

Town of Essex - Zoning Board of Appeals

**29 West Avenue
Essex, CT 06426**

MINUTES

June 21, 2011 – Regular Meeting

The Essex Zoning Board of Appeals conducted their regularly scheduled meeting on Tuesday, June 21, 2011 at 8:00 p.m. in Room A of the Essex Town Hall. Members present were Stu Ingersoll, Al Daddona, Doug Demarest, Alix Walmsley Paul Greenberg and Lynn Faulstick. Also present, Michael Wells legal counsel to the Board and Stella Beaudoin, Recording Secretary.

Consideration of **Application #11-8 on behalf of James O'Rourke, property located at 2 Cedar Grove Terrace Extension, Essex, CT, Assessor's Map 76 Lot 4, RU District**, requesting a Variance of Sections 40E and 40I.1 of the Essex zoning regulations. This is an application to raise the roof and add a small dormer over an existing garage that is located within a side and front yard setback area. Also to add a front step overhang to the house within the front yard setback area.

James O'Rourke presented on behalf of the application. Mr. O'Rourke stated that when he purchased the property in November he found letter in the Essex zoning records reflecting a previously granted variance for the garage. Mr. O'Rourke noted that the letter found in the file additionally stated that the space over the garage could be converted into a living space. Mr. O'Rourke stated that based on the contents of this letter, he was under the assumption that he could move forward with the project of constructing a living space over the garage without any additional approval.

Mr. O'Rourke indicated that he presents before the Essex ZBA this evening with the request to continue this project. Mr. O'Rourke indicated that he applied for Permits for the roof, the septic tank and the soil testing and he further stated that Mr. Keith Nolan the Essex Building Inspector has been out to the site to inspect the project.

Attorney Wells stated that the original application before the Essex Zoning Board of Appeals was a request to close in the breezeway. The addition was on the plan but it did not require a variance because it was not an enclosed space. Mr. Wells indicated that the issue surrounding the current construction on the garage is that the applicant wishes to go up in the height of the garage. The variance requested this evening is to add living space above the existing garage. There is a four foot footing which has been in place under the entire garage for some time. This proposal is within the side setback but the structure is staying within the existing footprint. The applicant is also staying within the front setback as well.

Mr. O'Rourke stated that approval from the Essex Health Department has been granted for the septic. However, in order to be issued a building permit and a zoning permit, Mr. O'Rourke must first obtain approval from the Zoning Board of Appeals by way of the issuance of a variance.

Mr. O'Rourke stated that the hardship surrounding this proposal is that this was the first property built on the street and it was built prior to zoning. The garage was constructed in 1979.

Al Daddona, ZBA commissioner indicated to Mr. O'Rourke that anytime you do any modification within the setback the issuance of a Variance is requisite.

Mr. Wells stated that prior to the Essex Zoning Commission passing the "Hyde" amendment this construction would not have required a variance. Mr. Wells explained that three years ago, an amendment to the Essex zoning regulations was passed. Prior to the approval of this amendment, if a property owner were to construct within the footprint and extended the height, a permit would not be required. Mr. Wells reminded the applicant that the previous owner did obtain a variance to construct, however remaining within the existing height.

Board commissioners expressed their dissatisfaction with the progress of the construction to date.

Mr. Wells asked if the board wished to keep this application open for the purpose of obtaining a copy of the letter Mr. O'Rourke referenced as on file in the Essex Zoning office.

Mr. O'Rourke objected to having this application tabled to next month pending the Board's review of this letter. A copy of said letter was not available in the ZBA file nor did the commissioners receive a copy of this letter with other documents relevant to this application.

Doug Demarest, ZBA commissioner stated that if this application is tabled, the applicant is not to proceed with the construction until such time that the Board approves a Variance.

Mr. Wells clarified for the Board the sequence of events leading to the current construction; A variance to construct a garage that was intended to be raised for the purpose of a bedroom within the setbacks was granted in 1979. What intervened between that time and now was the 'Hyde" amendment to the Essex Zoning regulations. The hardship surrounding this application was that the Hyde amendment. The footings were built many years ago to support the second floor and the construction was delayed. Mr. Wells noted that although Mr. O'Rourke did jump the gun on this construction, the Board must consider that the septic has been approved for the purpose of the third bedroom.

A brief discussion ensued.

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

There were no letters submitted on behalf of this application.

Mr. Ingersoll closed the public portion of this application at 8:40 p.m.

Consideration of **Application #11-9 on behalf of Michael Belanger, property located at 70 Plains Road, Essex, CT, Assessor's Map 53 Lot 12, LI District**, requesting a Variance of Sections

40A and 90A1 of the Essex zoning regulations. The property is comprised of a 15.6 acre parcel comprised of a multi-dwelling establishment. This is an application to allow a general principal use that is not allowed within the Limited Industrial District.

Michael Belanger presented on behalf of this application. Mr. Belanger is looking to put an ice cream parlor on the lower level of the building located at 70 Plains Rd., Essex. Soft serve ice cream will be offered and there will be a service entrance at the front of the building. There will be no inside seating.

Mr. Belanger noted that the property is nonconforming, however he did make mention of Porky Petes restaurant which is located right down the street from the proposed ice cream parlor.

Mr. Belanger indicated that the ball field is situated right next to me his property. There is quite a bit of traffic coming in and out of the ball field so the area is congested. Mr. Belanger indicated that he spoke with Joe Budrow, Essex ZEO about the parking for this business. There is space in front of the building for parking and there are also spots in the backyard. Mr. Belanger stated that this will be a private, non franchised ice cream store. He bought the property two and a half years ago, renovated the structure and put in a landscape business. The economy has been sluggish for his business and Mr. Belanger is looking to put the property to a use that would benefit the community. He proposes to employ six or so people from April to November, so it will be a seasonal store. However, Mr. Belanger noted that if people are still buying ice cream in November will stay open.

Mr. Belanger stated that the hardship is that this property was in place before zoning. Mr. Belanger recanted that Porky Petes and Cliff's Market are both just down the street and both offer similar products for sale. Mr. Belanger noted that Essex Zoning is trying to re-zone the business district on Plains Road.

Mr. Demarest noted that with other similar requests, the Board received a detailed set of drawings.

Mr. Belanger stated that Mr. Budrow informed him that if the variance is approved, Mr. Belanger will have to apply for a separate variance for parking.

Stu Ingersoll, ZBA chairman stated that the Essex zoning regulations tell you how many parking places you need.

Mr. Wells stated that this is a use variance request. A use that is not normally permitted and if the variance is approved, the Board will then be permitting said use. Mr. Wells indicated that it is not necessarily subject to zoning or a site plan. The previously granted variance for this property was for a nonconfirming use because it was a house and the applicant raised the use and received a variance for the same, per the "Hyde" amendment. Mr. Wells stated that general principal uses do not include retail other than a farm stand. A site plan is required for new construction or for existing buildings with a 2,500 s/f increase. The square footage is not being increased so this says that a site plan would not be necessary.

Mr. Belanger stated that the back lot has quite a bit of space for parking. Mr. Belanger went on to say that all of the renovations completed to date on the house have been very tasteful and in keeping with the community. If the variance is granted, the front of the house may change in that a deck may be constructed. Mr. Belanger stated that he is anxious to move on this new business and hopes to be up and running soon so that within the year this proposal will offer a a viable business for the community. Mr. Belanger noted that once health approval is received, it should take about six weeks to construct the ice cream parlor.

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

Unidentified Essex Resident: The traffic situation is a concern. That street is well traveled and the resident indicated that he would like to be able to get in and out of the driveway without dealing with an additional traffic flow. The resident stated that Mr. Belanger is a great neighbor and he has no issue with a new business in town.

There were no letters submitted on behalf of this application.

Mr. Ingersoll closed the public portion of this application at 8:50 p.m.

Consideration of **Application # 11-10 on behalf of John Mezzio, property located at 27 Grandview Terrace, Essex, CT Assessor's Map 27 Lot 83 VR District** requesting a Variance to add an addition to the rear of the house that currently is located in the side yard setback area.

John Mezzio presented on behalf of this application. Mr. Mezzio stated that he would like to add a screened-in porch off the kitchen. The house is 24 feet wide and 5 feet from the property line. The end of the screened porch is outside of the door and he wishes to go over ten feet. There will be a 30 inch solid wall and above the screen will be one story. There will be no electrical or plumbing installed.

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

There were no letters submitted on behalf of this application.

Mr. Ingersoll closed the public portion of this application at 8:57 p.m.

DELIBERATION

Application #11-8 on behalf of James O'Rourke, property located at 2 Cedar Grove Terrace Extension, Essex, CT, Assessor's Map 76 Lot 4, RU District, requesting a Variance of Sections 40E and 40I.1 of the Essex zoning regulations. This is an application to raise the roof and to add a small dormer over an existing garage that is located within a side and front yard setback area and to add a front step overhang to the house within the front yard setback area.

Discussion:

Doug Demarest stated that based on the fact that the applicant is looking for an addition to the garage only, the "Hyde" amendment is the hardship because you have a preexisting building that is being expanded upward only. It was built by variance prior to the adoption of the "Hyde" amendment and supporting testimony indicates that the footings and the support for the second story was in existence with the plan to ultimately build a second story, prior to this construction.

Al Daddona stated that if commissioners plan to vote on this proposal this evening based on a letter which would justify this project, then the Board should move forward to grant the variance.

Stu Ingersoll stated that this construction was done in violation of our regulations with no zoning permit and no building permit. That said, this is not necessarily grounds for denying this application.

Mike Wells indicated that if the ZBA grants a variance, the applicant would then apply for a building permit and a zoning permit. If the applicant proceeded without a building permit, zoning would issue a cease and desist. Attorney Wells stated that commissioners must look at the hardship before the board which is the "Hyde" amendment. The "Hyde" amendment limits the height. You cannot go up if by going up you are now over the setback.

Paul Greenberg noted that the increase in elevation is modest.

Mr. Demarest stated that approval hinges on this letter that no one has seen.

Mr. Ingersoll asked Mr. Wells if the Board could grant the variance subject to receiving for the zba file, the referenced letter.

Mr. Wells stated that this is not an option as this is not something that is within the control of the applicant. The letter is in the Essex zoning office.

Mr. Ingersoll asked how the Board could be certain that construction has stopped until such time that the necessary permits are issued.

Mr. Wells noted that that would be up to the Essex zoning office to issue a cease and desist.

Motion made by Doug Demarest to approve a Variance for **Application #11-8 on behalf of James O'Rourke, property located at 2 Cedar Grove Terrace Extension, Essex, CT, Assessor's Map 76 Lot 4, RU District**, requesting a Variance of Sections 40E and 40I.1 of the Essex zoning regulations. This is an application to raise the roof and to add a small dormer over an existing garage that is located within a side and front yard setback area and to add a front step overhang to the house within the front yard setback area. This Variance is approved based on the fact that the hardship associated with the application involves the Hyde amendment to the Essex Zoning Regulations; this is a preexisting building that is being expanded upward only. The structure was constructed prior to the adoption of the Hyde amendment with Variance approval and supporting testimony indicates that the footings and the support for the second story was in place with the plan to ultimately build a second story. This Variance is granted in accordance with the plans as presented; 2 Cedar Grove Terr. Ext, Owner James S. O'Rourke, 15 Cedar Grove Terr. Front View dated May 13, 2011.

Motion seconded by Lynne Faulstick and passed unanimously.

Application #11-9 on behalf of Michael Belanger, property located at 70 Plains Road, Essex, CT, Assessor's Map 53 Lot 12, LI District, requesting a Variance of Sections 40A and 90A1 of the Essex zoning regulations. The property consists of a 15.6 acre parcel with a multi-dwelling establishment. This is an application to allow a general principal use that is not allowed within the Limited Industrial District.

Motion made by Doug Demarest to deny on the basis that adequate details have not been provided and new regulations are proposed to be approved in the near future that would impact this property. Lack of hardship shown. **Application #11-9 on behalf of Michael Belanger, property located at 70 Plains Road, Essex, CT, Assessor's Map 53 Lot 12, LI District**, requesting a Variance of Sections 40A and 90A1 of the Essex zoning regulations. The property is comprised of a 15.6 acre parcel comprised of a multi-dwelling establishment. This is an application to allow a general principal use that is not allowed within the Limited Industrial District.

Discussion:

Commissioners stated their concern about the traffic on Plains Road and the traffic flow surrounding this application. There is no existing inlet or outlet shown on the application for this property.

Attorney Wells stated that if the Board grants this application the Essex Zoning would have no further control or input for this project. Any use is subject to parking restrictions per the Essex Zoning regulations. If the Board is inclined to grant this Application, commissioners must think about all of the conditions, i.e., location of parking, lighting, hours of operation, location of dumpster and the entire set up. The Board can approve an ice cream shop only. Mr. Wells asked the Board to think about the details when considering the approval of a variance for this application.

Mr. Daddona noted that there was no plan or details submitted with this application.

Paul Greenberg noted that there is plenty of other businesses on Plains Road and it is a tough road traffic-wise.

Mr. Wells reminded the Board that they can continue this application for a decision and the applicant can resubmit the application and relevant information. The time constraint is such that it will not be heard for another month. Mr. Wells asked commissioners to think about all of the issues that are not going to be addressed, noting that the Board would be permitting a use that is currently not allowed in this zone.

Al Daddona stated that this is granting a use exception.

Mr. Wells stated that the next step would be to demonstrate the parking to Joe Budrow, the Essex zoning enforcement officer, showing how it meets the code. Mr. Budrow would then have to interpret the number of spaces that are required.

Mr. Ingersoll stated that the Essex Zoning Commission has indicated that there will be a change of zone in the area of Plains Road and when the zone change is completed, there will be certain regulations that apply and would impact this property. Mr. Ingersoll noted that granting this application would be jumping the gun with regard to the perspective zone change. Mr. Ingersoll went on to say that Plains Road is very sensitive area regarding the traffic. Mr. Ingersoll stated that he would like to see the zone change in effect before anything else is done in that area. Mr. Ingersoll noted that the Board should have drawings that show parking and the traffic pattern and we do not know if its going to be an allowed use when the regulations change.

Doug Demarest stated that he is looking for the details surrounding this plan.

Stu Ingersoll stated that he is in favor of waiting until the Essex Zoning Commission has made changes within this zone.

Doug Demarest agreed.

Motion made by Doug Demarest to deny a Variance for **Application #11-9 on behalf of Michael Belanger, property located at 70 Plains Road, Essex, CT, Assessor's Map 53 Lot 12, LI District**, requesting a Variance of Sections 40A and 90A1 of the Essex zoning regulations. The property consists of a 15.6 acre parcel with a multi-dwelling establishment. This is an application to allow a general principal use that is not allowed within the Limited Industrial District. This Variance application is denied for lack of hardship and on the basis that the applicant has not provided adequate details and plans related to this proposal. New zoning regulations are proposed for the Town of Essex and scheduled to be approved in the near future. That change will impact this property.

Motion seconded by Lynn Faulstick and passed unanimously.

Motion made by Al Daddona to approve a Variance for **Application #11-10 on behalf of John Mezzio, property located at 27 Grandview Terrace, Essex, CT Assessor's Map 27 Lot 83 VR District** requesting a Variance to add an addition to the rear of the house that currently is located in the side yard setback area. A Variance is granted based on the hardship; the topography of the land and the fact that this house predates zoning. This proposal is for a small screened-in porch to the back of the property which presents minimal intrusion to the setback. This Variance is granted in accordance with the plans as presented

Motion seconded by Lynn Faulstick and passed unanimously.

Respectfully submitted

Stella C. Beaudoin
Recording Secretary