

**New Fairfield Zoning Board of Appeals
New Fairfield, Connecticut 06812**

**MEETING MINUTES
April 26, 2018**

The New Fairfield Zoning Board of Appeals (ZBA) held a public hearing followed by a business session at 7:00 p.m. on Thursday, April 26, 2018, in the Community Room of the New Fairfield Public Library located at 2 Brush Hill Road. Secretary Joanne Brown took the Minutes.

ZBA members in attendance: Joe DePaul, Chairman; John Apple, Vice Chairman; Vinny Mancuso; John McCartney and Dan McDermott.

Town Officials in attendance: Evan White, Zoning Enforcement Officer.

Chairman Joe DePaul called the meeting to order at 7:00 p.m. and introduced the Board Members. Joe DePaul saluted Bob Jano on being selected as Outstanding Senior for 2018. Mr. Jano served on the ZBA from 1995 to 2009. Joe DePaul explained the meeting process and voting and appeal procedures. Secretary Joanne Brown read the Agenda. Vinny Mancuso made a motion to adopt the agenda, duly 2nd, approved 5-0. Secretary Joanne Brown read the Call of the Meeting.

Continued Application # 04-18: Sarro, 21 Woods Road, for variances to Zoning Regulations 3.2.5B, 7.1.1.2 and 7.2.3A,B&E for the purpose of constructing a new single family house. Zoning District: R-44; Map: 20; Block: 12; Lot: 20A.

Vinny Mancuso made a motion to hear Continued Application # 04-18, duly 2nd, approved 5-0. Ralph Gallagher returned to the board and gave a brief history of the preexisting nonconforming lot requesting a variance for frontage and no setbacks. Joe DePaul stated that he visited the property and found it very steep and asked to see the topographical map. Ralph Gallagher stated that the highest elevation was 550 going down to the 440 line; a 110' drop. Joe DePaul produced various photos of the property. Ralph Gallagher stated that a stone wall would be constructed and fill brought in for a small area. The house would be approximately 2700 sq. ft., 28' deep x 52' wide with the garage fitting nicely into the hill. Mr. DePaul stated that the lot is not a legal building lot and the board does not have to approve the proposal. Joe DePaul asked the public for comment. Deborah Minchin, 19 Woods Road, stated that the property was never a buildable lot. Ms. Minchin expressed her concern that the existing concrete driveway and walls were constructed without permits and the construction has caused significant damage to her property and her well water. Lisa Lee, 24 Woods Road, also noted her concern over the blasting or hammering work that would be done on the lot causing damage to the driveway in which she invested money to upgrade and maintain. Ms. Lee questioned if the owner would be responsible for upkeep of the driveway and has major concerns over the steep pitch and safety. Jennifer Licht, 17 Woods Road, also noted that no permits were pulled for the large driveway and stone walls and the property owner did not respond to stop work orders. Ms. Licht stated that the property is not a buildable lot that can feasibly be accessed and the possibility of damage to the

lake from runoff and sediment, coupled with the safety and disregard for the neighbors, gives her grave concerns. John McCarthy asked about the history of the work on the property. Evan White, ZEO, stated that Wetlands granted a permit for a 5 year period to activate a plan which turned into a 10 year period which culminated into a stop work order on the illegal steep driveway. Ralph Gallagher stated that the lot is buildable. Vinny Mancuso questioned if the Health Department reviewed the proposal. Ralph Gallagher stated that the septic plan was reviewed by the Health Department. Mr. Gallagher also noted that the adjoining properties had no frontage. Joe DePaul stated that each property is different. Vinny Mancuso stated that he saw problems regarding the topography, safety and sediment going into the lake during construction. Ralph Gallagher stated that the house could be moved but into a steeper grade. Joe DePaul asked the public again for comment. Deborah Minchin stated that the Sarros already have a home and there is no hardship. Jennifer Licht reiterated how the property was previously worked on without permits and noted the possible trauma to the land. Vinny Mancuso made a motion to enter into the Business Session, July 2nd, approved 5-0. Vinny Mancuso stated that this lot was not a legal buildable lot with multiple safety issues. Joe DePaul made a motion to approve a variance to waive the frontage needed to make it a buildable lot, per the plans as submitted; the hardship being the steep topography of the property, July 2nd, denied 0-5. Variance denied.

While in the Business Session, Vinny Mancuso made a motion to accept the minutes as read, July 2nd, approved 5-0.

Continued Application # 05-18: 76 Lake Drive South LLC, 76 Lake Drive South, for variances to Zoning Regulations 3.0.4A,B,C,E,F&G1,2,3, Minor Accessory Building and Structure, 3.2.6A Front Setback to 6.2', 3.2.6B Side Setbacks to 35.1' and 87' and 3.2.6C Rear Setback to 3.5', 3.2.7, 6.4 Excavation, Removal, Filling, and Grading of Earth Material, 6.4.3D Exemptions, 6.4.4A Grading Standards, 6.4.7 Application of Special Permit, 7.1.1.2 and 7.2.3A,B&E for the purpose of demolishing an existing house and constructing a new single family home with site improvements and landscaping. Zoning District: R-44; Map: 20; Block: 1; Lot: 18-23.

Dan McDermott made a motion to hear Continued Application # 05-18, July 2nd, approved 5-0. Peter Coffin of Doyle Coffin Architecture returned to the board noting two issues which were raised at the last meeting. The applicant presented a new proposal with the bedroom wing relocated to maintain the existing 15.3' rear setback. The garage placement was a source of concern with Wetlands, wanting the structure to remain as is while the ZBA had requested moving the garage out of the setbacks. Joe DePaul mentioned that Wetlands has a right to request this as their concerns are for possible damage caused by blasting and hammering. Peter Coffin noted that the property owner would like to keep the structure where it is but would move it not to jeopardize the proposal. Joe DePaul read into the record the letter from Thomas Quigley, Chairman of the Wetlands Commission noting the following 4 concerns:

1. The proposed site for the new garage would most likely be constructed on ledge rock and likely involve hammering and or blasting ledge within the wetlands regulated area.
2. The new garage would sit closer to the lake than the existing garage.
3. The new garage would be closer to the proposed septic system which may disturb existing soil conditions during its construction.

4. The property across the street is currently under construction and recently underwent significant blasting. The long-term effects of that blasting in the area are still unknown.

Joe DePaul appreciated the Chairman's views but noted that there are steps that can be taken to limit disturbances to the lake. Dainius Virbickas of Artel Engineering noted that moving the garage would open the land to disturbances but could be mitigated by silt fences and hay bales to stabilize the run off and erosion. Mr. Virbickas noted the long distance from the garage to the house if the garage was moved to the new location. Joe DePaul noted that by moving the garage no setbacks would be needed and it would reduce nonconformity. Vinny Mancuso agreed with moving the garage to reduce nonconformity. Joe DePaul asked the public for comment. None given. Vinny Mancuso made a motion to enter into the Business Session, duly 2nd, approved 5-0. Joe DePaul noted that Wetlands' concerns are for the construction period and there are ways to mitigate the damage. John Apple noted that he strongly hoped that there would be no need to blast. Vinny Mancuso concurred. Joe DePaul made a motion to grant a rear setback to 15.3' to reconstruct a house and move the garage per the plans as submitted; the hardship being the size and shape of the lot, noting the decrease in nonconformity by moving the garage, duly 2nd, approved 5-0. Variance granted.

Application # 07-18: ZIM LLC, 2 Flora Street, for variances to Zoning Regulations 3.1.5A&B, 3.1.6B Side Setback to 22.7', 3.1.6C Rear Setback to 15', 3.1.11, 7.1.1.1A,B&C and 7.2.3A&B for the purpose of constructing a new 12' x 15.3' deck Zoning District: R-88; Map: 30; Block: 1; Lot: 18.

John McCartney made a motion to hear Application # 07-18, duly 2nd, approved 5-0. Applicant Mendi Biba approached the board to request a variance for a deck. The previous owners had built a covered deck with no permits many years ago. He has torn the existing decaying structure down and would like to reconstruct an open deck the same size as the previous one. Joe DePaul noted that the structure would be grandfathered in after three years. The deck would require a 15' rear setback and a south side setback to 22.7'. The stairway would remain in the same location and the only change would be that the deck would be open, not enclosed. Joe DePaul asked the public for comment. None given. Vinny Mancuso made a motion to enter into the Business Session, duly 2nd, approved 5-0. Joe DePaul made a motion to grant a rear setback to 15' and a south side setback to 22.7' to construct an open deck to replace the previous one; the hardship being the small size and shape of the lot, noting no increase in nonconformity, duly 2nd, approved 5-0. Variance granted.

Application # 08-18: Spruce Ridge Craftsmen, 2 Barn Brook Drive, for variances to Zoning Regulations 3.1.6B Side Setback to 24' for the purpose of constructing a rear deck. Zoning District: R-88; Map: 13; Block: 2; Lot: 1.15.

Dan McDermott made a motion to hear Application # 08-18, duly 2nd, approved 5-0. Joe Reilly approached the board. He stated that he has an agreement to purchase the property. Joe DePaul stated that this property was recently before the board but withdrew because the hardship was self-created by the owners. Joe DePaul reiterated that any new construction

should adhere to the zoning regulations. Joe DePaul read into the record three cases mentioned in Connecticut State Statutes, Section 124, Zoning stating:

1. Variance denied since hardship was of plaintiff's own making. Id., 737
2. Where plaintiff purchased property under conditions and restrictions now complained of, ground of "hardship" without support of evidence
3. When claimed hardship arises because of actions of applicant, board is without power to grant variance. Id., 681

Joe DePaul explained that by asking the board to grant a variance due to the actions created by the developers, the board has no legal means to do that and stated that the purchaser has accepted the fact that a variance cannot be granted since the condition was self-created. Joe Reilly noted that the variance would be for a deck since one is not needed for the house. Mr. Reilly gave his best guess that the property was configured to keep the pond with the property. Wayne Skelly, developer, stated that the lot was not originally configured this way but wound up after other parties moved roads, etc. Joe DePaul stated that this is an accepted condition and you cannot create a hardship. A brief discussion ensued about the property and Evan White suggested continuing the application to look into the history. Joe DePaul stated that the board could not grant a variance on a self-created hardship. Mr. Reilly withdrew application # 08-19. Application withdrawn.

Application # 09-18: Hughes, 335 Route 39, for variances for Zoning Regulations 3.2.5A&B, 3.2.6B Side Setback to 18', 3.2.6C Rear Setback to 30', 3.2.11, 7.1.1.2 and 7.2.3A,B&E for the purpose of constructing a rear deck over an existing patio and replacing a porch roof. Zoning District: R-44; Map: 2; Block: 8; Lot: 5.

Vinny Mancuso made a motion to hear Application # 09-18, July 2nd, approved 5-0. No one was present for the application. Joe DePaul made a motion to move Application # 09-18 to the end of the agenda, July 2nd, approved 5-0.

Application # 10-18: Woodin, 12 Schermerhorn Drive, for variances to Zoning Regulations 3.2.5A&B, 3.2.6B Side Setback to 19.5', 3.2.6C Rear Setback to 25.8', 3.2.11, 7.1.1.2 and 7.2.3A,B&E for the purpose of constructing a deck. Zoning District: R-44; Map: 36; Block: 3; Lot: 10 & 11.

John McCartney made a motion to hear Application # 10-18, July 2nd, approved 5-0. Stacey Keaney, Keaney & Company, and applicant Courtney Woodin approached the board seeking a side setback for a deck which was failing and structurally unsound. The deck was reconstructed as it was needed for safety as a second egress but was found to be 6" over the setback. The house has a very steep drop in the rear. Joe DePaul presented photos of the deck. Joe DePaul asked the public for comment. None given. Vinny Mancuso made a motion to enter into the Business Session, July 2nd, approved 5-0. Joe DePaul saw no problems with the application. Joe DePaul made a motion to grant a side setback to 19.5' and a rear setback to 25.8' to construct two decks per the plans as submitted noting no increase in nonconformity, July 2nd, approved 5-0. Variance granted.

Application # 11-18: Mohr, 35 Macbean Drive, for variances to Zoning Regulations 3.0.2A Table of Zoning Requirements – Residential District and 3.2.5 for the purpose of having the vacant lot recognized as a single family dwelling building lot. Zoning District: R-44; Map: 24; Block: 14; Lot: 16.

John McCartney made a motion to hear Application # 11-18, duly 2nd, approved 5-0. Attorney Ray Lubus, representing the owner, and Gene Cassavehcia, contract purchaser, gave a brief history of the unique property. Lots 18 and 19 were subdivided into easterly and westerly half lots and houses were erected on the easterly lots in the late 1950s. The Mohr family purchased the property in 1960 which was the westerly halves of lots 18 and 19, paying taxes on the property for the past 58 years. Attorney Lubus found in the Zoning Regulations of 1974, and Regulation 3.4.1 states:

“nothing in this ordinance shall prevent construction of a single family dwelling on a lot owned separately from the adjoining lot as evidenced by a deed recorded in the land records of the Town of New Fairfield at the time of the adoption of this ordinance provided lot is large enough to meet the health and sanitary requirements”.

Attorney Lubus noted that this lot meets all the qualifications except that it is not one acre. Joe DePaul countered that a foundation was not put down during the time of the old Zoning Regulations and the lot is now under the new, stricter 2018 Zoning Regulations and is not a buildable lot. Gene Cassavehcia explained that the Mohrs believe the property is grandfathered in and is a buildable lot. Attorney Lubus stated that the subdivision predated the subdivision map of 1955 and state law automatically validated the subdivision. Evan White, ZEO, stated that the lots were a legal lot in 1955. A lengthy discussion ensued over the lot, surrounding area and whether the current zoning regulations take precedent. Joe DePaul noted that personal situations cannot be taken into account, only that of the land. The role of the ZBA was discussed and Joe DePaul stated that this was the first time the board had been asked to grant a variance to create a buildable lot. Spot zoning was discussed and Joe DePaul stated that this raises a complex issue. Joe DePaul suggested that the application be continued to confer with the town attorney. Ray Lubus asked that the town attorney get the complete file to make an informed decision. Vinny Mancuso make a motion to continue Application # 11-18 to next month, duly 2nd, approved 5-0. Application continued.

Application # 12-18: Leiter, 19 Great Meadow Road, for variances to Zoning Regulations 3.0.9A,B,C&E Pergolas, 3.2.5A&B, 3.2.6A Front Setback to 35’, 3.2.6B Side Setbacks to 12’ and 3’, 3.2.6C Rear Setback to 0’, 3.2.7, 3.2.11, 7.1.1.2, 7.2.3A,B&E for the purpose of enlarging a side deck, increasing the pitch and raising height of kitchen and constructing a portico roof over the front entrance. Zoning District: R-44; Map: 10; Block: 5; Lot: 5.

Vinny Mancuso made a motion to hear Application # 12-18, duly 2nd, approved 5-0. Applicant Jeffrey Leiter approached the board explaining that he purchased the preexisting nonconforming property “as is” and found many problems with the foundation, rotting beams, and roof stability. Joe DePaul thanked the applicant for his thorough application and appreciated his efforts. The deck would be moved closer to the end of the house with no increase in nonconformity. The deck would require a 0’ setback into the 440 line. The board said that the applicant would have

to contact First Light. The applicant said First Light had been contacted. The deck would measure 69" x 289" and could not be made smaller due to the potential of a fire hazard. The house is presently 1600 sq. ft. Joe DePaul asked the public for comment. None given. Vinny Mancuso made a motion to enter into the Business Session, duly 2nd, approved 5-0. Joe DePaul saw no problems with this application, noting that the improvements were necessary to meet code and noting no increase in nonconformity. Joe DePaul made a motion to grant a front setback to 35', a rear setback to 0', side setbacks to 12' and 3' for the purpose of enlarging the side deck, increasing the pitch, raising the height of the kitchen and constructing a portico roof over the front entrance per the plans as submitted noting no increase in nonconformity; the hardship being the small size and shape of the lot, duly 2nd, approved 5-0. Variance granted.

Application # 13-18: Foley, 83 Lake Drive North, for variances to Zoning Regulations 3.2.5A&B, 3.2.6A Front Setback to 13', 3.2.7, 3.2.11, 7.1.1.2 and 7.2.3A,B&E for the purpose of a vertical expansion and bedroom addition. Zoning District: R-44; Map: 15; Block: 1; Lot: 59-61.

Peter Coffin, Doyle & Coffin Architecture, and Bruce Hickey approached the board seeking a front setback for a vertical expansion to add a fifth bedroom to a wing of the house. Joe DePaul produced photos noting that no neighbor views would be obstructed. The footprint would remain the same with a 6' vertical expansion over one wing north of the chimney. Evan White saw no problems with the application. Joe DePaul asked the public for comment. None given. John Apple made a motion to enter into the Business Session, duly 2nd, approved 5-0. Joe DePaul made a motion to grant a front setback to 13' to allow a 6' vertical expansion to add a bedroom noting no increase in dimensional nonconformity; the hardship being the size and shape of the lot, duly 2nd, approved 5-0. Variance granted.

Application # 09-18: Hughes, 335 Route 39, for variances for Zoning Regulations 3.2.5A&B, 3.2.6B Side Setback to 18', 3.2.6C Rear Setback to 30', 3.2.11, 7.1.1.2 and 7.2.3A,B&E for the purpose of constructing a rear deck over an existing patio and replacing a porch roof. Zoning District: R-44; Map: 2; Block: 8; Lot: 5.

No one was present for Application # 09-18 and the application remains unopened. Vinny Mancuso made a motion to adjourn at 9:25 p.m., duly 2nd, approved 5-0.