

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

**MINUTES  
October 15, 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, October 15, 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; Vinny Mancuso; and Jack Machinko.

ZBA members absent: Patrick Hearty and Alternate Ann Brown.

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. Vinny Mancuso made a motion to adopt the Agenda, duly 2<sup>nd</sup>, 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 2<sup>nd</sup>, approved 4-0. Applicant Inez Deaton approached the board with revised plans. Ms. Deaton discovered from a set of plans in the property's Land Use file that there was a previous variance granted on the property from either November or December, 1976, for a pool with a rear setback of 10.8' and a side setback of 12.2'. Ms. Deaton hoped that, if this variance could be found, it could be used to proceed with her original application (Plan A). Joe DePaul stated that an existing variance, theoretically, would allow the construction of the new deck without an increase in nonconformity and agreed that the ZBA secretary would research the variance. If found, it would be emailed to Ms. Deaton and the ZEO, Evan White. Ms. Deaton went on to present the revised plans (Plan B) in case Plan A was not feasible. The applicant explained that the existing deck's rear setback was 15.2' and the end of the stairway to the property line is 39'. Vinny Mancuso enquired about an A2 survey. Ms. Deaton explained that she did not get it yet and is prepared to do so after it is approved. The applicant would like to cover a portion of the deck. Joe DePaul stated that the applicant is not increasing nonconformity and asked the board if they had any problems with Plan B. Regarding Plan A, Ms. Deaton explained the deck would not extend further

than the south side of the house. The deck size would increase by 3' with a covered area of 12'x12' which would be approximately half of the deck. The new setback would be 12.2', which would decrease nonconformity, assuming the previous variance is valid. Joe DePaul explained that the ZBA will look up the variance and that the applicant should meet with the ZEO who would advise the applicant on how to proceed with the application. The secretary questioned what the date was of the previous variance. It was ascertained that the variance was either November or December 3, 1976. The applicant had previously signed a continuance form and was still within the timeframe to continue. John Apple made a motion to continue, duly 2<sup>nd</sup>, 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.

Vinny Mancuso made a motion to hear Continued Application # 19-15. Sherman Hotchkiss and attorney, David Grogins, approached the board. Attorney Grogins was standing in for Attorney Neil Marcus who was out of the country. Attorney Grogins stated that he believed that this application for a variance should, in fact, be an appeal to the ZEO's denial of a Certificate of Occupancy (CO). Attorney Grogins stated that he went through the file and did not see an application for a variance. Joe DePaul agreed with Attorney Grogins on the fact that it should be an appeal, but stated that the applicants did, in fact, file for a variance and that Attorney Marcus requested a variance at the previous month's meeting. Joe DePaul explained that the board could not vote on an appeal because it was not requested and was not advertised as such. Joe DePaul suggested that the applicant could withdraw their application for a variance and file an appeal. Attorney Grogins stated that the previous ZEO gave verbal approval for stairs which he did not consider a structure under his interpretation of the zoning regulations. Attorney Grogins explained that the builder and homeowner relied on the verbal decision of the previous ZEO, Tom Gormley, who had the authority to make the decision.

Attorney Grogins explained that this constitutes a municipal estoppel. Joe DePaul sympathized with the applicant but found no justification of hardship because hardship is based on the land. Mr. DePaul explained that he believed the previous ZEO made a mistake in saying that the stairs did not constitute a structure and that the current ZEO had a different opinion and would not issue a CO. Attorney Grogins stated that the new ZEO has no authority not to issue a CO. Joe DePaul disagreed with Attorney Grogins and stated that he believed it was the ZBA's job to determine what is correct and to act properly, not enforce an incorrect decision. A lengthy conversation ensued over whether to withdraw the application and file an appeal or vote on a variance. Joe DePaul questioned whether the applicant could appeal the ZEO's decision in the proper timeframe or if a decision was reached at all. Joe DePaul sympathized that the applicant was relying on the verbal approval from the previous ZEO. The current ZEO's opinion is that the stairway is a structure and needs a variance. Attorney Grogins stated that the current ZEO's opinion should not matter. Joe DePaul stated that they do have a case for an estoppel but it is the ZBA's job to determine what is correct. A lengthy discussion ensued about filing an appeal and what the time limits are to do so. Joe DePaul stated that an appeal must be filed

within 15 or 30 days after the ZEO issued a certificate of noncompliance depending on which statute is applicable, either the state statute or the local ordinance. He questioned whether the timeframe could have run out as the application for the variance was filed two months ago. Joe DePaul explained the difference of applying for a variance and an appeal. Daniel Lamb, architect, commented that the applicant only filed for a variance because they were acting on instructions from the present ZEO and now are getting caught in the town bureaucracy. Joe DePaul stated the applicant's attorney was before the board requesting a variance and the board could vote on the variance if they would like. Joe DePaul read two letters into the record, one from Attorney Neil Marcus and another from the previous ZEO, Tom Gormley. Tom Gormley stated in his letter that he did not consider the stairway to be a structure. Joe DePaul also read an opinion from the town attorney, John Keating. Attorney Keating stated in his letter that the stairway was indeed a structure. Attorney Grogins argued the point that the previous ZEO had the authority to grant the approval. Joe DePaul stated that the current ZEO has consulted with the town attorney in an effort to understand the town regulations and whether the stairway constitutes a structure. Attorney Grogins argued that the town attorney's opinion was of no value. Sherman Hotchkiss questioned whether the regulations regarding a structure were changed since 2008 when the project was started. Joe DePaul stated that they may have a point but they are currently trying to get a variance in 2015 and are subject to the regulations at present.

Attorney Grogins commented that the applicant proceeded with building the stairs which was based on the verbal okay by the previous ZEO and stated how unfair this situation was. Joe DePaul sympathized with the applicant but stated that the ZBA's job is to determine what is correct and that they would not back up a wrong decision. Attorney Grogins reiterated Neil Marcus' point that the board could vote on if a variance was even necessary. Attorney Grogins stated that he would like the board to vote on whether a variance is required. He also stated that he thought that a 3-2 vote would all that would be required for such a decision. Joe DePaul replied that he was not sure that would be the case. The chairman asked the public for comment. None given. Sherman Hotchkiss stated that they relied on the authority of the town employee and proceeded under his verbal approval and asked if this was fair. Vinny Mancuso commented that this application should only be voted on once. A continuance was discussed. John Apple suggested that the applicant return to the present ZEO and get the denial for a CO in writing. Joe DePaul explained that the previous variance in 2008 was granted based on the plans in the ZBA file and that the variance was granted as per plans submitted. A lengthy discussion ensued about whether the applicant should withdraw, file an appeal or if the board should vote on a variance. Attorney Grogins argued that this presented a very substantial case of financial hardship. Joe DePaul said that he would go back to the town attorney to see what we have the right to decide because they requested a variance. Joe DePaul suggested a continuance. Sherman Hotchkiss asked Joe DePaul to speak to the town attorney about an estoppel. Joe DePaul reiterated that the applicant has no hardship. Joe DePaul presented a picture of the stairway and gave his opinion that it was a structure. Attorney Grogins argued that because the previous ZEO said it was not a structure, this should not be an issue. Joe DePaul gave a brief history of the previous variance on the property and that the setbacks have gone from 50' to 30' with the Chairman voting against the variance and now the applicant is asking for 13'. A lengthy discussion ensued about the previous plans and whether a stairway was on the previous plans. Sherman Hotchkiss commented that you do

not get a CO at the start of construction. Daniel Lamb questioned what was approved on the original variance. Joe DePaul presented the plans approved in 2008 which did not show a stairway Daniel Lamb stated that the stairs were painted on the ground and showed to Tom Gormley. John Apple suggested that the applicant revisit the ZEO to get a denial in writing. Joe DePaul stated if the applicant wanted to come back as an appeal, they would have to withdraw the variance and file an appeal. Vinny Mancuso made a motion to continue Application # 19-15 to next month, duly 2<sup>nd</sup>, approved 4-0.

**Application # 22-15:** Bhat, 17 Eldred Road, for variances to zoning regulations 3.2.5A&B, 3.2.6A Front Setback to 16' 5" and 3.2.6B Side Setback to 11'7", 3.2.11, 7.1.1.1A,B&C and 7.2.3A,B&E for the purpose of bringing into compliance an existing addition and constructing a 10'x26' deck. Zoning District: R-44; Map: 37; Block: 2; Lot: 1-4.

Vinny Mancuso made a motion to hear Application # 22-15. Agent Jeff Madera approached the board. Unfortunately, Mr. Madera did not have a letter authorizing him to represent the applicant and the application would have to be continued to next month to get proper authorization. Joe DePaul had some questions for the agent. The application was incorrectly filled out as contract purchaser and as a use variance. The application was modified and initialed. The agent gave a brief history of the property. Mr. Madera explained that the structure was built over 40 years ago. Joe DePaul stated that the addition would be grandfathered in and that it would be legally nonconforming. Joe DePaul questioned the front setback of 16.5' and side setback of 11.7' and asked what the existing addition was that the board was being asked to legalize. Joe DePaul questioned what the plywood was on the structure and what work has been done. The Chairman commented on the stairway to the basement and that it was a hazard. The agent commented that the interior structure was nice and the applicant wants to bring the structure into code. John Apple questioned what the 11.7' setback was need for. The position of the septic was discussed. Joe DePaul questioned what the concrete pads were throughout the property and who put the plywood on. The agent stated that he was rebuilding what was there. Joe DePaul asked if the agent was going out any further than the original construction and the agent said the corner was squared off and filled in because it was structurally unsound. The Chairman stated that the board needs to see what was there before to determine what was needed. A discussion ensued about the setbacks. It was determined that since the corner was squared off, plans showing before and after need to be presented with exact measurements for the board to make a decision. The deck was discussed and the board did not have a problem with the deck. A continuance was signed subject to receipt of a letter from the owner authorizing Mr. Madera to act on the owner's behalf. Joe DePaul questioned what the shed was on property. It was ascertained that it did appear on the survey. Vinny Mancuso made a motion to continue Application # 22-15 to next month, duly 2<sup>nd</sup>, approved 4-0.

**Application # 23-15:** Clear, 140 Lake Drive South, for variances to zoning regulations 3.2.5A, 3.2.6A Front Setback to 23', 3.2.11, 7.1.1.1A,B&C and 7.2.3A,B&E for the purpose of constructing a second story addition. Zoning District: R-44; Map: 25, Block: 1, Lot: 34 & 35.

Vinny Mancuso made a motion to hear Application # 23-15, duly 2<sup>nd</sup>, approved 4-0. Agent Stacey Keaney and applicant Marjorie Clear approached the board. Ms. Keaney stated that the property was existing nonconforming and showed plans with a small corner in red. The applicants were requesting a 23' variance to add an 8' vertical expansion for a second story, replacing the roof but staying within the same footprint. Ms. Keaney presented several pictures and plans to the board. Jack Machinko questioned if the new roof would block neighbors' views of the lake. The applicant stated that their neighbors' views would not be affected and that the nearby houses had a higher elevation. The 440 line was discussed as was the history of the property. Joe DePaul stated that the actual variance needed was 24.6', not 23'. Ms. Keaney stated that she was worried about the measurements of the overhang. Joe DePaul asked the public for comment. None given. Jack Machinko made a motion to enter into the Business Session, duly 2<sup>nd</sup>, approved 4-0. While in the Business Session, Joe DePaul made a motion to grant a front setback of 24.6' for the purpose of raising the roof and creating a small addition to the front of the house per the plans as submitted, the hardship being the irregular shape of the property, noting that there is no increase in nonconformity, duly 2<sup>nd</sup>, approved 4-0. Variance granted.

Vinny Mancuso made a motion to adopt the minutes from the September 21, 2015, meeting, duly 2<sup>nd</sup>, approved 2-0-2, John Apple and Jack Machinko abstaining. Vinny Mancuso made a motion to adjourn the meeting at 8:56 pm, duly 2<sup>nd</sup>, approved 4-0.