



TOWN OF ESSEX
Zoning Board of Appeals

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

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Regular Members
B. Sarrantonio
Philip J Beckman

Alternate Members
George Wendell
Richard Rybak
Susan Feaster

Unapproved

Minutes
December 21, 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, December 21, 2021 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 Feirer, P Schaller, B Sarrantonio, P Beckman, G Wendell, and S Feaster.

Commission members seated were: W T Furgueson, W Feirer, P Beckman, B Sarrantonio, R Rybak, S Feaster and G Wendell.

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

Chairman 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.

2. Public Hearing

Application No. 21-44 on behalf of Gerald Alessandrini, 26 Falls River Drive, Ivoryton, CT, Assessor's Map 36 Lot 13, RUM District, requesting variances to sections 40C, 40D, 40E, 40 I.1, 62B, and 50D, of the zoning regulations to construct a detached 12' X 20' garage to be located 20 feet from the property line where 40 feet is required.

Seated for this application were W T Furgueson, W Feirer, G Wendell, P Beckman, R Rybak. B Sarrantonio recused herself because she is a neighbor.

This application is to construct a detached 12' X 20' garage to be located 20 feet from the property line where 40 feet is required. The lot is 0.62 acres, is nonconforming, and has two front setbacks (Falls River Drive and West Hills Road)

Previous variance requests: ZBA #14-3 to locate a 144 sq ft shed 28 feet from a property line where 40 feet is required- Granted. Please note that based on today's zoning regulations this shed would be permitted as of right at the described location.

Applicant stated that there is currently no garage on the property and several months ago his vehicle sustained major damage due to a windstorm. The architectural design of the proposed garage is in keeping with the house and the neighborhood.

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

B Sarrantonio, as a resident, stated she had no objection to this proposal.

There was no further public comment and no further comment from the Board.

MOTION made by P Beckman to close the public hearing on **Application No. 21-44** on behalf of Gerald Alessandrini, 26 Falls River Drive, Ivoryton, CT, Assessor's Map 36 Lot 13, RUM District, requesting variances to sections 40C, 40D, 40E, 40 I.1, 62B, and 50D, of the zoning regulations to construct a detached 12' X 20' garage to be located 20 feet from the property line where 40 feet is required at 7:10p.m.; **SECONDED** by W Feirer; **IN FAVOR:** W T Furgueson, W Feirer, G Wendell, P Beckman, R Rybak; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED** 5-0-0.
Discussion: No further discussion.

Application No. 21-45 on behalf of Arthur James Pascoots, 30 Saybrook Road, Essex, CT, Assessor's Map 46 Lot 82-1, RU District, requesting variances to sections 40C, 40D, 40E, 40 I.1, 61B, and 50D, of the zoning regulations to construct a 8' X 12' pergola to be located 28 feet from the property line where 40 feet is required.

Seated for this application were B Sarrantonio, W Feirer, W. T Furgueson, P Beckman, R Rybak

This application is to construct a 8' X 8' pergola to be attached to the existing building to be located 28 feet from the property line where 40 feet is required.

The house is pre-existing non-conforming and was built in 1856. The lot is 1.04 acres and is non-conforming (min lot size in RU is 80,000 sq ft or 1.8 acres).

Previous variance requests: ZBA #14-3 to locate a 144 sq ft shed 28 feet from a property line where 40 feet is required- Granted. Please note that based on today's zoning regulations this shed would be permitted as of right at the described location.

Arthur Pascoots who presented on behalf of this proposal stated that there is no other location for the pergola to be situated. The existing house is in violation of zoning and this is the only reasonable place to put the pergola. The pergola will be installed on an existing stone patio.

Attorney Rutkowska noted for the record that the application states that the structure is 8 x 12' and in fact the structure will be 8 x 8'.

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

A letter from the CT River Gateway Commission received on behalf of this application stating no objection to the proposed addition.

There was no further public comment and no further comment from the Board.

MOTION made by P Beckman to close the public hearing on **Application No. 21-45** on behalf of Arthur James Pascoots, 30 Saybrook Road, Essex, CT, Assessor's Map 46 Lot 82-1, RU District, requesting variances to sections 40C, 40D, 40E, 40 I.1, 61B, and 50D, of the zoning regulations to construct a 8' X 12' pergola to be located 28 feet from the property line where 40 feet is required at 7:20p.m.; **SECONDED** by R Ryak; **IN FAVOR:** B Sarrantonio, W Feirer, W. T Furgueson, P Beckman, R Rybak; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED** 5-0-0. **Discussion:** No further discussion.

Application No. 21-46 on behalf of Essex House, LLC, 63 South Main Street, Essex, CT, Assessor's Map 46 Lot 33, RU District, requesting modification of variances granted on December 4, 2001 and February 4, 2005 to allow no more than eight overnight clients.

Seated for this application were W Feirer, P Schaller, P Beckman, B Sarrantonio, S Feaster.

This application is to change a public spa, wellness center and apartments to private suites for wellness center clients. The request is to modify the variances granted on December 4, 2001 and February 4, 2005 to allow no more than 8 overnight guests.

The Zoning Enforcement Officer has noted that she does not believe a variance is the correct permit for the proposed use. Under Section 140G.2 the ZBA's purpose is to vary the regulations, in this case there is no need to vary the regulations. Based on the proposed use by the applicant, the zoning regulations allow for this use with the granting of a special exception.

Attorney Terrance Lomme presented on behalf of this application. Attorney Lomme provided background on the size of the property for which the lot size is 2.79 acres. There are currently three structures on the property; main building 7,704 s.f.; three apartments and garage 1,324

s.f., and the brick ranch 1,780 s.f. Attorney Lomme stated that there has been a substantial change in circumstances surrounding the previously granted variances. Attorney Lomme stated that the history of use includes the initial use as a convalescent home which housed 30 residents, plus the apartments. In 1966 the brick wing was added on the road-side to increase the population to 45 residents, plus the apartment and ranch house. In 1997 a variance was issued to change the use to Kiddie Kampus day care center. In 2001 a variance was granted to Authentica Day Spa and Wellness Center. In 2014 saunas and steam rooms were added. Attorney Lomme noted that the sauna/steam room did not require a variance but was an addition to the prior uses. Attorney Lomme stated that the proposed use is to utilize the main building for no more than eight residential suites, plus use the existing brick ranch house. There will be no public access to the apartment building.

Attorney Lomme stated that he is seeking a modification of existing variances to change from public spa and wellness to private, and to allow no more than 8 suites in the main building and occupancy of the brick ranch house. The apartment/garage which is nonconforming as it is situated in the sideline, will be removed to make the property less nonconforming. Attorney Lomme stated that the clientele will typically not have cars so there will be significantly less traffic, and he noted that the clientele will be offsite during the weekdays, sometime between 9:00am to 5:00 p.m. (to be determined), creating less activity in the neighborhood.

Attorney Lomme stated that guests, some of whom will be treated at the spa for burn-out and stress, and looking for off-campus, in-town lodging, for which transportation will be offered to and from the spa. On the weekends the services of an in-house chef will be offered. Attorney Lomme stated that there will be no treatment for drug or alcohol addiction, there will not be drug or alcohol dependent clientele, and this location will be utilized strictly for residential purposes. Attorney Lomme noted that if it is the Board's preference, the applicant can offer a condition that there will be no treatment at the facility. The clientele will not pay a room rental fee, per se. The lodging will be just one aspect of the offerings. The average stay in conjunction with the wellness center will be about four weeks at a cost of about \$160,000.

Attorney Lomme stated that because this is a modification of a variance, a hardship is not necessary and he noted that this property would also be less nonconforming if the applicant takes down the garage. The residences will all be situated in the main building, and the rooms on the second floor remain intact from a previous time.

C Duques stated that the proposed use does fit into the regulations. C Duques noted that anything allowed in VR Zone is allowed in RU Zone, as per the Special Principal Use, Section D, of the zoning regulations. C Duques stated that this proposed use should go to Planning and Zoning for a Special Exception. P&Z can apply special conditions, if they see fit, i.e., traffic, parking, lighting, etc. C Duques noted that this is more than just a modification as there has been a change of ownership, and a change to overnight. C Duques stated that the benefit of bringing this proposal before the Planning and Zoning Commission is that they will address specific conditions moving forward. C Duques suggested tabling this proposal pending a Planning and Zoning decision.

Attorney Rutkowska stated that per Section 60a.2 of the zoning regulations, convalescent homes are also included, which is consistent with Attorney Lomme's interpretation to

convalesce. Attorney Rutkowska noted that the applicant went before the Zoning Commission in an informal meeting and the Zoning Commission did agree with Attorney Lomme's interpretation. Regarding modification of existing variance; the word modification is used in different context. Attorney Rutkowska noted that a modification can be insignificant, however, consider whether there has been a material change. In this case we are talking about an actual condition as stated in the variance. Therefore, case law is clear that modification/change in existing condition in variance, is allowed however does require a variance. The reduction of a nonconformity is a legitimate terminology in the granting of a variance. A reduction of nonconformity are with regard to bulk standards. Attorney Rutkowska suggested that the Board may want to continue this matter until such time that the Planning and Zoning Commission has had an opportunity to review. Attorney Rutkowska noted, as related to material change in circumstance, at the time of the granting of the application has the circumstances changed. Attorney Rutkowska noted that a consideration is, were the facts and circumstances in effect at the time of the original decision.

Attorney Lomme stated that if there were no variance on the property, he might be in agreement with Ms. Duques argument. However, only the ZBA has the authority to modify a previous variance decision.

Attorney Rutkowska stated that the fact that there is an existing variance, legally entitles the property owner to that variance. The Zoning Commission cannot modify the variance, however they can make it moot or not necessary.

Attorney Lomme clarified that it would require a change in regulation to make a variance moot or not necessary.

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

A letter from the CT River Gateway Commission received on behalf of this application stating no opposition and a letter from Paul Greenberg, Mack Lane, requesting additional screening.

Attorney Rutkowska noted that the Zoning Commission can file an appeal against the ZBA.

There was no further public comment and no further comment from the Board.

MOTION made by W T Furgueson to close the public hearing **Application No. 21-46** on behalf of Essex House, LLC, 63 South Main Street, Essex, CT, Assessor's Map 46 Lot 33, RU District, requesting modification of variances granted on December 4, 2001 and February 4, 2005 to allow no more than eight overnight clients at 8:26p.m.; **SECONDED** by B Sarrantonio; **IN FAVOR:** W T Furgueson, B Sarrantonio, W Feirer, P Beckman, S Feaster; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED** 5-0-0. **Discussion:** No further discussion.

2. Regular Meeting

- **Application No. 21-44** on behalf of Gerald Alessandrini, 26 Falls River Drive, Ivoryton, CT, Assessor's Map 36 Lot 13, RUM District.

MOTION made by W T Furgueson to approve issuance of a variance for **Application No. 21-44** on behalf of Gerald Alessandrini, 26 Falls River Drive, Ivoryton, CT, Assessor's Map 36 Lot 13, RUM District, requesting variances to sections 40C, 40D, 40E, 40 I.1, 62B, and 50D, of the zoning regulations to construct a detached 12' X 20' garage to be located 20 feet from the property line where 40 feet is required. The hardship associated with this proposal is the lot is the topography of the land and the property predates zoning. This proposal is approved in accordance with plans as submitted; **SECONDED** by R Rybak; **IN FAVOR:** W T Furgueson, W Feirer, G Wendell, P Beckman, R Rybak; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED 5-0-0. Discussion:** No further discussion.

- **Application No. 21-45** on behalf of Arthur James Pascoots, 30 Saybrook Road, Essex, CT, Assessor's Map 46 Lot 82-1, RU District.

MOTION made by P Beckman to approve issuance of a variance for **Application No. 21-45** on behalf of Arthur James Pascoots, 30 Saybrook Road, Essex, CT, Assessor's Map 46 Lot 82-1, RU District, requesting variances to sections 40C, 40D, 40E, 40 I.1, 61B, and 50D, of the zoning regulations to construct a 8' X 8' pergola not to exceed 10 feet in height, to be located 28 feet from the property line where 40 feet is required. The hardship associated with this proposal is the nonconforming lot preexists zoning. This proposal is approved in accordance with plans as submitted; **SECONDED** by G Wendell; **IN FAVOR:** B Sarrantonio, W Feirer, W. T Furgueson, P Beckman, R Rybak; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED 5-0-0. Discussion:** No further discussion.

Application No. 21-46 on behalf of Essex House, LLC, 63 South Main Street, Essex, CT, Assessor's Map 46 Lot 33, RU District.

MOTION made by P Beckman to re-open the public hearing for the purpose of continuing **Application No. 21-46** on behalf of Essex House, LLC, 63 South Main Street, Essex, CT, Assessor's Map 46 Lot 33, RU District, requesting modification of variances granted on December 4, 2001 and February 4, 2005 to allow no more than eight overnight clients; **SECONDED** by W Feirer; **IN FAVOR:** W T Furgueson, B Sarrantonio, W Feirer, P Beckman, S Feaster; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED 5-0-0. Discussion:** No further discussion.

MOTION made by W Feirer to continue to January 18, 2022 **Application No. 21-46** on behalf of Essex House, LLC, 63 South Main Street, Essex, CT, Assessor's Map 46 Lot 33, RU District, requesting modification of variances granted on December 4, 2001 and February 4, 2005 to allow no more than eight overnight clients; **SECONDED** by W T Furgueson; **IN FAVOR:** W T Furgueson, B Sarrantonio, W Feirer, P Beckman, S Feaster; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED 5-0-0. Discussion:** No further discussion.

3. **Old Business**

Approval of Minutes – November 26, 2021

MOTION made by W Feirer to approve the November 26, 2021 Minutes with amendments; 1) Page 2, second paragraph change verbiage from *sections* to *divided*; 2) Change of verbiage to: *Applicant requests a reduction of the setback due to the topography of the land*; 3) Page 1, include G Wendell as seated member; **SECONDED** by W T Furgueson; **IN FAVOR:** B Sarrantonio, P Beckman, W Feirer, W T Furgueson G Wendell; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED** 5-0-0. **Discussion:** No further discussion.

4. New Business

- Election of Officers

MOTION made by R Rybak to endorse reelection of the current slate of officers; **SECONDED** by P Beckman; **IN FAVOR:** B Sarrantonio, P Beckman, S Feaster, R Rybak G Wendell; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED** 5-0-0. **Discussion:** No further discussion.

- Approval of Meeting Schedule 2022

MOTION made by W T Furgueson to approve the 2022 meeting schedule as presented; **SECONDED** by R Rybak; **IN FAVOR:** W T Furgueson, B Sarrantonio, S Feaster, P Beckman, W Feirer, R Rybak, G Wendell; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED** 7-0-0. **Discussion:** No further discussion.

- Discussion regarding updating ZBA Variance Application

Members will review the proposed changes to the Variance Application and provide comments at the January 2022 meeting.

- Report from ZEO- regarding procedures as relating to CGS Section 14-55
Continued discussion.

5. Correspondence

There was no correspondence and there were no invoices.

6. Adjournment

MOTION made by W T Furgueson to adjourn the meeting at 8:49 pm to the next regularly scheduled meeting which will be held on Tuesday, January 18, 2022 at 7:00 p.m., at the Essex Town Hall, in Meeting Room A, and accessible via online. Refer to Town of Essex website for the Zoom link and related information; **SECONDED** by S Feaster; **IN FAVOR:** W T Furgueson, B Sarrantonio, S Feaster, P Beckman, W Feirer, R Rybak, G Wendell; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED** 7-0-0. **Discussion:** No further discussion.

Respectfully submitted, Stella A Caione