

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

**MINUTES
August 21, 2008**

The New Fairfield Zoning Board of Appeals held a regular public hearing followed by a business session at 7:00pm on Thursday August 21, 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, Joe DePaul, and Bob Jano.

ZBA members absent: John Apple, and Jack Michinko

Town Officials in attendance: None

Chairman, John Day called the meeting to order at 7:09pm, introduced the Board members and explained the meeting process, voting procedures of a 4 member Board, 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 added a discussion regarding a newspaper article about emailing and FOIA implications to the end of the Agenda. John Day made a motion to adopt the Agenda as amended duly 2nd approved 4-0. Secretary, Laurie Busse, read the Call of the Meeting.

Continued Application # 26-08: Elizabeth Smith, 14 Pondfield Road, for variances to zoning regulations for the purpose of screening in an existing deck.

Joe DePaul made a motion to bring Continued Application# 26-08 to the floor, duly 2nd, approved 4-0.

John Day read a letter dated August 21, 2008 from Rick Salem, Agent into the meeting. This letter requested the application not be heard tonight as he is on vacation. John Day made a motion to continue the application until the September 18, 2008 meeting, noting the application must be heard at this meeting as the applicant will be out of time; duly 2nd, approved 4-0.

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.

Bob Jano made a motion to bring Application # 33-08 to the floor, duly 2nd, approved 4-0.

Tricia and Mary Lynch approached the Board. They explained the history of the home and how the builder had always promised them a larger deck, and not the 3' x 3' landing they have. The lower deck is legal and the upper deck is not. The applicant also discussed the problems they have had with their attorney and their builder's attorney regarding this home. The applicants are proposing a 10' x 14' deck and discussed other new homes in the area that have larger decks and similar setbacks. The Board

discussed the variances and minutes from the prior meetings with the applicants. The Board understands the applicants' position that they were unaware of the 2005 and 2007 variances, but they also discussed their position on increasing nonconformity. The Board noted the original variance #01-05 had a side deck, which did not require a variance. The Board noted the 2007 Minutes are on the Town's website and the 2005 Minutes as well as all other Minutes are on file with the Town Clerk's office. John Day explained options on how to move forward with the application. The applicants stated they would like to continue to the September 18, 2008 meeting.

John Day made a motion to continue the application to the September 18, 2008 meeting, July 2nd, approved 4-0.

Application # 34-08: Philip and Alison Kraska, 34 Windmill Road, for variances to zoning regulations for the purpose of constructing a 2nd story addition and a front porch.

Bob Jano made a motion to bring Application # 34-08 to the floor, July 2nd, approved 4-0.

Tammy Zinick, agent and Mr. & Mrs. Kraska approached the Board and explained the home was built around 1940 and is preexisting nonconforming. The addition will consist of a 2nd story and a front entrance. The 2nd story addition itself is not encroaching on the front setback but the proposed front entrance way is. The existing front setback is 31.5'. The proposal of the covered front porch will bring the front setback to 29.5' and they are asking for a 29' front setback for "wobble room". Currently the applicants access their home from the rear of the house and it is important to have an entranceway closest to the driveway. This proposal increases nonconformity. The applicant discussed the steep slope of the property. The Board discussed their position on increasing nonconformity and looked for ways to have a front entrance without increasing nonconformity. John Day explained how to move forward with the application. Tammy Zinick requested a short break. John Day made a motion to take a short break, July 2nd approved 4-0.

Back from the break the applicants clarified what setback they needed to stay within. The Board explained the existing front setback is 31.5' and they should try to stay within that setback. The applicants and the Board discussed proposals that will bring them no closer to 31.5' from the front setback. The Board explained Variances are granted per the plans submitted and they would need new plans showing the changed proposal. The applicants did not want to continue the application as this would delay them an additional 30 days and requested to step back and draw on their plans and submit those plans for the files. John Day made a motion to suspend application # 34-08 and bring them back when they were ready, July 2nd approved 4-0.

After the Board heard application # 37-08 the applicants returned. There was much discussion with the Board as to how far the covered deck will extend. The Chairman summed the discussion up as follows: The covered porch runs from the 31.5' setback in a straight line extension from the overhang 52' toward the Male's property but the porch may extend uncovered to the edge of the proposed deck in the plans submitted.

Maureen Walker made a motion to enter the business session, July 2nd, approved 4-0.

In the business session the Board discussed there is no increase in nonconformity and the applicants' ability to be flexible.

John Day made a motion to grant the variance for a front setback to 31.5' per the plans submitted subject to the following change; in lieu of the proposed entrance way as drawn in the original plans we will grant a Variance for a covered porch starting at a point 31.5' from the Windmill Road boundary that being the overhang of the roof over the existing one story dwelling closest to Windmill Road and extending a line of that overhang approximately 52' toward the Male's property. The Board is satisfied based on the survey that that line will not come any closer to Windmill Road than 31.5' with the option to extend the deck uncovered beyond the 52' to the edge of the proposed deck in the plans already submitted relative to the setback from the Male's property. It is subject to the plans as submitted as modified of course noting for those purposes the Board is only concerned with the site plan and the internal arrangements and the engineering plans are not before the Board and are not a condition of our approval or a restriction imposed by the Board, the hardship is the size and slope of the property, duly 2nd, approved 4-0.

Application # 35-08: James and Deidre Reuther, 26 Fulton Drive, for variances to zoning regulations for the purpose of raising the roofline over a portion of their home.

Maureen Walker made a motion to bring Application # 35-08 to the floor, duly 2nd, approved 4-0.

James Reuther approached the Board and explained that one room of his home has a ceiling height of only 79" and would like to raise the roofline so he can have "standing room" in this part of the house. There will be no changes to the footprint on the ground; there will be no increase in the net height of the home. The applicant is asking for a 20' front setback because he has two surveys that show two different front setbacks. One front setback is 20.7' and the other is 20.3'. Mr. Reuther stated he would not exceed the existing footprint of the home and will not increase nonconformity. The overall height of the home is approximately 28' and the addition will not exceed the existing height of the home. Some of the Board members discussed a bay window that may be closer than 20.7' to the front setback. It was decided the bay window is grandfathered and not in front of the Board.

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

John Day made a motion to go into the business session, duly 2nd, approved 4-0.

In the business session the Board discussed this is a straightforward vertical expansion; there is no increase in nonconformity, no change to the footprint on the ground, no increase in nonconformity, no change in height or change in use and there is no adverse impact on the neighbors.

John Day made a motion to grant the variance the hardship being the irregular size and shape of the property noting it is subject to the plans as submitted. The front setback used will be 20.3' with the understanding that the actual dimension is whatever the true measurement is from the existing structure to the property line because that's not being changed by the proposal and noting for the record that the Board isn't expressing a view on the status of the bay window one way or another duly 2nd, approved 4-0.

Minutes: Bob Jano made a motion to adopt the Minutes of the July 17, 2008 meeting July 2nd; approved 2-0-2; Maureen Walker and Bob Jano voted to approve the Minutes. John Day and Joe DePaul abstained.

Application # 36-08: Frank and Catherine Ross, 29 Lakeshore North, for variances to zoning regulations for the purpose of modifying a previously approved variance and adding a deck.

Maureen Walker made a motion to bring Application # 36-08 to the floor, July 2nd, approved 4-0.

Mr. Ross approached the Board and discussed the previous variance # 58-07; at that time he requested to rebuild the house and dropped the deck from the application because it would increase nonconformity and lot coverage. The applicants wanted to put a deck on the house and the original deck was large so he cut that back. He revised his plans and flip-flopped the steps to the deck, in doing this they didn't violate any of the existing setbacks because of the way the deck is it comes out about 4' and goes on an angle so they are no closer to the setbacks they were granted last time. The Board looked at the setbacks that were granted last time and in that sense they are not increasing nonconformity from the prior approved variance. Although there is a very slight increase in lot coverage there is still a reduction from the original lot coverage, just not as much as originally approved. The Board discussed their position on this.

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

John Day made a motion to go into the business session, July 2nd, approved 4-0.

In the business session the Board discussed they are revising the approved variance to add a deck and are still significantly reducing lot coverage from the original home, even though there is a slight increase from their last proposal. The applicants are not coming any closer to the previously varied setbacks and in a sense are not increasing nonconformity.

John Day made a motion to grant the Variance for a north side setback to 16' and a south side setback to 17' and a rear setback of 29.4' for the purpose of constructing a deck the hardship being that placed in the record with respect to the prior variance subject to the plans as submitted and noting relative to the existing structure this does not increase nonconformity July 2nd, approved 4-0.

Application # 37-08: Jeffrey J. and Anna M. Healy, 12 Cedar Lane and 9 Fair Lane, for variances to zoning regulations for the purpose of demolishing the existing house and replacing it and enlarging the deck.

Maureen Walker made a motion to bring Application # 37-08 to the floor, July 2nd, approved 4-0.

Jonathon Encarnacion representing the applicants approached the Board explaining the home was abandoned and is in ill repair. The applicants plan to tear it down and rebuild on the existing foundation including the steps. The lower portion of the home will have a 2nd story addition and may be higher than the home but a height variance is not required.

There is no change to the footprint on the ground and the size of the overhangs on the cantilevered portion of the house reduces nonconformity on that part of the building.

The existing rear deck is 13' x 13' and the proposal is to increase the deck to 20' x 13' which increases nonconformity. The applicants own the empty lot to the rear of the property and there is a small strip of land owned by the association that separates these two lots. The applicants are in the process of purchasing that small 2' strip of land that separates the two lots and then combining them to become one lot, and when completed, a rear setback will not be required. The Board discussed their position on increasing nonconformity and looked for alternate ways to enlarge the deck without increasing nonconformity. The applicant stated he would not go past the existing setback of 35.9'

John Day asked for any further public comment—

John Day made a motion to enter the Business Session, July 2nd, approved 4-0.

In the Business Session the Board discussed the proposal as modified does not increase nonconformity and the variance is consistent with the current dimensions and there is a reduction in nonconformity in another section of the proposal because the overhangs to the cantilevered section don't go out as far as the existing overhangs.

John Day made a motion to grant the Variance with a front setback to 24' 1" and a rear setback to 35'9" the hardship is the irregular size and slope of the lot, subject to the plans as submitted with the following change that is that the rear setback for purposes of the deck is granted only to the extent of 35' 9" that being the surveyed distance from the existing deck from the rear boundary and with that change this proposal doesn't increase nonconformity July 2nd, granted 4-0.

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

Maureen Walker made a motion to bring Application # 38-08 to the floor, July 2nd, approved 4-0.

Chris Donahue representing the applicants approached the Board and noted the requested setbacks are incorrect and are actually closer to the boundary than the application indicates. John Day explained how to move forward. The applicant would like to continue to the September 18, 2008 meeting, the Board noted due to the upcoming Labor Day Holiday the cut off date for the correct setbacks is this Tuesday August 26. John Day stated if the applicant cannot get the correct setbacks to us by August 26 then they can withdraw their application and resubmit; and he will waive the filing fee provided they resubmit within a reasonable time frame.

Maureen Walker made a motion to continue the application to the September 18, 2008 meeting, July 2nd, approved 4-0.

Discussion: An article was distributed to the Board. The Chairman discussed with the Board the importance of being really careful when making comments about cases in response to the secretary's emails because those emails are usually sent to at least 3 Board members and 3 is a quorum. If there is a comment made about a case in an

email that goes to 3 Board members including the sender the Freedom of Information Act (FOIA) has been violated. The sender must be sure not to hit the reply all button and make sure they address only the Chairman or the Secretary in their replies. This can be difficult because if the sender emails the chair and cc's the vice chair in an email, then they are in violation of the FOIA. The article also suggested that Board members save all of their emails regarding Board business; however, John Day stated that they would not have to do this if Board business other than meeting arrangements was not discussed in an email.

John Day made a motion to adjourn the meeting at 10:20pm duly 2nd approved 4-0.