

**New Fairfield Zoning Board of Appeals
New Fairfield Connecticut 06812
MINUTES
Meeting
February 18, 2010**

The New Fairfield Zoning Board of Appeals held a public hearing followed by a business session at 7:00pm on Thursday February 18, 2010 in the New Fairfield Free Public Library. Secretary Laurie Busse took the minutes.

ZBA members in attendance: John Day, Chair, Joe DePaul, Vice Chair, Jack Machinko Peter Hearty, and John Apple

ZBA members absent: None

Town Officials in attendance: None

Chair John Day called the meeting to order at 7:03pm introduced the Board members and explained the meeting process and voting procedures. John Day gave the definition of a recusal.

Secretary Laurie Busse read the proposed agenda for the meeting. John Day stated he would like to add a discussion on the June meeting date to the Agenda and asked for any additional amendments or changes to the agenda, none heard. John Day made a motion to adopt the Agenda as amended, duly 2nd, approved unanimously. Secretary, Laurie Busse, read the Call of the Meeting.

Application # 01-10: Jonathon and Rosetta Rhodes, 35 Bogus Hill Road, for variances to zoning regulations for the purpose of legalizing a deck

Joe DePaul made a motion to bring Application # 01-10 to the floor, duly 2nd, approved 5-0.

Caren Silva agent for the Rhodes' approached the Board explaining there may be an advertising issue. The legal notice should have reflected the addition and not the deck. She would like to explain the situation to make sure that the next legal notice is correct. In July of 2008 Variance # 31-08 granted a 16' side setback for an addition, which replaced the then existing deck. After the addition was built a survey was done and it was discovered both the addition and the corner of the deck are over the 16' setback ranging from 3" to 9". The 16' requested setback was taken off a 1986 survey which indicated the deck was 22.2' to the property line so Ms. Silva assumed that was the deck that was there, but it was really one foot larger because unknown to the applicant the previous owner enlarged the deck by approximately 1' without taking out any building permits. Discussion followed the legal notice needs to be revised and the applicant changed and initialed the wording on the application.

John Day asked if there were any further comments that needed to be placed into the record before continuing the matter—none heard.

Jack Machinko made a motion to continue the matter to the March 15, 2010 meeting July 2nd, approved 5-0.

Application # 02-10: Deborah Oulvey, 30 Lake Drive North, for variances to zoning regulations for the purpose of constructing a 2nd story addition.

Joe DePaul made a motion to bring Application # 02-10 to the floor, July 2nd, approved 5-0. No one was present to represent this application; Chairman Day stated the application will remain unopened.

June Meeting Date: Joe DePaul made a motion to bring the discussion of the June meeting date to the floor, July 2nd, approved 5-0.

John Apple and Joe DePaul will not be present at the June 17 meeting. Given the current situation, this will leave the Board without a quorum. Discussion followed on the best possible date for the June meeting without changing the application or advertising deadline dates and still maintaining a quorum is Monday June 14 or Tuesday June 15. The secretary will check for available venues on those dates and advise the Board of the June meeting date.

Minutes: John Day made a motion to go into the business session for the purpose of approving the Minutes to the January 21 meeting July 2nd, approved 5-0. John Day made a motion to approve the Minutes to the January 21, 2010 meeting as presented, July 2nd, approved 5-0.

Application # 02-10: Deborah Oulvey, 30 Lake Drive North, for variances to zoning regulations for the purpose of constructing a 2nd story addition.

Tammy Zinick, agent for Deborah Oulvey arrived at 7:45pm. Joe DePaul made a motion to bring Application # 02-10 to the floor, July 2nd, approved 5-0.

Tammy Zinick explained the plans for a 2nd story addition with dormers on a preexisting nonconforming home. The existing highest point of the house is 25' 9" and the proposed height including the dormers will be 29.9'. A height variance is not required. There will be no change to the footprint on the ground. Two of the neighbors, Marganti located at 28 Lake Drive North and Cotumaccio located at 22 Sunset Trail wrote letters of support for the project and were submitted into the record. Ms. Zinick stated there may be a neighbor who would not be in favor of the project but she is not here tonight and lives closer to the Marganti's than to the Oulvey's. Pictures and layouts of the neighborhood were submitted into the record. The pictures indicate a 4' increase in height may impinge on the neighbors' view of the Lake and those neighbors have not written a letter of support. Further discussion focused on pending litigation regarding vertical expansions. The existing house is odd shaped with two portions of the roof that are significantly lower than the existing peak of 25' 9". The plans submitted show these portions of the home will increase to the current height of 25' 9". The Board expressed their concerns with the middle portion of the home increasing the overall height of the home by 4' and questioned why that portion of the project had to increase the height of the home. Ms. Zinick stated it was for aesthetics and did not want to make changes to the plans since the owners were not present to comment. Ms. Zinick discussed that in 2004 or 2005 the owners actually increased the neighbors' view of the Lake by taking down some trees. In 1991, after denying an application for a larger garage, Variance #

15-91 was granted for a 24' X 24' garage on the west side of the home, but never built. Variance # 15-91 reduces the side setback to 13' 6" and the rear setback to 10'. Discussion followed some of the Board members believed the current Board would never have granted the variance for the garage and would like to see nonconformity reduced by having the property owners give up their rights to build the garage in exchange for an increase in height. Other members felt if the garage had been built it would be insignificant, noting it is not part of the application and the Board has to look at what is on the application. Ms. Zinick did not want to comment on this as the property owners were not present. Discussion followed in the past some property owners had offered to remove grandfathered buildings such as sheds in order to obtain variances to construct some other type of structure such as a deck or a pool. The chairman reminded the Board they need to vote on the project that is presented to them and again reminded the Board they had denied other homes in the area vertical expansions due to the proposed projects decreasing the neighbors' views of the Lake.

John Day asked for any further public comment—none heard.

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

In the business session, the Board discussed they would have liked a better factual record for the 4' height increase. The applicant has requested they vote on the application per plans submitted. Pending litigation regarding view impacts in lake communities was discussed. The garage was discussed, and although it would be nice to reduce nonconformity, the owners may have the right to construct the garage tomorrow if they so desired. The Board does not have the right to require an applicant to give something lawfully in place up. The Chair reminded everyone the Board must vote on the application in front of them. The Board discussed the 6 month rule.

John Day made a motion to grant the variance subject to the plans as submitted. The hardship is the irregular size and shape of the lot, noting while increasing the height it does not increase dimensional nonconformity, duly 2nd, denied 2-3. John Apple and Peter Hearty were in favor. Jack Machinko, John Day, and Joe DePaul and were opposed.

Tammy Zinick asked if she could speak on this matter. Chairman Day explained she may not speak on the merits of the case, but she may ask procedural questions about appeals, but that is all they can discuss. Ms. Zinick asked if in fact she comes back next month with the same plans but with additional information regarding giving back the variance granted in 1991 is this what the Board is looking for? The Chairman stated as he previously told her neither he nor any Board member can answer that question and the conversation is over.

Joe DePaul made a motion to adjourn the meeting at 8:32pm, duly 2nd, approved 5-0.