

## Unapproved

### Town of Essex - Zoning Board of Appeals

29 West Avenue  
Essex, CT 06426  
[essexct.gov](http://essexct.gov)

## MINUTES

### October 16, 2012 – Regular Meeting

The Essex Zoning Board of Appeals conducted their regularly scheduled meeting on Tuesday, October 16, 2012 at 7:30 p.m. in Room A of the Essex Town Hall.

Members Present: Stu Ingersoll, Al Daddona, Alix Walmsley, Paul Greenberg and Doug Demarest.

Absent: W. T. Furgueson, Alternate Member, Lynn Faulstick, Alternate Member

Staff: Michael Wells, Legal Counsel to the Board and Stella Beaudoin, Recording Secretary.

Paul Noto, alternate member stepped down.

Mr. Ingersoll called the meeting to order at 7:34 p.m.

Consideration of **Application #12-25 on behalf of Michael Picard, 41 Saybrook Road, Essex, CT, Assessor's Map 71 Lot 22, RU District**, requesting a variance to Sections 40C, 40D, 40E, 50C.2 and 61B of the Essex zoning regulations to replace an existing single family residence with a new single family residence with a proposed lot coverage of 9.8% where 7.5% is maximum allowed.

Attorney Chris Smith presented on behalf of the applicant, Michael Picard. Also present were Tom Metcalf, L.S. and Michael Picard. Attorney Smith stated that in support of this application, Mr. Picard will eliminate two existing side setback nonconformities associated with a detached garage on the property. Attorney Smith distributed packets to the Board which included a cover letter for request for variance approval from Thomas E. Metcalf, P.E., L.S. and a letter from Christopher J. Smith of Shipman & Goodwin, LLP, both dated September 14, 2012; A copy of the Variance application dated September 13, 2012; a copy of reduced building plans dated September 12, 2012, the revised building plans dated October 15, 2012 and the architectural plans prepared by Thomas Metcalf dated September 25, 2012.

The existing building coverage is 6.3% and with this proposal the resulting coverage will be 9.8% for which a variance is required. Mr. Picard proposes to raze and consolidate into a single structure the existing single-family residence and detached garage which Attorney Smith noted will resolve the nonconformity. The structures will be pulled back from the existing property line which will be in compliance with the zoning regulations. A new septic will be installed on the property and the new residence will now be out of the 100-year flood zone. Attorney Smith stated that there are not many properties in the RU zone that have similar nonconformities that propose to be eliminated. Attorney Smith indicated that this proposal results in enhancing privacy, protecting property values, and will not be detrimental to the public health, safety and welfare. The revised plan pulled the steps back 50 feet out of the gateway buffer.

Mr. Metcalf stated that the height of the structure to the ridge line of the house is 34'8" which is less than the 35 foot maximum allowable height in the Gateway District. The height of the cupola and the chimney is above the 35' regulation, but is allowable in the regulations. The existing structure is a two-story house and is 30 feet in height.

Attorney Smith stated that the hardship as per the CT land use law, the hardship surrounds the change of a nonconforming use to a less offensive nonconforming use which is a legal basis for approving a use variance for the resulting less offensive nonconforming use. Attorney Smith stated that this proposal reduces two zoning nonconformities as the house was constructed in 1963.

Mr. Ingersoll stated that this application is looking to increase the coverage and the house will include an exercise room and a billiard room, which are not essential to living.

Attorney Smith noted that it would be living space and it is a single family home and not over the top, however it does provide for recreational space versus extra bedrooms. Attorney Smith indicated that he has a meeting with Torrance Downes, CT River Gateway Commission to discuss this proposal and as such, Attorney Smith asked for a continuance.

Mr. Ingersoll stated that the Board typically does not grant a continuance without good reason. If the applicant is in agreement, the Board would like to make a ruling on this proposal this evening.

Attorney Smith stated that in deference to the prior agreement with Torrance Downes, his client would prefer to keep his commitment and meet on Friday relative to concerns of the Gateway Commission. Attorney Smith asked that this application remain open and be continued to the November 2012 meeting.

Attorney Wells stated that the Board may keep the Public Hearing open and continue it in order to receive the report from Gateway. Attorney Wells noted that those Board members in attendance at this evening's meeting must be at the meeting in November in order to vote.

Mr. Ingersoll asked the Board if they were unanimously in agreement with granting a continuance and if there were any additional questions. Members were in agreement with the continuance.

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

Mr. Ingersoll read a letter into the record from Robert Kolp, Pent Cove Restway, dated October 15, 2012. In his letter Mr. Kolp notes that he is an abutting property owner and goes on to state his concerns and objections to this proposal. Attorney Smith stated that he will respond to this letter at the November 2012 meeting.

Mr. Ingersoll closed the public portion of this application.

**Application #12-26 on behalf of Heritage Cove Condominium Association, 85 River Road, Essex, CT, Assessor's Map 12, Lot 7, RU District** requesting a variance to section 40C, 40D, 40E, 40I.1, 50D and 6B of the Essex zoning regulations to allow the replacement of an existing accessory building with a new, slightly larger structure.

Patrick Kilty, presented. Mr. Kilty is the Manager of Heritage Cove and Project Manager of this undertaking. Heritage Cove condominiums are situated on 12.5 acres and comprised of over 100 condominiums and several accessory structures for parking and storage. Mr. Kilty stated that a Variance was recently approved and in the winter of 2012 accessory structures were renovated

and several rooflines were changed. Mr. Kilty noted that he is looking to update the buildings and he is seeking approval to rebuild a 20' x 20' utility building which is a nonconforming accessory structure and is located within the side yard setback. Mr. Kilty indicated that in order to get a 6" pitch to the roof, he proposes a 7'10" increase above grade elevation. The hardship surrounding this application is the setback which came into effect after the condos were built. Mr. Kilty noted that he will be reducing the nonconformity by 50% with this proposal.

Mr. Demarest noted that the proposed buildings are on the same footprint.

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 read into the record a letter from J. H. Torrance Downes, Senior Planner, CT River Gateway Commission dated October 15, 2012. Gateway indicates that this proposal presents no impacts to the riverway scene.

Mr. Ingersoll closed the public portion of this application at 8:07 p.m.

Consideration of **Application #12-27 on behalf of Salvatore Sapia, 3 Riverview Street, Essex, CT, Assessor's Map 28 Lot 39, VR District requesting variances to sections 40D, 40E, 40I.1, 50D and 60B** of the Essex zoning regulations to cover an open patio area with a roof coming to a point 15 feet from the northern side property line where 25 feet is required and 23 feet from the front property line where 30 feet is required, and to make structural improvements to a garage that is located 5'2" from the side property line and 22 feet from the front property line.

Sal Sapia presented on behalf of this application. Mr. Sapia stated that he is applying for a variance for coverage. A variance was previously granted in 1974 for the construction of a garage. Mr. Sapia noted that his is a small lot and the sidelines are tight. The property line goes to the cove. The hardship surrounds the size of the lot. Mr. Sapia proposes to place a flat roof enclosure over the open space between the garage and the house. He will remove the garage and rebuild on the same footprint and bring it up to code.

Mr. Ingersoll asked Mr. Sapia if he would stipulate that there would be no future attempt to turn the space above the garage into a living area. Mr. Sapia agreed.

Mr. Sapia stated that the 25-foot setback just clips the corner of the new work and he needs a variance for the 25-foot sideline and also for the coverage ratio.

Mr. Wells stated that according to Joe Budrow, ZEO, this proposal is going to be 6 feet taller than the existing building. A variance is required for the height of the proposed garage as it is taller than the existing garage.

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.

Attorney Ed Cassella presented in the capacity as legal counsel to Moira Johnson, 9 Riverview Street who owns the adjoining property. Ms. Johnson is in opposition to this proposal. Mr. Cassella distributed pictures of the current views from Ms. Johnson's property. Mr. Cassella stated that the proposed existing ridge line will obstruct Ms. Johnson's views. Attorney Cassella stated that Mr. Sapia has an option and he can tear down the existing garage and rebuild at the same

height. To build a better peak roof for storage is not a legal hardship related to conditions that affect the property. Attorney Cassella stated that his client has objections to the elevation of the garage. Attorney Cassella stated that if the Board does find a hardship for the construction of the garage, he requested that the Board allow Mr. Sapia the minimum necessary in relationship to the hardship. Mr. Cassella stated that an additional 6-8 feet is not the minimum necessary to alleviate the hardship. Moira and Gary Johnson submitted a letter stating opposition to the application.

Mr. Sapia stated that he has changed the direction of the ridge and moved it toward the rear of the building for the least impact possible. Mr. Sapia stated that he put a good deal of thought into this proposal and this plan presents the best solution possible. Mr. Sapia stated that the photo presented by Ms. Johnson is inaccurate.

Mr. Greenberg noted that Mr. Sapia could rebuild the first garage without raising the roof and that would not impact the view for abutting properties.

Attorney Cassella stated that this proposal raises the existing ridge over the height of the current garage. Attorney Cassella requested that the Board deny the extension of the nonconforming structure noting that Mr. Sapia is proposing to build up an additional 6 or 7 feet above the existing height.

Mr. Sapia asked members to come back out to the property to view the site. Members stated that they have all visited the site prior to this evening's meeting.

Mr. Demarest asked Mr. Sapia if he could you put together a mock up on the existing structure with a few 2 x 4's to show the new ridge line. Mr. Sapia will construct a mock up on the ridge line of his roof in the next day and Board members will individually go out to view the property. Board members will individually contact Mr. Sapia and Ms. Johnson and coordinate a time to visit the property. continue the hearing to gather further information. Will not discuss the site walk with each other until the next meeting.

Mr. Ingersoll read into the record a letter dated October 13, 2012 from Jonathan and Margaret Marx, 5 Riverview Street stating their support to this application. A letter from J. H. Torrance Downes, Senior Planner, CT River Gateway Commission dated October 15, 2012. Gateway indicates that this proposal presents no impacts to the riverway scene.

Mr. Ingersoll stated that this application is continued to the November 2012 meeting.

Consideration of **Application #12-28 on behalf of Dawn Plumb at 60 Pond Meadow Road, Ivoryton, CT, Assessor's Map 83 Lot 13-2 RU District**, requesting a variance of Sections 45D.3 of the Essex zoning regulations to allow an accessory apartment to be located in a below grade basement area. This is an application seeking approval to locate an accessory apartment in a below-grade basement area of the home.

Ms. Dawn Plumb presented. Ms. Plumb stated that the walls and the floors of the proposed accessory apartment are above grade. Ms. Plumb proposes to construct a platform to exit from the 8' sliding doors in order to step down. There are two walls that are below grade in the basement, however not in the vicinity of the apartment.

Attorney Wells noted that the basement is not defined in the zoning regulations. The regulations reference the location of a below-ground basement, however this is not a below ground basement. This is a walk out basement and is located above grade.

Mr. Ingersoll noted that this house was constructed in 1983.

Attorney Wells stated that there is an argument that no variance is required and there is also an argument that a variance might be required and perhaps this is why Mr. Budrow sent the applicant to the ZBA. Mr. Budrow did not make a determination as to whether this is a below-ground basement area. Attorney Wells stated that if the Board is inclined to find this construction acceptable they will grant variance stating that the location of the accessory apartment is not considered a below ground-area. The Board is approving the hardship as the basement area is not below ground in the area in which the apartment will be and will not be in violation of the zoning regulations. The hardship is the topography and the fact that the house is built into a hill.

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 read into the record one letter from the adjoining neighbor stating no objection to the construction of the accessory apartment.

Mr. Ingersoll closed the public portion of this application at 8:45 p.m.

Consideration of **Application #12-29 on behalf of George and Susan Baker at 9 South Cove Lane, Essex, CT Assessor's Map 74, Lot 6, RU District** requesting variances of 40C, 40D, 40EE, 40I.1, 50C.2, 50D, 61B and 101D of the Essex zoning regulations to allow a new house to be located 22', 8.5" from the northern side property line where 30 feet is required and for a detached garage to be located 8'10" from the same property line. The applicant also seeks an approval to increase the lot coverage to 10% where 7.5% is required and to also locate a patio area to be 40 feet from South cove where 50' is required.

Attorney Terrance Lomme presented on behalf of the applicants. This is the last house before the cove on the left hand side of the road. This property contains 15,000 s/f which is .35 acres. Attorney Lomme presented a drawing of the house and the garage noting that this property has several hardships. On the south side of the property there is a drainage easement to the Town of Essex and a 15-foot right-of-way and a 5-foot view easement. There is also a proposed septic system drawn into the plans. The house is being turned so as to be removed from the 50-foot buffer. On the north side there is a hatchway which will come out and the garage will be reduced in size and reduced in nonconformity to be moved away from the rear and side property line. The house was constructed in the early 1900's and the house, the garage and the lot are nonconforming. The proposed house has a 1,200 s/f footprint and is two stories in height. The roof line will be 27'.8". The applicants will make this house their permanent residence.

Attorney Lomme noted that the patio area was not included in the coverage. The impervious area will be reduced by replacing the paved driveway with pavers due to the proximity to the cove. The footprint of the house was not reduced, however it was pulled back and turned. the existing coverage is 8.4' and there will be an increase of 1.6%. There is a 15' drainage easement, a 20' right-of-way and a 50' site line easement which predates the applicant's ownership. Attorney Lomme noted that the hardships surrounding this application include the easements, the diminutive size of the property all of which existed long before zoning. This proposal reduces the nonconformities by 304 s/f.

Attorney Lomme stated that he spoke with Torrance Downes at Gateway, and Mr. Torrance Downes thought that Gateway would not have a problem with this application, noting for the

record, Gateway is an advisory opinion and the Board is not bound by that opinion. Attorney Lomme asked the Board to consider the application and close the Public Hearing this evening.

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.

Lillian Mosa, 165 Saybrook Road, abutting neighbors to the north side of this property. Ms. Mosa stated that their view will be impacted with the construction of this structure. The view of the cove on the first floor and in the yard will be impacted because of the enclosed patio. There will be a 3-4' stone wall. The stone wall of the patio will be higher than the patio. Ms. Mosa stated that she opposes only the construction of the wall around the patio.

Joe Wren, P.E. presented on behalf of the applicant. Mr. Wren prepared the site plans. The base plan was developed by Don Carlson, L.S. In this proposal, the long access of the house fits the lot better and pulls the entire structure outside of the 50' buffer from the CT River. Ms. Mosa's home is at a much higher elevation and the elevation of the ground where the patio is to be situated is 13'.5". The patio is an as-of-right and a 6' fence may be constructed without a zoning permit. The maximum height of the patio wall will be 3'. The wall will be an improvement as we are pulling things out of the 50' buffer and the view will in fact increase. Mr. Wren stated for the record, ten feet of the existing house is being removed.

Lee Tyrall presented for Anthony Bagotano 7 Cove Road. Mr. Tyrall stated that the structure in this proposal will block the second story view to the cove. Attorney Lomme clarified that the white stakes as reflected on the property are the stakes for the septic.

Attorney Wells noted for the record that he previously represented Mr. Tyrall in a probate matter which is now completed. Mr. Tyrall is representing the owner of 7 Cove Road.

Mr. Wren stated that the house is being increased from a 1 ½ to a 2-story home. It meets the Gateway height restriction and there is a view restriction on this property. Mr. Wren stated that a neighbor's view being impacted is not a reason to deny a variance unless they have a deeded view restriction over that property. The owners on South Cove Lane do have a deeded view easement and we are respecting that. This plan preserves that view. As far as the height, the existing is 19'5" for the house and the proposed is 30'5" which below-grade. The proposed volume of the house is fully in compliance with the zoning regs. Mr. Wren stated that we are here for the setbacks which we are improving and for the coverage. This is a modest house. The footprint is 1230 s/f and a two-story structure which is 2460 s/f. The patio is the only portion of the application to which Ms. Mosa is opposed.

Joe Wren stated that in an email from Torrance Downes today, Mr. Downes states that the building is in keeping with their intent with what they would like to do with the scene from the river. No trees are proposed to be felled within the riparian buffer to the river. This property will meet the intent of Gateway.

Attorney Wells stated with regard to the patio wall, in terms of height it meets the requirements of the regulations. The proximity to the water is the Gateway review and the CAM review and that is not what the variance request is seeking.

Ms. Walmsley stated that the 3' wall is not within the purview of the ZBA and the Board is not violating any regs on height. Stu: the fact that the notice was not sent on a timely basis to the neighbors, is not a basis for denying the application. The zoning regulations do not stipulate notification to the abutters are to comply with a time table.

Attorney Wells advised the Board that they may continue the Public Hearing to await receipt of a letter from the Gateway Commission or the Board may wish to make an individual site visit.

Ms. Walmsley noted that if the height that would affect the view is not the part of the building and if the 3 foot wall around the patio is not within the purview of the ZBA, it would not help to keep the Public Hearing open. Other members agreed that the application should be closed.

Mr. Ingersoll read into the record two letters from Claire Matthews stating no contest to this application and a letter from.

Mr. Ingersoll closed the public portion of this application at 9:50.

### **Deliberation**

Consideration of **Application #12-26 on behalf of Heritage Cove Condominium Association, 85 River Road, Essex, CT, Assessor's Map 12, Lot 7, RU District** requesting a variance to section 40C, 40D, 40E, 40I.1, 50D and 6B of the Essex zoning regulations to allow the replacement of an existing accessory building with a new, slightly larger structure.

**Motion** made by Doug Demarest to approve a variance for **Application #12-26 on behalf of Heritage Cove Condominium Association, 85 River Road, Essex, CT, Assessor's Map 12, Lot 7, RU District** requesting a variance to section 40C, 40D, 40E, 40I.1, 50D and 6B of the Essex zoning regulations to allow the replacement of an existing accessory building with a new, slightly larger structure. The Variance is approved based on the fact that the reconstructed buildings will be constructed on the same footprint. This variance is approved in accordance with the plans as presented.

**Motion** seconded by Paul Greenberg and passed unanimously.

Consideration of **Application #12-28 on behalf of Dawn Plumb at 60 Pond Meadow Road, Ivoryton, CT, Assessor's Map 83 Lot 13-2 RU District**, requesting a variance of Sections 45D.3 of the Essex zoning regulations to allow an accessory apartment to be located in a below grade basement area.

**Motion** made by Al Daddona to approve a variance for of **Application #12-28 on behalf of Dawn Plumb at 60 Pond Meadow Road, Ivoryton, CT, Assessor's Map 83 Lot 13-2 RU District**, requesting a variance of Sections 45D.3 of the Essex zoning regulations to allow an accessory apartment to be located in a below grade basement area. The Variance is approved based on the fact that the apartment will be situated in a portion of the basement area that is not below ground and the construction of the apartment will not be in violation of the zoning regulations. The hardship surrounding this application is the topography of the land and the fact that the house was built into a hill. This Variance is approved in accordance with the plans as submitted.

**Motion** seconded by Paul Greenberg and passed unanimously.

**Motion** made by Paul Greenberg to approve a variance for **Application #12-29 on behalf of George and Susan Baker at 9 South Cove Lane, Essex, CT Assessor's Map 74, Lot 6, RU District** requesting variances of 40C, 40D, 40EE, 40I.1, 50C.2, 50D, 61B and 101D of the Essex zoning regulations to allow a new house to be located 22', 8.5" from the northern side property line where 30 feet is required and for a detached garage to be located 8', 10" from the same property line. The applicant also seeks an approval to increase the lot coverage to 10% where 7.5% is required and to also locate a patio area to be 40 feet from South cove where 50' is required.

based on the hardship surrounding the size and configuration of the property, the three easements which further restrict the location of the structures and when completed the nonconformities will be reduced. This Variance is approved based on the plans as submitted dated September 28, 2012.

**Motion** seconded by Alix Walmsley and passed unanimously.

**Approval of Minutes – Public Hearings and Regular Meeting of August 21, 2012**

**Motion** made by Al Daddona to accept the September 2012 regular meeting Minutes as presented.

**Motion** seconded by Alix Walmsley and passed unanimously.

**Correspondence / New Business:** None

**Motion** made by Al Daddona to adjourn at 9:56pm.

**Motion** seconded by Doug Demarest and passed unanimously.

Respectfully submitted,

Stella C. Beaudoin  
Recording Secretary

The next Public Hearing and regularly scheduled meeting of the Essex ZBA will be conducted on November 20, 2012.

The audio proceedings from this meeting were recorded on one card and may be obtained in the Essex Land Use office.