

Town of Essex - Zoning Board of Appeals

**29 West Avenue
Essex, CT 06426**

MINUTES

September 20, 2011 – Regular Meeting

The Essex Zoning Board of Appeals conducted their regularly scheduled meeting on Tuesday, September 20, 2011 at 8:00 p.m. in Room A of the Essex Town Hall. Members present were Stu Ingersoll, Doug Demarest, Lynne Faulstick, Paul Greenberg, Tim Furgueson and Michael Noto. Also present, Michael Wells Legal Counsel to the Board and Stella Beaudoin, Recording Secretary.

Consideration of **Application #11-16 on behalf of John Lombardi, property located at 25 Saybrook Road, Essex, ct, Assessor's Tax Map 46 Lot 2, LI District**, requesting a Variance of Sections 40a and 90A of the Essex Zoning Regulations. This is an application to allow a retail use in a district where retail is not allowed. Essex Warehouse is a business that in August 2010 relocated from a location in Ivoryton to a location at 23 Saybrook Road where multiple businesses are located within a large building. Prior to the relocation, there were no zoning or health approvals granted for the new use. This application is continued from the August 2011 meeting.

Seated for this proposal were Stu Ingersoll, Michael Noto, Paul Greenberg, Tim Furgueson and Doug Demarest.

Essex Warehouse is a business that does wholesale and retail sales of used furniture, collectibles and estate items. The retail aspect of the business is not allowed in the LI District

John Lombardi presented on behalf of this application. Mr. Lombardi stated that at the August 2011 meeting he was asked to obtain and provide to the ZBA Commissioners a letter from the owner of the building, and a letter from each of the two property abutters. Mr. Lombardi presented a First Amendment to the Lease dated October 24, 2010 by and between Connecticut Yankee Realty, Inc. and John Lombardi for the original lease term of November 1, 2010 through October 31, 2011 for the premises located at 25 Middlesex Turnpike, Essex, CT.

Mr. Lombardi noted that the hardship surrounding his proposal is finding a place that can house 2200 s/f of furniture. Mr. Lombardi conducts his business on Friday, Saturday and Sunday from 10:00 a.m. to 3:00 p.m. Mr. Lombardi stated that the lease agreement he referenced earlier in the meeting increased the amount of space that he rents from 1530 s/f to 2280 s/f. Mr. Lombardi is seeking to utilize the entire 2280 s/f for this proposal.

Attorney Wells informed the Commissioners that if they wished to grant a variance to this proposal it would be for a specific area within the space Mr. Lombardi leases.

Mr. Lombardi indicated that there is a total of 5,000 s/f inside the building and he noted that once he obtained the 2200 s/f he put up a wall to separate his business.

Attorney Wells noted that per the lease, the area which Mr. Lombardi rents is to be used only for storage. Attorney Wells noted that Mr. Clark submitted a letter dated September 2, 2011 indicating that the master lease on the property is held by CT Yankee Realty Inc. Under the master lease agreement, as the master tenant, Mr. Clark deals with all matters relative to Essex Zoning and as such he is in position to grant amendments to the lease. Per the agreement with Tegrant, Mr. Clark states that the tenant is allowed to use the building in any manner authorized by the Essex Zoning or Essex Zoning Board of Appeals. Mr. Clark has stated that Mr. Lombardi's proposed use of space in this building is low impact and is in keeping with the utilization of older factory space into a current productive use. Mr. Clark would be willing to amend the lease if the Essex ZBA agrees to allow a variance.

Mr. Lombardi stated the hardship is trying to find a location in Essex that would allow the square footage and would also allow the trucks to come in and out.

Mr. Ingersoll stated that a hardship is defined as one that is unique to this property and for Mr. Lombardi to be in compliance, the Essex Zoning regulations would have to be amended to classify this location from an industrial to a retail district.

Mr. Lombardi stated that the building has been empty for years and this proposal creates a very low impact on the town, noting that this would seem to be an ideal use for this space.

Michael Noto commented that there was a question at the August meeting about the signage.

Mr. Lombardi stated that there is an eight foot banner on the back side of the building. There are also two smaller signs that are two feet by two feet, which are placed on the front of the property which is on Saybrook Road. Those signs are placed on the grass portion of the lawn. Mr. Lombardi stated that there have been no complaints about these signs. The signs are removed on Sunday afternoon.

Attorney Wells stated that it is the position of the Board that if the use has to be changed for this location, the Essex Zoning Commission would handle that. Mr. Wells advised Commissioners that they are in a position to grant a use variance for this proposal. Mr. Wells noted that there is one limitation to a use variance and that it would be granted for a use that is not otherwise permitted anywhere else in town.

Tim Furgueson questioned if there is a liability involved with granting a variance of this sort?

Mr. Wells stated that Mr. Lombardi is asking to be allowed a variance for a limited use of 2200 s/f. If the Board granted the variance it would be very specific to that space. Time and space restrictions may be placed on the variance. Mr. Wells went on to say that the decisions of the Essex Zoning Board of Appeals are not binding as precedent in terms of allowing future similar use for additional spaces within this building. The Board may place conditions on the approval, i.e., hours of operation, days of operation, etc.

Mr. Noto asked if there is any other retail in that strip.

Mr. Lombardi stated that there is no other retail on that strip. Mr. Lombardi stated that he did obtain letters from the people who occupy the surrounding warehouse space.

Mr. Lombardi stated that he cleans out homes and repairs a good deal of the furniture that he obtains. Mr. Lombardi stated that he does donate much of the furniture that is delivered to this warehouse space. Mr. Ingersoll asked if anyone wished to speak in favor or in opposition of this application.

Audience member, Alfonse Aldonalfi stated that he occupies the warehouse adjacent to Mr. Lombardi. Mr. Aldonalfi indicated that one of the many hardships associated with this proposal is the availability of a similar space of this size on Main Street or North Main Street at an affordable price. Mr. Aldonalfi stated that the exorbitant rents in other locations within the Town of Essex create a physical hardship. Also, due to the size of the trucks and the frequency of the deliveries, this location is ideal. Mr. Lombardi is doing wholesaling most of the time and he fixes the furniture, which is allowed under the Essex Zoning Regulations. Mr. Lombardi does internet sales and repairs furniture and 90% of the time he is doing what is legally allowed in that space. That repaired furniture is donated to local churches and other various charities within the Town. Mr. Lombardi is looking for a small piece of this business to be retail. Mr. Aldonalfi stated that there are many businesses within the Town that are illegally conducting this very same type of business.

Audience member Jason Wlochowski stated that he is a resident of Ivoryton and that he volunteers as a Boy Scout/Eagle Scout leader for the past seven years and he also volunteers his time in the community. Mr. Wlochowski stated that he directs many people who have fallen victim to various physical and financial hardships to Mr. Lombardi who repairs and donates much of his furniture to these same people. Mr. Wlochowski noted that many industrial businesses do a small part of retail in their stores and Mr. Lombardi is going about this request the right way by seeking permission. Mr. Lombardi has a good heart is trying to do the right thing.

Audience member Aggie Waterman stated that she is a resident of Ivoryton and owns a consignment store and a restaurant. Ms. Waterman stated that before obtaining his current space, Mr. Lombardi furnished a good deal of her furniture inventory. Ms. Waterman stated that many people still come in to her store every weekend and ask where Mr. Lombardi has moved because he sells his furniture at a reasonable price.

Audience member Larry Lombardi stated that he is here this evening to speak on behalf of Mr. Lombardi's character. Larry Lombardi stated that he is not related to the applicant and he noted that John Lombardi is a good guy and is out trying to make a living in a way that benefits the town, and the Board should look favorably upon him.

Audience member Mark Uihlien stated that he was able to find five properties that allow retail in Essex. Mr. Uihlien stated that his problem with this proposal is that it introduces retail into the gateway and he does not think this is appropriate and further, Mr. Uihlien does not see the hardship associated with this proposal.

Joseph Budrow, Essex Zoning Enforcement Officer and Wetlands Enforcement Officer stated that since the notice of violation was sent out Mr. Lombardi he has stopped into the Zoning office many times to find out what he can do to become compliant with the regulations. Mr. Budrow stated that Mr. Lombardi did know that he could have gone to the Essex Zoning Commission and request through a petition to have retail added to the LI district. Mr. Budrow stated that Mr. Lombardi came this route [ZBA] instead, noting that the Board heard two hardships surrounding this proposal, neither of which were viable. Districts are not a hardship and financial is not a hardship. Mr. Budrow stated that there is a liability to this proposal and that liability is, since he started in his position as Essex Zoning Enforcement Officer in November 2010 at least four people have asked to place a retail use in an area that does not allow a retail use. Mr. Budrow stated that if the Board allows this Variance they are opening the door for him to inform people that the Board has granted a variance where retail is not allowed. Mr. Budrow stated that he would rather not have to ever tell people that.

Attorney Wells informed the Commissioners that a precedent would not be set by approving a variance to this proposal and that the Board is not bound by any decision. Mr. Wells stated that he understands what

the Zoning Enforcement Officer is saying, however Mr. Wells does not want the impression set that there is a domino theory here. That is not a basis for approval or denial. If the board were to consider denying, the basis for that decision should not be if we grant a variance [to you] we have to grant to every one else. Mr. Wells stated that if the Board grants this variance it would not be proper to say that the Board is doing this because all industrial zones should have retail. This is a very specific request and the Board must decide this issue only.

Mark Uihlein questioned if a Variance was approved and if a future applicant were to civilly litigate could this case be used as a basis for litigation.

Attorney Wells stated that Zoning Board of Appeals' cases are individual and they do not provide precedent for a court. Mr. Wells went on to say that the Essex Zoning Board of Appeals is not a judicial body and those decisions made by the Board do not have judicial precedent.

Mr. Aldonalfi questioned if warehouse sales are allowable in a limited amount in the industrial zone within the Town of Essex.

Mr. Budrow stated that as of right now, only wholesale sales are allowed. Mr. Budrow stated that wholesale is when you sell a multiple amount of goods to one vendor who then sell those goods retail. Mr. Budrow stated that Mr. Lombardi is allowed to sell wholesale, however 8-10% of his business is not allowed. Mr. Budrow noted that Mr. Lombardi has admitted for the record that he does sell retail and that is not allowed.

Mr. Wlochowski questioned that in order to do wholesale would he have to buy multiple items? Mr. Wlochowski went on to say that by that definition, when he buys one piece from a wholesaler is he actually buying retail?

A brief discussion ensued on the nuances of retail vs. wholesale.

Stu Ingersoll noted that if you collect sales tax that will distinguish if the business is wholesale.

Mr. Ingersoll noted that there were three letters submitted on behalf of this application; Lou Rastkhane, President, Crystal Journey Candles, LLC, 25 Middlesex Turnpike, Essex, CT, submitted a letter in favor of this application. John R. Morrison, Owner, CT Sign Service, 25 Saybrook Rd., Essex, CT submitted a letter in favor of this application. Herb Clark, III, CT Yankee Realty, 25 Middlesex Turnpike, Essex, CT submitted a letter in favor of this application.

Diane Lombardi thanked everyone for their support on behalf of John.

Mr. Ingersoll closed the public portion of this application at 8:55 p.m.

Tim Furgueson was seated for this application

Consideration of **Application #11-18 on behalf of John Beveridge, property located at 18 River Road, Essex, CT, Assessor's Map 18 Lot 4, RU District requesting Variances of Sections 40D, 40E, 40I.1, 50D and 61B of the Essex Zoning Regulations.** This is an application to allow a 13' x 17' addition onto an existing detached garage that is within the front and side yard setback areas.

Mr. John Beveridge presented. Mr. Beveridge is looking to add a bay onto an existing garage. The house is situated on the Falls River and on Book Hill Road. The house is about sixteen feet from the rear yard and

7.5 feet from the front yard. In 1930 the new bridge went in. When the town built the new road there was a wide right-of-way installed so as to accommodate for the water. Mr. Beveridge presented a photograph of the front of the building and of the addition and the surrounding property. Mr. Beveridge stated that the shape of the lot and the very wide right-of-way is the hardship. There will be no heat and no plumbing in the proposed addition. Mr. Beveridge stated that the hardship is the shape of the land and the right-of-way along the River Road which is so wide that it has created a 7.5 foot hardship. The bay will be utilized for storage for Mr. Beveridge's antique cars. The total lot area including the garage will bring the coverage to 6.7%.

Joe Budrow stated that a hardship can be based on the uniqueness of the property. People who live along the State roads often have wide rights-of-way. The wide right-of-way on River Road makes Mr. Beveridge's property unique.

Mr. Beveridge stated that from the edge of the road the right-of-way is 45 feet which makes this right-of-way forty feet over the normal width.

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

There were no letters submitted on behalf of this application.

Mr. Ingersoll closed the public portion of this application at 9:16p.m.

Consideration of **Application #11-19 on behalf of Robert and Georgiann Murphy, property located at 36 Mack Lane, Essex, CT, Assessor's Map 50 Lot 13, VR District**, requesting a variance to section 40D, 40I.1 and 60B of the Essex Zoning regulations. This is an application to allow for the height of a new single family structure to exceed the allowed height of 35' within the Gateway Conservation District and to allow for the structure to increase lot coverage to 11.67 where 7.5% is allowed.

Joe Budrow stated that the legal notice that was placed in the newspaper is incorrect should have had additional variance requirements listed. Mr. Budrow asked Mr. Wells opinion on how to proceed.

Attorney Wells stated that if the legal notice does not specify all of the variance requirements the Board may only open the hearing and listen to testimony only on those regulations listed. Attorney Wells questioned Mr. Budrow regarding his earlier comment that the applicant had not yet submitted architectural drawings on the proposed dwelling as it has not been determined that the dwelling exceeds the height allowance within the Gateway district. Mr. Wells stated that in the notice it says that it does exceed the height regulation.

Mr. Budrow stated that when this application was submitted it was submitted as "a height thing" and it was submitted with an addendum. Mr. Budrow stated that a second addendum is now included with the application and Mr. Budrow did not see that addendum at the time the legal notice was submitted to the newspaper. As such, the height requirement did not get into the legal notice. Sections 40E, 40C and 101J must be added to the newspaper notice, which is for the height. Mr. Budrow stated that he will dispute the height request as he thinks that the applicant may not need a height variance.

Mr. Ingersoll asked if Mr. Budrow sent a notice to the Gateway Commission.

Mr. Budrow stated that the Gateway has a meeting in the next few days with the site inspector and they do have the paperwork on this application. Mr. Budrow indicated that he contacted the architect and in the last few days plans were received on behalf of this application.

Mr. Wells asked Attorney Lomme to speak briefly on behalf of this application.

Attorney Lomme stated that the issue of the height was misinterpreted and the structure will not be higher than that which the Gateway restriction allows for. Mr. Lomme noted that this is a Hyde amendment variance. A portion of the existing house and the proposed house goes into the setback. It is currently 25 feet in height and the applicant wishes to increase that height, however not over the 34 foot height restriction. This proposal does not require a variance of the Gateway regulations. The applicant is looking for a variance for two of the sections; coverage and the height in the setback. Mr. Lomme stated that the applicant is actually asking for less than what the notice states.

Mr. Wells stated that if the notice does not ask for all of the needed variance requirements, the Board may go forward on those sections advertised, however it is advisable to put off hearing this application for one month allowing the Zoning office to properly re-advertise this application. Mr. Wells advised the Board to defer to the applicant.

Mr. Ingersoll stated that he would like a letter from the Gateway Commission to be made available for the next meeting.

Mr. Lomme stated that assuming that this notice had been published correctly, he would have presented and answered questions this evening and then requested a continuance of the public hearing until next month when the Gateway letter was available. The Notice has added confusion to the issues. Mr. Lomme asked to have this application tabled to the regularly scheduled October 2011 ZBA meeting, allowing the Zoning office to re-publish the notice correctly.

Mr. Ingersoll stated that the re-publication will be done at no cost to the applicant.

For the record it was noted that the public hearing was not opened on **Application #11-19 on behalf of Robert and Georgiann Murphy, property located at 36 Mack Lane, Essex, CT, Assessor's Map 50 Lot 13**, however a preliminary discussion was conducted. There was a problem with the advertisement of the legal notice. The notice will be re-published and the Board will hear this application at the October 2011 meeting.

DELIBERATION

- **Reconsideration of Application #11-16 on behalf of John Lombardi, property located at 25 Saybrook Road, Essex, CT, Assessor's Tax Map 46 Lot 2, LI District**, requesting a Variance of Sections 40a and 90A of the Essex Zoning Regulations. This is an application to allow a retail use in a district where retail is not allowed.

Sitting on this case is Michael Noto, Paul Greenberg, Stu Ingersoll, Doug Demarest and Tim Furgueson.

Mr. Wells stated that he is satisfied on what has been presented on the technical issues, regarding right to file the application in relation to the tenant/ landlord agreement.

Mr. Demarest stated that there is no hardship associated with this application.

Mr. Noto stated that hardship is the lack of available space, however that is not considered to be a viable hardship.

Mr. Greenberg noted that one can argue about a lot of technicalities surrounding the hardship. That said, Mr. Greenberg finds this proposal to be a good idea and allowing a variance is the right thing to do. Mr. Greenberg stated that he will support this application. Forcing Mr. Lombardi to move and find another business is not the right thing to do. Mr. Greenberg stated that making Mr. Lombardi move and finding a place to unload the trucks is the hardship.

Mr. Demarest stated that the law says that you have to have a hardship.

Mr. Greenberg noted that the hardship is the nature of the business and the trucks coming in and out.

Stu Ingersoll stated that what Mr. Lombardi is doing is a good thing. However the Board has testimony that 10% is retail and 90% is wholesale. By granting a variance the Board is giving Mr. Lombardi special permission for 10% of his business. Mr. Ingersoll stated that the Board has right to do that subject to certain things. That said, Mr. Ingersoll stated that he is having a hard time finding a hardship.

Mr. Noto stated that this is a very small violation of the zoning ordinances and the benefits out way the negatives. There is a limitation in finding a hardship. However, if the Board wants this business in Essex, there are a very limited number of places and therein lies the hardship. Mr. Noto stated that he tends to be in favor of this application but with limitations, i.e., time and signage. The limited spaces available for the use of this business within the Town of Essex is the hardship.

Tim Furgueson asked what the guidelines are for a hardship.

Attorney Wells stated that generally, per the zoning regulations, strict applications would "produce unusual hardships or exceptional difficulty". Mr. Wells noted that the Board must look at what makes this property unique. Mr. Wells reminded the Board that a variance is granted to the property, not to the person.

Mr. Greenberg stated that consideration of the hardship is a judgment call.

Mr. Ingersoll stated that his idea of what constitutes for a hardship is that there is something unique to that property that would convince the Board to grant a variance. Mr. Ingersoll stated that it is not up to the Board to change the Essex Zoning regulations to meet the needs of one man. That said, Mr. Ingersoll stated that he agrees 100% with what Mr. Lombardi intends to do with this space.

Mr. Wells stated that if a variance were to be allowed it would be granted for a particular space of that building, not for the whole building.

Mr. Noto asked if the building were to burn down, would the variance remain in place.

Mr. Wells stated that in that situation, the variance would be null for the space that the variance was granted.

It was noted that Cliff's Market was granted a variance and no precedent was set there.

Doug Demarest asked if the Board should approach the Essex Zoning Commission and request that the Zoning Regulations be amended to allow limited retail.

Mr. Ingersoll stated that he would be receptive to approaching the Zoning Commission with that request.

Mr. Wells noted that the Board is allowed to grant a use variance.

Mr. Demarest stated that in the legal sense we do not have a hardship.

Mr. Ingersoll indicated that the Board is talking about allowing a use variance to legally allow Mr. Lombardi to conduct 10% of his business. Mr. Ingersoll stated that by doing so, the ZBA is stepping in for the Zoning Commission.

Motion made by Michael Noto to grant a Variance **Application #11-16 on behalf of John Lombardi, property located at 25 Saybrook Road, Essex, ct, Assessor's Tax Map 46 Lot 2, LI District**, requesting a Variance of Sections 40a and 90A of the Essex Zoning Regulations. This is an application to allow a retail use in a district where retail is not allowed. The conditions placed on this variance are as follows; hours of operation are limited to 9:00 a.m. to 3:00 p.m. Friday through Sunday; restrictions on signage so that there are no signs located on any road; and this variance limits the activity conducted on this premises to sales of furniture and household accessories. The hardship surrounding this application is the lack of availability of other facilities, parking, loading within the Town of Essex for this type of retail business of furniture and household accessories. There is a very small amount of retail business to be conducted.

Motion seconded by Paul Greenberg with Tim Furgueson voting no to the motion, Doug Demarest voting no to the motion, Stu Ingersoll voting no to the motion and Paul Greenberg and Michael Noto in favor. Motion failed 3/2. The variance was not granted for lack of votes.

- **Reconsideration of Application #11-18 on behalf of John Beveridge, property located at 18 River Road, Essex, CT, Assessor's Map 18 Lot 4, RU District requesting Variances of Sections 40D, 40E, 40I.1, 50D and 61B of the Essex Zoning Regulations.** This is an application to allow a 13' x 17' addition onto an existing detached garage that is within the front and side yard setback areas.

Sitting on this case is Lynn Faulstick, Paul Greenberg, Stu Ingersoll, Doug Demarest and Tim Furgueson.

Motion made by Lynne Faulstick to grant a Variance to **Application #11-18 on behalf of John Beveridge, property located at 18 River Road, Essex, CT, Assessor's Map 18 Lot 4, RU District requesting Variances of Sections 40D, 40E, 40I.1, 50D and 61B of the Essex Zoning Regulations.** This is an application to allow a 13' x 17' addition onto an existing detached garage that is within the front and side yard setback areas. The hardship surrounding this application is based on the shape of the property, also on the excessive setbacks due to the right-of-way. This variance is granted based in accordance with the drawings as submitted: 18 River Road, Essex, Connecticut, Prepared for John Beveridge February 3, 2003, Gessick & Associates, P.C.

Motion seconded by Tim Furgueson and passed unanimously.

Respectfully submitted,

Stella C. Beaudoin
Recording Secretary

The proceedings of the September 20, 2011 Public Hearing was recorded on 1 card. Please speak with the Essex Zoning Office for further information.