



TOWN OF ESSEX
Zoning Board of Appeals

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George Wendell
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Unapproved

MINUTES

April 17, 2018 – Public Hearing and Regular Meeting

The Essex Zoning Board of Appeals conducted their regularly scheduled meeting on Tuesday, April 17, 2018 at 7:00 p.m. in Room B of the Essex Town Hall. Seated for the meeting were P Greenberg, B Sarrantonio, W Feirer, W. T Furgueson, G Wendell seated for W Veillette.

Staff:

Stella C. Beaudoin, Recording Clerk
Michael Wells, Esq., Legal Counsel

Audience members: There were 23 audience members.

P Greenberg, Chair called this evening's meeting to order at 7:00pm

PUBLIC HEARINGS

This evening's quorum was comprised of 4 regular members and one seated alternate.

- **Application 18-3** on behalf of Michael Picard, 175 Saybrook Road, Assessor's Map 74, Lot 11, requesting variances to sections 40C, 40D, 40E, 40I.1, 50C.2, 61B and 101D of the zoning regulations to allow the replacement of a nonconforming house with a new single family dwelling that will not be within setback areas but to be 32.2 feet in height where 30 feet is the maximum height allowed. Also, to allow a pool house to a point 16 feet from a side property line where 30 feet is required, and a pergola to a point 16.5' from a side property line where 30 feet is required. Also, to allow construction within the Gateway Buffer Area.

In 2017 the applicant submitted Application #17-5 to eliminate existing structures and to redevelop the property. Variances to ten sections of the zoning regulations were required. On October 20, 2017 a meeting was conducted with the Land Use staff to review a new site plan and to verify the elimination of variances needed. There are a few differences in the current site plan from the site plan that was reviewed in October 2017.

Marjorie Shansky, Esq, and Thomas Metcalf, P.E., L.S. presented on behalf of the applicant.

Tom Metcalf stated that this a one-acre parcel with South Cove to the east, Saybrook Road to the west and the lot is 240 feet deep and 130 feet wide with an existing house on the property and associated improvements to include septic and well. The land slopes to South Cove at 10% which plays into the variance request for the building height.

The second plan referenced by T Metcalf reflects the existing house, the proposed house, pergola, pool, pool house and patio area. The variances requested include side setback for the pool pavilion, improvements within the 50-foot gateway buffer, pool, portions of patio, pergola and associated landscaping with the pool and patio area. The applicant is also requesting variance for building height for the new house height. This property had been before the Zoning Board of Appeals in 2000 by the previous owners for several variances and in 2000 there were variances granted for an addition to the house and a second story addition to the house within the gateway buffer area and for building height.

In 2003 application was made for variance to construct a garage and second story apartment which was granted.

The removal of the house which is nonconforming related to rear setback, gateway buffer area and side setback, is a nonconforming structure which will be removed and a conforming structure will be constructed. The existing survey did show several out-buildings on the property and they have been removed and eliminated in any calculations. The pool pavilion is a 14' x 30' open structure and will be 16 feet from property line where 30 feet is required. T Metcalf stated that the width of the lot is confining and limits the availability for a pool pavilion. T Metcalf noted that the zoning regulations do allow for an accessory structure to be placed in the rear yard setback, so it is feasible to attempt placement of the pavilion closer to the water, however that location would place the pavilion in the gateway buffer and there is a large Oak tree which would have to be felled in order to place the pavilion in that location.

T Metcalf noted that as related to the proposed height of this building, the Zoning Commission voted to amend the regulations to allow building height to 35 feet and this change will become effective on May 18, 2018 which would make this structure compliant with the Zoning regulations. The actual height of this building once the site is graded will be 27-28' which would make it compliant with the regulations. T Metcalf stated that the applicant has worked with their architect to keep the house low and omitted an attic making this structure a moderate size in the height. T Metcalf stated that the plans were submitted to CT River Gateway Commission and Torrence Downes issued a letter on February 9, 2018 stating no opposition to the granting of variances. There were several conditions listed in the Gateway letter for which the applicant has agreed compliance.

Attorney Marjorie Shansky presented a letter for the record dated April 17, 2018 and reiterated the high points of Mr. Metcalf's presentation. The elimination and reduction of nonconformities is another reason to grant variance. There has been a reduction of nonconformity and the removal of the house from within the gateway buffer is an elimination of significant nonconformity. M Shansky stated that the neighbors to the south have no objection to this proposal.

B Sarrantonio noted that there were a cluster of outbuildings which have not been included in this site plan. T Metcalf stated that on the previous site plan, the house scooted southeast violating a setback. It was a different, bulkier design house with a separate out-building garage which has also been eliminated. The proposed house is conforming and it is only the pool pavilion that is nonconforming.

M Wells stated that the pool, patio, and pool pavilion for the side are all within the Gateway buffer area.

There were no further comments from the Board.

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

Debbie Malcarne representing the Malcarne family who lives on the property to north. D Malcarne stated that the existing structure is just a few feet from the property line. The entire southerly exposure and view of the cove has been obstructed by the installation 10 foot arborvitae and chain link fence. The Arborvitae and the four-foot chain link fence was installed completely obscuring the Malcarne's view of the cove. D Malcarne stated that she is in opposition to the installation of the proposed pool pavilion which is to be 16 feet from the Malcarne property line and will be 24 feet from Mrs. Malcarne's home. The pool pavilion does overlap the back bedroom of Mrs. Malcarne's home and with the installation of the pool pavilion the view from the western side will be obscured. D Malcarne stated that there has already been overdevelopment of the subject property and as a result, a loss of major views. The allowance of the installation of the proposed pool pavilion will now obscure the west side view and encroaching and hampering on our enjoyment of the property, as well as encroaching on the view which is already seriously impaired. The actual building will be 22 feet from our bedroom.

Claire Matthews who presented commented on a CT Law Tribune article on nonconformancy. C Matthews stated that this proposed development on the subject property is offensive to the neighborhood. This property is inconsistent and offensive to the natural landscape and offensive to the neighbors, and there is no hardship associated with this proposal. C Matthews noted that there are zoning regulations in the town for the purpose of protecting the neighborhood and the property owners.

Shirley Malcarne who presented stated that the proposed location of the pavilion will be 16 feet from her property line and the Arborvitae that the applicant planted on the property line present a wall of trees that obscure her view from the cove. The potential noise and the light coming from the pavilion are troublesome.

Carter Gowrey, 179 Saybrook Road, who is situated 2 lots to the south of the proposed location stated that the proposed height of this house will impair his view of the South Cove.

M Shansky presented a sketch of the pool pavilion noting that there are no lights proposed in this application and that any lights involved would need to be compliant with the zoning regulations.

There was no further public comment.

There was a letter submitted into the record from the CT River Gateway Commission, a third review, and recommendations related to this proposal. Gateway states no objection to this proposal however in their letter has placed suggested conditions on approval.

A letter submitted from Claire Matthews stating opposition to this proposal and a CT Law Tribune article related to self-created hardships, which has been made a part of the record.

A letter from Shirley Malcarne stating opposition to the proposal.

A letter from Vanessa Malcarne stating opposition to the proposal.

A letter from Carter Gowrey stating opposition to this proposal.

A letter from the DEEP Land and Water Resources Division stating no objection.

P Greenberg closed the Public Hearing at 8:08pm.

- **Application No. 18-6** on behalf of Joseph and Karen DiRenzo, 3 New City Street, Essex, CT, Assessor's Map 28, Lot 69, VR District, requesting variances to sections 40D, 40E, 40I.1, 45D.4, 50D and 60B of the zoning regulations to allow a garage addition to come to a point 28 feet, 4 inches from the rear property line where 30 feet is required, and to allow the existing building coverage to increase from 15.5% to 17.5% where 10% is the maximum building coverage allowed. Also, to allow an accessory dwelling unit to be located within an existing structure that is 7 feet from a property line where 15 feet is required.

J Beverage who presented on behalf of the applicant stated that this is the same proposal that was before the Board two months ago and was denied based on the 60,000 square foot lot on which an accessory apartment was proposed to be constructed. The Zoning Commission has recently eliminated that regulation and allows the addition of accessory apartments on legal nonconforming lots.

M Wells stated that he looked at regulations as was provided by the ZEO and he reviewed the zoning regulations that were posted online and the change to the regs had not been updated.

Karen DiRenzo presented stated property is legally nonconforming and it abuts to Essex Land Trust property, and the baseball field to the rear.

John Beverage stated that the applicant is seeking a side yard setback variance for the construction of the garage in the side yard. J Beverage stated that the existing lot coverage is 15.4 and it is going to 16.4 which is a 1% increase. The 16' x 22' shed will be removed.

There were no further comments from the Board.

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

Norman Needleman, First Selectman commented on the miscommunication between the land use office and the ZBA related to this application in that the Board was not aware of the change in the zoning regulations for accessory apartments at the time that the applicant previously presented this proposal. N Needleman stated that as a Town, Essex has been far too restrictive in the allowance of accessory apartment and he noted that none of the fears and concerns that were in place when the regulation was formed 25 years ago are real fears today. N Needleman commended the Zoning Commission in their decision to the allowance of limited accessory apartments, and this proposal fits within those parameters.

Joe Montana, 58 North Main Street stated that he had no problem with this proposal.

Susan Malan, stated that the accessory apartment change in the zoning regulations speaks directly to this application and this proposal should be allowed. Architect has created a proposal that is in keeping with the neighborhood and with the Town.

Bill Taylor, next door neighbor stated that he is in favor of this proposal.

Lynn Atkin, 81 North Main Street, agree that the applicant is a tremendous asset to the neighborhood and is in favor of this application.

There was no further public comment.

There was one letter submitted into the record from the CT River Gateway Commission which states no objection to this proposal. Other letters were previously submitted and made a part of the record.

P Greenberg closed the Public Hearing at 8:25pm.

- **Application No. 18-8** on behalf of Thomas and Kelly Nichols, 10 West Avenue, Essex, CT, Assessor's Map 32, Lot 60, VR District, requesting variances to sections 40D, 40E, 40I.1, 50D and 60B of the zoning regulations to add a two-car garage to a point 7 feet from a side property line where 25 feet is required and to allow the existing building coverage to increase from 18% to 22.58% where 10% is the maximum building coverage allowed. Also, to allow an expansion of a part of the house that is within the west side setback area.

Thomas Nichols who presented on behalf of this proposal stated that the house subject to this proposal was built in 1890, on a small pie shape lot and he proposes to renovate the home to post-Victorian style with a detached 2 car garage on east side of the house and expand the second floor to improve the roof lines of this house. The hardship is the unique shape of the lot and the topography.

John Beverage who presented on behalf of this proposal stated that the barn is 20' x 22' which would be a lot coverage increase of 1%, going from 18 to 19. The barn is an historic structure and the applicant would prefer not to take it down.

There were no further comments from the Board.

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

Susan Malan audience member stated this proposal will improve the look of this historical property.

There was no further public comment.

There was one letter submitted into the record from the CT River Gateway Commission which states no objection to this proposal.

A letter from Peter Scholes dating April 18, 2018 stating no opposition to this proposal.

P Greenberg closed the Public Hearing at 8:38pm.

- **Application No. 18-9** on behalf of Raymond and Marianne Pawlicki, 11 Mack Lane, Essex, CT, Assessor's Map 50, Lot 14-4, VR District, requesting variances to sections 40C, 40D, 40I.1, 50D and 60B of the zoning regulation to add an open addition to a point 6.5 feet from a side property line where 25 feet is required. Also, to allow a proposed pool house that would increase the existing building coverage from 8.8% to 11.9% where 10% is the maximum building coverage allowed.

Ed Cassella, Esq., requested that this matter be continued to the May 15, 2018 meeting.

Raymond Pawlicki stated that it came to his attention that neighbors have some concerns and he will work to mitigate the concerns.

REGULAR MEETING

- **Application 18-3** on behalf of Michael Picard, 175 Saybrook Road, Assessor's Map 74, Lot 11,

Discussion:

It was noted that the height issue is a non-issue at this time.

George Wendell commented on the concept put forward by the applicant's counsel related to of reducing the nonconformity and he stated that there was not a nonconformity on the north side before and now there is making this inconsistent with the idea.

B Sarrantonio stated that she has a problem with the pool pavilion which could be placed somewhere else or not constructed at all. The pavilion significantly impedes the neighbor's view.

A lengthy discussion ensued.

Application 18-3 on behalf of Michael Picard, 175 Saybrook Road, Assessor's Map 74, Lot 11, requesting variances to sections 40C, 40D, 40E, 40I.1, 50C.2, 61B and 101D of the zoning regulations to allow the replacement of a nonconforming house with a new single family dwelling that will not be within setback areas but to be 32.2 feet in height where 30 feet is the maximum height allowed. Also, to allow a pool house to a point 16 feet from a side property line where 30 feet is required, and a pergola to a point 16.5' from a side property line where 30 feet is required. Also, to allow construction within the Gateway Buffer Area, ruled as follows; **MOTION** by B Sarrantonio to approve the height of the house based on the slope and based on the fact that the zoning regulation change in height will take effect on May 18, 2018. Approved in accordance with the plans submitted; **SECONDED** by W. T. Furgueson; **IN FAVOR** P Greenberg, B Sarrantonio, W. T. Furgueson, W Feirer, G Wendell; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED:** 5-0-0. **MOTION** by W Feirer to approve variance for the pool and the patio to the Gateway buffer area setback, and approval conditioned on the elimination of the prior variances granted to the property. Variance approved based on the reduction of the nonconformity and approved in accordance with the plans submitted; **SECONDED** by W. T. Furgueson; **IN FAVOR** P Greenberg, B Sarrantonio, W. T. Furgueson, W Feirer, G Wendell; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED:** 5-0-0. **MOTION** by W Feirer to deny a variance for the pool pavilion based on lack of hardship. The reduction to the nonconformity does not apply because it is situated on different portion of property to where the nonconformity has been reduced or

eliminated; **SECONDED** by G Wendell; **IN FAVOR** P Greenberg, B Sarrantonio, W. T. Furgueson, W Feirer, G Wendell; **OPPOSED**: None; **ABSTAINING**: None; **MOTION CARRIED**: 5-0-0.

- **Application No. 18-4, Coastal Area Management Site Plan Review** on behalf of Michael Picard, 175 Saybrook Road, Essex, CT, Assessor's Map 74, Lot 11, Rural Residential District (EV).

A Coastal Area Management site plan review is reviewed by the Zoning Commission as per section 102 of the Zoning Regulations. The Coastal Area Management District is bounded by a line that is 1000 feet from the coast line. The state of CT allows Towns the right to determine their own Coastal management border. In Essex, the Coastal Management border is 1,000 feet.

MOTION made by W Feirer to approve **Application 18-4 Coastal Area Management Site Plan Review** on behalf of Michael Picard, 175 Saybrook Road, Assessor's Map 74, Lot 11; This Approval is based on the evidence presented and the fact that the March 19, 2018 DEEP letter in which it was stated that the proposal was reviewed, comments were provided and issues were addressed by the applicant, and there were no other objections. The proposed development is in compliance with the CAM Act. The application for variance was approved with the exception of the pool pavilion which was denied. The CAM request is approved as submitted as it is consistent with all applicable coastal policies and includes all reasonable measures to mitigate adverse impacts; **SECONDED** by W. T Furgueson; **IN FAVOR** P Greenberg, B Sarrantonio, W. T. Furgueson, W Feirer, G Wendell; **OPPOSED**: None; **ABSTAINING**: None; **MOTION CARRIED**: 5-0-0.

- **Application No. 18-6** on behalf of Joseph and Karen DiRenzo, 3 New City Street, Essex, CT, Assessor's Map 28, Lot 69

MOTION made by W. T. Furgueson to approve a variance **Application No. 18-6** on behalf of Joseph and Karen DiRenzo, 3 New City Street, Essex, CT, Assessor's Map 28, Lot 69, VR District, requesting variances to sections 40D, 40E, 40I.1, 45D.4, 50D and 60B of the zoning regulations to allow a garage addition to come to a point 28 feet, 4 inches from the rear property line where 30 feet is required, and to allow the existing building coverage to increase from 15.5% to 17.5% where 10% is the maximum building coverage allowed. Also, to allow an accessory dwelling unit to be located within an existing structure that is 7 feet from a property line where 15 feet is required. The hardship associated with this proposal is the fact that the subject property is a legal nonconforming lot, small in size and conversion of a preexisting structure that was already situated in the setback; This proposal is approved in accordance with the plans as submitted; **SECONDED** by W Feirer; **IN FAVOR** P Greenberg, B Sarrantonio, W. T. Furgueson, W Feirer, G Wendell; **OPPOSED**: None; **ABSTAINING**: None; **MOTION CARRIED**: 5-0-0.

Application No. 18-8 on behalf of Thomas and Kelly Nichols, 10 West Avenue, Essex, CT, Assessor's Map 32, Lot 60.

Discussion:

G Wendell stated that the hardship is the small size of the lot.

P Greenberg stated that the coverage is extreme however he struggles with the notion of tearing down an antique barn in exchange for the allowance of the garage.

B Sarrantonio stated that in lieu of the historic nature and the location that there is some logic to allowing it this proposal as presented.

W. T. Fugueson stated that he would support the allowance of maintaining the historic barn.

MOTION made by B Sarrantonio to approve a variance for **Application No. 18-8** on behalf of Thomas and Kelly Nichols, 10 West Avenue, Essex, CT, Assessor's Map 32, Lot 60, VR District, requesting variances to sections 40D, 40E, 40I.1, 50D and 60B of the zoning regulations to add a two-car garage to a point 7 feet from a side property line where 25 feet is required and to allow the existing building coverage to increase from 18% to 22.58% where 10% is the maximum building coverage allowed. Also, to allow an expansion of a part of the house that is within the west side setback area. The hardship associated with this proposal is the historic nature of the property, the flat roof and the historic barn which should not be removed. This proposal is approved in accordance with the plans as submitted; **SECONDED** by W T Furgueson; **IN FAVOR** P Greenberg, B Sarrantonio, W. T. Furgueson, W Feirer, G Wendell; **OPPOSED**: None; **ABSTAINING**: None; **MOTION CARRIED**: 5-0-0.

NEW BUSINESS

There was no new business.

OLD BUSINESS

- **Approval of Minutes –Meeting Minutes, March 20, 2018**

MOTION made by W T Furgueson to approve the March 20, 2018 Regular Meeting Minutes as presented; **SECONDED** W Feirer; **IN FAVOR** P Greenberg, B Sarrantonio, W. T. Furgueson, W Feirer, G Wendell; **OPPOSED**: None; **ABSTAINING**: G Wendell; **MOTION CARRIED**: 4-0-1.

CORRESPONDENCE AND INVOICES

There were no invoices and no correspondence.

PUBLIC COMMENT

There was no public comment.

ADJOURNMENT

MOTION made by W. T. Furgueson to adjourn the meeting at 9:02 p.m. to the next regularly scheduled meeting which will be held on Tuesday, May 15, 2018 at 7:00 p.m. at the Essex Town Hall, Conference Room A, 29 West Avenue, Essex, CT; **SECONDED** by W Feirer; **IN FAVOR** P Greenberg, B Sarrantonio, W. T. Furgueson, W Feirer, G Wendell; **OPPOSED**: None; **ABSTAINING**: None; **MOTION CARRIED**: 5-0-0.

Respectfully submitted,

Stella C. Beaudoin
Recording Secretary