

Town of Essex - Zoning Board of Appeals
29 West Avenue
Essex, CT 06426

MINUTES

June 19, 2012 – Regular Meeting

The Essex Zoning Board of Appeals conducted their regularly scheduled meeting on Tuesday, June 19, 2012 at 7:30 p.m. in Room A of the Essex Town Hall. Members present were Stu Ingersoll, Paul Greenberg, Michael Noto, Lynn Faulstick and Doug Demarest. Also present, John Bennet, Legal Counsel to the Board and Stella Beaudoin, Recording Secretary.

Mr. Ingersoll called the meeting to order at 7:32 p.m.

Consideration of **Application #12-13 on behalf of Philip Unghire, 40 Pond Meadow Road, Ivoryton, CT, Assessors Map 83 Lot 10-1, RU District, requesting a variance to Section 45D.3 of the Essex zoning regulations to allow an accessory apartment to have a total floor area of more than 1/3 the total area of the principal structure and to be located in below-ground basement area.** On October 7, 2003 a zoning permit was issued for the construction of a new home. The initial site plans showed an accessory apartment in the basement. When told that the apartment could not be allowed a new site plan was submitted showing a bedroom and bathroom downstairs but an open space where the kitchen was once proposed. The apartment is currently established, with a full kitchen, living room, bedroom and bathroom. This application is seeking approval for an existing accessory apartment to be located below ground.

Phillip Unghire presented. Mr. Unghire stated that he wishes to create an in-law apartment for his father who recently suffered a stroke.

Mr. Ingersoll stated that the hardship must be something which is unique to the property; medical necessity does not constitute for a valid hardship.

Mr. Unghire stated that the property has a good deal of ledge and the topography of the land would prevent another location for the apartment. The apartment is situated below-ground only, under a portion of the house with a single step to get down to the apartment.

Mr. Noto questioned if Mr. Unghire is required to seek approval for the apartment as it is situated downstairs in the basement area of the house.

Attorney Bennet commented on the Essex Zoning Regulations and stated that it is up to the Board to determine if the below ground definition of the zoning regulations applies to this proposal. Max floor area of the accessory apartment shall not exceed 1,000 feet per Mr. Bennet.

Mr. Ingersoll stated that the zoning regulations limit accessory apartments to a certain square footage area and this proposal substantially exceeds that requirement.

Mr. Ingersoll asked the Board if they had any questions.

Mr. Ingersoll asked if anyone wished to speak in favor or in opposition to this application.

Mr. Ingersoll closed the public portion of this application at 7:45 p.m.

Consideration of **Application #12-15 on behalf of Susan Malan, 34 Grove Street, Essex, CT, Assessors Map 27, Lot 53, VR District, requesting variances to sections 40C, 40d, 40I.1, 50d and 60B of the Essex zoning regulations to allow a storage shed on the property that would increase lot coverage to 8.56% where 7.5% is the maximum allowed. Also, to allow a proposed roof over an existing non-conforming deck to be located 13 feet from the front property line where 30 feet is required.**

Susan Malan presented. Ms. Malan stated that she wishes to construct a shed on her property. Due the terraced topography of her property, the proposed location is the only feasible location on which to situate the shed. Ms. Malan stated that the hardship associated with this application is in that this is a unique lot where in order to access the property to mow and maintain the grounds she must either enter through neighbor's property or carry the lawn mower up the hill of her property.

Ms. Malan stated that the second piece of her application is to construct an 8' x 6' roof over the existing porch. The porch will not be enclosed. The coverage will increase .46% increase with this proposal.

Mr. Ingersoll asked the Board if they had any questions.

Mr. Ingersoll asked if anyone wished to speak in favor or in opposition to this application.

Ruth Schumaker stated that she lives across the street from the applicant. Ms. Schumaker stated that since Ms. Malan has moved into her house on Grove Street she has beautified her property and the surrounding area. Ms. Schumaker stated her approval for this proposal.

Mr. Ingersoll closed the public portion of this application at 7:55 p.m.

Consideration of **Application 12-16 John and Carrie Kolb, 20 North Main Street, Essex, CT, Assessors Map 27 Lot 53, VR District requesting variances to sections 40C, 40D, 40I.1, 50D and 60B of the Essex zoning regulations. This is an application to allow an 84 s/f kitchen expansion on a single family residence to a point 23 feet from a side property line where 25 feet is required and to allow an expansion of a non-conforming dormer that is 25.5 feet from the front property line where 30 feet is required. Also, this application requests an increase in lot coverage from 20 to 20.87% where 7.5% is the maximum allowed.**

John Kolb presented. Mr. Kolb stated that he and his wife would like to expand the kitchen on the rear (west side) of the house and expansion of the dormer on the front (east) elevation of the house. The front dormer expansion is within the 30 foot required setback, is an extension of the existing dormer and is consistent with the size of the existing dormer to the main part of the house. The house was constructed pre-zoning and is an existing nonconforming use. The front dormer does not increase the coverage of the house or the height of the house. This originally was a two family house which the applicant has converted to a single family dwelling.

The second piece of this application is for the construction of an 84 s/f proposed addition to the back of the house which will increase lot coverage and encroach on the side setback about two feet from the side lot line. The grade of the backyard is steep at a 15-foot elevation and Mr. Kolb stated that water seeps down and collects in the hollow at the base, in front of the main door of the house. Mr. Kolb indicated that the roof line will remain the same. The hardship on the proposal for the front property is that the house was constructed prior to zoning and was additionally constructed inside of the 30-foot setback and any modifications would be within the setback area. The hardship on the rear property proposal is that

a portion of the addition is within 25-feet of the side setback and the slope of the backyard, and the increase on the lot coverage would be less than 1%.

Mr. Ingersoll asked the Board if they had any questions.

Mr. Ingersoll asked if anyone wished to speak in favor or in opposition to this application.

Debby Kelton who resides on the westerly side of the property stated that she is in favor of this application.

Mr. Ingersoll closed the public portion of this application at 8:10 p.m.

Consideration of **Application 12-17 on behalf of Susan McNamara, 32 Hemlock Drive, Essex, CT, Assessors Map 73 Lot 3, RU district, requesting variances to sections 40C, 40D, 50D, and 61B of the Essex zoning regulations to allow a 392 s/f expansion to a detached garage that was approved by the ZBA in 2007, and to allow lot coverage to increase from 10.1% to 10.8% where 7.5% is the maximum allowed.** This property is 1.24 acres in size and overlooks South Cove. In 2007 the Zoning Board of Appeals granted a Variance for a 28' x 28' detached garage on the property. The garage was never constructed.

Ryan McNamara presented on behalf of this application. Mr. McNamara presented for the record a letter from a neighbor along with medical testimony. Mr. McNamara is requesting an increase of 300 s/f to expand upon his garage. Mr. McNamara stated that his property abuts 82 acres of land which is owned by the Nature Conservancy, which wraps around the property. This 392-foot expansion to the original approval cannot be seen by the road nor by the adjoining neighbors. Mr. McNamara stated that there is a medical hardship associated with this request to construct a 28' x 42' garage and he anticipates a future need to have wheelchair access to this proposed structure. Two of the vehicles which will occupy the garage are commercial and two vehicles will be utilized for personal use. There is currently an existing two-bay garage which houses two small vehicles.

Mr. Ingersoll asked the Board if they had any questions.

Mr. Ingersoll asked if anyone wished to speak in favor or in opposition to this application.

Mr. Ingersoll presented into the record a letter from John and Mary Mesick who are in favor of this application. Mr. Ingersoll presented into the record medical evidence.

Mr. Ingersoll closed the public portion of this application at 8:25 p.m.

Deliberation

Application #12-13 on behalf of Philip Unghire, 40 Pond Meadow Road, Ivoryton, CT, Assessors Map 83 Lot 10-1, RU District

Ms. Faulstick stated that this proposal is 500 s/f larger than what is allowed under the zoning regulations.

Mr. Demarest stated that this dwelling is situated above-ground to the extent that it can be accepted as an accessory apartment, even though it goes over the allowed square footage.

Mr. Ingersoll stated that this apartment was constructed illegally and it has been occupied under those same circumstances.

Mr. Noto stated that per the original approval for the construction of the house, it was specific that an apartment was not allowed.

- **Motion** made by Stu Ingersoll to deny a Variance for **Application #12-13 on behalf of Philip Unghire, 40 Pond Meadow Road, Ivoryton, CT**, Assessors Map 83 Lot 10-1, RU District, requesting a variance to Section 45D.3 of the Essex zoning regulations to allow an accessory apartment to have a total floor area of more than 1/3 the total area of the principal structure and to be located in below-ground basement area. The Variance is denied on the basis that there is no hardship shown.

Motion seconded by Lynn Faulstick and passed unanimously deny this application.

- **Motion** made by Lynn Faulstick to approve a Variance for **Application 12-15 on behalf of Susan Malan, 34 Grove Street, Essex, CT**, Assessors Map 27, Lot 53, VR District, requesting variances to sections 40C, 40d, 40I.1, 50d and 60B of the Essex zoning regulations to allow a storage shed on the property that would increase lot coverage to 8.56% where 7.5% is the maximum allowed. Also, to allow a proposed roof over an existing non-conforming deck to be located 13 feet from the front property line where 30 feet is required. The hardship associated with this proposal is that this property is a nonconforming lot and it was in place prior to zoning. The topography of the property also presents a hardship. This proposal is approved in accordance with the plans as submitted.

Motion seconded by Paul Noto and passed unanimously.

- **Motion** made by Lynn Faulstick to grant a Variance for **Application 12-16 John and Carrie Kolb, 20 North Main Street, Essex, CT**, Assessors Map 27 Lot 53, VR District requesting variances to sections 40C, 40D, 40I.1, 50D and 60B of the Essex zoning regulations. This is an application to allow an 84 s/f kitchen expansion on a single family residence to a point 23 feet from a side property line where 25 feet is required and to allow an expansion of a non conforming dormer that is 25.5 feet from the front property line where 30 feet is required. Also this application requests an increase in lot coverage from 20 to 20.87% where 7.5% is the maximum allowed. The variance is granted based on the hardship associated with the nonconforming lot which predates zoning. The amount of increase in coverage is insignificant. This variance is based on the plans as submitted.

Motion seconded by Michael Noto and passed unanimously.

Application 12-17 on behalf of Susan McNamara, 32 Hemlock Drive, Essex, CT, Assessors Map 73 Lot 3, RU District.

Michael Noto stated that a 4-vehicle garage was previously granted and the applicant is seeking to add an additional bay. Mr. Noto questioned the hardship for the additional bay.

Paul Greenberg reminded the Board that two similar proposals for a five bay garage have been approved.

John Bennet stated that the applicant has not provided a sketch of the proposal other than a footprint. Because this proposal involves a second floor, Mr. Bennet suggested that if the Board is considering approval of this application that they place restrictions on the variance.

- **Motion made by Michael to deny without prejudice a Variance for Application 12-17 on behalf of Susan McNamara, 32 Hemlock Drive, Essex, CT,** Assessors Map 73 Lot 3, RU district, requesting variances to sections 40C, 40D, 50D, and 61B of the Essex zoning regulations to allow a 392 s/f expansion to a detached garage that was approved by the ZBA in 2007, and to allow lot coverage to increase to 10.8% where 7.5% is the maximum allowed. This variance request is denied without prejudice with the understanding that the applicant has the right to reapply with a rendering of the proposed garage to reflect all of the dimensions including the upper floor.

Motion seconded by Doug Demarest and passed unanimously.

- **Motion** made by Lynn Faulstick to accept the minutes of the regular meeting of May 15, 2012.

Motion seconded by Michael Noto and passed unanimously.

The regularly scheduled meeting adjourned at 8:50 p.m.

Respectfully submitted,

Stella C. Beaudoin
Recording Secretary

The proceedings of the June 19, 2012 Public Hearing were recorded on 1 card. Please speak with the Essex Zoning Office for further information.