

**New Fairfield Zoning Board of Appeals**  
**New Fairfield Connecticut 06812**  
**MINUTES**  
**Meeting**  
**May 16, 2013**

The New Fairfield Zoning Board of Appeals (ZBA), held a public hearing followed by a business session at 7:00 pm. on Thursday, May 16, 2013, 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, Peter Hearty, and Vinny Mancuso

ZBA members absent: Alternate John McKee

Town Officials in attendance: None

Chairman Joe DePaul called the meeting to order at 7:02 pm, introduced the Board members, and explained the meeting process and voting procedures. Joe DePaul gave the definition of a recusal.

Secretary Laurie Busse read the Agenda. Joe DePaul read an email dated 05/02/2013 into the meeting from Michael Dee indicating he will withdraw his application. Vinny Mancuso made a motion to remove Continued Application # 08-13 from the Agenda, duly 2nd, approved 5-0. Joe DePaul made a motion to add notifications to neighbors onto the end of the Agenda and adopt the Agenda as amended, duly 2nd, approved 5-0. Secretary Laurie Busse read the Call of the Meeting.

**Application # 08-13:** Michael B. & Sheri L. Dee, 21 Titicus Mountain Road, for variances to zoning regulations for the purpose of constructing a 1 ½ story garage.

Withdrawn

**Application # 11-13:** Joe and Diane Reilly, 35 Ball Pond Road East, for variances to zoning regulations for the purpose of varying a previously approved variance.

John Apple made a motion to bring Application # 11-13 to the floor, duly 2nd, approved 5-0.

Mr. & Mrs. Reilly approached the Board. They discussed Variance # 05-02 for a 24' X 24' 2-car garage that was granted for a front setback of 26' stipulating the 50' rear setback must be met in March 2002 to a prior owner. The garage was never constructed. The applicants recently purchased the home and after speaking to the wetlands officer would like to vary the variance so the garage will be 7.3' away from the front setback. The prior wetlands permit has expired and they need to work with wetlands on this matter as well. The applicants also own the property directly across the street. If the garage was pushed towards the front of the property there will be less impact on Ball Pond and less impact to the property owners across the pond that have lake views. There are trees and bushes in the front of the home so the garage will not be seen from the road. Discussion followed on

the February and March 2002 Minutes which indicate the Board had many concerns about the garage going so close to the front of the home. Further discussion focused on the many garages the Board turned down in the Candlewood Lake area because they were too close to the road. Since the front setback had been varied to 26' then this new proposal is considered an increase in nonconformity. The Board stated their position on increasing nonconformity. This is a flat piece of property that is almost 1 acre on Ball Pond. There is another cottage on the property as well.

Joe DePaul asked for any further public comment—none heard.

Peter Hearty made a motion to enter the Business Session, duly 2nd, approved 5-0.

In the Business Session the Board discussed that a prior variance already exists for a 2-car garage so off street parking is not an issue. The new proposal for a front setback to 7.3' would be a tremendous increase in nonconformity and there are safety hazards with a garage so close to the road.

Joe DePaul made a motion to grant the variance for a garage with a front setback to 7.3' per the plans submitted, the hardship is the proximity to Ball Pond and size and shape of the lot, duly 2nd, denied 0-5.

**Application # 12-13:** Philip & Kathleen Nelson, 47 Bigelow Road, for variances to zoning regulations for the purpose of constructing a shed.

Jack Michinko made a motion to bring Application # 12-13 to the floor, duly 2nd, approved 5-0.

Phil Nelson approached the Board and explained his plans. He would like to build a shed on the west side of his home. There are significant wetlands and slope on the rear of his property. The west side of his home will sustain footings for the shed. The house is on an angle and if the shed was located on the west side of the home, aesthetically it would look like the rear of the home and not be seen from the road. The shed will meet all other zoning requirements.

Joe DePaul asked for any further public comment—none heard.

Peter Hearty made a motion to enter the Business Session, duly 2nd, approved 5-0.

In the Business Session the Board discussed the shed will not be seen from the road and will not impact the neighbors. There are wetlands in the rear of his yard.

Joe DePaul made a motion to grant a variance for a shed in the side yard subject to the plans as submitted. The hardship is the wetlands and shape of the lot, duly 2nd, approved 5-0.

**Application # 13-13:** Richard and Rosanne Medina for variances to zoning regulations for the purpose of constructing a 2-car garage with living space above, enclosing the side porch and constructing a rear deck.

Peter Hearty made a motion to bring Application # 13-13 to the floor, duly 2nd, approved 5-0.

Mr. & Mrs. Medina along with their architect John McGuirk approached the Board. The lot is preexisting nonconforming with .357 of an acre. It is a small lot with a 600sqft home on it. They are proposing to put the garage by the current driveway and parking area. The garage will have a kitchen, dining room, and living room over it. The existing home will be reconfigured to have 2 bedrooms and 2 bathrooms. They propose to convert the existing side porch to an entry foyer and add a rear deck to the existing home. The existing home is 26' from the front setback and the proposed addition will be 27.3' from the front property line, so there is no increase in nonconformity. The side setback is conforming and the proposed addition will be 12' from the side setback. The Board discussed their position on increasing nonconformity and looked for ways to reduce nonconformity to the side setback. The property is on an angle and the garage could be pushed toward the rear of the home, however then they will need a rear variance. It was also suggested to reduce the size of the garage to a 1 car garage. The garage is going in the location of the existing deck and is 26' wide. The applicant submitted letters from his neighbors approving the project. The addresses are 6 Flak Lane, 3A, 3B, & 3C Flak Lane and 46 Candlewood Hill Rd. However the neighbor whose property will be affected by the 12' setback did not have a letter approving the project. The Board indicated that they would like to see a letter of approval from this neighbor. The Board also discussed they would have liked to have seen approval letters from the neighbors in their own words rather than the form letter the applicants typed up and had them sign. The Board again discussed other options for the addition. The Board explained how to move forward with the application. The applicants stated they would like to continue the Application to the June 20 meeting.

Vinny Mancuso made a motion to continue the application to the June 20 meeting, July 2nd, approved 5-0.

**Application # 14-13:** Christine Berntsen, 14 Flak Lane, for variances to zoning regulations for the purpose of constructing a new home.

Vinny Mancuso made a motion to bring Application # 14-13 to the floor, July 2nd, approved 5-0.

Christine Berntsen, Marc Huberman along with their contractor Joe Beatty approached the Board. They explained due to the severe ledge, rock, and slope on their property water run off had worked its way underneath their home causing severe structural damage. The house needs to be demolished and a new one constructed. The existing setbacks are as follows: front setback 27.5', side setback 16.3' and the other side setback to 15.6'. They are proposing a new location for their home which will make the side setbacks conforming, noting they will still need a front setback to 27.5. A memo dated 5/2/2013 from the Town Sanitarian, Mike McCarthy stating he has no objections with the location of the new home.

Joe DePaul asked for any further public comment—none heard.

Vinny Mancuso made a motion to enter the Business Session, July 2nd, approved 5-0.

In the Business Session the Board discussed there is no increase in nonconformity as a matter of fact the proposal makes the property more conforming. There will be no impact on the neighbors and there is significant rock, ledge, and slope on the property.

Joe DePaul made a motion to grant a variance for a front setback of 27.5' subject to the plans as submitted. The hardship is the rock, ledge, slope and shape of the property,

further stipulating there is no increase in nonconformity but rather a reduction of nonconformity, duly 2nd, approved 5-0.

**Application # 15-13:** Patrick Reilly, 29 Candlewood Drive, for variances to zoning regulations for the purpose of constructing 2<sup>nd</sup> story additions and 2 story additions to the home and detached garage.

Peter Hearty made a motion to bring Application # 15-13 to the floor, duly 2nd, approved 5-0.

Patrick Reilly and Cheryl Finlay approached the Board. The side of the house was constructed right into a ledge outcropping and due to extreme runoff has caused damage to that side of the home. The existing side setback is 6'. They will remove that portion of the home which will reduce nonconformity on the side setback. They are also proposing a 2<sup>nd</sup> story addition to the home and detached garage. The proposed height of the home will be approximately 24' and the proposed height of the garage will be approximately 20'. There will be no plumbing or heating in the garage addition. The home will have a rear addition, however that is outside of the ZBA's jurisdiction. The home is on Candlewood Drive and the requested front setback is 27.7' which is existing. The garage is on Sylvan Road and the requested front setback is 4.6' which is also existing. Discussion focused that this is a corner lot and according to zoning regulations it has 2 fronts and 2 sides. There are no rear setbacks.

Joe DePaul asked for any further public comment—none heard.

John Apple made a motion to enter the Business Session, duly 2nd, approved 5-0.

In the Business Session the Board discussed this is a very oddly shaped lot, the vertical expansions will not increase nonconformity, there will be a reduction in the footprint on the ground and there will be no impact on the neighbors. The house is a corner lot.

Joe DePaul made a motion to grant a front setback on Candlewood Drive to 27.7' and a front setback on Sylvan Road to 4.6' subject to the plans as submitted further stipulating there is no increase in nonconformity. The hardship is the rock and ledge on the property, and it is a corner lot, duly 2nd, approved 5-0.

**Application # 16-13:** Jacques and Kathy Proteau, 181 Ball Pond Road, for variances to zoning regulations for the purpose of constructing a rear deck with roof and stairs to grade.

Peter Hearty made a motion to bring Application # 16-13 to the floor, duly 2nd, approved 5-0.

Mr. & Mrs. Proteau approached the Board. They explained they are planning to construct two covered rear decks with stairs to grade. The 1<sup>st</sup> deck is existing but is in ill repair and needs to be replaced. This deck is not in front of ZBA. The second deck is in front of ZBA. The applicants would like to construct a 14' X 30' rear covered deck with stairs to grade. Due to the proximity of the house to the road, the rear deck is in violation of the front setback. This is an R-88 zone. The new deck will be 64' from the front setback, but will not increase nonconformity since the other deck and front of the home are closer to the front setback. The new deck will be approximately 12-16' high at the peak of the roof.

Joe DePaul asked for any further public comment—none heard.

Vinny Mancuso made a motion to enter the Business Session, duly 2nd, approved 5-0.

In the Business Session the Board discussed there will be no increase in nonconformity, and the location of the home cannot be changed.

Joe DePaul made a motion to grant a front setback to 64' for the purpose of constructing a rear covered deck, subject to the plans as submitted. The hardship is the size of the lot and the proximity of the existing house to the road, further stipulating there is no increase in nonconformity, duly 2nd, approved 5-0.

**Minutes:** John Apple made a motion to accept the Minutes to the April 15, 2013 meeting as presented, duly 2nd, approved 4-0-1. Vinny Mancuso abstained.

**Neighbor Notifications:** Joe DePaul discussed there are zoning regulations in place which may indicate that applicants are supposed to notify neighbors via certified mail 10 days prior to the meeting date. The Land Use Dept. has been telling applicants they must do so. The Board has always taken the position that this does not apply to ZBA. The zoning regulations are not clear regarding neighbor notification. According to State Statutes if the ZBA required such mailings, then they would have a certificate of mailing and not certified mail. These are 2 very different mailing options; the 1<sup>st</sup> is just documentation from the post office and costs a lot less than certified mail. State Statutes Section 8-7d states that “such commission, board, or agency may by regulation provide for additional notice. Zoning Board of Appeals has not taken that position. Joe DePaul further stated that the Zoning Commission cannot write regulations for Zoning Board of Appeals. We are a separate entity and should write our own regulations.

Secretary Laurie Busse stated that due to the requirements of the legal notice in the newspaper combined with the requirement for notifying applicants via certified mail, most applicants do not receive notice they are on the agenda more than 10 days prior to the meeting date, making it impossible for them to be in compliance with the zoning regulations. Additionally the burden of proof to show that the correct neighbors were notified would fall on ZBA. If the burden of proof was left up to the applicants, and if ZBA moves forward with the public hearing then we are in agreement with the applicants that they have notified the correct neighbors. Currently ZBA does not have staff in town hall. For the secretary to notify the neighboring property owners it would create about 2 hours additional work per application, not to mention the additional costs for postage and office supplies. In order for this to be properly done, there must be a full time secretary in town hall designated for ZBA and Zoning. The Zoning Dept. also does not have a secretary in Town Hall; they only have their recording secretary for meetings.

Discussion followed and Joe DePaul said the Board should decide if it wants to notify neighbors or not. The consensus of the Board is that neighbors should not be notified.

Joe DePaul made a motion to adjourn at 9:30pm, duly 2nd, approved 5-0.