

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

**MINUTES
November 20, 2008**

The New Fairfield Zoning Board of Appeals held a regular public hearing followed by a business session at 7:00pm on Thursday November 20, 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, John Apple, and Michelle Rhyce

ZBA members absent: Joe DePaul

Town Officials in attendance: Maria Horowitz, Zoning Enforcement Officer

Chairman, John Day called the meeting to order at 7:03pm, introduced the Board members and explained the meeting process, voting procedures, and standards for a variance. John Day gave the definition of a recusal. Chairman Day stated that absent a recusal, alternate member Michelle Rhyce will participate in the public session, however, she would not be a voting member in the business session.

Secretary, Laurie Busse read the proposed agenda for the meeting. John Day stated the 2009 Meeting Dates and Deadline Dates needed to be added to the Agenda. John Day made a motion to adopt the Agenda as amended, duly 2nd, approved unanimously. Secretary, Laurie Busse, read the Call of the Meeting.

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.

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

Ann Ross, Tasos Kokoris Architect, and Attorney Neil Marcus approached the Board. Attorney Marcus reminded the Board the reason for the continuance was so they can look for ways of reducing the height of the garage or document the plans submitted in the prior applications were for a 2 story garage. Mrs. Ross was not able to find any plans for the previous applications but thinks the garage always had a loft for storage. Attorney Marcus stated his own research on the property could not conclude any set of plans other than a 2-car garage. Tasos Kokoris submitted to Mrs. Ross approximately 5 drawings of garages with reduced heights, and each one was uglier than the last. The only aesthetically pleasing garage is the one they submitted with their application, and therefore they are asking the Board to consider the plans as submitted. Attorney Marcus read the Minutes to Application # 30-84 into the meeting, noting the garage was pushed further back to appease the neighbors' concerns that their view of the lake would be reduced. Attorney Marcus discussed his client's right to build on the existing foundation without height limitations other than what is in the zoning regulations and the proposed garage is way below that. Attorney Marcus will concede for the purposes of this

application the garage must be consistent with a garage use and the 2nd story will not be used for living space as discussed last month. Attorney Marcus is not asking for a new Variance but wants the Board to certify to the ZEO that the old variance's are in place and that the structure that is proposed is in conformity with the 2 variance's that exist.

The Board discussed their view procedurally is that the prior variances did not adopt any specific set of building plans as a term and condition of the variance. So what the Board is doing tonight is granting a variance with 2 components to it. One is to affirm the previously approved setbacks although for the record they agree with Attorney Marcus' summary and the Town Land Use attorney's analysis and that is that the dimensional setbacks previously adopted by any of the prior variances not overturned by the Court remain in effect. The second part of the Variance is to approve the specific plans because it's this Board's view that any construction outside the building envelope can be conditioned on specific plans. Discussion followed last month Mr. Kokoris stated he could reduce the height of the garage by 4 or 5'.

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

Attorney Ed Hannafin and Bruno Mejean: approached the Board. Attorney Hannafin stated his client Bruno Mejean lives across the street from Mrs. Ross and the height of the proposed garage will obstruct his view of the lake and reduce the value of his home; noting the pitch of the garage is identical to the future construction on the home, thus indicating a creeping variance. Mr. Mejean does not object to Mrs. Ross constructing a garage or to the setbacks already in place, he is just objecting the height of the garage and wants it to remain a one story building. Attorney Hannafin read zoning regulation 2.4.3 into the record. Attorney Hannafin stated this is a self imposed hardship.

Attorney Marcus explained this is not an expansion of a nonconforming use, because the use is not nonconforming. The hardship is not self imposed, on the 3 prior applications Mrs. Ross was mistakenly told that she had to build her garage within 2 years and that is the reason why she reapplied. If she had built her garage in 1975 or in 1984 no one would be able to object to the height of the garage so long as it was within the current zoning regulations. Attorney Marcus further stated the expansion of the garage must be conforming to zoning regulations and it is. The height does not require a variance and would like the Board to consider the application per plans submitted and stipulate solely for garage use. Discussion followed that although this Board may stipulate the garage can only be used for garage use, a future Board may overturn that decision and this Board cannot restrict any future Board's actions.

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

In the Business Session the Board discussed the prior applications did not approve a specific set of plans, they only approved the footprint on the ground; so the issue before the Board is what to approve over the footprint on the ground. Prior Boards found a hardship exists for a 2-car garage however the hardship for the 2nd story is an issue. The garage is 4' or 5' taller than if it was one story, even with a pitched roof. Some Board members believed the garage should have the same roofline as the existing house and would prefer the proposal not be as high as it is. If the home was within the building envelope, they would be able to go up 35' but since it is outside the building envelope the Board can control the height of the garage. Further discussion focused the Board is generally flexible with vertical variances but have always been concerned with

neighbors' views and the Board is not persuaded that they couldn't have a perfectly attractive garage that wasn't several feet lower. Discussion followed the applicant has requested the Board vote on the plans as submitted so if the motion to grant the Variance does not pass, then the applicant must come back to us with a different set of plans for approval and the 6-month rule would apply; noting that by custom and practice the Chair has always waived that rule when a substantially different set of plans is submitted.

John Day made a motion to grant the Variance subject to the plans as submitted noting for those purposes although not sure its legally necessary that the Board in effect is reaffirming the prior dimensional setbacks approved by the prior decisions with exception of the one overturned by the Superior Court and is affirming the appropriateness of the construction of a 2 car garage and for the purposes of this particular vote is considering the applicant's plans as submitted to the Board and explained by the applicants in this matter. The hardship is incorporated by reference to the prior applications. Duly 2nd, denied 0-5.

Minutes: Bob Jano made a motion to adopt the Minutes to the October 16, 2008 meeting as revised, duly 2nd, approved 4-0-1. Maureen Walker abstained.

Application # 50-08: Thomas and Victoria Creamer for variances to zoning regulations for the purpose of constructing, an in ground pool.

John Day recused himself from this application and alternate Michelle Rhyce was elevated to voting status. Bob Jano made a motion to bring Application # 50-08 to the floor, duly 2nd, approved 5-0.

Tom Creamer and Tom Nejame of Nejame pools approached the Board and stated on the application under hardship, it incorrectly states the applicant is on a corner lot. Mr. Nejame discussed the steep slope on the property. The pool is 16' wide at the shallow end and 17' wide at the deep end. The pool will be 16' from the rear setback. This is a 2 acre zoning district and the required rear setback is 60'. The existing house is 44.3' from the rear property line; Maria Horowitz stated they can drop down to one acre zoning regulations. The survey showed a shed that is less than 16' from the rear property line; however the applicants stated this shed has been removed. The Board discussed moving the pool closer to the house. The applicant wants to keep the pool in the sight line of the deck and is afraid if the pool was too close to the house, his children would be tempted to jump off the roof of the house into the pool. The pool will have a fence around it. Maria Horowitz said she has no comment.

Maureen Walker asked for any further public comment—none heard.

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

In the Business Session the Board discussed the odd shape of the lot and the terrain as well as the location of the house on the lot.

Maureen Walker made a motion to grant the Variance for a rear setback of 16' subject to the plans as submitted the hardship is the shape, terrain and location of the home, duly 2nd, approved 5-0.

Application # 51-08: Jean and Greg O'Neill, 1 Lancaster Road, for variances to zoning regulations for the purpose of reconstructing and enlarging an existing deck. John Day returned to the meeting as a voting member, noting Michelle Rhyce would resume participating as an alternate in only the public sessions.

Bob Jano made a motion to bring Application # 51-08 to the floor, duly 2nd, approved 5-0.

Mr. and Mrs. O'Neill approached the Board and explained their deck is in ill repair and needs to be replaced. The existing deck is 3' 6" by 15'. They propose to extend the deck to the width of existing stairs and wrap the stairs parallel to the house. The deck will increase to 6' 4" x 15', noting this will extend the line of nonconformity but will not increase nonconformity.

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

Maureen Walker 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, the applicants are simply extending the line of nonconformity and they will be no closer to the setback than the existing shed.

John Day made a motion to grant the Variance with a rear setback of 27' 5" subject to the plans as submitted. The hardship is the irregular size and shape of the lot, duly 2nd, approved 5-0.

Application # 52-08: Twin Hills LLC, 17 Madeline Drive Lot 13, for variances to zoning regulations for the purpose of constructing a 3rd house on an access way.

John Apple made a motion to bring Application # 52-08 to the floor, duly 2nd, approved 5-0.

Rick Jowdy, Developer of Sonneborn Estates approached the Board. The original plans for the driveway to this property were on Madeline Drive, when he went to put in the driveway he hit a lot of rock and submitted pictures for the record, noting he would have to blast in order to get the driveway in. Mr. Jowdy proposes to use an access way that currently serves two lots. The access way will be black topped, approximately 900' long and will be 18' wide to lot 13 then back down to 16' wide at lot 5 and then down to 12' wide. Pictures of the proposed location were submitted into the record showing a less rocky more level terrain. Mr. Jowdy submitted a copy of Variance # 13-03 which is also for this subdivision, noting he was using the same formula for this Variance as he did for the last Variance. This is a 17 lot subdivision. Discussion followed on the number of interior lots, and location of driveways. This discussion is for the Planning Commission and not within ZBA jurisdiction. The Board also discussed if a fire truck would be able to turn around and just because they allowed a prior Variance does not mean they have to do it again.

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

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

In the Business Session the Board discussed avoiding slope and ledge; there will be less congestion on Madeline Drive and avoiding a long driveway down hill and allowing water to shoot into the road. This proposal will be better for the neighborhood.

John Day made a motion to grant the Variance for a 3rd house on the access way subject to the plans as submitted. The hardship is the slope and ledge, duly 2nd, approved 5-0.

2009 Meeting Dates and Application Deadlines:

Bob Jano made a motion to bring 2009 Meeting Dates and Application Deadlines to the floor, duly 2nd, approved unanimously.

The 2009 Meeting Dates and Application Deadlines were discussed as outlined; noting all of the meeting dates will remain on the 3rd Thursday of the month. The application deadline is normally 3 weeks prior to the meeting date some of the application deadlines were changed to a week earlier due to holidays falling on the normal application deadline date. John Day made a motion to adopt the 2009 Meeting Dates and Application Deadlines as discussed, duly 2nd, approved unanimously.

John Day made a motion to adjourn the meeting at 10:58pm duly 2nd approved unanimously.