

1 TOWN OF ESSEX ZONING BOARD OF ADJUSTMENT
2 MEETING MINUTES
3 JULY 1, 2021
4

5 **Note: This was a virtual meeting held on Microsoft Teams**

6
7 **This is a web-draft first draft.**

8
9 **ZONING BOARD OF ADJUSTMENT (ZBA) MEMBERS PRESENT:** Nick Martin, Chair;
10 Michael Plageman, Vice Chair; Hubert Norton and Tom Yandow.

11
12 **OTHERS PRESENT:** Sharon Kelley, Zoning Administrator; and Jim & Gina Barrett.
13

14 The meeting came to order at 6:02 p.m.

15
16 The Agenda was amended to move the Election of Officers and the Operating Procedures after
17 Agenda Item 3, the Variance application.
18

19 Chairman Nick Martin noted that the meeting was being held in person and virtually. He read the
20 procedure of the meeting into the record and provided the public.
21

22 Chairman Martin read the first application into the record as follows:
23

24 **AGENDA ITEM 1: VARIANCE: JAMES & GINA BARRETT: PROPOSED 10' VARIANCE**
25 **FROM THE PROPERTY LINE FRONTING 157 SAND HILL ROAD (CORNER LOT) TO**
26 **ACCOMMODATE STAIR REPLACEMENT AND DECK ADDITION. PROPERTY IS**
27 **LOCATED IN THE MEDIUM DENSITY RESIDENTIAL (R2) ZONE. TAX MAP 45, PARCEL**
28 **58.**
29

30 **Board Member Norton MOVED and Board Member Yandow SECONDED a MOTION to open**
31 **the Fact Finding/Public Hearing. The MOTION passed 4-0.**
32

33 Sharon Kelley noted that the legal ad stated the request was for a 10' variance however, the ZBA should
34 consider if they want to start the variance request from the point of where the previous stairs were
35 situated from the point closed to the road as the house itself did not meet the 40' front yard setback
36 requirement. Kelley also noted that the replacement stairs and new deck ended at the point where the
37 existing walkway was located, which was, in part, under the deck.
38

39 Gina Barrett, landowner/applicant provided the following testimony:
40

- 41 • She takes responsibility for not calling the zoning officer herself. She did question her
42 builder about the need for a permit, but he mis-informed her as he thought she lived in the
43 Junction.
- 44 • She noted that the house currently does not meet the 40' front yard setback requirement
45 and anything to be built would require a variance request.
- 46 • She has elderly parents and a young niece who is in a wheelchair, as well as planning for
47 themselves as they age to convert the steps into a ramp in the future.
- 48 • She stated the existing steps were crumbling, and there was a 6-foot hole under the steps
49 that she believed the previous owner was building a bilko.
- 50 • She noted the 12' length was proposed as that was what was available for purchase.

- 51 • They opted to put up posts rather than break of the walkway.
- 52 • She believes the new construction extended out by 3½ feet more towards Sand Hill Road.
- 53 • She believes the new construction improves the look of the neighborhood and noted who
- 54 can and cannot see it from their homes.
- 55 • The structure does not obstruct traffic or turning vehicles. _____
- 56

57 There were no other public comments.

58
59 **Board Member Norton MOVED and Board Member Yandow SECONDED a MOTION to close**
60 **the Fact Finding/Public Hearing. The MOTION passed 4-0.**

61
62 During ZBA deliberations, the members determined that the hardship was primarily due to the lot being
63 a pre-existing non-conforming lot and structure.

64
65 **Board Member Norton MOVED and Vice Chair Plageman SECONDED a MOTION to**
66 **approve the application for a Variance at 157 Sand Hill Road, subject to the following**
67 **Findings and Conditions:**

68
69 **FINDINGS:**

- 70
71 1) The landowners/applicants are James S. and Gina M. Barrett.
- 72
73 2) The property under review is located at 157 Sand Hill Road, within Chittenden County, in the
74 Town of Essex, and State of Vermont. The parcel is identified on the Tax Map as 2:045/058/000
75 and, is a .35-acre lot located in the Medium Density Residential (R2) Zoning District. It is
76 served by town water and town sewer. This parcel is a corner lot on Maplelawn and Sand Hill
77 Road. The curb cut fronts Maplelawn Drive, however the front entry door to the house fronts
78 Sand Hill Road and this is the location of the new steps & small deck.
- 79
80 3) The following Zoning (building) permit has been issued on this property:
81
82 Permit #130-1986, to convert a garage to a dining room & workshop; and
83 Permit #91-1988, to add a family room and mudroom.
84
85 The house is pre-existing the Zoning Regulations and was built as a 3-bedroom house in 1968,
86 and is a non-conforming lot and structure due to lot size and front yard setbacks.
87
88 4) On 4/26/21, a complaint was filed from an abutting landowner (Savard) stating that a deck was
89 constructed at 157 Sand Hill Road and a permit was not visible. The complainant believed the
90 structure did not meet the setback requirements. On 5/6/21, a letter was sent to the landowners
91 asking for confirmation of the setbacks. As a result, a variance application has been submitted to
92 accommodate the replacement steps with a small deck and steps.

93
94 The right-of-way on Sand Hill Road is 49.5 feet.

95 The existing setback from the front property line on Sand Hill Road to the house is 35.83 feet.

96 The setback from the front property line the newly constructed deck/stairs is 28.33 feet. (A

97 difference of 7.5 feet.)

98

99 The setback from the front property line to the beginning point of the former stairs was 31.83
100 feet. (The additional encroachment into the front yard setback is about 3.5 feet.) The request for
101 a variance is for a further encroachment of 3.5 feet to the front-yard setback

102

103 It is noted that the pre-existing steps, the addition of the deck and the existing walkway increases
104 the encroachment off the walkway to 1 inch +/-.

105

106 5) The applicant submitted a computer-generated plan and pictures date-stamped received May 13,
107 2021, by the Community Development Department. The pictures depict before and after views
108 of the replacement steps and deck.

109

110 6) This application is being reviewed by the Zoning Board of Adjustment under the *Town of Essex*
111 *Official Zoning Regulations, Section 7.5- Variance.*

112

113 7) Pursuant to state statute a ‘Notice of Hearing’ was provided to the applicant for posting on the
114 property.

115

116 8) The abutting property owners were notified of this meeting by certified mail.

117

118 9) The applicants were emailed a copy of this Staff Report prior to the meeting.

119

120 10) Gina Barrett, landowner, stated made the following comments: _____

121

122 • She takes responsibility for not calling the zoning officer herself. She did question her
123 builder about the need for a permit, but he mis-informed her as he thought she lived in the
124 Junction.

125 • She noted that the house currently does not meet the 40’ front yard setback requirement
126 and anything to be built would require a variance request.

127 • She has elderly parents and a young niece who is in a wheelchair, as well as planning for
128 themselves as they age to convert the steps into a ramp in the future.

129 • She stated the existing steps were crumbling, and there was a 6-foot hole under the steps
130 that she believed the previous owner was building a bilko.

131 • She noted the 12’ length was proposed as that was what was available for purchase.

132 • They opted to put up posts rather than break of the walkway.

133 • She believes the new construction extended out by 3½ feet more towards Sand Hill Road.

134 • She believes the new construction improves the look of the neighborhood and noted who
135 can and cannot see it from their homes.

136 • The structure does not obstruct traffic or turning vehicles. _____

137

138 11) No one from the public provided comments on this application.

139

140 12) Public Works, Police, Fire and Recreation took no exception to this application.

141

142 13) **Applicant’s response** to variance criteria found in Section 7.5 of the Zoning Regulations:

143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189

- (1) There are unique physical circumstances or conditions, including irregular topography, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the Zoning Regulations in the neighborhood or district in which the property is located.

APPLICANT'S RESPONSE: *The 'front' of our corner lot house faces Sandhill Rd. Sandhill ROW is 49.5'. 25' from the center of the road, plus 40' would mean we wouldn't be able to build anything since the house itself is just within the 40' mark. We had to replace our crumbling front steps for safety. With a step replacement, we wanted to have a space large enough for a wheelchair to turn past open door, in part, due to niece in wheelchair. It's a front door 12' x 10' deck/steps with railings and no cover. When asked, builder said no permit was required, which we now know is not to be the case. The old steps were an eyesore and the new steps/decks is a vast improvement to the look of the house and enhances the neighborhood. The Maplelawn side is beyond the needed setback, with the step replacement starting over 65' from center of Maplelawn.*

- (2) Because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

APPLICANT'S RESPONSE: *To build anything at all on Sandhill side would have had to start inside our house since 25' from center of Sandhill + 40ft lands just inside the Sandhill edge of the house.*

- (3) Unnecessary hardship has not been created by the applicant.

APPLICANT'S RESPONSE: *It does not interfere with neighbors, views, etc. It's a simple 12' x 10' deck with steps, railings, and no cover. Other homes up/down Sandhill have front porches/decks that seem to be closer to road edge than this build. There are also houses closer in distance Sandhill ROW than where our front step replacement starts. We had asked builder and he believed no Permit was required. Apologies, as we should have looked it up ourselves.*

- (4) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially nor permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare.

APPLICANT'S RESPONSE: *It's a vast improvement visually. It's an improvement in safety since disintegrating steps were a hazard. It now more easily allows for handicap access versus the small, pre-fab concrete crumbling front steps that needed to be replaced.*

- 190
191 (5) The variance, if authorized, will represent the minimum variance that will afford relief and
192 will represent the least deviation possible from these Regulations and from the plan.

193
194 **APPLICANT'S RESPONSE:** *One of our goals was that the front steps*
195 *replacement would be not as much of a step down when going out of the house.*
196 *We also wanted a space wide enough for a wheelchair to exit and turn beyond the*
197 *exterior door that opens outward. It's 10ft wide and 12ft long.*

198
199 **14. [FINDINGS OF FACT ANALYSIS FOR VARIANCES-SECTION 7.5: In granting**
200 **any request for a variance, the Board must find that all the criteria contained in**
201 **Section 7.5 are met, and the findings must be specified in its decision.**

202
203 **THE ZBA FINDS:**

- 204
205 (1) There are unique physical circumstances or conditions, including irregular
206 topography, narrowness, or shallowness of lot size or shape, or exceptional
207 topographical or other physical conditions peculiar to the particular property, and
208 that unnecessary hardship is due to such conditions, and not the circumstances or
209 conditions generally created by the provisions of the Zoning Regulations in the
210 neighborhood or district in which the property is located. This is a pre-existing,
211 non-conforming lot and structure.
212
213 (2) Because of such physical circumstances or conditions, there is no possibility that
214 the property can be developed in strict conformity with the provisions of the
215 zoning regulation and that the authorization of a variance is therefore necessary
216 to enable the reasonable use of the property. The existing house was built in
217 1968 and is situated on a corner lot. The pre-existing house was constructed
218 within the 40' setback line. The applicants have kept the size of the deck within
219 1 inch of the original stairs and walkway. The additional width and length of the
220 deck allows for future wheelchair accessibility into the structure.
221
222 (3) Unnecessary hardship has not been created by the applicant as this house was
223 built in 1968, and is a pre-existing nonconforming lot and structure.
224
225 (4) The variance, if authorized, will not alter the essential character of the
226 neighborhood or district in which the property is located, substantially nor
227 permanently impair the appropriate use or development of adjacent property,
228 reduce access to renewable energy resources, nor be detrimental to the public
229 welfare.
230
231 (5) The variance, if authorized, will represent the minimum variance that will afford
232 relief and will represent the least deviation possible from these Regulations and
233 from the plan.

234
235 **CONDITIONS:**

236

- 237 1. A Zoning Permit application shall be secured by the applicant.
238 2. Any/all previous approvals not affected by this approval shall remain in effect and run with the
239 land.
240 3. By acceptance of the conditions of this approval without appeal, the applicant confirms and
241 agrees for themselves and all assigns and successors in interest that the conditions of this
242 approval shall run with the land and the land uses herein permitted and, will be binding upon and
243 enforceable against the applicant and all assigns and successors in interest.
244

245
246 **The MOTION passed 4-0.**

247
248 **AGENDA ITEM 4: MINUTES: May 6, 2021:**

249
250 **Vice-Chair Plageman MOVED and Board Member Norton SECONDED a MOTION to**
251 **continue the 5/6/21 minutes to the next meeting in order to clarify the sentence on Lines 70**
252 **& 71. The MOTION passed 4-0.**

253
254 **OTHER BUSINESS:**

255
256 Kelley reported that there is not an application for the August meeting.
257

258
259 The meeting adjourned at 6:59 p.m.

260 **ZONING BOARD OF ADJUSTMENT**

261 By:

262 _____, Chair
263 Nick Martin
264