



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**  
**October 17, 2023 – Zoning Board of Appeals**

**Call to Order and Seating of Members**

The Essex Zoning Board of Appeals conducted their regularly scheduled meeting on Tuesday, October 17, 2023 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, W Feirer, P Schaller, P Beckman, S Feaster, R Rybak, G Wendell.

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

W T Furgueson, 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. 23-14** on behalf of Emme L. Deland, **17 West Avenue** Essex, CT, Assessor's Map 32 Lot 34, VR District, requesting variances of Sections 40C, 40D, 40I.1, 50D, and 60B for an addition to an existing house expanding the footprint by 12 ft, resulting in 29 sq ft in the setback, having a side setback of 22 ft 4 inches where 25 ft is required. **Continued to November 21, 2023 meeting, at the request of the applicant.**
- **Application No. 23-15** on behalf of Audrey Weber, **15 Maple Avenue** Essex, CT, Assessor's Map 17 Lot 22, VR District, requesting variances of Sections 40D, 40E and 60B

for first floor handicap accessible bedroom and bathroom addition resulting in a coverage of 10.8% where 10% is allowed.

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

This application requests a variance for addition to an existing house to expand the first floor to include a handicap accessible bedroom and bathroom. The expanded footprint would result in the total building coverage equaling 10.8%, where 10% is allowed.

The property is 0.46 acres and contains a single-family home that was built in 1938.

Gateway has provided comments and does not object to the variance request.

Previous variance requests: Application #16-4, approved an application to construct an open porch to be 23.5 ft from property line where 25 ft is required.

Mr. Weber, Jr., who presented on behalf of the applicant, stated that the hardship associated with this application is to create, in advance of anticipated disability, an ADA compliant installation of a first floor, handicap accessible bathroom.

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

Letter from CT River Gateway Commission noting no opposition to this application.

There was no further comment from the Board.

**MOTION** by W T Furgueson to close the public hearing on **Application No. 23-15** on behalf of Audrey Weber, **15 Maple Avenue** Essex, CT, Assessor's Map 17 Lot 22, VR District, requesting variances of Sections 40D, 40E and 60B for first floor handicap accessible bedroom and bathroom addition resulting in a coverage of 10.8% where 10% is allowed, at 7:09 pm; **SECONDED** by P Beckman; **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.

- **Application No. 23-16** on behalf of William C Bowers and Joanne Kennedy, **15 Novelty Lane** Essex, CT, Assessor's Map 50 Lot 5, WF District, requesting variances of Sections 40D, 40E, 101E, and 50D for the installation of a permeable bluestone patio and installation of a 13' X 7' pool/spa to be located within 100 feet of the coastal jurisdiction line and the Gateway Buffer Area.

This application requests a variance for improvements including a 13' X 7' inground pool/spa and permeable bluestone patio within 100 feet of the coastal jurisdiction line.

The property is 0.71 acres and contains a single-family home that was built in 1935.

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

W T Furgueson opened the public hearing on Application 23-16.

Nate Misbach of Lions Creek Outdoor, a design and build firm of luxury outdoor living spaces, stated that this proposal is for installation of a permeable blue stone patio and a pool/spa. Nate has met with the CT River Gateway Commission, whom he noted, has approved this proposal with conditions.

N Misbach stated that the hardship surrounding this proposal is within the zoning regulations – this property has been of residential use since 1957, however it is zoned as Business Waterfront. Nate stated that if this was zoned residential, he would still be before the Board because this property is within 100 feet of the coastal jurisdiction line and the Gateway Buffer Area.

Attorney Royston stated that the subject property is in the Waterfront Business District, and in 2007 zoning eliminated residences as being a permitted use in that district, which makes the residence nonconforming. Attorney Royston stated that he is of the opinion that this application does not need a variance for an expansion of a nonconforming use, because the patio is adjacent to the structure.

Attorney Royston noted that the hardship surrounding this application is that the entire lot is located within the 100-foot coastal jurisdiction line and the Gateway Buffer Area, which prohibits improvements. There is no place on this lot to place such an improvement related to the residential use. The Gateway Commission made a determination as to whether this proposal is consistent with the Plan of Conservation and Development. Attorney Royston suggested that the Board determine if the relief is consistent with the purpose and intent of the zoning regulations, and Attorney Royston noted that the Board is not bound by the opinion made by Gateway. If the Board decides this proposal is detrimental to the Gateway standards, they have the authority to deny the variance.

A letter dated October 5, 2023, was submitted from the CT River Gateway Commission (CRGC).

The proposal subject to this application was discussed by Gateway at their September 28, 2023 Commission meeting. The Gateway Commission determined that although building within the 100-foot setback is not in keeping with one of its key standards, the proposed project is a unique situation and contains counterbalancing and offsetting features causing no cumulative negative effect on the natural and traditional riverway scene on the Connecticut River or on the values for which the Commission was formed. Because of its location, design and topography, the proposed project will not be visible from the water and does not change the character or view of the waterfront. The spa and patio will be constructed at or below grade level and will not require fencing making the project invisible from the water. Unlike other nearby sites, this location is not part of the surviving historic Essex waterfront. The site is built on landfill that was part of an industrial waterfront expansion and has no natural riparian interface with the Connecticut River or Middle Cove. The CRGC requested the ZBA apply the following conditions if an approval is granted:

- The pool, patio and equipment are flush with the natural grade of the property.
- The small patio is of permeable construction allowing natural drainage into the soil.
- The pool and patio have no lighting except in the pool as described by the agent.
- The owner will offset the new construction by installing an equivalent area of native vegetation to provide an additional environmental buffer in place of some of the manicured mono-culture lawn

that exists on the property today. With the requested ZBA conditions, the project does no harm to the natural and traditional riverway scene of the Connecticut River.

October 17, 2023 email transmission from Paul Riggio, Essex Harbormaster, on behalf of the Harbor Management Commission (HMC) expressing concerns related to former use of this site which was an oil tank farm. Mr. Riggio stated in his email that when the test holes were dug for the septic replacement, an oil slick appeared in Middle Cove. The HMC has requested that an oil boom plan be submitted to the Essex Harbor Management Commission for approval that would show protection of the entire western property line, and Mr. Riggio asked that this plan and the implementation of this plan would be made part of the Board's approval.

Mr. Riggio noted that because this project will mostly have contaminated soil, requiring off-site removal, the HMC requests the requirement be in place for soil testing to the disturbed area, to be conducted by a licensed environmental company, prior to any approvals, and further requested that those results are to be submitted to the Essex Harbor Management Commission for their approval.

If contaminated soils are discovered from the testing, the HMC requires a removal and disposal plan prepared by a licensed environmental company and submitted to the Essex HMC for their approval.

Mr. Riggio confirmed that this application includes a permeable bluestone patio, and the HMC requests a detailed plan for review and approval, showing cross-sections of the drainage system below the patio, as well as how it would drain.

N Misbach indicated that this is the first time he was made aware of the correspondence submitted from P Riggio/HMC and he would like the opportunity to review the letter and statements made therein.

Attorney Royston suggested that the Board consider a continuance of this hearing, which would offer the applicant the opportunity to consult with the Harbormaster and Essex HMC, and then come back to the ZBA with a solution.

At this time, Paul Riggio joined the meeting via Zoom platform.

N Misbach questioned if when the septic was installed, were there large portions of soil stockpiled and left exposed.

P Riggio stated that this was not the case, however, when they started drilling for test holes there was a slick across the cove. P Riggio reiterated, the HMC requests an oil boom along western perimeter of the property. This was previously an oil tank farm so when test holes were being drilled, an oil slick showed up on middle cove, as reported by health enforcement officer. P Riggio noted that he suspects that this continued on throughout the construction.

N Misbach questioned, If the core samples come back reflecting zero contaminants, will placement of an oil boom in the water still be required.

P Riggio stated that he will put that question before the HMC. In the area of construction, i.e. plunge pool, and the permeable blue stone area, P Riggio suggested that the applicant might want to test the area, as well as that area that will be disturbed during the excavation.

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

**MOTION** by W Feirer to close the public hearing on **Application No. 23-16** on behalf of William C Bowers and Joanne Kennedy, **15 Novelty Lane** Essex, CT, Assessor's Map 50 Lot 5, WF District, requesting variances of Sections 40D, 40E, 101E, and 50D for the installation of a permeable bluestone patio and installation of a 13' X 7' pool/spa to be located within 100 feet of the coastal jurisdiction line and the Gateway Buffer Area, at 8:27pm; **SECONDED** by W T Furgueson; **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.

## 2. Regular Meeting

- Discussion and possible decision on variance **Application No. 23-15** on behalf of Audrey Weber, **15 Maple Avenue** Essex, CT.

**MOTION** made by W T Furgueson to approve **Application No. 23-15** on behalf of Audrey Weber, **15 Maple Avenue** Essex, CT, Assessor's Map 17 Lot 22, VR District, requesting variances of Sections 40D, 40E and 60B for first floor handicap accessible bedroom and bathroom addition resulting in a coverage of 10.8% where 10% is allowed. The hardship associated with this proposal is to create ADA accessibility and compliance, and the incursion is minimal; This proposal is approved in accordance with the plans as submitted; **SECONDED**; 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 and Possible Decision on **Application No. 23-16** on behalf of William C Bowers and Joanne Kennedy, **15 Novelty Lane** Essex, CT.

**Deliberation**: It was noted that this is a minor change to this property, and the applicant is taking professional measures to ensure that they are not creating an issue with what already exists. Gateway has placed conditions on this proposal with which the applicant is willing to comply. It is a reasonable, and minor addition of the space that has been used for that purpose, and it is uniquely in that zone. Any approval would be subject to the parties mutually acceptable agreement along with the HMC requirements.

**MOTION** made by B Sarrantonio to approve a variance for **Application No. 23-16** on behalf of William C Bowers and Joanne Kennedy, **15 Novelty Lane** Essex, CT, Assessor's Map 50 Lot 5, WF District, requesting variances of Sections 40D, 40E, 101E, and 50D for the installation of a permeable bluestone patio and installation of a 13' X 7' pool/spa to be located within 100 feet of the coastal jurisdiction line and the Gateway Buffer Area. This is a reasonable and minor addition of the space that has been used for the same purpose and it would be considered pertinent were it

not in this zone. The variance is subject to the parties creating a mutually acceptable agreement related to the Essex Harbor Management Commission requirements. The hardship associated with this proposal is the property is within the 100-foot Gateway buffer. This proposal is approved in accordance with the plans as submitted; **SECONDED**; W T Furgueson; **IN FAVOR**: W T Furgueson, W Feirer, B Sarrantonio, P Beckman; **OPPOSED**: P Schaller; **ABSTAINING**: None; **MOTION CARRIED 4-0-1.**

**3. Old Business**

- Approval of Minutes – September 19, 2023

**MOTION** made by W T Furgueson to approve the September 19, 2023 Minutes with following amendment; Page 2, 8<sup>th</sup> paragraph to read, “Attorney Royston noted that the tree is part of the *topo to the north which was prohibited* and a valid basis for hardship.” **SECONDED** by W Feirer; **IN FAVOR**: W T Furgueson, W Feirer, P Schaller; **OPPOSED**: None; **ABSTAINING**: B Sarrantonio, P Beckman; **MOTION CARRIED 3-0-2.**

- Approval of 2024 Meeting Calendar

**MOTION** made by W. T. Furgueson to approve the 2024 meeting calendar as prepared by the ZEO; **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.**

**4. New Business** – There was no new business.

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

**6. Adjournment**

**MOTION** made by W T Furgueson to adjourn the meeting at 8:47pm to the next regularly scheduled meeting which will be held on Tuesday, November 21, 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 W Feirer; **IN FAVOR**: W T Furgueson, W Feirer, P Schaller, B Sarrantonio, P Beckman; **OPPOSED**: None; **ABSTAINING**: None; **MOTION CARRIED 5-0-0.**

Respectfully submitted,

Stella A Caione, Recording Clerk