



TOWN OF ESSEX
Zoning Board of Appeals

Executive Board
W. T. Furgueson, Chair
W Feirer, Vice Chair
Philip J Schaller, Secretary

29 West Avenue • Essex, Connecticut 06426
Telephone (860) 767-4340 • FAX (860) 767-8509

Regular Members
B. Sarrantonio
Philip J Beckman

Alternate Members
George Wendell
Richard Rybak
Susan Feaster

Unapproved

Minutes
December 20, 2022 – Zoning Board of Appeals

Call to Order and Seating of Members

The Essex Zoning Board of Appeals conducted their regularly scheduled meeting on Tuesday, December 20, 2022 at 7:00 p.m. at the Essex Town Hall, Meeting Room A and also public access via online through Zoom. Members in attendance were W T Furgueson, B Sarrantonio, P Schaller, P Beckman, S Feaster and G. Wendell.

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

W T Furgueson welcomed everyone to the Essex Zoning Board of Appeals meeting.

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.

W T Furgueson noted that the order of the agenda items was going to be modified. Item 1 was going to be heard last.

1. Public Hearing

Application No. 22-17 on behalf of **Lawrence C Kaplan and Nora E Groce-Kaplan, 7 Dennison Road, Essex, CT**, Assessor's Map 17 Lot 34, VR District, requesting variances to Sections 40C, 40E, and 60B for a lot line revision resulting in the parcel becoming 0.62 acres from 0.72 acres where 1.3 acres or 60,000 sq ft is required.

Seated for this application, W T Furgueson, B Sarantonio, P Schaller, P Beckman, G Wendell.

This application is for a lot line revision to 7 Denison Road, making that parcel more nonconforming and adding land to the adjacent parcel 13 Dennison Road. The proposed lot line revision would result in the existing lot, which is 0.72 acres, to be decreased to 0.62 acres. The required lot size in the VR zone is 60,000 sq ft or 1.3 acres.

The adjacent property would increase in size from 0.52 acres to 0.62 acres.

Previous variance requests: None.

Lawrence Kaplan who presented on behalf of this application stated that he has owned this property for 30 years, and he noted that a small portion of the property has been utilized by the neighbor. Mr. Kaplan stated that he is looking for approval to give the portion of land to the neighbor at 13 Dennison Road and he stated that there will be no loss to the aesthetics of the applicant's lot. There is no plan to change any of the property features, trees, etc., and that giving this strip of land is done so purely as a good will gesture.

The neighbors have utilized this portion of the applicant's property for the past 16 years. It was suggested that 15 years would qualify as adverse possession, and by deeding that portion to the neighbors, the applicant would avoid any type of a lawsuit surrounding adverse possession. The request for the variance is because Mr. Kaplan's property is becoming smaller and more nonconforming.

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

There were letters submitted on behalf of this application from The CT River Gateway Commission and the Health Department, stating no objection to this proposal.

There were no further comments by the Board.

MOTION by W T Furgueson to close public hearing on **Application No. 22-17** on behalf of **Lawrence C Kaplan and Nora E Groce-Kaplan, 7 Dennison Road, Essex, CT**, Assessor's Map 17

Lot 34, VR District, requesting variances to Sections 40C, 40E, and 60B for a lot line revision resulting in the parcel becoming 0.62 acres from 0.72 acres where 1.3 acres or 60,000 sq ft is required at 7:15 p.m.; **SECONDED** by B Sarrantonio; **IN FAVOR:** W T Furgueson, B Sarantonio, P Schaller, P Beckman, G Wendell; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED** 5-0-0. **Discussion:** No further discussion.

Application No. 22-18 on behalf of Julie Michaelson, **11 Mares Hill Road, Essex, CT**, Assessor's Map 79, Lot 80-1-32, RU District, requesting variances to Sections 40C, 40D, 40E, 40I.1 and 61B for a garage 36'x24'x15.5' high located at 16.6 feet from the rear property line where 30 feet is required.

Seated for this application, W T Furgueson, B Sarantonio, P Schaller, P Beckman, G. Wendell.

Bob Doane, P.E., who presented on behalf of the applicant stated that the property is a 5-acre parcel, and it is a very steep piece of property. There is a buildable area in the back portion of the property near the house and the sanitary system, and the driveway meanders up. The owners would like to install a 16 x 24' garage with 3 doors in the front; one of the bays of the garage will house a 4-wheel-drive tractor with a front-end loader for the purpose of clearing snow off of the owner's 18' driveway. Mr. Doane stated that a B-100a analysis was submitted to the Health Department for a code compliance sanitary system. The garage will be placed in an area that is not a candidate for sanitary system. The topography of the property is the hardship. There will be no impact to the adjoining property to the north.

It was confirmed that there were existing garage bays currently situated on the property and this proposal would create a total 5-bay garage area.

R Doane pointed out that the property is comprised of 5 acres noting that this is the property owners right to enhance the property. Mr. Doane stated that the grade is so steep it presents a danger to navigate up the drive to the house. This proposal would provide storage for the tractor and cars, which would detract from the danger created by the steepness of the driveway.

Previous variance requests: None

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

There were no comments.

There were no letters submitted.

There were no further comments by the Board.

MOTION by W T Furgueson to close public hearing on **Application No. 22-18** on behalf of Julie Michaelson, **11 Mares Hill Road, Essex, CT**, Assessor's Map 79, Lot 80-1-32, RU District, requesting variances to Sections 40C, 40D, 40E, 40I.1 and 61B for a garage 36'x24'x15.5' high located at 16.6 feet from the rear property line where 30 feet is required at 7:39 p.m. **SECONDED** by P Schaller; **IN FAVOR:** W T Furgueson, B Sarantonio, P Schaller, P Beckman, G Wendell; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED** 5-0-0. **Discussion:** No further discussion.

Application No. 22-19 on behalf of Richard A Varrato, **58 Melody Lane, Ivoryton, CT**, Assessor's Map 89 Lot 32, RU District, requesting variances to Sections 40C, 40D, 40I.1, and 50D for a second floor addition to an existing garage located 31 feet from the side property line where 40 feet is required.

Seated for this application, W T Furgueson, B Sarantonio, P Schaller, P Beckman, S Feaster.

This application is to add to an existing structure which is located within the setbacks. The existing garage is 31 feet from the front property line where 40 feet is required. The parcel is located on a corner and therefore has two front setback requirements. This application reflects a request to build out useable space above the existing garage. The footprint of the existing house is not proposed to change. The height of the addition will not exceed the 35-foot height requirement. The parcel is 0.69 acres in size and it is a corner lot, pre-existing non-conforming in its size.

Previous variance requests: None

John Marcum who presented on behalf of this application stated that he is not increasing the land usage, and he is not increasing the size of the garage. The hardship is that this is corner lot which is somewhat unique to the neighborhood.

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

There were no letters presented on behalf of this proposal.

There were no further comments from the Board.

MOTION by W T Furgueson to close public hearing on **Application No. 22-19** on behalf of Richard A Varrato, **58 Melody Lane, Ivoryton, CT**, Assessor's Map 89 Lot 32, RU District, requesting variances to Sections 40C, 40D, 40I.1, and 50D for a second floor addition to an existing garage located 31 feet from the side property line where 40 feet is required, at 7:45 pm. **SECONDED** by P Beckman; **IN FAVOR:** W T Furgueson, B Sarantonio, P Schaller, P Beckman, S Feaster; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED** 5-0-0. **Discussion:** No further discussion.

Application No. 22-16 on behalf of Frank and Dorene Grasso, **1 River Road Essex**, appealing an alleged decision of the Zoning Enforcement Officer (ZEO) relating to variance #22-16 which was granted in 2016 for **5 River Road, Essex, CT**, Assessor's Map 70 Lot 8, RU District.

Seated for this application, W T Furgueson, B Sarantonio, P Schaller, P Beckman, S Feaster.

In the application for the appeal of the Zoning Enforcement Officer's (ZEO) decision, the applicant stated that there was no formal decision presented by the ZEO as to why Variance 16-12 should not have automatically Ceased despite the variance having been in excess of 6 years old. The applicant further stated that it is their belief that they were denied due process before the ZBA during the September and October ZBA hearings with respect to their objections to Variance 22-7. Mr. Grasso confirmed that it is his request that the ZBA reject the ZEO's decision.

Frank Grasso who presented on behalf of this appeal read into the record a letter stating reasons for this appeal.

Attorney Larry Shipman, who represents the Planning and Zoning Commission and the Zoning Enforcement Officer, stated that he is here this evening in the capacity of representing the ZEO. Attorney Shipman stated that the owner of the previously granted variance subject to the property in this appeal, did not act on it, and came back before the Board with an application, which was granted as minor modification. Attorney Shipman stated that a variance runs with the land. The passage of time does not cause a variance to cease. The granted variance continues to be that variance from the time it is recorded on the land records. The modification that was requested was a reduction to the existing variance. Attorney Shipman stated that, procedurally, he is not sure as to what the Grassos are asking Ms. Duques, who was acting in the capacity as the Zoning Enforcement Officer and made an opinion. Attorney Shipman noted that the State law, and case law, indicates that a variance does not cease by inactivity to build something on that variance, and he stated that there were no time conditions placed on the prior variance by the ZBA.

C Duques stated that she provided Mr. Grasso with the informational packet of materials related to this evening's meeting, just prior to the start of the meeting.

Mr. Grasso stated that the opinion made 45 days ago by the ZEO and Attorney Sylvia Rutkowska, legal counsel for the ZBA, should not be valid and that he should be able to obtain an opinion as to whether the variance ceased or did not cease.

Atty Shipman referenced previous Minutes which reflect the ZEO stating that the variance did not cease, and the applicant would be moving forward with a request for a minor modification. Attorney Rutkowska clarified that the Grassos were not prevented from speaking at the previous meeting, rather she advised Mr. Grasso that the only item on the ZBA's previous meeting agenda was a variance request, and not an appeal of any ZEO decision, therefore the ZBA could not hear any such appeal at the previous meeting. Further, neither ZBA or Attorney Rutkowska can instruct the ZEO to make a decision; the ZBA only has jurisdiction to hear an appeal from a decision made by the ZEO. Attorney Rutkowska stated that the opinions stated in prior meetings are not binding and taking them out of context is a dangerous thing, noting that zoning boards do not establish precedents. Attorney Rutkowska clarified for the record, the 2016 variance was granted, in part, on the basis of a reduction of a nonconformity (the elimination of garage), and the garage was in fact eliminated in reliance thereon, which may be considered commencement of construction. Attorney Rutkowska concurred with the legal opinion of Attorney Shipman with respect to the case law.

It was noted that Mr. Grasso is relying on the one-year time limitation statement that is noted in the Town's zoning regulations, and the Board acknowledges the inconsistency related to that section of the regulations and current case law.

Attorney Shipman suggested that after the 1st of the year, Ms. Duques seek to amend section 140J to remove time limitations on variance to build a structure.

Kristine Thomas, owner of the property subject to the appeal, commented on the time constraints with filing an appeal and stated that the Grassos were outside of that time limitation. As such, this appeal process should not be entitled to a vote. A building permit has been issued and construction started.

Attorney Rutkowska asked for clarification on what decision Mr. Grasso is appealing, and the date thereof. Mr. Grasso stated the appeal is derived from the statements made in the September 2022 meeting. Attorney Rutkowska advised that the ZBA only had jurisdiction to hear an appeal if filed within 30 days of the applicable decision and any untimely appeal should be dismissed for lack of jurisdiction. Atty Rutkowska noted that, to the extent that there was a

lack of clarity as to whether or when the decision was made the Board may act and recommended it uphold the ZEO's decision based on the case law.

W T Furgueson asked if anyone wished to speak.

Dorene Grasso stated that she attended the September meeting and was told that she and Mr. Grasso were not allowed to come forward with any further comment. Mrs. Grasso noted that the transcription of the meetings did not capture the meeting in its entirety.

MOTION by W T Furgueson to close public hearing on **Application No. 22-16** on behalf of Frank and Dorene Grasso, **1 River Road Essex**, appealing an alleged decision of the Zoning Enforcement Officer (ZEO) relating to variance #16-12 which was granted in 2016 for **5 River Road, Essex, CT**, Assessor's Map 70 Lot 8, RU District at 8:22 p.m. **SECONDED** by B Sarrantonio; **IN FAVOR:** W T Furgueson, B Sarantonio, P Schaller, P Beckman, G Wendell; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED** 5-0-0. **Discussion:** No further discussion.

Discussion and possible decision on applications:

- **Application No. 22-17** on behalf of **Lawrence C Kaplan and Nora E Groce-Kaplan, 7 Dennison Road, Essex, CT**

After a brief discussion, Commissioners determined that this proposal is a minor modification and a reduction of an encroachment.

MOTION made by B Sarrantonio to grant a variance for **Application No. 22-17** on behalf of **Lawrence C Kaplan and Nora E Groce-Kaplan, 7 Dennison Road, Essex, CT**, Assessor's Map 17 Lot 34, VR District, requesting variances to Sections 40C, 40E, and 60B for a lot line revision resulting in the parcel becoming 0.62 acres from 0.72 acres where 1.3 acres or 60,000 sq ft is required. The hardship associated with this application is that there is a potential title issue and the approval of a variance is consistent to the property. The Application is approved in accordance with the plans as submitted; **SECONDED** by P Beckman; **IN FAVOR:** W T Furgueson, B Sarrantonio, P Schaller, P Beckman, G Wendell; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED** 5-0-0. **Discussion:** No further discussion.

- **Application No. 22-18** on behalf of Julie Michaelson, **11 Mares Hill Road, Essex, CT**

It was noted that this proposal presents a bit of an overbuild and there is a way around this proposal without getting into the setback. It was suggested that the application is not the

minimum necessary to address the hardship. Conversely, it was also noted that there is a hardship surrounding this proposal with regard to the steepness and topography of the land.

It was suggested that this application be denied on the grounds that encroachment into the setback area is not necessary.

MOTION made by G Wendell to deny a variance for **Application No. 22-18** on behalf of Julie Michaelson, **11 Mares Hill Road, Essex, CT**, Assessor's Map 79, Lot 80-1-32, RU District, requesting variances to Sections 40C, 40D, 40E, 40I.1 and 61B for a garage 36'x24'x15.5' high located at 16.6 feet from the rear property line where 30 feet is required.

This application is not the minimum necessary to address the hardship; **SECONDED** by P Beckman; **IN FAVOR:** W T Furgueson, P Schaller, P Beckman, G Wendell; **OPPOSED:** B Sarrantonio; **ABSTAINING:** None; **MOTION CARRIED 4-1-0. Discussion:** No further discussion.

Application No. 22-19 Richard A Varrato, 58 Melody Lane, Ivoryton, CT, on behalf of Robert Marley Brown and Kathleen Bragdon-Brown, **83 North Main Street, Essex**

MOTION made by W T Furgueson to approve a variance application for **Application No. 22-19** on behalf of Richard A Varrato, **58 Melody Lane, Ivoryton, CT**, Assessor's Map 89 Lot 32, RU District, requesting variances to Sections 40C, 40D, 40I.1, and 50D for a second floor addition to an existing garage located 31 feet from the side property line where 40 feet is required.

The hardship associated with this proposal is that this property is situated on a corner lot and the applicant is not expanding the footprint; This proposal is approved in accordance with the plans as submitted; **SECONDED** by P Schaller; **IN FAVOR:** W T Furgueson, B Sarantonio, P Schaller, P Beckman, S Feaster; **ABSTAINING:** None; **MOTION CARRIED 5-0-0. Discussion:** No further discussion.

- **Application No. 22-16** on behalf of Frank and Dorene Grasso, **1 River Road Essex**, appealing an alleged decision of the Zoning Enforcement Officer (ZEO) relating to variance #16-12 which was granted in 2016 for **5 River Road, Essex, CT**, Assessor's Map 70 Lot 8, RU District.

It was noted that the appeal was not filed in a timely manner, and due to lack of jurisdiction, members were in agreement to dismiss the appeal.

MOTION made by W T Furgueson to dismiss the appeal on behalf of **Application No. 22-16** for Frank and Dorene Grasso, **1 River Road Essex**, appealing an alleged decision of the Zoning Enforcement Officer (ZEO) relating to variance #16-12 which was granted in 2016 for **5 River Road, Essex, CT**, Assessor's Map 70 Lot 8, RU District, for lack of jurisdiction due to being untimely; alternatively, to the extent that there is ambiguity or lack of clarity as to the date of

the decision, the Board upholds the ZEO's decision based on case law; **SECONDED** by P Beckman; **IN FAVOR:** W T Furgueson, B Sarrantonio, P Schaller, P Beckman, S Feaster; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED** 5-0-0. **Discussion:** No further discussion.

3. Unfinished Business

Approval of Minutes – November 22, 2022

MOTION made by W T Furgueson to approve the November 22, 2022 Minutes as presented; **SECONDED** by P Beckman; **IN FAVOR:** W T Furgueson, B Sarrantonio, P Beckman, P Schaller; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED** 4-0-0. **Discussion:** No further discussion.

4. New Business –

- Election of officers.

Continued to January 2023 meeting.

- Approval of Meeting Schedule 2023

MOTION made by W T Furgueson to approve the 2023 Zoning Board of Appeals meeting schedule, **SECONDED** by P Schaller; **IN FAVOR:** W T Furgueson, B Sarrantonio, P Schaller, P Beckman; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED** 4-0-0. **Discussion:** No further discussion.

5. Correspondence – There was no correspondence.

6. Adjournment

MOTION made by W T Furgueson to adjourn the meeting at 8:53 pm to the next regularly scheduled meeting which will be held on Tuesday, January 17, 2023 at 7:00 p.m., at the Essex Town Hall and accessible via online. Refer to Town of Essex website for the Zoom link and related information; **SECONDED** by B Sarrantonio; **IN FAVOR:** W T Furgueson, B Sarrantonio, P Schaller, P Beckman; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED** 4-0-0. **Discussion:** No further discussion.

Respectfully submitted,

Stella A Caione, Recording Clerk