

New Fairfield Zoning Board of Appeals
New Fairfield, Connecticut 06812

MINUTES
November 20, 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, November 20, 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; John Apple, Vice Chairman; Jack Michinko; Vinny Mancuso; and Alternate Ann Brown.

ZBA members absent: Patrick Hearty 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. It was noted that Alternate Ann Brown was serving at the request of Patrick Hearty. 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 add the 2015 ZBA calendar and the procedure of addressing alternates for the board to the agenda, duly 2nd, approved 5-0. Joe DePaul made a motion to adopt the Agenda as modified, duly 2nd, approved 5-0. Secretary Joanne Brown read the Call of the Meeting.

Continued 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.

Vinny Mancuso made a motion to hear Application # 26-14, duly 2nd, approved 5-0. Applicants Cathy Ashe and Jim Hancock approached the board with a modified plan with a side setback to 15' for the purpose of constructing a 15 x 15 storage shed instead of a carport. Joe DePaul researched the zoning regulations for accessory uses. Zoning regulation 3.0.4G states that the structure shall be located no less than (10) feet in the R-44 District and shall not exceed 120 square feet. Joe DePaul said that the board would not be able to vote on this application because it was not advertised for a shed. Joe DePaul suggested that they follow Zoning regulations 3.0.4 and reapply and the fee

would be waived. A continuation form was signed last month. Vinny Mancuso made a motion to continue the application, duly 2nd, approved 5-0.

Continued 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. Vinny Mancuso made a motion to hear Application # 27-14. No one was present for the application. The board discussed continuing the application until next month or moving it to the back of the agenda. It was decided to continue the application until next month, because several members of the public were present to discuss the application and it would be easier for them to come back next month, rather than wait until the end of the meeting and probably have to come back next month anyway. Vinny Mancuso made a motion to continue Application #27-14 to next month, duly 2nd, approved 5-0.

Continued Application # 28-14: McGuire, 16 Flak Lane, for variances to zoning regulations 3.2.5A, 3.2.6A Front Setbacks to 33.1' and 37.1' and 7.2.3A,B&E for the purposes of adding a second story over an existing garage. John Apple made a motion to bring Application # 28-14 to the floor. Christianne McGuire approached the board requesting a vertical variance over the garage for storage. Ms. McGuire showed the board several pictures and plans. Joe DePaul questioned whether there would be heat or plumbing in the addition. Ms. McGuire replied that there would not be any heat or plumbing. Joe DePaul asked how this area would be accessed. Ms. McGuire stated that a pocket door might be put in or an entrance from the garage. Joe DePaul suggested that the entrance should be discussed with the Zoning Enforcement Officer and that they would most likely prefer an entrance from the garage and not from the living space. Joe DePaul asked the public for comment. None given. Vinny Mancuso made a motion to enter into the Business Session, duly 2nd, approved 5-0. The board had no issues with the application. Joe DePaul made a motion to grant two front variances, one to 33.1' and another to 38.4' for the purposes of making a vertical expansion on top of the existing garage noting that the applicant is not increasing nonconformity per the plans as submitted, duly 2nd, approved 5-0. Variance granted.

While in the business session, Vinny Mancuso made a motion to adopt the October 2014 minutes, duly 2nd, approved 4-0-1. John Apple abstained.

Application # 31-14: Becker, 30 Ball Pond Road East, for variances to zoning regulations 3.2.5A, 3.2.6A Front Setback to 0.6', 3.2.6B Side Setbacks to 5.8' and 9.6' and 3.2.6C Rear Setback to 27.5' and 7.2.3A,B&E for the purpose of increasing the height of an existing garage. Ann Brown made a motion to hear Application # 31-14, duly 2nd, approved 5-0. Laura and Irv Becker approached the board with their agent Stacey Keaney. Ms. Keaney explained the position of the garage and its current state of disrepair. The roof has had two prior sets of shingles and the slab is cracked with water damage. The applicant would like to rebuild on the same footprint with a story and half garage matching the architectural style of the home with three dormers. Joe DePaul asked how many cars the applicants have. The applicants replied that they have two cars. The applicants stated that they moved into the residence four months ago. The

parking situation in front of the residence was discussed. Joe DePaul discussed the narrowness of the road making parking along the road a dangerous situation. Joe DePaul asked how many feet the garage was from the property line. It was determined that the garage is .6' from the line. It was suggested that the applicants move the position of the garage further back for safety reasons. Joe DePaul suggested that the applicants move the garage 17' back. The agent stated that would involve a very high retaining wall at the rear of the property. The applicants stated that they would be hesitant to take down too many trees and would like to consult the neighbors. A discussion ensued about the number of feet that would be acceptable to move the garage back. Joe DePaul suggested that the applicants ask for a continuance to further investigate cost and the issue of the tree removal with the neighbors. Vinny Mancuso made a motion to continue the application to the next meeting, July 2nd, approved 5-0.

Application # 32-14: Ellinghaus, 2 Blue Jay Road, for variances to zoning regulations 3.2.5A, 3.2.6A Front Setback to 35' on Joyce Hill Road and Front Setback to 30' on Blue Jay Road and 7.2.3A&B for the purpose of constructing a new single family dwelling. Vinny Mancuso made a motion to bring Application # 32-14 to the floor. Realtor Beverly Fairchild approached the board representing Lillian Ellinghaus. Ms. Fairchild gave the board a letter from the Health Department saying that they had no issues with the application. Ms. Fairchild stated that she is the realtor for the property and that it had just been given approval by the Wetland Commission to be sold as a buildable lot. Joe DePaul stated that he did not understand the placement of the house. Ms. Fairchild did not know but stated that there were soil tests and wetlands involved. The placement of the septic was discussed with the shape of the lot. Ms. Fairchild was unsure of the reasons the engineer had placed the house where he did. Joe DePaul stated that the applicant was asking for two front variances. A lengthy discussion ensued on the footage requested and the reasoning behind it. Joe DePaul asked if Ms. Fairchild would like the application to be continued at the end of the meeting in order to get in touch with the engineer to ask him the pertinent questions. John Apple made a motion to move the application to the end of the meeting, July 2nd, approved 5-0.

Application # 33-14: Weinman, 2 McIntyre Road, for variances to zoning regulations 3.2.5A, 3.2.6A Front Setback to 26.7' and 7.2.3A&B for the purpose of constructing a new covered porch and dining room. Ann Brown made a motion to hear Application # 33-14, July 2nd, approved 5-0. Henry Weinman approached the board requesting a 26.7' front variance for a new porch, dining room, steps with 18" bay windows. The property is existing nonconforming. Mr. Weinman had modified the drawing to include the 18" bay window. Joe DePaul stated that he was not increasing nonconformity and that a variance on the side and rear was not needed. Joe DePaul asked for public comment. None given. Vinny Mancuso made a motion to enter into the Business session. The board had no issues with the application. Joe DePaul made a motion to grant a front variance to 26.7' for the purpose of adding an addition onto the house with bay windows that stick out from the roof line by another 8 inches per the plans as submitted and modified, the hardship being the size and shape of the lot with no increase in nonconformity, July 2nd, approved 5-0. Variance granted.

Application # 34-14: Gengel, 112 Lake Drive South (CI), for variances to zoning regulations 3.2.6C Rear Setback to 16' and 7.2.3A&B for the purpose of adjusting existing pool footprint. Vinny Mancuso made a motion to bring Application # 34-14 to the floor, duly 2nd, approved 5-0. Paul Russo, Agent from Lakeview Development, and Gerhard Gengel approached the board. Mr. Russo gave a brief history of the property stating that there was a pre-existing cottage on the property which was nonconforming. A pool was approved on the original site plan. In looking at the cottage it was thought that they would replace the cottage with the pool in the same footprint. Mr. Russo approached the ZEO, Tom Gormley, to discuss the situation. Mr. Russo reported that Mr. Gormley stated that as long it was replaced in the same footprint of the structure, he would be okay with that. It was requested that the applicants go to Wetlands. Wetlands requested that a large oak tree be saved. Mr. Russo then requested that the pool be moved to save the tree. Joe DePaul gave his opinion that the ZEO was in error stating that a pool could be put in the footprint of a cottage. Joe DePaul brought up whether the cottage was a legal structure. It was determined that the cottage was built in 1935, prior to zoning regulations that began in 1937. Joe DePaul said the applicant did not have the right to replace the cottage with a pool and it was not a given. Joe DePaul stated that it is the board's practice not to increase nonconformity. A copy of plans from the file was gone over and it was discovered that there would be a decrease of nonconformity. Pictures of the cottage were shown. An email was read into the file from Tom Gormley, ZEO, explaining the situation to the Chairman. Joe DePaul also had checked with the town attorney. Joe DePaul asked the board if they had any concerns. They had none. The retaining wall around the pool was discussed. Joe DePaul asked the public for comment. None given. Mr. Gengel said he did speak to his neighbors and they can't wait for the pool. John Apple made a motion to enter into the business session, duly 2nd, approved 5-0. The board discussed that the applicant is reducing nonconformity and that the previous structure was legal because it predated zoning. Joe DePaul made a motion to grant a rear variance setback to 16' to construct a swimming pool per the plans as submitted, the hardship being the saving of an oak tree, the steep slope of the property and noting that there is a decrease in non-conformity, duly 2nd, approved 5-0. Variance granted.

Application # 35-14: Stark, 6 Meadoway, for variances to zoning regulations 3.2.6A Front Setback to 22.1', 3.2.6B South Side Setback to 11.0', 3.2.6C Rear Setback to 33.2', 3.2.5A and 7.2.3A,B&E for the purposes of adding a second story over the existing footprint of the home. Jack Machinko made a motion to bring up Application # 35-14 to the floor. Agent, Joe Coelho, approached the board requesting a second story over the same footprint, leaving the chimney. The property is currently one story. Joe DePaul questioned what the height of the roof was currently. Ann Brown stated that the plans showed the existing roof was 23' and the proposed new height would be 27'. The dimensions of the attic were discussed. The screened porch would have an open deck on top of it. Joe DePaul stated that the applicant would not be increasing nonconformity. John Apple questioned the status of the work at the house. Mr. Coelho stated that the project started with the siding and continued from there. Joe DePaul asked the public for comment. None given. He asked the board about the deck above the screened-in porch. The board did not have any issues. John Apple made a motion to enter into the business

session, duly 2nd, approved 5-0. Joe DePaul made a motion to grant a front variance to 22.1', a rear variance to 33.2' and a side variance to 11' to allow a second story addition to be built on top of the existing house footprint which includes a deck over the front porch per the plans as submitted, the hardship being the extremely small size of the lot, duly 2nd, approved 5-0. Variance granted.

Application # 37-14: Pesarini, 42 Lavelle Avenue, for variances to zoning regulations 3.2.6A Front Setback to 28', 3.2.6B Side Setbacks to south 3.5' and north 8', 3.2.5A and 7.2.3A,B&E for the purpose of adding a roof over the front door and adding a second story within the same footprint. Jack Machinko made a motion to bring Application # 37-14 to the floor, duly 2nd, approved 5-0. Stenio Pesarini and Stacey Keaney, Agent, SKD Design, Keaney & Co., approached the board to request a variance to build a second story 9' higher. The open deck will be closed in and made into a living area. The existing footprint of the home is very small with 24" steep stairs. They would put add a second story with a 5'x5' entry with an overhang. The applicants are asking for a vertical expansion. Joe DePaul stated that this property is very close to the neighbors. The construction at the neighbor's house was discussed. The property slope was also discussed. The existing door would be removed to make way for stairs. It was discovered that the roof of the entry would increase nonconformity. The agent said that she could reduce the entry to 3.6'. Joe DePaul suggested that they reduce nonconformity by making it equal to the current 29.5' setback in the front. Window placement was discussed. Vertical expansions were discussed. Joe DePaul asked for comments from the public. None given. Joe DePaul remarked that the house is very close to the next door neighbor. The agent remarked that the construction would only increase the height by 9' and would straighten and re-center the roofline and that the architecture would match the house and it would blend in nicely. The total height to the mean would be 32'. Enclosing the deck and putting in transient windows on top for privacy from the neighbors was discussed. Roof height was discussed. John Apple made a motion to enter into the business session. Joe DePaul stated that somewhere down the line the board had to stop the vertical expansions. Joe DePaul reiterated the close proximity to the neighbor and the fact that it was an extensive expansion. The board had no objections since it would be in the same footprint. Joe DePaul made a motion to grant a front variance to 29.5', side setback to 3.5' and north side setback to 8' to grant a vertical expansion per the plans as submitted noting that it does not increase nonconformity, the hardship being the narrow shape of the lot, duly 2nd, approved 4-1, Joe DePaul voting no. Variance granted.

Application # 38-14: Reilly, 59 Lake Drive South (CI), for variances to zoning regulations 3.2.5A, 7.2.3A,B&E, 3.2.6B Side Setback to 19.0' and 3.2.6C Rear Setback to 32.2' for the purpose of replacing an existing wooden deck at rear of home and adding a second floor addition over existing footprint. John Apple made a motion to bring Application # 38-14 to the floor, duly 2nd, approved 5-0. John McGuirk, architect, approached the board describing the current setbacks and that the property is existing nonconforming. Mr. McGuirk said that the applicants were proposing rebuilding an existing rear deck to line up with the house which will make the side setback 20' with a decrease in nonconformity. The applicant will be remodeling the second floor by adding a second dormer on the south

side to match an existing dormer. The new dormer will line up with the existing roof overhang with no increase in nonconformity. Joe DePaul inquired about the current square footage. Mr. McGuirk commented that the square footage will increase slightly. Upstairs, a 4'x12' area will be added with a vertical expansion. The elevation of the dormers was discussed. Joe DePaul asked for comments from the public. None given. Vinny Mancuso made a motion to enter into the business session, duly 2nd, approved 5-0. The board discussed the current state of nonconforming and had no issues. Joe DePaul made a motion to approve a rear setback variance to 32.2' and side setback to 19' for the purpose of reconstructing a deck and adding a dormer and additional construction per the plans as submitted noting that there is no increase in nonconformity, the hardship being the unusual shape and steepness of the lot, duly 2nd, approved 5-0. Variance granted.

Application # 39-14: MacCarthy, 28 Overbrook Drive, for variances to zoning regulations, 3.1.5A, Minimum Lot Area and Frontage, 7.2.3A&B and 3.1.6B, Side Setback to 26.9' for the purpose of enlarging the master bedroom. John Apple made a motion to bring Application # 29-14 to the floor, duly 2nd, approved 5-0. Applicants Jean and Pat MacCarthy approached the board. Joe DePaul remarked that he visited the site and there is an illegal shed on the property. The applicants said that they recently discovered that it was illegal during a survey. Joe DePaul stated that granting a variance would be based on the removal of the shed. Mrs. MacCarthy stated that there is currently an illegal sunroom on the back of the house. The plan would be to put a legal sunroom on the back with a deck in between and extension of the bedroom. The side setbacks were discussed. The proximity of the neighboring house was discussed. The amount of the increase in nonconformity was discussed including other options in order to not increase nonconformity. The board discussed the 2.5' increase in nonconformity and whether the amount would be considered diminimus. The applicant agreed to remove the shed as a condition to the variance. Joe DePaul asked for public comment. None given. John Apple made a motion to enter into the business session, duly 2nd, approved 5-0. The board discussed the removal of the shed and the diminimus amount of the increase in nonconformity. Joe DePaul made a motion to grant a side variance to 26.9' to construct an addition to the house per the plans as submitted contingent on the removal of the shed, the hardship being the odd shape of the lot, duly 2nd, approved 5-0. Variance granted. The applicant asked when the shed needed to be removed. The board replied before construction of the addition.

Application # 32-14: Ellinghaus, 2 Blue Jay Road, for variances to zoning regulations 3.2.5A, 3.2.6A Front Setback to 35' on Joyce Hill Road and Front Setback to 30' on Blue Jay Road and 7.2.3A&B for the purpose of constructing a new single family dwelling. Vinny Mancuso made a motion to bring back Application # 32-14 to the floor, duly 2nd, approved 5-0. Ms. Fairchild returned to the board, having spoken to the engineer regarding the position of the house. Ms. Fairchild said the position of the house could not be moved and stated that there was a letter from the Health Department stating that. Joe DePaul countered that the letter did not state that it could not be moved and such a letter would be needed. Ms. Fairchild said that it was irregular lot with watercourses and that it would be piped. Ann Brown questioned why the pipe and the house couldn't be moved west a few feet toward the septic to eliminate one of the two variances required; the one

for the front setback on Joyce Hill Road. Joe DePaul clarified that a letter was needed from the town (Health Department and Wetlands) stating that this is the only spot where the house could be placed. Ann Brown questioned what the circle was on the plans. It was ascertained it was the 75' well radius line. Joe DePaul suggested coming back for a continuance and requested that the engineer be present with appropriate documentation from the town. Beverly Fairchild explained the current state of the landowner. Joe DePaul asked for public comment. Barry Lesser, 1 Blue Jay Road, commented that there are two main problems of grade and drainage in the community and that a four bedroom house seems too large for the neighborhood. Beverly Fairchild commented that a raised ranch would be put on the lot, not a large colonial. Ms. Fairchild did not know what square footage of the proposed house would be. Mr. Lesser was concerned that there would be a driveway going over the main stream. Ms. Fairchild said that there would be pipes put in. Mr. Lesser also commented that the streets were extremely narrow and was concerned over the presence of construction trucks blocking traffic. The board commented that they needed much more information such as square footage in order to make a decision including the written decision from Wetlands and proof from town that the property needs a variance. Vinny Mancuso made a motion to continue Application # 32-14 to the next meeting, July 2nd, approved 5-0.

Joe DePaul made a motion to discuss the ZBA calendar and procedure to assign alternates, July 2nd, approved 5-0. The board did not have any issues with the schedule. Vinny Mancuso made motion to adopt the 2015 ZBA calendar, July 2nd, approved 5-0.

Joe DePaul commented that the ZBA was fortunate to now have two alternates but discovered that there are complex rules in place to follow. Joe DePaul read Section 8-5a into the record regarding the selection of alternates by the Chairman and the recording of the selection in the minutes. A discussion ensued about the procedures for choosing the alternate. It was determined that the secretary will ask the absent member which alternate should be used for the meeting, unless the member asks specifically for a particular alternate which is his choice. Vinny Mancuso made a motion to adjourn the meeting at 9:23 pm, July 2nd, approved 5-0.