

New Fairfield Zoning Board of Appeals
New Fairfield Connecticut 06812
MINUTES
Special Meeting
October 14, 2009

The New Fairfield Zoning Board of Appeals held a public hearing followed by a business session at 7:00pm on Wednesday October 14, 2009 in the New Fairfield Free Public Library. Secretary Laurie Busse took the minutes.

ZBA members in attendance: John Day, Chair, Maureen Walker, Vice Chair, Jack Machinko, Michelle Rhyce and Joe DePaul

ZBA members absent: John Apple, and Bob Jano

Town Officials in attendance: Maria Horowitz

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

Secretary Laurie Busse read the proposed agenda for the meeting; Chairman Day asked if there were any changes or amendments to the Agenda—None Heard. Maureen Walker made a motion to adopt the Agenda as presented, duly 2nd, approved unanimously. Secretary, Laurie Busse, read the Call of the Meeting.

Continued Revision to Application # 15-09: Reilly Construction, 8 Muller Street, for the purpose of revising a previously approved Variance that shows the incorrect Zoning District as R-44; Map: 32, Block: 4; Lot: 5. The correct Zoning District is R-44; Map: 31, Block: 4; Lot: 10.

Joe DePaul made a motion to bring Continued Revision to Application # 15-09 to the floor duly 2nd, approved 5-0.

Joe Riley of Riley Construction approached the Board and explained the application for Variance # 15-09 contained incorrect zoning district information and thus this incorrect information was carried over onto the Variance. He is asking the Board to correct the Variance and has submitted the correct identifiers for the lot in question. The Board discussed with the exception of the Map, Block, & Lot numbers, there are no other issues with the approved Variance. Maria Horowitz confirmed the correct identifiers.

John Day asked for any further public comment—none heard

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

In the business session the Board discussed this is an administrable correction, noting both the applicant the CZEO have verified the correct identifiers for this lot.

John Day made a motion to grant the correction to the Variance the hardship is incorporated by reference to the above application, noting this is for the purpose of correcting the Zoning District information only, duly 2nd, approved 5-0.

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

Continued Application # 26-09: Anthony and Kristina Wilmot, 4 Hardscrabble Road, for variances to zoning regulations for the purpose of constructing a swimming pool in the front yard.

Joe DePaul made a motion to bring Continued Application # 26-09 to the floor, duly 2nd, approved 5-0.

No one was present to represent this application. The Chairman moved this application to the end of the Agenda to see if someone shows up. At the end of the meeting, there still was no representation for this application and it will be heard at the next regularly scheduled meeting.

Application # 27-09: Martin and Rosemary McGrath, 99 Pine Hill Road, for variances to zoning regulations for the purpose of constructing a one car garage.

Michelle Rhyce made a motion to bring Application # 27-09 to the floor, duly 2nd, approved 5-0.

Martin McGrath approached the Board and explained his plans to construct a one car garage 57.6' from the front setback. The existing front setback is 56.1'. The history of the property was discussed. In November 2001 Variance # 47-01 was granted for a vertical expansion. In October of 2005 an application for a two-car garage was denied. Mr. McGrath explained since October of 2005 he has reduced the size of the garage from two cars to one car, noting the request for a two car garage encroached on both the front and the side setbacks. The revised plans encroach on the front setback in the sense that they are outside of the building envelope; however, he will not come any closer to the front setback than the existing house and a side setback is in compliance with the existing zoning regulations. There is a severe drop off behind the house and the front portion of the property has a very odd shape to it. Due to the terrain of the lot, it would be extremely difficult to construct the garage anywhere else. The Board discussed this proposal does not increase nonconformity and inquired about the shed shown on the survey, the applicant noted the shed is still there. Maria Horowitz stated she has no additional comments.

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

Maureen Walker made a motion to enter the Business Session, duly 2nd, approved 5-0.

In the Business Session, the Board discussed the proposal does not increase nonconformity and it is no closer to the front setback than the legally protected home. There is no adverse impact on the neighbors. The significant slope and odd shaped lot were also discussed.

John Day made a motion to grant the Variance for a front setback of 57.6', subject to the plans as submitted the hardship is the irregular shape and slope of the lot, further noting the proposal does not increase nonconformity duly 2nd, approved 5-0

Application # 28-09: Tom and Jeanette Kavanagh, 22 Lake Shore North, for variances to zoning regulations for the purpose of raising the roofline.

Joe DePaul made a motion to bring Application # 28-09 to the floor, duly 2nd, approved 5-0.

Joe Coelho of JC Contracting approached the Board. The applicants have an attached one car garage. Currently there is a small spiral staircase in the house that allows access to the 2nd story loft. They are proposing to construct a normal to code staircase in the garage. In order to do this they must raise the roofline to the garage by 7'. They will not exceed the existing highest point of the house; in fact the proposed garage roofline will still be a few feet below the existing roofline of the house. A height variance is not required. There will be no change to the footprint on the ground and there will be no increase in dimensional nonconformity. The existing height of the home will not increase.

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 this is a straight forward vertical expansion. There is no net increase in the building height. There is no documentation in the factual record that shows there is any impact on the neighbors. There is no increase in dimensional nonconformity.

John Day made a motion to grant the Variance for a side setback to 13' 3" subject to the plans as submitted the hardship is the nonconforming size of the lot, further stipulating this Variance does not increase dimensional nonconformity, duly 2nd, approved 5-0.

Application # 29-09: Peder W. Scott, 283 Route 39, for variances to zoning regulations for the purpose of revising a previously approved Variance and adding a bay window and a chimney with a built in gas grill with a roof.

Maureen Walker made a motion to bring Application # 29-09 to the floor, duly 2nd, approved 5-0.

Peder W. Scott approached the Board. Discussion focused on what was previously approved in Variance # 07-08 granted on April 17, 2008. The applicant proposes to add a bay window to the north side of the home and a chimney with an outdoor built in gas grill with a roof over it on the south side of the home. Variance # 07-08 gives them a north side setback to 19'. With the addition of the bay window the north side setback will be 20'. The existing south side setback is 23.4' and did not require a variance in application # 07-08. The addition of the chimney will bring the south side setback to 21.89' but does not include the roof over the gas grill. Discussion followed on the size of the roof to the gas grill. Maria Horowitz believes it is 3' and the applicant referred to it as a skirt and said it was no more than 12". The Board stated their position on varying any additional setbacks that would increase nonconformity. The Board discussed that if after construction if there is any conflict between the plans submitted and the required 20' side setback, the applicant will have to modify the construction at his cost to stay within the 20' side setback. The Board reviewed the setbacks on Variance # 07-08 and asked if the change in plans is going to permit construction within the terms of that same

variance or if an additional or modification to the Variance is needed. The applicant stated he is willing to stipulate the skirt will conform to the 20' side setback. The applicant clarified the 19' side setback was only for one side, not both sides. The Board reiterated their position on increasing nonconformity. Mr. Scott stated that tonight's presentation to the Board is that the plans in front of them comply with Variance # 07-08 with a front setback of 10.8', a north side setback to 19', a south side setback 20' and a rear setback to 0'. The Board stated their position is that so long as he meets the 20' south side setback, they are OK with the plans; Maria Horowitz agreed this was also her position, noting her concerns are that she estimates the skirt to be about 3' and that would put them past the 20' required setback, but so long as the applicant stipulates he will meet the 20' south side setback she will be OK with it. The Board discussed when they vote on the Variance they can stipulate that while the Variance is subject to the plans as submitted that's subject to them requiring no variance not previously specified, which are the 3 dimensions discussed. So if there a conflict hypothetically between either the plans or the construction and the fact that no side variance is being requested on the 20' side the plans do not trump, the side setback does. The lot coverage will remain unchanged at 34% because the house will be 3' shorter so as to meet the requirements in Variance # 07-08. The height of the home will increase by 6" but doesn't increase any of the dimensional nonconformity previously approved in the prior Variance.

John Day asked for any further public comment—Maria Horowitz stated to make sure the house is 3' shorter to meet the requirements of Variance # 07-08.

Jack Machinko made a motion to enter the business Session, duly 2nd, approved 5-0.

In the Business Session, the Board discussed there is no change in the prior variance dimensionally as none of the previously varied setbacks will change. The house is 3' shorter, and 6" taller. The motion will include wording that says if there is any conflict between the prior approved and the potentially reapproved setbacks and the building plans that the setbacks trump, that we are not increasing nonconformity relative to what we previously voted on. If the applicant wants to change the plans without changing the previously approved nonconformity then it is not a big issue. There are no objections in the factual record from any of the neighbors. The Board discussed the original lot coverage was 48% and the applicant purchased land to reduce the coverage to 34%, which was an overall reduction in nonconformity. The Board discussed the unusual numbers they previously approved but they are not being asked to go beyond them in this case.

John Day made a motion to grant the Variance subject to the building plans as submitted qualifying that by stating that the Board is reaffirming the prior Variance dimensional setbacks meaning a front setback to 10.8', a north side setback to 19', a rear setback to 0' and lot coverage to 34%, noting a south side setback is not being requested as the applicant stipulated it will meet the 20' required setback and to the extent that there is a conflict between either the building plans submitted tonight or the as built survey and those numbers, the Board is not varying those numbers. The hardship is the irregular size and shape of the lot duly 2nd, approved 5-0.

Application # 30-09: David and Sue Mitchell, 1A Walnut Ridge Road, for variances to zoning regulations for the purpose of constructing an in ground pool.

Michelle Rhyce made a motion to bring Application # 30-09 to the floor, duly 2nd, approved 5-0.

Joe Coppola of Coppola enterprises approached the Board and explained his plans to construct a 20' x 30' in ground pool. The lot is at the corner of Short Woods Road and Walnut Ridge Road, therefore it has 2 fronts. Aesthetically Walnut Ridge is the front of the home. The pool will be located on the Short Woods Road front. The right rear corner of the property drops off 18'. The septic and reserve are located where they are because they could not be in the rear corner of the property due to the 18' drop off. The back corner not only has a severe drop, but it is also wet. This is because when the development went in the developer put a retention pond in. Mr. Coppola followed the water down to make sure it goes to the pond and it does. The house was built in 1995. Pictures were showed and discussed. The original pool size was larger, but he reduced it to 20' x 30' so as to fit it into the property. Discussion followed on the fence. There is a stockade fence on the property and the applicant proposes to construct an identical 6' stockade fence from the corner of the house to the existing stockade fence for privacy on the Short Woods Road setback. There will be an additional fence around the pool. The applicant stated he is willing to allow the Board to stipulate that he mirror the existing stockade fence.

If Walnut Ridge Road was the only front then the proposed pool would be conforming. Maria Horowitz stated if Short Woods Road was a side they could drop down to 1 acre zoning and the side setback would be 20', further noting that when the new zoning regulations go into effect the Short Woods Road setback will become a side setback.

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

Maureen Walker made a motion to enter the Business Session, duly 2nd, approved 5-0.

In the Business Session, the Board discussed the slope and retention pond issues put the septic and reserve in the true back. If Short Woods Road was not considered a front setback, then the lot would be conforming. The applicant has agreed to construct a stockade fence of like height and design from the corner of Short Woods Road to the corner of the house.

John Day made a motion to grant the Variance for the Short Woods Road front setback of 20' and construct an in ground pool subject to the plans as submitted with the condition that a stockade fence extend from the corner of the house to the existing stockade fence being of like height and design. The hardship is the steep slope and two front and two year yards duly 2nd, approved 5-0.

Application # 31-09: Vincent Murphy, 40 Lake Drive South, for variances to zoning regulations for the purpose of constructing front and rear additions and a rear deck.

Michelle Rhyce made a motion to bring Application # 31-09 to the floor, duly 2nd, approved 5-0.

Vincent Murphy, Attorney Mark Pancrazio, and architect Jeff Mose approached the Board. They explained a previous owner received Variance # 71-89 which varied the rear yard setback to 12' for the purpose of constructing an upper level deck, noting the

deck was constructed to be more conforming and it is quite far from the 12' setback. The applicant proposes to construct an octagon shaped deck 15' from the rear setback and increase the head room in one of the bathrooms. The applicant also proposes to enclose the breakfast nook and wrap around deck. The house sits about 45' below the road, and it is literally a goat path to get to the house as it is a very steep slope. There is no increase in nonconformity relative to the existing prior Variance # 71-89. The addition is going out sideways which does not require a Variance and the rear addition will not go out past the existing house. They are proposing to enlarge the existing bathroom by 8sqft by extending the wall out 2' which would square off the house and does not increase nonconformity. They will restructure the bathroom roof with a gable roof to increase the height. The height of the cupola will not exceed the existing roof height. The existing front setback is 23' and the proposed addition is 26' from the front setback, so there is no increase in nonconformity. Maria Horowitz stated she does not have any issues with this application.

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

Michelle Rhyce made a motion to enter the Business Session, duly 2nd, approved 5-0.

In the Business Session, the Board discussed the deck was not built to fully utilize the prior Variance. While the proposal expands construction outside the building envelope, it does not increase nonconformity and does not fully utilize the nonconformity authorized by the prior Variance. The only substantial expansion is on the side that does not increase nonconformity. The house sits so far below the road that there will be no impact on the neighbors.

John Day made a motion to grant the Variance subject to the plans as submitted noting this Variance does not increase nonconformity and in fact the plans don't fully use nonconformity previously authorized. The hardship is the irregular slope and shape of the lot duly 2nd, approved 5-0.

The Board discussed they would like to recognize that Bob Jano has been a supportive and active ZBA member and his contributions are greatly appreciated. The Chair also recognized the rest of the Board for their contributions and hope they continue to serve on the ZBA. This has been a great Board and the Chair as well as the Town appreciates all that they have done. This is Maureen Walker's last meeting and she will be missed.

Maureen Walker made a motion to adjourn the meeting at 9:03pm, duly 2nd, approved 5-0.