

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

MINUTES

August 21, 2014

The New Fairfield Zoning Board of Appeals (ZBA) held a public hearing followed by a business session at 7:00 p.m. on Thursday, August 21, 2014 in the New Fairfield Library located at 2 Brush Hill Road. Secretary Joanne Brown took the Minutes.

ZBA members in attendance: Joe DePaul, Chairman; John Apple, Vice Chairman; Jack Michinko; Patrick Hearty and Alternate John McKee.

ZBA members absent: Vinny Mancuso.

Town Officials in attendance: Susan Chapman, First Selectman; Tom Gormley, Zoning Enforcement Officer and Antonio Iadarola, Town Engineer.

Chairman Joe DePaul called the meeting to order at 7:00 p.m. and introduced the Board Members. He 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 as read, duly 2nd, approved 5-0. Secretary Joanne Brown read the Call of the Meeting.

Continued Application # 17-14: Bartlett, 4 Ansonia Road, for variances to zoning regulations 7.2.3A, B & E and 3.2.6A Front Setback to 28.3' for the purpose of modifying an existing second floor dormer facing rear.

John Apple made a motion to hear Application # 17-14, duly 2nd, approved 5-0.

Mr. Bartlett explained that the existing bathroom was nonfunctional due to a low ceiling and roof height and he was not able to take a shower. The applicant would not change the square footage of the room; he proposes to fill in the void space of the dormer which will make the room useable. The applicant proposes to change the roof line from a dormer to a shed roof, with the inside walls remaining and no change to the square footage of the room. Mr. Bartlett presented to the board the survey which showed the proposed changes. The inside walls will move out 21" and 28" and go straight up. Mr. Bartlett explained that the house is on a corner lot and therefore there are two front

yards. Joe DePaul asked the board if they had any questions. They did not. Joe DePaul asked for public comment, none given.

John McKee made a motion to enter into the Business Session, July 2nd, approved 5-0.

The board discussed the hardship being the size of the lot and the fact that the house is on a corner lot, with two front yards. Joe DePaul made a motion to grant a variance to modify the 2nd story bath dormer facing rear, with no increase in non-conformity, the hardship being the size of the lot and that the house has 2 front yard setbacks, July 2nd, approved 5-0. Variance granted.

Joe DePaul made a motion to adopt the minutes as written from last month's meeting, July 2nd. Approved 3-0-2, Patrick Hearty and John Apple abstained.

Application # 18-14: Vasquez, 35 Ilion Road, for variances to zoning regulations 7.2.3A & B, 3.2.6B Side Setback to 7.8' and 3.2.5.A for the purpose of constructing a one car garage

John McKee made a motion to bring Application # 18-14 to the floor, July 2nd, approved 5-0.

Mr. Vladimir Vasquez requested a variance for a 7.8' side setback to construct a one car garage. The plan presented by Mr. Vasquez showed an existing two car garage on the property. Joe DePaul asked Mr. Vasquez why an additional garage was needed since there is an existing two car garage on the front of the house. Mr. Vasquez explained that the two car garage was very tight and could only fit one car and a motorcycle. Mr. Vasquez said another garage was needed to fit another car. Joe DePaul asked Mr. Vasquez for the square footage of the house. Mr. Vasquez replied that the house was 1600 square feet. Joe DePaul asked if the garage could be placed at the rear of the house where a variance may not be needed. Mr. Vasquez explained that the septic and well were in the back of the house and it would be difficult to drive over the septic.

Joe DePaul stated that Mr. Vasquez is asking for a radical increase in nonconformity going from a 20' setback to 7.8'. Jack Machinko asked where the garage is currently. Joe DePaul asked what the use of the one car garage would be. Mr. Vasquez stated it would be used for a car as the two car garage is too tight for two cars. Joe DePaul suggested that Mr. Vasquez build a garage in the back of his house. Rear setbacks were discussed for R-44 lots. It was suggested that Mr. Vasquez speak to Tom Gormley, Zoning Enforcement Officer, to discuss the options of constructing a garage within the building envelope where no variances would be needed.

Joe DePaul asked Mr. Vasquez if he would like to withdraw his application. Mr. Vasquez did withdraw his application and signed a withdrawal form for the record.

Application # 19-14: Gengel, 112 Lake Drive South (CI), for variances to zoning regulations 7.2.3 A, B & E, 3.2.6A Front Setback to 10.8' for the purpose of increasing the height of the existing garage.

John McKee made a motion to bring Application # 19-14 to the floor, duly 2nd, approved 5-0.

Paul Russo of Lakeside Development and homeowner Gary Gengel approached the board. Mr. Russo explained that there is an existing two car garage onsite that needs to be updated, keeping the same footprint with only an increase in height. The height is approximately 19-20' and they propose to add 8' or 9'. Joe DePaul stated that the board needed exact measurements for the existing garage and the proposed construction. Mr. Gengel stated that the garage also needs to be higher because the road elevation was raised years after the garage was erected. The raised road elevation makes it difficult to drive into and out of the garage without scrapping the bottom of his car. The pitch of the current roof is flat and it would need to be changed. The garage would be used as a garage only. Gengel said his neighbors are excited to see the garage updated. Joe DePaul stated that the applicant needs an exact measurement of the new height of the garage in order to obtain a variance.

Joe DePaul suggested that they ask for a continuance to ascertain the height of the new garage. ZBA has to advertise the modification to the garage height by a vertical expansion and needs exact measurements for the notification in the newspaper before they will vote on it. It was suggested that the applicant request two variances, one for a vertical expansion and one for a front variance of 10.8'. Joe DePaul also asked if any neighboring views would be obstructed. Mr. Gengel stated that no neighbor views would be obstructed. It was discovered that there was no authorization letter for Mr. Gengel's agent, Mr. Russo, to represent him in the file. Mr. Gengel agreed to provide this.

Jack Machinko made a motion to continue Application # 19-14, duly 2nd, approved 5-0.

Application # 20-14: Carley, 60 Wood Creek Road, for variances to zoning regulations 7.2.3.A, B & E, 3.2.5A and 3.2.6B Side Setback to 20.8' for the purpose of waiving the 35' height restriction on one corner of the home from 35' to 35.9'.

John Apple made a motion to bring Application # 20-14 to the floor, duly 2nd, approved 5-0.

Tim and Jane Carley explained that they tore down a seasonal cottage in 2010 and rebuilt the house. Initial surveys were fine; however, the final survey discovered the average height of the house 9" over the permitted 35'. The Carleys were unable to

obtain a Certificate of Occupancy. Joe DePaul asked to see photos of the house which were provided. The 9" discrepancy is an average measurement. The front of the house is under the maximum allowable height; however, the ground elevation makes the rear and side facing the lake over the 35' for an average of 35.9'. Joe DePaul asked what alternatives the Carleys have. They stated that the ground elevation could be increased on the side of the house with a retaining wall. Joe DePaul asked if there were any obstructed views from neighboring houses. The home behind the property is over 20 feet higher than the Carley's home with no obstructed views. Joe DePaul asked for public comment, none was given.

Measurements were discussed whether what the applicant was asking for was 35.9' or 35'- 9". It was decided that the applicants were requesting a variance for a vertical height of 35.9 feet. John Apple suggested that they could bring in soil to increase the ground elevation thereby, decreasing the height measurement, although that was not ideal. Zoning Enforcement Officer Tom Gormley said that could be done legally.

John McKee made a motion to enter into the Business Session, July 2nd, approved 5-0. John Apple discussed increasing the ground elevation. The height at the front of the house is less than 35'. The height exceeds the 35' requirement from the Candlewood Lake side. Different height zoning regulations were discussed. It was agreed that a variance to Zoning Regulation 3.2.10 maximum building height has to be waived. It was determined that this application was not properly advertised and the application needs to be amended to include 3.2.10. Tim and Jane Carley agreed to a continuance and signed the forms for the record.

Joe DePaul made a motion to come out of the Business Session, July 2nd, approved 5-0.

John McKee made a motion to continue Application # 20-14, July 2nd, approved 5-0.

Application # 21-14: New Fairfield Free Public Library, Town of New Fairfield, for variances to zoning regulations 7.2.3.A, B & E; Business Zone 4.1.3A Minimum Lot and Area Frontage and 4.1.4A,C Minimum Building and Structure Setbacks for the purpose of increasing the height of the front and rear roof by no more than 2'.

John Apple made a motion to bring Application # 21-14 to the floor, July 2nd, approved 5-0.

Antonio Iadarola, Town Engineer, explained the reasons for returning to the board for a variance. He noted that a variance was granted in 2008 but, the height variance was omitted. The town desires to legally move forward with the proposed construction providing handicap accessibility and zoning regulations 4.1.4A, C, 4.1.3.A, 7.2.3 A, B&C need to be addressed. The building is nonconforming. Mr. Iadarola stated that the existing footprint will not change and the flat area of the building roof will be modified from a flat roof to a hip roof to accommodate the overrun of the elevator and address any potential problems associated with rain and heavy snows of the winter. The roof

will be basically the same as in the back. The top ridge will match. The flat portion of the existing roof will be replaced to make it esthetically match the building, accommodate the overrun of the elevator and address the potential problems that flat roofs have with snow and rain.

Joe DePaul asked for public comment. Tom Gormley, Zoning Enforcement Officer, commented that he reviewed the drawings of the elevator to make the library ADA compliant and the proposed roof. He assured the board that the improvements will enhance the current library building.

John McKee made a motion to enter into the Business Session, duly 2nd, approved 5-0. The board discussed the proposal and all agreed that there would be no increase in nonconformity.

Joe DePaul made a motion to grant a variance to allow the reconstruction of the library roof with variances to zoning regulations 4.1.4 A, C and 4.1.3A, 7.2.3. A,B&E to reconstruct the library roof with no increase in nonconformity, not exceeding the current roof height and footprint, with the hardship being the extremely small size of the lot and the advanced age of the Library, duly 2nd, approved 5-0. Variance granted.

Appeal # 22-14: Oulvey, 30 Lake Drive North (CI), for the purpose of appealing the Zoning Enforcement Officer's decision not to issue a Zoning Permit in that the scope of work exceeds what was granted for Variance Application # 04-14.

John Apple made a motion to bring Appeal # 22-14 to the floor, duly 2nd, approved 5-0.

Peter Young, agent for the Oulvey's, explained that his clients were seeking a reversal of the Zoning Enforcements Officer's decision denying a Zoning Permit. Mr. Young submitted to the board copies of previous applications, minutes and variances as justification for his appeal.

Joe DePaul stated that Application # 04-14 was advertised as variance for 7.2.3.A&B, 3.2.5A and 3.2.6C Rear setback for the purpose of constructing a roof over a rear entrance.

Peter Young discussed the sets of plans showing work in addition to the roof over the door that were sent to the board and secretary, Laurie Busse. Joe DePaul stated that he spoke with the former secretary and those plans were not included with the original application.

Joe DePaul stated that the variance, if granted, is always only what the applicant requests and what is advertised. Joe DePaul went on to say since the 2nd story addition was not advertised, it would not have been considered for a variance. Joe DePaul listened to the 2/20/14 ZBA meeting tape and stated that the wording "subject to plans submitted" does not mean that the applicant is approved for other work indicated on the

plans. The work shown on the plans submitted refers only to the work which was applied for and advertised.

Peter Young explained that when he applied for a building permit, it was never processed. There was a dispute between Peter Young and the building department over what construction was allowed by the variance. ZBA Chairman Joe DePaul, hearing about the problem, spoke with Peter Young and it was decided that the best way to solve the problem was for him to come in with a new application which included all of the construction which he wished to take place. When the new application was submitted (application # 13-14), it was heard at the May 15, 2014 meeting. The result of that meeting was that the application was continued. At the June 18, 2014 meeting a letter was read from Peter Young requesting another continuance. At the July 17, 2014 meeting another letter from Peter Young was read into the record withdrawing the application.

Joe DePaul discussed that when Peter Young was denied a building permit he refiled the ZBA application. The 15 day appeal process was discussed. Joe DePaul stated that Mr. Young should have appealed when he was denied a building permit. Peter Young countered that he did not appeal the decision because he the town never accepted his application.

Joe DePaul read Section 8-7. Appeals to board. Hearings. Effective date of exceptions or variances; filing requirements. "An appeal may be taken to the zoning board of appeals by any person aggrieved or by any officer, department, board or bureau of any municipality aggrieved and shall be taken within such time as is prescribed by a rule adopted by said board, or, if no such rule is adopted by the board, within thirty days, by filing with the zoning commission or the officer from whom the appeal has been taken and with said board a notice of appeal specifying the grounds thereof. Such appeal period shall commence for an aggrieved person at the earliest of the following: (1) Upon receipt of the order, requirement or decision from which such person may appeal, (2) upon the publication of a notice in accordance with subsection (f) of section 8-3, or (3) upon actual or constructive notice of such order, requirement or decision."

Joe DePaul and Peter Young discussed the 30 day rule and the fact that the variance for a roof over a rear entrance was issued in March. It was discussed whether to vote on the timing of the appeal or the merit of the issue.

Peter Young stated that he was present tonight to submit the appeal on behalf of his clients.

Joe DePaul asked Tom Gormley, Zoning Enforcement Officer, for his comments. Mr. Gormley stated that on January 23rd, 2014, Mr. Young sat down with him with an A2 Survey to discuss construction of a water protection for a rear entrance. Mr. Gormley asked Mr. Young if he was sure this was all they were looking for. Mr. Gormley said he wrote up the application of the roof over the rear entrance.

Peter Young discussed how he spoke to the Land Use Secretary but not with Mr. Gormley after the variance was granted. The first application had 4 pages, including (2) two A2 surveys. No plans were submitted with the application. Peter Young said that the plans were submitted at the meeting. Mr. Young stated that that it is typical practice for the variance granted at the meeting to differ from the variance requested in the application. Joe DePaul said that this may occur only if there were no advertising issues.

Joe DePaul suggested that the tape from the ZBA 2/20/14 meeting be played. The series of events were discussed regarding Application # 13-14 beginning with the application, the neighbors' objections, the continuance to the next month and then the application finally being withdrawn.

Joe DePaul read into the file a letter from Collins Hannafin, legal counsel Raymond Pool and Tom Cheneski, abutting neighbors to the Oulveys, supporting the Zoning Enforcement Officer's denial of issuing a Zoning Permit.

John McKee recused himself from the Application due to a possible business conflict. Joe DePaul asked for public comment, none given. Tom Gormley was asked for the difference between a Zoning Permit and a Building Permit.

Jack Machinko asked if there had been any construction started. Peter Young stated that no construction had been started yet.

John Apple made a motion to enter into the Business Session, July 2nd, approved 4-0.

The board discussed that they understood the variance request to be for a roof over the rear entrance only as advertised and this is what they all voted on. They discussed the 30 day rule, but decided to let Town Council deal with the timing issues if needed. It was decided that the board did not need to listen to the tape of the 2/20/14 meeting. Chairman Joe DePaul asked the board members to explain their reasoning for how they voted. Jack Machinko stated that he voted on the roof over a rear entrance and thought that the applicant should submit another application if they wanted to construct a 2nd story. Patrick Hearty did not recall an application for construction of a 2nd story, just a roof over a rear entrance. Joe DePaul restated that the board would never vote on something that was not correctly advertised. All board members were in agreement. Joe DePaul made a motion to sustain the appeal to override the Zoning Enforcement Officer's decision to deny a zoning permit for the construction of a 2nd story addition, July 2nd, 0-4. Appeal denied.

John Apple made a motion to adjourn the meeting at 9:03 pm, July 2nd, approved 4-0.