

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

**MINUTES
June 19, 2008**

The New Fairfield Zoning Board of Appeals held a regular public hearing followed by a business session at 7:00pm on Thursday June 19, 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, and Jack Michinko.

ZBA members absent: John Apple, and Joe DePaul

Town Officials in attendance: Maria Horowitz, Zoning Enforcement Officer {ZEO}

Chairman, John Day called the meeting to order at 7:00pm, 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 and process for a recusal.

Secretary, Laurie Busse read the proposed agenda for the meeting. In response to the Chair's request for any suggested changes in the agenda as read, Attorney Ray Lubus explained Continued Application # 13-08 is out of time and he would like to withdraw and resubmit in July in hopes of a 5 member Board. Chairman John Day agreed to honor the Board's prior offer to waive the filing fee when the application is resubmitted for this case under all the circumstances. John Day made a motion to remove Continued Application # 13-08 from the Agenda and adopt the Revised Agenda a revised; the motion was duly 2nd approved 4-0. Secretary, Laurie Busse, read the Call of the Meeting.

Application # 18-08: Ronald E. and Winifred C. Graiff as Trustees, 52 Bogus Hill Road, for variances to zoning regulations for the purpose of varying a previously approved Variance to allowed use allowed under Garage, Private.

Bob Jano made a motion to bring Application# 18-08 to the floor, duly 2nd, approved 4-0.

Ron Graiff approached the Board. Mr. Graiff explained in November 2007 he requested a variance to construct a 2nd detached garage with the view to storing one or more boats, asserting they were motor vehicles for those purposes. The Board granted Variance # 46-07 for the purpose of constructing a 2nd detached garage, but noting in the Variance Description that the Board took no position as to whether a boat is considered a motor vehicle for the purpose of the relevant zoning regulations. Mr. Graiff feels that this text suggests he is doing something he shouldn't. He would like to have the Board revise this Variance by removing that last sentence from the Variance Description. Since the November 2007 meeting Mr. Graiff and his wife have purchased a home down south and two of their boats will be moved to that home permanently. Mr. Graiff stated he has not filed Variance # 46-07 with the Town Clerk.

The Board read zoning regulation 3.1.1c into the meeting, which refers to motor vehicles. Zoning regulation 3.1.1g was read into the meeting, which refers to the storage of boats in this residential zone. The Board discussed these regulations. The Minutes of the November 15, 2007 meeting for application 46-07 were read into the record. The previous Variance does not decide the boat issue and the Board does not see grounds to remove the last sentence based on a change of the owners' heart, noting the letter of non compliance may be incorrect in its characterization of the previous Variance granted.

Further discussion focused on the applicant needs relief from zoning regulation 3.1.1g, which the applicant has not requested and was not advertised in either this or the prior Variance. The applicant has indicated that he is now in compliance with zoning regulation 3.1.1g and therefore the matter is not before us. The Chair asked if there is no violation of 3.1.1c then perhaps the matter is not properly before us. Mr. Graiff asked how to remove the last sentence from the Variance Description. The Board discussed how the Variance Description accurately reflects the discussion of the November 15 2007 meeting. If the Board were to remove this last sentence, then a future owner or advocate would have the opportunity to say that there is obviously some substantive meaning to the deletion of that sentence and perhaps the Board did express a view with respect to the boat vs. motor vehicle issue. The Board noted that both variances would be a matter of public record and although the applicant may not file both variances with the Town Clerk, the Minutes are permanently on file with the Town Clerk and ZBA records are public records which can be viewed by anyone with an interest in the issue. Tonight's application is not an appeal of the prior variance and the only way to appeal any variance is through Danbury Superior Court within the specified time period, which was not done. If the applicant is requesting the expungement of the prior variance than that is beyond the scope and authority of this Board to expunge any and all reference to the prior variance. The Board can vote on the new variance requested or refuse to vote if we lack jurisdiction in this matter for lack of any claimed violation. Correspondence from Town Counsel was read into the meeting, which indicates the ZBA may not have jurisdiction on this matter.

Mr. Graiff read page 6 of the zoning regulations garage definitions and page 75 of the regulations 3.1.8c Misc. Provisions.

John Day explained how to move forward with the application, and asked if the applicant wished a continuance or a vote on the matter tonight. The applicant requested the Board vote on the application.

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

Bob Jano made a motion to move into the Business session, duly 2nd, approved 4-0.

In the Business session the Board discussed their views as to whether the last sentence of the prior variance could legally be removed. The prior variance was granted without the Board taking a position on the boat issue, and although there was correspondence regarding the wording of the application, the wording was not changed and at that point if the applicant took issue with the wording, an appeal should have been filed but was not. A cloud does not exist on the property or applicant because the Board explicitly did not take a position on the boat vs. motor vehicle issue. Contrary to the letter of

noncompliance, the record is clear the previous variance was not granted to permit the use of the building exclusively for boats.

John Day made a motion to grant the variance the hardship being that placed in the record last November when the prior variance was heard; noting the factual representations in the record of tonight's proceeding, duly 2nd, denied 0-4.

Minutes: Bob Jano made a motion to adopt the Minutes of the May 15, 2008 meeting duly 2nd; approved 3-0-1 Maureen Walker abstained.

Application # 19-08: Michael and Mary Ann Smyth, 11 Titicus Mountain Road, for variances to zoning regulations for the purpose of constructing a portico.

Maureen Walker made a motion to bring Application # 19-08 to the floor, duly 2nd, approved 4-0.

Michael Smyth and Charles Aldridge approached the Board. They explained the home was built 75' from the front setback. Due to the wetlands on the property the home could not be pushed back any further and the front steps required a variance. Variance # 07-92 was granted for stairs to grade 70' away from the front property line. The applicant would like to construct a portico directly over the stairs. The portico will not come any closer to the front property line or be any wider than the existing stairs and they will not increase nonconformity. The Board discussed the application requests a front setback to 69'. The applicant stated this is an oversight and requested to change the front setback to 70' to match the stairs. The Board discussed this is a minor vertical expansion over something that was previously varied.

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

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

In the business session the Board discussed this is a minor vertical expansion, there is no increase in nonconformity and the original Variance was granted due to wetlands.

John Day made a motion to grant the variance with a front setback to 70'. The hardship is the wetlands and the topography of the lot subject to the plans as submitted noting the front setback is to 70' and not the advertised 69', duly 2nd, approved 4-0.

Application # 20-08: James and Lynn Mead, 80 Lake Drive South, for variances to zoning regulations for the purpose of constructing an addition to the garage.

Maureen Walker made a motion to bring Application # 20-08 to the floor, duly 2nd, approved 4-0.

Lynn Mead approached the Board along with her attorney Ray Lubus and her architect Anita O'Brien. Attorney Lubus stated he would like to remove the side setback of 19.7' from the application. The purpose for the addition is to create a home office in the garage and add a half bathroom. The rear setback to 35' is further away from the boundary line than the existing house. There is no increase in nonconformity. There will be a vertical expansion over the garage and the net height will not exceed the height of the home. The use of a home office is not in front of the Board. Chairman John Day

read letters from Clifford Jensen, 78 Lake Drive South dated 6/18/2008 and Ken and Mary Kennedy, 82 Lake Drive South dated 6/19/2008. Both of these letters state they approve of the addition. Noting for the record these neighbors live on the sides of the applicant. The applicants own the property across the street, which has an upward slope, and there will be no adverse affect on the neighbors. Maria Horowitz stated she has no comment.

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

Bob Jano made a motion to move into the business session, duly 2nd, approved 4-0.

In the business session the Board discussed this is a straight forward vertical expansion and the home office is not in front of them. There is no increase in nonconformity; there is no change to the footprint on the ground, a height variance is not needed and the height of the garage will not exceed the height of the home. Views of the lake will not be impacted and there are letters of support from the neighbors.

John Day made a motion to grant the variance for a rear setback to 35' subject to the plans submitted, noting there is no increase in nonconformity. The hardship is the irregular shape and slope of the lot duly 2nd, approved 4-0.

Application # 21-08: Lawrence E. and Marietta J. Schiff, 3 Coves End, for variances to zoning regulations for the purpose of extending the 2nd floor.

Maureen Walker made a motion to bring Application # 21-08 to the floor, duly 2nd, approved 4-0.

Larry and Marietta Schiff approached the Board. They explained their plans to build straight up to increase the bedroom. They will not change the foot print on the ground, there will be no increase in nonconformity and there will be no change in the net height of the home. The house is built on an angle to the property line and there will be no impact on the neighbors. There will be no change in use. Maria Horowitz stated she has no issues with the application.

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

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

In the business session the Board discussed this is a straight forward vertical expansion, there is no increase in nonconformity, and there is no impact on the neighbors.

John Day made a motion to grant the variance for a front setback of 23.3' subject to the plans as submitted; noting there is no increase in nonconformity. The hardship is the small shape and size of the lot duly 2nd, approved 4-0.

Application # 22-08: Bradley Harrington, 230 Route 37, for variances to zoning regulations for the purpose of legalizing and extending an existing deck with stairs to grade.

Jack Machinko made a motion to bring Application # 22-08 to the floor, duly 2nd, approved 4-0.

Brad Harrington approached the Board and explained the deck has been on the house for at least 25 years. The deck is on the 1981 Field Card, but not on the 1971 Field Card. The 1971 Field Card does not show any type of stairs or deck. The Board discussed a deck is a structure and therefore never grandfathered. The Board discussed if a deck and or some type of stairs are not shown on the 1971 Field Card, what type of egress did the previous home owners have? Discussion followed there had to be something there in order to enter and exit the home. The home is 40' from the front setback and the existing deck is 32' from the front setback. Discussion followed if the deck had never been built would they allow it today? The applicant showed pictures of the home. The house sits where it is because of the significant slope on the property

Mr. Harrington proposes to extend the deck the length of the home. The existing deck is 32' x 8' and he proposes a 42' x 8' deck, which will not come any closer to the front setback than the existing deck. As you face the house on the right side of the house the front deck will connect to a side deck with a rounded front and that side deck with the rounded front is not before the Board. As for the left side of the home the front deck will wrap around the side with stairs to grade. These stairs will be near the entrance to the basement. There is no way to access the basement from inside the house. The requested side setback for the stairs is 10.4'. The Board discussed the existing side setback is 15.4'. The size of the chimney on the side of the home has to be at least 2' wide. Legally the stairs need to be 3' wide and this will increase nonconformity by approximately 3'. The Board discussed their position on increasing nonconformity. Mr. Harrington said he would like to have these stairs, but can live without them if the application will be denied. The slope behind the house is all up hill.

John Day explained how to move forward with the application. Mr. Harrington said he would like to scrap the stairs and vote on legalizing the front deck and extending it. To clarify matters John Day stated that at the applicant's request they will be voting on the revised proposal as follows:

- Legalize the existing deck which is 32' x 8'
- Expand the deck to 42' x 8' noting the deck will not come any closer to the front setback than it already is
- Remove the proposed side stairs so the side of the expanded deck is going to extend no closer than the existing side wall of the house to the property line which is 15.4' plus or minus

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

Spencer Miles, 1 Bogus Hill Road: Stated the applicant should be allowed to keep the existing deck, however, he should not be allowed to extend the deck as his hardship of slope is self created. If the applicant expands the deck, he will have the opportunity to enclose it.

Jonathon Rhodes, 35 Bogus Hill Road: Discussed he was required to send out certified mail letters to all of his abutting property owners and requested to post a sign. Maria Horowitz explained the certified mail letters are required by Inland/Wetlands and not ZBA. As far as posting the sign, it is requested, but not required.

The applicant explained this is an open deck with a legally required railing and he does not have plans to enclose it.

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

In the business session the Board discussed it is bazaar the 1971 field card does not show any type of egress from the home and the applicant needs to have some form of egress from the front of the home. For the purpose of legalizing the deck the Board will treat this as new construction. The Board discussed the size of the deck and the setbacks. The Board discussed the applicant dropped the stairs from the proposal so the side of the deck will not exceed the side of the home and if they expand the front deck they will come no closer to the front boundary than the existing deck. The legal hardship exists with substantial ledge and slope on the property.

John Day made a motion to grant the Variance the hardship being the irregular shape and slope of the property noting that for purposes of this motion the Variance is for a porch 42' x 8' with a front setback of 32' and a side setback to 15.4' plus or minus, noting the proposed expansion of the deck is no closer to the boundary then the existing side of the home, not subject to the plans as submitted but rather as discussed and revised at tonight's meeting also noting the applicant has withdrawn the stairs on the south side of the home further stipulating this will be an open porch with the legally required railing and there is no enclosure duly 2nd, approved 4-0.

Application # 23-08: Scott Watson, 18 Sunset Drive, for variances to zoning regulations for the purpose of rebuilding and enlarging an existing deck.

Jack Machinko made a motion to bring Application # 23-08 to the floor, duly 2nd, approved 4-0.

Mr. Watson approached the Boar. The existing deck is 8' x 59' and is 23' away from the 440 Line, although aesthetically it looks like the home is 60' away from the property line. The deck is in ill repair and needs to be replaced. Mr. Watson would like to replace and enlarge the deck by 3' to make it 11' x 59' as it is not wide enough to put a table and grill on it. This will increase nonconformity by 3'. The Board explained their position on increasing nonconformity and noted that there have been many properties before us that have the same situation with the house being set further back from the water's edge and aesthetically the edge of the water appears to be their property line. Mr. Watson noted there is a road that runs through his property making it difficult to put a deck any where else on the property and the house predates zoning regulations. The Board looked for other ways to expand the deck without increasing nonconformity. The applicant is willing to take one or two feet off of the proposal, however this will still increase nonconformity.

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 this is an increase in nonconformity and it is not any different than lake homes that have the 440 Line as their property line, and it doesn't matter where the water is. The existing deck is 8.2' and the applicant is entitled to rebuild it as is.

John Day made a motion to grant the Variance with a rear setback to 20' subject to the plans as submitted. The hardship is the irregular shape, size and slope of the lot, duly 2nd, denied 0-4.

Application # 24-08: Robert and Laurie Rzasa, 9 Calverton Drive, for variances to zoning regulations for the purpose of extending the 2nd floor.

Maureen Walker made a motion to bring Application # 24-08 to the floor, duly 2nd, approved 4-0.

Bob Rzasa approached the Board. The existing deck is approximately 14' long and one section is 8' long, which is a walkway. He would like to expand the deck out to become flush with a portion of the roof, to make it approximately 12' wide. When he first purchased the home there was a 3 season deck and was in ill repair so he removed it. He would like to replace it now. The deck is in the rear of the home. The Board inquired as to why he was requesting a front setback to 23.3'. Maria Horowitz explained this setback is preexisting and zoning regulation 2.3.1.d2 is rarely used, but applies in this situation. The Board verified the deck will not further encroach on the front setback.

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

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

In the business session the Board discussed there is no increase in nonconformity, and there is no construction in the area of the requested setback.

John Day made a motion to grant a front setback to 23.3' the hardship is the size and shape of the lot, subject to the plans as submitted and noting there is no increase in nonconformity, duly 2nd, approved 4-0.

Application # 25-08: Town of New Fairfield 54 Gillotti Road {High School}, for variances to zoning regulations for the purpose of obtaining a use variance to construct a credit union.

Bob Jano made a motion to bring Application # 25-08 to the floor, duly 2nd, approved 4-0.

Phil Ross, Director of School Buildings & Grounds, John Boccuzzi, Assistant Superintendent of Schools, Mariana Coelho, Principal, Tom Scherf, Joe Gargano, and Lynne Macey from the HS Business Dept. and Antonio Ruotolo from Mutual Security Credit Union approached the Board.

Phil Ross explained the proposal to convert an existing 14' x 12' interior storage space within the High School's Business Dept into a credit union for use by the students and staff, which is directly driven by the curriculum of the Business Dept. John Boccuzzi explained the State of Connecticut has encouraged personal finance courses. The Business Dept. applied for and was awarded a personal finance grant. The course is now a requirement for graduation. The Business Dept. subsequently applied for an innovation grant through the State of Connecticut to fund the implementation of a credit union at the High School. The purpose of the credit union is multi faceted. It supports the personal finance program because the students will be encouraged to open

accounts at the credit union and learn how to manage money and secondly students will have an opportunity to work in the credit union as it operates within the school. The hours of the credit union would be very limited from approximately 11:30am to 1:00pm. The customers able to access or use the credit union are strictly limited to students, faculty and staff of the High School and Middle School only. Spouses, siblings, and other family members will not be able to use this credit union. Also, students, staff and faculty of Consolidated and Meeting House Hill Schools will not be able to use this credit union, as it is not a public access site. The credit union will operate under the following guidelines:

- Open to only High School and Middle School students staff and faculty. Family members, spouses, and students, faculty and staff from other schools will not be able to use this site.
- Not a public access facility
- Hours of operation are from 11:30am to 1:00pm and only on days when school is in session.
- Focus on educational and instructional purpose
- Minimal credit union staff most likely 2-3 staff members
- Minimal traffic limited to staff members and money deliveries.

The Board discussed the amount of traffic and some Board members expressed concern of opening the door for other commercial ventures within a residential zone. Further discussion focused on which zoning regulations needed to be varied.

The applicants explained they did their homework before seeking out a credit union and they were the ones who sought out a credit union, and the process was rather difficult, noting all of the local banks were solicited but were not interested in this venture. Furthermore, the school's attorney, Tom Mooney, went through the contract with a fine tooth comb. They have limited the number of hours to stay within the lunch periods and there will be no ATM. The Board discussed increasing the hours of operation to two {2} hours a day to fully cover the lunch periods.

Antonio Ruotolo explained Mutual Securities operates under a Community Charter vs. a Federal Credit Union and explained the difference. Mutual Securities also operates other non public access facilities such as the ones at BF Goodrich, RDG Boehringer, and Bridgeport High School.

Some of the Board members still had concerns and John Day explained how to move forward. Discussion focused on a continuation, which the applicants were willing to do if the Board needed more information and or wanted to seek legal advice. The Board was reminded that if a continuation were granted, all substantive discussions and input must take place within the public hearing sessions, and not in other dialogue or other input from the community or interested parties. The applicant requested the Board vote on the proposal tonight. The Chairman verified the guidelines the applicant was willing to accept as conditions on any variance granted. John Day polled the Board members to see if they needed additional time or information and if they were willing to vote tonight. Each member of the Board indicated he or she was ready to vote tonight.

John Day asked for any further public comment—none heard

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

In the business session the Board discussed the restrictions and there are several other Variances on this property and how they felt with the restrictions that would take place. They also discussed that this was first proposed to local banks. They also discussed how hardships had been found for prior variance requests in connection with the High School and Middle School property.

John Day made a motion to grant a Use Variance for the purpose of constructing and operating a credit union in the High School as described and submitted to the Board subject to the following restrictions:

- The Credit Union will only be open for banking purposes to site meaning Middle School and High School students, faculty and staff. That family members, siblings, parents, spouses, etc and students, faculty and staff at Town schools not at this site are not be eligible to bank there.
- That the credit union not be or be operated as a public access facility
- Hours of operation will be limited to a maximum of two {2} hours a day at times set by the school
- Those hours of operations themselves will be limited to Mondays thru Fridays during which the High School and Middle School are in operation
- That the primary purpose and operation of this facility be instructional and educational
- That there be No ATM's associated with it
- That the number of credit union staff on site at any given time to assist in instruction or operation of the facility be as small as circumstances permit, noting for the record although not part of the motion that in the public session the discussion was in the vicinity of a maximum of maybe six {6} or so staff members so any vehicular or other community impact should be limited.

The hardship being the irregular size and shape of the high school property and incorporating by reference the listed hardship for the school electronic sign Variance, 2nd by Maureen Walker duly 2nd, approved 4-0.

Maureen Walker made a motion to adjourn the meeting at 11:57pm duly 2nd approved 4-0.