

**New Fairfield Zoning Board of Appeals**  
**New Fairfield Connecticut 06812**  
**MINUTES**  
**Meeting**  
**October 21, 2010**

The New Fairfield Zoning Board of Appeals held a public hearing followed by a business session at 7:00pm on Thursday October 21, 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, John Apple, and Vinny Mancuso (until 9:20pm)

ZBA members absent: None

Town Officials in attendance: Maria Horowitz, CZEO

Chair John Day called the meeting to order at 7:06pm introduced the Board members and explained the meeting process and voting procedures. John Day gave the definition of a recusal. Alternate member Vinny Mancuso was present as a non voting member until 9:20pm.

Secretary Laurie Busse read the proposed agenda. John Day asked if there were any amendments or changes to the Agenda—None Heard. Joe DePaul made a motion to adopt the Agenda as presented, 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.

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

Attorney Dan Cassagrande and Hugh Bilecky approached the Board. Copies of the Cease & Desist Order were submitted. The property was sold from Stan Gardner to Hugh Bilecky in 2009 and has been used for commercial purposes for 50 years. Hugh Bilecky was an employee of Stan Gardner in the early 1980's and later worked for him as a subcontractor. Stan Gardner allowed Hugh Bilecky to store commercial vehicles on the property during his employment as a subcontractor. An affidavit by Stan Gardner was submitted and read into the record. The affidavit indicates the property was used by Stan Gardner and his brother for commercial purposes since 1957 and they have always had construction equipment on the property. The garage which looks similar to a small house is used to store trucks and other construction equipment is the only building on the property, noting there is no residence or septic system on the property. Maria Horowitz stated the equipment that is inside the building is OK, but it is the equipment outside the building that is in violation of the Certificate of Occupancy (C/O) and building permits. Gardner also stored construction vehicles outside the garage. At this point it was noticed the tape recorder was making a beeping noise. After fixing the problem and

noting that a few minutes of testimony may have been lost the Chair summarized the affidavit from Stan Gardner. Attorney Cassagrande also noted the time.

Hugh Bilecky stated that in the 1980's there were 2 crews and construction equipment was moved in and out of the property several times a day. In 1988/89 Bilecky stored a backhoe and a trailer on the property in addition to Gardner's equipment. Due to the current economy he is only moving the equipment sporadically.

Pictures were submitted into the record, showing the truck that was cited in the Cease and Desist Order (C&D) as being stuck in the mud has been moved. The ground below it has been graveled and the truck sits on top of the gravel. Discussion followed the truck's registration expired 10 years ago and it is being used to store equipment, almost like a second building or structure. Discussion followed. The C& D refers to a 53,800lb truck which has 10 wheels and a 33,000lb truck. The other equipment comes and goes.

The Board discussed the 1967 zoning regulations were in place at the time the garage was built. Maria Horowitz stated absent evidence of prior 1970's use, she cannot be sure this type of commercial use was going on and cannot be sure if this is an illegal use or an illegal expansion of an approved commercial use. The 2 vehicles named above intensify the illegal use.

Attorney Cassagrande submitted controlling court case Hall v. Brazzale # 11375 into the record. Reference was also made to the Helicopter Assoc. Case v. Stamford Supra, but this information was not submitted into the record.

The Board discussed zoning regulations 7.2.2 and 7.2.2A & B, which basically state no nonconforming use shall be expanded. Cassagrande stated his interpretation is that those zoning regulations apply to structural nonconformity and not use nonconformity. The Board discussed limiting the number of construction vehicles on the property. Maria Horowitz reiterated any equipment outside the garage was in violation, and would be unhappy if the C & D was overturned. If the Board decides that this is an expansion of a permitted use, then she would like to see more buffering on Route 39 and the applicant would have to submit a site plan modification to the Town for any vehicles stored outside of the garage.

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

Steve Merullo: Issued the complaint against the applicant. The pictures he took on September 2, 2010 were submitted at the September 23, 2010 Special Meeting. These pictures show hazardous waste material such as turpentine, oil, tar, and sealant being stored outside in rusty cans in an environmentally sensitive zone. The Ball Pond Brook runs just a few feet behind the property. Other pictures showed backhoes, tractors, a dump truck and a trailer as well as other construction equipment being stored outside on the property. Mr. Merullo believed there was documentation that stated construction equipment could not be stored outside of the garage. It is the bigger trucks that caught his eye. In 1987 he stated there was not much of anything going on. The Board would like to see this documentation that shows no outside storage as this would have bearing on the case.

Maria Horowitz stated she has issues with the unregistered box truck stuck in the mud sitting in the same spot becoming another storage building. The C/O is for work being

done and storage inside the garage. All equipment should be in the garage and not outside. Moore's dump trucks are not on this property.

Attorney Cassagrande stated if the Board overturns the C & D he would consider a stipulation limiting the number of vehicles stored outside. The Board discussed historically they do not modify C & D's and want to see documentation that specifies no outdoor storage and would like to continue to next month's meeting. John Day asked if there was any further public comment for those who could not attend next month's meeting.

Linda Fox, 43 Route 39: Stated that she has lived diagonally across the street from the property for the past 25 years or so. The property is easily seen from her driveway and there have always been backhoes, trailers etc stored outside on the property. There hasn't been any remarkable change in the use of the property since she has lived there, noting there is less activity now than there used to be.

Joe DePaul made a motion to continue the Appeal to the November 18, 2010 meeting, duly 2nd, approved 5-0. Joe DePaul made a motion to take a short break while the room cleared duly 2nd, approved 5-0.

**Application # 24-10:** Thomas and Janeane LaMonte, for variances to zoning regulations for the purpose of demolishing the existing house and detached garage and constructing a new house with an attached garage.

Peter Hearty made a motion to bring Application # 24-10 to the floor duly 2nd, approved 5-0

Sean Condon, Scott Yates, and Thomas and Janeane LaMonte approached the Board. This is a small nonconforming lot. The existing home has drainage & flooding issues, foundation cracks, & compromised support beams. The applicants propose to tear it down and rebuild it. The new house will either reduce nonconformity or eliminate it all together as follows:

<u>Zoning Regulations</u>	<u>Existing</u>	<u>Requested</u>
3.2.6A Front Setback	19.9'	40.1' (Nonconformity Eliminated)
3.2.6B North Side Setback	7.9'	8.3'
3.2.6B South Side Setback	7.4'	8.1'
3.2.6C Rear Setback	13.5'	19.6'
3.2.7 Lot Coverage	28.62%	26.48%
3.2.8 Impervious Surface Coverage	47.3%	47.1%
House Sq. Footage	1,772sqft	1,768sqft

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 the rare opportunity to approve a variance that not only eliminates nonconformity in the front of the home, but reduces it on many other levels. A height variance is not required.

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. Further stipulating this Variance does not increase dimensional nonconformity.

**Minutes:** John Day made a motion to accept the Minutes to the August 16, 2010 Meeting as presented duly 2nd, approved 4-0-1 Peter Hearty abstained. John Day made a motion to accept the Minutes to the September 23, 2010 Special Meeting as presented, duly 2nd, approved 4-0-1 Peter Hearty abstained.

**Application # 25-10:** Adrian and Amita Schulte, 33 Deer Run for variances to zoning regulations for the purpose of remodeling the existing structure, constructing a 2<sup>nd</sup> story addition, a great room addition and a deck, plus legalizing the existing deck.

Peter Hearty made a motion to bring Application # 25-10 to the floor duly 2nd, approved 5-0

Jeff Berman, Architect and Adrian Schulte approached the Board. This lot has a steep slope and is small and nonconforming. The existing rear deck wraps around 2 sides of the house and is approximately 4' to 5' wide. The deck was built without permits post 1970 as it is not on the 1970's field card but appears on a 1980's field card. There is a 5' wide triangular section that increases nonconformity by 5' going towards the 440 Contour Line. The Board explained their position on legalizing structures as well as increasing nonconformity by 5'.

The proposed addition and new deck will not go any closer to the 440 Contour Line than the existing house. The existing house is approximately 12' from the 440 Line and the closest point of the proposed new deck will be 13.6' away noting the closest point of the addition will be over 19' away from the 440 Contour Line. The other boundaries will not be affected by this proposal. John Day explained how to move forward with the application. The applicants requested a 5 minute break to discuss their options.

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

Back from the break the applicants stated they would like to bifurcate the application and have the illegal deck voted on separately from the addition.

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 small lot and steep slope. The additions and the proposed new deck do not increase nonconformity and there is no impact on the neighbors. A height variance is not required.

John Day made a motion to grant a variance for the addition not including the illegal deck subject to the plans as submitted. The hardship is the irregular shape and slope of the lot duly 2nd, approved 5-0

The existing deck encroaches on the 440 Contour Line by 5' and would the Board have allowed a 5' increase in nonconformity if the deck had not already been built. Some

members felt that since only a small portion of the deck was encroaching on the 440 Line they would be ok with the increase in nonconformity while others felt that any increase that large was not justified.

John Day made a motion to grant a Variance for a rear setback to 7' subject to the construction already in place. The hardship is incorporated from the prior motion. Duly 2nd, denied 3-2. John Day and Joe DePaul were opposed.

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

Joe DePaul made a motion to bring Application # 26-10 to the floor duly 2nd, approved 5-0

Agent Tammy Zinick approached the Board. The lot sits on the corner of Candlewood Road and Cross Way. The proposed addition will not come any closer to the Cross Way boundary than the existing house. The proposed addition will be 14' from the Cross Way setback and existing is 13'. The proposed setback that appears to the south side of Cross Way is 13.6' which increases nonconformity by approximately 13'. The existing setback is 26'. The addition will be 25' 6" high and the existing house is 17' high. A height variance is not required. The Board questioned the setbacks as to front, rear and side. Maria Horowitz stated when the zoning regulations changed in October 2009; they did away with corner lots and lots with roads on 2 sides having 2 fronts and 2 rears. Now they all have front and side setbacks. On a prior application # 51-07 the Board turned down a similar proposal as it increased nonconformity. A letter dated 2005 from the Health Dept was referenced. This letter is in with the prior Application # 51-07 indicating the Yourasheck's lot may not be buildable due to current septic designs. Discussion followed.

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

Marcia Kendall 12 Candlewood Road: Ms. Kendall stated she shares a well with the applicant and has concerns with the setbacks from the well and worries about the added pressure on the well and the extra load with the larger septic will have an impact on her. As it is, the water pressure is quite low.

The Board discussed the letter submitted earlier may be out dated due to new and improved septic designs and would like an updated letter from the Health Dept. regarding the empty lot next door.

John Day made a motion to continue the application to the November 18, 2010 meeting duly 2nd approved 5-0.

**Application # 27-10:** Frank & Robert Gerosa c/o Patricia Bass, 19 Lake Shore South, for variances to zoning regulations for the purpose of converting the existing carport into a garage.

Peter Hearty made a motion to bring Application # 27-10 to the floor duly 2nd, approved 5-0

Charles Aldridge, Architect and agent for the applicant approached the Board. The house was built in the 1960's and is pre-existing, nonconforming. He proposes to enclose an existing 12' X 22' carport which sits on top of a concrete pad. There will be no change to the footprint on the ground, no increase in nonconformity and a height variance is not required. There will be no impact on the neighbors. He is simply converting the existing carport into a 12' X 22' garage.

John Day asked for any public comment—none heard.

John Day made a motion to enter the Business Session duly 2nd approved 5-0.

In the Business Session the Board discussed the irregular shape of the lot and the applicant is simply enclosing what is already there. There is no increase in nonconformity, no change to the footprint on the ground, and no adverse impact on the neighbors.

John Day made a motion to grant the variance for a front setback to 31.3'; a north side setback to 7.8' and a south side setback to 9.4' subject to the plans as submitted. The hardship is the irregular shape and size of the lot. Further stipulating this Variance does not increase dimensional nonconformity, duly 2<sup>nd</sup> approved 5-0

**Application # 28-10:** Robert and Jan Fasullo, 30 Jewel Lane, for variances to zoning regulations for the purpose of constructing a horse barn.

Peter Hearty made a motion to bring Application # 28-10 to the floor duly 2nd, approved 5-0

Paul Syzmanski, Robert & Jan Fasullo approached the Board and explained their plans to construct a horse barn. The proposed barn will be 30' X 36' and will house 2 horses, possibly a 3<sup>rd</sup>, but not more than 3. The barn is considered an accessory use and therefore 100' on both sides is required. The applicants have 5 acres, which meets the requirements to have up to 3 horses; however their lot is very long and narrow. It is 200' W X 1,000' L. Thus it is impossible to have the barn meet 100' setbacks on both sides. They are proposing 88' on the west side setback and 68' on the east side setback. The barn in the proposed location will be 200' from the Weber's home, 300' from the neighbor on the other side, and 700' from the lots in the Warwick Farm Subdivision owned by Gary Mead. The Board looked for ways to construct the barn so that it would need less of a variance but could not find a way that would significantly make a difference.

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

John Leahy: Is a relative of the Weber's and both he and the Weber's are in favor of this project.

Gary Mead, 19 Rock Ridge Court: Is the owner and developer of the lots in the Warwick Farm Subdivision which abut the rear of the property. While he can admire the beauty of the horses, he inquired with some people on their thoughts on purchasing a home abutting a property with horses. He had mixed reactions, while some people said they would love it, others simply said too smelly, and would not appreciate the smell in the

summer months. He is requesting the owner put up a fence 60' from the property line and an agreement as to where the pasture space will be.

Mr. Fasullo stated he would be willing to put up a natural looking cattle fence 30' from the property line and keep the 30' from the fence to the property line wooded.

Maria Horowitz stated the zoning regulations regarding horses.

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

John Day made a motion to enter the business session duly 2nd approved 5-0.

In the business session the Board discussed making a conforming lot nonconforming and the unusual bowling alley shape, noting there was more than enough property for the horses. The neighbors, who were closest to the barn, are present and not objecting.

John Day requested they go back into the public session. Joe DePaul made a motion to go back into the public session duly 2nd, approved 5-0.

Back in the public session John Day inquired if the applicant was OK with the Board voting on the application with a cattle style fence 30' from the rear setback and the 30' from the fence to the rear property line will be forested. The applicant agreed to this.

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

Back in the business session the Board discussed the shape of the lot and stipulating if a variance was granted it would include a natural color cattle style fence and keeping the area from the fence to the rear property line wooded so that this area may not be used for pasture.

John Day made a motion to grant a west side setback to 88' and an east side setback to 68' subject to the plans as submitted further subject to a 30' zone at the rear boundary bordered by a cattle style fence on the barn side and wooded on the other side. The horses will not be allowed to use the wooded area as a pasture. The hardship is the unusual shape of the lot duly 2nd, approved 5-0.

**Application # 29-10:** John and Deborah Casey, 19 North Beach Drive, for variances to zoning regulations for the purpose of constructing a deck with stairs to grade.

Peter Hearty made a motion to bring Application # 29-10 to the floor duly 2nd, approved 5-0

Mr. and Mrs. Casey approached the Board. The lot is preexisting nonconforming. The proposed 16' X 12' deck will go partially over an existing concrete patio and will be 8' from the ground. The deck will not come any closer to the side setbacks than the existing house. It will not extend past the concrete patio in the rear of the property. The Board discussed the patio is not subject to zoning regulations as it is less than 2' from the ground, therefore the deck is increasing nonconformity in the rear. Further discussion focused on a retaining wall that is 3' high and the deck will not go past the retaining wall. The Board discussed if the retaining wall was considered a structure and thought of other properties where they were considered structures in the past.

Maria Horowitz stated she did not have any issues 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 the small size and slope of the lot. If the retaining wall is viewed as a structure than there is no increase in nonconformity if it is not considered a structure than there is a huge increase in nonconformity.

John Day made a motion to grant the Variance for a rear setback to 22' both side setbacks to 13' and 11' subject to the plans as submitted. The hardship is the slope and size of the lot duly 2nd, approved 4-1. Joe DePaul was opposed.

Joe DePaul made a motion to adjourn the meeting at 11:30pm, duly 2nd, approved 5-0.