

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

**REVISED MINUTES  
April 17, 2008**

The New Fairfield Zoning Board of Appeals held a regular public hearing followed by a business session at 7:00pm on Thursday, April 17, 2008, in the New Fairfield Free Public Library. Secretary, Laurie Busse, took the minutes.

ZBA members in attendance: John Day, Chairman, Maureen Walker, Vice Chairman, Bob Jano, John Apple, and Jack Michinko.

ZBA members absent: Joe DePaul

Town Officials in attendance: None

Chairman, John Day called the meeting to order at 7:05pm, introduced the Board members and explained the meeting process, voting procedures, and standards for a variance. John Day gave the definition of a recusal.

Secretary, Laurie Busse read the proposed agenda for the meeting. John Day made a motion to adopt the Agenda duly 2nd approved 5-0. Secretary, Laurie Busse, read the Call of the Meeting.

**Continued Application # 02-08:** Maplewood Development LLC, 7 Astoria Drive, for variances to zoning regulations for the purpose of constructing a single family home.

Bob Jano made a motion to bring Continued Application # 02-08 to the floor, duly 2<sup>nd</sup>, approved 5-0.

Bernd Jackel approached the Board stating he received the required letter from the Town Sanitarian regarding the septic and the well. John Day read the letter dated March 17, 2008 from Rich Jackson, into the meeting. The property was originally 2 legal building lots, which have been combined into one lot to reduce nonconformity. The house will be a one story 3-bedroom straight ranch with a garage and a deck with stairs to grade. The deck will be approximately 3 to 4' off the ground. The total square footage including the garage will be 2,100sqft. Discussion followed side setbacks are not needed. The Board questioned why the requested front setback was to 19' and the requested rear setback to 36' when the survey shows the front setback to 20' and the rear setback to 37'. Mr. Jackel explained he left one foot as a buffer. Discussion followed on moving the house further away from the road, this was not possible due to the location of the septic and stipulations in the Inland/Wetlands permit. The Board discussed their position on undeveloped legally protected building lots.

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

John Day made a motion to move into the Business session, duly 2nd, approved 5-0.

In the Business session the Board discussed the modest size of the house, noting living space is 1,400sqft and including the garage the total is 2,100sqft, how 2 small lots were combined to reduce nonconformity, the slope in the rear of the property, and the Town Sanitarian stated the septic system and well are in the only possible locations.

John Day made a motion to grant the variance for a front setback to 19' and a rear setback to 36' subject to the plans as submitted noting the extended setbacks are only for a buffer and do not allow an additional foot to be added onto the house, duly 2nd, approved 5-0.

**Minutes:** While in the business session, the Minutes to the March 20 and Revised Minutes to the February 21, 2008 meetings were discussed. Jack Michinko made a motion to approve the Minutes to the March 20, 2008 meeting, duly 2nd, approved 2-0-3. John Day, Bob Jano, and John Apple abstained. John Day made a motion to approve the Revised Minutes to the February 21, 2008 meeting, duly 2nd, approved 4-0-1. Bob Jano abstained.

**Continued Application # 04-08:** Sherman and Barbara Hotchkiss, 65 Lake Drive South, for variances to zoning regulations for the purpose of constructing a one story addition.

John Day made a motion to bring Continued Application # 04-08 to the floor, duly 2<sup>nd</sup>, approved 5-0.

Attorney Neil Marcus and architect Neil Hauck approached the Board recapping on the February meeting. The applicant has 0.96 acre. The addition is a 20' x 20' octagon shape home office with a powder room. The existing house is 2,300sqft and the addition will make it approximately 2,700sqft. The patio is not on grade, it has steps and sits on a stone wall about 4' from the ground. The existing house has a south side setback of 17.4'; the addition will be within the required setback from the south side boundary and a variance is not required. The existing patio is 13.75' from the rear boundary and the addition will be 30' from the rear boundary. The applicants believe the existing patio should be used as the line of nonconformity. Attorney Marcus read transcripts from the Doyen Case and the Raymond Case, which discuss their position. Attorney Marcus also read the part of the transcript from the December 2006 meeting, when the applicant's original application # 54-06 was denied noting where the line of nonconformity starts.

Discussion followed that perhaps the applicants misunderstood the Boards position on what can be used as the line of nonconformity. It's not that structures don't count toward measuring nonconformity from the property line but rather the Board in assessing whether a proposal expands nonconformity looks at whether the building area is expanding nonconformity separately from a deck or other structure is expanding nonconformity. In the applicant's previous application #54-06 the Board took the position that while that wouldn't expand nonconformity from the edge of the preexisting nonconforming structure it would increase nonconformity as measured from the existing building. In the Doyen Case both the ZEO and the ZBA agreed the Essex zoning regulations stated that if a proposal didn't increase nonconformity it could be certified as compliant. The Essex ZBA upheld the ZEO's decision saying that the 6' expansion of the house over the preexisting deck complied with the local ordinance that permitted approval of proposals that didn't increase nonconformity. However, the trial court reversed the decision of the ZBA and the ZEO stating that its judgment by trading the

expansion of the house over the deck is an increase in nonconformity and the ZBA and ZEO exceeded their authority. This Board takes that as a deferral to the construction of our local ordinance. The question before us is does the extension of a building not as far back as the porch, but further back than the existing building an increase in nonconformity. We rejected the 1<sup>st</sup> proposal, which also would not have exceeded the side setback and also would not have extended further back than the existing porch because it was extending the building further back than the existing building. The Board looked for other areas to construct the addition including on the north side of the home, which would not increase nonconformity.

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

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

In the business session the Board discussed where the line of nonconformity starts for the addition. If you measure it from the building, then nonconformity clearly increases, if you believe an increase in nonconformity should be measured from the existing porch, which is a structure and not a building then the proposal would not be an increase in nonconformity. Some of the Board members felt that since the patio was 4' off the ground with a stone foundation, then it should be considered as the line of nonconformity. Discussion followed that the zoning regulations clearly state the difference between a building and a structure and the line of nonconformity for a building should start with a building and not a structure, as per the Board's practice they have always compared buildings to building and structures to structures, so why would this application be different.

John Day made a motion to grant the variance with a rear setback to 30' subject to the plans as submitted the hardship is the irregular shape, slope and size of the lot, also noting the current zoning regulations were designed for a larger lot than it presently is duly 2nd, approved 4-1. John Day voted to deny the variance.

**Continued Application # 05-08:** William and Carolyn Drew, 8 Lake Shore North, for variances to zoning regulations for the purpose of constructing a front porch.

John Day made a motion to bring Continued Application # 05-08 to the floor, duly 2<sup>nd</sup>, approved 5-0.

The applicants approached the Board noting the reason they continued was to look for ways to reduce nonconformity. Since then they have revised their plans from a front porch with a requested front setback of 22.5' to a side porch that will follow the line of the existing home on the north east side of the house. The new requested front setback is 26'. This will not increase nonconformity. The porch will be a covered porch but will not be enclosed.

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

John Day made a motion to move into the business session, duly 2nd, approved 5-0.

In the business session the Board discussed the applicants did a great job of listening to the Boards concerns and revising their plans so they no longer increase nonconformity

by extending the porch from the north east corner of the house in a northerly direction so that it is an extension of the existing house.

John Day made a motion to grant the variance for a front setback of 26' subject to the revised plans submitted, noting those plans call for a 9' wide porch extending from the northeast corner of the house in a straight line extending the wall and overhang of that house toward the northern property line. The hardship is the irregular size and shape of the lot duly 2nd, approved 5-0.

**Continued Application # 06-08:** Joseph and Sophie Amorando, 18 Fieldstone Drive for variances to zoning regulations for the purpose of constructing a 14' x 20' carport.

Maureen Walker made a motion to bring Continued Application # 06-08 to the floor, duly 2nd, approved 5-0.

The applicants approached the Board stating they continued to look for ways of reducing nonconformity. They have reduced the size of their carport from 14' x 20' to 12' x 20'. This will bring the side setback from 14' 8" to 16' 8". The Board noted the revised plan is still making a conforming side nonconforming. The Board discussed at one point the home had a garage which was converted to a bedroom and discussed their position on increasing nonconformity to get back something they already had and this was a self-created hardship and not a legal hardship. Discussion followed on reducing the size of the carport to 11' x 20'; however, this may not be a functional carport.

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

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

In the business session the Board discussed the revised plans still increase nonconformity and while there may have been times when they allowed an increase in nonconformity to build a garage, it was for the sole purpose of taking cars off the street and this house has off the street parking. The Board also discussed the home previously had a garage that was converted into a bedroom.

John Day made a motion to grant the variance with the new requested side setback of 16' 8" subject to the revised plans submitted of a 12' x 20' carport, the hardship is the irregular shape and size of the lot, duly 2<sup>nd</sup>, denied 0-5

**Application # 01-08:** Thomas and Janet Gibbons, 5 Glen Way for variances to zoning regulations for the purpose of constructing a 2<sup>nd</sup> story addition and changing the roofline.

Maureen Walker made a motion to bring Application # 01-08 to the floor, duly 2nd, approved 5-0.

Thomas Gibbons approached the Board along with his Attorney Neil Marcus and his architect Rich Cannali. Attorney Marcus explained the plans for a vertical expansion on the rear of the home. The home is preexisting nonconforming. The total height increase will be 3' 7" from the ridge. The total height of the home will be 29' 11" and a height variance is not required. The number of bedrooms will remain the same and the square footage of the addition is 336sqft. The addition will stay within the footprint on the ground and will not increase nonconformity, actually, they will decrease nonconformity

because the existing overhangs are 18" and 22" and during construction, these overhangs will be reduced to 12". Attorney Marcus read zoning regulation 2.4.3 into the record and discussed the Land Use process of constructing a vertical expansion on a nonconforming lot. A letter from Cliff Presco, 3 Glen Way was submitted into the record stating he is in favor of the addition.

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

Robert & Donna Rondono, 8 Glen Way, Attorney Ray Lubus, and Architect Michael Blank: approached the Board and submitted a certified deed from the Land Records in the Clerk's Office. They also submitted variance #10-99, which shows a previous vertical expansion in the front of the home that raised the roofline from the center ridge by 6' 4" to the rear roof edge by 8'. Attorney Lubus stated the additional 3' 7" in height will obstruct his client's view of the Lake. Discussion followed on the total height increases between the two proposals. Architect Michael Blank discussed ways of increasing the size of the home without increasing the height which included building under the deck, which is about 8' off the ground, finishing off the unfinished basement, or adding the 2<sup>nd</sup> story without increasing the height of the home.

The applicant and Mr. Rondono submitted pictures into the record, both sets of pictures were taken from the same location. The pictures showed a significant amount of trees. The Board inquired if the Rondono's could see the Lake in the spring and summer when the trees were in bloom. The trees do block most of their view, but they have a little window over the roof of the Gibbon's house, which is why the 3' 7" addition is taking away from their view. Discussion followed the Rondono's view of the lake will be slightly obstructed. The Tax Map was submitted into the record. Further discussion followed the addition will not have an attic, but pull down stairs to an attic space and at the most there will be is 5' in height at the ridge.

Architect Rich Cannali stated the existing roof leaks the increased height of 3' 7" is to keep the pitch of the roof so the elements run off rather than sit on the roof, causing the roof to leak even more. Architect Michael Blank discussed the pitch of the roof can remain the same without leaking if material other than asphalt shingles are used, such as copper sheeting. The applicants discussed the cost of using other materials.

Attorney Neil Marcus discussed zoning regulation 2.4.3 in depth.

John Day asked for any further public comment.

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

In the business session the Board discussed the various issues. There is no change to the footprint on the ground; there is no increase in nonconformity, but rather a slight decrease in nonconformity because the overhangs will be smaller. There is a prior variance to raise the roofline, the proposed expansion will have an impact on the neighbors' view of the Lake, and one or more alternatives have been discussed to achieve some form of expansion. Discussion followed that both the applicants and the neighbors took pictures from the same location, and both viewed the results differently. The Board discussed their views that once a height increase has been granted, it should not be done again and the first variance diminished the neighbor's lake views, and this will diminish their views further.

John Day made a motion to grant the variance subject to the plans as submitted and incorporating the hardship statement adopted in the 1999 proceeding, which is the irregular shape, size & slope of the lot, duly 2nd, denied 0-5.

**Application # 07-08:** Peder W. Scott, 283 Route 39 for variances to zoning regulations for the purpose of demolishing the existing home and replacing it.

Bob Jano made a motion to bring Application # 07-08 to the floor, duly 2nd, approved 5-0.

Peder Scott approached the Board and explained his plans to tear down the existing house and rebuild it. He has purchased land from the State starting at the “right of way” to help reduce nonconformity. This purchase increased the front setback from being over the property line to 10.8’ behind the property line. He will use the footprint of the existing house, with the exception of the front of the home that will exceed the original footprint, by 1’ but because he purchased the land from the state, he is not increasing nonconformity. The old height of the house is 20’ 8”; the proposed new average height is 29’ a height variance is not needed. Pictures were submitted of the neighbors’ house across the street, which sits up above this house and will not block their views of the Lake. Mr. Scott also took down an 80’ tall fir tree that he thought was a safety hazard for the new home, this also increased his neighbor’s view of the Lake.

The existing house prior to the land being purchased from the State was at 48% lot coverage. Now that the property has been purchased from the State the lot coverage with the proposal is reduced to 34%.

In August of 1989 variance # 66-89 was granted to construct a rear deck 2’ away from the property line. The survey submitted shows the rear deck goes over the property line and onto 1<sup>st</sup> Light’s property. Discussion followed that we did not advertise 1<sup>st</sup> Light’s property in the Legal Notice. John Day explained how to move forward with the application. The applicant stated he would reduce the size of the deck to be even with the property line.

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

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

In the business session the Board discussed the applicant went from a 0’ setback to a 10.8’ setback because he purchased land from the State. There is a height increase, but it does not require a height variance and there is no adverse impact on the neighbors. Although the lot coverage still exceeds zoning regulations, it has been reduced significantly, again because of the purchase of the additional land.

John Day made a motion to grant the variance for a front setback of 10.8’, a side setback to 19’ and a rear setback to 0’ subject to the plans as submitted except the rear push out will not exceed the property line. The hardship is the size and slope of the property. Noting the net increase in the front property there is no increase in nonconformity.

**Application # 08-08:** Ken and Stefanie Thuesen, 14 Bay Drive, for variances to zoning regulations for the purpose of constructing a 2<sup>nd</sup> floor addition and constructing 3 decks.

Bob Jano made a motion to bring Application # 03-08 to the floor, duly 2<sup>nd</sup>, approved 5-0.

The applicants approached the Board and explained their plans for a 2<sup>nd</sup> story addition and decks in the rear of the home. The property is just under an acre. The existing house is on the property line. The 2<sup>nd</sup> story addition will be on ½ of the house and will not exceed the existing footprint. The height increase will be 15' and a height variance is not required. The applicants own the property across the street and the addition will not interfere with that view. The existing home is 3,269sqft. with the addition the home will be 4,606sqft. The number of bedrooms will not increase.

The property does not have any existing decks, just a patio. The decks will provide them with views of the Lake. One of the decks will come across the back of the house on the 2<sup>nd</sup> story and will not exceed the existing patio, and another deck will be off the 1<sup>st</sup> floor from the kitchen area. All of the decks will exceed the line of the house, and discussion followed on a previous application heard tonight. John Day explained how to move forward with the application. The applicants stated they wanted to bifurcate the application the decks as one vote and the 2<sup>nd</sup> story as another.

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

John Day made a motion to move into the business session duly 2<sup>nd</sup> approved 5-0.

In the business session the Board discussed the 2<sup>nd</sup> story addition does not increase nonconformity. There is no change in the footprint on the ground, no adverse impact on the neighbors and a height variance is not required.

John Day made a motion to grant the vertical expansion that does not go outside the existing footprint be granted, the hardship is the irregular shape and slope of the lot subject to the plans as submitted, duly 2<sup>nd</sup>, approved 5-0.

The Board discussed the decks. Some members opposed the decks because they believe that houses and decks should be voted on as separate issues and the line of nonconformity for a house starts with a house or other building and the line of nonconformity for a deck starts with a deck or other structure that is not a building, which historically has been the practice of the ZBA. Other members thought the line of nonconformity starts with the closest point of a building or structure while others thought each case is treated individually, which would allow their votes to vary. The Board discussed a previous case heard tonight.

John Day made a motion to grant the variance for the decks with a rear setback to 4' the hardship is the same as above, subject to the plans as submitted, duly 2<sup>nd</sup>, approved 4-1. John Day voted to deny the variance.

**Application # 09-08:** Louise Arpaia, 1 Carleon Road, for variances to zoning regulations for the purpose of constructing a single family home.

John Apple made a motion to bring Application# 09-08 to the floor, duly 2<sup>nd</sup>, approved 5-0.

Several members of the public were present for this application. Joe Reilly of Reilly Brothers Contracting LLC is the applicant. No one was present to represent this application. The Chairman stated correspondence dated April 10, 2008 was received from the ZEO, Maria Horowitz indicating the correct setbacks were not on the application, and therefore we have an advertising issue. Additionally there is a timing issue involved with this application and the Board has not receive any correspondence from the applicant or his agent requesting the application remain unopened for the April meeting, therefore due to the time constraints, the application was opened and continued without further discussion.

John Apple made a motion to adjourn the meeting at 10:45pm duly 2nd, approved 5-0.