

New Fairfield Zoning Board of Appeals New Fairfield, Connecticut 06812

MINUTES June 25, 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, June 25, 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; Patrick Hearty; Jack Machinko and Alternate Ann Brown.

ZBA members absent: John Apple, Vice Chairman and Vinny Mancuso.

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. Joe DePaul gave the definition of a recusal.

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

Tabled 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.

Ann Brown made a motion to enter into the Business Session, duly 2nd, approved 4-0. While in the Business Session, Joe DePaul explained the background of Tabled Application # 06-15 noting that the vote was postponed in order to confer with the town counsel regarding relevant case studies. A letter from town counsel, John F. Keating, was read into the record. Attorney Keating's letter included several case studies (*Morikawa and Durkin*) countering Attorney Marcus' case studies. Attorney Keating stated that "if the construction of the garage within the setback was the result of an error by the property owner or another "employed" by the property owner (including the general contractor), the hardship would unquestionably be "self-created". If the placement of the garage within the front yard setback was the result of an error by an independent surveyor hired by the builder, architect or other contractor (as in *Osborne*), in my view, the courts would still conclude that the hardship was "self-created" because the survey (or staking) was performed "on behalf of" the property owners as in *Morikawa and Durkin*." In conclusion, an error by a building contractor or surveyor employed by the property owner is a self-created hardship that is legally insufficient to justify a variance. Joe DePaul reiterated that with a self-created nonconformity the board lacks the power to grant a variance and stated that there is no justifiable hardship. He stated that

normally the board would not grant a variance for a second garage that violated the town's setback regulations. The board members discussed the lack of hardship. Joe DePaul made a motion to grant a variance for a front setback to 22.9' for the purpose of legalizing an already existing garage, July 2nd, 0-4 opposed. Variance denied.

While in the Business Session, Ann Brown made a motion to adopt the minutes as read, July 2nd, approved 3-0-1, with Jack Machinko abstaining.

Continued 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 hear Continued Application # 08-15, July 2nd, approved 4-0. Len and Carol Agostino approached the board. The applicant stated after taking the board's comments into consideration last month, they met with three contractors and decided to revise the deck to have an 11' side setback on the north side, 10' side setback on the south side and 47' rear setback to construct a 24'x11' elevated deck to include the staircase within the perimeter of the deck. The applicant stated that the side setbacks are within the existing nonconformity. Len Agostino revised his original application to reflect the revisions. Joe DePaul asked the public for any comment. None given. Ann Brown made a motion to enter into the Business Session, July 2nd, approved 4-0. Joe DePaul stated that the applicants had done a great job in improving the setbacks and that the amounts they were asking for were diminimus. Joe DePaul made a motion to grant a variance with a south side setback to 10', north side setback to 11' and a rear setback to 47' to construct an elevated deck per the revised plans as submitted; the hardship being the unusual shape of the lot, July 2nd, approved 4-0. Variance granted.

Application # 13-15: Forster, 4 Cecelia Lane, for variances to zoning regulations 3.2.5A&B, 3.2.6B Side Setback to 17', 3.2.6C Rear Setback to 23'6", 3.2.11, 7.1 and 7.2.3.A&B for the purpose of constructing a 12'x17' elevated deck. Zoning District: R-44; Map: 10; Block: 8; Lot: 12.

Ann Brown made a motion to hear Application # 13-15, July 2nd, approved 4-0. Applicant Frank Forster and builder, Rick Salem, approached the board. The applicant explained the history of the existing deck with a 42" roof overhang. Joe DePaul gave the applicant some suggestions as to where the deck could be placed to lessen the variance requested. A lengthy discussion ensued with the Mr. Forster stating that he did not want to wrap the deck. Joe DePaul suggested that the applicant scale back the size of the deck to 6' with a 30' rear setback. Joe DePaul shared pictures of the residence with the board and discussed the placement of the 440 line. The applicant modified his original proposal to reflect the new setbacks. Joe DePaul commented that the new revisions were outside the building envelope and that the application needed to be re-advertised to be safe. The applicant signed a continuance form. A lengthy discussion ensued about setbacks. Joe DePaul asked the public for comment. None given. Patrick Hearty made a motion to continue Application # 13-15, July 2nd, approved 4-0.

Patrick Hearty made a motion to adjourn the meeting at 7:57 p.m., July 2nd, approved 4-0.