

TOWN OF ESSEX
Zoning Board of Appeals

Executive Board

*Paul Greenberg, Chair
Michael Noto, Vice Chair*

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Regular Members

*Al Daddona
W. T. Furgueson
William Veillette*

Alternate Members

*Ward Feirer
Barbara Sarrantonio
Peter Decker*

MINUTES

July 15, 2014 – Public Hearing and Regular Meeting

The Essex Zoning Board of Appeals conducted their regularly scheduled meeting on Tuesday, July 15, 2014 at 7:30 p.m. in Room A of the Essex Town Hall.

Attending Members:

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

Absent Members:

Al Daddona
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.

Seated for this application were the four regular members and one alternate, Barbara Sarrantonio.

Attorney Terry Lomme presented on behalf of Mr. Finkeldey. Attorney Lomme submitted for the record an A-2 survey prepared by Hendriks Associates and dated July 1, 2014.

Attorney Lomme stated that the Cease and Desist Order issued on January 13, 2014 was not specific as to what and where the violations were.

Attorney Lomme stated that Mr. Finkeldey had previously indicated that the structure in question existed prior to the purchase of the property.

Attorney Lomme submitted letters from the current tenant stating that she has resided on this property since October 2009. Attorney Lomme submitted a letter from the prior tenant, David Burke in which Mr. Burke states that he has occupied the residence from 2000-2005. Attorney Lomme stated that Rudy's Battery Service previously occupied the structure and Attorney Lomme presented a check which was issued by Rudy's Battery Service to Mr. Finkeldey's father, dated 1/17/1955, which Attorney Lomme indicated was the point in time when Rudy's was located on the premises in the current structure. Attorney Lomme stated that the current configuration and location of the structure has been the same since 2006 and there is record that the structure has been occupied since 1955 which addresses the main issues in the Cease and Desist Order.

Attorney Lomme stated that one of the issues surrounds the location of the house which is not situated in the setback, however the carport which has existed in the same location since 2006 is situated 11 feet from the property line. Attorney Lomme stated that insofar as the use of the house, it has existed and the use has been continual since 1955 which was prior to zoning. This makes it a nonconforming, preexisting use.

Attorney Wells summarized that there has been no physical or structural changes to the house since 2009. The carport was constructed in 2009 and it is the only structure that violates the setbacks. In terms of the use, this structure was utilized as an apartment and the current tenant has lived there since 2009, and she still occupies the space. A tenant has lived in the existing structure since 1955.

Attorney Lomme stated that the allowance of multiple homes on one property is not permitted in the Town of Essex and he presented for the record, the Essex assessor's cards for 7 Parker Lane, 22 Pratt Street and 29 Plains Road. Attorney Lomme stated that all three properties reflect two houses on one property. The 29 Plains Road property is the adjoining neighbor to Mr. Finkeldey. Attorney Lomme stated that all of the referenced structures preexisted zoning and as such they not subject to the zoning regulation discussed at the previous meeting. In 1995 the regulation specific to this zone changed and Mr. Finkeldey's property has been in place in 1955.

Joe Budrow, Zoning Agent stated that the enforcement process has taken over one year to investigate and complete, which ultimately led to the Cease and Desist Order. Mr. Budrow stated that the unapproved use and the accessory structure which is being utilized as a carport was the crux of the issuance of a Cease and Desist Order. Mr. Budrow stated that following the July 24, 2013 meeting between himself, the Health Director and Mr. Finkeldey, Mr. Budrow investigated the Health Department files and he could not find any approvals for that property. Mr. Budrow stated that the Cease and Desist Order and the discussions at the meetings all pointed to the use that is taking place on the subject property.

Mr. Budrow noted that the definition of a lot, per the zoning regulations states the allowance of one principal use or one principal building. Although it was not specifically referenced in the Cease and Desist Order, all parties knew what he was talking about as there were several conversations previous to that meeting. Mr. Budrow stated that he previously presented 2004, 2006 and 2012 aerial photos into the record, which showed different configuration on the property.

Mr. Budrow obtained a letter from Essex Assessor, Jessica Sypher who states in her letter that a reevaluation was conducted in 2013, however the structure in question was not a part of the reevaluation. Ms. Sypher further stated that if there are no trespassing signs posted on a property, the person conducting the assessment on the property will not proceed.

Paul Greenberg, stated that there are records on file in the assessor's office of this property and the structures prior to 2009 and Mr. Greenberg asked Mr. Budrow to research that information and report back to the Board with his findings. Mr. Greenberg further requested that Mr. Budrow research the tax records for past years to determine if the structure in question on premises has been taxed as a garage.

Attorney Wells requested that Mr. Budrow research the 1966 date and confirm to the Board at the August 19th meeting that this is the date that zoning came into effect. Attorney Wells further requested that Mr. Budrow confirm that only one use is allowed on a lot and the date that that regulation came into effect. Attorney Sipples will research the CT State Statute that references the requirement of the continuous use of this property.

At this time, Attorney Lomme agreed to an extension of time to allow for the continuance of this Cease and Desist order.

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 August 19, 2014 regularly scheduled meeting; **MADE** by M. Noto ; **SECONDED** by P. Greenberg; **IN FAVOR:** M. Noto, W. Veillette, W. Furgueson, P. Greenberg, B. Sarrantonio; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED:** 5-0-0.

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.

Andrea Griffis presented. Ms. Griffis stated that she is requesting a variance for coverage so that she can add a garage to the property. The initial proposal was 2 feet within property line and Ms. Griffis has moved it back to 5 feet. As such a setback variance is no longer needed and Ms. Griffis is seeking a variance for lot coverage only. Ms. Griffis presented an amended site plan to the Board.

Ms. Griffis stated that this is a proposal to construct a garage at 14' x 22' and 15' in height to the roof peak with cupola for a total max height of 19 feet. Ms. Griffis stated that the trunk of the Maple tree is ten feet from her property line and the proposed garage will be 10 feet from the closest corner of the Maple tree. The canopy extends 30 feet onto Ms. Griffis' property. Ms. Griffis stated that she will remove a minimal amount of branches on the tree which is encroaching on her house. The purpose of the garage is for storage of bikes, kayaks, boat and winter storage of small Fiat that is in-process of restoration. Ms. Griffis stated that there is a minimal amount of vehicle traffic into the garage.

Ms. Griffis stated that the hardship associated with this proposal is that her house which was constructed in 1832 is situated on a 1/3rd acre lot which was split at a 2/3rd acre lot in the 1970's. The coverage regulation was at 15% when Ms. Griffis purchased the property and the zoning regulation has since reduced the maximum building coverage requirement to 7.5%.

Ms. Griffis stated that she met with an arborist who suggested root invigoration and soil stabilization and Ms. Griffis retained Bartlett Tree Service for that service in June 2014. Ms. Griffis stated that she designed the garage with the Maple tree in mind, keeping the structure small enough so that a foundation would not be requisite. The garage will be assembled off site and delivered fully assembled. The garage foundation will be a gravel raised bed and will sit on 6 helical piers and placed on site in conjunction with her arborist. Ms. Griffis stated that will postpone foundation work till early fall so as not to expose the roots of the Maple tree to the heat.

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

Ms. Melanie Phoenix stated that Ms. Griffis presented a substantial and favorable presentation.

Mr. Stuart Schenk presented in opposition to this proposal. Mr. Schenk commented on the June 2014 Minutes and stated that he was not attempting to use the Board to liaison between he and Ms. Griffis, however he has been personally working with Ms. Griffis toward an amicable resolution. Mr. Schenk stated that the need for additional storage is not a legal hardship. Mr. Schenk stated that the 2.1% coverage is excessive.

There was no further public comment.

Mr. Greenberg closed the public hearing.

Application 14-11 on behalf of Charles Timlin, 149 Main Street, Ivoryton, Assessor's Map 58, Lot 21, VR District, requesting variances to sections 40C, 40D, 40I.1 and 60B of the Essex zoning regulations to allow an 18' x 18' accessory structure to a point 10 feet from the west side property line where 25 feet is required.

Stan Shepard presented on behalf of this application. Mr. Shepard corrected the dimension for this proposal as referenced on the legal notice stating that the accessory structure is 18' x 20' and will be a prebuilt shed structure. Mr. Shepard stated that this is a setback issue only. The house was constructed in 1790 and the property predates zoning. The shed is a pre-fab and will not be utilized as a garage, however it will be used for storage.

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

There was not public comment.

Mr. Greenberg closed the public hearing.

Application 14-12 on behalf of Joshua Jones for Brian Isacson, 17 Parker Terrace, Essex, Assessor's Map 32, Lot 18, VR District, requesting variances to sections 40D, 40E, 50D and 60B of the Essex zoning regulations to allow a handicapped ramp to increase the building coverage from 12.2% to 12.9% where 7.5% is the maximum building coverage allowed.

Mr. Greenberg opened the Public Hearing and continued this proposal to the August 19, 2014 Hearing.

MOTION to continue **Application 14-12** on behalf of Joshua Jones for Brian Isacson, 17 Parker Terrace, Essex, Assessor's Map 32, Lot 18, VR District, requesting variances to sections 40D, 40E, 50D and 60B of the Essex zoning regulations to allow a handicapped ramp to increase the building coverage from 12.2% to 12.9% where 7.5% is the maximum building coverage allowed to the August 19, 2014 meeting; **MADE** by B. Sarrantonio; **SECONDED** by M. Noto; **IN FAVOR:** M. Noto, W. Veillette, W. Furgueson, P. Greenberg, B. Sarrantonio; **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 14-9 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.

The Board's comments were that the hardship associated with this application surrounds the house that was constructed pre-zoning and the fact that the zoning laws have changed, and it is impossible to do anything with the property and not be in violation of the zoning regulations. This variance request is for coverage only and below the 15% requirement. There is no exterior access and the basement is a small crawl space, and the applicant does need to large equipment. The Board stated that they are pleased to see that a good deal of effort has been put forward toward the protection of the Maple tree.

MOTION to grant 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 which was initially proposed to be located two feet from the eastern side property line where five feet is required. The applicant has adjusted this proposal and moved the location of the accessory building back to 5 feet from the setback. A setback variance is no longer needed and this variance is granted for lot coverage only. The driveway will not be extended. The hardship associated with this proposal is conditioned on the change in the zoning laws and the applicant has taken care to minimize any impact. This variance is granted in accordance with the plans submitted which include the installation of helical piers. **MADE** by B. Sarrantonio; **SECONDED** by M. Noto; **IN FAVOR:** P. Greenberg, M. Noto, W. Veillette, W. Furgueson, B. Sarrantonio; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED:** 5-0-0.

Application 14-11 on behalf of Charles Timlin, 149 Main Street, Ivoryton, Assessor's Map 58, Lot 21, VR District, requesting variances to sections 40C, 40D, 40I.1 and 60B of the Essex zoning regulations to allow an 18' x 18' accessory structure to a point 10 feet from the west side property line where 25 feet is required.

MOTION to grant a variance to **Application 14-11** on behalf of Charles Timlin, 149 Main Street, Ivoryton, Assessor's Map 58, Lot 21, VR District, requesting variances to sections 40C, 40D, 40I.1 and 60B of the Essex zoning regulations to allow an 18' x 18' accessory structure to a point 10 feet from the west side property line where 25 feet is required. The hardship associated with this proposal is the topography and configuration of the lot. This variance is approved in accordance with the plans submitted, as amended. **MADE** by W. Veillette; **SECONDED** by M. Noto; **IN FAVOR:** P. Greenberg, M. Noto, W. Veillette, W. Furgueson, B. Sarrantonio; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED:** 5-0-0.

3. Old Business

-Approval of Minutes – Public Hearings and Regular Meeting June 17, 2014

The following amendments were suggested and noted in italics:

Page 2, second paragraph, 5th line; "Per the *CT General State Statute*, 8-13a, if *a* structure.."

Page 2, remove 3rd paragraph beginning: "Joseph Budrow, Zoning Enforcement Officer presented."

Page 2, 4th paragraph, 2nd line: "configuration of this property has changed *within the past three years*".

Page 2, 5th paragraph: "Attorney Wells stated that he does not know if the structures that *are* the.."

Page 2, 7th paragraph: "Mr. Budrow entered into the record the Application for *appeal of an order*.."

Page 2, 7th paragraph, 4th line: "commercial and *industrially* zoned property."

Page 2, 7th paragraph, 9th line: "requested a meeting on July 24, 2013 with Mr. Finkeldey, Mr. Budrow, the Essex Sanitarian *and the Building official*."

Page 2, last line: "relocated to the *east* of the property."

Page 4, 2nd paragraph, 4th line: "the hardships associated with this proposal.."

Page 5, 4th paragraph, last sentence: "The applicant rescinded her request for *setback*.."

MOTION to approve of the June 17, 2014 meeting Minutes as amended; **MADE** by M. Noto; **SECONDED** by P. Greenberg; **IN FAVOR:** M. Noto, P. Greenberg, W. Veillette, W. Furgueson, B. Sarrantonio; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED:** 5-0 0.

4. New Business

There was no new business.

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

6. Adjournment

MOTION to adjourn the meeting at 9:35 p.m. to the next regularly scheduled meeting to be held on Tuesday, August 19, 2014 at the Essex Town Hall, Conference Room A, 29 West Avenue, Essex, CT; **MADE** by M. Noto; **SECONDED** by W. T. Furgueson; **IN FAVOR:** P. Greenberg, M. Noto, W. Veillette, W. Furgueson, B. Sarrantonio; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED:** 5-0-0.

Respectfully submitted,

Stella C. Beaudoin
Recording Secretary