

Town of Essex - Zoning Board of Appeals

**29 West Avenue
Essex, CT 06426**

MINUTES

July 19, 2011 – Regular Meeting

The Essex Zoning Board of Appeals conducted their regularly scheduled meeting on Tuesday, July 19, 2011 at 8:00 p.m. in Room A of the Essex Town Hall. Members present were Stu Ingersoll, Al Daddona, Doug Demarest, Alix Walmsley Paul Greenberg and Tim Fuergeson. Alternate Michael Noto was present. Also present, Michael Wells legal counsel to the Board and Stella Beaudoin, Recording Secretary.

Consideration of **Application #11-11 on behalf of Robert Marston for Corrine Moriarty, property located at 42 Prospect Street, Essex, CT, Assessor's Map 32 Lot 46, VR District**, requesting a Variance of Sections 40D, 40E, 40I.1, 50D and 60B of the Essex zoning regulations. This is an application to add an extension to an existing deck that is located within a side yard setback area. the single family home is located to the front of the premises and an accessory building is located to the rear. The existing lot coverage is 17.25 where 7.5% is the maximum allowed.

Robert Marston presented on behalf of the applicant, Corrine Moriarty. The applicant proposes to expand the existing deck that is attached to the rear building. The proposed expansion would extend the deck thirteen feet to the rear of the accessory building and then wrap around approximately sixteen feet.

The existing deck does not conform to the side yard requirement as it is located within the 25 foot side yard setback and is 17 feet from the boundary. Applicant proposes to replace the existing deck and extend around to the back of the building making it around three times its existing size.

Mr. Marston stated that the hardship surrounding this application is that the existing deck is not very safe.

Mr. Ingersoll explained that the hardship surround a Variance request must be one that surrounds the land, personal convenience is not legitimate grounds for hardship.

Al Daddona commented on a pipe coming up from the back of the house.

Mr. Marston stated that he is unaware of a pipe coming up from the ground.

Mr. Daddona stated that the applicant is increasing the coverage to over 18% and the limit per the Essex Zoning regulations is 7.5%. Mr. Daddona noted that this application goes way over with the 18.75% coverage increase. Mr. Daddona further noted that the existing deck is at 17.2% coverage which is already over the allowed coverage limit.

Mr. Marston stated that the existing deck is twelve feet long. The purpose of the wrap deck is for the enjoyment of the property.

Joseph Budrow, Essex Zoning Enforcement Officer stated that this application has received approval from the Health Department.

There were no letters submitted on behalf of this application.

Mr. Ingersoll asked if anyone wished to speak in favor or in opposition of this application.

Mr. Ingersoll closed the public portion of this application at 810 p.m.

Consideration of **Application #11-12 on behalf of Bounthanh T. and Chanmaly L. Outama, property located at 32 Eagle Ridge Drive, Essex, CT, Assessor's Map 42 Lot 4-20, RU District**, requesting a Variance of Sections 40D, 40E, 40I.1, 50D and 61B of the Essex zoning regulations. The property has a single family located on the premises. The house is located approximately 42 feet from the front property line. The front stoop is located entirely within the 40-foot front yard setback area. This is an application to construct a gable roof structure over an existing concrete porch that is located in the front yard setback area.

Chanmaly Outama presented. Ms. Outama stated that she would like to build front porch so when visitors come over the entry will be free from the weather. Ms. Outama noted that the front door rusts and the overhang will protect the front door.

Mr. Ingersoll asked the applicant if she plans to put in a lot of fill.

Ms. Outama stated that the proposal is comprised of an entryway with steps that will come up from the front.

Tim Furgueson stated that the Board requires more detail before they can make a finding on this application request. Mr. Furgueson noted that there is no formal plan accompanying the application.

Ms. Outama stated that she submitted a detailed plan when she applied for the building permit and that plan was filed with the Essex Building Department. That plan however was not made available at this evening's meeting.

Mr. Wells explained to the applicant that they were to go to the Essex Zoning Enforcement officer and make sure he forwards the plan to this Board for review at the August 2011 meeting.

Michael Noto, newly appointed alternate to the Essex Zoning Board of Appeals was not officially seated on this application. However if one of the present seated members are not available for the August 2011 meeting, Mr. Noto will be seated.

Mr. Ingersoll closed the public portion of this application at 8:50 p.m.

Consideration of **Application # 11-13 on behalf of Michael Belanger, property located at 70 Plains Road, Essex, CT Assessor's Map 53 Lot 12, LI District** requesting a Variance of

Sections 40a and 90A.1 of the Essex Zoning regulations. This is an application is a second attempt made by Mr. Belanger to obtain a Variance to allow a general principal use that is not currently allowed within the Limited Industrial zone. Mr. Belanger has added materials that the board did not review at the June meeting.

This property is comprised of a .51 acre parcel and a single family home is located on the premises. Mr. Belanger proposed to locate a food service establishment at the property, a use not allowed in the district. The establishment will be an ice cream parlor to be located in the front portion of the first floor of the building. The Essex Zoning commission has closed a public hearing proposing to create a Business District along Plains Road with a possible vote to take place on Monday, July 18, 2011. If approved the new District will allow for a food service establishment such as the Ice Cream Parlor that Mr. Belanger is proposing this evening.

Michael Belanger presented. Mr. Belanger made a model of what he anticipates the proposal will resemble upon completion. Mr. Belanger stated that he presented before the ZBA one year ago and the Board requested further information.

Mr. Belanger stated that the model is set up to retain the charm of Essex. There will be parking spaces on the property, however Mr. Belanger was not sure as to how many. Mr. Belanger indicated that most of the parking will be behind the building. The front of the building will have a turn-around. Mr. Belanger was not informed by the Zoning office of the requisite amount of allotted parking spaces.

Mr. Belanger noted that the baseball entrance abuts this property and he stated that parking behind the proposed building will not add to the traffic. Mr. Belanger stated that he might have to go to the CT Department of Transportation to request a variance for the front of the property and he anticipated that the State will approve a horseshoe entrance. Mr. Belanger noted that the house is close to the road and there is a good deal of property behind the house.

Alix Walmsley indicated that if the Board allows the use, there will be adequate parking for vehicles behind the building.

Mr. Wells commented that the Board does not know if this proposal would be a permitted use, however, the Board's consideration is the variance request. Mr. Wells noted that the applicant must comply with any conditions the Zoning Board of Appeals places on the variance.

The Zoning Board of Appeals is being asked to grant a variance for the use regulation to permit a use in this zone. When the Board grants a use variance the Board has the ability to place conditions on that use.

Stu Ingersoll noted that granting a variance makes this property unique.

Tim Furgueson asked if there is a line of demarcation questioning why Porky Petes was granted a Variance for take out. It was noted that the existing condition was already being met which allowed that business to go in.

Paul Greenberg stated that Cliffs and Porky Petes are both situated in close proximity to this proposal noting that this business should be allowed.

Stu Ingersoll stated that his concern is that if the Board grants this use variance, the Zoning Commission loses control of its ability to set requirements.

Mr. Wells reminded the Board that they cannot make a use variance conditional for the Zoning Commission to review.

Mr. Belanger, met with the Essex Health Department and fine-tuned the nuances of this proposed business. With this business proposal, the water use would be significantly cut back versus that of what is allowed for this 2 bedroom house.

Mr. Wells noted that Essex Zoning would decide on the lighting, access and location of dumpster, etc. The State would have to approve entrances. Mr. Wells stated that if the Board conditions the Variance for the retail sale of ice cream that is what the use Variance would be limited to.

Mr. Ingersoll stated that he sees no reason to take this out of the control of the Essex Zoning Commission's purview.

Mr. Daddona asked if this property is required to have designated parking spaces?

Mr. Wells stated that he does not know what the new regulation mandates.

Mr. Daddona noted that the first location of the proposed donut shop was disapproved because of the location and the parking.

Mr. Ingersoll stated that the parking spaces should be reviewed by the Essex Zoning Commission.

Mr. Belanger stated that the property had parking spaces in the front of the building and those spaces were close to the road.

Mr. Daddona asked if the Board grants the use variances, can we limit the size of the building.

Mr. Wells stated that the Board could make that a condition of the variance.

Mr. Ingersoll asked if anyone wished to speak in favor or in opposition of this application.

George ?, stated that he has lived in Essex for over 50 years and he has had to put up with a good deal of traffic. This resident stated that he is not in favor of this business. It abuts his home and he is retired and he hopes to reside there and maintain the house for as long as he is able.

There were no letters submitted on behalf of this application.

Mr. Ingersoll closed the public portion of this application at 8:40 p.m.

DELIBERATION

Consideration of **Application #11-11 on behalf of Robert Marston for Corrine Moriarty, property located at 42 Prospect Street, Essex, CT, Assessor's Map 32 Lot 46, VR District**, requesting a Variance of Sections 40D, 40E, 40I.1, 50D and 60B of the Essex zoning regulations. This is an application to add an extension to an existing deck that is located within a side yard setback area.

Replacing the existing deck would be alright, however to construct a wrap deck

Motion made by Al Daddona to deny a Variance due to insufficient hardship demonstrated for **Application #11-11 on behalf of Robert Marston for Corrine Moriarty, property located at 42 Prospect Street, Essex, CT, Assessor's Map 32 Lot 46, VR District**, requesting a Variance of Sections 40D, 40E, 40I.1, 50D and 60B of the Essex zoning regulations. This is an application to add an extension to an existing deck that is located within a side yard setback area.

Discussion: Mr. Daddona stated that replacing the existing deck would be alright, however to construct a wrap deck is too big of a proposal.

Motion seconded by Paul Greenberg and carried unanimously in favor of the Motion. Motion carried.

Consideration of **Application #11-12 on behalf of Bounthanh T and Chanmaly L. Outama, property located at 32 Eagle Ridge Drive, Essex, CT, Assessor's Map 42 Lot 4-20, RU District**, requesting a Variance of Sections 40D, 40E, 40I.1, 50D and 61B of the Essex zoning regulations. The property is comprised of a 15.6 acre parcel comprised of a multi-dwelling establishment. This is an application to construct a gable roof structure over an existing concrete porch that is located in the front yard setback area. **Tabled to the regularly scheduled August 2011 meeting.**

Consideration of **Application # 11-13 on behalf of Michael Belanger, property located at 70 Plains Road, Essex, CT Assessor's Map 53 Lot 12, LI District** requesting a Variance of Sections 40a and 90A.1 of the Essex Zoning regulations. This is an application to allow a general principal use that is not allowed within the Limited Industrial zone.

Motion made by Stu Ingersoll to deny a variance due to insufficient hardship demonstrated for **Application # 11-13 on behalf of Michael Belanger, property located at 70 Plains Road, Essex, CT Assessor's Map 53 Lot 12, LI District** requesting a Variance of Sections 40a and 90A.1 of the Essex Zoning regulations. This is an application to allow a general principal use that is not allowed within the Limited Industrial zone. To grant a Variance on behalf of this proposal would deny the Essex Zoning Commission their ability to review the application according to the zone change and associated regulations in process.

Discussion: Mr. Daddona stated that Essex Zoning should first review this application. Mr. Daddona noted that an Ice Cream facility is a good idea, however we do not know what the ramifications would be if the Board approved this proposal.

Ms. Walmsley stated that there are other similar businesses on Plains Road which makes it difficult for the Board to structure the use in a way that makes sense for that area. Ms. Walmsley noted that it is difficult to structure an approval to include the necessary restrictions.

Mr. Daddona stated that the Board is not in the right position to grant this variance.

Mr. Greenberg stated that there are two businesses in close proximity to this proposal that are similar.

Mr. Ingersoll stated that if the Board grants a variance, the Essex Zoning Commission would not be able to apply their wisdom of rules and regulations to this property. Mr. Ingersoll stated that otherwise the use is fine, however it should be structured the right way.

Ms. Walmsley noted that there is a lack of sufficient hardship demonstrated.

Mr. Wells stated that use variances are difficult as it places the Zoning Board of Appeals in the position to review condition requirements, such as parking, lighting, etc. If the Board is inclined to grant this proposal a variance, the Board would have to come up with a hardship.

Mr. Ingersoll stated that he has been on this Board along time and in that time less than a half dozen applications have been presented for a use variance. Mr. Ingersoll noted that the Board very seldom grants a use variance.

Motion seconded by Al Daddona and carried unanimously in favor of the Motion. Motion carried.

Respectfully submitted

Stella C. Beaudoin
Recording Secretary