

**New Fairfield Zoning Board of Appeals
New Fairfield Connecticut 06812
REVISED MINUTES
Meeting
February 16, 2012**

The New Fairfield Zoning Board of Appeals (ZBA), held a public hearing followed by a business session at 7:00 pm on Thursday, February 16, 2012, in the New Fairfield Public Library. Secretary Laurie Busse took the minutes.

ZBA members in attendance: Joe DePaul, Chairman, Peter Hearty, Jack Michinko Vinny Mancuso and Alternate John McKee.

ZBA members absent: John Apple, Vice Chairman

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 proposed agenda. Joe DePaul asked if there were any changes or amendments to the Agenda—None Heard. Vinny Mancuso made a motion to adopt the Agenda as read, duly 2nd, approved 5-0. Secretary Laurie Busse read the Call of the Meeting.

Application # 01-12: Michael Fioccola, 13 Hilldale Road, for variances to zoning regulations for the purpose of constructing a 2nd story addition.

Vinny Mancuso made a motion to bring Application # 01-12 to the floor, duly 2nd, approved 5-0.

Peter Young, agent, approached the Board and explained the house had been damaged beyond repair by a hurricane. The house is a small house on a small lot with a slope and ledge in the rear yard. They are proposing to reconstruct the house over the existing footprint and raise the roofline as the original house had a flat roof and they would like to do away with the flat roof and have a peaked roof. The Town Sanitarian stated there can be no living space on the 2nd floor therefore there will only be an attic with no stairs. There will be no increase in nonconformity, there will be no change to the footprint on the ground and there will be no impact on the neighbors. The proposed height is 22' high. The existing deck is still standing 5.7' from the rear boundary and Mr. Young explained that a variance is not required for the deck because it is preexisting and is still standing. A survey from December 6, 2011 was submitted into the record. The Board discussed the deck further. Mr. Young stated that he would like the Board to vote on the 2nd story addition and if he has to come back for the deck he will.

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 this is a classic vertical expansion. There will be no change to the footprint on the ground, no increase in nonconformity and no impact on the neighbors. The applicant stated he would come back if a variance was needed for the deck. It was noticed that the applicant asked for a side setback of 15' and a rear setback of 22' when the A-2 Survey indicated a side setback of 15.5' and a rear setback of 22.5'. Joe DePaul stated he would like to question Mr. Young on this. Vinny Mancuso made a motion to go back into the public session, duly 2nd, approved 5-0

Back in the public session the Board questioned the different setbacks on the application and the survey. Mr. Young stated he would like to modify his request to match that on the A-2 Survey. Therefore the side setback will be 15.5' and the rear setback will be 22.5'. Variance # 100-89 dated November 20, 1989 was for a deck and discussed.

Vinny Mancuso made a motion to go back into the business session duly 2nd, approved 5-0.

The Board discussed the applicant was willing to modify his setbacks to match the survey.

Joe DePaul made a motion to grant a side setback to 15.5' and a rear setback to 22.5' for the purpose of constructing a 2nd story addition subject to the plans as submitted. Noting there is no increase in dimensional nonconformity and the applicant is building over the existing footprint and raising the roofline. The hardship is the ledge and small size of the lot duly 2nd, approved 5-0.

Minutes: Peter Hearty made a motion to adopt the Minutes to the January 19, 2012 meeting as submitted, duly 2nd, approved 5-0.

Application # 02-12 , Marilyn McEarchern, 66 Woodcreek Road, for variances to zoning regulations for the purpose of constructing a single family home.

Jack Michinko made a motion to bring Application # 02-12 to the floor, duly 2nd, approved 5-0.

Peter Young, agent for the property, owner approached the Board. This is a small lot with a lot of ledge. Two lots have been combined to help reduce nonconformity and by doing so a variance will not be required on the north side of the property. The deed to the property was submitted into the record. A map of the neighborhood was submitted into the record which showed homes closer to the setbacks than he is requesting. The Board discussed moving the house closer to the north side of the property so that less of a south side variance would be needed. On the north side of the property is an easement for neighbors to pass and repass noting the house cannot be within a certain distance of that easement, therefore he cannot move the house. The proposed home will be 22' high X 24' wide X 40' long. It will be a colonial style, 2 story house with 3 bedrooms and no garage. The Board discussed the side deck is 8' wide and by removing the side deck a south side variance would not be required. The applicant agreed to remove the deck on the south side of the home. The Board discussed their position on varying empty lots.

Joe DePaul read a letter into the record from Rick Johnsen of 81 Woodcreek Road dated February 13, 2012. This letter authorized Joseph Coppola Jr. to speak on his behalf. Joe DePaul asked if Joe Coppola or Rick Johnsen was present. They were not.

Joe DePaul read an email from John Lannamann dated February 15, 2012 which objects to the construction of the new home because it is a violation of a Restrictive Covenant that has been in effect since 1947. The email explained that in exchange for the right to pass over the property his grandmother entered into a Protective Covenant in 1947 that limited the number of houses on the upper road also known as Kellogg's Point to 8 homes. This maximum number of homes constructed has been reached and the new home proposed by Mr. McEachern will violate this agreement. Donald Simmons, will provide a copy of this agreement at the hearing. Joe DePaul asked if Donald Simmons was present—he was not.

Joe DePaul read a letter into the meeting from Attorney Neil Marcus dated February 16, 2012. This letter states his clients Joseph and Christine Matranga own Lot 6 on the Subdivision Map of Woodcreek Road. The Matranga's are the holders of an easement to access Lake Candlewood through Parcel A. They have concerns that the construction of this house will impede their deeded access rights to Lake Candlewood as well as obstruct their view of the lake. The construction of this house also violates the Restrictive Covenant which limits the number of homes that can be built on the area known as Kellogg's Point.

Joe DePaul asked for any further public comment—as follows:

Ross Carly, 58 Woodcreek Road: stated the required certified letters were not sent to the adjoining property owners and that First Light was only notified of the construction of a dock and not the construction of the house. The proposed house is much larger than houses in the neighborhood noting the house next to the proposed house is only 800 square feet; additionally the other homes in the neighborhood are single story homes. The proposed house also violates the Restrictive Covenant which limits the number of homes to 8 that his grandfather, John Carpenter entered into with John Lannamann.

Gary Carpenter, 64 Woodcreek Road: stated he owns the adjoining cottage and has concerns about the septic system and he would like to be assured that the septic system is code compliant as he has had issues in the past with other neighbor's septic systems. The required letter from the Town Sanitarian stating the septic system is in the only possible location was not in the file. Mr. Young stated that Maria Horowitz had this letter and he would get it to us. Joe DePaul stated that if the variance is granted it would be a stipulation that this letter be submitted to us. The secretary gave Mr. Carpenter the phone number to the Town Sanitarian, Mike McCarthy.

Mr. Young submitted 3 certified receipts and a copy of the letter sent to the adjoining owners and 5 additional certified receipts of neighboring homes that he said he was not legally required to notify. The home will not interfere with the easement. Mr. Young stated he believes the Restrictive Covenant does not pertain to this parcel of land, but rather to land on the other side of Kellogg's Point.

Joe DePaul stated he checked with Town Counsel, Jack Keating, regarding the Restrictive Covenant. It is the advice of Town Counsel that the Restrictive Covenant is

outside of the ZBA's jurisdiction and that the ZBA must rule on the application based on how it pertains to zoning regulations.

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 its position regarding construction on empty lots. They also discussed how this lot was combined with another lot to reduce the amount of nonconformity as well as the applicant's willingness to remove the deck from the south side of the property so as to eliminate a south side setback. The new south side setback will be 20.7'. They do not have legal authority over the Restricted Covenant.

It was noticed that the A-2 Survey showed the front setback of 11.8' and the application requested a 12' front setback. Vinny Mancuso made a motion to go back into the public session, duly 2nd, approved 5-0.

In the public session the Board explained the requested front setback is 12' and the A-2 Survey shows 11.8'. They cannot grant a variance greater than what was advertised. Mr. Young stated he would like to change the requested front setback to 12'. Joe DePaul made a motion to go back into the business session, duly 2nd, approved 5-0.

Back in the business session the Board discussed the front setback will be 12'

Joe DePaul made a motion to grant a front setback to 12' and a rear setback to 36' subject to the plans as submitted with the following modifications. The deck on the side of the home has been removed and a variance for the south side setback has been eliminated, the new distance will be 20.7' and the front setback will be 12'. The hardship is the location of the easement; the size of the lot and the location of the proposed septic system. Duly 2nd, approved 5-0.

Application # 03-12: Laurent and Renata Xatart, 43 Sylvan Road, for variances to zoning regulations for the purpose of raising the roofline, extending the roof rakes, constructing a staircase and construct and enlarge decks.

Vinny Mancuso made a motion to bring Application # 03-12 to the floor, duly 2nd, approved 5-0.

John McGuirk, Architect, approached the Board. He explained the property is approximately 1 acre in size but has an extremely steep slope from the road to the water. There are rock outcroppings and ledge on the property. There is an existing dwelling all the way down toward the water. The house is 4 bedrooms. There is an upper deck outside the guest bedroom that wraps around and meets up with grade. Because of the condition of the lower bedroom they want to knock it down and rebuild it in the location that is there now. The corner of existing deck is 17' from the 440 Contour Line and when it is rebuilt it will remain at 17'. The lower level deck will go across the front and will be within 2' of grade so it is not a zoning issue. They would like to increase the size of the lower level bedroom on the 2nd level. Off of the kitchen is an existing deck that is 17.5' from the 440 Line. They propose to rebuild that and wrap around to the slate patio. They are angling the deck to the 440 Line but because the 440 Line swings

in the corner of the deck will be 17' from the 440 Line, noting there is still no increase in nonconformity. They are going to enclose the stairway to the 3rd and 4th level. They will be adding one story above the bay window area increasing the height of the home by 13'. The new height will be 26' from the average grade to the peak. The height of the proposed addition will not be any higher than the existing highest point of the roof. The roof rakes that are extending out will be 19' from the 440 Line and the existing setback is 17' from the 440 Contour Line so there is no increase in nonconformity. The staircase to the decks do not encroach any closer to the setbacks. Pictures were submitted into the record. Variance# 39-99 dated October 21, 1999 was discussed for a 2nd story addition. Mr. McGuirk stated that variance pertains to what is now actually the 4th level.

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

Peter Hearty 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, the steep slope and the amount of rock and ledge on the property.

Joe DePaul made a motion to grant the variance for a rear setback of 17' to raise the roofline, expand the house and extend the decks subject to the plans as submitted. The hardship is the excessive amount of rock, ledge, and slope on the property further stipulating this variance does not increase nonconformity July 2nd, approved 5-0.

Application # 04-12: Christopher and Patricia Sheering, 16 Knolls Road, for variances to zoning regulations for the purpose of constructing dormers and a balcony.

Peter Hearty made a motion to bring Application # 04-12 to the floor, July 2nd, approved 5-0.

Peter Young, agent for the owners, approached the Board and explained his plans to construct a gabled dormer in the front of the home with a balcony and a shed dormer in the rear of the home. The dormers will not increase the height of the home or go past the existing footprint. The balcony will not go over the existing footprint. There will be no increase in nonconformity, there will be no change to the footprint on the ground, there will be no impact on the neighbors, and there will be no increase in the height of the home. This is a small lot that has a slope so construction elsewhere on the property is not feasible.

Joe DePaul asked for any public comment—none heard.

Peter Hearty made a motion to enter the business session, July 2nd, approved 5-0.

In the business session the Board discussed this is a classic vertical expansion. There will be no increase in nonconformity, there will be no change to the footprint on the ground, there will be no increase in the height of the home, and there will be no impact on the neighbors.

Joe DePaul made a motion to grant the variance for a front setback to 21.4', two side setbacks to 12.6' and 9.9' and a rear setback to 38' subject to the plans as submitted further stipulating this variance does not increase dimensional nonconformity. The hardship is the shape, size and slope of the lot, July 2nd, approved 5-0.

Application # 05-12: David Lee, 134 Lake Drive North, for variances to zoning regulations for the purpose of constructing an addition and a deck.

Vinny Mancuso made a motion to bring Application # 05-12 to the floor, duly 2nd, approved 5-0.

David Lee and his attorney Robyn Kahn approached the Board. Attorney Kahn explained that Zoning Regulation 1.5.4 Storm Water Management is no longer an issue because since submitting their application they have adjusted their plans so that they will be under the 25% impervious surface coverage. They explained their plans to construct a 16' X 36' addition and a deck 1.32' from the north side setback. A letter dated February 6, 2012 from Tamara Tershakovec who is the neighbor directly affected by this proposal was read into the meeting. The letter stated that she did not have any issues or concerns with the proposed expansion. The house is "L" shaped and the addition will square it off. The proposal increases nonconformity and the Board stated their position on increasing nonconformity. Discussion focused on moving the addition and deck to the other side of the property however the other side of the property has a steep rocky slope and the septic system is also located there. The Board discussed reducing the size of the addition and deck so it is not any closer to the side setback than the existing garage which appears to be about 10' from the side setback. The A-2 Survey submitted did not scale the distance from the garage to the side setback. Discussion followed. The Board did not feel comfortable granting a variance without a number. The applicants requested if they could take a break so they can call the surveyor and get the exact setback from the garage to the property line.

John McKee made a motion to table the application until after the following application was heard, duly 2nd, approved 5-0.

At 8:42pm John McKee made a motion to end the break, duly 2nd, approved 5-0. Vinny Mancuso made a motion to bring Application # 05-12 back to the floor, duly 2nd, approved 5-0.

Attorney Robyn Kahn stated she spoke to the surveyor, William Whynott on the phone and he stated the garage is 8' from the property line. She will have the surveyor follow up with written confirmation on this setback. The proposed height of the addition is 26'. The secretary inquired if the addition was one or two stories. Attorney Kahn stated the addition was 2 stories and there will be a 2nd story addition on top of the existing home. The Secretary stated she advertised what was on the application and did not advertise a 2nd story addition to the existing home or a 2 story addition. The application simply indicated a 16' X 36' addition. Maria Horowitz's Letter of Non-Compliance also did not indicate a 2 story addition or a 2nd story addition. The Board discussed there was an advertising issue and could not grant a variance for something that was not advertised. Discussion followed the plans were on file with the elevation drawings. The Board stated historically they have always clearly noted 2 story additions and 2nd story additions in the Legal Notices and that this application should not be an exception. Attorney Kahn revised and initialed the application at the meeting to indicate the 2 story addition and the 2nd story addition. The Chairman stated that as long as they are continuing the correct side setback and A-2 Survey should be submitted by the application cut off date of Tuesday February 21.

John McKee made a motion to continue the application to the March 19, 2012 meeting, duly 2nd, approved 5-0.

Application # 06-12: Greg Baumgart, 9 Darien Road, for variances to zoning regulations for the purpose of rebuilding the rear room and raising the roofline.

Vinny Mancuso made a motion to bring Application # 06-12 to the floor, duly 2nd, approved 5-0.

Greg Baumgart approached the Board and explained the lot is less than 1/10th of an acre and there is ledge in the front of the yard. The ceiling height in the rear room of the home is not up to code and pictures were submitted showing the height of the room and the height of the back of the home. He is proposing to demolish the sides of the home and raise the roofline in the back of the home to be equal to the height in the front of the house. There will be no increase in nonconformity, there will be no change to the footprint on the ground, there will be no increase in the height of the home, and there will be no impact on the neighbors.

Joe DePaul asked for any 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 this is a classic vertical expansion. There will be no increase in nonconformity, there will be no change to the footprint on the ground, there will be no increase in the height of the home, and there will be no impact on the neighbors.

Joe DePaul made a motion to grant a south side setback to 2.8', a north side setback to 10.9' and a rear setback to 46' subject to the plans as submitted further stipulating this variance does not increase nonconformity. The hardship is the size of the lot, and the ledge in the front yard, duly 2nd, approved 5-0.

At 8:37pm Peter Hearty made a motion to take a 5 minute break to give the applicants from Application # 05-12 time to reach the surveyor duly 2nd, approved 5-0.

Vinny Mancuso made a motion to adjourn the meeting at 8:55pm, duly 2nd, approved 5-0.