



File Copy

Zoning Board of Appeals

29 West Avenue, Essex, CT 06426

Application for the Appeal of ZEO's Decision

Date received by office 11/17/22 Application fee - \$50 = Pd. ✓ CK # 5084

Application # 22-16 Hearing Date ~~October 18, 2022~~
December 20, 2022

Premises: Street Address 5 River Road

Assessor's Map # 17 Lot # 4 Lot Area .35 ac

Zoning District RU-Rural Residential

Owner of Property Kristine Thomas

Address _____
Street Town State Zip

Telephone _____ Email: _____
home work

Applicant (if not owner) Frank Grasso & Dorene Grasso

Address 1 River Road Essex CT 06426
Street Town State Zip

Telephone 203-984-2549 203-984-2888 Email: fgrasso51@gmail.com
home work

Note:

- 1) TO BE ACCEPTED BY THE LAND USE OFFICE. THIS APPLICATION MUST BE COMPLETED, SIGNED, AND SUBMITTED WITH THE REQUIRED FEE(S) AND MAP(S) PREPARED IN ACCORDANCE WITH THE APPLICABLE REGULATIONS.
- 2) THE SUBMITTAL OF THIS APPLICATION CONSTITUTES THE PROPERTY OWNER'S PERMISSION FOR THE COMMISSION OR ITS STAFF TO ENTER THE PROPERTY FOR THE PURPOSE OF INSPECTION.
- 3) I HERBY AGREE TO PAY ALL ADDITIONAL FEES AND/OR ADDRESS SUCH COSTS DEEMED NECESSARY BY THE LAND USE OFFICE AS DESCRIBED IN PART THREE OF THIS APPLICATION.

Signature (Authorized Agent) _____ Date _____

Deed Reference: Book _____ Page _____

Current use of the property:

Residential

Business

Farm

Other _____

1. Original request (Please describe proposed use, dimensions, height and location of any new construction PLUS any changes to use, size, shape, bulk, footprint, floor area or height of existing structure; Site plan drawn to scale shall also be provided; Please cite appropriate sections of the Essex Zoning regulations)

(Please attach supplemental sheets if space provided is insufficient)

2. Decision, order or requirement made by ZEO appealed from (include date and description)

In spite of the ZBA Attorney having implied its existence, no formal decision has been presented by the ZEO as to why Variance 16-12 should not have automatically Ceased despite the variance having been in excess of six years old.

In Accordance with Essex Zoning Regulations 140J and 140K, when the 2016 Variance (16-12) was granted, it was issued contingent upon the variance being built within one year of its granting unless the pertinent use or characteristic ceases by reason of fire or other casualty, provided that: Notice of intention to resume or restore such characteristic is filed with the Zoning Enforcement Agent within six months after cessation; and such resumption or restoration is made and completed withing two years after cessation.

We are not aware of any fire or casualty that occurred, nor if the construction ever began, or of any resumption or restoration of the project. Unless the Applicant has complied in some way that is not evident, then, in accordance with Essex Zoning Regulation 140J the original variance should have ceased.

(Please attach supplemental sheets if space provided is insufficient)

3. Reason for appeal of ZEOs decision

This filing is made to the Zoning Board of Appeals pursuant to Section 8-7 of the Connecticut General Statutes to determine whether the Zoning Board of Appeals was misinformed by their Attorney who misinterpreted a conversation that she had with the Zoning Enforcement Officer regarding the status of the prior variance which was granted June 21, 2016. Based upon her interpretation, the Attorney told the Commissioners that the Zoning Enforcement Officer had made a determination that the Variance was still active and that the board did not have to look at whether the Variance should have Ceased in Accordance with Essex Zoning Regulation 140J. The Board followed her advice and made its ruling to approve the new variance request. This misinterpretation by the ZBA Attorney denied us due process in this Meeting.

See Attached Letter.

(Please attach supplemental sheets if space provided is insufficient)

The following items must be included as part of this application:

- a. Fee of \$50.00 – Town Fee \$50 payable to the Town of Essex
- b. 10 copies of the application, site plan (with setback lines) and sketch of the proposal.
- c. Copy of property deed d. Supporting documentation regarding appeal

Owner/Applicant Commitments

I (we) certify that the statements hereinabove made and the documents submitted herewith are true to the best of my (our) knowledge and belief.

I (we) consent to allow Zoning Board of Appeals members access to the property for informal, independent site visits, for the purpose of evaluating this application prior to the Board rendering its decision.

Signature of applicant *Timothy Brown* *Daniel A. Bassett* Date: 11/17/22

Signature of property owner *Same* Date: _____

Applicant must provide a current list of all names and addresses of abutting property owners.

NAME	ADDRESS	TOWN	ZIP CODE
	<u>Thomas, Kristine</u>	<u>5 River Road,</u>	<u>Essex CT</u>
	<u>Surdam, Robert & Patricia Ellis</u>	<u>4 River Road,</u>	<u>Essex CT</u>
	<u>Lukasik, April</u>	<u>9 Mill Road</u>	<u>Essex, CT</u>

Attachment to Application for Appeal of ZEO

Frank & Dorene Grasso
1 River Road
Essex, CT 06426

Essex Zoning Board of Appeals
Essex, CT 06426

November 16, 2022

Dear Commissioners,

We are writing this letter to say that we believe we were denied due process before the Zoning Board of Appeals during the September and October ZBA hearings with respect to our objections to Variance 22-7, because your attorney, Sylvia Rutkowska, misinterpreted her conversation with the Zoning Enforcement Officer, Carey Duques' evaluation of the status of the Variance that was issued in 2016. And based upon her misinterpretation, she led the Board to believe that Ms. Duques had officially ruled that the 2016 variance was still in effect and therefore the only business before them was to decide if a proposed amendment to the 2016 building plan should be approved.

We asked if we could postpone the hearing until they had a chance to review Ms. Duques analysis. But, based upon Attorney Rutkowska's saying that Ms. Duques had ruled that the 2016 variance had not ceased, one of the Commissioners basically told us "We can't get into that here, and that is a separate decision." During the September and October hearings, the Commissioners politely listened to our objections but still voted 5-0 to approve the variance request on the belief that the 2016 variance was still active.

We believe we were denied due process because when we asked Ms. Duques during the September hearing how she came up with her analysis, she was not allowed to say anything because Attorney Rutkowska silenced her saying that this was something that could not be decided at that this meeting. Had Ms. Duques been allowed to speak, she may have told the board what she told us a couple weeks later when we met with her. During that meeting, Ms. Duques said that she had only done a preliminary analysis and while her findings "seemed" to indicate that the variance was still in effect, **she had not issued a formal opinion.**

- Now here we are with no formal opinion on why the Variance should have been continued yet the Zoning Board was allowed to go forward on this faulty assumption.

Because we were denied due process, we believe that the Zoning Board of Appeals needs to:

- Request that the Zoning Enforcement Officer perform a thorough analysis and provide a comprehensive opinion explaining why the variance that was issued in 2016 is still in force and has not Ceased, and

- This report needs to be reviewed in “the separate meeting” discussed in the September hearing, and confirmed by the ZBA before it can determine that Variance Request 22-07 is an amendment to the prior variance, or if Variance Request 22-07 needs to be looked at *denovo*.

In accordance with State Statute 8.7 we request:

- A copy of all Zoning Enforcement Agents’ records and all correspondence between the town and the Applicant, her architect Hope Procter or any other agents between 2016 and 2022 concerning the 2016 variance, any extensions, and the 2022 variance request;
- A copy of the Town’s procedures for reviewing Variance Extension requests.

We believe that a formal review of the 2016 Variance Status is necessary in order to provide us our due process under your regulations.

Respectfully,



Frank and Dorene Grasso
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203-984-2549 & 203-984-2888
Fgrasso51@gmail.com
Drengrosso51@gmail.com