

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

MEETING MINUTES

June 19, 2017

The New Fairfield Zoning Board of Appeals (ZBA) held a public hearing followed by a business session at 7:00 p.m. on Monday, June 19, 2017 in the New Fairfield Public Library, located at 2 Brush Hill Road. Secretary Joanne Brown took the Minutes.

ZBA members in attendance: Joe DePaul, Chairman; Vinny Mancuso; Patrick Hearty; John McCartney and Alternate Ann Brown.

ZBA members absent: John Apple, Vice Chairman

Town Officials in attendance: None.

Chairman Joe DePaul called the meeting to order at 7:00 p.m. and introduced the Board Members. 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 # 11-17: Morris, 40 Lakeshore North, for variances to Zoning Regulations 3.2.5A, 3.2.6A Front Setback 22', 3.2.6B Side Setbacks to 7.4' and 19', 3.2.6C Rear Setback to 25.6', 3.2.11, 7.1.1.2 and 7.2.3A,B&E for the purpose of a vertical second floor expansion. Zoning District: R-44; Map: 40; Block: 4; Lot: 4.

Patrick Hearty made a motion to hear Continued Application #11-17, duly 2nd, approved 5-0. Joe DePaul read a letter from Attorney Neil Marcus requesting this application be moved to the end of the meeting due to a scheduling conflict. Attorney Richard Smith asked that the application be postponed until Attorney Marcus arrived. Patrick Hearty made a motion to hear Continued Application #11-17 when Attorney Marcus arrived, duly 2nd, approved 5-0.

Continued Application # 12-17: HKMQ LLC, 42 Route 39, for variances to Zoning Regulations 4.1.4A,B&D Minimum Building and Structure Setbacks, 4.1.4A Front Setback to 17' and 4.1.4B Side Setback to 16' and 4.2.7B Landscaping Requirement for the purpose of constructing a retail/office building. Zoning District: B/C; Map: 19; Block: 13; Lot: 12.

John McCartney made a motion to hear Continued Application # 12-17, duly 2nd, approved 5-0. Ralph Gallagher and Joe Reilly returned to the board with revised plans taking into account the suggestions the board presented at last month's meeting. The new proposal eliminated the need for a side setback variance and relocated the building 25' off the property line. The applicant also reduced the width of the building from 107' to 102'. Joe DePaul read a letter from ZEO Evan White confirming that the property does not abut residential

properties. Joe DePaul noted his concern over the entrance way. Ralph Gallagher stated that the proposed entrance would improve the operation of the driveway. 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. Patrick Hearty agreed that the applicant addressed the concerns of the board from the last meeting. Joe DePaul made a motion to grant a front setback to 25' to construct a retail/office building per the revised plans submitted at the meeting, noting the elimination of the side setback; the hardship being the size and shape of the lot, July 2nd, approved 5-0. Variance granted.

Continued Application # 14-17: Bernardini, 90 State Route 39, for variances to Zoning Regulations 4.1.4B,C&D Minimum Building and Structure Setbacks, 4.1.4C Rear Setback to 10' and 4.2.7B Landscaping Requirements for the purpose of expanding a parking lot which abuts residential R-44 property. Zoning District: B/C; Map: 19; Block: 12; Lot: 19.

Vinny Mancuso made a motion to hear Continued Application # 14-17, July 2nd, approved 5-0. Attorney Anthony Yorio and applicant David Bernardini approached the board with revised plans and a traffic study to address the board's main concern raised at the April meeting regarding safe access to the property. The new proposal eliminates access to Route 39 from the proposed property and creates a shared access by a connecting to the adjacent lot (80 Route 39). The access to 80 Route 39 was revised to show one way in and one way out of the lot to address the traffic flow. The applicant indicated that an easement would be granted between the properties to allow access to 90 Route 39 from the adjacent property. The applicant owns both lots. Russ Posthauer, CCA LLC, discussed the traffic flow between the two lots, parking requirements and the need for additional parking spaces. He also explained the topography of the lot which prohibited spaces from being created at the rear of the building. Scott Hesketh, PE, of F.A. Hesketh & Associates, presented a detailed traffic study including volume, accident data from DOT, field observation at the site, peak hours usage and stated that the new proposed entrance and exit to Route 39 increased the site distances and would allow the intersection to operate at acceptable levels. John McCartney requested a review of the history of accidents in the area and a detailed discussion ensued over the number and type of accidents. Patrick Hearty asked when the accidents occurred. Scott Hesketh stated, in his professional opinion, that with the proposed changes to the traffic flow, Route 39 was capable of handling the volume of usage safely and efficiently. Mr. Hesketh stated that this proposal allows vehicles to see and be seen allowing enough braking distance. Joe DePaul asked the public if anyone had any question. None given. Joe DePaul read an email into the record from ZEO Evan White regarding the exact Zoning Regulations requiring a variance, namely 4.1.4D which states: If abutting a residential district, no building, structure or parking area within a Business/Commercial BC District shall be closer than one and one-half (1-1/2) times the minimum side or rear building setback required in the residential district that it abuts. Such setback areas shall be provided with screening as prescribed under section 6.1.2 or as may be required pursuant to Section 6.1.10 and 4.2.7 Landscaping Requirements: A. The application must be in compliance with Section 6.1; and B.2. No paved area shall be within (50) feet of said adjoining property line; and B.3 A fifty (50) foot landscaped buffer satisfactory to the Commission shall be maintained within the setback required in Sections 4.2.7.B.1 and 4.2.7.B.2 to protect neighboring residential properties.

Retaining natural growth within the buffer area is preferable but supplemental planting to provide year-round screening may be required.

Joe DePaul expressed his concern that this application had not only one but three regulations that needed a variance with substantial setbacks. Joe DePaul reported that the Town Attorney stated that the board has the power to grant the setbacks but going from 75' to 6' is a lot to ask. Joe DePaul questioned what the hardship was and that it was self-created because the applicant knew what he was getting into when he purchased the property. Attorney Yorio countered that there was a hardship; the mixed use and corresponding zoning regulations deprive it of its' commercial use because the property cannot support the parking required. Attorney Yorio also mentioned the topography of the lot and how it was built into a hillside with no additional room for parking. The history of previous occupants of the property was discussed. Vinny Mancuso stated that the applicant invested a lot of time and expense for this application and would provide an important service to the town. John McCartney agreed with Vinny Mancuso. Ann Brown questioned what type of buffer and fencing would be used. The applicant stated that he would put in a double sided fence and block the headlights with evergreens.

Joe DePaul asked the public for comment. Abutting Neighbor, Scott March, 3 Escape Road, stated that he had no objections with the application. He stated that the applicant had improved the area and noted the good things he was doing for this town. Mr. March stated it would be a wrong decision to deny the application. Scott Braun, resident of New Fairfield, stated that the benefits to the town and need to be given greater consideration. Joe DePaul countered that the board had to work within the statutes of the regulations. Dan McDermott, Alpine Road, stated that this application should be considered because the whole town is talking about the new businesses on social media and that it was good for the town.

Joe DePaul stated that he did appreciate the fact that the proposal was safer. Vinny Mancuso made a motion to enter into the Business Session, July 2nd, approved 5-0. A lively discussion ensued between the board. Patrick Hearty noted that the applicant made an effort and investment to improve the safety of the lot. John McCartney noted that there were so many empty properties in New Fairfield. Vinny Mancuso stated that the Town Attorney said that the board had the power to approve the regulations and discussed the buffer requirement. Joe DePaul made a motion to grant a variance for a rear setback to 6', a variance for 4.1.4D Business/Commercial setback, and landscaping requirements 4.2.7B2&3 to allow expansion of a parking lot; the hardship being the size, shape and slope of the lot, noting the interest of public safety, July 2nd, approved 4-1, Ann Brown opposed. Variance granted.

While in the Business Session, John McCartney made a motion to approved the minutes as read, July 2nd, approved 4-0-1, Vinny Mancuso abstaining.

Continued Application # 18-17: Hahn, 9 Merlin Avenue, for variances to Zoning Regulations 3.2.5A, 3.2.6B Side Setback to 17', 3.2.6C Rear Setback to 15.5', 3.2.11, 7.1.1.1A&B and 7.2.3A&B for the purpose of extending an existing deck into the rear and side yard. Zoning District: R-44; Map: 34; Block: 3; Lot: 7.

Vinny Mancuso made a motion to hear Application #18-17, July 2nd, approved 5-0. Doug Hahn approached the board with a revised application eliminating the side yard setback. Mr. Hahn researched the previous variance on the property. Mr. Hahn is now requesting a 10' deck. Joe DePaul stated that he was looking into 6' decks and noted that a 6' deck does not allow ample room on either side to safely have a grill in accordance with fire regulations. A brief discussion ensued about deck sizes. Mr. Hahn showed the board several photos of the deck and the proposed size of the new 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 made a motion to grant a rear setback to 20' to extend an existing deck to 10' per the revised plans as submitted; the hardship being the size and shape of the lot and safety concerns, July 2nd, approved 5-0. Variance granted.

Application # 17-17: Hollister, 25 Candlewood Drive, for variances to Zoning Regulations, 3.2.5A&B, 3.2.6C Rear Setback to 3.2', 3.2.7, 3.2.11, 7.1.1.2 and 7.2.3A&B for the purpose of building a rear porch and side addition to an existing house. Zoning District: R-44; Map: 39; Block: 1; Lot: 64/69.

Patrick Hearty made a motion to hear Application # 17-17, July 2nd, approved 5-0. Ralph Gallagher, agent for the Hollisters, approached the board requesting to close in a screened in porch, slightly raise the roof and add a 35' x 15' deck. Mr. Gallagher gave a brief overview of the property and placement of the deck. No neighbor's views would be impacted. A discussion ensued over the size of the deck. The board suggested that the applicant reduce the deck size to not increase nonconformity and keep the existing 15.3' setback. Ralph Gallagher agreed to keep the deck to the existing setbacks. Vinny Mancuso made a motion to enter into the Business Session, July 2nd, approved 5-0. Joe DePaul made a motion to grant a rear variance to 15.3' to allow an addition to enclose a screened-in porch and deck per the revised plans as submitted; the hardship being the small size and shape of the lot, July 2nd, approved 5-0. Variance Granted.

Application # 19-17: Serokosz, 15 Erin Drive, for variances to Zoning Regulations 3.1.5A&B, 3.1.6A Front Setback to 34', 3.1.6B Side Setback to 22', 3.2.11, 7.1.1.1A&B and 7.2.3A&B for the purpose of building an attached garage and breezeway. Zoning District: R-88; Map: 23; Block: 15; Lot: 21.

Vinny Mancuso made a motion to hear Application #19-17, July 2nd, approved 5-0. Mark and Jessica Serokosz approached the board requesting a 24' x 28' 2 car garage with a 9.5' breezeway. Patrick Hearty asked if they had an existing garage. The applicants stated that they did not and gave a brief overview of the property and setbacks. Joe DePaul stated that the board usually does not have a problem with garages because they take the cars off the street but that most houses on that block have one-car garages, not two. Joe DePaul stated that they could do a vertical expansion and put the garage behind the house. Jessica Serokosz stated that the septic was behind the house. Joe DePaul showed pictures of the property and stated that the board did not vote on personal reasons for a variance. The board suggested eliminating the breezeway and continuing to next month with revised plans. The

front setbacks were discussed for the porch and the applicant agreed to continue until next month. Patrick Hearty made a motion to continue Application #19-17, July 2nd, approved 5-0. Application Continued.

Continued Application # 11-17: Morris, 40 Lakeshore North, for variances to Zoning Regulations 3.2.5A, 3.2.6A Front Setback 22', 3.2.6B Side Setbacks to 7.4' and 19', 3.2.6C Rear Setback to 25.6', 3.2.11, 7.1.1.2 and 7.2.3A,B&E for the purpose of a vertical second floor expansion. Zoning District: R-44; Map: 40; Block: 4; Lot: 4.

John McCartney made a motion to hear Continued Application # 11-17, July 2nd, approved 5-0. Applicant Tim Morris and Attorney Neil Marcus approached the board and gave a brief overview of the proposal and the issue of invasion of privacy in a tight community. Ellen Hines, landscape architect, presented a proposal to plant arborvitaes on the property line to provide instant height and privacy. Several photos were presented showing how the plantings would look. Joe DePaul questioned whether they would remove any windows on that side. Tim Morris stated that they would not like to do that and that it would be virtually impossible to look into the neighbor's windows from the proposed second story window because of the angle. Vinny Mancuso stated that more than one neighbor had an objection to this proposal. Neil Marcus stated that most of the houses in the neighborhood had second story additions and gave a brief description of the property, septic and reserve septic areas. The proposed addition would include a bonus/play room and office, with no increase in nonconformity. Joe DePaul asked the public for comment. Richard Smith, attorney for Marlena Sturm, discussed the impact this proposal would have on the lifestyle and privacy of his client and other neighbors. Mr. Smith reiterated how tight the houses were together and that even with a wall of arborvitaes, the screening would be intrusive. Tom Gibbons, tenant of 41 Lakeshore North, read a letter into the record from the owner noting their objections. Marlena Sturm showed the board a two minute video of her property and presented pictures from several locations throughout her home. Ms. Sturm presented letters from several neighbors noting their objection to the proposal and lack of hardship.

Neil Marcus and the applicant rebutted the comment about how the applicant only spends summers in town. The applicant stated that he pays taxes in New Fairfield regardless of the amount of time spent in town. Joe DePaul agreed. Neil Marcus noted that property values increase, not decrease, after renovations and the hardship is that the house has two fronts on a small lot. Tim Morris reiterated that with the plantings and proposed second floor windows there would be no way to look into his neighbor's windows and no invasion of privacy.

Richard Smith countered that there was no evidence presented that there would not be an invasion of privacy and that the hardship was self-created. Nicole Rajkumar, 4 Candlewood Knolls, noted that all the houses are very close in the area. Vinny Mancuso made a motion to enter into the Business Session, July 2nd, approved 5-0. Joe DePaul noted that the houses are very close together and that there were many objections from several neighbors with no hardship. Vinny Mancuso noted that from each room of the neighbor the new construction would be visible and block sun and invade her privacy. Patrick Hearty also stated that many people had objections. Joe McCartney and Patrick Hearty both noted that they could see both sides of the story. Joe DePaul made a motion to grant a front setback to 22', side

setbacks to 7.4' and 19' and a rear setback to 25.6' for a vertical expansion per the plans as submitted, the hardship being the small size of the lot; duly 2nd, 0-4-1, John McCartney abstaining. Variance Denied.

Application # 20-17: Woodin, 12 Schermerhorn Drive, for variances to Zoning Regulations 3.2.5A&B, 3.2.6C Rear Setback to 35', 3.2.11, 7.1.1.1A&B and 7.2.3A,B&E for the purpose of adding a second floor addition. Zoning District: R-44; Map: 36; Block: 3; Lot: 10&11.

John McCartney made a motion to hear Application #20-17, duly 2nd, approved 5-0. Stacey Keaney, Keaney & Co. LLC, and applicant Courtney Woodin approached the board with a proposal to add a 600 sq. ft. second story addition to the middle of an existing ranch. The roof height is presently 8' and an additional 7' would be added. Ms. Keaney gave a brief overview of the property and steep slope in the rear. A rear setback of 35' is the only setback needed. The board discussed the topography and slope of the rear lot. Vinny Mancuso made a motion to enter into the Business Session, duly 2nd, approved 5-0. Joe DePaul made a motion to grant a vertical expansion with a rear setback to 35' per the plans as submitted; the hardship being the steep slope of the lot, duly 2nd, approved 5-0. Variance granted.

Application # 21-17: State of Connecticut, 210 State Route 39 (#6 #4Bogus Hill Right of Way) for variances to Zoning Regulations 3.0.4C,D,E&F Minor Accessory Buildings and Structures, 3.2.6A Front Setback to 0', 3.2.6C Rear Setback to 10' (from 440 line), 3.2.11, 7.1.1.2 and 7.2.3A&B for the purpose of replacing an 8'x8' existing guard shed with a new 8'x12' guard shed. Zoning District: R-44; Map: 10; Block: 12; Lot: 1.

Joe DePaul stated that Application #21-17 would remain unopened because it is not owned by the State of Connecticut but by the Girl Scouts and the application would need to be refiled and advertised.

John McCartney made a motion to adjourn the meeting at 9:40 p.m.