

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

The New Fairfield Zoning Board of Appeals held a public hearing followed by a business session at 7:00pm on Thursday January 21, 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: Maria Horowitz, CZEO

Chair John Day called the meeting to order at 7:04pm introduced the Board members and explained the meeting process and voting procedures.

Secretary Laurie Busse read the proposed agenda for the meeting. John Day asked for any amendments or changes to the agenda, none heard. Jack Machinko made a motion to adopt the Agenda as read, duly 2nd, approved unanimously. Secretary, Laurie Busse, read the Call of the Meeting.

Continued Appeal # 33-09: Leigh Sleight, 30 Inglenook Drive, to appeal a Cease and Desist Order issued on September 15, 2009 regarding the conversion of a detached garage into a second residential dwelling.

John Apple made a motion to bring Continued Appeal # 33-09 to the floor, duly 2nd, approved 5-0.

Leigh Sleight approached the Board. She explained on October 6, 2004 she had a building permit to construct a 25' X 30' detached garage and received her CO. On May 29, 2008 she received a building permit to construct a 24' X 25' addition to the garage and received her CO. Variances were not required for either the garage or the garage expansion.

Maria Horowitz explained in late August or early September 2009, the Tax Assessor went out to review the property subsequently looking in the window of the garage he noticed the expansion portion had a kitchen. He inquired of Maria Horowitz to see if they had a permit for living space, which they did not, and on September 15, 2009 a Cease & Desist Order was issued. Maria Horowitz further explained the garage itself is legal but the use of part of the garage as living space is not. It was meant for storage and not living space, further noting that it is against zoning regulations to have living space in a detached garage. Maria Horowitz has been working with Leigh Sleight to rectify this matter. Suggestions included connecting the existing home to the garage expansion via a heated breezeway and converting a bedroom to a den so the property would remain 2 bedrooms. Leigh Sleight will still have to meet the Impervious Surface Coverage requirements. Maria Horowitz and Leigh Sleight have not yet reached an agreement.

Maria Horowitz further explained that although she is working with the applicant to rectify this matter, the C&D is still in effect because it was issued and the matter is not yet resolved.

The garage expansion has running water and heat as well as a full bathroom, and kitchen noting the kitchen doesn't have a stove. Leigh Sleight stated she had a family emergency and finished off the addition portion of the garage so that her mother could move in. Her mother will be moving to an assisted living facility shortly.

John Day explained how to move forward with the application. The applicant requested a 10-minute break so that she could speak with Maria Horowitz. John Day made a motion to take a 10-minute break, duly 2nd, approved 5-0.

Back from the break Leigh Sleight stated she wanted the Board to vote on her appeal. Even though she is working with Maria Horowitz on this matter, a concrete decision has not yet been reached and by withdrawing she would forfeit her right to an appeal if an agreement could not be reached. Ms. Sleight understands she has 15 days from the date of publication to appeal the ZBA's decision. Ms. Sleight stated she may still have to file an appeal to preserve her rights while working with the Town to resolve this matter. John Day explained that if the Board overturns the Cease and Desist the applicant does nothing and can keep the illegal apartment in her garage. If the Board sustains the Cease & Desist, the applicant can still work with Maria Horowitz to resolve the matter.

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 what's before them is the use of the garage and not the dimensional setbacks. The applicant is not asking for a Use Variance and it is undisputed that the conversion of the garage into living space is not permitted by the Town. Both parties are trying to work out a resolution.

John Day made a motion to overturn the Cease and Desist Order issued on September 15, 2009, duly 2nd, denied 0-5. The Cease and Desist Order is sustained.

Minutes: John Day made a motion to approve the Minutes to the December 17, 2009 meeting as presented, duly 2nd, approved 4-0-1. Jack Machinko abstained

Continued Application # 35-09: Brian and Kathryn Johannssen, 200 Route 39 for variances to zoning regulations for the purpose of constructing a 2nd story to the garage with stairs to grade.

Joe DePaul made a motion to bring Continued Application # 35-09 to the floor, duly 2nd, approved 5-0.

Brian Johannssen approached the Board. The reason for the continuation is because an updated survey showed an incorrect rear setback was advertised. The correct rear setback is 8' 6". The vertical expansion portion of the garage is to increase storage space. The garage will not be any higher than the existing house and a height variance is not required. The side expansion will not exceed the existing garage footprint. There

are outside stairs to grade which will not go any closer to the setbacks than the existing building. The impervious surface coverage does not apply.

Maria Horowitz stated she does not have any issues with the application.

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 the vertical expansion does not increase nonconformity and the stairs do not increase dimensional nonconformity. There is no impact on the neighbors and the CZEO does not have any concerns with the application.

John Day made a motion to grant the variance for a rear setback of 8' subject to the plans as submitted. The hardship is the irregular shape and size of the property, noting the vertical expansion does not increase nonconformity and the stairs do not increase dimensional nonconformity, duly 2nd, approved 5-0.

Application # 36-09: David and Sue Mitchell, 1A Walnut Ridge Road, for variances to zoning regulations for the purpose of revising a previously approved Variance.

John Apple made a motion to bring Application # 36-09 to the floor, duly 2nd, approved 5-0.

David Mitchell and Joe Coppola of Coppola Enterprises approached the Board. They explained this is a corner lot. In October 2009 Variance # 30-09 was granted to construct a pool 25' away from the Shortwoods Road front setback. They're now asking to move the pool to within 20' of the front setback, noting a dimensional variance will not be required since the pool will not exceed the 20' required front setback.

The reason for the change is after starting to dig the hole for the pool they came across several buried tree stumps. After digging down as far as 24' they were still digging up tree stumps and Mr. Coppola stated they could not get 100% soil compaction which is required for the pool. Mr. Coppola would like to turn the pool in the other direction and change the location of the pool but still keep it within in the 20' Shortwoods Road front setback and he will keep it in line with the split rail fence stipulated in the previous variance. To avoid coming back to the Zoning Board of Appeals for a third time, Mr. Coppola requested the Board to give him a 2' leeway as to where he can move the pool, noting he thinks one location is OK, but he can't be certain until he starts digging and submitted pictures of where he wanted to dig and how the buried stumps related to the area he is requesting.

Maria Horowitz stated she did not have any issues with the pool moving closer to the front boundary as it is still within zoning regulations and the only reason the applicant is here tonight is because of the change in the pool location. The issue with the tree stumps was unforeseen and is something the developer never should have done. She will be OK if the Board gives the applicant a zone in which to construct the pool so he does not have to keep coming back.

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 that variances are granted subject to the plans as submitted. That means that if there are any changes to the plans, even if nonconformity is not increased the applicants have to come back. The change in plans for this application don't increase the dimensional setback that was previously approved and doesn't increase nonconformity, but there is the possibility the pool will move forward, how far we don't know, but if the Board approved the plans the first time, it makes sense to approve it this time due to the reasons just stated.

John Day made a motion to grant the variance incorporating by reference the hardships stated in the prior Variance # 30-09 and subject to the plans as submitted defined as follows: The pool must be of the prescribed dimensions within a zone that may go as far forward but no further forward than the existing split rail fence which approximates the front wall of the house and comes no closer to the road than 20' and may go as far back as is legally permitted to meet the first two conditions, and incorporating by reference all the other conditions in the original granting of the Variance, duly 2nd, approved 5-0.

Election of Officers:

John Day briefly discussed what was involved in the Chair and Vice Chairs positions and asked for nominations. John Apple nominated John Day as Chair and Joe DePaul as Vice Chair. John Day asked for any other nominations—none heard. John Day made a motion to approve by acclamation that he would be Chair and Joe DePaul would be Vice Chair, duly 2nd, approved 5-0.

Joe DePaul made a motion to adjourn the meeting at 8:45pm, duly 2nd, approved 4-0.

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