

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

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

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

ZBA members absent: Vinny Mancuso

Town Officials in attendance: Maria Horowitz, CZEO

Chair John Day called the meeting to order at 7:07pm 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. John Day made a motion to add the 2011 meeting dates onto the Agenda duly 2<sup>nd</sup>, approved unanimously. Secretary, Laurie Busse read the Call of the Meeting.

**Continued Appeal # 23-10:** Caperton Company LLC/Hugh Bilecky 50 Route 39, to appeal a Cease & Desist Order dated June 29, 2010 regarding storage of construction equipment and vehicles as well as violations of building permits, certificates of occupancy and zoning regulations.

Joe DePaul made a motion to bring Continued Appeal # 23-10 to the floor, duly 2nd, approved 5-0.

Attorney Cassagrande and CZEO Maria Horowitz agreed to continue the Appeal to the December 16 2010 meeting. A letter from Attorney Cassagrande was received by the secretary just prior to 5pm this evening. After speaking with Town Council the public hearing must be closed or the matter must be withdrawn by the December 16 meeting.

Chairman Day invited public comment for anyone who would like to place something into the record and would be unable to attend the December 16 2010 meeting, noting that the Board will merely accept whatever documentation is submitted but would not be able to interact or discuss any evidence submitted into tonight's record. Steve Merullo stated he would like to submit 2 documents into the record, the first being a "Memo in Opposition to Appeal #23-10" and the second labeled "Affidavit". Mr. Merullo inquired if it was possible for the applicants and the Town to reach an agreement outside of a ZBA meeting. The Board discussed it would be possible for the applicants and the CZEO, Maria Horowitz to reach an agreement, and withdraw their appeal but the ZBA would have absolutely nothing to do with that agreement.

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

Joe DePaul made a motion to continue Appeal # 23-10 to the December 16 2010 meeting, duly 2nd, approved 5-0.

**Continued Application # 26-10:** James (Ed) Hopkins, 10 Candlewood Road, for variances to zoning regulations for the purpose of constructing a 2-story addition.

Peter Hearty made a motion to bring Continued Application # 26-10 to the floor duly 2nd, approved 5-0

No one was present to represent this case. Maria Horowitz stated agent Tammy Zinick had planned to attend. The application was moved to the end of the Agenda.

After the last application was heard, Peter Hearty made a motion to bring Continued Application # 26-10 to the floor, duly 2nd, approved 5-0.

Agent Tammy Zinick approached the Board. She reminded the Board the addition would be going next to an empty, currently undevelopable lot owned by the Yorasheks. She submitted the letter that was discussed last month dated 2/24/2005 from the Town Sanitarian Tim Simpkins addressed to the Tax Assessor, Joan Oros stating at the present time the lot is undevelopable as the size and soil characteristics will not allow a well and septic system. Discussion followed on a conversation that Ms. Zinick had with Tim Simpkins and Maria Horowitz which focused on the lot is not developable today, but with future technology in septic systems, it may be. Maria Horowitz also noted that this area maybe going over to public water, and if so they will not have to construt a well on the property. Discussion focused on the 12' X 35' 2 story addition. The first floor will be a garage and the 2<sup>nd</sup> floor will be bedrooms. The house will be reworked so that it remains 3 bedrooms. The prior proposal on application # 51-07 requested a much larger increase in nonconformity with a south side setback of 7.6' and a front setback of 12.5'. The current proposal does not increase nonconformity in the front and is much more modest with a Crossway front setback to 14' and a south side setback to 13.6'. Discussion followed. The Board compared increasing nonconformity next to an empty, potentially unbuildable lot to a home on Candlewood Lake where the 440 Contour Line is used as the rear setback. Although the property below the 440 Contour Line is undevelopable and often has the appearance of being part of the homeowners' property, the Board still does not favor increases in nonconformity which encroach on the 440 Contour Line. There is an existing garage door, but it is very small and opens up into the house and not a garage. This home sits on a corner lot. The addition cannot be constructed on the Candlewood Road front setback as that is reserved for a future septic area.

John Day asked for any further public comment—as follows:

Herb and Linda Yorashek, 31 Candlewood Road: Stated they live at 31 Candlewood Road and own the empty lot discussed at tonight's meeting which is located directly across the street from them at 30 Candlewood Road. They have no issues with the proposed addition provided it would not infringe on their rights to construct a house if future septic system technology allowed them to construct a house at 30 Candlewood Lake Road. They are not interested in selling the property.

Maria Horowitz stated the Yorashek's lot is considered a legal building lot and that even if they wanted to sell 7' of their property to the applicant they wouldn't be able to do so because the lot is already undersized and nonconforming. Zoning regulations prohibit them from making a nonconforming lot even more nonconforming.

The Board discussed they cannot speak for a future Board, but there are some members who look at the proximity of one house to another as well as the proximity from the setbacks. Ms. Zinick noted the house across the street had a large addition; however no documents were submitted that indicated this house increased nonconformity.

John Day 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 proposal is smaller than the previous Application # 51-07 however there is still a 7' increase in nonconformity. It does not take cars off the street as the Assessors card shows cars are parked in the driveway.

John Day made a motion to grant the Variance for a front setback on the Crossway front to 14' and a south side setback to 13.6' subject to the plans as submitted. The hardship is the 2 fronts and the irregular shape of the lot, noting there will be no increase in nonconformity in the front setback and 6 ½' increase in nonconformity on the side setback. Duly 2nd, denied 3-2. John Day, Joe DePaul, and Peter Hearty were opposed. John Apple and Jack Michinko were in favor.

**Application # 30-10:** Paul Agostini and Rosana Gonzalez, 331 Route 39, for variances to zoning regulations for the purpose of constructing a 2<sup>nd</sup> story addition.

Peter Hearty made a motion to bring Application # 30-10 to the floor duly 2nd, approved 5-0

Paul Agostini approached the Board and explained his plans to construct a 600sqft addition above the garage and part of the house. The addition will not be any higher than the existing roofline of the house, 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 dimensional nonconformity. The roofline on the garage will be switched from running front to back to side to side. A brief discussion focused on prior Variance # 11-05 in which a variance had been granted for a rear deck, noting the deck did not increase dimensional nonconformity.

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

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

In the business session the Board discussed this is a traditional vertical expansion. There is no increase in dimensional nonconformity, there is no increase to the footprint on the ground, there is no impact on the neighbors and a height variance is not required.

John Day made a motion to grant the Variance for a side setback to 15' and a rear setback to 10' subject to the plans as submitted. The hardship is the irregular size and

shape of the lot. Further stipulating this Variance does not increase dimensional nonconformity duly 2nd, approved 5-0.

**Application # 31-10:** Michael Bierce & Joanna Dickerson Bierce, 2 Kearn Road, for variances to zoning regulations for the purpose of constructing a 2<sup>nd</sup> story addition, and a front portico.

Joe DePaul made a motion to bring Application # 31-10 to the floor duly 2nd, approved 5-0

John McGuirk and Michael Bierce approached the Board stating they believed there was an advertising issue. The north side setback to 18.6' should be 18' as the existing overhangs of 6" will increase to 10" for the proposed second story addition. The Board discussed how to move forward as well as their position on increasing nonconformity. Further discussion focused on the chimney appears to be closer to the north side setback than the existing overhangs. The applicants requested a 5 minute break.

John Day made a motion to take a 5 minute break, duly 2nd, approved 5-0.

Back from the break the applicants stated they would like the Board to vote on the proposal with the advertised setback of 18.6' and they will modify their plans to reflect this setback. The height of the home will increase by 10' noting a height variance is not required. The front covered portico will be constructed by placing columns on top of a 3' high knee wall. Discussion followed regarding the 3' high wall was within the zoning regulations and the line of nonconformity starts where the steps are 2' high from the ground. Maria Horowitz stated the steps are legal and there is no increase in dimensional nonconformity. She has no concerns with this proposal.

John Day 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 there is no increase in dimensional nonconformity for the portico. The applicants are willing to reduce the overhangs on the 2<sup>nd</sup> story addition so the addition will not increase dimensional nonconformity. There is a 10' net height increase on the home, but there is no evidence this will impact the neighbors and a height variance is not required.

John Day made a motion to grant a Variance for a front setback of 25.5' and north side setback to 18.6' subject to the plans as submitted noting the proposal must conform to the advertised setback of 18.6' further stipulating this variance does not increase dimensional nonconformity. The hardship is the size and shape of the lot. Duly 2nd, approved 5-0.

**Minutes:** John Day made a motion to accept the Minutes to the October 21, 2010 Meeting as presented duly 2nd, approved 5-0.

**Application # 32-10:** Elizabeth Power, 11 Ore Hill Road, for variances to zoning regulations for the purpose of legalizing the rear elevated deck.

Peter Hearty made a motion to bring Application # 32-10 to the floor duly 2nd, approved 5-0

Elizabeth Power and Carl Short approached the Board. They explained when they purchased the house 5 years ago the decks were already there. They didn't know the decks were built without permits until they went to refinance their home. Discussion focused on the Board's position of legalizing structures. The Board discussed prior Variance # 21-90 for an oversized one car garage 19' from the rear setback, noting the garage was never constructed. There is an enclosed 3 season room which appears to have been constructed in 1976, the applicants referred to this as a weight room which comes closer to the rear setback than the existing deck. It was determined that this weight room was constructed without permits by a previous owner; however, unlike the deck it is legally grandfathered. There is a lower deck that was also constructed without permits, however since this deck is less than 2' from the ground it is not within the zoning regulations. Discussion followed.

John Day asked for any 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 they neither reward nor penalize a project that was constructed without permits, but rather focus on if they would allow the project to move forward had it never been constructed. Some members felt that since the weight room was constructed without permits and used as the line of nonconformity then they are rewarding the current owners if they allow the deck. Discussion followed on the size of the lot.

John Day made a motion to grant the variance for a rear setback to 11' 10" subject to the construction already in place, noting due to the construction of the weight room it does not increase dimensional nonconformity. The hardship is the size and shape of the lot duly 2nd, approved 4-1, Joe DePaul was opposed.

**2011 Meeting Dates:** The 2011 meeting dates were handed out and discussed as outlined, noting the dates in red as possible alternate dates. John Day made a motion to approve the meeting dates as proposed subject to 2 or more members projecting their unavailability duly 2nd, approved 5-0.

Joe DePaul made a motion to adjourn the meeting at 10:17pm, duly 2nd, approved 5-0.