



TOWN OF ESSEX
Zoning Board of Appeals

Executive Board

W. T. Furgueson, Chair
W Feirer, Vice Chair
Philip P Schaller, Secretary

29 West Avenue • Essex, Connecticut 06426
Telephone (860) 767-4340 • FAX (860) 767-8509

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Brian Weinstein

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Philip J. Beckman
George Wendell
Richard Rybak

Unapproved

Minutes
February 18, 2020 – Zoning Board of Appeals

The Essex Zoning Board of Appeals conducted their regularly scheduled meeting on Tuesday, February 18, 2020 at 7:00 p.m. in Room A of the Essex Town Hall. Present: W T Furgueson, Ward Feirer, Brian Weinstein, Phillip Schaller, Phillip Beckman, Alternate; Richard Rybak, Alternate; George Wendell.

Staff:

Stella Caione, Recording Secretary
Joseph Budrow, Essex Zoning Enforcement Officer
Makana Ellis, Esq., Dzialo, Pickett & Allen, PC
David Royston, Esq., Dzialo, Pickett & Allen, PC

W T Furgueson, Chair called the meeting to order at 7:00 p.m. Mr. Furgueson reversed the order of the agenda items.

1. PUBLIC HEARINGS

- **Application No. 20-4** on behalf of Louis G. Spann, Jr., 41 Prospect Street, Essex, CT, Assessor's Map 32, Lot 51, VR District, requesting variances to sections 40C, 40D, 40I.1 and 60B of the zoning regulations to allow an unapproved shed to remain at a point on a property line where a 25 foot building setback is required.

Seated for this proposal was B Weinstein W Feirer, W T Furgueson, P Schaller, and P Beckman.

On March 22, 2018 a zoning permit was approved for a "doghouse utility shed" and proposed to be situated 4 feet from a property line and not to exceed 4 feet in height. J Budrow felt that this accessory item was minor enough to the extent that it would not require a variance if a zoning permit application was submitted. Subsequent to the installation, J Budrow receive complaints from the abutting neighbor. J Budrow visited the property and ascertained that the shed appeared

to be at least 7 feet in height and came right up to the property line. This is not what was approved per the zoning permit. J Budrow sent certified notification on September 18 2019 in which he stated that at this time the subject property is in violation of zoning regulation sections 40C, 40D 40I.1 and 60 B for having an accessory structure approximately 0 feet from a side yard property line where 25 feet is required. J Budrow advised Mr. Spann that the shed needs to be relocated to a conforming area on the property. J Budrow noted that it appears that the roof of the shed crosses the property line and this is not allowed.

Louis Spann who presented on behalf of this proposal stated that he constructed a small utility shed to house a portable generator and a lawn mower and a few woodworking items. He constructed a 7-foot high, 44 s.f. custom built shed which is 3 feet higher than what was approved. The shed is situated behind a retaining wall. L Spann stated that he did not realize that he was in violation and offered to remove the gutter and the soffit so as to remediate the height issue. It was noted that the original permit granted approval for a shed four feet in height and L Spann constructed a shed seven feet in height. L Spann stated that the peak of the roof is 7'1" and the height as it stands, does not obscure any views.

J Budrow, Zoning Enforcement Officer stated that as originally drawn and submitted, permits were approved for an accessory building.

A brief discussion on architectural features of this structure ensued and W T Furgueson stated that the ZBA does not have purview over architectural features. He noted however that the building is a different structure than what was previously presented and approved.

L Spann stated that aesthetically this is the only location in which to situate the shed and offered to remove the soffit to alleviate the encroachment.

W. T. Furgueson asked if anyone wished to speak in favor or in opposition to this proposal.

Sherry Morgan, 39 Prospect Street Essex who presented, distributed a timeline which reflects the time from when she purchased her home related to the construction timeline of the subject shed. S Morgan stated that this shed can be located within the 25' setbacks, and as such there are no physical constraints of the land or associated hardship. The current location of this nonconforming shed confers upon its owner an unfair advantage; Said shed is 5" from Ms. Morgan's back door and it overhangs by property by over 12".

S Morgan asked that this application be denied for two safety reasons; It has unpermitted electricity and it overhangs the same location where the installation of 3 steps (ZBA Application 20-1) were approved by the Zoning Board of Appeals in January 2020, which was an application to add a second emergency exit to Ms. Morgan's home. S Morgan stated that the shed can be situated in other locations on the property, i.e. up against the applicant's deck and his stairs. S Morgan stated that the land is flat and the shed would properly fit in that location. S Morgan pointed out two additional locations as to where the shed could be situated. S Morgan stated that the applicant did not meet the hardship criteria.

S Morgan stated that ground cover behind the back of her garage was removed by the applicant and stone was installed. The gutter on L Spann's shed now drains into that area onto her property. S Morgan stated that an electric line comes out of a hole in L Spann's garage and goes along the retaining wall and inlets into a grey pipe that is sitting unattached on top of the retaining wall.

J Budrow stated that permitting from the building inspector is required of the property owner in order to install electric. Permitting was not authorized for this electric installation.

L Spann stated that he did nothing intentionally wrong and keeping peace with the neighbors is more important.

Jim Godsman stated that the property line in question also abuts his home and he stated that the rules are the rules and encroachment is encroachment.

There was no further comments from the audience.

A letter dated February 10, 2020 was submitted from J H Torrance Downes, Deputy Director, River COG the CT River Gateway Commission stating that this application proposes a small project that will not create any significant visual impact to the "natural and traditional river scene" and Gateway does not oppose the granting of a variance.

There was no further comment from the Board.

The public hearing closed at 8:10pm.

- **Application No. 20-3** on behalf of James Pascoots, 30 Saybrook Road, Essex, CT, Assessor's Map 46, Lot 82-1, RU District, requesting variances to sections 40D, 40E, 40I.1, 40I.2, 50D and 61B of the zoning regulations to add a 4' 20' addition to a front porch to a point 32 feet from the property line where 40 feet is required. Also, to add height to this porch that is within a front yard setback area.

Seated for this proposal were W T Furgueson, W Feirer, G Wendell, B Weinstein, P Schaller.

Jim Pascoots who presented on behalf of this application stated that the property has an existing porch and he is looking to square it off and align the porch to be more proportional, which is around a 3' extension. The existing porch encroaches the front setback area approximately 3 feet. The extent of the proposed addition would not extend further than the existing front façade of the house which is 17 feet from the front property line.

W. T Furgueson asked if anyone wished to speak in favor or in opposition to this proposal and there was no comment from the audience.

A letter dated February 10, 2020 was submitted from J H Torrance Downes, Deputy Director, River COG the CT River Gateway Commission stating that this application proposes a small project that will not create any significant visual impact to the "natural and traditional river scene" and Gateway does not oppose the granting of a variance.

There was no further comment from the Board.

The public hearing closed at 8:15pm.

- **Application No. 20-2** on behalf of Carl Schuler, 4 Dogwood Drive, Centerbrook, CT, Assessor's Map 55, Map 13, RU District, requesting variances to sections 40C, 40D, 40I.1 and 61B of the zoning regulations to locate an 8' x 16' shed to a point 16 feet from a side property line where 30 feet is required.

W T Furgueson and R Rybak recused themselves from this application.

Seated for this application were W Feirer, P Beckman, B Weinstein, P Schaller, G Wendell.

W Feirer chaired for this application.

In August 2020 the ZEO was informed that there was a shed situated on the subject property which was installed without the benefit of zoning approval. The shed is situated 16 feet from the property line where 30 feet is required.

Carl Schuler who presented stated that the hardship associated with this proposal is that the house is situated on a corner lot along the back line. The septic is between the house and shed and the leaching fields are in the front of the house. Mr. Schuler stated that he did not know that he was required to seek a permit for the installation of this shed.

W. Feirer asked if anyone wished to speak in favor or in opposition to this proposal and there was no comment from the audience.

There was no further comment from the Board.

The public hearing closed at 8:20pm.

2. Regular Meeting

Discussion and possible decision on applications:

-Application No. 20-2 on behalf of Carl Schuler, 4 Dogwood Drive, Centerbrook, CT, Assessor's Map 55, Map

MOTION made by G Wendell to approve **Application No. 20-2** on behalf of Carl Schuler, 4 Dogwood Drive, Centerbrook, CT, Assessor's Map 55, Map 13, RU District, requesting variances to sections 40C, 40D, 40I.1 and 61B of the zoning regulations to locate an 8' x 16' shed to a point 16 feet from a side property line where 30 feet is required. This is a reasonable request, a minor incursion and the associated hardship is the configuration of the home and the location of the septic. This proposal is approved in accordance with the submitted plans; **SECONDED** by B Weinstein; **IN FAVOR:** W Feirer,

P Beckman, B Weinstein, P Schaller, G Wendell; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED 5-0-0.**

- **Application No. 20-3** on behalf of James Pascoots, 30 Saybrook Road, Essex, CT, Assessor's Map 46, Lot 82-1.

MOTION made by P Schaller to approve a Variance for **Application No. 20-3** on behalf of James Pascoots, 30 Saybrook Road, Essex, CT, Assessor's Map 46, Lot 82-1, RU District, requesting variances to sections 40D, 40E, 40I.1, 40I.2, 50D and 61B of the zoning regulations to add a 4' 20' addition to a front porch to a point 32 feet from the property line where 40 feet is required. Also, to add height to this porch that is within a front yard setback area. The hardship associated with this proposal is the proximity of the addition to the existing deck, as the way the lot is situated by reason of the existing house being located within the front setback. This proposal is approved in accordance with the plans as submitted; **SECONDED** by W Feirer; **IN FAVOR:** W T Furgueson, W Feirer, G Wendell, B Weinstein, P Schaller; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED 5-0-0.**

- **Application No. 20-4** on behalf of Louis G. Spann, Jr, 41 Prospect Street, Essex, CT, Assessor's Map 32, Lot 5.1.

It was noted that the shed was not built by the standards of what was permitted.

Attorney David Royston, legal counsel for the Board stated that there are issues that need to be determined related to this application, surrounding the parameters of decision. There are certain aspects related to the amount of time taken by the applicant that are irrelevant to the Board's consideration. There is a 3-year time period limit to resolve a violation. If a court action is not taken to enforce the zoning violation, it is grandfathered. In this case that would be the time limit and as such the consideration of timeline does not come into play in this case.

The second parameter is that this is an application for a variance. It is not an appeal of decision made by the ZEO. In that regard the applicant is required to meet standard requirements of hardship and to demonstrate why the relief they request is consistent with the comprehensive plan of zoning. The Board must determine whether a hardship exists. As per the hardship stated by the applicant, the closest the Board can come is that the applicant is saying that because he had a permit, and because the structure, although somewhat larger, is built close to the area where the permit allowed, that should stand for something. If there were an action on the part of the Town that misled the applicant into doing what he did, it would be inequitable to now say to him that you cannot do that. The Board must determine whether the applicant was misled by the Town. If the Board finds that even though not stated, that this is the only location on which the shed could be placed, then this is the only location.

W T Furgueson confirmed with Attorney Royston that the Board is to view this proposal as though the applicant is requesting a variance for a structure is not already in place.

W T Furgueson stated that the Board always takes into account the neighbor's testimony, and although Ms. Morgan cited other locations on the property, the applicant did apply to the Town and

Mr. Spann did encroach with the structure he installed. Mr. Furgueson stated that the applicant's shed overgangs the neighbor's property and as such, he sees no way to grant an approval for this variance

W Feirer stated that it is unfortunate that applicant did not follow through with the original plan, noting that it was an honest mistake however based on the request put forward in the application, Mr. Spann is outside of a good deal of elements within the regulations.

MOTION made by W T Furgueson to deny a Variance for **Application No. 20-4** on behalf of Louis G. Spann, Jr, 41 Prospect Street, Essex, CT, Assessor's Map 32, Lot 51, VR District, requesting variances to sections 40C, 40D, 40I.1 and 60B of the zoning regulations to allow an unapproved shed to remain at a point on a property line where a 25 foot building setback is required. This proposal is denied due to lack of hardship; **SECONDED** by P Beckman; **IN FAVOR:** B Weinstein W Feirer, W T Furgueson, P Schaller, and P Beckman; **OPPOSED:** None; **ABSTAINING:** P None; **MOTION CARRIED** 5-0-0.

3. New Business

There was no new business.

4. Old Business

Approval of Minutes – January 21, 2020.

MOTION made by B Weinstein to approve the December 17, 2019 Minutes with following correction; 1) Page 4, motion to read: "carried 4/0/1."; 2) Page 3, first full paragraph, 2nd line to read: "7/100's of an acre."; 3) Page 3 to correct spelling to "Jim *Godsman*"; **SECONDED** by P Schaller; **IN FAVOR:** B Weinstein W Feirer, W T Furgueson, P Schaller, and P Beckman; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED** 5-0-0.

5. Correspondence and Invoices

There was no correspondence and there were no invoices.

In response to Application # 20-01 and #20-4, Attorney Royston further embellished. Attorney Royston stated that the granting of a variance does not in itself create any right of the owner of the property to enter upon or trespass onto another piece of property. If there is a variance in place, and the subject structure encroaches on the abutting property, it is up to the holder of the variance to reach an agreement with the abutting property owner to be granted an easement. The Board did not authorize or approve the right to enter over the neighbor's property. With every variance granted the reasons for granting should be clearer and any limitations should be made on the record. Make sure the intent is clear on the record.

6. Adjournment

MOTION made by P Schaller to adjourn the meeting at 8:47p.m.to the next regularly scheduled meeting which will be held on Tuesday, March 17, 2020 at 7:00 p.m. at the Essex Town Hall, Conference Room A, 29 West Avenue, Essex, CT; **SECONDED** by W Feirer; **FAVOR:** B Weinstein W Feirer, W T Furgueson, P Schaller, and P Beckman; **OPPOSED:** None; **ABSTAINING:** None; **MOTION CARRIED 5-0-0.**

Respectfully submitted,

Stella A. Caione

Stella A. Caione, Recording Clerk