

New Fairfield Zoning Board of Appeals New Fairfield, Connecticut 06812

MINUTES **September 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 Monday, September 21, 2015 in the Community Room above the Senior Center located at 33 Route 37. Secretary Joanne Brown took the Minutes.

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

ZBA members absent: John Apple, Vice Chairman; 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. Joe DePaul made a motion to adopt the Agenda, duly 2nd, approved 4-0. Secretary Joanne Brown read the Call of the Meeting.

Continued Application # 18-15: Deaton, 9 Lake Drive, for variances to zoning regulations 3.2.5A&B, 3.2.6C Rear Setback to 13' 5", 3.2.11, 7.1.1.1A,B&C and 7.2.3A&B for the purpose of replacing a deck with a larger 12'x26' deck. Zoning District: R-44; Map: 31; Block: 7; Lot: 28 & 29.

Vinny Mancuso made a motion to hear Continued Application # 18-15, duly 2nd, approved 4-0. Joe DePaul read an email from Inez Deaton, dated September 17, 2015, into the record requesting a continuance to next month when the A2 survey would be ready. Vinny Mancuso made a motion to continue the application until next month, duly 2nd, approved 4-0.

Continued Application # 19-15: Hotchkiss, 65 Lake Drive South, for variances to zoning regulations 3.2.5A&B, 3.2.6C Rear Setback to 13', 3.2.11, 7.1.1.1A,B&C and 7.2.3A&B for the purpose of bringing into compliance existing structures that were not built according to the previously approved plans and variances. Zoning District: R-44; Map: 39; Block: 1; Lot: 60-63.

Patrick Hearty made a motion to hear Continued Application # 19-15, duly 2nd, approved 4-0. Attorney Neil Marcus approached the board representing Sherman Hotchkiss. Attorney Marcus explained to the board that he was involved in the prior application in 2008 and pulled old files of what was approved originally. Attorney Marcus showed the board plans from 2006 from an application that was denied and then modified for an addition. He showed the board an area on

the plans that the applicant interprets as an existing staircase prior to any construction on the property. When the plans were modified, the applicant's second architect, Daniel Lamb, designed a doorway into the lower floor of the octagonal addition and redesigned a staircase. The direction of the stairway was then changed to avoid construction into the septic system. Joe DePaul asked for photos of the site prior to 2008 and stated that the plans did not look like they contained an existing staircase.

Attorney Marcus read the definition of a structure into the record "any form or arrangement of materials assembled or constructed to give support or shelter such as buildings, towers, masts, shed roofed storage areas, and also including ornamental structures and retaining walls as well as fences more than six (6) feet in height. This includes anything constructed or erected on the ground the use of which requires essentially permanent location on the ground or attachment to something having location on the ground. All buildings shall be considered structures.

For the purpose of these Regulations, the word "structure" includes: all buildings, signs, swimming pools, tennis courts, basketball courts, paddle tennis courts, towers, docks and decks higher than two (2) feet above average grade; but excludes fences, patios, sidewalks terraces, stone walls, and driveways." Attorney Marcus stated this definition excluded staircases. Joe DePaul countered that the staircase was 12' off the ground. Attorney Marcus stated that the architect and builder changed the direction of the staircase and contacted the ZEO, Tom Gormley, explaining exactly what they did. Attorney Marcus believed that Mr. Gormley had read the structure definition and agreed that the staircase did not need a further variance because it was not a structure. Attorney Marcus stated that there were two choices in which Gormley could proceed; either issue a Cease & Desist order or allow the applicant to proceed with the project as revised. Attorney Marcus stated that this constituted a municipal estoppel and the town attorney should be consulted.

A discussion ensued about Tom Gormley and both board members Vinny Mancuso and Patrick Hearty commented that the board could not vote on hearsay and that there was nothing in writing to support the applicant's statements regarding Mr. Gormley's authorization to proceed without a variance. Architect Daniel Lamb approached the board and explained that he was hired in 2013 to take the project forward and was under the impression that the approvals were in place. Mr. Lamb explained how the curve of the stairway was changed because of the placement of the septic and that there were at least two meeting with the prior ZEO. Mr. Lamb went on to describe that there was an existing walkway of flagstone in the dirt which acted as modified steps, not a structure. Joe DePaul pointed out that Mr. Lamb had just concurred that there was no prior staircase, just flagstone on the ground. The builder, Kevin Van Coughnett, stated that the flagstone was set in concrete but was not 2' off the ground which would explain why the staircase would not be shown on the previous plans from 2007. Joe DePaul stated that staircases are always shown on plans and now the applicants have created a structure 10' off the ground which now needs a variance. Joe DePaul showed the applicant and Attorney Marcus the plans from the ZBA files which were subject to the plans as submitted which did not contain stairways or steps. Joe DePaul explained that if the plans were changed, the applicant needed to come before the ZBA for another variance. Attorney Marcus stated that the applicant thought that the ZEO's approval was enough and that the prior ZEO's interpretation of a structure did not include a staircase that violated a setback. Attorney Marcus suggested that there were two ways to handle the situation. The ZBA could modify the variance to include the staircase or the ZEO could issue a Cease & Desist and the court can decide. Joe DePaul stated that the burden of proof was on the applicant.

Joe DePaul also explained that there was no hardship based on the land to support a variance. Joe DePaul stated that the property easily provided access from the other side of the deck and that there was no hardship. Attorney Marcus stated that this application contained a number of complicated issues and that the ZBA should consult the town counsel. Joe DePaul countered that the applicant should be responsible for any fees. Joe DePaul stated that he thoroughly read the 2008 minutes from the last application and that the board reluctantly gave the applicant a 30' setback and now 7 years later the applicant is requesting a 13' setback. Joe DePaul commented that the board did not grant variances lightly and did not think there was a hardship because of an error made by a previous ZEO. Joe DePaul suggested that the applicant get in touch with Mr. Gormley and provide a sworn affidavit attesting to the approval. Joe DePaul stated that he would get in touch with town counsel and asked Mr. Hotchkiss if he would be responsible for any fees incurred. A continuance was discussed and both Attorney Marcus and Mr. Hotchkiss stated that they would not be available for the next meeting. Attorney Marcus stated that he would send another attorney to represent the applicant. Vinny Mancuso made a motion to continue Application # 19-15, duly 2nd, approved 4-0.

Application # 20-15: Smith, 2 Joel's Drive, for variances to zoning regulations 3.1.5A, 3.1.6B Side Setback to 23.5', 7.1.1.1A&B and 7.2.3A&B for the purpose of constructing an unfinished addition over an existing garage for storage. Zoning District: R-88; Map: 18; Block: 3; Lot: 7.

Vinny Mancuso made a motion to bring Application # 20-15 to the floor, duly 2nd, approved 4-0. Brian McDonald, agent for Louis Smith, approached the board and requested a variance for a vertical expansion to add an unfinished addition over an existing garage for storage. Joe DePaul provided photos to the board and commented that the structure would block the windows on the back of the house. The position of an existing shed was discussed and that it needed to be relocated to an area within the zoning setbacks as a condition of the variance being granted. The proposed storage area would not have any heat, water or electric and have no access to the house. Joe DePaul asked the public for comment. None given. The board did not have any questions on the application. Patrick Hearty made a motion to enter into the Business Session, duly 2nd, approved 4-0. Joe DePaul made a motion to grant a 23.5' side variance for the purpose of constructing a 2nd story roof over an existing garage, subject to the shed being relocated in conformance with Zoning regulations and having no access way from the 2nd story to the house, the hardship being the irregular size and shape of the lot, duly 2nd, approved 4-0. Variance approved.

While in the Business Session, Vinny Mancuso made a motion to adopt the minutes as read, duly 2nd, approved 3-0-1, Patrick Hearty abstaining.

Application # 21-15: Sandler, 339 Route 39, for variances to zoning regulations 3.2.5A&B, 3.2.6A Front Setback to 36.5', 3.2.11, 7.1.1.1A,B&C and 7.2.3A&B for the purpose of building a 4'x8' covered overhang at the front entry and extended front porch landing. Zoning District: R-44; Map: 2; Block: 8; Lot: 3.

Vinny Mancuso made a motion to hear Application # 21-15, duly 2nd, approved 4-0. Jeanne Williamson, P.E. and applicant, Mr. Sandler, approached the board requesting a variance to bring a walkway to the existing house structure and construct an overhang to allow safe access to the front door. The ZEO, Evan White, had no problem approving the plans according to ADA

regulations. The current setback is 37.9' and the new front setback would be 36.5'. Photos were provided by Ms. Williamson and the size of the pillars was discussed. Joe DePaul asked if there was any public comment. None given. Vinny Mancuso made a motion to enter into the Business Session. Joe DePaul commented that the setback amount was diminimus with no increase in nonconformity. Joe DePaul made a motion to grant a variance with a front setback to 36.5' to construct a covered overhang at the front entry per the plans as submitted due to a safety issue, the hardship being the small nature and irregular shape of the lot, duly 2nd, approved 4-0. Variance approved.

Vinny Mancuso made a motion to adjourn the meeting at 8:20 pm, duly 2nd, approved 4-0.