

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

**MINUTES  
August 16, 2007**

The New Fairfield Zoning Board of Appeals held a regular public hearing followed by a business session at 7:00pm on Thursday, August 16, 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. Croix Sather, Vice Chairman joined the meeting at 7:15pm

ZBA members absent: None

Town Officials in attendance: Maria Horowitz, Zoning Enforcement Officer

Chairman, John Day called the meeting to order at 7:05pm, introduced the Board members and explained the meeting process and voting procedures. John Day gave the definition of a recusal stating alternate member John Apple would be elevated to full voting status for the 2 applications where there would be a recusal at tonight's meeting.

Secretary, Laurie Busse read the proposed agenda for the meeting. John Day made a motion to adopt the Agenda, duly 2<sup>nd</sup> approved 5-0.

Secretary, Laurie Busse, read the Call of the meeting.

**Continued Application # 24-07:** William and Carolyn Drew, 8 Lake Shore North, for variances to zoning regulations for the purpose of enlarging the rear shed dormer to a full dormer.

Bob Jano made a motion to bring Continued Application # 24-07 to the floor, duly 2<sup>nd</sup>, approved 5-0.

Tammy Zinick, agent for the property owners approached the Board and explained the plans to expand the partial rear dormer to a full dormer. There will be no net increase in height, the footprint on the ground will not change, and they are not adding any bedrooms. Maria Horowitz did not have any objections to this application.

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

John Day made a motion to enter the business session, duly 2<sup>nd</sup>, approved 5-0.

In the business session the Board discussed this is a classic vertical expansion, there is no increase in nonconformity, there is no increase in the net height of the home and they are not adding any bedrooms. The use of the home will not change.

John Day made a motion to grant the variance for a front setback to 38' and a rear setback to 40' for the purpose of enlarging the rear dormer subject to the plans submitted. The hardship is the irregular size of the property, duly 2nd, approved 5-0.

In the business session Bob Jano made a motion to accept the Minutes to the June 21, 2007 meeting, duly 2nd, approved 5-0-1. John Apple abstained. Bob Jano made a motion to accept the Minutes to the July 19, 2007 meeting, duly 2nd, approved 3-0-3. Croix Sather, Joe DePaul, and John Apple abstained from the vote.

**Application # 26-07:** Fred Podlaha, 20 Sweetcake Mountain Road, for variances to zoning regulations for the purpose of legalizing a garage.

Maureen Walker made a motion to bring Application # 26-07 to the floor, duly 2nd, approved 5-0.

Fred Podlaha and his builder William Sweikeef approached the Board and explained they had permits to build a garage within the setbacks using an old survey map from Town Hall. The steep slope on the property caused the original surveyor's map to be off by 1', stating after the garage was completed and a new survey was done, the garage was 19' from the side setback instead of 20'. The 19' is to the overhangs of the garage and not the wall. Maria Horowitz stated she has no basis but to conclude it was a surveyor's error. The applicants submitted a letter dated July 17, 2007 from their neighbors Wendy and Raymond Kosach, 22 Sweetcake Mountain Road, stating they were OK with the garage addition.

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

Croix Sather made a motion to move to the business session, duly 2nd, approved 5-0.

In the business session the Board discussed the original project did not require a variance and while there is an increase in nonconformity, it is by 1' and it appears that the original survey was in error.

John Day made a motion to grant a variance for a side setback of 19' subject to the plans submitted and as built. The hardship is the irregular shape of the property and the irregular size of the lot; duly 2nd, approved 5-0.

**Application # 27-07:** John and Mary Aragonés, 140 Ball Pond Road for variances to zoning regulations for the purpose of removing the existing patio and replacing it with a deck.

Croix Sather made a motion to bring Application # 27-07 to the floor, duly 2nd, approved 5-0.

Mr. & Mrs. Aragonés approached the Board and explained their plans to build a deck over the existing patio and are requesting two side setbacks of 10' and 20'. The applicants submitted pictures into the record. The Board discussed the requested 20' side setback is the current zoning regulation and is not in front of the Board. Their lot is on a steep slope. The deck will follow the line of the home that has an existing side setback of 9.9'. The deck will be open and not enclosed. The Board discussed that while the area of nonconformity is increasing, nonconformity itself is not increasing.

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

Croix Sather made a motion to move into the business session, duly 2nd, approved 5-0.

In the business session the Board discussed that this is a ½ acre lot and while the area of nonconformity is increasing, nonconformity itself is not increasing because the deck is going no closer to the side setback than the existing home. The Board also discussed the applicant's willingness not to enclose the deck.

John Day made a motion to grant the variance for a side setback to 10' subject to the plans submitted stipulating the deck remain open and can never be enclosed. Noting that the plans as submitted would not increase nonconformity in that the requested side setback is 10' and the structure already has less than 9'. The hardship is the irregular size of the nonconforming lot, duly 2nd, approved 5-0.

**Application # 28-07:** Margaret Imbro, 4 Eastview Drive, for variances to zoning regulations for the purpose of legalizing a deck with a roof and 2 open decks.

Croix Sather made a motion to bring Application # 28-07 to the floor, duly 2nd, approved 5-0. Maureen Walker recused herself from this application and Chairman Day elevated John Apple to full voting status.

Margaret Imbro approached the Board and explained her plans to repair two open decks and one covered deck that have been on the back of the house since 1979, but were built without permits. All of the decks follow the line of the existing home and are at least 2' further away from the rear setback than the existing home. John Day explained how the Board views structures that were built without permits. Margaret Imbro stated her neighbors do not oppose to her repairing the decks and submitted pictures into the record. Maria Horowitz did not have any comment.

John Day asked for any further public comment—none heard

Joe DePaul made a motion to move into the business session, duly 2nd, approved 5-0.

In the business session the Board discussed the decks were built without permits and there is no increase in nonconformity even though the area of nonconformity has increased. In other words the applicant is not coming any closer to the rear setback than the existing home.

John Day made a motion to grant a variance for a rear setback to 17.2' subject to the plans submitted. The hardship is the nonconforming size of the lot; duly 2nd, approved 5-0.

**Application # 29-07:** Town of New Fairfield Free Public Library, 2 Brush Hill Road, for variances to zoning regulations for the purpose of constructing 2 additions and a front vestibule.

Croix Sather made a motion to bring Application # 29-07 to the floor, duly 2nd, approved 5-0. Maureen Walker has rejoined the meeting.

Linda Fox, Library Director and Sarah Marsh, Chairman Library Board of Trustees approached the Board and explained their plans. The Library cannot have a vertical expansion because both the Adult Library and the Children's Library are open floor plans and there are no weight bearing walls that could support an addition. One of the reasons for the expansion is to make the Library ADA compliant, which would require an elevator and widening the staircase. The first part of the addition is a vestibule in the front of the Library. The original front and side setbacks to the Library went up to Route 39. The State took a great deal of property from the Library when they planned to widen and reroute Route 39. These new setbacks are referred to as the "taking line". The State did not change the road and they did not give the property back to the Library.

The annex addition is off the Community Room and encroaches on the "taking line". The back of the existing Library is directly on the rear setback and the chimney is over the rear setback using "air space" on the neighbor's property. The Board discussed pushing the annex addition to the rear setback that would not increase nonconformity and would require less of a variance on the "taking line". Additionally, the Library would be no closer to the "taking line" than the existing slate porch, thus not increasing nonconformity in the front and side of the property. The Library noted if you look at the western expansion they are no closer to the original property line than the existing building. The Board inquired how much property was taken due to Eminent Domain the Library was not sure.

The purpose of the rear addition is to install an elevator and it is located in the back of the building where the oil tank is. The oil tank, which is enclosed in a concrete case, will have to be moved. There was discussion if the oil tank was a building or structure. It was determined the oil tank is a structure. The Library has an odd shaped rear setback and some of the Board members were concerned that the rear addition was encroaching on part of the rear setback and would increase nonconformity while other members believed that the addition does not increase nonconformity because the oil tank is right up against that portion of the rear setback.

Further discussion focused on the new additions would increase lot coverage and a variance for lot coverage would be required. Lot coverage was advertised in the Legal Notice however; the Library did not have the exact percentage they would be over lot coverage. Discussion followed if the proposed additions would be over lot coverage had the State not taken any of the property. The Board inquired if there were enough parking spaces for the addition. Maria Horowitz stated she did not have the parking regulations with her and she would have to check the regulations.

John Day explained how to move forward with the application. The Library stated they would like to continue the application to the next meeting. The Library needs to have the following information prior to the next Zoning Board of Appeals meeting:

- How much property was lost due to the "Taking Line"?
- If the property was not taken by the State, would a variance for front and side setbacks still be required? If so, what would they be?
- Zoning regulations state the building cannot exceed 25% of the lot. What percentage are the proposed additions over lot coverage, both with the original setbacks and the "taking line" setbacks?
- Does the Library have enough parking spaces or is a variance required for parking? If a variance is required for parking, how many spaces are they short?

Croix Sather made a motion to continue the application to the September 20, 2007 meeting, duly 2nd, approved 5-0.

**Application # 30-07:** Lawrence and Ellen Heller, 333 Whaley Road, Route 39, for variances to zoning regulations for the purpose of expanding and legalizing a deck.

Maureen Walker made a motion to bring Application # 30-07 to the floor, duly 2nd, approved 5-0.

Attorney Richard Smith, builder Don Olson and the property owners approached the Board. Attorney Smith stated the home was built in 1960. The existing deck is approximately 10' off the ground and does not have stairs to grade, thus not giving the property owners a 2<sup>nd</sup> exit if there was a fire. The 1980 field card shows a 15' x 8' rear deck. The 2001 and 2006 field cards show a 20' x 12' rear deck. Field cards prior to 1980 cannot be located for this property. A prior owner built both of these decks without permits. The Hellers purchased the property in November 2006; shortly afterwards they were made aware the deck was built without permits and immediately tried to rectify it as noted in Application # 59-06. The deck is in poor condition and needs to be repaired. The applicants propose to angle off the deck and add stairs to grade, which would increase nonconformity by 8'. Pictures were submitted into the record. Attorney Smith discussed the previous variances #59-06 was approved for dormers and # 77-88 was approved for a 2<sup>nd</sup> story addition. The Board explained it was the applicant's job to prove the deck predated zoning regulations; which they have not done. The Board discussed the past history of the property noting that at some point a carport had illegally been converted into living space and that while the building may be grandfathered a deck is a structure and is never grandfathered. The Board discussed the safety of having a 2<sup>nd</sup> exit while other members discussed historically the Board has never increased nonconformity by 8'. There is also a single door in the basement of the house that can be used for an exit.

John Day asked for any further public comment

Maureen D'Angelo: a New Fairfield resident stated the Heller's purchased the home in good faith and they are trying to right the wrongs of the previous owner and should be commended for it.

John Day asked for any further public comment—None Heard.

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

In the business session the Board discussed they do not penalize nor reward an applicant for building something without a permit rather they look at it as if the structure wasn't there would a variance be granted. The deck does not increase nonconformity on the previously varied sides; however it increases nonconformity by 8' in the rear. Historically the Board has never granted a variance where there was such a large increase in nonconformity. The deck has been there for at least 27 years, however the applicant was not able to prove the deck predated zoning regulations and although decks are structures and never grandfathered, some members believed there is something to be said for the length of time the deck has been up. Some of the Board members discussed their views on safety concerns for not having a 2<sup>nd</sup> fire exit.

John Day made a motion to grant the variance for (2) side setbacks to 17.5' and 10.5' and a rear setback to 26' for the purpose of enlarging and legalizing a deck, subject to the plans submitted. The hardship is the irregular shape and size of the property as well as the reasons articulated in council's presentation, July 2nd, denied 3-2. John Day and Joe DePaul voted against the application. Croix Sather, Bob Jano, and Maureen Walker voted in favor of the application.

**Application # 31-07:** Keith and Linda Wright, 3 Fulton Drive, for variances to zoning regulations for the purpose of raising their roofline.

Maureen Walker made a motion to bring Application # 31-07 to the floor, July 2nd, approved 5-0.

The homeowners approached the Board and explained they have a low pitched roof line with only 6' 10" on one side and 8' 6" on the other side. Due to the low pitch they have issues with ice damming and leaks from heavy snow storms. They propose to take the roof off on the lower section and go up with a higher pitch roof to match the other side of the house. There will be no change in the foot print on the ground, the overall height of the home will not change, there will be no increase in the number of bedrooms and the use of the home will not change. The home has roads on 3 sides, and discussion focused if a rear setback was required. It was determined a rear setback was not required.

John Day asked for any public comment—none heard.

Croix Sather made a motion to enter the business session, July 2nd, approved 5-0.

In the business session the board discussed this is a classic vertical expansion, there is no increase in nonconformity, there is no increase in the net height of the home, and there is no increase in the number of bedrooms. There will be no change in the footprint on the ground and there is no adverse impact on the neighbors. The Board discussed the size of the nonconforming lot of 4/10<sup>th</sup> of an acre.

John Day made a motion to grant a variance for 2 side setbacks to 9' 9" and 14' 6" subject to the plans submitted. The hardship is the size of the lot, July 2nd, approved 5-0.

**Application # 32-07:** Gerard Taylor, 7 Lamont Road for variances to zoning regulations for the purpose of constructing a new home.

Bob Jano made a motion to bring Application # 32-07 to the floor, July 2nd, approved 5-0. John Day recused himself from this application and John Apple was elevated to full voting status. Vice Chairman, Croix Sather chaired the meeting for this application.

Attorney Dom Chieffalo and Jeanne Abric, contract purchaser approached the Board and explained their plans to construct a new home. There are 4 lots that have been combined to create a single ¼ acre lot. The Town Sanitarian, Rich Jackson, submitted a letter stating that although the septic system has not yet been approved; the septic system is in the only possible location. The applicant proposes to construct a 2 bedroom raised ranch with a 23' x 40' footprint. The roof overhangs will add approximately 1' to

the size of the home. The A-2 Survey they submitted has a 48' x 24' home which will allow for the overhangs. The Board discussed the variance is to the overhangs and not the walls. Attorney Chieffalo stated he understands if his client submits different building plans than what is submitted tonight, he will have to come back and have the variance changed. There is a steep slope on the property, the grade map submitted shows the property starts at 320' and drops down to 290' which is a 30' drop within 124'. Some of the Board members believed 40' home was too big for the lot while other members discussed it was in harmony with the neighborhood.

Croix Sather 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 on a preexisting nonconforming lot they must approve some type of building and the home is consistent with new construction and they have no issues with the size of the lot vs. the size of the home.

Croix Sather made a motion to grant a variance for a front setback to 27' and a side setback to 15' subject to the plans submitted stipulating the foundation of the house being 40' x 23' with the setbacks as described in the Legal Notice with the understanding that the house size is not going to change but it can potentially move within the setbacks that were advertised. The hardship is the shape and severe slope of the lot subject to the plans submitted; duly 2nd, approved 5-0.

Joe DePaul made a motion to adjourn the meeting at 9:37pm, duly 2nd, approved 5-0.