

TOWN OF ESSEX
Zoning Board of Appeals

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Executive Board

Paul Greenberg, Chair
W. T. Furgueson, Vice Chair
W. Feirer, Secretary

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Barbara Sarrantonio
William Veillette

Alternate Members

Philip J. Beckman
George Wendell
Richard Rybak

Unapproved

MINUTES

April 18, 2017 – Public Hearing and Regular Meeting

The Essex Zoning Board of Appeals conducted their regularly scheduled meeting on Tuesday, April 18, 2017 at 7:00 p.m. in Room B of the Essex Town Hall. Attending Members were P Greenberg, W. Feirer, B Sarrantonio, W. Veillette, W.T. Furgueson, P Beckman, Alternate and G Wendell, Alternate, R Rybak, Alternate.

Staff:

Stella C. Beaudoin, Recording Clerk
Michael Wells, Esq., Legal Counsel

P Greenberg called the meeting to order at 7:00pm

Seated for the meeting were P Greenberg, W. Feirer, B Sarrantonio, W. Veillette, W. T. Furgueson.

Audience members: Ed Cassella, Esq., Shirley Malcarne, Michael and Jody Picard.

PUBLIC HEARINGS

Application No. 17-5 on behalf of Michael Picard, 175 Saybrook Road, Essex, CT, Assessor's Map 74, Lot 11, requesting variances to Sections 40C, 40D, 40E, 40I.1, 40N, 40R, 50C.2, 50D, 61B and 101D of the zoning regulations to allow a single-family dwelling to a height of 32 feet, 3 inches where 30 feet is the maximum height allowed and to be located to a point 20 feet from the side property line where 30 feet is required. Also, to allow a detached garage to a point 8 feet from a side property line where 30 feet is required and to a point 12 feet from a front property line where 40 feet is required. Also, to allow a paved driveway to be located within 5 feet of a side property line. Also, to allow an in-ground swimming pool within the Gateway buffer area. Also, to allow a pool pavilion to a point 6 feet from a side property line where 30 feet is required and to be within the Gateway buffer area. Also, to allow a patio to a point 7 feet from a side property line where 10 feet is required and to be within a Gateway buffer area. Also, to allow a 123- foot long wall within the Gateway buffer area.

This is an application is a request to convert the second floor of the third building to a residential suite that would add to the total rooms rented by the Griswold Inn. This addition would be an expansion of a

nonconforming use as Inns are not a use listed as allowed in the Essex Village, or anywhere else in town. The Griswold Inn, Copper Beech Inn and Ivoryton Inn are all nonconforming uses. The regulations state that when multiple uses exist on a lot, or are proposed, the lot shall have a minimum lot size for each use. In Essex Village the minimum lot size is 15,000 square feet. With retail and Inn on the same lot there needs to be 30,000 square feet. This lot is 26, 136 square feet in size.

John Bennet, Esq., who presented on behalf of the applicant stated that there are revised plans which changes the dimensions listed in the public notice related to the description in this proposal. J Bennet stated that the structure will be situated within the gateway buffer area and as such the CT River Gateway Commission has reviewed and signed off on this proposal. J Bennet stated that in all aspects, this project reduces nonconformities and is therefore approvable by the Commission without the proof of hardship.

Tom Metcalf, P.E. presented. T Metcalf presented for the record, three copies of revised sheets 1 and 2. Sheets 3 and 4 were not submitted as there were no changes on those sheets.

T Metcalf stated that Richard Gates, Land Surveyor created and provided a topographic survey of the property and T Metcalf noted that the property is relatively steep at 8-9% across the property, to the steep slope going down to south cove. There is an existing septic system and there are a few wells situated on the property. In the past, several variances were granted to this property and filed with the Town Clerk on the land records. T Metcalf stated that if this application is approved, the existing variances will be relinquished by the applicant.

T Metcalf stated that a variance was granted to construct a two-story building with a second-floor apartment and a garage workshop, however this structure was never constructed. T Metcalf stated that a variance was granted to construct a second story addition on a portion of the house and a single-story addition toward the front of the house. The single-story addition was constructed, however the second story addition was never built. T Metcalf noted that if this proposal is approved by the ZBA, the existing variances which have been filed with the Town Clerk will be relinquished as the new application proposes the elimination of the house structure.

T Metcalf addressed the proposed site plan before the Board this evening stating that this is a proposal to construct a two-story dwelling, a garage, a patio and a swimming pool with an open pool pavilion. The septic will remain in the same general location with an increase in the size of the leaching system to accommodate the new structure. The driveway will deposit into a courtyard for ease into the garage entrance. The lot size will not change. There are modest improvements as reflected on the most recent plan, sheets 1 and 2. The garage location was shifted to the south to increase the setback on the north property line and the house was slightly shifted to the north. T Metcalf commented on the side setback to the north; the house as it exists is 42 feet from property line and the proposed house will be 39 feet from north property line. The garage will be 15 feet from the property line reducing the nonconformance. To the south, the house as it currently exists is only 5 ½ feet from the southern property line, however increasing the setback from 5 ½ feet to 21 feet, reducing a nonconformance. The southern line of the pool pavilion which is 6 feet, will not encroach any closer to the property line reducing the nonconformance. The shed was 11 feet from property line and the proposed garage will be 12 feet from the property line. As related to the gateway setbacks, the existing deck and house is 24 feet from water line and the new house will be moved back to 72 feet which will remove a nonconformance. The pool pavilion will reduce a nonconformance, i.e., the pool will be 28 feet away and patio is 31 feet away from the rear setback, therefore removing the nonconformance. There is an existing landscape wall which will not change. The building height is 32.5 feet and the applicant is compliant with the lot coverage.

T Metcalf stated that the area of the building coverage within the Gateway setback is 1240 s.f. This proposal will reduce the area of building coverage by 85 s.f. and within the gateway setback, this proposal will reduce the coverage by 924 s.f. The Essex Zoning regulations allow a maximum building height of 30 feet measured from the lowest existing grade around the house. The northeast corner from the existing grade to the top of the house is a measurement of 32.3 feet. On the southeast corner, the height from existing ground to the top of structure would be 31 feet. On the northwest corner, as the land slopes up, from existing grade to the top of the house is 27.8 feet. The actual, visible house will around 29 feet on two sides of the house and the height of the house where the grade rises is 28 feet. The end result will be a structure that is less than 30 feet in height.

B Sarrantonio clarified that there will be a 2-car, drive-in garage situated under the house in addition to the proposed 2-car garage situated in a different location on the property.

T Metcalf commented on the grade change noting that the patio elevation is at 21 and rises to elevation 22. T Metcalf noted that there is a grade change near the road at elevation 40, to the top of the slope to elevation 12. The slope of the land is what creates the need for variance for the building height. There is no attic proposed in this structure and the actual building height is 25'9" from the base to the peak.

T Metcalf stated that in a meeting with the CT River Gateway Commission, they requested that consideration be given to shielding the garage as viewed from the Cove. Plantings and the installation of trees are proposed in the front of the garage that would obscure the view of the garage from the cove. Native buffer plantings will be installed in front of the patio and the pool area.

T Metcalf commented on a letter dated April 17, 2017 which was received by the ZEO from Sue Jacobson, environmental analyst, Land and Water Resources Division, State of CT Department of Energy and Environmental Protection (DEEP). In her letter, S Jacobson recommended 1) To improve storm water quality via the installation of permeable pavers around the pool. 2) The incorporation of rain barrels, rain gardens or swales into the stormwater management system; and the planting of a vegetated riparian buffer. T Metcalf stated that he proposes the installation of an infiltration system to catch the stormwater which will avoid discharge into the cove and the Installation of drywell catch basins with perforated piping to promote stormwater infiltration on the street side of the house adjacent to the corners of the house. 3) To review the drainage so that it does not deposit onto neighboring property. T Metcalf stated that as related to the adjacent property line, he proposes capturing the water in the drainage system and outlets. 4) Consideration be given to the visual quality of the shore from the CT River. T Metcalf stated that it is within the domain of the Gateway Commission to ensure that the traditional river front scene from the water is maintained. 5) Attention to the slope from the water upward to the property. T Metcalf stated that the existing landscape wall to the water will not be touched. There is a stone rip rap embankment slope that over the years has had some plantings. From the top of the bank, there will be no changes on the steep slope, however per the suggestion of the CT River Gateway Commission, there will be an installation of a buffer area with native plantings. 6) The applicant may wish to consider a geotechnical analysis to demonstrate that the slope will support the weight of a pool. T Metcalf stated that this is handled through the building permit process and the pool company must address the construction of the pool with the building official, and by default this will be addressed when the time comes to install the pool.

The CT River Gateway Commission expressed a concern regarding the view from the river. T Metcalf stated that the length of the existing house is 98 feet. The proposed façade will be 82 feet in length which provides a reduction of the overall length. The landscaping will further break-up the view from the water. T Metcalf stated that the existing building is very close to the property line. By shrinking the house down in size, and introducing landscaping, this proposal it softens the look from the river. Natural colors to the siding and cedar color to the roof materials will be utilized.

J Bennet stated that every aspect of the project being proposed is being pulled back and reducing nonconformities. The house will conform to height upon completion. J Bennet stated that the aspect of the house will be not only conforming but lower.

B Sarrantonio stated that it appears that if the house was moved slightly to the north this proposal might have eliminated a nonconformity on the south property line.

T Metcalf stated that pushing the house any further to the north would make it extremely difficult to drive into the garage and he indicated that the septic system requires setback requirements from the property line and from the well. T Metcalf noted that the soils are suitable for septic placement in the area of the proposed setback and pushing it further to the north would infringe on public health regulations.

B Sarrantonio suggested the placement of the pool and the pavilion to be moved toward the patio. T Metcalf stated that there is a distance from the pool to the septic that must be maintained. The relocation of the pavilion would create separation distance issues from the septic system.

M Picard stated that the grade on the north side is steep and to place the pool in that area would require a good deal of fill.

P Greenberg asked if anyone wished to speak in favor or in opposition to this proposal.

Attorney Ed Cassella representing Alan Miller, 177 Saybrook Road, Essex, property owner to the south of this proposal. E Cassella stated that the applicant does not have a hardship for the redevelopment, and the reductions of nonconformity are not significant to warrant variances for the proposed structures, which could be built without many, if not all, of the requested variances. E. Cassella stated that the applicant bases his entire application on the argument that he is reducing nonconformities and therefore should be allowed to essentially build whatever he wants, wherever he wants, as long as he reduces nonconformities. E Cassella stated that the legal predicate for the granting of variances is not simple, "it is well established that the granting of a variance must be reserved for unusual or exceptional circumstances. An applicant for a variance must show that because of some peculiar characteristic of his property" and "application of the zoning regulation produces an unusual hardship as opposed to the general impact which the regulation has on the other properties in the zone." E Cassella stated that this whole development could be pushed to the north and to the west and built within the setbacks, so there is no hardship and he stated that this is not consistent with the comprehensive zoning plan. This lot is 43,000 s.f. and a very large lot with room on the property for the construction of the proposed structures that would not require a variance. E Cassella stated that if the shed and the carport are torn down, that nonconformity ceases to exist and he noted that when you can construct on the property in locations other than those that would require a variance, it is not considered a hardship.

E Cassella stated that with respect to the proposed height, there is no information in the plan to substantiate the granting of a height variance and he stated that the patio was substantially expanded and is immediately up against the property line, if not encroaching over the boundary line. The elevations on the pool pavilion are also unclear.

E Cassella stated that this proposal presents negative impact and harm to his client, Alan Miller and he stated that there is no hardship associated with this proposal to warrant the granting of a variance, and if there are reductions of nonconformity they are not significant enough to enable the development to move forward, as proposed. E Cassella stated that the open air and buffer is being degraded as the proposal is within 6 feet of the property line of A Miller.

M Wells asked E Cassella if it is his belief that the argument related to this proposal is that the total amount of building in the setback areas is being reduced by 85 s.f. based on the pooling of the structures to which E Cassella agreed.

J Bennett stated that there are no wetland violations on this property noting that S Jacobson, DEEP has visited the site and submitted a letter for the record on her findings, and the DEEP has been on-site on numerous occasion. J Bennet stated that the existing patio has not been increased in size as shown on the aerial photos and he noted that the statement averring violations is untrue. J Bennet stated that the concept that when a house is demolished and reconstructed, said house must be made conforming, is not the law in the State of Connecticut.

M Wells stated that there are two questions that need to be addressed which could be further clarified through a brief and suggested that the public hearing be extended: 1) Can the Board grant a variance in line with the Vine cases if the proposed development could be in complete compliance with the regulations otherwise. 2) Can the applicant pool areas of nonconformity while decreasing some and increasing others to reach a total reduction in nonconformity that would support granting of a variance under the Vine case. M Wells stated that he would like to be in receipt of the briefs at least one week prior to the meeting.

J Bennett stated that he has a conflict with the May 16, 2017 ZBA meeting and requested an extension to the June 20, 2017 meeting.

The following letters were received for the record: CT River Gateway Commission dated April 17, 2017; Alan Miller dated Tuesday March 7, 2017; Shirley Malcarne dated April 14, 2017; S Jacobson, DEEP dated April 17, 2017; FM Harvey dated March 20, 2017; Memorandum in Opposition to Application from E Cassella dated April 13, 2017 and two letters from Vanessa Malcarne dated March 20, 2017 and April 14, 2017.

MOTION to continue the Hearing as consented to by the applicant to the June 20, 2017 meeting for **Application #17-5** on behalf of Michael Picard, 175 Saybrook Road, Essex, CT, Assessor's Map 74, Lot 11, requesting variances to Sections 40C, 40D, 40E, 40I.1, 40N, 40R, 50C.2, 50D, 61B and 101D of the zoning regulations to allow a single-family dwelling to a height of 32 feet, 3 inches where 30 feet is the maximum height allowed and to be located to a point 20 feet from the side property line where 30 feet is required. Also, to allow a detached garage to a point 8 feet from a side property line where 30 feet is required and to a point 12 feet from a front property line where 40 feet is required. Also, to allow a paved driveway to be located within 5 feet of a side property line. Also, to allow an in-ground swimming pool within the Gateway buffer area. Also, to allow a pool pavilion to a point 6 feet from a side property line where 30 feet is required and to be within the Gateway buffer area. Also, to allow a patio to a point 7 feet from a side property line where 10 feet is required and to be within a Gateway buffer area. Also, to allow a 12-foot long wall within the Gateway buffer area. The Variance is approved based on the plans as submitted. **MADE** by W Feirer; **SECONDED** by B Sarrantonio; **IN FAVOR:** P Greenberg, W. Feirer, B Sarrantonio, W. Veillette, W T Furgueson; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED:** 5-0-0.

NEW BUSINESS

There was no new business.

OLD BUSINESS

- Approval of Minutes –Meeting Minutes, March 21, 2017

MOTION to approve the March 21, 2017 Regular Meeting Minutes as presented; **MADE** by B Sarrantonio; **SECONDED** by W Feirer; **IN FAVOR:** P Greenberg, W. Feirer, B Sarrantonio, W. Veillette, W T Furgueson; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED:** 5-0-0.

CORRESPONDENCE AND INVOICES

There were no invoices and no correspondence

ADJOURNMENT

MOTION to adjourn the meeting at 9:50 p.m. to the next regularly scheduled meeting which will be held on Tuesday, May 16, 2017 at 7:00 p.m. at the Essex Town Hall, Conference Room A, 29 West Avenue, Essex, CT; **MADE** by B Sarrantonio; **SECONDED** by W T Furgueson; **IN FAVOR:** P Greenberg, W. Feirer, B Sarrantonio, W. Veillette, W T Furgueson; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED:** 5-0-0.

Respectfully submitted,

Stella C. Beaudoin
Recording Secretary