



TOWN OF ESSEX
Zoning Board of Appeals

Executive Board

W. T. Furgueson, Chair
W Feirer, Vice Chair
Philip P Schaller, Secretary

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B. Sarrantonio
Brian Weinstein

Alternate Members

Philip J. Beckman
George Wendell
Richard Rybak

Unapproved

Minutes

January 19, 2021 – Zoning Board of Appeals

1. Call to Order and Seating of Members

The Essex Zoning Board of Appeals conducted their regularly scheduled meeting on Tuesday, January 19, 2021 at 7:00 p.m. This meeting was made available to the public via Zoom.

EZBA Chairman W T Furgueson welcomed everyone to the Essex Zoning Board of Appeals public access meeting which was conducted via Zoom platform.

The members of the Essex Zoning Board of Appeals announced themselves. The audio attendees were advised to mute themselves during the meeting except during public comment. Attendees were asked to please identify themselves for the record prior to making any comments.

Commission members present were: W. T. Furgueson, W Feirer, B Sarrantonio, P Schaller, R Rybak, P Beckman, G Wendell.

Staff present: Joseph Budrow, Zoning Enforcement Officer, Stella Caione, Recording Clerk and Sylvia Rutkowska, ZBA Legal Counsel.

Audience: There were six audience members present.

2. Public Hearing

- **Application No. 21-1** on behalf of Margo Weitekamp, 24 Hemlock Drive, Essex, CT, Assessor's Map 74, Map 19, RU District, requesting variances to sections 40D and 101E of the zoning regulations to locate an 11' x 36' inground swimming pool within the Gateway Buffer Zone.

Seated were W T Furgueson, P Schaller, B Sarrantonio, R Rybak, G Wendell.

The property at 24 Hemlock Drive is .3 acre in size. It is a rectangular lot that abuts South Cove along the south shore. From the street the land gradually slopes toward the house. The developed area is graded flat but on the east side the land slopes steeply to the waterline. A seawall exists between the cove and the developed rear yard. The rear property line is beyond the shoreline by approximately 10 to 15 feet (shoreline has curves). The lot has a single-family dwelling, with large deck and patio work, and a detached garage.

The applicant would like to install a 10' x 36' inground swimming pool and is proposing a location in the rear yard within an existing patio area. The location conforms with the zoning regulations except regulation 101E that states that no improvements are allowed within 100 feet of the coastal jurisdiction line (formerly called the mean high tide line). Other patio improvements are proposed, as well, in locations where there is patio already.

In 2004 a Variance was granted to allow an inground swimming pool in the same general area. Although the Variance was filed on the land records, that swimming pool was never built. The site plan approved was not an A2 survey showing distance or location accuracy, details that are typically included on survey plans. Additionally, the scope of the project is not known based on the ZBA file, however it appears that there was patio expansion shown. It is also unclear if the Gateway Commission commented on this proposal (In 2004, the Gateway Buffer Zone was 50 feet). The zoning regulations for the Gateway Conservation District have changed since 2004. This proposal shows a complete replacement of the existing patio where the pool is proposed, and expansion.

John Cunningham TEC Landscape Design, Madison, CT who presented for the applicant stated that base of the wall is between 2 and 3 feet. There will be no changes to the existing stone wall. Elevation 11 will be the elevation of the pool. Proceed up steps from that point, and there is an existing concrete block stairway and retaining wall which need to be replaced. J Cunningham stated that there are a number of areas that are comprised. The new pool is proposed at elevation 11, the new stone wall at elevation 9 and upper patio at elevation 18-18.5. All elevations on the property will remain the same. J Cunningham stated that the configuration of the wall were changed so there will be 4 concrete walls running parallel and perpendicular to the pool and the staircase to upper terrace. The existing material situated above the seawall is mostly invasive material. J Cunningham recommended that all invasive material be removed, and take one Red Oak tree down that is located to the right of the staircase. This Red Oak is the last remaining tree and it is bent at severe angle toward the house and the pool.

J Budrow reported that Torrance Downes, CT River Gateway Commission stated that per regulation 101F, vegetation cannot be removed. J Budrow stated that the applicant must come back for a variance in February for removal of the tree.

J Cunningham stated that he is here tonight to address placement of a new wall and staircase which will match existing staircase. The terrace area will be a permeable application with 12 x 14 base, and there will be no run off. The grading will match the existing and J Cunningham stated that he would like to keep the wall at around six feet. The septic work meets all setbacks and the pool equipment will be installed at a higher grade. There will be a planted bed area which will retain the slope down to the stone wall. Erosion and sediment control fencing will be placed on top of the stone wall, running along the whole area of the work site.

J Cunningham noted that the hardship associated with this proposal is that this is the only location on the property on which a pool can be situated.

W T Furgueson asked if anyone wished to speak in favor or in opposition to this application.

Kate McSpadden stated her support of this proposal.

There was no further public comment.

There was a letter submitted from CT River Gateway Commission on behalf of this proposal. Gateway stated that after review of the proposal, the Gateway Commission would likely not oppose the granting of required variances for this project as the visual obtrusion of development, and the existing residential structure already exists at the site. An overall increase of visual intrusion is minimal, especially since the expansion is for an at-grade patio and pool. The only visible increase in structure will be the new retaining walls that will be required to support the newly excavated areas where the patio expansion will occur.

Gateway commented on excavation for the expansion of the pool area and installation of the pool noting that the site visits allowed members and staff to note with concern the close proximity of the hillside on top of which the work will occur. Questions were raised with respect for the methodology for the work and whether heavy equipment of any kind will be necessary to perform the excavation work. If so proximity of the work to the stone sea wall would suggest that special measures may be needed in order to prevent damage to the sea wall. The Gateway Commission requests that the project engineer specifically address and assure that the proposed work will not inadvertently destabilize the adjacent slope and sea wall and create a condition where repairs to the sea wall become necessary, especially if those repairs result in the necessity for work to be conducted from the South Cove side of the wall, a project that will likely require state permits.

As related to disposal of pool water and pool water chemical, one of the responsibilities of the Gateway Commission is the protection of the ecology of the lower Connecticut River and to tributaries and marshes. Concerns related to excavation and installation, and disposal of pool water and pool water chemicals were also noted by Gateway.

J Budrow, ZEO, stated that E and S measures will be in place.

J Cunningham stated that there will be No stockpiling on the property and noted that the in-ground pool will be a salt water pool.

The Board had no further comments.

MOTION made by W T Furgueson to close the public hearing **Application No. 21-1** on behalf of Margo Weitekamp, 24 Hemlock Drive, Essex, CT, Assessor's Map 74, Map 19, RU District, requesting variances to sections 40D and 101E of the zoning regulations to locate an 11' x 36' inground swimming pool within the Gateway Buffer Zone at 7:15pm; **SECONDED** by R Rybak; **IN FAVOR:** W T Furgueson, P Schaller, B Sarrantonio, R Rybak, G Wendell; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED** 5-0-0. No Discussion.

- **Application No. 21-2** on behalf of Vin and Joan Falcigno, Jr, 44 North Main Street, Essex, CT, Assessor's Map 27, Lot 65, VR District, requesting variances to sections 40D, 40E, 50D and 60B of the zoning regulations to allow a new house addition to increase the building coverage from 11.1% to 12.5% where 10% is the maximum building coverage allowed.

Seated were W T Furgueson, P Schaller, W Feirer, B Sarrantonio, G Wendell.

The property at 44 North Main Street is .58 acre in size. The property continually rises from the road for a total elevation change of 20 feet. The lot has a single-family dwelling, a detached barn and a shed.

The applicant would like to demolish 400 square feet from the rear of the house and build a larger addition in the same area. There are no setback encroachments. This is an increase in building coverage. The existing building coverage, per the architects' data, is 11.1%. The proposed building coverage is 12.5%. The maximum building coverage allowed is 10%

Hope Proctor, Architect on behalf of the applicant stated that this application proposes to update and to square off the back end of the house, and to cover the hatch to the existing basement. The proposal will maintain the character with the existing house, and maintain the historic aesthetic. H Proctor stated that what is unique to the property is that 30 feet of frontage is owned by the Town but maintained by property owners, at 11.1% in 10% coverage zone. If the right of way is included, it comes out to a total of 9.5% H Proctor stated that the adjacent neighbors to north is at 12.5% and the neighbors to the south is 15% coverage. This proposal is in keeping with the neighborhood. The proposed height of the structure will be lower.

W T Furgueson asked if anyone wished to speak in favor or in opposition to this application.

There was no public comment and there were no letter submitted on behalf of this proposal.

There was no further comment from the Board.

MOTION made by W T Furgueson to close the public hearing on **Application No. 21-2** on behalf of Vin and Joan Falcigno, Jr, 44 North Main Street, Essex, CT, Assessor's Map 27, Lot 65, VR District, requesting variances to sections 40D, 40E, 50D and 60B of the zoning regulations to allow a new house addition to increase the building coverage from 11.1% to 12.5% where 10% is the maximum building coverage allowed at 7:32pm; **SECONDED** by W Feirer; **IN FAVOR:** W T Furgueson, P Schaller, W Feirer, B Sarrantonio, G Wendell; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED** 5-0-0. No Discussion.

- **Application No. 21-3** on behalf of Gary and Diane Arnold, 8 Rachel Lane, Ivoryton, CT, Assessor's Map 86, Lot 5-2, RU District, requesting variances to sections 40C, 40D, 40E, 40I.1 and 61B of the zoning regulations to allow a 12' x 24' carport to be located to a point 27.3 feet from the side property line where 30 feet is required and 26.13 feet from the rear property line where 30 feet is required.

Seated were W T Furgueson, P Schaller, W Feirer, B Sarrantonio, R Rybak.

The property at 8 Rachel Lane is 1.21 acres in size. The property gently slopes away from the road. Each side of the property drops quite a bit from the center area where the house was built. The lot has a single-family dwelling and a shed.

The applicant is proposing a location for a detached 12' x 24' carport just to the right of the house, next to the attached garage. The proposed location minimally encroaches the side setback and the rear setback areas. As proposed, the back-right corner comes to a point 26.13 feet from the rear property line where 30 feet is required, and to a point 27.3 feet from a side property line where 30 feet is required.

Diane Arnold who presented stated that she wishes to place a carport off of the existing 2-car garage. This proposal will encroach on the setback lines, however no way to move the location as the property deeply slopes. The hardship is the topography of the land.

W T Furgueson asked if anyone wished to speak in favor or in opposition to this application. There was no public comment.

There was no further comment from the Board.

There were no letters submitted on behalf of this application.

MOTION made by W T Furgueson to close the public hearing on **Application No. 21-3** on behalf of Gary and Diane Arnold, 8 Rachel Lane, Ivoryton, CT, Assessor's Map 86, Lot 5-2, RU District, requesting variances to sections 40C, 40D, 40E, 40I.1 and 61B of the zoning regulations to allow a 12' x 24' carport to be located to a point 27.3 feet from the side property line where 30 feet is required and 26.13 feet from the rear property line where 30 feet is required at 7:36pm;

SECONDED by W Feirer; **IN FAVOR:** W T Furgueson, P Schaller, W Feirer, B Sarrantonio, R Rybak;

OPPOSED: None; **ABSTAINING:** None; **MOTION CARRIED** 5-0-0. No Discussion.

- **Application No. 21-4** on behalf of Bertie Deming Heiner, 17 Mack Lane, Essex, CT, Assessor's Map 50, Lot 14-1, VR District, requesting variances to sections 40D and 101E of the zoning regulations to allow for a two patios, a swimming pool and accessory pool equipment within the Gateway Buffer Zone.

Seated were W T Furgueson, P Schaller, W Feirer, B Sarrantonio, R Rybak.

The property at 17 Mack Lane is .73 acre in size. Much of the lot is relatively flat. A retaining wall separates the upper area where a house once was located, and a gently sloping lawn that ended at a bulkhead. Earlier in 2019 the house was removed, and the lot was put up for sale as a vacant lot. The former house was very irregular and encroached into each side setback area. A new house is proposed but there are not nonconformities as the submitted site plan shows no setback encroachments.

The applicant is proposing a number of improvements within the Gateway Buffer Zone. An 18' x 50' inground swimming pool with some attached patio area is the largest improvement. To the north is an area for pool equipment. Finally, there is a proposed small patio down by the headwall. The location of all the improvements conform with the zoning regulations except regulation 101E that states that no improvements are allowed within 100 feet of the coastal jurisdiction line (formerly called the mean high tide line).

Joe Wren, P.E. who presented on behalf of the homeowners stated that this proposal is for construction of an L- shape house with an attached garage. The driveway will be a permeable surface. There will be a propane tank, and inground pool, and generator with a screening hedge and there is an existing fence along the property line. There is a patio firepit, and other features. The septic system is on Mack Lane side of the property. The pool is 10 feet higher than the water level and not visible from the CT River. On the plan submitted with the application, there are proposed meadow grass plantings. Gateway initially asked that the slope area down from pool have low ground cover rather than lawn and the applicant prefers lawn. All the areas are still meadow grass with slight depression so that if there is any runoff it will be captured in the three large meadow grass areas for retention and infiltration.

Elizabeth Halley landscape architect stated that the plants will vary in interest through the seasons, using local, hard seed materials, CT stone and blue stone will be utilized for the patio. American Beech which tends to hold its leaves through the winter, will be installed. All the lighting will be subtle and offer privacy from the neighbors, using natural vegetation. The views from the river will be maintained and landscape elements will be low profile. There are proposed, low stepping stones and patio surrounded by meadow grasses. E Halley stated that the plan adds to the character of the neighborhood. The rain garden aspect will be added to include plants to mitigate the water run-off. No synthetic fertilizer will be utilized. The hardscape materials, the stepping stones are all CT granite slabs and the granite steps are all CT granite. The joints planted with permeable planting, ie thyme, etc. with subtle path lighting for safety. None of the lighting will be direct upward toward the sky. Lights along path down to the water shine very low.

J Wren stated that the hardship associated with this proposal is the shape of the lot and the right of way which extends off of the property on the Mack Lane side. J Wren noted that this plan eliminates 2 preexisting nonconformities.

S Rutkowska asked J Wren if there were any structures within the Gateway buffer prior to demolition to which Mr. Wren responded that there were structures within the Gateway buffer; there was a retaining wall that went from the former house across the neighbors property line, down to the water and south to the next property line.

It was noted that this proposal reduces nonconformities in the side yard setbacks.

W T Furgueson asked if anyone wished to speak in favor or in opposition to this application. There was no public comment.

There was no further comment from the Board.

There was one letter from the CT River Gateway Commission submitted on behalf of this application stating no objection to this proposal.

There was one email submitted from 30 Mack Lane, Michael Furgueson, offering his strong support for this proposal.

MOTION made by W T Furgueson to close the public hearing on **Application No. 21-4** on behalf of Bertie Deming Heiner, 17 Mack Lane, Essex, CT, Assessor's Map 50, Lot 14-1, VR District, requesting variances to sections 40D and 101E of the zoning regulations to allow for a two patios, a swimming pool and accessory pool equipment within the Gateway Buffer Zone at 8:14pm; **SECONDED** by W Feirer; **IN FAVOR:** W. T. Furgueson, W Feirer, P Schaller, B Sarrantonio, R Rybak; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED** 5-0-0. No Discussion.

2. Regular Meeting

- **Application No. 21-1** on behalf of Margo Weitekamp, 24 Hemlock Drive, Essex.

Per **ZBA Section 140L Referral**, Robert Doane, P.E., Wetlands Enforcement Agent provided a written review of the submitted site plan and offered a favorable comment, noting that this development will protect the integrity of middle and south cove. Mr. Doane stated that he contacted John Cunningham from TEC Design and discussed the sedimentation erosion control plan and the construction sequence for the proposed activity. In response to their conversation Mr. Cunningham provided a letter describing the construction sequence with a detail of the proposed sedimentation erosion control. R. Doane stated that if the construction sequence is followed, and the erosion control is installed properly, Mr. Doane noted that the function of the wetlands and watercourses will be protected and as such the IWWC endorses this proposal. J Cunningham confirmed with Mr. Doane that there will be a salt water pool with no chemicals stored onsite and no filter backwashing.

- **MOTION** made by B Sarrantonio to approve a Variance for **Application #21-1** on behalf of Margo Weitekamp, 24 Hemlock Drive, Essex, CT, Assessor's Map 74, Map 19, RU District, requesting variances to sections 40D and 101E of the zoning regulations to locate an 11' x 36' inground swimming pool within the Gateway Buffer Zone; The hardship surrounding this application is that the property predates zoning and this proposal addresses a safety issue related to access to the basement. A variance is approved with the following condition; 1) the applicant will follow the direction of the wetlands enforcement agent and the guidance of the CT River Gateway Commission. This proposal is approved in accordance with the plans as submitted; **SECONDED** by R Rybak; **IN FAVOR:** W T Furgueson, P Schaller, B Sarrantonio, G Wendell, R Rybak; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED** 5-0-0. **Discussion:** Approval is conditioned on compliance of IWWC requirements; submission by the applicant of a construction sequence and E & S control measures. No Discussion.
- **Application No. 21-2** on behalf of Vin and Joan Falcigno, Jr, 44 North Main Street, Essex.

MOTION made by W Feirer to approve a Variance for **Application No. 21-2** on behalf of Vin and Joan Falcigno, Jr, 44 North Main Street, Essex, CT, Assessor's Map 27, Lot 65, VR District, requesting variances to sections 40D, 40E, 50D and 60B of the zoning regulations to allow a new house addition to increase the building coverage from 11.1% to 12.5% where 10% is the maximum building coverage allowed. The hardship associated with this application surrounds the re-location of the basement access which is currently situated outside of the home. This proposal is approved in accordance with the plans as submitted; **SECONDED** by B Sarrantonio; **IN FAVOR:** W T Furgueson, P Schaller, W Feirer, B Sarrantonio, G Wendell; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED** 5-0-0. No Discussion.

- **Application No. 21-3** on behalf of Gary and Diane Arnold, 8 Rachel Lane, Ivoryton

MOTION made by W T Furgueson to approve a Variance for **Application No. 21-3** on behalf of Gary and Diane Arnold, 8 Rachel Lane, Ivoryton, CT, Assessor's Map 86, Lot 5-2, RU District, requesting variances to sections 40C, 40D, 40E, 40I.1 and 61B of the zoning regulations to allow a 12' x 24' carport to be located to a point 27.3 feet from the side property line where 30 feet is required and 26.13 feet from the rear property line where 30 feet is required. This application proposes a minimal incursion and the hardship surrounds the topography of the land. This proposal is approved in accordance with the plans as submitted; **SECONDED** by W Feirer; **IN FAVOR:** W. T. Furgueson, W Feirer, P Schaller, B Sarrantonio, R Rybak; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED** 5-0-0. No further discussion. No Discussion.

- **Application No. 21-4** on behalf of Bertie Deming Heiner, 17 Mack Lane, Essex

Per **ZBA Section 140L Referral**, Robert Doane, P.E., Wetlands Enforcement Agent provided a written review of the submitted site plan and offered a favorable comment, noting that he reviewed the site plan and the supporting information in the 4-sheet plan set, and he contacted Joe Wren, P.E. to discuss the proposal. Mr. Wren advised that the proposed meadow grass area will be depressed (rain garden) to accommodate the stormwater runoff quality and quantity. As indicated on the site plan, a silt fence will be installed along the bulkhead. The pool will be a saltwater pool and maintained by a pool water company to reduce onsite chemical storage. Any chemicals stored onsite will be in the basement of the house. Any filter backwash will be directed to the stormwater infiltration system. With proper implementation of the construction sequence and sedimentation and erosion control plan, the function and value of the wetland and watercourses will be protected and as such, the IWWC endorses the proposal.

MOTION made by W Feirer to approve a Variance for **Application No. 21-4** on behalf of Bertie Deming Heiner, 17 Mack Lane, Essex, CT, Assessor's Map 50, Lot 14-1, VR District, requesting variances to sections 40D and 101E of the zoning regulations to allow for a two patios, a swimming pool and accessory pool equipment within the Gateway Buffer Zone. This proposal presents a reduction of nonconformities and provides an addition of vegetation. This variance is approved with the following condition; 1) the applicant will follow the direction of the wetlands enforcement agent and the guidance of the CT River Gateway Commission. This proposal is approved in

accordance with the plans as submitted; **SECONDED** by W T Furgueson; **IN FAVOR:** W. T. Furgueson, W Feirer, P Schaller, B Sarrantonio, R Rybak; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED** 5-0-0. **Discussion:** Approval is conditioned on compliance of IWWC requirements; submission by the applicant of a construction sequence and E & S control measures.

3. New Business

J Budrow reported that he has resigned effective February 1, 2021. Carey Duques has been hired to serve as the Essex Town Planner, Land Use Official, and Wetland Official, with Robert Doane, P.E. assisting as Ms. Duques' field operative. Per **ZBA Section 140L Referral**, Robert Doane, P.E., Wetlands Enforcement Agent provided a written review of the submitted site plan. Mr. Doane J Budrow will work with Ms. Duques through the month of February.

W T Furgueson thanked Joe Budrow for all of his hard work.

4. Old Business

Approval of Minutes – December 15, 2020.

MOTION made by W T Furgueson to approve the December 15, 2020 Minutes as presented; **SECONDED** by B Sarrantonio; **IN FAVOR:** W. T. Furgueson, W Feirer, P Schaller, B Sarrantonio, R Rybak, G Wendell; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED** 6-0-0. No Discussion.

a. **Other**

There was no other business.

5. Correspondence and Invoices

There was no correspondence.

Invoices submitted from Attorney Sylvia Rutkowska.

6. Adjournment

MOTION made by W T Furgueson to adjourn the meeting at 8:31 pm to the next regularly scheduled meeting which will be held on Tuesday, February 16, 2021 at 7:00 p.m., location TBD; **SECONDED** by W Feirer; **IN FAVOR:** W. T. Furgueson, W Feirer, P Schaller, B Sarrantonio, R Rybak, G Wendell; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED** 6-0-0. No Discussion

Respectfully submitted,
Stella A. Caione
Stella A. Caione, Recording Clerk