

**New Fairfield Zoning Board of Appeals  
New Fairfield Connecticut 06812  
MINUTES  
March 19, 2009**

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

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

ZBA members absent: Maureen Walker, Vice Chair, John Apple, and Joe DePaul

Town Officials in attendance: Maria Horowitz, CZEO

Chair John Day called the meeting to order at 7:03pm 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. Jack Machinko made a motion to adopt the Agenda, duly 2<sup>nd</sup>, approved unanimously. Secretary, Laurie Busse, read the Call of the Meeting.

**Application # 09-09:** Eugene Kelly and Kelly Toncar, 3 Candle Hill Road for variances to zoning regulations for the purpose of replacing an existing deck with a family room

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

The applicants and their builder Joe Fossi approached the Board and explained their plans to convert an existing deck to a smaller family room. The exterior porch will be converted to interior living space. The addition is more conforming than the deck and there will be no increase in nonconformity. There is no net increase in height. The deck has 2 sets of stairs to grade and the proposed family room will have one set of stairs to grade. The property is a corner lot with 2 front boundaries and is less than a ½ acre.

Maria Horowitz confirmed that the existing deck is legal.

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 there is no increase in nonconformity and the proposal actually decreases conformity.

John Day made a motion to grant the Variance for a front setback of 35'; and a rear setback to 28' subject to the plans as submitted. The hardship being the 2 fronts and the nonconforming size of the property further noting this Variance does not increase nonconformity, duly 2nd, approved 4-0.

**Minutes:** Bob Jano made a motion to adopt the Minutes to the February 19, 2009 meeting as submitted, duly 2nd, approved 4-0.

**Application # 10-09:** Ronald and Ethel Kern, 6 Shore Drive, for variances to zoning regulations for the purpose of constructing a 2 story addition.

Bob Jano made a motion to bring Application # 10-09 to the floor, duly 2nd, approved 4-0.

Ronald Kern, Michael Streeman, and Attorney Thomas Beecher approached the Board. Attorney Beecher handed out an informational packet and an updated survey showing the requested side setback to 12' 9" and a rear setback to 40'. Attorney Beecher explained they were in front of the Board with application # 57-08 in December 2008 seeking a 2 story addition to enclose an outside stairwell, thus allowing the applicant to have an interior access to his basement home office and utilities. Those plans requested an 8' 4" side setback that increased nonconformity. That application was denied and has been appealed and is in litigation. The plans submitted tonight have been changed to reduce the side setback to 12' 9" noting Variance # 35-72 varied this side to 12' 6". The construction for Variance # 35-72 never exceeded 12' 9". The existing lot coverage is 21.8% and the addition will increase lot coverage by half a percentage point to 22.3%. Attorney Beecher stated for the record Note #10 on the submitted survey has a typo and should read as follows: "Existing house plus enclosed stairway to within 12' 9" equals 22.3% lot coverage". Discussion followed if the addition went out to 12' 6" the lot coverage would be slightly higher. The hardship is the size and irregular pie shape of the lot. This proposal does not increase nonconformity dimensionally, but does minimally increase lot coverage. The property the addition is closest to is owned by the applicant. Maria Horowitz stated she is not thrilled with an increase in lot coverage but it is minimal and since the applicant is going to 12' 9" rather than 12' 6" she will accept it.

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

John Schalkham, 15 Windmill Road: approached the Board and submitted pictures of homes in the neighborhood, noting there are zoning regulations in place but it appears there is a disregard for them. He has concerns with the overdevelopment of the neighborhood in general. These are small lots and the number of people living in these large homes has increased and there is no place to park. This is a quiet bedroom community.

The Board showed Mr. Schalkham the survey and the plans that are in front of the Board, noting they can only vote on what is in front of them and explained how they treat buildings and structures that need to be legalized, without either penalizing or rewarding construction before a variance. Attorney Beecher noted the builder did start construction prior to obtaining a building permit, but stopped work back in December 2008.

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

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

In the Business Session the Board discussed there aren't any nonconformity issues other than coverage. Since there are two prior variances, the Board has found a hardship exists. The pictures can be viewed from two different angles, it either shows the proposed addition is consistent with other houses in the neighborhood or you can view it as over expansion and the Board needs to control it.

John Day stated the Board needed to go back into the public session. John Day made a motion to go back into the Public Session, July 2nd, approved 4-0.

Back in the Public Session the Chairman asked what does the vote have to do with the status of the litigation? Attorney Beecher stated it would be withdrawn and he has already spoken to Attorney Keating on this matter. John Day stated he would make the motion to include the litigation be dismissed with prejudice noting the motion must pass. Attorney Beecher did not want the motion to state withdrawn with prejudice, discussion followed on specific procedural steps.

John Day made a motion to go back into the Business Session, July 2nd, approved 4-0

Back in the Business Session the Board discussed it is their understanding that if the motion passes the pending litigation between the applicants and the Town will be terminated.

John Day made a motion with the understanding that if this motion is granted the pending litigation between the applicant and the Town will be terminated through the appropriate mechanisms. The motion is to grant the variance for a side setback to 12' 9" and a rear setback to 40' subject to the plans as submitted, noting there is no increase in dimensional nonconformity and with respect to coverage nonconformity there is a *de minimus* one half of one percent increase. The hardship is the irregular shape and size of the lot, July 2nd, approved 4-0.

**Application # 11-09:** Melissa Grant, 37 Fulton Drive, for variances to zoning regulations for the purpose of constructing a 2-story addition.

Bob Jano made a motion to bring Application # 11-09 to the floor, July 2nd, approved 4-0.

Joe Coelho the applicant's builder approached the Board and explained his plans for a 2 story addition. Due to the steep slope on the property the house sits lower than the road. There is no overall height increase. There will be a 25' x 32' garage where the basement portion of the addition is. The front part of the addition will follow the line of the house and because of the shape of the property and the house being built on an angle nonconformity will decrease. The closest point from the house to the rear property line is approximately 40'. The rear of the addition will also follow the line of the house however for the same reason nonconformity will increase by 7'. The Board discussed their position on increasing nonconformity and looked for ways of reducing it. Chairman Day explained how to move forward with the application. Mr. Coelho requested a short break so he can contact the property owners. John Day made a motion to take a short break, July 2nd, approved 4-0.

Back from the break the applicant would like the Board to vote on the following changes. The depth of the garage will be reduced from 25' to 23' and the width of the garage will

be reduced from 32' to 28'. The rear wall of the garage will be pushed forward 4' toward the Fulton Drive boundary. The rear corner of the addition will be 38' or 39' plus or minus from the rear boundary. Maria Horowitz acknowledged this is a tough piece of property and she is OK with the changes.

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 application has been adjusted to propose a *de minimus* increase in nonconformity as well as the steep slope and odd shape of the lot.

John Day made a motion that the variance be granted for a front setback of 24' and a rear setback to a plus or minus of 39' not subject to the plans as submitted but rather subject to the following adjustments. The front wall facing the Fulton Drive boundary of the garage will extend 23' not 25' in a straight line continuing the front wall of the existing house. The rear wall of the garage will not extend in a straight line from the rear wall of the existing house but rather will start 4' inward toward the Fulton Drive boundary because the width of the proposed garage is going to be reduced from 32' to 28' and that's going to place the rear setback plus or minus to 39'; so long as the construction is consistent with the width and depth and the continuation of the front wall and the addition is where we agreed it should be. The hardship is the slope and irregular shape and size of the property duly 2nd, approved 4-0.

Bob Jano made a motion to adjourn the meeting at 8:40pm duly 2<sup>nd</sup> approved unanimously.