

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

**MINUTES
December 20, 2007**

The New Fairfield Zoning Board of Appeals held a regular public hearing followed by a business session at 7:00pm on Thursday, December 20, 2007, in the New Fairfield Free Public Library. Secretary, Laurie Busse, took the minutes.

ZBA members in attendance: John Day, Chairman, Maureen Walker, Bob Jano, John Apple and Jack Michinko.

ZBA members absent: Joe DePaul

Town Officials in attendance: None

Chairman, John Day called the meeting to order at 7:10pm, introduced the Board members and explained the meeting process and voting procedures of a 4 and 5 member Board, noting there would be a recusal at tonight's meeting. 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.

Application # 51-07: Ed Hopkins, 10 Candlewood Road, for variance to zoning regulations for the purpose of constructing a 2 story addition

Bob Jano made a motion to bring Application # 51-07 to the floor, duly 2nd, approved 5-0.

Mr. Hopkins approached the Board. Mr. Hopkins has an Inland/Wetlands permit for his project. The proposed addition encroaches on a setback that abuts the Yourashek's empty lot, which the applicant stated was recently deemed unbuildable due to the amount of wetlands on the property, and submitted a letter from his neighbors Herbert & Linda Yourashek dated 11/2/07. The letter stated the Yourashek's property abuts the Hopkins property and they have no issues with the addition; however the letter did not mention anything about the lot being deemed unbuildable.

Mr. Hopkins explained prior to coming before ZBA he changed his plans numerous times so he would not be over lot coverage. The existing home is 2 stories. The plans are to build a 2 story addition, the bottom story will be a garage and the upper story will be a bedroom. The home will remain 2 bedrooms. The addition will not be taller than the existing home. The applicant currently does not have a garage. There are garage doors that no longer open because when the applicant had the driveway repaved a couple of years ago; the paving went above the garage doors. Before when they did open, the

garage was part of the lower level. In other words, there was no wall, door, or other barrier, between the garage and the playroom.

The Board discussed this is a corner lot, the existing front setback that faces Cross Way is 13' and there will be no increase in nonconformity. The south side setback which abuts the Yorashek property has an existing setback of 25' 6" and the proposed addition will reduce the setback to 10' 6" thus increasing nonconformity. On the boundary that abuts the Tonner property the requested rear setback is 28.3'. The survey shows it is 28.9', which is the same setback as an existing wood deck and does not increase nonconformity. Mr. Hopkins stated he had purchased the Tonner property; and owns the land as far as the stream, which raised the question on the survey that indicated 10' plus or minus from the Tonner boundary. The Board discussed their position on increasing nonconformity for the purpose of a garage to get cars off the street. There was discussion on new homes in the area seem quite large for this neighborhood.

The Board also discussed the Yorashek property. Some of the Board members discussed their position that if this lot was truly deemed unbuildable then it would make a difference to them regarding increasing nonconformity other members would like to see an updated survey showing the applicant purchased the Tonner property. John Day explained how to move forward with the application. Mr. Hopkins stated he would like to continue to the next meeting.

John Day made a motion to continue the application to the January 17, 2008 meeting, duly 2nd, approved 5-0.

Application # 52-07: Oulvey, 30 Lake Drive North, for variances to zoning regulations for the purpose of legalizing pergola.

Maureen Walker made a motion to bring Application # 52-07 to the floor, duly 2nd, approved 5-0.

Deborah Oulvey and her builder, Leo Jette Jr. approached the Board. They explained back in September they obtained all of their permits for the project. During the construction of the project the property owner inquired about constructing pergola. The pergola is within the boundaries of the deck. It is not encroaching on any setbacks and it isn't a roof structure and Mr. Jette thought that he could do this. When he went to obtain the C/O he was notified there are pergola regulations and the pergola he constructed was in violation of those regulations.

John Day made a motion to take a break duly 2nd, approved 5-0. Back from the break Chairman Day read zoning regulations 2.16D into the meeting. The pergola the applicant constructed was in violation of a few regulations including construction in the front of the home and extending more than 10' from the home, noting the pergola does not extend past the deck. The applicant explained aesthetically the front of the home appears to be the rear of her home. The applicant has roads on 2 sides of her property and she does not access her home from Lake Drive North, rather she accesses her home from Sunset Trail. The applicant stated that awnings and umbrellas cannot handle the high winds in that location and the pergola was built so there can be some relief from the sun. A discussion followed regarding structures such as an enclosed deck can be constructed in the front but not pergola. It is not up to the Zoning Board of Appeals to agree or disagree with the zoning regulations but rather to abide by them, unless there is

a hardship arising from the land that would allow them to grant a variance. The applicant stated the slope in her yard is so steep that she accesses her home from Sunset Trail, rather than Lake Drive North and the uniqueness of the property is the front of the home aesthetically appears to be the rear of the home and the house is far from the road and doesn't look like it is out of character with the neighborhood.

John Day asked for any further public comment as follows:

Grace Sosnicki, 14 Fox Run: stated the front of the home looks like the rear and the pergola is quite beautiful and is in line with other homes in the area.

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 pergola is a very attractive addition to the home, and they fully understand the wind conditions; further discussion focused on the applicant's ability to construct a deck or covered porch in the front of the home but not a pergola. However, there is not a hardship arising from the land that would allow them to construct a pergola in the front of the home.

John Day made a motion to grant a variance for the pergola not subject to the plans submitted, but rather than the pergola in place. The hardship is the slope of land, duly 2nd, denied 2-3.

The Board discussed the Minutes from the November 15, 2007 meeting. Bob Jano made a motion to approve the Minutes from the November 15, 2007 meeting, duly 2nd, approved 4-0-1. Jack Michinko abstained.

Application # 53-07: Joseph Mandracchia, 6 Kingsbury Road, for variances to zoning regulations for the purpose of constructing an addition and adding a bay window.

John Apple made a motion to bring Application # 53-07 to the floor, duly 2nd, approved 5-0.

Mr. Mandracchia explained his plans. The addition will add a bedroom, part of the addition will cantilever over the side, and there will be a 20" bump out where the bay window will be placed. The existing home is 1 bedroom and the 2nd bedroom will be for Mr. Mandracchia's elderly mother, who has come to live with them. The addition will be 8' closer to the side boundary and for tonight's discussion it will be called the Tolve boundary, the other side boundary is not affected. The addition will be no closer to the front or rear boundaries than the existing home. The Board noted the bump outs were not an issue for them. The Board discussed their position on increasing nonconformity and the hardship needs to arise from the land, and although they have sympathy for someone taking care of aging parents, that cannot be considered a hardship. The Board looked for other ways to expand without increasing nonconformity; this included a vertical expansion and squaring off the home. The applicant noted squaring off the home would encroach on his septic system and a vertical expansion would be too costly.

The Board inquired about lot coverage, noting the ZEO's report said he was at exactly 20% lot coverage and did he have a surveyor measure the property? Mr. Mandracchia

did not have a surveyor do this and wanted to measure the property himself. The Board did not want to take a position on this however; they suggested that because he was so close to going over the lot coverage, it would be better to have it professionally done. John Day explained how to move forward with the application. The applicant stated he would like to proceed.

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 that although they are sympathetic to the applicant's personal issues, they do not fit into the State Statutes for granting a variance. The Board further discussed the increase in nonconformity and the 20% lot coverage may not be an issue.

John Day made a motion to grant the variance for a front setback to 20' and a side setback to 4' subject to the plans submitted. The hardship is the nonconforming size of the property, duly 2nd, denied 0-5.

Application # 54-07: April Bealeau, 10 Carleon Road, for variances to zoning regulations for the purpose of constructing shed dormers and an attached garage.

Maureen Walker recused herself from this application. John Apple made a motion to bring Application # 54-07 to the floor, duly 2nd, approved 5-0.

The applicants explained their existing home is a cape and they would like to construct shed dormers and an attached garage in the rear of the home. The Board discussed the vertical expansion, noting there would be no increase in nonconformity, no change in the footprint on the ground, and a height variance is not needed.

The attached garage would be in the rear of the home. The applicants propose to replace the existing 8' x 11' deck with a 12' x 11' garage. This would increase nonconformity by 4'. The Board discussed their position on increasing nonconformity. The applicants discussed reducing the size of the garage to that of the deck, however, that may leave them unable to open the car doors once inside the garage. The applicants stated they have a shed 1' away from the property line that is not shown on the survey. It is however on the assessor's field card. The Board discussed their position if another building was closer to the property line than the proposed addition. John Day explained how to proceed, reminding the applicants this is a Board of 4. The applicants stated they would like to bifurcate their application and requested the Board to vote on the vertical expansion tonight and continue the garage to next month's meeting.

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

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

The Board discussed the shed dormers are a classic vertical expansion. There is no increase in nonconformity, no change in the footprint on the ground, no impact on the neighbors, and a height variance is not required.

John Day made a motion to grant the variance for a front setback of 25' and a side setback of 14' for the purpose of constructing a shed dormer only, subject to the plans submitted. The hardship is the nonconforming size of the lot, noting the shed dormers do not increase nonconformity, duly 2nd, approved 5-0. The garage was continued.

Application # 55-07: Grace & Ted Sosnicki, 14 Fox Run, for variances to zoning regulations for the purpose of constructing shed dormers.

Maureen Walker made a motion to bring Application # 55-07 to the floor, duly 2nd, approved 5-0.

The applicants explained they propose to raise the roof line above the living room to create a storage area, as they do not have a basement, they only have a crawl space. They will not be changing the footprint on the ground and there is no increase in nonconformity. The applicants also propose to move the porch over as well as expand and enclose their porch. The home was constructed on such an angle that by enlarging the porch they will not come any closer to the boundary line than the existing porch.

John Day asked for any further 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 that raising the roof line does not require a height variance, does not impact any of the neighbors and there is no change in the footprint on the ground. Enclosing and enlarging the open porch does not increase nonconformity.

John Day made a motion to grant the variance for a front setback to 12' subject to the plans submitted, and discussed. The hardship is the irregular shape of the lot and the amount of ledge on the lot, noting there is no increase in nonconformity, duly 2nd, approved 5-0.

Application # 57-07: Bellavin Development LLC, 17 Lillian Avenue, for variances to zoning regulations for the purpose of legalizing a foundation and varying a previously approved variance to construct a new home.

With the gracious consent of the Library, Chairman, John Day flipped flopped Application #'s 56-07 and 57-07 on the Agenda. Bob Jano made a motion to bring Application # 57-07 to the floor, duly 2nd, approved 5-0.

Peter Young approached the Board, and explained a variance had been granted on Application # 15-04 in June 2004. That variance was to construct a Cape Cod style home. Since then, the owner sold the property and the new owner has found a buyer who wants a raised ranch style home. Mr. Young tried to explain the foundation that was already poured, was similar to that of the variance, but not the same. The Board explained the variance was per plans submitted. The prior plans showed the foundation would be 26.5' x 28' x 48'. The Cape Cod house including the overhangs was 30' x 50' with a rear deck that was 8' x 14'. The poured foundation is 26' x 48'. The original plans showed the cape as 30' x 50' and the new plans show a raised ranch that is 28' x 48' with a rear deck that is 8' x 14'. All of the new setbacks will match those on variance # 15-04. The front setback will be 21', and the rear setback will be 41'. The house will be

2 bedrooms. The Board inquired why a builder would want to construct a smaller house. Mr. Young explained the market is not what it used to be and a smaller house is cheaper to build.

John Day asked for any further public comment—as follows

John Percentage, 11 Merlin Avenue stated he was confused about the location of the house and had concerns if the style of the new house would fit into the neighborhood.

The Board explained that the house would be in the same exact location as originally proposed in June 2004 and it was not going to come any closer to the boundaries than the original variance provided for. The new house will be a raised ranch and there are several raised ranches in the neighborhood.

John Day asked for any 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 the new proposal is smaller than the original home and there is no increase in nonconformity.

John Day made a motion to grant the variance for a front setback to 21' and a rear setback to 41' subject to the plans submitted and is on file, the hardship is the irregular size and slope of the lot, duly 2nd, approved 5-0.

Application # 56-07: Town of New Fairfield Free Public Library, 2 Brush Hill Road, for variances to zoning regulations for the purpose of constructing an addition.

Bob Jano made a motion to bring Application # 56-07 to the floor, duly 2nd, approved 5-0.

Linda Fox, Library Director and Sarah Marsh, Chair Library Board, approached the Board and briefly discussed the previous times they were in front of the Board, noting previously the Board had concerns with the Library going over lot coverage. Since then, the Library has gone to the Planning Commission to combine the Library Lot with Town Hall/Veterans Field Lot as well as the upper parking Lot. By combining all 3 lots, they have gone from 35% lot coverage to 0.55% lot coverage, thus lot coverage is no longer an issue.

The additions will not come any closer to the front, side or rear boundaries than the existing Library. There is a portion of the rear addition that can be interpreted as encroaching on the side boundary, or on the rear boundary. The Zoning Board of Appeals is taking the position that this is the rear boundary. There is a portion of the chimney that goes over the existing rear boundary. Discussion followed regarding the “taking line” and the additions do not increase nonconformity. The Library is not asking for a parking variance. There was a concern regarding parking. John Day discussed they are not expressing a view on parking. They cannot disapprove an application because an applicant is not asking for something, which they may or may not need. One Board member had concerns that the use of Memorial Field may be altered by combining the lots. The Library explained by combining the lots, the use deeded to Memorial Field will not change; they were just simply combining the lots for acreage

purposes. Sarah Marsh went to the Veterans prior to having the lots combined and explained the Library's plans. The Veterans were happy the Library came to them and did not have any concerns with their project.

John Day explained how to move forward with the application. The Library would like the Board to take a single vote on all 3 setbacks.

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

John Day made a motion to move into the business session, July 2nd, approved 5-0.

In the business session the Board wanted to go on record thanking the Library for their patience in working with the Board and substantially changing their plans to have as small of a variance as possible. Parking is not in front of them, so they cannot discuss it. The north addition has been revised so as not to increase nonconformity. The front addition has been reduced so as not to increase nonconformity. The rear addition does not increase nonconformity.

John Day made a motion to grant the variance for a front setback to 0'; a side setback to ½'; and a rear setback to 0', subject to the plans submitted, noting the Board is; not expressing a view on Parking. The hardship is the irregular shape of the land, July 2nd, approved 5-0.

Election of Officers: John Day explained that an officer of the Board not only must run meetings, but be comfortable with it. John Day would like to see at least 2 members other than him start to run meetings. Maureen Walker has expressed an interest in becoming Vice Chair. Discussion followed for John Day to continue as Chair and Maureen Walker to become Vice Chair. The consensus of the Board is to have John Day remain as Chair and Maureen Walker to become Vice Chair, a formal vote was not taken.

Maureen Walker made a motion to adjourn the meeting at 11:00pm July 2nd, approved 5-0.