

**New Fairfield Zoning Board of Appeals
New Fairfield Connecticut 06812**

**MINUTES
February 19, 2009**

The New Fairfield Zoning Board of Appeals held a regular public hearing followed by a business session at 7:00pm on Thursday February 19, 2009 in the New Fairfield Free Public Library. Secretary, Laurie Busse, took the minutes.

ZBA members in attendance: John Day, Chair, Jack Michinko, Bob Jano; and John Apple

ZBA members absent: Maureen Walker, Vice Chair, Joe DePaul; and Michelle Rhyce

Town Officials in attendance: Maria Horowitz, CZEO

Chair John Day called the meeting to order at 7:05pm introduced the Board members and explained the meeting process and voting procedures for a Board of 4.

Secretary Laurie Busse read the proposed agenda for the meeting. John Day asked if there were any amendments to the Agenda—none heard. Bob Jano made a motion to adopt the Agenda, duly 2nd, approved unanimously. Secretary, Laurie Busse, read the Call of the Meeting.

Continued Application # 02-09: Louis Hirshfield and Leila Larijani, 13 Candlewood Knolls Road for variances to zoning regulations for the purpose of raising the roofline, enclosing the front porch with a 2 story addition, construct decks on the side and rear of the home and constructing a 2 story conservatory with decks.

Bob Jano made a motion to bring Continued Application # 02-09 to the floor, duly 2nd, approved 4-0.

The applicants approached the Board along with their contractor Steve Retallick. They recapped on last month's meeting noting the expansions to the front of the home as well as the north and south sides do not increase nonconformity. The rear expansion for the 2 story conservatory increases nonconformity by 2.9'. Last month the Board discussed their position on increasing nonconformity. The reason they requested to continue was so they can bring in documentation that the Board approved a Variance for increasing nonconformity for their neighbors the Barbour's who are located on the south side boundary. The minutes from the April 18, 2002 ZBA meeting regarding application #09-02 were read into the meeting. These minutes indicated a variance was granted for a vertical expansion and although the existing house did not meet the current zoning regulations the vertical expansion did not increase nonconformity. The Board discussed their approach to this application is exactly the same as it was for the Barbour's application. The Board reminded the applicants they did not have any issues with the other parts of their project that did not increase nonconformity including the vertical expansion on the front of the home. Further discussion included the Board did not have any issues with the conservatory going the length of the house, so long as it does not encroach on the existing rear setback of 35.9'. Maria Horowitz stated she is not in favor

of increasing nonconformity, other than that she does not have any issues with the proposal.

John Day explained how to move forward with the application. The applicants requested a 5-minute break. John Day asked for any further public comment before the applicants went to break—none heard. Bob Jano made a motion to take a 5 minute break, duly 2nd, approved 4-0.

Back from the break the applicants stated they would like to modify their plans by reducing the width of the conservatory by 2.9' and the rear setback will remain at 35.9'. John Day explained a variance is granted per the plans submitted and any changes to the plans submitted, even if they made the proposal smaller would land the applicants back in front of the Board. The applicants stated they would like to take another 5-minute break. John Day made a motion to take a 5-minute break.

Back from the break the applicants stated the existing proposal for the conservatory is 16' 4". They would like to extend the length of the conservatory to 20' 4". They propose to do this by extending the conservatory to the north side boundary which borders the Nabozna residence. The conservatory goes exactly to where the proposed deck was on the north side border and the deck will be incorporated into the conservatory. There will be no change to the rear boundary.

John Day asked for any further public comment—none heard

Bob Jano made a motion to move into the Business Session, duly 2nd, approved 4-0.

In the Business Session the Board discussed the elements as now proposed do not increase nonconformity. The record from last month's meeting indicates the height increase will not have any impact on the neighbors and there is no change in the use of the property. The portion of the proposal that did increase nonconformity has been adjusted so that nonconformity is no longer increased.

John Day made a motion to grant the Variance for a front setback of 21.9'; a north side setback (Nabozna residence) to 7.3'; a south side setback (Barbour residence) to 8.6' and a rear setback to 35.9' noting contrary to the plans submitted the proposed conservatory will go to the Nabozna residence side deck boundary and the overall proposal does not increase nonconformity, duly 2nd, approved 4-0.

Minutes: Bob Jano made a motion to adopt the Minutes to the January 22, 2009 meeting as submitted, duly 2nd, approved 4-0.

Application # 04-09: Thomas and Denia McGuire, 8 Woods Road, for variances to zoning regulations for the purpose of constructing a 2nd story addition.

John Apple made a motion to bring Application # 04-09 to the floor, duly 2nd, approved 4-0.

Tammy Zinick, agent for the applicants approached the Board. She explained the irregular shape of the lot. The 2nd story addition will be 6' in height, noting the overall height of the home will not increase because the addition is equal to the peak on the

existing roof. There is no adverse impact on the neighbors. Maria Horowitz stated she does not have any issues with this proposal.

John Day asked for any further public comment—none heard

Jack Machinko made a motion to enter the Business Session, duly 2nd, approved 4-0.

In the Business Session the Board discussed the irregular shape and size of the lot and this is a classic vertical expansion. There is no increase in nonconformity, there is no change to the footprint on the ground and since the addition will be equal to the height of the existing roof peak, there is no increase in height. There is also no impact on the neighbors.

John Day made a motion to grant the variance subject to the plans as submitted, noting there is no change in use, height or nonconformity. The hardship is the irregular shape and size of the lot, duly 2nd, approved 4-0.

Application # 05-09: Laura Stone, 11 West View Trails, for variances to zoning regulations for the purpose of replacing concrete steps with a larger deck.

Bob Jano made a motion to bring Application # 05-09 to the floor, duly 2nd, approved 4-0.

Laura Stone approached the Board and explained her current front steps are in ill repair and do not meet the current zoning regulations as they are smaller than 3' x 3'. She proposes to replace the front concrete steps with an 8' x 8' wooden deck which extends on the length of the house. This will increase nonconformity by 2.6', noting that any steps less than 2' from the ground would not be counted, so they are basically starting with the 3rd step. The Board discussed their position on increasing nonconformity. Discussion followed there is a brick wall approximately 4' high on either side of the steps which extends beyond the bottom step. The stairs are going to the side rather than straight forward which helps reduce nonconformity. Maria Horowitz stated the new proposal has to be at least 3' x 3' to meet zoning regulations. The applicant submitted pictures for the record. The Board discussed reducing the size of the deck to 3' x 8' so as not to increase nonconformity. Discussion followed the brick wall would be the closest point to measure from and the extra width may increase nonconformity by a few inches. Maria Horowitz did not have any further comments.

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

Bob Jano made a motion to move into the Business Session, duly 2nd, approved 4-0.

In the Business Session the Board discussed the photos show the existing deck is 3' square with 5 steps each being 1' in depth and a brick wall on both sides of the steps that is at least 4' high. The proposed construction of an 8' x 8' deck centered on the door will not increase nonconformity or if so by only a few inches.

John Day made a motion that the variance be granted for a front setback of 32' subject to the plans as submitted. The hardship is the size and shape of the lot noting the Board's opinion is there is no increase nonconformity duly 2nd, approved 4-0.

Application # 06-09: Adam J. and Nicole L. Furphy, 10 Inglenook Road, for variances to zoning regulations for the purpose of constructing a portico with stairs.

John Apple made a motion to bring Application # 06-09 to the floor, duly 2nd, approved 4-0.

Mr. Furphy approached the Board. He explained he was in front of the Board in December 2008 and his application was denied because it increased nonconformity. He has since changed his proposal so nonconformity will only be increased by a foot or less. Mr. Furphy stated he has 3 fronts on his property. The revised plans are to construct a portico only over the stairs, which he has had to replace since the December meeting. The stairs are going to the side rather than straight out which has actually reduced the nonconformity of the existing steps by about 1'. He has changed his approach to the water going into the garage; however that project is not in front of the ZBA. Discussion followed if he is closer to the front setback than the garage. The existing setback is 21. 6' and he is proposing to go to 20. 6'. The application is requesting 18' Mr. Furphy noted this was just a buffer, the actual measurement will not exceed 20. 6'. The Board discussed the stairs were built prior to Mr. Furphy coming back to the Board and discussed their position on legalizing structures. Discussion followed the new stairs reduce nonconformity and the old stairs appear closer to the property line than the corner of the garage. The Board discussed if the applicant was closer to the setback than the garage. He is not.

John Day asked for any further public comment—none heard

Jack Machinko made a motion to enter the business session, duly 2nd, approved 4-0.

In the business session the Board discussed their position on unlawful construction of the stairs and they neither punish nor reward an applicant. The increase in nonconformity will be no more than 1' in a very small triangular area, and elsewhere there is no increase in nonconformity at all.

John Day made a motion to grant the variance for a front setback not closer than 20' 6" which is a minimal increase in nonconformity subject to the plans as submitted for the portico and the stairs as built. The hardship is the irregular shape and number of fronts on the lot, duly 2nd, approved 4-0.

Application # 07-09: Andrew and Ann Peczeniuk, 27 Shortwoods Road, for variances to zoning regulations for the purpose of legalizing an in ground pool.

Bob Jano made a motion to bring Application # 07-09 to the floor, duly 2nd, approved 4-0.

Joe Coppola the applicants' agent approached the Board. He explained he had a permit to construct the pool. Upon excavation he encountered ledge at which point he began to remove the ledge with an excavator with a hammer. He removed most of the soft ledge but then he encountered hard ledge which the machine was unable to remove. The only choices were to blast which was not feasible due to the proximity of the home; or to slightly turn the pool sideways. Mr. Coppola chose to turn the pool sideways and believed he was still within the required setback. When an "as built" survey was submitted to the ZEO it was discovered the pool was not within the required setback. The property line is on an angle so when the pool was slightly turned it encroached on

the rear setback by 1' 3". The pool does not go any closer to the rear setback than an existing cabin that is 18.3' from the rear property line.

John Day asked for any further public comment—none heard

Jack Machinko made a motion to move into the Business Session duly 2nd, approved 4-0.

In the Business Session the Board discussed this was an unanticipated condition and they neither reward nor punish an applicant for constructing outside the building envelope without a permit. The Board discussed there is a slight increase in nonconformity limited to a very small, triangular area.

John Day made a motion to grant the Variance for a rear setback of 48' 7" subject to the plans as submitted and construction already in place noting there is a minimal increase in nonconformity. The hardship is the rock and ledge on the property, duly 2nd, approved 4-0.

Application # 08-09: Christina E. Huben, 25 Knollcrest Road, for variances to zoning regulations for the purpose of constructing an addition, a 2nd story addition, and a deck.

Bob Jano made a motion to bring Application # 08-09 to the floor, duly 2nd, approved 4-0.

Christina Huben and Dan Lamb, Architect approached the Board. Mr. Lamb explained the single story addition would be filling in or squaring off the south west corner of the existing house, which will not increase nonconformity. The rest of the proposal is a vertical expansion and does not change the footprint on the ground. The height increase is 15' or 16'. The rear of the house will be 33' high and the front of the house will be 40' to 41' high. A height Variance is not required because the average height of the home after the proposed addition is 35'. The vertical expansion will not impact the neighbors because they are higher up on the hill than Ms. Huben. The existing deck is 6' x 13' and they propose to enlarge the deck to 14' x 42', which will increase nonconformity by approximately 12'. The existing rear setback is 42.4' and the applicant is requesting a 29.8' rear setback. Discussion followed. Variance #12-97 varied the side setback to 17' for the purpose of constructing a deck. The Board discussed their position on increasing nonconformity and looked for ways of reducing the size of the deck so that it does not increase nonconformity. The applicant discussed the deck will add value to her home and is aesthetically pleasing also noting that a smaller deck was not feasible for her. John Day explained how to move forward with the application. The applicants requested a short break. Bob Jano made a motion to take a break, duly 2nd, approved 4-0.

Back from the break the applicant stated she would reduce the size of the deck to 12' x 33' and then have a 5' walkway outside the bedrooms. The applicant does not want a deck on an angle. The Board again discussed their position on increasing nonconformity and that they had granted Variances with minimal increases in nonconformity earlier tonight. John Day again stated how to move forward with the application. The applicant requested another break. John Day made a motion to take a short break, duly 2nd, approved 4-0.

Back from the break the applicant stated she would change her request to continue the present line of nonconformity. Chairman Day wanted to be clear the applicant will be

requesting a single Variance request the exception will be modifying the deck so it is no closer to the rear setback than 42.4', which is the closest point of nonconformity. The applicant agreed.

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

Jack Machinko made a motion to enter the Business Session, July 2nd, approved 4-0.

In the Business Session the Board discussed there is no increase in nonconformity. The squaring off of the house does not go any closer to any boundary than the existing house and the vertical expansion does not impact the neighbors and it does not change the footprint on the ground. A height Variance is not required as the overall height of the home is 35'. The deck as been amended so the rear boundary remains 42.4' which is what the overhangs of the existing house are so there is no increase in nonconformity. There is no adverse impact on the neighbors and it is consistent with other Variances they have granted in this area.

John Day made a motion to grant the Variance for a rear setback of 42.4' subject to the plans as submitted and revised noting the deck will be reduced so that it comes no closer than 42.4' to the rear setback and does not increase nonconformity. The hardship is the size, shape, and slope of the lot July 2nd, approved 4-0.

Bob Jano made a motion to adjourn the meeting at 9:52pm July 2nd approved unanimously.