

New Fairfield Zoning Board of Appeals
New Fairfield, Connecticut 06812

MINUTES
December 15, 2014

The New Fairfield Zoning Board of Appeals (ZBA) held a public hearing followed by a business session at 7:00 p.m. on Monday, December 15, 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

Town Officials in attendance: Evan White, Zoning Enforcement Officer.

Chairman Joe DePaul called the meeting to order at 7:05 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. Joe DePaul made a motion to adopt the Agenda, 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.

Joe DePaul read an email from Cathy Ashe into the record dated December 14, 2014 withdrawing Application # 26-14.

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, duly 2nd, approved 5-0. No one was present for the application. The board reviewed the history of the application, with the applicant being late at the first meeting, absent last month and again absent this evening. It appeared that the applicant did not seem interested in providing documentation to the board to support the application. The previous public comment was discussed. Joe DePaul asked for public comment, none given. Vinny Mancuso made a motion to enter into the business session, duly 2nd, approved 5-0. Vinny Mancuso stated that the applicant was given sufficient time to present his case and that the board should vote on the application. John Apple stated

that the residence was in a one-family zone, not a two-family zone. Joe DePaul stated that the town had received complaints about the number of people living at the residence. It was discovered that there were three apartments at the property and the applicant was told that he needed a variance to legalize the situation. The applicant did not present any reasoning that would justify having three apartments in one house. Joe DePaul made a motion to grant a variance at 32 Possum Drive to legalize the three apartments, the hardship being the size and shape of the lot, duly 2nd, 0-5 opposed. Variance denied.

While in the business session, Joe DePaul asked for any comments or changes on November's minutes. Vinny Mancuso made a motion to adopt the November 2014 minutes, duly 2nd, approved 5-0.

Continued 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. John Apple made a motion to bring Application # 32-14 to the floor. Realtor Beverly Fairchild approached the board representing Lillian Ellinghaus requesting two front variances. Ms. Fairchild presented the board with a letter from Tim Simpkins, Director of Health, which was read into the record. The letter stated that there was the house could not be moved by even a few feet closer to the septic system without causing health and wetland issues. The Notice of Decision Issuance of Inland Wetland Permit was also read into the record. Joe DePaul inquired about the square footage of the house. Evan White, ZEO, commented that the home would be less than 2000 square feet. Ann Brown asked if the house could be reconfigured or designed smaller to eliminate at least one of the setback variances. A discussion ensued about the size of the home. Joe DePaul reiterated Tim Simpkins comments that the house could not be moved. Vinny Mancuso stated that with the information from the Health Department and Wetlands there was enough information to make a decision. Joe DePaul asked for public comment, none given. Vinny Mancuso made a motion to enter into the business session, duly 2nd, approved 5-0. Joe DePaul asked the board for any comments. Ann Brown stated that she had an issue with granting a variance for new construction and thought that the house could be reconfigured. Vinny Mancuso commented that he was content with the findings of the architect, health director and wetlands. Joe DePaul made motion to grant two front variances, one on Joyce Hill Road to 35' and one on Blue Jay Road to 30' for the purpose of constructing a new single family four bedroom house per the plans as submitted, the hardship being the irregular size of the lot, septic system and wetlands, duly 2nd, approved 4-1. Ann Brown voting no. Variance granted.

Application # 23A-14: Underhill, 5 Pine Island, for variances to zoning regulations Minor Accessory Buildings & Structures 3.0.4E and 3.0.4G1 and Uses Permitted as of Right 3.2.1 to maintain deck and enclosure (cottage).

Attorney Neil Marcus and applicant, Bob Underhill, approached the board. Attorney Marcus gave a brief history on the previous 2011 Cease and Desists on the property which brought them before the board. There were a number of issues with the building department, health department and zoning department. A Cease and Desist was again issued in 2014 which narrowed the issues from the first Cease and Desist. The applicant presented a map of the parcel identifying the 440 contour in bold which is the line between the applicant's land and the land owned by First Light. A large wooden deck and docks are located below the 440

contour. Mr. Underhill stated his intention is to rebuild the rotting structures and covered deck on his property. The building is identified as a cottage but, is basically a screened-in porch. New Fairfield's Zoning Regulations do not allow for accessory structures without a primary structure. Pine Island cannot sustain primary structures. There is no electricity, wells or septic systems. The only use of the island is recreational; boating, fishing and picnicking.

The Chairman said that New Fairfield zoning will not allow a deck to be built without a house and you cannot build a house on Pine Island. The town cannot provide emergency services to Pine Island such as police and fire. The applicant was asked about bathrooms in the buildings. Mr. Underhill stated that he installed a self-composting toilet. The applicant was also asked if he stayed overnight on the property. He indicated that he has, about 15 times since 1998. The applicant did not know if he paid taxes on the property.

Attorney Marcus indicated that the applicant wants to address the issues raised in the Cease and Desist by allowing them to go back to the building department and obtain permits for the structures that were built on the property.

A lengthy discussion ensued about the property and the structures currently on it. The board examined the photos. Attorney Richard Smith, representing the town of New Fairfield, explained the background of the Cease and Desist situation in 2011. At that time the town did not have a proper survey and the Cease and Desists were withdrawn. Regulations do not allow for accessory structures. The town has encouraged the landowners to seek a variance or to remove the structures. Pine Island has been a source of problems in the past with noise, parties and vandalism. This is the first application to come before the board on Pine Island and every lot is different and unique. Attorney Smith remarked that Mr. Underhill and his counsel have been very compliant in working with the town. Vinny Mancuso asked Attorney Smith what the town's position is. Mr. Smith remarked that the town's position is to either remove the structures or make them compliant. The town is not suggesting the board grant or deny the variance. Vinny Mancuso commented that he thought that it was not fair that the taxpayers on the lake should have to deal with the noise, parties and the vandalism from the island. Mr. Underhill commented that he believed that people who have structures take better care of their own property and they have a vested interest. Joe DePaul stated that he had a problem legalizing structures that cannot be supported by police or fire. He is concerned that granting a variance would increase the town's liability. He also said that the applicant has not provided evidence that these structures predated the regulations and are existing non-conforming. John Apple also commented that it was hard to grant a variance when it is against zoning regulations and thought that the town needed to make that decision. Joe DePaul said that there are too many violations and if the town could not respond to any emergency, the town could be liable. Joe DePaul questioned that the applicant could not provide proof that the property was existing nonconforming. Attorney Marcus reiterated that they would like to comply with the town and that the property has been there for a long time and that the property is kept in good condition. Mr. Underhill commented that he did not wish to negatively affect the community in any way. Joe DePaul asked for public comment, none given. Attorney Richard Smith entered the pictures into the record. Vinny Mancuso made a motion to enter into the business session, duly 2nd, approved 5-0. Ann Brown commented that she expressed concern that the town was not able to provide police or fire services. Joe DePaul made a motion to grant a variance with a front setback to 0' and varying regulations 3.0.4E, 3.0.4G1 and 3.2.1, to permit the continued use of the structures on Pine Island, the

hardship being the irregular shape of the lot and the fact that the structures are over the 440 line, duly 2nd, 0-5 opposed. Variance denied.

Application # 36-14: McSpedon, 299 Route 39, for variances to zoning regulations 3.2.5A, 7.2.3A,B&E, 3.2.7; Building S (cottage on south side of property) 3.2.6C Rear Setback to 1.8' and 3.2.6B South Side Setback to 1.0'; Building N (cottage on north side of property) 3.2.6C Rear Setback to 0.5' and 3.2.6B North Side Setback to 0.5' for the purpose of renovating the two buildings including adding second story.

John Apple made a motion to bring Application # 36-14 to the floor. Attorney Richard Smith represented Mr. McSpedon. Attorney Smith described the property saying that there are two old cottages existing on one parcel since the 1930s. The structure on the left encroaches on the neighbor's property and is in disrepair. They would like to remove the encroachment for one structure and raise a second story on each structure. The Cottage on the right would stay in the same footprint and add a second story. Attorney Smith gave an assessor's card from 1962 which mentioned that the house was built 30 years ago. Joe DePaul said that he checked online with the current assessor's database that stated house was built in 1940. Joe DePaul said that according to the records, there were no toilets in either dwelling. Joe DePaul provided pictures to the board which showed the structures are located on the edges of the property line with 15' in between the structures. He said the cottages are in horrendous condition. According to the property cards, the cottages are worth \$2,000.00 to \$5,000.00. There is only one parking space on the lot with two houses. Joe DePaul questioned why the houses could not be combined into one house. It would be tough to request two vertical expansions with no parking. Joe DePaul stated that he would need to see more involved plans. Richard Smith stated that there will be no increase in bedrooms, just more living space. Mr. McSpedon discussed the family dynamics and the uses of the cottages during the summer. Attorney Smith suggested that they could come back with more complete plans. Joe DePaul stated that he would like to see one structure although they are entitled to keep two. It was discussed that the applicants cannot get a vertical expansion without a variance. Richard Smith stated that it was his understanding that the board would prefer one structure with a vertical expansion. Richard Smith agreed to continue the application to the next meeting.

Vinny Mancuso made a motion to continue Application # 36-14 to next month, duly 2nd, approved 5-0.

Vinny Mancuso made a motion to adjourn the meeting at 8:27 pm, duly 2nd, approved 5-0.