P.E.; Gabe Handy and Jenna Church.

Kelley noted the start of the meeting at 6:00 p.m.

AGENDA ITEM 1: ELECTION OF OFFICERS:

Sharon Kelley, Z.A., stated that election for officers occur on the first meeting in July. Kelley reminded the ZBA that Nick Martin indicated in an email that he was happy to continue as Chair, however if someone else was interested, he was fine to have them serve. A brief discussion ensued on the elections.

Board Member Norton Moved and Board Member Bixby Seconded a Motion to appoint Nick Martin as Chair. The Motion passed 3-0.

Hubert Norton Moved and Stephanie Bixby Seconded a Motion to appoint Michael Plageman as Vice Chair. The Motion passed 3-0.

Kelley turned the gavel over to Vice-Chair/Acting Chair Michael Plageman.

Acting Chair Plageman Moved and Board Member Norton Seconded a Motion to appoint Stephanie Bixby as Clerk. The Motion passed 3.0.

Acting Chair Plageman took roll call of the ZBA members present for the meeting: Hubie Norton, Stephanie Bixby and Michael Plageman were in attendance for this meeting.

Board Member Norton Moved and Board Member Bixby Seconded a Motion to Amend the Agenda by moving Agenda Items 2 (Approval of Minutes) and 3 (Review and approval of Operating Procedures to the end of the meeting. The MOTION passed 3-0.

**AGENDA ITEM 3: VARIANCE: GABE HANDY d/b/a FRANKLIN SOUTH, LLC:
PROPOSED.....**

Board Member Norton asked if the Planning Commission (PC) heard its application on this property. Kelley reported no and that it needed ZBA approval before scheduling a PC hearing.

Board Member Norton Moved and Board Member Bixby Seconded to Open the Public Hearing. The MOTION passed 3-0.

Sharon Kelley reported that the applicant was requesting a variance due to the flood zone and its 50' buffer located in the back of the lot. Kelley noted that the applicant did lessen the front yard setback from its original position which was located approximately 5' from the setback. Kelley noted that the Planning Commission will determine whether a side yard buffer will be required during the site plan review process. She did not have anything further to add to the Staff Report that was previously provided to the ZBA.

John Stuart and Gabe Handy spoke on this application. Stuart made the following points:

- The proposal is to improve 108 Colchester Road by demolishing the existing 600 s.f. building and constructing a 3,000 s.f. metal building. The existing lot is substandard on frontage and acreage. A variance will be needed.
- He tried to improve the lot as much as possible. He pushed the building back as much as possible, noting the southerly property line will move from 25' to a 14' setback and the front property line will improve from a 5' setback to a 16' setback. He noted the remaining property has steep slopes and wetlands, which provided a limited area to make improvements.
- He received and provided a VTrans permit for the curbcut, which will be improved.
- He received an amended State Wastewater permit.
- He provided a rendering of the proposed building; and
- He stated the driveway will be paved with parking and landscaping located in the front.

Gabe Handy stated that he originally had two tenants for the building, which are companies that he uses primarily for his development project, however one tenant backed out. He stated that he will continue with two units and believes the remaining tenant, Tri City Glass, will end up using both units for storage only – no onsite work. He noted that each unit will have one bathroom; and each unit will have a 14' high overhead door.

Board Member Norton asked if the variance was also for the leach field and tank. Stuart replied that the existing 100 gallon system will be used however, they are replacing the existing tank on the northeast corner with a combination tank and pump station.

Board Member Norton asked if the existing leach field and replacement system prevents the building from being pushed further into the back of the lot. Stuart replied yes. Stuart showed on the plan where the riparian buffer was located.

Board Member Norton noted that Public Works asked for Type 3 topcoat for pavement. Handy used his project located at 60 Lincoln Street, noting that course asphalt goes down into the ground versus draining towards Railroad Street.

Board Member Bixby confirmed that due to wetlands it gives limitations towards the front yard setback. Stuart confirmed.

Acting Chair Plageman noted that only one business is now proposed, with two units. Handy stated that when they made application, he had two tenants, one in each 1500 s.f. unit, each with a bathroom. He stated that he would like to keep it as two units.

Board Member Norton asked if the only other traffic would be for delivery of materials. Handy confirmed and noted that mostly small box trucks would be making deliveries.

Acting Chair Plageman asked to confirm the proposed side setback and asked about the buffer. Stuart replied that the existing building has a 25' side setback and the proposed building would have a 14' side yard setback. Kelley noted that the B1 Zoning District does not have a side yard setback. However, there is a 30' buffer requirement when a lot abuts a residential zoning District. Kelley noted that the lot under review and the abutting lots are not located in a residential District, however the abutting lots are being used as a residential use.

No public was present.

Board Member Norton Moved and Board Member Bixby Seconded a Motion to close the Fact-Finding/Public Hearing. The Motion passed 303.

Board Member Norton MOVED and Board Member Bixby SECONDED a Motion to approve the application subject to the following Findings and Conditions:

FINDINGS:

1. The landowner/applicant is Gabe Handy, d/b/a Franklin South LLC.
2. 108 Colchester Road is a 0.73-acre, pre-existing, non-conforming lot located in the Town of Essex, Chittenden County and State of Vermont. The parcel is identified on Tax Map 48, Parcel 3, lot 000. The pre-existing lot has 140' of road frontage; is served by private water (shallow well) and private on-site septic; and is situated in the Mixed-Use (MXD) and Flood Plain (C2) Overlay Zoning District. A Septic Permit was issued in 1985 (septic permits were required starting in 1973), however there is no permit for the construction of a house, which was built prior to 1972. A garage was erected in 1969.
3. The applicant has requested a Variance from the Zoning Regulations (Reference Section 7.5 'Variance' of the Zoning Regulations) and Section 3.8 'Nonconformities' will be considered with this application, as follows:

Section 7.5 of the Town of Essex Zoning Regulations reads:

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 it 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.*

(B) Renewable Energy Structures. N/A.

(C) Special Flood Hazard Areas. N/A as the structure is not located in the Flood area, nor its setback requirements.

(D) Conditions of Variance Approval. *In granting a request for a variance, the Board of Adjustment may attach such additional conditions and safeguards as it may deem necessary and appropriate under the circumstances to implement the purposes of this Section and these Regulations.*

Section 3.8(B) 'Nonconforming Structures' of the Town of Essex Zoning Regulations reads:

Nonconforming Structures. *Any structure or portion thereof legally in existence as of the effective date of these Regulations or subsequent amendments, but not currently in conformance with these regulations, may be modified, reconstructed, enlarged, or moved only in accordance with the following:*

(1) *Repairs. Nothing in this section shall be deemed to prevent normal maintenance and repair of a nonconforming structure, provided that such action does not increase the degree of nonconformance.*

(2) *Modifications. A nonconforming structure may be structurally enlarged, extended, modified, or moved provided that the improvement or relocation is in conformance with all provisions of these Regulations and does not increase the degree of nonconformance.*

(3) *Damaged Structures. If a nonconforming structure is damaged or destroyed by fire, explosion or act of God, the structure may be reconstructed without approval from the Board of Adjustment, if the reconstruction does not increase the degree of nonconformance, except that:*

(a) *Approval of the Board of Adjustment, subject to conditional use review under Section 5.7, shall be required for the reconstruction of a nonconforming structure that has been destroyed or damaged by fire, explosion or Act of God in an amount equaling seventy-five percent (75%) or more of its market value, to determine whether the structure can be reconstructed in a manner that decreases the degree of nonconformance; and*

(b) *The structure as approved by the Board must be rebuilt within one (1) year of the date of the approval unless the Board extends this period for one (1) additional year upon finding that physical hardships unforeseeable delays or*

other circumstances justify the extension.

4. The proposal is to demolish the existing residential house and structures that are situated on a nonconforming lot and reconstruct a 50'x60', 2-unit commercial building. The applicant has proposed the front yard setback to be 16.5-feet to accommodate a 2-unit commercial structure. The applicant stated the existing house is situated 5' from the front setback requirement. (See Finding 5 below for the lot and setback requirements. The proposal does not encroach into the Flood Zone, nor its buffer requirements.

The following entitled plans were submitted with this application:

FRANKLIN SOUTH, LLC COMMERCIAL BUILDING SITE PLAN 108 COLCHESTER ROAD, ESSEX, VERMONT, DWG. 1 OF 2, as drawn by JH Stuart Associates, 22 Tanglewood Drive, P.O. Box 8367, Essex, Vermont and dated 10/20/2023, last revised 5/2/2024.

The applicant also provided the following:

A letter dated 12/26/2023, from the State of Vermont granting access approval for the proposed use (copy attached); and an amended Wastewater System and Potable Water Supply Permit #WW0-4-6100, dated 4/18/2024, for a 2-unit, 50'x60' commercial building with a maximum of 2 employees (copy attached).

5. The applicant has chosen to redevelop the lot for commercial use. Table 2.11(D)(1) of Zoning Regulations for the Mixed-Use Development (MXD) District reads, in part, *Dimensional requirements for nonresidential uses shall be those specified for the B1 District (Table 2.9)* as shown below.

Dimension	Off-site Water and Sewer	Off-site Water or Sewer	On-site Water and Sewer
<i>Minimum Lot Area – per Dwelling Unit</i>	20,000 sq. ft.	30,000 sq. ft.	40,000 sq. ft.
<i>Minimum Lot Area – Nonresidential</i>	30,000 sq. ft.	40,000 sq. ft.	40,000 sq. ft.
<i>Minimum Lot Frontage</i>	150 feet	150 feet	150 feet
<i>Minimum Front Setback (from ROW)</i>	50 feet(a)	50 feet(a)	50 feet(a)
<i>Minimum Side Setback (see (F)(5) below)</i>	None	None	None
<i>Minimum Rear Setback (see (F)(5) below)</i>	None	None	None
<i>Minimum Buffer/Residential Districts (see (F)(5) below)</i>	30 feet	30 feet	30 feet
<i>Minimum Buffer/ Surface Waters (see Section 3.11)</i>	Varies	Varies	Varies
<i>Maximum Lot Coverage – All</i>	70%	70%	70%
<i>Maximum Height (see Section 3.6)</i>	40 feet	40 feet	40 feet

(F5, as highlighted above, refers to buffers, to be reviewed under site plan w/the PC)

6. The applicant has indicated that the existing grandfathered residential structure is situated 5' from the front property line and the new structure is proposed with a 16.5' front yard setback.

It is noted that the road frontage in the MXD (B1) zone is 150-feet, however this lot is grandfathered with 140' of frontage. and remains a buildable lot. The property is also located in the Flood (C2) Zone however, the applicant has situated the structure outside the C2 Zone and meets the required 50' buffer requirement from the C2 zone.

This lot is designated in the Mixed-Use (MXD) Zone and the requirements, as highlighted below, state that a 30' buffer is required from Residential **Districts**. The abutting lots on both sides of this parcel are also located in the MXD Zoning District and used as residential lots. It is noted that the Railway abuts the project on east side of the road. **The issue of a side-yard buffer will be resolved during site plan review with the Planning Commission. Reference Zoning Regulation, Table 2.9(F), which reads:**

District Development Standards:

(5) Buffers. Notwithstanding other applicable district dimensional requirements under

Subsection (D), where new nonresidential structures or uses are on lots adjoining residential zoning districts, buffer areas at least 30 feet in width shall define side and rear yard setback areas along district boundaries unless waived or modified by the Planning Commission in accordance with the provisions of Section 3.2 (Buffers).
Emphasis added.

This application is being reviewed by the Zoning Board of Adjustment under the *Town of Essex Official Zoning Regulations, Section 7.5-Variance*.

7. 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.
8. The applicant and his engineer were emailed a copy of this Staff Report and provided a hard copy at the meeting.
9. John Stuart and Gabe Handy spoke on this application and made the following comments:

John Stuart:

- The proposal is to improve 108 Colchester Road by demolishing the existing 600 s.f. building and constructing a 3,000 s.f. metal building. The existing lot is substandard on frontage and acreage. A variance will be needed.
- He tried to improve the lot as much as possible. He pushed the building back as much as possible, noting the southerly property line will move from 25’ to a 14’ setback and the front property line will improve from a 5’ setback to a 16’ setback. He noted the remaining property has steep slopes and wetlands, which provided a limited area to make improvements.
- He received and provided a VTrans permit for the curbcut, which will be improved.
- He received an amended State Wastewater permit.
- He provided a rendering of the proposed building; and
- He stated the driveway will be paved with parking and landscaping located in the front.

Gabe Handy stated that he originally had two tenants for the building, which are companies that he uses primarily for his development project, however one tenant backed out. He stated that he will continue with two units and believes the remaining tenant, Tri City Glass, will end up using both units for storage only – no onsite work. He noted that each unit will have one bathroom; and each unit will have a 14’ high overhead door.

10. No one from the public was present.

11. In an email dated 4/24/24 (regarding site plan review) & 5/22/24 (variance) respectively, Public Works comments as follows:

(4/24/24): Public Works has reviewed the site plan for 108 Colchester Road and offers the following comments:

1. *The cross-section detail for the driveway shows 18” of 704.05A. This should be 24”. (to be reviewed by PC at site plan review)*

2. *Public Works recommends that the top layer of pavement should be Type III but it is not required. The specified pavement on the plans will produce a rough surface. (to be reviewed by PC at site plan review)*
3. *Roadbed separator fabric is missing from the design and needs to be included. (To be reviewed by PC at site plan review)*
4. *The applicant's engineer states that Vtrans has approved the upgraded curb cut as shown on the plans. A copy of that approval shall be submitted to Public Works prior to commencement of construction. (already provided to PW)*
5. *The applicant will be required to follow the Low Risk Site Handbook for Erosion Prevention and Sediment Control during construction. A copy of the guidance document is located on the Town's website (<https://www.essexvt.org/745/Resources>) or can be downloaded from the Department of Environmental Conservation's website. (Will be a PC condition)*

(5/22/24): Public Works takes no exception to the application as proposed. The applicant's engineer has addressed comments 1-4 from the PW's memo. The applicant will still be required to follow the Low-Risk Site Handbook for Erosion Prevention and Sediment Control during construction.

12. In an email dated 1/2/24, the Police Chief said, *No issue from PD other than clearly marked addresses.*

13. In an email dated 1/3/24, the Recreation Director stated, *No objections from P&R.*

14. In an email dated 5/10/24, the Fire Chief stated,
Our comments are that each building must be labeled with its proper street address is clearly discernable colors for ease of visibility in low/no light conditions. Also, they must provide after-hours emergency contact information to the Essex Police Dispatch Center.

15. Section 7.5 of the Town of Essex Zoning Regulations reads:

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

*(E) The Board shall grant a variance, and render a decision in favor of the appellant, only if it 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.

(F) **Renewable Energy Structures.** N/A.

(G) **Special Flood Hazard Areas.** N/A as the structure is not located in the Flood area, nor its setback requirements.

(H) **Conditions of Variance Approval.** In granting a request for a variance, the Board of Adjustment may attach such additional conditions and safeguards as it may deem necessary and appropriate under the circumstances to implement the purposes of this Section and these Regulations.

16. The applicant's response to the above Variance criteria is as follows:

§7.5(A)(1) --- The lot is smaller than the required 1 acre (0.73) lot size minimum, and the frontage is narrower than the required 150 feet (140'). The applicant did not create these conditions and is unable to cure the deficiencies by acquisition. Approximately one-half of the lot (west sides) contains steep slopes, wetlands and Indian Brook all of which are undevelopable. Due to the lot limitations, the front yard must be reduced from the required 50 feet to 16.5', an improvement from the present structure setback of 5 feet.

§7.5(A)(2) --- Due to the above described conditions, the lot cannot be developed in strict accordance with the Regulations; therefore, a variance is required with the planned development is a major improvement from existing lot use.

§7.5(A)(3) --- The present lot limitations were not created by the applicant.

§7.5(A)(4) --- The property is located in the Mixed Use Development District (MXD) which permits the proposed commercial activity. The existing structure will be replaced with a new single story building for two small businesses and located further from Colchester Road. The addition of landscaping and the new building will be an aesthetic enhancement to the area.

§7.5(A)(5) --- The proposed development can be completed within the available lot area and no additional relief is required.

17. The Zoning Board of Adjustment finds that a request for a variance is (approved or denied,) subject to the following:

(1) There **are or are not** unique physical circumstances or conditions in that the lot is a pre-existing small lot consisting of 31,798 s. f., and 140' of frontage versus a conforming lot requiring 40,000 s.f. of lot area with 150-foot of frontage. A portion of the lot is also within the Flood Zone (C2), which requires a 50' clearance buffer of a structure.

(2) Because of such physical circumstances or conditions, there is no

possibility **or there is a 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 **(or unnecessary)** to enable the reasonable use of the property.

(3) Unnecessary hardship has **(not been or has been)** created by the applicant.

(4) The variance, if authorized, **(will not or will)** 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 or will not)** represent the minimum variance that will afford relief and will represent the least deviation possible from these Regulations and from the plan.

CONDITIONS:

1. Prior to the issuance of a Zoning Permit, the applicant shall secure a site plan approval from the Planning Commission and adhere to all conditions of said approval, including securing a construction permit and inspection prior to occupancy of the premises.
2. Any/all previous approvals not affected by this approval shall remain in effect and run with the land.
3. By acceptance of the conditions of this approval without appeal, the applicant confirms and agrees for themselves and all assigns and successors in interest that the conditions of this approval shall run with the land and the land uses herein permitted and, will be binding upon and enforceable against the applicant and all assigns and successors in interest.

The Motion passed 3-0.

AGENDA ITEM 2: MINUTES: March 7, 2024:

Stephanie Bixby Moved and Board Member Norton Seconded a Motion to approve the 3/7/2024 minutes as written. The Motion passed 3-0.

AGENDA ITEM 3: REVIEW OF OPERATING PROCEDUES:

Board Member Norton Moved and Board Member Bixby Seconded a Motion to move the Operating Procedures to the next scheduled meeting. The Motion passed 3-0.

AGENDA ITEM 5. OTHER BUSINESS:

Kelley reported that no applications have yet been received for the August meeting.

AGENDA ITEM 6: ADJOURNMENT: The meeting adjourned at 6:41 p.m.

ZONING BOARD OF ADJUSTMENT

By: _____

Nick Martin, Chair