



TOWN OF ESSEX
Zoning Board of Appeals

Executive Board
W. T. Fergusson, 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
January 16, 2024 – Zoning Board of Appeals

Call to Order and Seating of Members

The Essex Zoning Board of Appeals conducted its regularly scheduled meeting on Tuesday, January 16, 2024 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 Fergusson, B Sarrantonio, P Schaller, P Beckman, R Rybak (via zoom), and G Wendell.

Staff present: Carey Duques, Zoning Enforcement Officer and acting Recording Clerk and David Royston, ZBA Legal Counsel, via Zoom.

W T Fergusson, Chair, opened this evening's 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.

1. Public Hearing

Application No. 23-21 on behalf of Marc J. and Laura L. Loew, **20 North Main Street** Essex, CT, Assessor's Map 31 Lot 39, VR District, requesting variances of Sections 40D, 40E, and 60B for a pergola over an existing deck.

Seated for this application: W T Fergusson, W Feirer, P Schaller, B Sarrantonio, P Beckman.

Attorney Terry Lomme presented on behalf of the applicants. He stated on the record that he has asked for Application 23-21 requesting a variance to be heard first before the appeal of the ZEO's decision Application 23-22. The reason for the request is if the variance is granted than the appeal will not have to be heard.

Attorney Lomme described the location of the property, size of 0.24 acres, and the existing house was constructed around 1850. The topography of the lot slopes down from back to the front.

This application is to request variances for a pergola constructed over an existing deck and detached from the main building. A variance had been applied for in June 2023 which covered the entire deck. The pergola has been modified and does not extend over the entire deck. Instead it meets the requirement of a detached structure being five feet from the side property line, detached, and under 15 feet in height.

The property has been surveyed since the June 2023 meeting ensuring that the location meets regulations and that the pergola would not encroach into side setbacks.

Attorney Lomme noted a pergola that was approved at 26 South Main Street Essex within the side setbacks.

The pergola has been disconnected from the house but remains connected to the deck. There was discussion about whether the deck is connected to the house. Mark Loew, property owner, stated that the deck is not attached to the house.

W Feirer discussed the order of events that have occurred to date; variance applied for in June which was denied, letter sent by ZEO to remove the structure, zoning permit for modified pergola, variance and appeal of ZEO decision.

W Feirer had concerns about the activities to date that have been conducted without benefit of permits.

An updated survey was provided by M Loew and the updated parcel size was discussed as it relates to the existing updated coverage calculations.

P Beckman asked which regulation is requested to be varied.

Attorney Lomme explained that the request is to address the concern of the zoning officer which related to building on a non-conforming structure. He noted that the existing deck was built without benefit of permits but since it was built in 2015 and more than 3 years have passed it is protected by CT General Statute 8-13a. Because the pergola is being proposed over the deck coverage is not an issue because the coverage already exists and cannot be counted.

There was discussion about the zoning permit that was filed for the pergola over the deck and whether that activity requires a variance. The appeal of the ZEOs decision is also on the agenda but will be discussed next if necessary.

W Ferier asked about the contention of the coverage calculation.

C Duques discussed her process of reviewing zoning permit applications and stated that she acknowledges that the coverage calculation is what it is because the deck has been in existence for

more than three years, despite not having permits. She stated that her issue is that the addition of the pergola is an expansion of a non-conformity.

Attorney Lomme stated that the use is staying the same and therefore is not an expansion of a non-conformity.

P Schaller asked about reducing the size of the deck by having it be 5 feet from the property line.

W Feirer asked what the hardship is.

Attorney Lomme said the size of the lot, configuration, and topography limits where the pergola can be located. The deck is already in location and should be able to be used.

W Feirer asked what the purpose of the pergola is.

Attorney Lomme explained the purpose of the pergola is for more outdoor use of the space.

M Loew stated that the hardship is also that the lot is non-conforming now but had not always been non-conforming. The deck was in place when he purchased the property in 2018. He is looking for enjoyment of his property.

Attorney Lomme discussed the possibility of reducing the deck's size and cutting it back from the side property line but mentioned issues due to the approach to the deck being reduced in size.

The Gateway Commission has reviewed the application, and it does not oppose the proposed work.

C Duques noted letter from the Cornell's opposing the variance and Attorney Lomme Letters provided copies of three letters in favor of the pergola.

P Beckman discussed the notion of the expansion of non-conforming structures that exceed coverage and if a decision on this application is setting a precedent going forward.

Attorney Lomme represented that the variance requested is for expansion of a non-conformity but not requesting an increase in coverage.

W T Fergusson asked if anyone wished to speak in favor or in opposition to this application;

Melanie Karr spoke in favor of the application.

Mary Smith spoke in favor of the application.

W T Fergusson read the letter of opposition from Robert and Susan Cornell.

Attorney Lomme addressed the question of coverage and the clarified lot size with the updated survey.

MOTION by W T Furgueson to close the public hearing on **Application No. 23-21** on behalf of Marc J. and Laura L. Loew, **20 North Main Street** Essex, CT, Assessor's Map 31 Lot 39, VR District, requesting variances of Sections 40D, 40E, and 60B for a pergola over an existing deck; **SECONDED** by B Sarrantonio; **IN FAVOR**; W T Furgueson, W. Feirer, P Schaller, B Sarrantonio, P Beckman; **OPPOSED**: None; **ABSTAINING**: None; **MOTION CARRIED** 5-0-0. **Discussion**: No further discussion.

Regular Meeting

Discussion and possible decision on applications:

- **Application No. 23-21** on behalf of Marc J. and Laura L. Loew, **20 North Main Street** Essex

B Sarrantonio discussed reasoning and rationale presented with the variance request.

P Beckman asked about the need for a variance and if the proposed work is even an expansion of a non-conformity.

W Feirer believes the proposed project is an expansion of a nonconformity.

P Schaller believes this is an opportunity to make a nonconformity more conforming.

WT Furgueson discussed the expansion of a nonconformity and the placement of the pergola on the deck and is most comfortable with the proposal when the regulations are met for setbacks, etc.

MOTION by P Beckman to approve the application on **Application No. 23-21** on behalf of Marc J. and Laura L. Loew, **20 North Main Street** Essex, CT, Assessor's Map 31 Lot 39, VR District, requesting variances of Sections 40D, 40E, and 60B for a pergola over an existing deck; expansion of a nonconformity. The hardship associated with this proposal is the lot pre-exists zoning, the deck pre-exists the current owners and the gradient of land slopes limiting the location of a pergola; This proposal is approved in accordance with the plans as submitted; **SECONDED** by B Sarrantonio; **IN FAVOR**; W T Furgueson, B Sarrantonio, P Beckman; **OPPOSED**: W. Feirer, P Schaller; **ABSTAINING**: None; **MOTION DOES NOT CARRY** 3-2-0. **Discussion**: No further discussion.

Public Hearing

Application No. 23-22 on behalf of Marc J. and Laura L. Loew, **20 North Main Street** Essex, CT, Assessor's Map 31 Lot 39, VR District, appealing the decision of the ZEO which denied a zoning permit for a pergola over an existing deck.

Seated for this application: W T Furgueson, W Feirer, B Sarrantonio, P Schaller, P Beckman.

Attorney Terry Lomme, presenting on behalf of the property owner. He stated that the reason given by the ZEO for the denial is coverage, as stated in the November 27, 2023 letter, which is a non-issue since the deck was built more than three years ago as discussed earlier in the evening. He notes the reference to Section 50D in the letter as well but said it is precatory language. Attorney Lomme presented that the pergola is smaller than the deck and would conform with the accessory building regulation, less than 15 feet tall, more than 5 feet from the side property line, and is less than 200 sq ft in area.

Carey Duques, Zoning Enforcement Official reviewed the timeline and the zoning permit that was submitted to her for a detached accessory structure. She concurred that the structure would meet height, setback and square footage requirements for the detached accessory structure. Duques noted that the concern is with the expansion of a nonconformity as stated in Section 50 C. 2 and 50D and the Preamble Section 10 regarding nonconformities. Which lead her to her decision to deny the zoning permit application.

Attorney Lomme represented that the letter is all the ZBA has to go on; prominently the coverage issue is noted as her reason for the denial and needs to be the focus of the Board. He also noted that the addition of the pergola conforms to the zoning regulations. He stated this is not really an expansion.

P Beckman references that the regulations state that expansions shall be in conformity with the regulations, which is being proposed.

C Duques read from the zoning regulations and the expansion and expansion and questions how the expansion is allowed relating to coverage.

B Sarrantonio also read from the regulations regarding extensions and expansions.

D Royston discussed the Doyen case vs. Essex ZBA, ultimately deciding that the court cannot substitute its judgment if the ZEO is using rational judgement. He suggested that you may want to determine if her interpretation is a valid or has a basis and makes sense. He asked the Board if they would consider a vertical addition as an expansion.

Attorney Lomme discussed the differences between the two cases, Doyen and this application.

C Duques discussed her interpretation about the expansion of a nonconformity and the possibility of the possible future enclosure of the pergola.

There was discussion about what the ZBA's action is to be- approve, deny, or approve with conditions.

Attorney Royston stated that if there is an overruling of the decision, he did not believe that conditions can be applied limiting the enclosure of the pergola. He believed that the ZBA could state that its reason for overturning the ruling could be that the pergola is not considered a roofed structure.

R Rybak asked about the proposed location of the pergola.

Attorney Lomme clarified that the proposed location is to have it five feet from the property line. He also stated that the pergola would be conforming.

There was discussion about the deck and if it is attached to the house and if there is a concrete pad beneath it.

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

John Sanberg suggested fining the Loews \$100 for not getting a permit but grant the variance.

Letter of opposition was read by C Duques from Robert and Susan Cornell.

Attorney Lomme responded saying that coverage should not be counted and also noted that the pergola is not very visible from other locations. He also said it is in keeping with the character of the village.

MOTION by W.T. Furgueson to close the public hearing on **Application No. 23-22** on behalf of Marc J. and Laura L. Loew, **20 North Main Street** Essex, CT, Assessor's Map 31 Lot 39, VR District, appealing the decision of the ZEO which denied a zoning permit for a pergola over an existing deck; **SECONDED** by W Feirer; **IN FAVOR** W T Furgueson, W Feirer, P Schaller, B Sarrantonio, P Beckman;; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED** 5-0-0. **Discussion:** No further discussion.

Regular Meeting

Discussion and possible decision on **Application No. 23-22** on behalf of Marc J. and Laura L. Loew, **20 North Main Street** Essex, CT

B Sarrantonio stated that she does not see issue with C Duques logic.

P Beckman asked D Royston for clarification on the basis that he needs to use when making a decision.

D Royston stated that the court says you cannot substitute your own judgement as to what is the better interpretation of the regulation. The test is if the Land Use Official uses reasonable judgement. If the board members believes that the Land Use Official is wrong then the decision can be over turned.

P Beckman believes that the applicant is bending over backwards.

There was discussion about the option of reopening the variance.

MOTION by P Schaller to deny **Application No. 23-22** on behalf of Marc J. and Laura L. Loew, **20 North Main Street** Essex, CT, Assessor's Map 31 Lot 39, VR District, appealing the decision of the ZEO which denied a zoning permit for a pergola over an existing deck based on the Zoning Officers findings; **SECONDED** by B Sarrantonio; **IN FAVOR** W T Furgueson, W Feirer, P Schaller, B Sarrantonio, P Beckman; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED** 5-0-0. **Discussion:** No further discussion.

3. Old Business

- Approval of Minutes – December 19, 2023

MOTION made by W T Furgueson to approve the December 19, 2023, Minutes as presented **SECONDED** by B Sarrantonio; **IN FAVOR:** W T Furgueson, P Schaller, B Sarrantonio, P Beckman, G Wendell; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED 5-0-0.**

4. **New Business** – No new Business

5. **Correspondence** – There was no correspondence.

6. **Adjournment**

MOTION made by P Schaller to adjourn the meeting at 9:00 pm to the next regularly scheduled meeting which will be held on Tuesday, February 20, 2024 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 P Beckman; **IN FAVOR:** W T Furgueson, P Schaller, B Sarrantonio, P Beckman, G Wendell; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED 5-0-0.**

Respectfully submitted,

Carey Duques, Substitute Recording Clerk