

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

**MINUTES
May 21, 2015**

The New Fairfield Zoning Board of Appeals (ZBA) held a public hearing followed by a business session at 7:00 p.m. on Thursday, May 21, 2015 in the Company A Firehouse located at 302 Ball Pond Road. Secretary Joanne Brown took the Minutes.

ZBA members in attendance: Joe DePaul, Chairman; John Apple, Vice Chairman; Patrick Hearty and Alternate Ann Brown.

ZBA members absent: Vinny Mancuso and Jack Machinko.

Town Officials in attendance: None.

Chairman Joe DePaul called the meeting to order at 7:01 p.m. and introduced the Board Members. Joe DePaul explained the meeting process and voting and appeal procedures. Joe DePaul gave the definition of a recusal.

Secretary Joanne Brown read the Agenda. John Apple made a motion to adopt the Agenda, duly 2nd, approved 4-0. Secretary Joanne Brown read the Call of the Meeting.

Continued Application # 05-15: Rossini, 7 Pleasant View Road, for variances to zoning regulations 3.2.5A&B, 3.2.6B South Side Setback to 1', and 3.2.11 for the purpose of adding a deck with a catwalk and staircase. Zoning District: R-44; Map: 2; Block: 6; Lot: 55.

John Apple made a motion to bring Continued Application # 05-15 to the floor, duly 2nd, approved 4-0. No one was present to hear the application. Patrick Hearty made a motion to move the application to the end of the agenda, duly 2nd, approved 4-0.

Continued Application # 06-15: Deluke, 22 Sunset Drive, for variances to zoning regulations 3.2.5A&B, 3.2.6A Front Setback to 22.9' and 3.2.11 for the purpose of constructing a two car garage. Zoning District: R-44; Map: 11; Block: 2; Lot: 6.

John Apple made a motion to bring Continued Application # 06-15 to the floor, duly 2nd, approved 4-0. Attorney Neil Marcus and applicant Otto Deluke approached the board. Neil Marcus explained to the board that there was an error in staking the garage made by the contractor resulting in change in setback from 40' to 22.9' to the overhang and 23.5' to the foundation. Neil Marcus stated that the cause of the problem is clearly an error and explained that case law is not consistent in dealing with errors and on one hand could be considered a self-created hardship and

on other hand might consider an error as a justification for a hardship. Attorney Marcus stated that the terrain on the back of the property is relatively steep and that the garage is properly located due to the grade problem. He stated that the Delukes obtained a valid building, zoning and erosion permits in 2009 and there was no intention to bypass any regulations and the mistake was legitimate and unintentional. The hardship really lies in the fact that the land has a significant grade challenge. Neil Marcus went on to quote that Connecticut General Statute 13A which states:

Universal Citation: CT Gen Stat § 8-13a (2012)

(a) When a building is so situated on a lot that it violates a zoning regulation of a municipality which prescribes the location of such a building in relation to the boundaries of the lot or when a building is situated on a lot that violates a zoning regulation of a municipality which prescribes the minimum area of the lot, and when such building has been so situated for three years without the institution of an action to enforce such regulation, such building shall be deemed a nonconforming building in relation to such boundaries or to the area of such lot, as the case may be.

Therefore, Mr. Marcus contends that the building built in 2009 and finished in 2010 became a nonconforming structure in 2013. He stated there were two reasons to obtain a variance. Firstly, the Delukes would like to be compliant and secondly, to clean up the mistakes on the property for resale in the future. Neil Marcus commented that the neighbors had no complaints about the property. John Apple commented that the surveyor should be responsible for the problem. Joe DePaul said that he had a problem with the hardship, noting that this is a second garage and the board would have a tough time granting a variance for a second garage that violated the zoning regulations. A discussion ensued about whether the contractor or surveyor staked the property and who staked the property. Joe DePaul quoted the state statutes that there is no hardship because it was self-created. Neil Marcus suggested that the board consult their general counsel for their opinion. Mr. Deluke explained that when the garage was constructed and went through all the proper procedures and only found out in 2014/2015 that the setbacks were incorrect. Mr. Deluke also commented that the town association was behind him and has no issue with the garage and would support it remaining. Neil Marcus said that he would submit cases to justify his position that there is hardship. The board agreed to discuss with issue with counsel. The applicant rested their case and preferred to postpone the vote until they have a five person board to vote on the application and the board had time to get an opinion from counsel. Joe DePaul asked the public for comment. None given. John Apple made a motion to close the public hearing and table the decision until next month after conferring with counsel, duly 2nd, approved 4-0. Hearing closed, decision tabled.

Application # 08-15: Agostino, 41 Lavelle Avenue, for variances to zoning regulations 3.2.5A&B, 3.2.6B Side Setback to 12' on the South side and 14' on the North side, 3.2.6C Rear Setback to 24', 3.2.11, 7.1 and 7.2.3A&B for the purpose of constructing a 24'x11'elevated deck with a staircase. Zoning District: R-44; Map: 2; Block: 7; Lot: 21.

Patrick Hearty made a motion to bring Application # 08-14 to the floor, duly 2nd, approved 4-0. Len and Carol Agostino approached the board and stated that they would prefer to have a five person board vote on their application. The applicants purchased the property six weeks ago. The applicants would like to build a deck on the house, the hardships being a steep slope and no

egress to the rear of the house. A discussion ensued about the placement of the 440 line and the rear variance needed. It was determined that the stairway could be repositioned to not increase the nonconformity on the rear of the property. Joe DePaul reiterated that the rear setback would need to be 50' from the second step of the stairs in order to not increase nonconformity. The applicant asked what the next step would be. Chairman DePaul stated that an A2 survey was needed with the proposed deck and all setbacks clearly stated. The applicants signed a continuance to next month. Joe DePaul asked the public for comment. None given. Patrick Hearty made a motion to continue Application # 08-15 to next month, July 2nd, approved 4-0.

Application # 09-15: Becker, 30 Ball Pond Road East, for variances to zoning regulations 3.2.5A&B, 3.2.6A Front Setback to 10', 3.2.6B Side Setback to 5.5' and 3.2.6C Rear Setback to 14.6', 3.2.11, 7.1 and 7.2.3A&B for the purpose of increasing the height, width and depth of an existing garage. Zoning District: R-44; Map: 22; Block: 7; Lot: 5 & 20

Patrick Hearty made a motion to bring Application # 09-15 to the floor, July 2nd, approved 4-0. Applicant Irv Becker and agent Peter Eckert of Architect's Guild approached the board. Mr. Becker explained to the board that they had previously received a variance to build a new garage based on a drawing and plans as submitted. After obtaining the approval, the architect had a different opinion on what the garage should look like and the building permit was denied because the architectural plans had changed. Mr. Eckert commented that the new plans would make the building a little smaller than what was approved. The board looked over the plans. Mr. Becker stated that the new plans would complement the architecture of the house and surrounding area. Joe DePaul questioned what the proposed square footage and the building height was as compared to the approved plan. It was determined that the proposed height is 7" less and width is 8" less than what was previously approved. Joe DePaul reiterated that the setbacks were to stay the same. Mr. Eckert explained that the garage doors would actually be 11' back from the street to include room for the overhangs. Joe DePaul asked the public for comment. None given. John Apple made a motion to enter into the Business Session, July 2nd, approved 4-0. Joe DePaul made a motion to grant a variance for a front setback to 10', two side setbacks to 5.5' and a rear setback to 14.6' for the purpose of replacing the garage per the plans as submitted on May 21, 2015, noting that this is the second variance on the property, the hardship being the small size and shape of the property, July 2nd, approved 4-0. Variance granted.

While in the Business Session, Joe DePaul asked the board for comments or changes to the minutes. John Apple made a motion to adopt the Minutes as read, July 2nd, approved 3-0-1, Ann Brown abstaining.

Application # 10-15: Gallinari, 17 Macbean Drive, for variances to zoning regulations 3.2.5A&B, 3.2.6B Side Setback to 14.5' and 3.2.11 for the purpose of constructing a 27.6'x15.6' elevated deck off the rear of the house. Zoning District: R-44; Map: 24; Block: 14; Lot: 13.

Ann Brown made a motion to bring Application # 10-15 to the floor, July 2nd, approved 4-0. Jim Gallinari approached the board looking to replace an existing deck. The applicant explained to the board that the current deck is in disrepair, misshapen and does not meet code. The dimensions will remain the same. Joe DePaul stated that the applicant was replacing the deck with no increase in nonconformity. The applicant modified the application to 14.9' from 14.5' to not increase nonconformity. Joe DePaul asked the public for comment. None given. John Apple made a motion to enter into the Business Session, July 2nd, approved 4-0. Joe DePaul made a

motion to grant a variance to reconstruct an elevated wooden deck on the rear of the property noting that there is no increase in nonconformity, the hardship being the narrow shape of the property, duly 2nd, approved 4-0. Variance granted.

Application # 11-15: Horell, 44 Lavelle Avenue, for variances to zoning regulations 3.2.5A&B, 3.2.6A Front Setback to 37', 3.2.6B Side Setback to 12', 3.2.11, 7.1 and 7.2.3A&B for the purpose of rebuilding and expanding an existing deck. Zoning District: R-44; Map: 2; Block: 6; Lot: 14 & 45.

John Apple made a motion to bring Application # 11-15 to the floor, duly 2nd, approved 4-0. Charles Sengelen, agent for the Horells, approached the board and explained that the current deck is in disrepair and is currently 3' from the septic. It needs to be 5' from the septic system. The staircase will be moved which will reduce nonconformity on the side by 2'. The current front setback is 40' and the applicant is asking for 37'. The increase in the size of the deck in the front is due to the existing stone wall and concrete patio and the footings need to be placed in front to dig the footings 42" down. Joe DePaul asked the public for comment. None given. A discussion ensued about the side setbacks requested and how setbacks must be correctly advertised.

Ann Brown made a motion to enter into the Business Session, duly 2nd, approved 4-0. Joe DePaul made a motion to grant a variance for a Front Setback to 37', two Side Setbacks to 12' for the purpose of rebuilding and expanding an existing deck, noting that there is a 2' decrease of nonconformity on the side, the hardship being the narrow shape of the lot, duly 2nd, approved 4-0. Variance approved.

Application # 12-15: Halpin, 346 Route 39, for variances to zoning regulations 3.2.5A, 3.2.6A Front Setback to 23', 3.2.11, 7.2.3E and 7.2.4 Restoration of Damaged Structure or Buildings for the purpose of demolishing an existing house and building a new one family house. Zoning District: R-44; Map: 42; Block: 1; Lot: 26-33.

John Apple made a motion to bring Application # 12-15 to the floor, duly 2nd, approved 4-0. Chris Halpin approached the board and explained how there was a flashing problem with the house which caused mold damage and rot. The applicant obtained a permit for selected demolition. Joe DePaul asked what the square footage was. The applicant responded that it was 600 square feet built in 1935. The board examined the A2 survey and a discussion ensued over the placement of the proposed home and the topography of the property. The placement of the driveway was discussed. The garage will be underneath the house. The applicant will be reducing nonconformity. Patrick Hearty stated that the applicant was not increasing nonconformity and staying within the rear setbacks. The front setback was discussed and the applicant modified the application to 23.9' for the purpose of constructing a single family house. Joe DePaul explained that the house will have to build as to the plans as submitted. Joe DePaul noted that there was no public to ask for comment. John Apple made a motion to enter into the Business Session, duly 2nd, approved 4-0. Joe DePaul made a motion to grant a variance to construct a new one story framed dwelling with a Front Setback to 23.9' decreasing nonconformity, the hardship being the size and shape of the lot, duly 2nd, approved 4-0.

Continued Application # 05-15: Rossini, 7 Pleasant View Road, for variances to zoning regulations 3.2.5A&B, 3.2.6B South Side Setback to 1', and 3.2.11 for the purpose of adding a deck with a catwalk and staircase. Zoning District: R-44; Map: 2; Block: 6; Lot: 55.

Patrick Hearty made a motion to bring Continued Application # 05-15 to the floor, July 2nd, approved 4-0. No one was present for the Application. Joe DePaul noted that the deadline was up for the public hearing and the Application needed to be voted on. The applicant was to return to the board with a modified plan. Patrick Hearty stated that the applicant was given options to modify his plan but did not return to present the modification to the board. Joe DePaul showed the board current photos of the property. Patrick Hearty made a motion to enter into the Business Session, July 2nd, approved 4-0. Joe DePaul made a motion to grant a variance to construct a deck with a catwalk and staircase with a South Side Setback to 1', the hardship being the small size and shape of the lot, July 2nd, 0-4 opposed. Variance denied.

John Apple made a motion to adjourn the meeting at 8:42 pm, July 2nd, approved 4-0.