

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

**MINUTES  
Meeting  
April 17, 2014**

The New Fairfield Zoning Board of Appeals (ZBA) held a public hearing followed by a business session at 7:00 pm. on Monday, April 17, 2014 in the New Fairfield Library located at 2 Brush Hill Road. Secretary Laurie Busse took the Minutes.

ZBA members in attendance: Joe DePaul, Chairman, John Apple, Vice Chairman, Jack Michinko, and John McKee

ZBA members absent: Patrick Hearty and Vinny Mancuso

Town Officials in attendance: Susan Chapman, 1<sup>st</sup> Selectman and Tony Iadarola, Town Engineer

Chairman Joe DePaul called the meeting to order at 7:00 pm, introduced the Board members, and explained the meeting process and voting procedures of a 4 member board. Joe DePaul gave the definition of a recusal.

Secretary Laurie Busse read the Agenda. John McKee made a motion to adopt the Agenda, duly 2nd, approved 4-0. Secretary Laurie Busse read the Call of the Meeting.

**Continued Application # 06-14:** Kevin McIntyre, 2 Manning Street, for variances to zoning regulations for the purpose of constructing a new home.

John Apple made a motion to bring Continued Application # 06-14 to the floor, duly 2nd, approved 4-0.

Joe Reilly approached the Board. Last month he needed a letter from the Town Sanitarian stating the septic and well are in the only possible location. Mr. Reilly stated the proposed home will be hooked up to Aquarion Water Co. and not on a private well. A letter from the Town Sanitarian, Mike McCarthy, dated March 30, 2014 was submitted into the record. The lot is a corner lot. The driveway and the front of the house will be on Manning Street and a 25' front variance is being requested. The side of the house will be on Wilson Street. The lot is 1/4 acre. The proposed home will be a 3 bedroom cape with a one car garage underneath. The home will be approximately 1,600sqft. There will be no deck.

Joe DePaul asked for any further public comment—None Heard.

John Apple made a motion to enter the business session, duly 2nd, approved 4-0.

In the business session the Board discussed their position on developing empty lots and the sanitarian recommends the septic location which prevents the home from being pushed further away from the setback. This is an undersized nonconforming corner lot.

Joe DePaul made a motion to grant a variance for a front setback of 25' for the purpose of constructing a new home without a deck, subject to the plans as submitted. The hardship is the corner lot and small size of the property, duly 2nd, approved 4-0.

**Minutes:** Joe DePaul made a motion to adopt the Minutes to the March 17, 2014 meeting as presented, duly 2nd, approved 4-0.

**Continued Application # 07-14:** Home Hearth Builders, 2 Elwell Road, for variances to zoning regulations for the purpose of converting a barn into a garage.

John Apple made a motion to bring Continued Application # 07-14 to the floor, duly 2nd, approved 4-0.

Wayne Skelly, Principle of Home Hearth Builders and Bill DiTulio approached the Board. Joe DePaul read correspondence that was received since the last hearing. A letter from the Director of Health & Inlands/Wetlands (I/W) Officer, Tim Simpkins, dated April 15, 2014 stating the garage must be 10' away from the septic system, a B-100 Test must be performed, and the I/W Commission would prefer all structures to be 150' away from the wetlands, although 75' is allowed. A letter from the CT Trust for Historic Preservation dated March 31, 2014 was read stating they are in favor of the variance and there are funds available to help return the barn to its original condition. The barn is in a state wide data base of historic structures and has significant historic value. The barn was constructed in 1739. A letter from the Dept. of Economic and Community Development dated April 7, 2014 stating per the Plan of Conservation & Development historic buildings are to be given special consideration.

Wayne Skelly said he wanted to clarify what he said last month about the road going through the wetlands. The Town Engineer did not state the road had to go through the wetlands, but due to the required improvements on Elwell Road, the developer felt this is the best location for the road. Moving the road over 35' will shrink the usable area of the lot and he will not be able to construct a house due to wetlands on the property. He is spending a quarter of a million dollars on road improvements required by the town engineer and does not want to lose a building lot, agreeing that this is a self-created hardship. They will demolition the barn if a variance is not granted.

Bill DiTulio stated the existing front setback on Elwell Road is 5'. This new proposed setback is a front setback to 35' on the west side of the barn and will not come any closer than the existing front setback. The new road will be on the side of the barn and perhaps they should look at it as a side setback and not a front setback. Discussion followed on self-created hardships. The road is not yet constructed and can be pushed over 35'. The Board can only focus on zoning regulations and cannot make their determination based on other boards and commissions regulations. Bill DiTulio stated they are donating 35 acres to Open Space. The Board proposed pushing all of the other homes back so that the developer can still have the same number of proposed lots. This is not possible as the land is too steep to push lots back. The Board had concerns that if a variance was granted there is still nothing preventing the developer from tearing the barn down. The developer stated there is going to be a contract between Home Hearth Builders and the owners of 4 Elwell Road that they will sell them the barn and the property. The Board inquired if this contract is already signed and would like to see it. The developer stated the contract is not yet signed. The Board would be more comfortable with a signed contract in place. The Board cannot be concerned with them losing a building lot when there are 8 other lots in this phase of development.

Discussion followed on the zoning requirements for conservation subdivisions, perhaps they should propose this as a conservation subdivision, and then a variance may not be required.

The developer discussed that if the variance is not granted and due to the wetlands on 4 Elwell Road, they could very well come back in front of ZBA for a variance for the garage, so what is the difference if they grant it now or later. The Board stated only 2 Elwell Road is in front of them. They cannot and will not comment on any proposal that is not before them.

Joe DePaul stated the hardship is self-created. The Board cannot grant a variance based on a self-created hardship. Landmark court rulings were read into the record regarding self-created hardships. John G. Booe Jr. v. Shelton ZBA, M & R Enterprises v. Southington ZBA, and Joseph Misuk v. Meriden ZBA. In all of these cases the ZBA's decision to grant a variance was overturned as the hardships were self-created.

The Board discussed that the correspondence read into the record earlier this evening indicated that there are funds available to help keep this barn from demolition. Perhaps these funds can be used to purchase the other lot so that the road can be moved over 35', noting the Town moved 2 other historic houses a ¼ mile down the road with funds used from historic preservation agencies.

Joe DePaul asked for public comment—As Follows:

Jerome Bielizna, Chairman and Faline Schneiderman, Secretary of New Fairfield Historic Properties Commission (HPC): Ms. Schneiderman submitted her speech into the record. The HPC is strongly in favor of granting this variance. The barn has local historic significance. The "Purpose" Section of the 2012 Zoning Regulations was amended to include verbiage to promote the historic character of the community. Zoning Regulation 1.1.E. Zoning Regulations 5.1, 6.3.1.F and 8.2.I were referenced as well. These Zoning Regulations have proved for the conservation or enhancement of historic resources. Zoning Regulation 1.5.9.G references hardships on corner lots. The Elwell Road barn and house are cited as 2 of the oldest buildings in New Fairfield. The barn would meet the eligibility requirements for designation as a "Local Historic Structure" if it retains its historic position in relation to the Elwell House. Additionally the lot at 2 Elwell Road and the existing home at 4 Elwell Road are nonconforming lots. If a variance is granted, then the owners of the house at 4 Elwell Road will purchase the lot the barn is located on and the lots will be merged, hence reducing the number of nonconforming lots in town. It is within the scope of both the Zoning Commission and the ZBA to reduce nonconformity whenever possible.

Linda Decker and Susan Monshaw: Talked about the history of the barn and its historic significance. It would be a shame to lose a barn with such historic value.

Antonio Iadarola, Town Engineer: He would like to clarify that he never told the developers where to locate the proposed road. The article that ran in the Citizen News is incorrect. He did specify improvements that had to be made to Elwell Road. There are a lot of issues with the way Elwell Road is right now, and he used the feedback from the I/W Commission when he made recommended improvements to Elwell Road. The proposed road will be 500'-600' from the wetlands. He understands the awkward situation the Board is in. The design of the intersection has to be as perpendicular as possible. The existing radius on Elwell Road is way below standard. The other end of Elwell Road is a one way due to safety issues.

Donna Apple: The roof on the barn is in disrepair. There is also an addition on the barn. Will the roof be repaired? If the barn is used as a garage will it take away from the historic value of the barn?

Faline Schneiderman: They will remove any additions that will take away from the historic value of the barn. Using the barn as a garage will not take away from the historic value.

Bill DiTulio: Part of the contract for the sale of the barn to the owners at 4 Elwell Road includes money the developers have set aside to improve the exterior as well as improvements to make the barn structurally safe.

Joe DePaul explained how to move forward with the application. The applicants requested a 5-minute break to discuss their options. Jack Michinko made a motion for a 5-minute break, duly 2nd, approved 4-0. Joe DePaul made a motion to come back from the break, duly 2nd, approved 4-0.

Wayne Skelly stated he would have his engineer review the plans to see if they cannot move the road over. The Board would be more comfortable with a signed contract in place. The contract can stipulate pending ZBA approval.

John Apple made a motion to continue to the May 15 meeting, duly 2nd, approved 4-0.

**Continued Application # 08-14:** William and Carolyn Rowan, 63 Bogus Hill Road, for variances to zoning regulations for the purpose of constructing a 2nd story addition and a 2 story addition.

John McKee made a motion to bring Continued Application # 08-14 to the floor, duly 2nd, approved 4-0.

Caren Carpenter, Architect, approached the Board. She explained last month there was an advertising issue. This is a small lot and the front of the home is within the rear setback. The correct setbacks are rear setback to 38.4' and side setback to 10.5'. The plans are to construct a 2 story addition and a 2nd story addition by extending the front of the house 2'. The proposed construction will not encroach on any of the existing setbacks. There will be no increase in nonconformity. The lot is narrow and steep with ledge out croppings.

Joe DePaul asked for any further public comment before continuing-None Heard.

John Apple made a motion to enter the business session, duly 2nd, approved 4-0.

In the business session the Board discussed there is no increase in nonconformity and the significant ledge.

Joe DePaul made a motion to grant the variance for a rear setback of 38.4' and a side setback to 10.5' for the purpose of constructing a 2 story and a 2<sup>nd</sup> story addition, subject to the plans as submitted. Further stipulating this variance does not increase dimensional nonconformity. The hardship is the size and shape of the lot as well as ledge, duly 2nd, approved 4-0.

**Application # 09-14:** Nancy Picciano, 7 Spruce Ridge Drive, for variances to zoning regulations for the purpose of constructing a pergola.

John Apple made a motion to bring Application # 09-14 to the floor, duly 2nd, approved 4-0.

Joe Reilly, contractor, approached the Board. He explained the proposal to construct a 12' X 12' pergola. The Zoning Regulations state that pergola cannot be more than 10' X 25'. Zoning Regulation 3.0.9 was read into the record. The Board inquired why not just take the 2' off. This is a pre-fabricated pergola. It comes in square sizes that are 10' X 10' or 12' X 12'. The property is long and narrow. The 10' X 10' pergola seems undersized. The pergola will not require a setback variance. Discussion followed the regulations allow for 10' X 25' which is 250sqft. The applicant is requesting 144sqft, so he is not going above the required square footage.

Joe DePaul asked for any further public comment—None Heard.

Jack Michinko made a motion to enter the business session, duly 2nd, approved 4-0.

In the business session the Board discussed this is an odd shaped lot. The pergola will be 35' from the side setback, so a setback variance is not required. While the pergola is 2' over the width, it is under the 25' length limit.

Joe DePaul made a motion to grant a variance for Zoning Regulation 3.0.9C for a 12' X 12' pre-fabricated pergola. The hardship is the irregular shape of the lot, duly 2nd, approved 4-0.

**Application # 10-14:** Jillian and Matthew Schwam, 22 Lake Drive South, for variances to zoning regulations for the purpose of constructing a 2<sup>nd</sup> story addition.

John Apple made a motion to bring Application # 10-14 to the floor, duly 2nd, approved 4-0.

Jillian Schwam approached the Board. They were before ZBA in October with Variance # 28-13 to legalize a 2<sup>nd</sup> story addition that went over the other side of their home. Tonight she is here to construct a 2<sup>nd</sup> story addition over the sunroom. There will be no increase to the footprint on the ground. There will be no increase in nonconformity. There will be no impact on the neighbors as the proposed height will be 20' 3" and the existing height is 22.7'. The deck will be constructed on top of the sunroom that is connected to an open deck. The deck will remain an open deck. Discussion followed this is a classic vertical expansion.

Joe DePaul asked for any further public comment—None Heard

Jack Michinko made a motion to enter the business session, duly 2nd, approved 4-0.

In the business session the Board discussed this is a classic vertical expansion. There will be no increase in nonconformity, no increase to the footprint on the ground, and the proposed height will not impact the neighbors.

Joe DePaul made a motion to grant a variance for a rear setback to 28.6' and a side setback to 17.1' for the purpose of constructing a 2<sup>nd</sup> story addition. The hardship is the small size, and shape of the lot, duly 2nd, approved 4-0.

John McKee made a motion to adjourn the meeting at 9:10 pm, duly 2nd, approved 4-0.