

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

**MINUTES
December 18, 2008**

The New Fairfield Zoning Board of Appeals held a regular public hearing followed by a business session at 7:00pm on Thursday December 18, 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 Jack Michinko, Bob Jano, and John Apple

ZBA members absent: Joe DePaul and Michelle Rhyce

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, and voting procedures.

Secretary, Laurie Busse read the proposed agenda for the meeting. John Day asked if there were any amendments to the Agenda—none heard. Bob Jano made a motion to adopt the Agenda, duly 2nd, approved unanimously. Secretary, Laurie Busse, read the Call of the Meeting.

Application # 53-08: Dennis Carlson, 2 High Trail Road, for variances to zoning regulations for the purpose of legalizing a deck with stairs to grade.

John Apple made a motion to bring Application # 53-08 to the floor, duly 2nd, approved 5-0.

Dennis Carlson and Attorney Raymond Lubus approached the Board. The 10' x 16' deck was constructed with stairs to grade and is in line with the house. The stairs to grade are approximately 3' wide. The house is a corner lot with 2 possibly 3 fronts. The front of the house faces High Trail Road. The rear of the house faces Candle Hill Road. Discussion focused where Candle Hill Road and High Trail Road meet could possibly be a 3rd front. Chairman Day explained how the Board views structures that are built without permits. The Board discussed the deck goes no closer to any boundary than the existing legal house and it moves further away from the boundary line facing Candle Hill Road. There is a legal garage that is substantially closer than the deck to the High Trail Road boundary line.

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

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

In the Business Session the Board discussed the deck does not increase nonconformity and there is no impact on the neighbors. Further discussion focused on the 2 possibly 3 fronts.

John Day made a motion that the Variance be granted for 2 front setbacks to 32.9' and 32' the hardship is the irregular shape and size of the lot and subject to the site as constructed presently and it does not increase nonconformity duly 2nd, approved 5-0.

Minutes: Bob Jano made a motion to adopt the Minutes to the November 18, 2008 meeting, duly 2nd, approved 5-0.

Application # 54-08: Adam and Nicole Furphy, 10 Inglenook Road for variances to zoning regulations for the purpose of constructing a portico with stairs to grade.

John Apple made a motion to bring Application # 54-08 to the floor, duly 2nd, approved 5-0.

Adam Furphy approached the Board. Mr. Furphy stated he has multiple front setbacks because Inglenook Road goes up and around his home giving him 3 possibly 4 fronts. Mr. Furphy proposes to construct a portico along the front of his home and extend it over towards the garage. The well is located inside the garage and there is an extreme slope on the property which causes his garage to flood on a regular basis and compromises the safety of his well. There is no overhang on this part of the home and the elements have eroded his front door, stairs and garage. The portico will prevent the water from intruding any further. The existing front setback is 21.6' and the requested setback is 16'. This increases nonconformity by more than 5'. To help reduce the increase in nonconformity Mr. Furphy proposes to reduce the size of the stairs from over 6' to 5.5' and turn the stairs sideways. Observing the survey from one angle it appears the corner of the stairs to the property line are the same as the home, however if you observe the survey from a different angle, there appears to be a difference. The chairman requested the distance from the corner of the stairs to the property line. This information is not on the survey. The Board discussed that although there is a need for something to be done to prevent water damage, the proposal clearly increases nonconformity. Board members expressed their opinions on need v. increase nonconformity. Some Board members weren't so sure that this was the only proposal that would help prevent further water damage.

John Day explained how to move forward with the application. Mr. Furphy stated he has a unique situation with his well being located in his garage and the need to keep water out of the garage as well as a hardship due to the slopes and several fronts of his property. He would like the Board to vote on the proposal as submitted. John Day explained the 6 month rule.

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

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

In the Business Session the Board discussed if increasing nonconformity is an acceptable trade off or not. Several Board members believed the need existed and the trade off was acceptable. Some Board members are not sure if there are other alternatives available that would solve the problem with out such a large increase in nonconformity or increasing nonconformity altogether. The Board discussed the increase in nonconformity was not for increased living space, but rather to protect the home and well from any further water damage. Some Board members discussed other options such as constructing a one foot eve around the home or perhaps a one foot eve

would not solve the problem, but there are no factual options in the public session and they are unsure where the slope on the property is and if the slope runs toward or away from the home. There is too much missing information.

John Day made a motion to grant the Variance for a front setback of 16' subject to the plans as submitted the hardship is the size and shape of the property, duly 2nd, denied 0-5.

Application # 55-08: Russell and Cindy Kaye, 1 Overlook Road, for variances to zoning regulations for the purpose of revising a previously approved Variance.

Maureen Walker made a motion to bring Application # 55-08 to the floor, duly 2nd, approved 5-0.

Russell Kaye and his builder Rory Languth approached the Board. They explained they received Variance # 39-08 in September to construct a roof over the existing rear deck. Those plans showed a shed roof going straight across the deck. When his builder came on the scene he noticed the shed roof was going to enclose the deck a lot and the beams would create a low ceiling height. The only significant change is that instead of going straight across the back they propose to turn a gable roof at one end of the deck and this will open it up and give them more head room. The Board discussed there will be no change in the footprint on the ground and there will be no increase in height of the existing building. There is no impact on the neighbors. There will be no screens, or heat the roof is just to keep the water off of the deck.

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 there is no increase in nonconformity, no impact on the neighbors, no increase in height and no change in the footprint on the ground.

John Day made a motion to grant the Variance with a rear setback of 39' subject to the plans as submitted and incorporating the hardship from the prior Variance # 39-08, noting this proposal does not increase nonconformity, duly 2nd, approved 5-0.

Application # 56-08: Edward and Lilouty Gerrity, 7 Whitney Drive, for variances to zoning regulations for the purpose of reconstructing a house.

Maureen Walker made a motion to bring Application # 56-08 to the floor, duly 2nd, approved 5-0.

Ed Gerrity approached the Board. He explained his home was destroyed by fire and before the fire the Connecticut New York Border Line ran through the middle of his home. He is proposing to move his home all the way inside the Connecticut border for tax purposes. Mr. Gerrity purchased the vacant adjoining lot about six years ago. The Board discussed there was a tent type car port up prior to the fire. The plans to relocate the home will increase nonconformity on the property line opposite Fulton Road; however it will decrease nonconformity on the property line opposite Whitney Drive. Discussion followed on how far the existing home is from the property line.

John Day stated there are 3 aspects to this application as follows:

- New construction
- Elevation shots showing proposed house
- Letter from Rich Jackson, Town Sanitarian stating the septic system is in the only possible location

Mr. Gerrity had one elevation shot, the Board reviewed it and decided additional elevation shots would be helpful but not required, however they must have the letter from Rich Jackson to make sure the home can be constructed in the new location.

John Day made a motion to continue the application to the next regularly scheduled meeting, duly 2nd, approved 5-0.

Application # 57-08: Ronald and Ethel Kern, 6 Shore Drive, for variances to zoning regulations for the purpose of constructing a 2 story addition.

Bob Jano made a motion to bring Application # 57-08 to the floor, duly 2nd, approved 5-0.

Ronald Kern, Michael Streeman, and Attorney Thomas Beecher approached the Board. Attorney Beecher handed out an informational packet. While the applicant was away, the contractor started construction, and Mr. Kern stopped the construction upon his return.

The applicants are requesting a west side setback that was previously varied to 12' 6" to 8.4' for a 2 story addition that will be 9' x 12', go up to the existing roof line with a cathedral ceiling and it will not be used for living space per say but to enclose a stairwell from an outside basement door. There is no interior access to the basement and the applicants are in their 70's and the exterior basement entrance is getting difficult for them. The Board stated health is not a hardship for a Variance. A picture was submitted.

The stairwell foundation is not new, it has recently been refaced. Two of the stairwell walls are part of the house foundation. The other 2 walls might have been constructed in 1982 during renovation and reconstruction after a fire that damaged the garage and the west side of the home. Supporting letters from neighbors were submitted. In 1982 Variance # 07-82 was granted for a vertical expansion for the purpose of installing solar panels only. In December 1972 Variance # 35-72 was granted for the west side setback to 12' 6". There is no record of a variance or building permit for the stairwell foundation. The Tax Assessor's records indicate a basement area that is larger than what the applicants say they have.

The applicant is requesting the west side be varied again to 8. 4'. The Board discussed their position on varying a previously varied setback that would increase nonconformity. Further discussion focused on lot coverage. Maria Horowitz's report indicates lot coverage is currently 24% and the proposed addition would bring it to 25%. Attorney Beecher stated the property was surveyed and the current lot coverage is 21.8% and after the construction of the addition, it will remain 21.8% because they are enclosing what already exists, therefore a lot coverage variance is not needed. Variance # 35-72 varied lot coverage.

There was a lengthy discussion if the stairwell is a building or a structure. This is a key issue because a building is grandfathered after 3 years and a structure is never grandfathered. Some Board members took the position that the foundation is a structure that is attached to the house similar to the way a deck is a structure that is attached to a house. Attorney Beecher believed the stairwell foundation is part of the house and is considered part of the basement and the Tax Assessor's records indicate that a portion of the foundation is considered part of the basement. The Board stated the zoning regulations state a building has to have a floor, 4 walls and a ceiling. The stairwell does not have an enclosed area that is connected to the rest of the basement of the house or a wall of the house. Therefore it is a structure and would not be grandfathered. John Day read from the zoning regulations the definition of a basement and a building. Further discussion focused on if the stairwell foundation was something such as a patio that is close to or at grade level then it would not be in the zoning regulations and if that is the case the addition would increase nonconformity. The foundation comes up about a foot above grade, which in that case a variance wouldn't have been required in 1982 because it wasn't part of the building it was an at or close to grade structure, not within the zoning regulations. The Board members discussed their individual positions if the foundation to the stairwell was a building or a structure.

John Day asked for any further public comment—none heard

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

In the Business Session John Day stated the Board must determine if the foundation is a building or a structure, or something that was at or close to grade level and not within the zoning regulations. This is important because of the grandfathering rule and the ZBA already varied this side in 1972. If the Board determines the foundation is not within the zoning regulations or is not part of the existing building then there is a 4' increase in nonconformity. If the Board determines the foundation is part of the building then this is a vertical expansion and does not increase nonconformity.

John Day made a motion to grant the Variance for a side setback to 8.4' subject to the plans as submitted, the hardship is the irregular shape and size of the property, July 2nd, denied 3-2. Bob Jano, Jack Machinko, and John Apple were in favor of the Variance. John Day and Maureen Walker were opposed to the Variance.

2009 Meeting Dates and Application Deadlines: The only revision to the 2009 Meeting Dates and Application Deadline dates are for the January meeting. The meeting was changed from January 15 2009 to January 22, 2009. The deadline application date was changed from December 18, 2008 to December 22, 2008. The reason for this change is that the Citizen News will not publish a paper the week of New Years, which is the week our Legal Notice for the January 2009 meeting must appear in. The Citizen News charges approximately \$55.00 (fifty five dollars) to \$75.00 (seventy five dollars) for our Legal Notices. If we had to advertise in the Danbury News Times the cost would be near \$500.00 (five hundred dollars). This is a cost that we cannot afford to incur. The Chairman further discussed the ZBA did not get the budget they requested and in addition there was a 3% budget freeze implemented in July. There is an additional 3% budget freeze in effect which may or may not be temporary. Further discussion focused that our budget is not padded and if we do not have the money to operate then the Board would have to shut down and that would result in Variances being automatically granted per State Statute. The Board discussed the costs of legal

notices per public hearing and the options of charging applicants an additional fee to continue the case or increase our fee from \$150.00 (one hundred fifty dollars) to \$200.00 (two hundred dollars). There is also a \$30.00 (thirty dollar) fee that we pay to the State for every application. It was the consensus of the Board to raise the application fee to \$200.00 (two hundred dollars).

John Day made a motion to approve the revised 2009 Meeting Schedule and Application Deadline date, July 2nd, unanimously.

Bob Jano made a motion to adjourn the meeting at 9:50pm July 2nd approved unanimously.