

**New Fairfield Zoning Board of Appeals
New Fairfield Connecticut 06812
MINUTES
Meeting
November 21, 2013**

The New Fairfield Zoning Board of Appeals (ZBA), held a public hearing followed by a business session at 7:00 pm. on Thursday, November 21, 2013, in the New Fairfield Library located at 4 Brush Hill Dr. Secretary Laurie Busse took the Minutes.

ZBA members in attendance: Joe DePaul, Chairman, John Apple, Vice Chairman, Jack Michinko, Vinny Mancuso, and Patrick Hearty

ZBA members absent: Alternate John McKee

Town Officials in attendance: None

Chairman Joe DePaul called the meeting to order at 7:00 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 made a motion to add 2014 calendar dates and election of officers to the end of the Agenda, duly 2nd, approved 5-0. Secretary Laurie Busse read the Call of the Meeting.

Application # 32-13: Gerard and Nancy Kick, 12 Knolls Road, for variances to zoning regulations for the purpose of constructing a 2nd story addition.

Vinny Mancuso made a motion to bring Application # 32-13 to the floor, duly 2nd, approved 5-0.

Gerard Kick and his architect Charles Reppenhagen approached the Board. The plans are to construct a 2nd floor dormer on the existing house. They will not extend past the existing footprint on the ground, there will be no increase in height, and will add approximately 900 to 1000sqft of living space. There will be no impact to the neighbors.

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 typical vertical expansion. There is no increase in nonconformity and no increase to the footprint on the ground.

Joe DePaul made a motion to grant a variance for a front setback to 27.6'; side setbacks to 11' and 14', and a rear setback to 45' for the purpose of constructing a 2nd story dormer. Further stipulating this variance does not increase dimensional nonconformity. The hardship is the irregular size and narrow shape of the lot, duly 2nd, approved 5-0.

Minutes: Vinny Mancuso made a motion to approve the Minutes to the October 17, 2013 meeting as presented, duly 2nd, approved 4-0-1. Patrick Hearty abstained.

Application # 33-13: Brian and Pamela Marshall, for variances to zoning regulations for the purpose of constructing a pool house.

Vinny Mancuso made a motion to bring Application # 33-13 to the floor, duly 2nd, approved 5-0.

Brian Marshall and his architect Brad DeMotte approached the Board. They explained they wanted to construct a 308sqft pool house approximately 800' away from the home, but close to the in ground swimming pool. The pool house will have a ½ bathroom and kitchen however it will not be heated. The in ground pool was constructed last summer and they found that it was bothersome to walk back and forth to the house to use the bathroom and then the house would get messy from dirt that was tracked in from wet feet. The current zoning regulations are not conducive to pool houses as they are classified as accessory structures and do not allow plumbing or heat and they can only be 225sqft. The underground pipes, well and septic dictated the location of the pool. The Board inquired if there was a hardship arising from the land that would be considered a reason to construct a pool house that had plumbing and is larger than the zoning regulations allowed. The applicants stated they do not have a hardship arising from the land. Other towns have zoning regulations that are conducive to the construction of a pool house. For example Ridgefield allows the construction of a pool house to be no more than 1,200sqft. The Board stated a pool house is very nice, but not a necessity. The Board stated it is not their job to agree or disagree with the zoning regulations but rather to uphold them unless there is a hardship arising from the land; further noting that perhaps these regulations were in place so that accessory apartments or 2nd dwellings such as a cottage could not be constructed. For example, they wouldn't want the pool house to have the ability to be rented out as living quarters. The applicants stated they would be willing to reduce the size of the pool house but would not be willing to give up the ½ bathroom or kitchen. The Board's position is there is no hardship arising from the land and they also had concerns that the pool house could be used as a secondary dwelling. Joe DePaul explained how to move forward with the application. The applicants stated they wanted the Board to vote tonight on the proposal submitted.

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 their concerns that this proposal would have the ability to allow a secondary dwelling and there is no hardship to justify the granting of a variance.

Joe DePaul made a motion to grant a variance per plans submitted for zoning regulations 3.0.4B Minor Accessory Buildings and Structures Shall Not Be Served with Heating & Plumbing Facilities and 3.0.4G4 Minor Accessory Buildings and Structures May Have Up To 150 Additional Sqft of Building Area Up To A Maximum of 225 Sqft of Building Area for the purpose of constructing a pool house. The hardship is the distance to the house and the underground piping duly 2nd, denied 0-5. The applicants were reminded of the appeal period.

Application # 34-13: ECB Realty, 7-9 Brush Hill Road, for use variances to zoning regulations for the purpose of constructing a drive thru for the future home of Dunkin Donuts.

Vinny Mancuso made a motion to bring Application # 34-13 to the floor, duly 2nd, approved 5-0.

The applicants' representative Dainius Virbickas, PE, of Artel Engineering approached the Board along with attorney Neil Marcus, and Dunkin Donuts Manager Ed Batista. Neil Marcus explained Dunkin Donuts' plans on relocating from its current location on Route 37 to the building where the Post Office is currently located. The Post Office's lease is up in August 2014. They will offer the Post Office the empty building next door where Robert's Hair Cutting Place is and the former home of Video Island. They are asking to relocate a nonconforming use and read the definition of a fast food restaurant into the record. Mr. Marcus explained that under the new zoning regulations Dunkin Donuts is considered a fast food restaurant; however they are currently operating under a special permit as a bakery. Discussion followed on varying the use of a building, and the applicants were firm in their belief they should be classified as a bakery and not as a fast food restaurant. At Dunkin Donuts' current location traffic often gets backed up at the drive thru and extends onto Route 37. They discussed ways on improving traffic flow at the new location, which would allow up to 14 cars to be in line at the drive thru window. The parking spaces abutting the cemetery will be dedicated to employee parking, noting that if there was any traffic at the drive thru window; cars parked by the cemetery would not be able to get out of their space. Mr. Batista stated the peak hours are from 7am-9am. The Board discussed they have many safety concerns regarding traffic and one of their concerns is that the peak hours are the same peak traffic hours for commuters and school busses and that there would be too much traffic on a single lane road for that much additional traffic to enter onto a main road. The Board inquired how many patrons are served during peak hours. Mr. Batista stated there are between 500-600 patrons per day and about 300 patrons from the hours of 7am-10am. The Board again stated their concerns of traffic issues noting there would be double the traffic on Saturday mornings. A traffic study has not yet been done, and the applicants will do one at the Board's request, noting it will be done by a private company that they hire and not from the State. The applicants must also go to Inland Wetlands. Neil Marcus stated that Dunkin Donuts does not want zoning regulation 4.1.2D Special Permit for a fast food restaurant; they want to allow an existing nonconforming restaurant to relocate. The new zoning regulations make Dunkin Donuts a fast food restaurant. Dunkin Donuts currently does not have a lease and is on a month to month basis. In June of 2012 they had an informal discussion with the Zoning Commission and will forward a copy of the Minutes from that meeting. The Board stated that although some commissions will do an informal hearing, those hearings are not binding. Zoning regulation 7.2.3 Nonconforming Use was read into the meeting.

Joe DePaul asked for any public comment—as follows:

Susan Chapman, 1st Selectman: Stated she has many safety and traffic concerns. There is a cross walk on Brush Hill Road which is not on Route 37, given the amount of increased traffic pedestrian safety would be jeopardized. As far as Dunkin Donuts not wanting to be classified as a fast food restaurant, well that is exactly what they are. On a Saturday morning parking is impossible and if Dunkin Donuts and the Post Office are in the same location patrons would be parking all over the road. She has contacted State Senator Richard Bloomenthal regarding her concerns for the loss of the Post Office.

Bob Jano: Traffic on Brush Hill Road in the morning is very heavy. He has counted at least 22 school busses not to mention parents driving their children and that is just for one of the schools. In addition to the traffic congestion due to the close proximity to the schools and 2 churches, the fire department (FD) and the police department (PD) use Brush Hill Road as a major artery. The ambulance and the FD have approximately 1,600 calls a year going down Brush Hill Road; now imagine an EMS vehicle rushing down Brush Hill Road and someone not paying attention, drinking their coffee, and eating a donut pulling out into the way of the EMS vehicle. This would cause a potentially hazardous if not deadly situation. Lastly Brush Hill Road becomes a sheet of ice in the winter and traffic coming in and out of a drive thru may cause a hazardous situation.

Diane Miller: Stated she lives at 1 Brush Drive. Brush Hill Road becomes a sheet of ice in the winter. In addition Dunkin Donuts opens up at 5am and has deliveries starting before 4am. The lighting, noise and traffic do not belong in a residential area at this time in the morning. They do not close until 9pm so this will create more noise and traffic in a residential area. In addition she has concerns of water usage. There are 4 wells on her property and if Dunkin Donuts taps into these then her wells will run dry. She has additional concerns regarding waste being dumped into the reservoir by patrons and by Dunkin Donuts. There is no reason why Dunkin Donuts should relocate. What would a traffic study include? Lastly, she did not receive the certified letters regarding tonight's meeting.

Neil Marcus: Stated a traffic study will analyze the road and his client will pay to have it done by a private company. It will not be done by the State.

Joe DePaul asked if there was any further public comment—None heard.

Ed Batista stated that people are already out at that time of day and he is just relocating the traffic. The ZBA stated they would like to see a traffic study. The Board inquired how Dunkin Donuts and the Post Office will receive their deliveries. The delivery trucks will go the opposite way of traffic and then come head on to oncoming traffic.

The ZBA stated they would like to see the Zoning Commission Minutes from June 2012, a traffic study, and they would like something in writing from the Post Office regarding their future location. There was discussion on continuing to either the December 19 2013 meeting or the January 23, 2014 meeting. The Board raised their concerns regarding time constraints if they continued until January 23, 2014. The applicants were not sure if they would be able to have a traffic study completed by December 19, 2013 and attorney Neil Marcus is unavailable that night. It was determined the application will be continued to January 23, 2014 and the appropriate form was signed, indicating the January 23, 2014 date.

John Apple made a motion to continue the application to the January 23, 2014 meeting, duly 2nd, approved 5-0.

John Apple made a motion to take a 5 minute break, duly 2nd, approved 5-0. Vinny Mancuso made a motion to come back from the break duly 2nd, approved 5-0.

Application # 35-13: Antony Martinez, 8 Candle Hill Road, for variances to zoning regulations for the purpose of constructing a deck.

Vinny Mancuso made a motion to bring Application # 35-13 to the floor, duly 2nd, approved 5-0.

Antony Martinez approached the Board and explained his plans to construct a 7' wide by 47' long deck. The deck will run the length of his home and meet up with a concrete patio. The property is less than ¼ acre and is surrounded by roads on 3 sides thus is considered to have 3 front yards. The front of his home faces Candle Hill Road and the rear of his home faces Notchview Drive. The side of the house faces Mountain Road. The deck will be 15.9' from the Mountain Road front setback which is equal with the existing house so there is no increase in nonconformity. The requested front setback to Notchview Drive is 25.8' but will not come any closer to the setback than the existing shed which is over the property line. Discussion followed the shed is legally grandfathered however Mr. Martinez is willing to relocate the shed so it is 10' away from the property line and by doing so will make the shed conforming. The Board discussed if this property had roads on 2 sides, he would have 2 fronts and 2 sides however, having roads on 3 sides is very unusual. The applicant stated he would have liked to make the deck wider than 7' however the location of the septic system prevents him from doing that.

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

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

In the Business Session the Board discussed the size of the lot and how few properties have 3 front setbacks as well as the applicant's willingness to relocate the shed so that it will be 10' away from the property line and by doing so will become conforming and actually decrease nonconformity on the lot.

Joe DePaul made a motion to grant a variance for a front setback to 15.9' on Mountain Road and a front setback to 25.8' on Notchview Drive for the purpose of constructing a deck. The hardship is the size of the lot and the property is considered to have 3 front setbacks due to it being surrounded by roads on 3 sides; duly, 2nd, approved 5-0.

Application # 36-13: John and Rebecca Castelhana, for variances to zoning regulations for the purpose of constructing an addition.

John Apple made a motion to bring Application # 36-13 to the floor, duly 2nd, approved 5-0.

John and Becky Castelhana approached the Board and explained their plans to construct a handicapped access addition for Mr. Castelhana's parents 44.9' away from the rear property line. The existing deck will be removed. The house was built on an angle and is pre-existing, nonconforming. The Board discussed their position on increasing nonconformity and looked for ways to reduce nonconformity which included reducing the size of the addition or moving it towards the side setback so at least part of the addition would meet the 50' required rear setback. Flipping the addition so the narrower end was facing the rear setback instead of being attached to the house would also help reduce nonconformity to about 48.5'. The applicants stated the addition is located in that particular location because there is an existing door there and it would just be a natural entrance to the addition. Further discussion followed and the Board explained the hardship must come from the land. Joe DePaul explained how to move forward with the application. The applicants stated they would like to continue to the December 19 meeting.

Vinny Mancuso made a motion to continue the application to the December 19 meeting, July 2nd, approved 5-0.

2014 Meeting Dates: Jack Michinko made a motion to enter the Business Session, July 2nd, approved 5-0. Discussion focused on holidays and the limited availability of venues. March 17 the Library is unavailable and availability in the Community Room is limited. Patrick Hearty will not be at the March 17 meeting. Joe DePaul will not be able to attend the July 17 meeting as he will be in California from July 11 thru July 21 and the following week the secretary is not available. Discussion focused on canceling the July meeting or having another member run the meeting which will be decided at a later point in time. Vinny Mancuso made a motion to adopt the 2014 meeting dates as presented, July 2nd, approved 5-0.

Election of Officers: Joe DePaul stated he does not mind staying on as chairman provided that nobody else wants the job, noting there is additional work that is involved; discussion followed. John Apple made a motion to elect Joe DePaul as chairman, July 2nd, approved 5-0. Joe DePaul made a motion to elect John Apple as vice chairman, July 2nd, approved 5-0.

Vinny Mancuso made a motion to adjourn the meeting at 9:10pm, July 2nd, approved 5-0.