

New Fairfield Zoning Board of Appeals
New Fairfield Connecticut 06812
MINUTES
Meeting
January 19, 2012

The New Fairfield Zoning Board of Appeals (ZBA), held a public hearing followed by a business session at 7:00 pm on Thursday, January 19, 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: Maria Horowitz, CZEO

Chairman Joe DePaul called the meeting to order at 7:03 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. Peter Hearty made a motion to adopt the Agenda as read, duly 2nd, approved 5-0. Secretary Laurie Busse read the Call of the Meeting.

Continued Application # 35-11: Linda and Robert Cioffoletti, 58 Fairfield Drive for variances to zoning regulations for the purpose of constructing a new home and detached garage.

Peter Hearty made a motion to bring Continued Application # 35-11 to the floor, duly 2nd, approved 5-0.

Dainius Virbrickas, P.E., approached the Board and recapped on last month's meeting. He read a letter into the meeting dated January 11, 2012, from the Director of Health, Tim Simpkins which clarified his letter from last month. The letter stated that the septic system was in the only possible location and did not encroach on the wetlands. The soils are adequate for a septic system. The proposal is to build a 24' X 36', 3 bedroom 1,500sqft cape style house. There will be a one car detached garage. The owners have not yet decided if a deck will be constructed, if so it may not require a variance. The lot is 1.6 acres with ledge and steep slopes in excess of 20%. There is a considerable amount of wetlands on the property as well. They must still go through the Inland/Wetland Commission. This is a very difficult property to build on and the only possible location for the home is in a small area near the front of the lot. They are requesting a 30' front setback. The Board discussed the stream going through the middle of the property as well as the steep ledge. The house to the west of this property is 29' from the road.

Maria Horowitz stated she does not have any issues with this proposal. The house is a modest size and is in the only possible location. She discussed the Board's position on developing an empty lot.

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 their position on developing empty lots and the significant slope and wetlands on the property.

Joe DePaul made a motion to grant a front setback to 30' for the purpose of constructing a new home and detached one car garage subject to the plans as submitted. The hardship is the slope, stream, and wetlands on the property, duly 2nd, approved 5-0.

Minutes: Vinny Mancuso made a motion to adopt the Minutes to the December 15, 2011 meeting as submitted, duly 2nd, approved 3-0-2. Jack Michinko and John McKee abstained from the vote. Everyone else was in favor.

Application # 28-11 TANM Irrevocable Trust, Anthony Sarro, Trustee, 21A Woods Road, for variances to zoning regulations for the purpose of legalizing pergola.

Vinny Mancuso made a motion to bring Application # 28-11 to the floor, duly 2nd, approved 5-0.

Anthony Sarro Trustee, Nick Sarro and his son Christian approached the Board. They were not aware of any zoning regulations when they constructed the pergola. The pergola is 12' H X 10' W X 30' L and was constructed along one of the retaining walls for shade and to help make the space greener. Discussion followed on the safety of the structure as it did not look safe. The applicants offered to bolt the pergola to the retaining wall to help make it more secure. Zoning regulation 3.0.9C was read into the meeting and discussed. The Board noted the pergola was larger than the zoning regulations allowed. The zoning regulations state the pergola can be no more than 25' long. The applicants did not want to make the pergola smaller by 5' as it is centered on the wall and is constructed in 10' lengths and is curved to fit the wall. The Board discussed options on how to reduce the size of the pergola. The zoning regulations also state the pergola cannot be constructed on a platform noting this is constructed on a concrete floor.

The rear setback was discussed. The applicants stated the pergola is approximately 30' from the water line. The Board discussed the property line is the 440 Line and not the water line, noting the applicants requested a 20' rear setback. There are other retaining walls on the property that are closer to the 440 Line than the pergola so there is no increase in nonconformity. Discussion followed, the applicants believed the pergola was further away from the 440 Line than the 20' requested and would consider changing the rear setback to 25'. Maria Horowitz stated that the applicants drew the pergola onto an existing A-2 survey and on an Engineers Erosion Control Plan, noting the pergola is not in the same location on the two maps. Maria Horowitz walked the property and believes the Engineers Erosion Control Plan shows the pergola in the correct location. She has instructed the applicants they must get an updated A-2 survey showing the correct location of the pergola. All parties agreed to leave the 20' requested rear setback,

noting the pergola cannot be enlarged if the rear setback is further away than 20'. The Board discussed zoning regulation 3.0.4 Minor Accessory Buildings. Maria Horowitz stated that since there is no home on the property, there shouldn't be any structures. Further discussion focused on the unusual wording of the deed and why the lot can have an accessory building without a home.

The Board again discussed the size of the pergola and felt that it should be reduced to meet the zoning regulations. The applicants agreed they would take 2 ½' feet off of each side to reduce the length of the pergola to 25'.

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.

The Board discussed this is a large piece of property with nothing on it except a few retaining walls and the pergola. There will be no increase in nonconformity. Further discussion focused on the applicants' willingness to reduce the size of the pergola so as to bring it into compliance with the zoning regulations. Zoning regulation 3.0.9C was removed from the application during the public session. The Board was indifferent to the concrete floor, stating they believed this zoning regulation was in place so that no one can create a building out of the pergola but this lot will not be able to have a building put on it.

Joe DePaul made a motion to grant the variance for the pergola not subject to the plans as submitted but rather to the construction already in place with the stipulation that it will be reduced in length by 5' so as not to be more than 25' long and a rear setback to 20' with the stipulation that if an A-2 survey determines that the pergola is further away than 20' from the 440 Line it may not be increased in size. The hardship is the slope, ledge and undevelopable property duly 2nd, approved 5-0.

Application # 37-11: Dennis and Patricia Fleishmann, 2 Summerhill Road for Variances to zoning regulations for the purpose of constructing an addition, raising the roofline, and expanding the deck.

John McKee made a motion to bring Application # 37-11 to the floor, duly 2nd, approved 5-0.

Agent Tammy Zinick approached the Board. She explained her plans to construct a 2nd story addition over a portion of the deck. The addition will not come any closer to the setbacks than existing. The Minutes to Appeal # 14-77 dated December 9, 1977 were read into the meeting. The Minutes indicated that the deck was illegally expanded to create handi-capped access for the owner. The Board had allowed this expansion with the stipulation that the open deck remain an open deck and cannot be converted into living space. The Minutes to Appeal # 07-84 dated March 28, 1984 were read into the meeting which seems to disregard the prior decision to leave the deck open and allowing a portion of it to be converted into a kitchen. Further discussion focused on both of the prior variances stipulated a 12' southwest side setback and the current survey indicates an 11.6' side setback. Maria Horowitz stated that due to technology today's surveys are more accurate and was not concerned about the 6" difference. The applicants wish to reduce the size of the deck by 8' which will make it a 4' deck. The height of the home will increase by 7' making the new height 24'. There was a lengthy discussion on how

many variances a property may have and over ruling a prior Board's decision. Joe DePaul stated that health issues are not considered hardships. Maria Horowitz stated that in 1977 there were no zoning regulations regarding handicapped access and that perhaps the 1977 Board did this as a way to allow the prior owner to access the home and that perhaps the 1984 Board took this into consideration. Further discussion followed that the proposal does not increase nonconformity.

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 some of the Board members believed there should be a limit on how many variances a property can have and that all Board's should honor a prior Board's decision. Further discussion focused on this proposal does not increase nonconformity and the Board's position on these types of subjects.

Joe DePaul made a motion to grant a front setback to 9.2' and a side setback to 11.6' subject to the plans as submitted. The hardship is the slope, size, and existing setbacks, further stipulating this variance does not increase nonconformity. Duly 2nd, approved 4-1. Joe DePaul was opposed.

John McKee made a motion to adjourn the meeting at 8:45pm, duly 2nd, approved 5-0.