

**New Fairfield Zoning Board of Appeals**  
**New Fairfield Connecticut 06812**  
**MINUTES**  
**September 17, 2009**

The New Fairfield Zoning Board of Appeals held a public hearing followed by a business session at 7:00pm on Thursday September 17, 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, John Apple, and Bob Jano

ZBA members absent: Michelle Rhyce and Joe DePaul

Town Officials in attendance: None

Chair John Day called the meeting to order at 7:03pm introduced the Board members and explained the meeting process and voting procedures.

Secretary Laurie Busse read the proposed agenda for the meeting. A discussion on the Land Use Academy Training Registration that was mailed out in the Board packages was added to the Agenda. John Day made a motion to adopt the Agenda as amended, duly 2<sup>nd</sup>, 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 showed 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.

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

For the second month in a row no one was present to represent this application. The Board recapped on last month's discussion the applicant incorrectly filled out the application with the wrong zoning district information. The Board wants someone to place into the factual record the correct information. The Board would be willing moving forward if Maria Horowitz, ZEO, was here to verify the correct information, but with no one present to place the correct information into the factual record the Board was not comfortable proceeding. The next meeting is October 15. Discussion followed on the 65 day time limit and the consequences of not having a quorum next month. Some of the Board members would like to deny the application while other Board members were willing to give the applicant until the October 15 meeting to show up. The Board further discussed the certified letter came back to the Zoning Board of Appeals with a forwarding address, so the letter had gone to two different addresses and no one signed for it. The secretary noted that this application had the same issue when they were originally in front of us in May and continued to June of 2009. The applicant should be putting his correct mailing address on the application. The Board discussed waiving the 6 month rule but not waiving the application fee noting if Maria Horowitz had written a letter stating a mistake was made and given the correct zoning district information, then that would also have been acceptable.

John Day made a motion to continue in the Public Session to the next regularly scheduled meeting of October 15, 2009 with the expectation for someone to appear and or submit written documentation to satisfy the correct Zoning District information duly 2nd, approved 3-2. Maureen Walker, John Apple, and Jack Machinko were in favor of continuing the application. John Day and Bob Jano were opposed to continuing the application.

**Application # 25-09:** Lisa Macaskill, 239 Ball Pond Road, for variances to zoning regulations for the purpose of constructing a 2<sup>nd</sup> story addition.

Maureen Walker made a motion to bring Application # 25-09 to the floor, duly 2nd, approved 5-0.

Ralph Serji of RCS Consultants approached the Board and explained the existing back corner of the house does not comply with zoning regulations. He proposes to add on a 2<sup>nd</sup> story that will increase the height of the home by 8'. The property is surrounded by rock. There will be no change to the foot print on the ground, they will be no closer to any setbacks and the roof will have the same pitch. The total height of the home will be under 35'. Due to the slope of the land the back yard rises behind the house and the 2<sup>nd</sup> floor will not have an adverse impact on the neighbors. There is no increase in dimensional nonconformity. The number of bedrooms will not increase; the addition will be a bonus room upstairs. The Board questioned why the applicant is requesting a 26' side setback when the survey shows a side setback of 27.7'? Mr. Serji stated he was unclear if the survey showed the setback to the wall or to the roof overhangs so he was advised to include the overhangs in his variance request, noting the 2<sup>nd</sup> story addition will not be any closer to the side setback than the existing home, including the overhangs.

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 this is a classic vertical expansion, there is no request for dimensional change, no adverse impact on the neighbors, the hardship is the slope and irregular shape of the lot.

John Day made a motion to grant the Variance for a side setback of no less than 26' per the plans submitted stipulating the existing setbacks to the building are maintained. The hardship being the slope and irregular shape of the property, further noting this Variance does not increase dimensional nonconformity, duly 2nd, approved 5-0

**Minutes:** Bob Jano made a motion to approve the Minutes to the August 17, 2009 meeting as presented, duly 2nd, approved 5-0.

**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.

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

Anthony and Kristina Wilmot approached the Board and explained their plans to construct a 20' x 40' in ground swimming pool in their front yard. The property is unique because most of the property is in New Fairfield and about 1/3<sup>rd</sup> of the property is in Sherman; noting they have a Sherman mailing address. The pool will be located in New Fairfield. There is a previous Variance on the property # 27-00 granted on August 17, 2000, which converted the then existing house into an accessory building that is 2' from the front setback. The new house which the applicants occupy is set much further back from the road. Variance # 27-00 stipulates the accessory building which the applicants refer to as a cottage cannot be used for living area. Mr. Wilmot stated he would like to use the cottage as a cabana to dry off from the pool; however it would be impossible to use it as living space, as the cottage does not have any plumbing further noting he was unaware of the previous Variance as he was not the owner at that time. Discussion followed when the Board granted Variance # 27-00 which changed the then existing house which was 2' from the road into an accessory building the rear yard as it existed changed. The new rear yard is behind the new home—not the accessory building. The applicants pointed out the steep slope and ledge on their property and it would be impossible to put a pool in the rear of the home. They also pointed out that aesthetically the pool would appear to be in the side yard, although technically it is a front yard due to the location of the road. The applicants propose to put the pool directly behind the accessory building and install a fence and plant pine trees. They do not want the pool to be seen from the road any more than the Board wants the pool to be seen from the road. The Board discussed the pool in the front yard behind the legal accessory shed that used to be the house. Further discussion focused the pool was drawn in on the A-2 Survey and is not to scale; the Board wants a more specific proposal on the A-2. Zoning regulation 2.16 was read into the meeting. The applicant discussed the property meets the predicate hardship the chairman outlined at the beginning of the meeting. Discussion followed the property has a condition that creates a hardship, not the proposal and they can't deny the Variance on hardship grounds when they found a hardship existed in 2000.

John Day explained how to move forward with the application stating he would waive the filing fee if the applicants wanted to withdraw and resubmit at a later date. The applicants were concerned about spending money to have an updated A-2 Survey if they are just going to be denied anyway. Discussion followed it will give the applicants a chance to put additional information into the record. The applicant stated he will continue to the October 15 meeting.

Maureen Walker made a motion to continue the application in the Public Session until the next regularly scheduled meeting, July 2nd, approved 5-0.

**Discussion on Land Use Academy Training:**

The Connecticut Land Use Academy, which is a program of the UCONN Center for Land Use Education and Research (CLEAR), is offering workshops on September 26 and November 14 from 8:30am to 3:00pm which provides instruction for local land use commissioners on the fundamental knowledge and skills needed to support sound decision making. The curriculum covers the roles, responsibilities and legal requirements of commissions as well as basic map reading techniques. The cost is \$20 which covers food and materials. If any one is interested in going, please let Laurie Busse know and a car pool can be arranged.

Bob Jano made a motion to adjourn the meeting at 8:35pm, July 2nd, approved 5-0.