

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

**REVISED MINUTES  
October 16, 2008**

The New Fairfield Zoning Board of Appeals held a regular public hearing followed by a business session at 7:00pm on Thursday October 16, 2008, in the New Fairfield Free Public Library. Secretary, Laurie Busse, took the minutes.

ZBA members in attendance: John Day, Chairman, Jack Michinko, Bob Jano, John Apple, Joe DePaul and Michelle Rhyce

ZBA members absent: Maureen Walker, Vice Chairman

Town Officials in attendance: None

Chairman, John Day called the meeting to order at 7:00pm, introduced the Board members and explained the meeting process, voting procedures, and standards for a variance. John Day explained a Variance is a request to be excused from compliance with the zoning regulations and we do not have anything to do with any other Land Use Regulations. John Day gave the definition of a recusal. Joe DePaul will be elevated to full voting status for the first 4 applications, and Michelle Rhyce will be elevated to full voting status for the remaining 4 applications.

Secretary, Laurie Busse read the proposed agenda for the meeting. John Day asked if there were any amendments to the Agenda—None Heard. John Day made a motion to adopt the Agenda as read, approved unanimously. Secretary, Laurie Busse, read the Call of the Meeting.

**Continued Application # 33-08:** Daniel J., Mary B. & Tricia Lynch, 31 Merlin Avenue, for variances to zoning regulations for the purpose of constructing, legalizing and/or enlarging decks.

John Apple made a motion to bring Continued Application # 33-08 to the floor, duly 2nd, approved 5-0.

Tricia Lynch, Attorney Raymond Lubus and Builder Allan Raiano approached the Board. They discussed the past history on the property which includes previous application #'s 01-05, 03-07 and 35-07. There is a Variance for the lower deck which is a 3' 2" x 3' 2" landing with stairs to grade. The upper deck is 25' off the ground and it is also 3' 2" x 3' 2" and is not legal; the prior application # 35-07 to legalize this was denied 0-5. The applicants propose to remove the lower deck and replace it with 2 or 3 stairs to grade, with a railing. They also propose to enlarge and legalize the upper deck to a 10' x 14' deck. The Certificate of Occupancy (C/O) was issued for the home on 8/8/07 and specifically excludes the decks even though the decks were existing. The applicants closed on the home on 8/10/07. At the time of closing, the Lynch's saw the configuration and were told it was just temporary so they could obtain a C/O. Attorney Lubus further discussed his clients' contract with the builder noting they paid extra for an upper deck. The builder told his clients the decks were approved by the Town, stating his clients

have clean hands. The Board discussed the Variance goes with the property and not the owner and referenced a previous application for a barn that had been built on Route 37, where the property owners had clean hands and the builder moved the barn closer to the Road than what the Variance stated and the Zoning Board of Appeals made them move it back. The applicants have recourse with the builder and the title insurance company. The Board discussed that they heard this issue last year and voted 0-5 not to legalize the upper deck, although they did grant the extra 2 inches for the support posts that stick out on the lower deck. John Day read a portion of the Minutes from the October 18, 2007 into the meeting. The Chairman pointed out the only argument that should be made is not whether or not the owners have clean hands but whether or not the Variance should be granted in the first place.

Attorney Lubus requested the Board look at this as a new proposal since enlarging the upper balcony has never been brought in front of them. The deck will be 10' wide extending toward the rear setback x 14' long extending along the wall of the home. The Board discussed the proposal significantly increases nonconformity and they were not likely to increase nonconformity on a property they previously voted down. The existing rear setback is approximately 46' and this proposal will increase nonconformity by 7' although the application is asking for a 10' increase in nonconformity with a rear setback of 36'. The applicants stated a safety hazard exists because a sliding glass door opens to the upper deck and the C/O never should have been issued on the slider that is 25' up in the air and opens to nothing. Discussion focused on putting safety beams across the door and this would get them a C/O on the door. The Board and the applicants discussed reducing the size of the deck to 8' x 14' which will increase nonconformity by 4' 10" with a rear setback of approximately 42'. The Board discussed they were pitched on a larger deck and they voted it down 0-5 and they were pitched on the present construction which is less nonconforming than the proposal we are voting on tonight and they voted it down 0-5. The proposal before the Board tonight gets rid of that but increases nonconformity by 4' 10" and significantly widens the deck. Some of the Board members would have liked to see letters from the neighbors stating they do not mind the increase in nonconformity, however the applicant is out of time and the application must be closed tonight. John Day reminded the applicants of the 6 month rule.

John Day asked for any further public comment.

Attorney Lubus stated he believed the last application to legalize the upper deck was voted down out of anger towards the builder and he would like to stress that his clients have clean hands and not to hold this against them.

Bob Jano made a motion to move into the Business Session, duly 2nd, approved 5-0.

In the Business Session the Board discussed the proposal they are voting on increases nonconformity by 4' 10" and whether, in the past, did they ever grant a Variance for a setback and later increase the Variance for the setback in the same dimension simply because there is a fresh application. So if the Board looks at this as if nothing's been built new construction proposal and without any illegal construction but with an existing Variance for a 3' 2" deep deck; the proposal the Board is voting on tonight is for an 8' deep deck. So if the Board denied a larger proposal in the earlier application the Board is reversing its own prior decision by going for a bigger deck now. You can add on top of that this is the 3<sup>rd</sup> or 4<sup>th</sup> time the Board has heard this and there's the fact that there's a 2<sup>nd</sup> floor issue and even if you strip all that stuff away. The Board needs to be confident

tonight that its not voting one way or the other either voting out of anger for the builder or sympathy for the folks before it with clean hands. Rather, the Board should be voting based on what the Board thinks the objective merits are. Some of the Board members discussed tonight's proposal would aesthetically improve the property.

John Day made a motion to grant the Variance for a rear setback of 42' subject to the revised plans reflected in the record those being an 8' deep x 14' wide 2<sup>nd</sup> floor deck with stairs to grade and removal of the 3' 2" x 3' 2' landing on 1<sup>st</sup> floor and substitution of stairs to grade from the 1<sup>st</sup> floor door. The hardship being incorporated by reference to the prior Variances for this property, duly 2nd, denied 3-2. Bob Jano, John Apple, and Jack Machinko voted in favor of the application. John Day and Joe DePaul voted against the application.

**Minutes:** Bob Jano made a motion to adopt the Minutes of the Special Meeting on September 2, 2008 and the Minutes to the Regular Meeting on September 18, 2008, duly 2nd, approved 4-0-1. Joe DePaul abstained.

**Continued Application # 38-08:** Gary and Marie Lane, 1 Meeting House Hill Circle, for variances to zoning regulations for the purpose of legalizing an above ground pool and deck

Bob Jano made a motion to bring Continued Application # 38-08 to the floor, duly 2<sup>nd</sup>, approved 5-0.

Marie Lane and Attorney Chris Donohue approached the Board reminding them the reason for the continuance was to get the correct setbacks. The pool is 4 ½ ' from the rear setback and 11.5' from the side setback. The applicants are here tonight because the previous owners built a pool and deck illegally, when the current property owner went to get permits to replace the deck she discovered that the deck and pool had been built illegally. There rear of the lot is heavily wooded and you cannot see St. Edwards through the trees. The adjoining property has a pool that has been abandoned. The property has a very steep slope and therefore the pool cannot be closer to the home and the pool cannot be moved to the other side of the lot because of the septic and it will be closer to the rear setback than it already is. There is another septic easement in the property owner's favor. John Day explained the Board's position on structures that are built illegally. The lot size is .059 acres. Some of the Board members discussed the property is large enough to get in a pool that would meet the setbacks, but because of the topography there is no where else to put it, while other Board members stated that a pool is not a necessity and they have turned down pools in the past for this reason.

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

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

In the business session the Board discussed they do not punish nor reward a property owner when a structure has been built without permits, regardless if it is a current or previous owner who built the structure. Some of the Board members discussed the pool increases nonconformity and they do not increase nonconformity for pools.

John Day made a motion to grant the Variance for a rear setback of 4 ½' and a side setback to 11.5' subject to the construction in place; the hardship is the slope of the

property, duly 2nd, denied 3-2. John Day, Jack Machinko, and John Apple voted in favor of this application. Joe DePaul and Bob Jano were opposed.

**Continued Application # 40-08:** Ann Ross, 108 Lake Drive South, for variances to zoning regulations for the purpose of enlarging a previously approved Variance to construct a 2-car garage.

Bob Jano made a motion to bring Continued Application # 40-08 to the floor, duly 2nd, approved 5-0.

Tasos Kokoris Architect and Attorney Neil Marcus approached the Board. John Day explained he received legal counsel on the 2 year rule the applicants have noted in their application. John Day explained his interpretation is that a variance goes with the property and there is no time limit, therefore the Variances for the existing setbacks are still in effect. Attorney Marcus agreed that an unappealed variance remains in effect for all time. The history of the property was discussed as follows:

- 1975, Application # 11-75 a Variance was granted for a one car garage with a side setback of 6', noting construction never started.
- December 1982, application # 37-82 the property was again granted a Variance because the applicants believed there was a 2-year rule; noting this time they requested a 21' x 24' 2 car garage with a breezeway connecting the garage to the house, although this time they constructed the foundation to the garage.
- 1983 the ZBA's decision for application # 37-82 was over turned by Danbury Superior Court.
- 1984 a 3<sup>rd</sup> Variance was granted for a side setback of 8' and a rear setback of 20' as the property owner was trying to appease the neighbors' concerns, noting the size of the garage increased to 24' x 26' this application also referred to the 2-year rule. To date, only the foundation of the garage has been constructed 6' from the side setback.

The applicant's immediate proposal for tonight's meeting is to construct a 2 story 2 car garage on top of the foundation already in place 6' from the side setback and the rear setback will be 26' from the property line. Discussion followed if the 440 Contour Line is the rear boundary. Phase 2 of the proposal is in the works for attaching the 2 story garage to the home and the 2<sup>nd</sup> story of the garage will become an additional bedroom. Discussion followed on the size and height of the previous applications. The size of the garage was available, the height of the previous proposed garages were not, Attorney Marcus noted his client did not know the height of the previously proposed garages, she just knew it didn't need a height variance. Discussion followed, the Board can grant to the setbacks in the prior variances but have the ability to shape the size and height of the garage. The Chairman clarified that the Board has to grant a Variance for a garage with a side setback to 6' and rear setback to 20' because the Board already has. The Board has not granted a Variance for any particular kind of garage, that's the matter before the Board and the Board can influence the shape of the plans for purposes of fulfilling the prior Variances.

The Board discussed tonight's proposal is only for a storage area above the garage without living space on the upper floor, if the applicant comes back at a later date to convert the storage area to living space and to attach the garage to the house, then they would have a self created hardship.

John Day read a letter dated September 16, 2008 into the meeting from Bruno and Martina Mejean. They live directly across the street and the 2 story garage will block their view of the lake. Bruno Mejean approached the Board and read another letter dated 10/16/2008 into the record noting again the view will obstruct their views of the lake as the height of the garage will be level with the middle height of their windows. Mr. Mejean stated he does not object to a one story garage, but opposes a 2 story garage.

The Board discussed their position on the height of the garage and some members believed that the proposed 10' high ceiling was too high, and automatic doors can be installed without such a high ceiling. The Board also had concerns of creating living space on the 2<sup>nd</sup> floor of the garage. The consensus of the Board is they would not vote in favor of a 2 story garage or a proposal that created living space in the garage. Tasos Kokoris stated the height of the proposed garage is 25' to the ridge, noting the house is inside the building envelope and the plans for a vertical expansion on the house do exist and the neighbors cannot argue this.

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

Martina Hund Mejean: approached the Board and stated she and her husband do not object to the garage, just to the 2<sup>nd</sup> story of the garage because it will obstruct her views of the lake, which is an issue for her. Mrs. Mejean submitted pictures of the views for the record, noting the height of the proposed garage is 2 or 3' above her windows.

John Day explained the Board needs to decide what design they want to approve including the height, further explaining we cannot undo prior Variances. The Board discussed per the applicant a standard garage door is 8', so therefore the garage is at least 4' higher than it needs to be.

John Day explained how to move forward with the application. Attorney Marcus stated he would like to continue to the November 20, 2008 meeting.

John Day made a motion to take a short break, duly 2nd, approved 5-0.

Back from the break John Apple made a motion to continue the application to the November 20, 2008 meeting, duly 2nd, approved 5-0.

**Application # 45-08:** Deborah Bush, 42 Sunset Trail, for variances to zoning regulations for the purpose of legalizing a deck with landing and stairs to grade.

John Day made a motion to bring Application # 45-08 to the floor, duly 2nd, approved 5-0.

Patrick O'Rourke of Casali Construction approached the Board and explained that only the stairs to the deck need to be legalized, and it was his fault the stairs were built outside of the building permit. The stairs encroach 34 ½' from the front setback. Mr. O'Rourke explained he had a building permit to construct the deck with stairs to grade but because of the steep slope on the other side of the deck he flip flopped the stairs. The existing house is 37.7' from the front setback. Discussion followed only the last stair or two was encroaching on the front setback. The Board discussed their position on

legalizing structures and would they have granted a Variance for this construction or would they have pushed the deck further back.

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

Bob Jano made a motion to go into the business session, duly 2nd, approved 5-0.

In the business session the Board discussed this is a minimal increase in nonconformity and we would have been OK with this proposal had it come in front of us prior to construction because of the steep slope and size of the property.

John Day made a motion to grant the Variance for a front setback of 34' 6" subject to the construction in place. The hardship is the size and slope of the lot, duly 2nd, approved 5-0.

John Day reminded everyone that Michelle Rhyce would be the voting alternate for the remainder of the applications.

**Application # 46-08:** Tony and Grace Smyth, 7 Glen Drive, for variances to zoning regulations for the purpose of constructing an above ground pool.

John Day entertained a motion to bring Application # 46-08 to the floor. The Board took up application # 46-08.

Tom Nejame of Nejame pools approached the Board. The secretary stated she did not have a letter from the property owners authorizing Mr. Nejame to act on their behalf. The Chairman stated we will hear the matter tonight, but nothing will be issued until we receive a letter of authorization from the property owners. Mr. Nejame explained the applicants would like to construct an above ground pool the lot is a triangle shape and the septic is on the other side of the home. The pool will be right up against the stairs to the deck. Discussion followed, there is a shed 12' from the property line and the pool will be no closer than the existing deck.

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

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

In the Business Session the Board discussed the unique geographic conditions of the lot and the shed is closest to the property line. There will be no impact on the neighbors as the reservoir is behind the rear property line.

John Day made a motion to grant the Variance for a rear setback to 18' the hardship being the irregular size and shape of the lot subject to the plans as submitted, duly 2nd, approved 5-0.

**Application # 47-08:** Steven and Joann Slattery, 24 Fair Lane, for variances to zoning regulations for the purpose of demolishing the existing home and rebuilding a new home.

Bob Jano made a motion to bring Application # 47-08 to the floor, duly 2nd, approved 5-0.

Mr. and Mrs. Slattery approached the Board, stating there should be a letter from Rich Jackson; Town Sanitarian stating the septic is in the only possible location. This letter was not in the file, but it is not necessary since this is not a vacant lot. Mr. and Mrs. Slattery propose to tear down the existing one story 20' x 40' house and rebuild it with a two story 26' x 42' house. The existing house is 780sqft. and the proposed house is approximately 1,400sqft. The house will be pushed 3' back and over making it further away from the front setback, but closer to both of the rear setbacks. The existing front setback is 20' and the proposed setback will be 23'. The property is a corner lot and has 2 fronts and 2 rears and no sides. The Board discussed there is a shed 9.8' away from the Fair Lane rear setback and the house will not be any closer to either of the rear setbacks than the existing shed. The house will not have a garage or basement because of the extensive ledge on the property.

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 proposal decreases nonconformity in the front but increases it in the rear and the other rear which aesthetically appears to be a side and decided this is a good trade off. There is no adverse impact on the neighbors.

John Day made a motion to grant the Variance with a front setback of 23' and two rear setbacks 11.5' and 30' the hardship being the dual fronts plus the ledge subject to the plans as submitted duly 2nd, approved 5-0.

**Application # 48-08:** Peter and Lori Nieves, 6B Rock Ridge Court, for variances to zoning regulations for the purpose of constructing an in ground pool.

Michelle Rhyce made a motion to bring Application # 48-08 to the floor, duly 2nd, approved 5-0.

Mr. Nieves approached the Board and explained his plans to construct an “L” shaped in ground pool 24' from the rear property line. The Board discussed the extreme odd shape of his lot and the steep slope on the lot. The lot is large enough to have a pool but because of the odd shape and slope this is the only place he can put it.

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 hardship is the shape and slope of the lot and there is no adverse impact on the neighbors.

John Day made a motion to grant the Variance for a rear setback of 24' subject to the plans as submitted the hardship is the irregular shape ledge and slope of the property duly 2nd, approved 5-0.

**Application # 49-08:** Katharina and Lucas Sheer, 15 Meadow Way, for variances to zoning regulations for the purpose of constructing two additions and stairs to grade.

Michelle Rhyce made a motion to bring Application # 49-08 to the floor, duly 2nd, approved 5-0.

Jonathon Encarnacion approached the Board. He did not have a letter from the property owners authorizing him to act on their behalf stating he did not receive the letter and agenda that was sent to him via certified mail. The certified mail letter was in the file and the secretary gave him the letter. The Chairman stated the Board will hear the matter tonight, but nothing will be issued until the Board receives a letter of authorization from the property owners. Mr. Encarnacion explained the additions are squaring off the house and will not go any closer to the setbacks than the existing home. He will be going over lot coverage by about 2%. The Board discussed their position on the applicant is not increasing nonconformity but rather simply extending the line of nonconformity. The last 2 or 3 steps where the risers are above 24 inches are creating the increase in lot coverage. Discussion followed on what other parts of the proposed additions would create an increase in lot coverage

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 size, shape, and slope of the lot and except for the increase in lot coverage, there is no increase in nonconformity. The home is small and given the nature, the additions are relatively minor.

Michelle Rhyce made a motion to adjourn the meeting at 10:58pm duly 2<sup>nd</sup> approved 5-0.