

TOWN OF ESSEX DEVELOPMENT REVIEW BOARD
REGULAR MEETING
MINUTES OF MEETING
April 2, 2026

DEVELOPMENT REVIEW BOARD: (*In person*): Ian Carroll, Chair; Sharon Zukowski, Vice Chair; Stephanie Bixby, Clerk; Nick Martin; Hubie Norton; (*Online*): Trefor Williams;
ADMINISTRATION and STAFF: Kent Johnson, Planner; Sharon Kelley, Zoning Administrator; Brittany McGregor, Planning Technician.

OTHERS PRESENT: Bryan Currier; Peter Edelmann; Lori Frigo; Tiffany Gershon; Chris Haggerty; Baki Nelson; Laurie Nelson; Daniel Seff. (*Online*): Melissa Chalmers; Michael Chalmers; Lynn Faber; Mike Faber; Gina Halpin Barrett; Debbie Hernberg; Dan Mellinger; Sara Mellinger; Anne Miller; Cheryl Van Epps; James Weston; Lorraine Zaloom; Lucia Family.

1. CALL TO ORDER

Chair Carroll called the meeting of the Town of Essex Development Review Board to order at 6:30 P.M.

2. AGENDA ADDITIONS/CHANGES

None.

3. AGENDA APPROVAL

Board Member Zukowski made a motion, seconded by Board Member Martin, to approve the agenda as written. The motion passed 6-0.

4. PUBLIC TO BE HEARD

a. Comments from Public on Items not on Agenda
None.

5. APPROVAL OF MINUTES

a. Approve minutes from March 5, 2026

Board Member Bixby made a motion, seconded by Board Member Zukowski, to approve the minutes of March 5, 2026 with the correction of a typo on line 99. The motion passed 6-0.

6. PUBLIC HEARING

a. **Variance** - Laurie and Baktash Nelson are requesting a variance of the side setback of their property located at 152 Old Stage Road (Parcel ID 2-010-063-007) located in the Agricultural Residential (AR) district. The variance request is to accommodate a 24'x14' shed that is 5 feet from the property line. In the AR district the side setback is 20 feet.

Board Member Martin made a motion, seconded by Board Member Zukowski, to open the public hearing. The motion passed 6-0.

Zoning Administrator Kelley summarized a letter dated April 1, 2026, from Daniel Seff, an attorney representing Lori Frigo. The letter states that a zoning permit was issued to the Nelsons, who reside at 152 Old Stage Road, on November 15, 2023, for a shed showing setbacks 20 feet from the side and 25 feet from the rear. She noted that a letter in response was issued by her as the Zoning Administrator on November 28, 2025. She said that the application before the Board is a request for a variance and that the dispute results from the placement of a shed within the 20-foot side yard

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setback and encroaching onto the Frigo lot. She noted that accompanying materials include a letter requesting a variance dated December 26, 2025 received by the Community Development Department, and includes affidavits from Richard Weston, Heidi Hulls, and James Weston, and a photo of an iron pin noting that it was placed by John Marsh. She said that the Board is tasked with determining whether the Applicants have met the five criteria necessary to grant a variance.

Baktash and Lori Nelson of 152 Old Stage Road spoke as the Applicants. Mr. Nelson said that they purchased their property in 2016 and that they wanted to build a shed in 2023. He said that he reviewed the permits obtained by previous owners and that all previous owners had used the pins placed by John Marsh to determine the property boundaries. He further noted that these boundaries have also been used by adjacent property owners for their own construction. He said that when he obtained the permit in 2023, it was displayed for three months and that there were no disputes or complaints or comments at that time. He said the shed was constructed in April of 2024 and that they received a complaint in October of 2024 noting that the shed was encroaching on an adjacent property. He said that because no one appealed, State statute considers this matter to be final. He emphasized that he has conducted his activity in good faith and according to the law. He spoke about how he hired a surveyor to conduct a revised survey, which found an error in the previous survey conducted by John Marsh (but also reiterated that the John Marsh survey was what other neighbors had relied on to determine property boundaries for their own property work in the past). He said that the new property line is closer to Ms. Frigo's house. He said that they had no intention to go against regulations and that they would not have proceeded as they did if they knew the original survey was incorrect. He cited several examples of case law that applied for the same variance under the same State statute as this current case, and he provided rationale for why he believes all five criteria for the variance have been met by this application. Board Member Martin asked if the Applicants had a survey conducted when they purchased the property, and Mr. Nelson replied that they had not, given that there was an existing survey and property pins placed at the time that he walked the property with his realtor prior to purchase. Board Member Martin asked when the Applicants first received complaints about the shed, and Mr. Nelson replied that they received complaints on August 15, 2024 about the bulldozer they used for shed construction. Chair Carroll asked when the permit was approved, and Mr. Nelson replied that it was approved on November 15, 2023, and that the shed was constructed between April and September of 2024. Board Member Norton asked if the original pin from the Marsh survey is still in place, and Mr. Nelson replied that the pin was in place during construction, but that it was missing after a new survey was conducted. He confirmed that the new survey conducted by Mr. Haggerty was not disputed.

Lori Frigo and Daniel Seff spoke as an adjacent property owner and her legal representation, respectively. Mr. Seff noted that the permit application submitted by the Nelsons was for a 25-foot distance, and that this was the permit that was granted. He said that Ms. Frigo is not contesting the permit, but the fact that the shed was built in violation of the permit (which required a 25-foot setback from the shed to the property line). He noted that the Zoning Administrator investigated this case and issued a notice of zoning violation in November of 2025. He said that there is no dispute that an application was filed for the shed with a 25-foot setback from the property line and that the permit was granted. He further said that there is no dispute that the shed was constructed very close to the property line. He also noted that it is a large shed, and that it is approximately three feet from the property line, and is directly in Ms. Frigo's field of view from her house. He spoke about the cases submitted as examples and a precedents for this case. He said that in the Fecto case, there was a survey error that resulted in the construction of a foundation for a house and that the party that constructed the foundation was ordered to move the foundation because their reliance on an improper or incorrectly conducted survey was not grounds for a variance. He said that in the Hogan case, a

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shed extension was constructed within a 25-foot setback, was challenged by adjacent property owners in Vermont Environmental Court, and that the court determined that the applicants created the hardship they were then forced to confront. He noted that this runs against one of the criteria for granting a variance, given that this is an unnecessary hardship created by the Applicant. He said that the burden is on the Applicant to prove that they meet all five criteria for a variance. He said that the setback rule is not preventing the Applicant from the reasonable use of their property, given that they already have a garage in addition to this newly constructed shed. He also said that Applicant is trying to argue that the errantly placed pin is a unique, peculiar circumstance of their property, which he disputes. He said that granting this variance would set a bad precedence for the Town. Board Member Martin asked how Ms. Frigo determined that the shed is three feet from the property line, and Ms. Frigo replied that she measured it from the stake placed by the Haggerty survey to the corner of the shed. She also confirmed that the first complaint she submitted to the Applicant was regarding the bulldozer in August of 2024. Board Member Bixby asked why Ms. Frigo did not raise more concern prior to the shed being constructed, given that the Applicant was also clearing brush on her property. Ms. Frigo said that the Applicant cleared the property after the shed was built, and that the brush that was there previously obscured her view of the shed construction. Board Member Martin asked if Ms. Frigo could view the Applicant's property when accessing her property, and she replied that she cannot. Chair Carroll asked Ms. Frigo to describe where the shed is obstructing her view in the fourth photograph of Exhibit E (east view) and she described a shed with building material to the right of it, and her house to the right of the building material. She said that the brush has since been moved.

James Weston, an adjacent property owner, spoke as an interested party. He said that his property was the first in the subdivision. He said that other neighbors have reached out to him over the years noting that the property lines are incorrectly surveyed, which he believes arose from the widening of the road for the Towers Road extension. He said that the Vermont Land Surveyors have said that it would be expensive to re-survey the Holmes Farm subdivision. He noted that the property lines, if redrawn correctly, would give the Nelsons' more land than the three to five feet that is currently in dispute. He said that there is also a barbed wire fence that used to show the property line and that it is currently buried under topsoil but is still present. He said a site visit by the Board to the property could be enlightening. He also said that Ms. Frigo's views are not obstructed, given that the shed is located in the back of the adjacent property. Board Member Martin asked if Mr. Weston conducted site work for the Applicant's shed, and Mr. Weston replied that he helped the Applicant find the pin on his property and finish spreading topsoil once construction was completed. He said he believes the property line should be further south than it is now.

Chair Carroll said that the Board has material to review and that a site visit could be beneficial for deliberating this Application. Board Member Zukowski asked if staff have engaged with Vermont Land Surveyors, and Board Member Norton played a recording a voicemail from Vermont Land Surveyors noting that the previous survey did not follow the standard procedures for surveying and that the more recent survey followed the standard procedures. Board Member Norton said that the question is how to reconcile an incorrectly conducted survey and how far back in time a surveyor has to look to find a satisfactory point of reference to determine the correct property boundary. He said that in order for the Board to determine whether this is a zoning violation, they need to determine where that property line is. Board Member Bixby concurred, saying that this is a bigger issue than just this current Application before the Board. Board Member Martin suggested soliciting an opinion from the Town Attorney on past instances of boundary lines affecting multiple properties. Chair Carroll asked what the unintended consequences could be if this variance is approved. Zoning Administrator Kelley replied that it would not solve the issue of the incorrect boundary lines, and she

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advised seeking an opinion from the Town Attorney on how far in the past they should look to determine boundary lines and how to resolve disputes arising from discrepancies.

Board Member Martin made a motion, seconded by Board Member Zukowski, to continue the hearing to June 4, 2026. The motion passed 6-0.

The applicant commented that there was a conflict with their schedule and they would not be able to attend the June 4, 2026 meeting.

Board Member Martin, made a motion, seconded by Board Member Zukowski, to rescind the previous motion.

Board Member Martin, made a motion, seconded by Board Member Zukowski, to continue the hearing to July 2, 2026. The motion passed 6-0.

b. Site Plan Amendment - Essex Resort Holdings LLC is requesting a site plan amendment for 70 & 74 Essex Way (Parcel ID 2-093-001-000 and 2-093-001-002) located in the Mixed Use Development-Planned Unit Development (MXD-PUD) District. The applicant is proposing a 5-foot wide natural path, removing four of the existing tennis courts, adding resort amenities including a sauna and cold plunge area, a landscaping berm, green houses, pond and other Zen garden features in the rear of the resort property.

Board Member Bixby made a motion, seconded by Board Member Martin, to open the public hearing. The motion passed 6-0.

Planning Technician McGregor began by noting that this application is similar to the previously submitted application from February with several minor changes. She said that the Applicant is still proposing to remove four of the six tennis courts and adding further amenities to the plan, including the Zen garden, greenhouse, sculptures, and that they have shifted the sauna and cold plunge pools from the spa area to be closer to the greenhouses. She noted that there is no longer a proposal to build structures on the 74 Essex Way parcel, and that that parcel will have a 20-foot easement given to the abutting neighbors to be used for screening as necessary. She also noted that the Applicant is proposing to add deed restrictions to 74 Essex Way to prevent future structures being created on that parcel. She said that the Applicant is proposing to reduce the walking path width from eight feet to five feet, and proposing to move it further off the property line (50 feet instead of 30 feet). She noted that Fire Chief Cole commented that the proposed reinforced turf path is not satisfactory for emergency access, and that there is a meeting between the Applicant and Chief Cole on April 8, 2026 to discuss these comments and potential options. She said that a condition of approval has been proposed that any emergency access must be reviewed and approved by the Fire Chief. She said that there was also a request from the Essex Parks & Recreation Department to have an easement added in where the path would be, in order to connect this path and access the Town lands behind it.

Bryan Currier of O'Leary, Burke, and Associates and Peter Edelman spoke on behalf of the Applicants. Mr. Currier said that the Applicant has worked with abutting property owners to develop options that would be more amenable than the original proposal from February. He said that they include narrowing and moving the path further from abutting properties, including a 20-foot easement for neighbors to plant screening, and including deed restrictions to the 74 Essex Way parcel. He spoke about Condition #12, asking that it be amended to say that Fire Chief approval is needed for zoning permits for structures that require DRB approval (not for all structures), given that accessory structures of less than

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100 square feet aren't in the DRB's jurisdiction. He further noted that an easement for a walking path as requested by the Town's Parks & Recreation Department would only come into effect if it were attached to a larger trail on Essex Town land. He said that the Applicant is not in support of this easement, given that abutting neighbors have said they do not want to see public access there. He also noted that there are already access points at the end of Freeman Woods Road and on Lang Drive. Board Member Norton asked how permanent deed restrictions can be and whether they can be overturned, and Mr. Currier replied that he is not certain but that the Applicant is voluntarily deed restricting. Board Member Norton asked if there are restrictions in this zoning district about how high fences or other screens could be, and Planning Technician McGregor replied that decorative fencing is restricted to 5 feet or shorter. Board Member Norton said that the Board should closely review the condition of approval regarding appropriate easement language for screening. Board Member Martin asked how many times to Applicant met with abutting landowners after the February meeting, and Mr. Edelman replied that they met twice in total and also had a number of text exchanges.

Tiffany Gershon, an abutting landowner, said that landowners had previously understood that there was a 100-foot buffer from the Applicant's property to theirs. She expressed concern about the proximity of the hotel and its guests to private property owners, and that this concern increases if an easement is created for a connection to other Town walking paths. She also noted that while a 20-foot easement would allow for privacy screening, the cost for materials would be on the abutting property owners. Michael and Melissa Chalmers, abutting landowners, said they would support maintaining a 100-foot buffer. They also expressed concern that the parcel of D2 would be converted into a fire lane, which would conflict with what is being considered in terms of a buffer. They further expressed concern about an easement for a trail. Cheryl Van Epps spoke about an instance where Pinewood Manor had a 50-foot buffer, but that the lower story and trees were removed, resulting in clear-cut vision and lack of screening. She said that eye-level barriers are as important as tree canopies, and should be considered. Dan and Sarah Mellinger, abutting landowners, began by expressing appreciation for Mr. Edelman's revisions, saying they are a worthwhile compromise. They noted that some of the details of agreement they had reached with the Applicant should be reflected in the record and a potential decision, including specifying a minimum of 50 feet for a setback requirement in the proposed conditions, not allowing the path to be publicly accessible, opposing the Essex Parks & Recreation request for an easement for a walking trail, and specifying in the proposed conditions that the 20-foot screening easement would run with the land (to pass through different ownerships). Mr. Mellinger clarified that the purpose of the screening easement would be to allow for vegetative plantings such as trees or bushes, not fencing. He also expressed support for the Applicant's proposed voluntary deed restrictions. Mike and Lynn Faber, abutting landowners, echoed Mr. Mellinger's sentiments and expressed appreciation and support for the collaborative process the Applicant has engaged in with abutting landowners.

Mr. Edelman confirmed that he will grant abutting landowners a 20-foot easement between their properties and will draft the easement language. He confirmed that he would be amenable to having the easement run with the land. Board Member Zukowski asked if an easement could be granted in a 30-foot buffer, and Planning Technician McGregor replied that as long as the easement is being used for a buffer and is still part of the 30-foot buffer, then yes. Mr. Currier said that they could make it clear that it's an easement for a specific purpose and not a boundary line adjustment. Board Member Martin noted a line on property #13 that describes the distance between the trail and that property line as 52 feet, which would address the Mellingers' concerns about the 50-foot distance from their property, and Mr. Currier said that the Applicant would be amenable to that condition.

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Board Member Zukowski made a motion, seconded by Board Member Bixby, to close the public hearing. The motion passed 6-0.

The Board added to additional findings that they would not be granting the request from Essex Parks and Recreation for a recreation easement through 74 Essex Way, due to comments made by neighbors.

Board Member Norton made a motion, seconded by Board Member Bixby, to approve the application with condition 4 reading: Abutting property owners to which a 20' easement will be granted, may use the easement only to provide a year-round screening, as agreed upon by the property owner and abutting property owners, in conformance with Zoning Regulations. New external light fixtures shall not be permitted within the easement. No trees shall be planted in the sewer easement. Further, condition 12 shall be updated to read: Prior to issuance of Zoning Permit for any structures requiring DRB approval, applicant shall submit revised plans for emergency access to be reviewed and approved by the Fire Department. The motion passed 6-0.

7. BUSINESS ITEMS

a. Review and possible vote on DRB Operating Procedures

The Board discussed remaining open items in the DRB Operating Procedures document. Board Member Zukowski suggested combining Section VII Subsections F and G, and she provided examples of State statute that could be helpful in aligning language (24 V.S.A. Section 4465 and 1 V.S.A. Section 310(8)(b)). Chair Carroll said he would draft language for the Board's consideration at a future meeting. Board Member Zukowski suggested adding language in Section VIII stating that the chair may establish reasonable time limits to maintain order and prevent unduly repetitious testimony and that recognized parties will be afforded adequate time to present relevant evidence and conduct cross-examination. Board Member Bixby said she would like to keep the example of three minutes per person in the procedures, but agreed with adding in Board Member Zukowski's proposed language. Chair Carroll said he would draft language for inclusion and consideration by the Board at a future meeting. Board Member Martin noted that Section VIII Subsection I states that no further evidence or testimony shall be accepted unless the Board formally votes to reopen the hearing, and asked whether the hearing could be reopened at a future meeting but within the 45-day deliberation period. The Board agreed that this is unclear and that they should seek clarification on this question. The Board discussed moving Section XI (Decisions) to be after Section VIII (Public Hearings and Order of Business) Subsection I but before Subsection J for better flow of the procedure and process. They discussed moving Section VIII Subsection J as well, and Chair Carroll said he would make edits to the procedure document to reflect this.

Cheryl Van Epps noted that Section XI Subsections G and H provide an opportunity for members of the public to request the DRB make motions to reconsider, amend, or rescind decisions made during that meeting, and asked if this could be articulated in the procedures and provide that opportunity for the public to make these requests. Board Member Martin suggested that this could be added into the "Other Business" portion of the Board's agendas. Ms. Van Epps suggested adding in a specific subsection to "Other Business" to explicitly state that it is an opportunity for the public to speak. Board Member Zukowski noted that the Planning Commission's procedures align with State statute, which allows for reconsideration to happen not necessarily during the same meeting, and asked that this be included in the DRB procedures. Chair Carroll said he would research this further and look into the State statute language. Lorraine Zaloom said that the DRB procedures allows applicants to rebut but doesn't allow other interested parties to also have the opportunity to rebut. She also suggested allowing some way for real-time fact-checking to occur during a meeting, so that information presented from applicants or interested parties can be verified in a more timely fashion during a hearing. She also

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suggested making the agenda available earlier to allow parties, such as the legal representation at one of tonight's hearings, to better prepare for the meeting. She further suggested that if legal representation is participating in a meeting, the Town attorney could also be invited to participate.

8. OTHER BUSINESS

None.

9. READING FILE

- a. Upcoming DRB applications

10. PROPOSED EXECUTIVE AND/OR DELIBERATIVE SESSION

- a. All meetings have a potential for an executive and/or deliberative session per 1.V.S.A. §313 & 312 (e)(f).

11. ADJOURN

Board Member Martin made a motion, seconded by Board Member Bixby, to adjourn the meeting. The motion passed 6-0 at 9:37 P.M.

Respectfully Submitted,
Amy Coonradt,
Recording Secretary

Approved this _____ day of _____, 2026
(see minutes of this day for corrections, if any)