

New Fairfield Zoning Board of Appeals
New Fairfield Connecticut 06812
MINUTES
Meeting
February 17, 2011

The New Fairfield Zoning Board of Appeals held a public hearing followed by a business session at 7:00 pm on Thursday, February 17, 2011, in the New Fairfield Library Community Room. 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: None

Town Officials in attendance: Maria Horowitz, Certified Zoning Enforcement Officer

Chairman Joe DePaul called the meeting to order at 7:05 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 made a motion to add a discussion on CT Land Use Seminars onto the Agenda, duly 2nd, approved unanimously. Joe DePaul made a motion to adopt the Agenda as amended, duly 2nd, approved unanimously. Secretary Laurie Busse read the Call of the Meeting.

Continued Application # 01-11: Kerry Dodge, 16 Crest Way Road, for variances to zoning regulations for the purpose of extending the deck, constructing a kitchen addition, a basement garage, and a 2nd story addition.

Vinny Mancuso made a motion to bring Continued Application # 01-11 to the floor, duly 2nd, approved 5-0.

Architect Philip Herzegovitch approached the Board and recapped on last month's meeting. Chairman, Joe DePaul stated he spoke with Town Counsel and was advised that the ZBA is free to rule as they see fit and deed restrictions do not preclude the ZBA from granting variances. Discussion focused on the prior Variance #67-84 which stipulated a 15' side setback but the actual side setback is 13.8'. This came about as the Candlewood Knolls Association stipulates a 15' setback in their deed restrictions. A discussion followed on the existing side setback of 13.8'. Some members believed the prior owners constructed past the 15' variance while others believed the house was originally constructed to 13.8' as noted in pictures and minutes that were submitted last month. The 15' north side setback is also noted in the prior minutes. The applicant stated the surveyor measured incorrectly but an updated survey indicates the house is and always was at 13.8' from the north side setback. The addition will have a 1' eve all the way around the house and the Board asked if this could be reduced to help meet the 15' side setback. Discussion followed. The proposal will not go any closer to the existing setbacks than the current home. The applicant noted he tried unsuccessfully to reach the Candlewood Knolls Association for their feedback on this proposal. The

property has 2 front setbacks on Crest Way and Mill Way with 2 side setbacks and is 1/3 of an acre.

Maria Horowitz stated the existing north side setback of 13.8' is legally grandfathered so this proposal will not increase nonconformity. Also, it is important for the Board to understand that all zoning regulations override any deed restrictions and view this application as they would for any other request for a Variance.

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 the small corner lot with 2 fronts and many members felt that this proposal would not increase nonconformity and there will be no impact on the neighbors. John Apple made a motion to go back into the public session for the purpose of discussing a 24' Crest Way front setback that was not advertised, duly 2nd, approved 5-0.

Back in the public session the applicant stated the front portion of the house that faces Crest Way has a jog in it and this "jog out" is 24' from the Crest Way front setback, however the proposal will affect the portion that is 28' away from the front setback and hence the reason for the requested 28' Crest Way front setback.

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

Joe DePaul made a motion to grant a Crest Way front setback to 28' and a north side setback to 13.8' subject to the plans as submitted, noting the hardship is the size, shape and 2 fronts, further stipulating this Variance does not increase dimensional nonconformity duly 2nd, approved 4-1. Joe DePaul voted against the proposal.

Application # 02-11: Scott Stevens, 15 Candlewood Knolls Road, for variances to zoning regulations for the purpose of constructing a 2nd story addition a covered entry way and cover an existing open deck.

John Apple made a motion to bring Application # 02-11 to the floor, duly 2nd, approved 5-0.

Agent Tammy Zinick approached the Board and explained the plans. The 2nd story addition will go over the existing footprint and will increase the height of the home by 7.5'. The new height will be 24' 5". There will be no increase in nonconformity. The property is on the corners of Candlewood Knolls Road and Claredal Avenue and is considered to have 2 fronts and 2 sides. The existing deck is 10.57' away from the Claredal Avenue front setback and they plan to close it in which will not increase nonconformity. Discussion followed the requested setback is 10' and the applicant agreed there will be no changes to the existing setback of 10.57'. Tammy Zinick agreed to request a setback of 10.57'. The covered entry is a 3' 8" roof that will go over the existing entrance way on Candlewood Knolls Road and will increase nonconformity by about 2'. The Board discussed their position on increasing nonconformity. The proposal will bring the front setback to 20.22'. Both the application and the Legal Notice showed the requested Candlewood Knolls Rd. front setback is 21'. Discussion followed on how

to move forward. Tammy Zinick stated she will keep the advertised Candlewood Knolls Road front setback to 21' and adjust the construction of the portico. The Board discussed this reduces the amount of increased nonconformity. A letter from Helen Nabozza a neighbor was read into the meeting stating she approves of this project. Further discussion focused on the small lot and the slope of the property noting the slope is so steep that the 2nd story addition will not be seen from the road. The home will remain 2 bedrooms.

Maria Horowitz stated the portico increases nonconformity.

Joe DePaul recapped on what the Board will vote on. The Claredal Avenue front setback will be 10.57'. The Candlewood Road front setback will be 21' and a side setback to 10'.

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

In the business session the Board discussed the steep slope and the majority of the proposal does not increase nonconformity. In regards to the portico there is a *de minimis* increase in nonconformity and the applicant's willingness to reduce the size of the portico.

Joe DePaul made a motion to grant a front setback on the Claredal Avenue side to 10.57'; a front setback on the Candlewood Knolls Road side to 21' and a side setback to 10' subject to the plans as submitted with the exception that the construction of the front portico on the Candlewood Knolls Road setback will be adjusted to meet the 21' setback. The hardship is the 2 fronts and the steep slope on the lot duly 2nd, approved 5-0.

Application # 03-11: Gary and Krista Gouveia, 141 Pine Hill Road, for variances to zoning regulations for the purpose of legalizing an in ground pool.

John Apple made a motion to bring Application # 03-11 to the floor, duly 2nd, approved 5-0.

Mr. and Mrs. Gouveia approached the Board and explained the original plans for the pool fell within the required rear setback and they even went to the trouble of staking out the 60' setback line for their contractor. However, during the construction the contractor hit rock and ledge and unbeknownst to them, shifted the pool sideways a few feet and went past the required setback. There is a 2' or 3' portion of the pool that encroaches on the rear setback by approximately 3½'. Letters were submitted from Sean and Judy Walsh of 143 Pine Hill Road and Lee Bessell of 139 Pine Hill Road stating they have no issues with the pool's location.

Maria Horowitz stated it is only a small portion of the pool that encroaches on the rear setback and verified the property owners did indeed stake out the pool location for the contractor.

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

John Apple made a motion to go into the business session, duly 2nd, approved 5-0.

In the business session the Board discussed it is a small percentage of the pool that is in violation of the rear setback and the excessive rock and ledge in that area.

Joe DePaul made a motion to grant the Variance for a rear setback of 56.5' subject to the construction already in place. The hardship is the unusual amount of ledge on the property duly 2nd, approved 5-0.

Application # 04-11: Alphonso and Patricia Pacheco, 15 Sunset Trail, for variances to zoning regulations for the purpose of constructing a detached garage.

John Apple made a motion to bring Application # 04-11 to the floor, duly 2nd, approved 5-0.

Mr. & Mrs. Pacheco approached the Board and stated they were not ready present tonight and would like to carry over to next month's meeting. Peter Hearty made a motion to continue to the March 14 2011 meeting, duly 2nd, approved 5-0.

Minutes: Peter Hearty made a motion to enter into the business session for the purpose of voting on the Minutes, duly 2nd, approved 5-0. Vinny Mancuso made a motion to adopt the Minutes as presented, duly 2nd, approved 5-0.

Discussion on CT Land Use Seminars: There is a seminar on CT Land Use Law Saturday March 12. Mike Zitka a well known and respected Land Use attorney will be presenting. The cost of the seminar may be reimbursable by the Town and Joe DePaul said he would be happy to car pool with any one who wants to join him. Discussion followed, several members expressed an interest in attending.

Peter Hearty made a motion to adjourn the meeting at 8:35 pm, duly 2nd, approved 5-0.