

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

**MINUTES
April 19, 2007**

The New Fairfield Zoning Board of Appeals held a regular public hearing followed by a business session at 7:00pm on Thursday, April 19, 2007, in the New Fairfield Free Public Library. Secretary, Laurie Busse, took the minutes.

ZBA members in attendance: John Day, Chairman, Maureen Walker, Joe DePaul, Bob Jano and John Apple

ZBA members absent: Croix Sather, Vice Chairman,

Town Officials in attendance: Maria Haussherr-Hughes

Chairman, John Day called the meeting to order at 7:03pm, introduced the Board members and explained the meeting process and voting procedures. 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 Appeal # 01-07: David and Carter Boyajian, 3 Milltown Road to appeal a Cease and Desist Order issued on December 5, 2006.

John Apple made a motion to bring Appeal # 01-07 to the floor, duly 2nd, approved 5-0.

Carter and David Boyajian approached the Board along with their attorney Raymond Lubus. John Day explained due to timing requirements the appeal had to be opened at the last meeting but was not discussed. Attorney Lubus stated this property has a unique history as it is in a residential area however; there has always been a workshop and a residence on this property. The applicants received a special permit to put up one 12" x 24" double sided sign. Zoning regulations 2.7.3b states if the property is nonresidential then an unlimited number of additional signs maybe put up so long as they apply to traffic control. Attorney Lubus stated his interpretation of the zoning regulations is this is a commercial property and therefore any number of additional signs may be put up.

Maria Haussherr-Hughes stated the applicant requested and received a special permit for one 12" x 24" double sided sign as per the maps submitted to the Zoning Commission. The applicants have put up six additional signs for a total of seven signs which include their name on the mailbox. In addition zoning regulation 2.7.3b states the signs may not be put up on the right of way or on State owned property. The signs are on State owned property and in the right of way; pictures were submitted for the record. Maria Haussherr-Hughes stated this is a residential property with a nonconforming use,

which is legal. The enter and exit signs on either driveway do not apply to residential areas and the other signs five signs although they have arrows also have the name of the Sculpture Barn and therefore are considered advertising and not traffic control. The applicants stated that traffic on Route 39 and Milltown Road goes too fast and the signs with arrows along with the Sculpture Barn name are necessary to direct traffic to their driveway. Joe DePaul inquired if visitors to the Sculpture Barn had their address. Carter Boyajian stated yes they do have the address, but they still seem to miss the driveway. John Day expressed his interpretation of the zoning regulations as the property to be a residential property as there is a residence on the property and it is in a residential zoning district. Attorney Lubus stated his interpretation was different as that there is a legal business on the property which makes it commercial and 8,000sqft are devoted to the business while only 2,000sqft are devoted to the residence.

There was much discussion on the interpretation of zoning regulations 2.7.3b and 2.7.3b5 as well as the purpose of all of the 7 signs. The Board discussed if the amount of signs were for advertising the business or for the purpose of traffic control. The enter and exit signs can be considered for traffic use only however, all of the other signs appeared to be for advertising purposes and not all of the signs were on the Boyajian's property. The Board compared this business to other businesses such as the Garden Center on Route 37 which has only one sign and nobody seems to miss their shop as well as the application for Gary Mead and the Rock Ridge Subdivision sign that was denied in 2005.

Attorney Lubus stated in January 2005 his clients received a special permit for their business. This business includes a gallery, a workshop and a studio for teaching art classes. In addition this business serves as a benefit to the Town as his clients host benefits and events for organizations such as the Lions Club. The 6 additional signs are for traffic control so that visitors to the Sculpture Barn will know how to get there.

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 John Day read the Cease & Desist order issued on December 5, 2006 which clearly states the applicant is allowed one 12" X 24" double sided sign. John Day then read zoning regulations 2.7.3a, 2.7.3b and 2.7.3b5. The Board discussed if the additional signs were allowed on or off the property and the property is within a residential zone, do they consider this a residential or commercial property. Some of the Board members expressed their opinion that since there are a large number of parking spaces and the amount of square footage devoted to the business greatly exceeds the amount of square footage devoted to the residence then perhaps this should be considered a commercial lot; while other Board members felt that since this lot is in a residential zoning district and there is a residence on the property then the lot should be considered residential in nature and not commercial. The Board also expressed their opinions that the majority of the signs were considered advertising and were not devoted to traffic control with the exception of the enter and exit signs.

The Board discussed splitting the amount of signs overturned in the Cease and Desist to include the one 12" x 24" double sided sign allowed in the special permit, the mailbox sign and the enter and exit signs with the remaining 3 signs to be upheld in the Cease & Desist Order.

John Day made a motion to overturn the Cease and Desist Order for the 3 signs on the corner with the Sculpture Barn name and arrows noting the motion included only those signs duly 2nd, denied 1-4. John Apple voted in favor of this motion while all others were opposed, the Cease & Desist was upheld for the 3 signs on the corner.

John Day made a motion to overturn the Cease and Desist order for the signs on the mailbox, the 12' x 24' double sided sign under the mailbox, and the enter and exit signs on either side of the driveway, duly 2nd, approved 4-1. John Day was opposed to this motion while all others were in favor. The Cease & Desist for the 4 signs mentioned was overturned.

Bob Jano made a motion to accept the Minutes of the March 15, 2007 meeting. Duly 2nd, approved 4-0-1. John Apple abstained from the vote.

Application # 10-07: James and Nanette Falsetti, 3 Valerie Lane, for variances to zoning regulations for the purpose of constructing a 2-bay garage with storage above.

Maureen Walker, made a motion to bring Application # 10-07 to the floor, duly 2nd, approved 5-0.

Jim Falsetti approached the Board and explained his plans to build a 2 bay garage with storage above. The lot is shaped like a slice of pizza, has a small amount of frontage and there is an easement on the side. There is also a steep slope on the property. The other side of the property has a pool. There is an existing shed that is 7.8' from the property line which is grandfathered. The garage will be one foot closer to the property line and the shed will be taken down. The proposed garage will be approximately 19-20' high and will not be as high as the existing home which is 26' to 28' high. The proposed garage will have fold down stairs for storage above but will not be heated or have running water. The Board discussed pulling the garage forward so as not to come any closer to the side setback than the existing shed. The Board discussed they have had flexibility for homes that do not have a garage; however he already has a 2-car garage. Maria Haussherr-Hughes stated the pool and the home are conforming; the garage will make the property nonconforming. The Board discussed other ways of increasing square footage in the home without increasing nonconformity.

John Day asked for any public comment—none heard

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

In the business session the Board discussed this garage would increase nonconformity and there is already a 2 car garage on the property. The Board also discussed the applicant's willingness to pull the garage back so it will not be any closer to the side boundary than the shed and there is also an opportunity for expansion without needing a variance.

John Day made a motion to grant the variance for a side setback of 7'9" subject to the plans submitted except that the garage will be no closer to the side setback than the existing shed, duly 2nd, denied 0-5. Application Denied. John Day explained the 15 day appeal period.

Application # 11-07: Virginia Garvey, 24 Knolls Road, for variances to zoning regulations for the purpose of constructing an addition with garage.

Bob Jano made a motion to bring Application # 11-07 to the floor, duly 2nd, approved 5-0.

Virginia Garvey and her architect Charles Reppenhagen approached the Board. Ms. Garvey read a statement indicating this cottage style home was built in 1936 and has historic value. Ms. Garvey stated the garage will fit in the middle of her property, however this would be distasteful. On the Knolls Road side, there will be no increase in nonconformity but on the association side nonconformity will increase 10' to 12'. The garage addition will be 12' x 22' and there will be an addition for a bedroom, bath, and screened in porch. The Board expressed their concerns with such a large increase in nonconformity. While in the past they have been flexible with a slight increase in nonconformity for homes without a garage, 10' to 12' was too great of an increase. John Day explained how to move forward with the application. The applicants requested a break to discuss their options.

John Day made a motion to take a short break, duly 2nd, approved 5-0.

Back from the break the applicants inquired if a change in setbacks had to be in by the Application Deadline date of next Thursday April 26. John Day explained only if the new setbacks come closer to the boundaries than the current application shows. The applicants requested to continue to the May 17 meeting

John Day made a motion to continue Application # 11-07 to the May 17 meeting, duly 2nd, approved 5-0. John Day stated if the applicant ends up withdrawing and then resubmitting we will waive the application fee.

Application # 12-07: Joseph and Eva Panettieri, 15 Flak Lane, for variances to zoning regulations for the purpose of constructing a 2nd story addition and legalizing a deck.

John Day made a motion to bring Application # 12-07 to the floor, duly 2nd, approved 5-0.

Joe Panettieri approached the Board and explained the deck is on grade and therefore not in front of the Board. Mr. Panettieri discussed his plans for a second story addition; he will go straight up and will not go past the existing footprint. The side setback is larger than the existing home because he would like to leave 1 ½' for the soffit. The Board discussed having such a large soffit would increase nonconformity and discussed ways to reduce the amount of nonconformity. The applicant agreed to cut back on the soffit so that it will not come any closer than 14'6" to the side setback. This will increase nonconformity by 6". The front door will also be relocated however this is not in front of the Board.

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 this is a typical vertical expansion with only a 6" increase in nonconformity for the soffit.

John Day made a motion to grant a side setback to 14' 6" for the purpose of a vertical expansion subject to the plans submitted with the exception of moving the side setback to 14'6" and noting the deck is not within Zoning Board of Appeals jurisdiction as it is

less than 2' from the ground. The hardship is the irregular shape and size of the lot.
Duly 2nd, approved 5-0.

Application # 13-07 Daniel and JoAnn Mahoney, 3 Almargo Avenue, for variances to zoning regulations for the purpose of changing the roofline.

The Board took up Application # 13-07 to the floor, duly 2nd, approved 5-0.

JoAnn Mahoney approached the Board and explained her plans to change her flat roof to a pitched roof. There will be no net increase in height, the foot print on the ground will not change and the eaves will not require a variance. The wrap around roof patio is over two rooms and they will pitch from the existing roof down.

John Day asked for any 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 this is a simple change in roof line, there is no increase in nonconformity or in the height of the home. There will be no impact on the neighbors.

John Day made a motion to grant the variance for a front setback to 39' a side setback to 10' and a rear setback to 24' subject to the plans submitted noting there is no increase in nonconformity. The hardship is the irregular shape and size of the lot, duly 2nd, approved 5-0.

Application # 14-07: Louise Disarro, 1 Oswego Road, for variances to zoning regulations for the purpose of constructing an addition.

The Board took up Application # 14-07 to the floor, duly 2nd, approved 4-0. Bob Jano recused himself from this Application. John Day explained the process of a 4-member vote.

Leo Jette Jr. from Woodland Building and Remodeling LLC approached the Board and said he understood the 4 member voting process and would like to proceed. Mr. Jette explained the plans to add a 10' x 19' dining room addition onto the front of the home by extending the line of the home. Due to the angle of the home this will increase nonconformity by approximately 1 ½ '. The Board discussed jogging the addition back. Mr. Jette said this can be done but would prefer to keep the addition within the line of the home otherwise it will look odd and when you are in the room it would also look and feel odd. This is an odd shaped lot.

John Day asked for any 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 this is an odd shaped lot and there will be an increase of nonconformity by 1' 9".

John Day made a motion to grant the front setback to 20.5' subject to the plans submitted, the hardship is the irregular shaped lot, duly 2nd, approved 4-0.

Application # 15-07 Jason DaSilva, 11 Hewlett Road, for variances to zoning regulations for the purpose of constructing a 2nd story addition.

John Apple made a motion to bring Application # 15-07 to the floor, duly 2nd, approved 5-0.

Jason DaSilva approached the Board and explained his plans to construct a 2nd story addition. There will be no change in the footprint on the ground and the home will be approximately 13' higher. A height variance is not needed and the roof will be the same pitch as the existing roof. He will be going from a flat ranch to a raised ranch and there will be no visual impact on the neighbors. There is a hoop house on the property that will be taken down.

John Day asked for any 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 this is an odd shaped lot and there is no increase in nonconformity as well as there is no visual impact on the neighbors.

John Day made a motion to grant the variance with a rear setback to 22' for the purpose of constructing a 2nd story addition, subject to the plans submitted further stipulating the hoop house will be taken down. The hardship is the irregular shaped lot, duly 2nd, approved 5-0.

Application # 16-07 Robert A and Randall S Smalley, 38 Lake Drive South, for variances to zoning regulations for the purpose of raising and changing the roofline and constructing a screened in deck and a rear deck.

John Day made a motion to bring Application # 15-07 to the floor, duly 2nd, approved 5-0.

Attorney Ward Mazzucco approached the Board and explained this is a small lot only 4/10th of an acre. In addition the lot has an extreme slope and the property drops 30 plus feet from the driveway and is a trapezoid shape with the home in the narrower portion of the trapezoid. The 440 Contour Line is the property line. There is a terrace on grade with a deck above. The applicant plans to enclose the deck above the terrace and add a 2nd deck next to it. The new deck will not increase nonconformity. There was discussion if the enclosed deck would extend out any further from the existing deck. After much discussion it was determined the soffit on the side will increase nonconformity by 4". The rear setback will go from 31.5' to 26.8'. The Board discussed their concerns with such a large increase in nonconformity. There will be a 2nd story addition as well. The 2nd story addition will go over the existing part of the home and will not encroach on the new additions. John Day explained how to move forward with the application. Attorney Ward requested an extension to the May 17 meeting.

Bob Jano made a motion to continue to the May 17 meeting, duly 2nd, approved 5-0.

Maureen Walker made a motion to adjourn the meeting at 10:40pm.