

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

**MINUTES**  
**October 16, 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, October 16, 2014, in the New Fairfield Library Community Room located at 2 Brush Hill Road. Secretary Joanne Brown took the Minutes.

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

ZBA members absent: John Apple, Vice Chairman, and Alternate John McKee.

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 welcomed Ann Brown, a newly appointed Alternate to the Board. 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 2<sup>nd</sup>, approved 5-0. Secretary Joanne Brown read the Call of the Meeting.

**Continued Application # 23-14:** Underhill, 5 Pine Island, for variances to zoning regulations Minor Accessory Buildings & Structures 3.0.4E and 3.0.4.G1 and Uses Permitted as of Right 3.2.1 to maintain deck and enclosure (cottage). Zoning District: R-44; Map: 20; Block: 9; Lot: 27

Joe DePaul read a letter from Attorney Neil R. Marcus withdrawing the application due to scheduling difficulties amongst the interested parties so that the clock would be reset to hear the application at an appropriate time.

**Application # 26-14:** Ashe, 35 Ridge Road (CI), for variances to zoning regulations 7.2.3A&B, 3.2.6B Side Setback to 10', 3.2.6C Rear Setback to 15', 3.2.5A, and 3.2.7 Maximum Building Area for the purpose of constructing a carport. Zoning District: R-44; Map: 15; Block: 4; Lot: 14

Vinny Mancuso made a motion to hear Application # 26-14, duly 2<sup>nd</sup>, approved 5-0. Applicants Jim Hancock and Cathy Ashe, approached the board requesting a variance to construct a carport within a side setback of 10' and a rear setback of 15'. A discussion ensued over a Cease and Desist order on the property and the usage of a current structure as temporary storage for building materials. The current side setbacks are 20'. Mr. Hancock was unsure of exactly where the carport would be placed, but requested a side 10' and rear 15' setback to be sure that he had the most flexibility to locate the car-port. It was discussed that the current setback was 47.5' from the corner. Joe DePaul said that 37.5' was a lot to ask for and discussed other options for placement and also mentioned constructing a garage instead of the carport. Mr. Hancock did not want to construct a garage because he did not want to diminish the look of the cottage. Joe DePaul stated that the applicants could work within the 27' without getting a variance. Joe DePaul said that the board does not give out variances easily when there are other options. Mr. Hancock said that he did not want to put the garage next to the house because of future medical situations and ADA requirements. The board discussed that a garage would be safer for ADA purposes. Joe DePaul stated that the board would be more sympathetic to garages than to the construction of carports. A discussion ensued about not increasing non-conformity. Joe DePaul said that the board is very reluctant to increase non-conformity and suggested that the applicants rethink their plans. Mr. Hancock asked to continue the application to the next session. Vinny Mancuso made a motion to continue the application until the next month, duly 2<sup>nd</sup>, approved 5-0.

**Appeal # 26A-14:** Ashe, 35 Ridge Road (CI), to appeal the Cease & Desist Order issued relative to zoning regulations 3.2.1 Uses Permitted as of Right; 1.5.2A Prohibited Uses General; and 3.0.5D Private Permanent Detached Garages as they apply to Hoop Pole Structures on property. Zoning District: R-44; Map: 15; Block: 4; Lot: 14

Vinny Mancuso made a motion to hear Appeal # 26A-14, duly 2<sup>nd</sup>, approved 5-0. Jim Hancock and Cathy Ashe, 35 Ridge Road, remained with the board from the previous application. Joe DePaul asked if Tom Gormley, Zoning Enforcement Officer, was present. He was not in attendance. Mr. Hancock explained that the ZEO was concerned that there were two hoop structures on the property and town ordinances state that there be no hoop house or structures. Mr. Hancock stated that he uses the hoop house as a temporary structure for building materials put up in April, 2014. Joe DePaul stated that was a long time to have a temporary structure. Vinny Mancuso stated that as a board member he had to respect the ZEO's concerns. Joe DePaul read a letter into the file from the ZEO on June 17<sup>th</sup> stating that the ZEO noticed the illegal hoop house structures on their property. A discussion ensued regarding the timing of how long the illegal structures have been up. Zoning regulations on the ordinance against private permanent detached garages were read into the record. Mr. Hancock disputed that the structure is not permanent. Joe DePaul explained that hoop house garages are never legal in any circumstance. Vinny Mancuso stated that the rules of the town are in place for a reason. Joe DePaul asked for public comment. Roger Flocke, 33 Possum Drive, asked why the applicants did not get a storage space. Mr. Hancock thanked the board for their time.

Vinny Mancuso made a motion to enter into the Business Session. It was discussed that the structure has been there for six months and is illegal. Joe DePaul made a motion to grant the appeal of a Cease and Desist to permit the hoop house structure to remain on the property, the hardship being the shape and size of the property and that the property is under construction, duly 2<sup>nd</sup>, 5-0 opposed. Appeal Denied.

While in the Business Session, Joe DePaul invited the Board and Public to attend a free seminar on the Freedom of Information Act on Monday, October 20<sup>th</sup> at Brookfield Town hall at 7:00 pm. Joe DePaul asked if anyone had any comments on the minutes from September 15<sup>th</sup>, 2014. Patrick Hearty made a motion to adopt the minutes from September 15<sup>th</sup> meeting, duly 2<sup>nd</sup>, approved 3-0-2. Alternate Ann Brown and Vinny Mancuso abstained.

**Application # 27-14:** Tamay, 32 Possum Drive, for variances to zoning regulations 3.2.5A, 7.2.3A&B and 3.1.2K Special Permit Uses, Accessory Apartments Item 2, for the purpose of constructing an in-law apartment. Zoning District: R-44; Map: 35; Block: 17; Lot: 6

Vinny Mancuso made a motion to hear Application # 27-14, duly 2<sup>nd</sup>, approved 5-0. No one was present for the application. Joe DePaul made a motion to move this application to the back of the agenda, duly 2<sup>nd</sup>, approved. 5-0.

**Application # 28-14:** McGuire, 16 Flak Lane, for variances to zoning regulations 3.2.5A, 3.2.6A Front Setback to 37.1' and 7.2.3A,B&E for the purposes of adding a second story over an existing garage. Zoning District: R-44; Map: 2; Block: 2; Lot: 5

Vinny Mancuso made a motion to bring Application # 28-14 to the floor, duly 2<sup>nd</sup>, approved 5-0. Applicant Christianne McGuire approached the board asking for a vertical variance to build over the existing garage. The applicant stated that she is on a corner property with two fronts. Joe DePaul asked what the current front setback was. The applicant gave the history of the house, explaining how the corner of the house would be inches beyond the setback if raised. Joe DePaul read the A2 survey and said that the setbacks were currently 38.4'. The applicant concurred. The question was raised if the measurements were from the soffit or the building. Joe DePaul questioned whether the variance was correctly advertised. It was determined that the applicant is asking for 37.1' from the soffit. The second front was discussed. The board asked for pictures to be provided. Vinny Mancuso asked if there were any objections from the neighbors. Ms. McGuire stated that she had great neighbors and there were no objections. Joe DePaul read the corner lot zoning regulations. It was determined that the applicant would be asking for two front setbacks and that the application was not advertised properly. Vinny Mancuso asked for dimensions for the height of the roof. Joe DePaul advised the applicant that architectural drawings, current pictures of the house and correct dimensions were needed. The applicant needs to meet with Tom Gormley, Zoning Enforcement Officer, and amend the application to incorporate the second front setback. The applicant was advised to ask for a continuance until next month.

Joe DePaul asked for public comment. Tim O'Leary, 45 Trafton Street, Maine, approached the board. Mr. O'Leary asked for clarity on what the applicant needs to do. It was discussed that two front setbacks need to be requested.

Joe DePaul made a motion to continue Application # 28-14 to the next meeting, duly 2<sup>nd</sup>, approved 5-0.

**Application # 29-14:** Cherick Design, LLC, 15 Lavelle Avenue, for variances to zoning regulations 7.2.3A&B, 3.2.6C Rear Setback to 27.6' and 3.2.5.A for the purpose of adding a 12'x16' deck on the side of the house. Zoning District: R-44; Map: 2; Block: 7; Lot: 8&9

Vinny Mancuso made a motion to bring Application # 29-14 to the floor, duly 2<sup>nd</sup>, approved 5-0. Applicants Cheryl Finley and Patrick Reilly approached the board asking for a 12'x16' deck on the basement level due to the slope of the land. Joe DePaul asked about a previous application which was withdrawn. It was determined that there would be no increase in non-conformity. The applicants are asking for a rear setback of 27.6'. Joe DePaul asked for public comment, none given. Joe DePaul asked about the steps to the deck. The applicants explained that there would be three steps to the deck with one side level to the ground.

Vinny Mancuso made a motion to enter into the Business Session, duly 2<sup>nd</sup>, approved 5-0. Joe DePaul made a motion to grant a rear variance to 27.6' for the purpose of constructing a deck per the plans as submitted noting that there is no increase in non-conformity, the hardship being the small size of the lot, duly 2<sup>nd</sup>, approved 5-0. Variance granted.

**Application # 30-14:** Bear Mountain LLC, 12 Bear Mountain Road, for variances to zoning regulations 3.2.6C Rear Yard Setback to 43.8' and 7.2.3A&B for the purpose of adding a deck to the rear of the house. Zoning District: R-44; Map: 25; Block: 3; Lot: 2.2

Vinny Mancuso made a motion to bring Application # 30-14 to the floor, duly 2<sup>nd</sup>, approved 5-0. Larry Link, Managing Member, Bear Mountain LLC and Linda Kim approached the board asking for a rear yard setback for the purpose of constructing a deck, the hardship being the shape of the lot. The front of the home is existing non-conforming and encroaches into the front setback. The applicants are requesting a 43.8' rear setback. Mr. Link described how the neighboring property is L-shaped which wraps around their property in the rear. A letter was read into the file from neighbor, Robert Riina, 14 Bear Mountain Road, dated September 15, 2014. He stated that he had no problem with the plans for the deck and there would be no impact to his property and offered his support. The applicants provided photos of the work currently being done to the house and explained where the deck would be placed. Architectural drawings were also provided. Joe DePaul questioned the placement of the deck and asked what the distances from the setbacks were. The applicant explained the placement of the deck citing the slope of the deck and the historic stone wall in the front. The dimensions of the deck were discussed. The applicants said the width of the deck will be 14'. Vinny Mancuso asked about landscaping. Joe DePaul suggested asking for a 10' or 12' deck instead. Joe DePaul asked about the stair

placement and it was discussed where the steps should be placed within the yard and not in the setback. Mr. Link explained that the deck will link with a stone patio on one side with no need for stairs. Joe DePaul asked the board members for any input. Patrick Hearty commented that everyone wishes that they had a bigger deck once they have one. The size of the deck was discussed, noting that board members did not have any comments. Joe DePaul asked the public for comment. None given. Mr. Link thanked the board for their time.

Patrick Hearty made a motion to go into the Business Session, duly 2<sup>nd</sup>, approved 5-0. The board discussed the dimensions of the deck and that it would be close to the ground. Joe DePaul made a motion to grant a rear variance to 43.8' to construct a deck per the plans submitted noting that it is a minimum increase in non-conformity, the hardship being the size and shape of the lot, duly 2<sup>nd</sup>, approved 5-0. Variance approved.

**Application # 27-14:** Tamay, 32 Possum Drive, for variances to zoning regulations 3.2.5A, 7.2.3A&B and 3.1.2K Special Permit Uses, Accessory Apartments Item 2, for the purpose of constructing an in-law apartment. Zoning District: R-44; Map: 35; Block: 17; Lot: 6

Vinny Mancuso made a motion to bring back Application # 27-14 to the floor, duly 2<sup>nd</sup>, approved 5-0. Wilson Tamay approached the board. The applicant was asking for a first floor in-law apartment, which was denied by zoning due to the 3 bedroom septic capacity. Joe DePaul read 3.1.2K Special Permit Uses from the zoning regulations. It was determined that the applicant was seeking a special permit, which was denied by zoning and the applicant is appealing the decision. Joe DePaul read 3.1.2K regulations 1 through 7 on accessory apartments. Joe DePaul asked the applicants for drawings which were not provided. The board requested plans and drawings in order to make any decision. The applicant stated when he bought the house it had an existing second kitchen. It was determined that the applicant was asking to keep the existing kitchen, not to add another apartment, just to maintain what he presently has. A lengthy discussion ensued about buying a home without an inspection. The applicant stated that he did not know the second kitchen was illegal when he purchased it. The applicant described that the house was a 2500 sq. ft. raised ranch. Joe DePaul questioned the applicant what exactly the applicant was looking for. Mr. Tamay requested that he would like to be able to keep the kitchen. The board was unsure exactly what needed to be granted. A discussion on accessory apartments ensued. Joe DePaul asked for comments from the public.

Roger Flocke, 33 Possum Drive, was concerned that an additional apartment would be constructed and had concerns over the septic. He asked when the last time the septic was pumped. The applicant stated that it was pumped last year. It was discovered that 12 people are living in the house. Mr. Flocke is concerned that more than one family is living at the property and he wants to live in a single family residential area, not one with an apartment building. Mr. Flocke commented that Mr. Tamay has been very compliant with any issues and is a nice neighbor. Mr. Flocke asked if there was a well or a water system and how many bedrooms there are. Mr. Tamay stated that he has a well and the house has 4 bedrooms and 3 bathrooms. Joe DePaul commented that Mr. Tamay is asking for an

accessory apartment in order not to have to rip out the kitchen and a bathroom. Ann Brown commented that the septic system will need to be upgraded and addressed.

Nancy Camp, 34 Possum Drive, came forward and stated that it was her understanding that the apartment was put in by a previous owner and questioned if an additional apartment was to be added. Ms. Camp asked Mr. Tamay if he was the owner of the house. Mr. Tamay stated that he was. Bob Jano, Old Farm Road, stated that usually there is a set of plans and a building inspector would inspect the house and septic system. He feels that Mr. Tamay is putting his neighbors at risk by overloading the septic. Bob Jano stated that he was a member of the New Fairfield ZBA for over 25 years, and as a former board member, he advised the board to think carefully before approving a variance to an applicant without proper documentation. Mr. Flocke made a final comment that they did not want to see the current situation get worse.

Joe DePaul discussed whether to continue or deny. It was determined that Joe DePaul would try to get further information from the ZEO because of inadequate representation.

Further comment from Alan Pecensa, 36 Possum Drive, commented that he did not know why the building inspectors did not inspect what the previous owners put in (Heinz, now deceased). A discussion ensued about prior zoning enforcement. Mr. Pecensa commented that Mr. Tamay would have to increase the size of the septic. Joe DePaul asked Mr. Tamay if he would like to continue the application. Mr. Tamay consented to continue. Joe DePaul will request more information for this application.

Vinny Mancuso made a motion to continue Application # 27-14 until the next meeting, July 2<sup>nd</sup>, approved 5-0.

Jack Machinko made a motion to adjourn the meeting at 9:03 pm, July 2<sup>nd</sup>, approved 5-0.