

TOWN OF ESSEX
Zoning Board of Appeals

Executive Board

*Paul Greenberg, Chair
Michael Noto, Vice Chair*

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*Al Daddona
W. T. Furgueson
William Veillette*

Alternate Members

*Ward Feirer
Barbara Sarrantonio
Peter Decker*

MINUTES

June 17, 2014 – Public Hearing and Regular Meeting

The Essex Zoning Board of Appeals conducted their regularly scheduled meeting on Tuesday, June 17, 2014 at 7:30 p.m. in Room A of the Essex Town Hall.

Attending Members:

Paul Greenberg
Al Daddona
Michael Noto
W. T. Furgueson
William Veillette
Barbara Sarrantonio
Ward Feirer

Absent Members:

Peter Decker

Staff:

Stella C. Beaudoin, Recording Clerk

Mr. Greenberg called the meeting to order at 7:30 p.m.

1. Public Hearings

An Appeal of an Order by the Zoning Enforcement official by John Finkeldey for property located at 33 Plains Road, Essex, CT, Assessors Map 45 Lot 20. Continued from the May 20, 2014 meeting.

On January 13, 2014, a cease and desist order was sent to John Finkeldey for the following regulated activities or uses found to be in violation of sections 40A, 40C, 40D, 40E, 40I.1, 40I.2, 50D, 82C, 90E, 121A.1 and 121A.2 of the Essex zoning regulations.

- The unapproved use and existence of a structure as a dwelling unit along with the accessory structure.
- The use of all accessory structures without zoning permits and within side setback areas.

Attorney Terrance Lomme, presented on behalf of the applicant. Attorney Lomme stated that Mr. Hendricks, Land Surveyor has not yet submitted the survey related to this proposal.

Seated for this application were the five regular members and two alternates, Barbara Sarrantonio and Ward Feirer.

Attorney Lomme stated that he is not yet in receipt of the property survey which is necessary evidence in the depiction of the location and boundaries. Attorney Lomme stated that the house in this proposal shows a structure that is close to the boundary line. The carport as it exists is further from the boundary. There are several structures on the property as shown on the 2012 aerial. Per the Essex zoning regulation, 8-13a if structure has existed for 3 years with no zoning enforcement it is considered nonconforming. Attorney Lomme stated that these structures have existed more than 3 years and have been utilized for residential uses.

Joseph Budrow, Zoning Enforcement Officer presented. Mr. Budrow submitted for the record the following items: A letter dated July 15, 2002 from the former Essex Sanitarian, Carol Speer, in which she addresses issues concerning the several wells and septic systems on Mr. Finkelday's property; A 1994 building permit which per Mr. Budrow stated was issued after the construction of Mr. Finkelday's house.

Attorney Lomme stated that Mr. Finkelday owns the property and nothing within the configuration of this property has changed. There are three structures on the property, several minor sheds, etc. The house is situated in the center of the property. There is a rental house with a commercial landscaping business occupying the lower level and a tenant upstairs. Attorney Lomme stated that the Cease and Desist Order does not specify which building on the property is the action of the Cease and Desist. Although the carport is mentioned, there is no specificity of structures in the Cease and Desist. Attorney Lomme suggested that Mr. Budrow present his case this evening and then continue this matter to the July 15, 2014 regularly scheduled ZBA meeting at which time Attorney Lomme will have available a survey of the property.

Attorney Wells stated that he does not know if the structure that is the result of the Cease and Desist was constructed prior to 2011. The Board needs to know the date the structure was built in the form of sworn testimony or affidavits.

Attorney Peter Sipples, representing Joseph Budrow stated that procedurally, the Mr. Budrow is ready to go forward with the appeal.

Mr. Budrow entered into the record the Application for a variance and a May 19, 2014 letter from Attorney Lomme requesting a continuation of the May 20, 2014 ZBA meeting. Mr. Budrow stated that he is aware of the three existing structures on this commercial and residentially zoned property. On June 12, 2013 an officer approached Mr. Budrow and informed him that John Finkelday had constructed another house on his lot. Mr. Budrow presented for the record a picture of this structure and the carport. Mr. Budrow stated that he researched the property and he ascertained that there was no building, health or zoning approvals in place. Mr. Budrow sent Mr. Finkelday a letter and requested a meeting on July 24, 2013 with Mr. Finkelday, Mr. Budrow and the Essex sanitarian. In that meeting, Mr. Finkelday confirmed that Dick Leighton, former Essex building official had approved the construction of the structure.

Mr. Budrow presented several photos that reveal a cluster of buildings on the property in 2004. Another photo reveals an accessory building on the northwest corner that appears to have been relocated to the center of the property.

At the July 24, 2013 meeting, Mr. Finkelday provided Mr. Budrow with a letter from a former tenant who stated that he lived at that location for three years until he relocated to another building on the property. To date, the Assessor's records reflect an existing garage with apartments located on the second floor, an existing single family dwelling, and an outbuilding of 392 square feet. Mr. Budrow presented for the record the Assessor's card relevant to this property along with 1994 survey which shows a framed garage, no house and no carport, although there is a well and a septic.

In 2013 the Town of Essex visited every property in Town and conducted a reevaluation. The reevaluation was complete in October 2013 which would indicate that the house to house study was done in the summer of 2013. Attorney Wells indicated that confirmation from the Assessor would provide a piece of significant evidence related to this Cease and Desist. Attorney Wells asked Mr. Budrow to confirm with the Assessor and obtain in writing the date of the physical reevaluation and information specific to this property.

Mr. Budrow submitted for record his correspondence, request for meeting and notice of violation letter related to the Cease and Desist.

Attorney Wells stated that the three year statute of limitation applies to setback however it does not apply to use for bringing an enforcement action.

Joe Budrow noted that he clearly states that there are explicit references to the violations and Mr. Finkelday was advised in a meeting that the carport and the sheds were the result of the cease and desist.

Attorney Wells asked Mr. Budrow to follow up with the Assessor and determine if the Town hired an appraiser to inspect Mr. Finkelday's property and the date that the inspection occurred.

Attorney Sipples presented a memorandum for the record dated June 17, 2014 re the Finkelday Appeal of a Cease and Desist Order in which he elaborates on the Cease and Desist.

MOTION to continue the Appeal of an Order by the Zoning Enforcement official by John Finkeldey for property located at 33 Plains Road, Essex, CT, Assessors Map 45 Lot 20 to the July 15, 2014 regularly scheduled meeting; **MADE** by M. Noto ; **SECONDED** by A. Daddona; **IN FAVOR:** M. Noto, W. Veillette, W. Furgueson, P. Greenberg, A. Daddona; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED:** 5-0-0.

Application 14-7 on behalf Elaine and Martin White, 101 North Main Street, Essex, Assessor's Map 17 Lot 9, VR District requesting variances to sections 40D, 40E, 40I.1 50D and 60B of the Essex zoning regulations to allow a 4' x 20' porch extension to a point 22 feet from the front property line where 30 feet is required. Also, to allow an increase in maximum building coverage to increase 10% where 7.5% is the maximum allowed.

Barbara Sarrantonio stated for the record that she would not participate in discussion on this application due to a professional conflict.

Seated for this application were the five regular members and alternates, Ward Feirer.

This application is to allow a front porch to be expanded along the front of the house, not to exceed the width of the existing porch. The proposed porch addition is 4 feet x 20 feet.

Martin and Elaine White presented. Mr. White stated that the existing porch is 23 feet from the property line and he would like to extend it to the entire length of the house to tie in the front of the house to what is existing. The house was constructed in 1818. The front of the porch will be a straight line and will follow the same roof line. The hardship associated with this proposal is that the house predated the zoning regulations. The structure as it currently exists presents a safety issue in that the porch ends and there is a sharp drop off.

Mr. Greenberg asked if anyone wished to speak in favor or in opposition to this application. There were no comments from the audience.

Mr. Greenberg closed the public hearing.

Application 14-8 on behalf Lisa and Jerry Baczewski, 10 River Street, Essex, Assessor's Map 28, Lot 34 VR District, requesting variances to sections 40D, 40E, 50D and 60B of the Essex zoning regulations to allow a 99 sq. ft deck, a 124sq. ft porch addition and a landing to increase the building coverage to 11.5% where 7.5% is the maximum building coverage allowed.

This application is to allow the addition of a deck, a porch and a landing to increase the existing building coverage from 10.39% to 11.5% where 7.5 is the maximum building coverage allowed. The proposed deck is 6' x 16.5' and will have a pergola on top. The proposed porch is 9.5' x 13' and a proposed landig is 6' x 6'. There are no setback encroachments.

Seated for this application were the five regular members and two alternates, Barbara Sarrantonio and Ward Feirer.

Lisa and Jerry Baczewski presented. Mr. Baczewski stated that he is seeking a variance to build a deck, a porch and landing on the back of the house to make it more functional. Mrs. Baczewski distributed photos to the members. The house was constructed in 1905. There are temporary stairs in place. A wooden porch with a roof and a deck with a pergola will be installed. The landing will have a shed roof and the little deck will have a pergola. Approval has been obtained from the Health Department for the septic.

Mr. Greenberg asked if anyone wished to speak in favor or in opposition to this application. There were no comments from the audience.

Mr. Greenberg closed the public hearing.

Application 14-9 on behalf of Andrea Griffis Inglis, 49 West Avenue, Essex, Assessor's Map 32, Lot 16, VR District,, requesting variances to sections 40C, 40D, 40I.2 and 60B of the Essex zoning regulations to allow a 14' x 22' accessory building to be located two feet from the eastern side property line where five feet is required. Also to allow an increase in building coverage to 14.4% where 7.5% is the maximum building coverage allowed.

This application is to allow an accessory structure to be located up to 2 feet from the east side property line where 5 feet is required. The proposed height is compliant as is the proposed distance from the rear property line. Also, the current building coverage is 12.2% and this

proposal looks to increase the coverage to 14.3% where 7.5% is the maximum coverage allowed.

Seated for this application were the five regular members and two alternates, Barbara Sarrantonio and Ward Feirer.

John Beveridge, architect presented on behalf of this application. Mr. Beveridge stated that the variances requested are in conjunction with an accessory building proposed to be constructed 5 feet away from property line and about 8 feet to the rear yard. The lot coverage will be 14.4%. The hardship associated with this proposal is that the house is situated on a small parcel and the construction of the home predates the zoning regulations. There is no garage on the property and this unit will be utilized for the storage of bikes, lawnmowers and yard equipment.

Mr. Beveridge is working with a contractor out of Tolland, CT in conjunction with this prefabricated structure and will be delivered to the site. The roof will be constructed onsite. The building will be placed on 6" x 6" pressure treated wood on top of a gravel base. Some of the color, character and theme from the house will be incorporated into the structure. There will be no plumbing in the structure. The only variance being requested is for the area. The applicant rescinded her request for coverage.

Chris Smith, Esq., Shipman and Goodwin presented on behalf of Stuart and Carol Schenk, who reside at 43 West Avenue, the adjacent property to the east. Attorney Smith entered an informational packet into the record and distributed to all of the members. The contents of the packets included information relevant to this application for Variance in the ZBA file along with a Bombaci Tree Service analysis of a Sugar Maple tree situated on the Schenk's property. Attorney Smith stated that the hardship associated with the variance request is self-created as the lot was part of a larger lot in the 1970's and any hardship is self-created and any increase in the coverage is self-created.

Attorney Wells stated that the parcel a legal lot when it was subdivided and questioned if Attorney Smith was suggesting that it was illegal to divide the land.

Attorney Smith stated that there is nothing unique about this lot. The applicant bought this property knowing it was an undersized parcel situated on a .34 acre nonconforming lot. Attorney Smith confirmed that when the applicant purchased the property the coverage requirements were at 15% however he would have to argue to this Board that it was legal to support a variance. Attorney Smith noted for the record that there is an appeal on the appellate record in which Attorney Wells represents the Board.

Attorney Smith stated that he will set legal reasons why this application does not qualify for a legal hardship for this Board, stating that you cannot expand a nonconformity. There is a 2700 s.f. home of livable space and to claim that the applicant requires space for extra storage is for convenience purposes only and will additionally increase the value of the property. Attorney Smith stated that convenience and financial benefit do not qualify as a legal hardship.

Attorney Smith entered into the record Exhibit B of his informational packet which references the large Sugar Maple tree that is 100 years in age, 75 feet with a 10 foot diameter. Attorney Smith stated that the Schenk's are concerned about the impact of this proposal on the Sugar Maple tree which is situated on their property. Attorney Smith stated that the Schenk's do not have an issue on coverage, however they would not be in objection if the applicant changed the

location of the proposed structure. Attorney Smith stated that the Schenk's are not in objection to the proximity of the structure to the property line, however they are opposed to the proposed location in proximity to the Sugar Maple tree.

In his analysis, Mr. Bombaci, arborist states that this proposal will have an adverse effect on the tree. The analysis is based on the fact that this is not a foundation building. The recommendation is to locate the structure 37 feet from the tree. Attorney Smith referenced Exhibit C which reflect photographs of the property. Attorney Smith referenced the aerial view and noted that there is a vacant space on the applicant's property on which the building might be constructed. Mr. Smith stated that if the applicant is willing to place the structure further over in the westerly direction, the applicant will not appeal a potential ZBA decision to grant variance on this proposal.

Mr. Beveridge pointed out that the flagstone patio currently exists in the same location that the proposed building will be located and this location has not negatively impacted the Sugar Maple tree.

Attorney Wells advised Commissioners that they have been informed by Attorney Smith that they do not have the authority to grant a variance to this application for area coverage. Attorney Wells stated that the Board cannot be involved in negotiation or appeals in order to make a decision. This is not in the jurisdiction of this Board. Attorney Wells stated that the location of the tree does not make a difference in granting a variance is for area coverage. The applicant is seeking a variance to place a building where it is allowed by the Essex Zoning regulations and that is the variance this Board must consider.

Mr. Daddona stated that prior to the change in the Zoning regulations the proposed location of this structure would have been legal and if the lots were grandfathered there would be no necessity in this proposal coming before the ZBA.

Attorney Smith stated that the ZBA is the only Board with the ability to waive the zoning regulations. Attorney Smith submitted for the record an excerpt from the Assessor's card and a map, printed June 17, 2014. Attorney Smith stated that this is not a valid hardship claimed for a variance.

Mr. Beveridge asked for a continuance to the July 15, 2014 ZBA meeting.

Mr. Noto asked why the applicant selected this location for the garage. Mr. Beveridge stated that there is a fairly limited amount of lawn and it appears that the applicant wishes to move terrace over to the lawn area with the workshop and shed.

Mr. Beveridge stated that the septic system is on the other side of the house, however this is a small piece of property with a large colonial home built in the 1800s. The house predates the zoning regulations and the space is needed for storage. The change in the zoning regulations from 15% to 7.5% is the hardship.

Ms. Sarrantonio asked for the weight load of the building.

Mr. Beveridge was not sure of the weight load however he stated that these buildings have been constructed so that they will not sink into the ground. There are no piers. There is gravel that is

framed up with pressure treated wood. Mr. Beveridge stated that the applicant has owned this property for fifteen years.

Stuart Schenk presented. Mr. Schenk stated that he is concerned about the impact of this proposal in terms of the 100 year old Sugar Maple tree situated on his property. The placement of the proposed structure on the applicant's property involves digging 12 inches and placing the structure on top of gravel. The applicant has offered to dig only six inches and to utilize a Bartlett power spade to be sure that the roots are not disturbed. Mr. Schenk stated that the Sugar Maple provides both protection and privacy and he noted that the tree is in perfect health. Mr. Schenk stated that he spoke with two arborists who indicated that the severing of any limb larger than 6" is very devastating to a tree. One of the arborists suggested that if five truckloads of mulch are placed on the ground and plywood is situated over the mulch, along with daily hydration the tree will remain healthy. Mr. Schenk stated that the applicant may have to go up 30 feet to install the cupola which will remove 30 years of growth. Mr. Schenk stated that if the tree dies as a result of this proposal, it would be their responsibility to facilitate the removal of the tree which will also result in an unrestricted view will be the applicant's garage.

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

Melanie Phoenix, 5 Ingham Hill Road presented. Ms. Phoenix stated that if these people abide by the rules, we should be making life easier for people.

Mr. Greenberg asked if there was any further audience comment. There was no further comment from the audience.

Mr. Greenberg closed the public hearing.

MOTION to continue the Public Hearing to July 15, 2014 to consider a variance to **Application 14-9** on behalf of Andrea Griffis Inglis, 49 West Avenue, Essex, Assessor's Map 32, Lot 16, VR District,, requesting variances to sections 40C, 40D, 40I.2 and 60B of the Essex zoning regulations to allow a 14' x 22' accessory building to be located two feet from the eastern side property line where five feet is required. Also to allow an increase in building coverage to 14.4% where 7.5% is the maximum building coverage allowed; **MADE** by M. Noto; **SECONDED** by A. Daddona; **IN FAVOR:** M. Noto, W. Veillette, W. Furgueson, , P. Greenberg, A. Daddona; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED:** 5-0-0.

2. Regular Meeting/Deliberation

The same members as were seated for the public hearing were seated for the regular meeting.

Application 14-7 on behalf Elaine and Martin White, 101 North Main Street, Essex, Assessor's Map 17 Lot 9, VR District requesting variances to sections 40D, 40E, 40I.1 50D and 60B of the Essex zoning regulations to allow a 4' x 20' porch extension to a point 22 feet from the front property line where 30 feet is required. Also, to allow an increase in maximum building coverage to increase 10% where 7.5% is the maximum allowed.

MOTION to grant a variance to **Application 14-7** on behalf Elaine and Martin White, 101 North Main Street, Essex, Assessor's Map 17 Lot 9, VR District requesting variances to sections 40D, 40E, 40I.1 50D and 60B of the Essex zoning regulations to allow a 4' x 20' porch

extension to a point 22 feet from the front property line where 30 feet is required. Also, to allow an increase in maximum building coverage to increase 10% where 7.5% is the maximum allowed. The hardship associated with this proposal is the pre-existing location of the house which was constructed prior to the inception of the Essex Zoning regulations and the coverage restrictions. The continuation of the porch is appropriate and will not place the house any closer to the road. This variance is granted in accordance with the plans as submitted; **MADE** W. Veillette; **SECONDED** by M. Noto; **IN FAVOR:** M. Noto, W. Veillette, W. Furgueson, P. Greenberg, A. Daddona; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED:** 5-0-0.

Application 14-8 on behalf Lisa and Jerry Baczewski, 10 RiverStreet, Essex, Assessor's Map 28, Lot 34 VR District, District, requesting variances to sections 40D, 40E, 50D and 60B of the Essex zoning regulations to allow a 99 sq. ft deck, a 124sq. ft porch addition and a landing to increase the building coverage to 11.5% where 7.5% is the maximum building coverage allowed.

MOTION to grant a variance to **Application 14-8** on behalf Lisa and Jerry Baczewski, 10 RiverStreet, Essex, Assessor's Map 28, Lot 34 VR District, District, requesting variances to sections 40D, 40E, 50D and 60B of the Essex zoning regulations to allow a 99 sq. ft deck, a 124sq. ft porch addition and a landing to increase the building coverage to 11.5% where 7.5% is the maximum building coverage allowed. The hardship associated with this variance is the present coverage limitations as per the Essex Zoning Regulations, preexisting home on a small lot. This variance is approved in accordance with the plans as submitted. **MADE** by M. Noto; **SECONDED** by W. Veillette ; **IN FAVOR:** M. Noto, W. Veillette, W. Furgueson, P. Decker, W. Feirer; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED:** 5-0-0.

3. Old Business

-Approval of Minutes – Public Hearings and Regular Meeting May 20, 2014

MOTION to approve of the May 20, 2014 meeting Minutes as presented; **MADE** by M. Noto; **SECONDED** by A. Daddona; **IN FAVOR:** M. Noto, P. Greenberg, A. Daddona, W. Veillette, W. Furgueson; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED:** 5-0 0.

4. New Business

Application 14-10 on behalf of Trevor Hilliar, 6 Main Street, Ivoryton, Assessor's Map 42, Lot 15, requesting an approval for the location of an auto repair business under new ownership.

Trevor Hilliar presented. Hilliar's foreign motors has been in the family's ownership for 50 years. For the previous 40 years Sal Pace has run Hilliar's. Mr. Pace has retired and Trevor Hilliar is taking over the management of the business. There is an application from DMV to prove that this has been an existing use of the property and will be a continuing use of the property. The ownership will transfer from Sal and Stephen Pace to Trevor Hilliar. This is an approval for a Certificate of Location.

MOTION to approve a Certificate of Location for **Application 14-10** on behalf of Trevor Hilliar, 6 Main Street, Ivoryton, Assessor's Map 42, Lot 15, requesting an approval for the location of an auto repair business under new ownership; **MADE** by M. Noto; **SECONDED** by A. Daddona; **IN FAVOR:** M. Noto, P. Greenberg, A. Daddona, W. Veillette, W. Furgueson; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED:** 5-0 0.

5. **Correspondence and Invoices** - There was no correspondence and no invoices

6. **Adjournment**

MOTION to adjourn the meeting at 9:15 p.m. to the next regularly scheduled meeting to be held on Tuesday, *July 15, 2014 at the Essex Town Hall, Conference Room A, 29 West Avenue, Essex, CT; **MADE** by A. Daddona; **SECONDED** by W. T. Furgueson; **IN FAVOR:** M. Noto, P. Greenberg, W. Veillette, W. Furgueson, A. Daddona; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED:** 5-0 0.

Respectfully submitted,

Stella C. Beaudoin
Recording Secretary