

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

**MINUTES  
February 15, 2007**

The New Fairfield Zoning Board of Appeals held a regular public hearing followed by a business session at 7:00pm on Thursday, February 15, 2007, in the New Fairfield Library. Secretary, Laurie Busse, took the minutes.

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

ZBA members absent: John Apple

Town Officials in attendance: Maria Haussherr-Hughes

Chairman, John Day called the meeting to order at 7:00pm, 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. Chairman Day asked if there were any corrections to the Agenda. Attorney Ray Lubus stated he submitted a letter requesting Appeal #01-07 remain unopened until the April 2007 meeting. Chairman Day discussed due to time constraints this would not be possible. Attorney Lubus was given the schedule that indicates the time frames. After the Call of the Meeting was read, attorney Lubus stated he would like to continue the appeal to the March 15 2007 meeting. Chairman Day stated he would leave the appeal unopened.

Bob Jano made a motion to adopt the Agenda duly 2<sup>nd</sup>, approved 5-0.

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

**Unopened Appeal # 01-07:** David and Carter Boyajian, 3 Milltown Road to appeal a Cease and Desist Order issued on December 5, 2006.

**Continued Application # 58-06:** William & Marie Thoma, 8 Arden Avenue, for variances to zoning regulations for the purpose of constructing a single family home

Bob Jano made a motion to bring Continued Application # 58-06 to the floor, duly 2<sup>nd</sup>, approved 5-0.

Peter Young approached the Board. Mr. Young has received the required letter from Rich Jackson regarding the location of the septic system. Due to the Health Dept.'s requirements, the location of the septic system has changed, and this change is not reflected in the plans we have on file; however, the location of the house and the requested setbacks have not changed. John Day read correspondence dated 2/15/2007 from Rich Jackson into the meeting. The letter stated the septic system was in the only possible location. Mr. Young explained the plans to build a single-family residence. The

home will be a 1,600sqft, 2-bedroom cape with a garage below it. The house will be on a slab without a basement. This is a small nonconforming lot that is 2/10<sup>th</sup> of an acre.

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 the septic system cannot be moved and this is a small nonconforming lot and the home is modest in size.

John Day made a motion to grant the application with a front setback of 20' subject to the plans submitted at tonight's meeting; the hardship is the irregular size and slope of the lot. Duly 2<sup>nd</sup>; approved 5-0.

While still in the Bob Jano made a motion to accept the Minutes of the January 18, 2007 meeting. Duly 2<sup>nd</sup>, approved 4-0-1. Joe DePaul abstained from the vote.

**Application # 02-07:** Michael and Maureen DeAngelo, 60 Ball Pond Road East, for variances to zoning regulations for the purpose of demolishing and rebuilding a larger 1-car garage.

Bob Jano made a motion to bring Application # 02-07 to the floor, duly 2<sup>nd</sup>, approved 5-0.

Michael DeAngelo and his architect, Stacey Keating, approached the Board and explained the existing garage is 14' x 22' and has deteriorated to the point where it needs to be torn down. The plans are to increase the size of the garage to 22' x 26'. This will encroach on the rear setback by 4'. There will be a 650sqft room above the garage. The new garage will be aesthetically pleasing to the neighborhood. John Day read letters into the meeting from 2 of the abutting property owners stating they did not have any issues with the proposed garage. The Board discussed this will increase nonconformity by 4' on an already nonconforming lot and if approved, would be the 3<sup>rd</sup> variance on this property. The other variances approved were # 54-92 for a front deck and # 20-00 for a vertical expansion. The Board stated it appears the height of the garage would block the view of Ball Pond from the neighbors to the rear of the applicant. Mr. DeAngelo did not have a letter from that property owner. The Board discussed their concerns regarding the room above the garage could be used for living space. The applicant stated this room would be for storage.

Stacey Keating stated she had an alternate plan that would not encroach on the rear setback. When the garage is rebuilt she can bring it 4' closer to the front and will not go any closer to the rear setback than the existing garage. The existing garage is 27.2' from the rear setback. A front setback would not be required.

Maria Haussherr-Hughes stated the property is in a 2-acre zone and the applicant can drop down to 1 acre zoning. Maria Haussherr-Hughes clarified that if the garage were moved 4' forward a variance for the front setback would not be required for the 1 acre zoning regulations.

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

Joe DePaul made a motion to enter the business session, July 2<sup>nd</sup>; approved 5-0.

In the business session the Board discussed the front setback was not an issue and the applicant was willing to change the plans so as not to increase nonconformity. The room above the garage should not be heated or used for living space.

John Day made a motion to grant a rear setback to 27.2' for the purpose of demolishing and rebuilding a 1-car garage subject to the revised plans submitted and discussed at tonight's meeting stipulating the room above the garage remains unimproved and unheated, and cannot be used for living space or convertible living space further stipulating the new garage will not go any closer to the rear boundary than the existing garage. The hardship is the size and slope of the lot, July 2<sup>nd</sup>, approved 5-0.

**Application # 03-07:** William and Marie Thoma, 31 Merlin Avenue, for variances to zoning regulations for the purpose revising a previously approved variance to construct a single-family house.

Croix Sather made a motion to bring Application # 03-07 to the floor, July 2<sup>nd</sup>, approved 5-0.

Dan Manzi approached the Board and explained that variance # 01-05 approved the construction of a 2-bedroom cape with a side deck on this lot. Since then, the builders have changed and he would like to change the house style from a cape to a raised ranch and would like to remove the deck from the side of the house and relocate it to the rear of the house as a 3' x 3' landing with stairs to grade. This will change the previously approved rear setback from 48' to 45'. The previously varied front setback of 24' will not change. The Board discussed the Minutes of the February and March 2005 meetings. The Minutes reflect the Board had concerns with a rear deck and the deck was not a necessity. Therefore in 2005 the applicant changed the plans to put the deck on the side of the home because a variance would not be required thereby reducing nonconformity. Dan Manzi stated there will not be a deck in the back; it will be a 3' x 3' landing with stairs to grade. The size of the house will not change; it will still be a 2-bedroom 1,800sqft house and will be 26' x 51'. The only changes will be the style of the house and the deck will be removed from the side and changed to a 3' x 3' landing in the rear of the home. The septic is already installed and inspected. Correspondence from Rich Jackson was read into the meeting stating the septic has been installed in the only suitable location.

Maria Haussherr-Hughes stated the survey submitted shows the rear setback is 48' from the overhangs. Since the landing will be 3' x 3' it will be partially under the overhangs of the house and therefore the increase in the rear setback will be 2' and not 3'. The correct requested rear setback will be 46'. Maria Haussherr-Hughes stated she would like the motion to stipulate that they do not come back for a deck.

John Day asked if this proposed 3' x 3' landing will be attached to the side deck. Dan Manzi replied he is completely removing the side deck. There will be no deck at all, just the landing with stairs to grade in the rear of the house. The stairs will be within the 46' setback.

John Day stated the matter before the Board is would this have been an acceptable proposal had it come before the Board in 2005. The Board discussed they may have

allowed a landing with stairs to grade but may not have allowed a 3' deck that ran the length of the house.

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

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

In the business session the Board discussed there is an increase in nonconformity by 2', however the house has not yet been built, and this is a small nonconforming lot.

John Day made a motion to grant a front setback to 24' and a rear setback to 46' for the purpose of constructing a single family 2-bedroom raised ranch with a 3' x 3' rear landing with stairs to grade subject to the plans submitted. The hardship is the size and slope of the lot. Duly 2<sup>nd</sup>, approved 5-0.

**Application # 04-07:** Jerzy and Bezena Sokol, 2 High Trail Road, CI for variances to zoning regulations for the purpose of constructing a 2 story addition with 2 balconies and loggia.

Croix Sather made a motion to bring Application # 04-07 to the floor, duly 2<sup>nd</sup>, approved 5-0.

Jerzy Sokol and his architect Charles Reppenhagen approached the Board and explained their plans to build a 22' x 22' two story addition. The home is on a corner lot and they will not come any closer to the front setback. A variance is not needed on the High Trail or Woody Glen sides of the home or on the north side of the home. For tonight's purposes the definition of a rear setback is the boundary opposite High Trail. The existing home is 14' to the rear setback and they are requesting 22' to the rear setback. There will be no increase in nonconformity. The height will increase by approximately 10'.

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

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

In the business session the Board discussed there is no increase in nonconformity and the height is not an issue. There will be no adverse impact on the neighbors.

John Day made a motion to grant a rear setback to 22' subject to the plans submitted, the hardship is the irregular size and shape of the lot, noting there will be no increase in nonconformity. Duly 2<sup>nd</sup>, approved 5-0.

**Application # 05-07:** June Arpi, 13 Yale Drive, for variances to zoning regulations for the purpose of constructing a deck.

Croix Sather made a motion to bring Application # 05-07 to the floor, duly 2<sup>nd</sup>, approved 5-0.

Morris Katz of Katz Contracting LLC approached the Board and explained the plans to construct a deck. The deck will be 15' x 38' with a 3' x 3' landing with stairs to grade. The rear deck will not go any closer to the rear setback than the existing deck. The front

of the deck will encroach on the front setback by an additional 1.7'. A side variance is not needed. The Board discussed the 1.7' increase in nonconformity is an area of concern for them. The Board discussed locating the stairs in another area. After further examination the Board noted the front setback shown on the survey is from the overhangs of the house to the property line. The chimney located in the front of the house appears to be closer to the front setback than the overhangs. The Board discussed they would allow the deck and stairs to come out as far as the chimney, but no further. John Day explained how to proceed. Mr. Katz requested a 5-minute break to speak with the homeowners who were sitting in the public section. John Day made a motion to take a 5-minute break, duly 2nd, approved 5-0.

Back from the break the Mr. Katz stated the homeowners would like to move the deck back to the line of the chimney so as not to increase nonconformity. The width of the deck will be increased from 15' to 17' when built and will not extend any closer to the front boundary than the closest point of the chimney.

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

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

In the business session the Board discussed the irregular shape of the property and the plans have been revised so as not to increase nonconformity. The revised proposal shows the deck will not come any closer to the front boundary than the nearest point of the existing chimney. The width of the proposed deck is now 17' wide as opposed to 15' wide.

John Day made a motion to grant a rear setback to 41' 4" and a front setback not to exceed the closest point of the chimney, subject to the plans submitted with 2 exceptions one being the width is increased from 15' to 17' and the other is the front setback being the closest point of the chimney and the construction to extend is no closer to the front boundary than that point. The hardship is the irregular shape of the lot. Duly 2nd, approved 5-0.

**Application # 06-07:** John and Eileen O'Brien, 14 Candlewood Knolls Road, for variances to zoning regulations for the purpose of legalizing the reconstruction of their home.

Maureen Walker made a motion to bring Application # 06-07 to the floor, duly 2nd, approved 5-0.

Attorney Ray Lubus, John & Eileen O'Brien approached the Board. The applicants' home was destroyed by fire and rebuilt in a different location on the property, thus increasing nonconformity. A previous Application # 54-05 had been withdrawn from the ZBA in December 2005. A Cease and Desist Order was issued on May 16, 2006, however the appeal period for the C&D has passed and they are here tonight to request a variance and not to appeal the C&D. Attorney Lubus requested the Board to look at this application as a vacant building lot and would they approve the plans as built. The chimney to the original house was left standing so when the house was rebuilt, there would be something to measure off of.

The Board discussed living space to living space there is a 9' jump, which is the discussion they had in December 2005. The other differences discussed were as follows:

<b>OLD HOUSE</b>	<b>NEW HOUSE</b>
Front Setback: 19.7'	Front Setback: 9' 5"
South Side Setback: 9.9'	South Side Setback: 5.4'
North Side Setback: 11'	North Side Setback: 9.5'
Size of House: 28' x 29'	Size of House: 28' x 29'
House Style: 1 story ranch	House Style: 3 story home
Basement: Crawl Space with partial standing room	Basement: Full basement
Front Porch: one 10' porch wide did not go the length of the house	Front Decks: two front decks one smaller deck on the 3 <sup>rd</sup> floor and a 2 <sup>nd</sup> deck on the middle floor going the length of the house and is 4' 5" wide

Attorney Lubus stated the applicants were willing to remove both of the decks to bring the front setback to 12'.

The Board discussed that at some point the applicant knew they needed a variance for the decks and they had to have been aware of the full basement versus the crawl space. The applicants also had to have been aware from the drawings their builder gave them that the house was taller than the original home. The Minutes of the December 15, 2005 meeting were discussed. Eileen O'Brien stated she did not know a survey would be required when the new home was completed and the builder assured her he measured properly and everything was all set so she took his word for it. The Board discussed if any proof had been submitted that this was the contractor's fault and has any action been taken against the contractor. Attorney Lubus stated the 2-year statute has run out. The Board discussed a previous application about a barn on Route 37 that was built where it should not be. The owner stated it was the builder's fault; however the ZBA made them move the barn back to where it should be. It is not within the jurisdiction of the ZBA to determine who is at fault.

Maria Haussherr-Hughes stated on 6/04/2004 she wrote on the applicant's plans and on her set of plans that the smaller deck could not be built and the larger deck would require a variance. The O'Brien's also told Maria Haussherr-Hughes that the home did not have a height increase and there were no pictures of the old home which is reflected in the December 2005 minutes. The pictures shown at tonight's meeting contradict what she was told. The first contradiction is pictures of the old home do exist. These pictures show the old home as a 1 story ranch with a front porch. The 2<sup>nd</sup> contradiction is the height of the home as increased by 2 stories. Maria Haussherr-Hughes stated the C&D was not appealed and it went to Town Counsel. If the home was illegally built then nothing has changed.

George Devine, 10 Candlewood Knolls Road: stated he has property at 10 and 12 Candlewood Knolls Road and his property abuts the O'Brien's. Mr. Devine was denied permission to add onto his deck because it would be too close to his septic. The fact that the O'Brien's moved their house closer to his property, devalues his property.

Croix Sather stated the overhangs on the new home were quite large and perhaps if the overhangs were cut off then that would help reduce nonconformity. John O'Brien stated he did not want to put "band aids" on the house unless it would get the house legalized. Mr. O'Brien again blamed the contractor for this dilemma. Attorney Lubus inquired if removing the overhangs was the way to go. John Day stated he could not give that opinion without polling the Board and that is something that cannot be done in the public session. Attorney Lubus requested a 5-minute break to discuss options with his clients

Maria Haussherr-Hughes stated before they go to a break now that she has seen photos of the original home she is really concerned with the height of the house and she believes there is a whole other issue going on here in addition to everything else that is going on. The pictures were never made available before. John Day commented as long as this refers to the scope of the C&D already issued. Maria Haussherr-Hughes stated it might be something else and there may be another procedure involved that Attorney Lubus may want to consider.

John Day stated that based on the pictures if there are any more comments that Maria Haussherr-Hughes or the Board would like to comment on they should do so now before the break giving the Applicants a chance to come back with a proposal based on everyone's comments.

John Day stated he has major concerns with the location of the house; it is so far away from the original it is just hard to believe that that was done in good faith even if the applicants are completely innocent in that regard. Unfortunately the prior president in the Town is the property owner with clean hands; a builder who misled them and constructed in an inappropriate site. We have not considered that as a basis for a variance. Another way to look at this is if this was a vacant lot and they were proposing to build where they did would we allow it. The 3<sup>rd</sup> way to look at it is does it make a difference that there is an increase in nonconformity relative to the prior construction. The reason for these comments is so that Attorney Lubus can consider them during the break.

George Devine, 10 Candlewood Knolls Road: stated he allowed the applicants to use the empty lot next to his house for the machinery. But what is good for one is good for all, and if he would not be allowed to build so close to the setbacks, then neither should the O'Brien's.

Maureen Walker made a motion to take a break, duly 2nd, approved 5-0.

Back from the break Attorney Ray Lubus stated his clients are willing to remove the overhangs from the two sides so the variance will not be as expansive as necessary. The new setbacks will be a front setback of 12'; the south side setback will be 7'; and the north side setback will be 11'.

There was discussion that the house is still much closer to the front boundary than the original house and did the applicants make any attempts to purchase property from the abutting neighbors. The applicants are using Candlewood Knolls property for their septic, driveway, and retaining wall. The Candlewood Knolls Assoc. is willing to let the applicants continue using their property but would not sell it. A letter dated 11/06/2006 was read into the meeting indicating the Candlewood Knolls Association was not selling any of their assets at this time. The previous property owner also signed a letter stating

she was using the Candlewood Knoll property with the Association's permission, which prevents any adverse possession claims.

John Day instructed the Board that they will be voting on the changes submitted as well as the height of the home, which was not addressed in the changes. Maria Haussherr-Hughes stated the pictures of the original house shows a basement and a 1<sup>st</sup> floor and now seeing the pictures of the new home she would like a vertical expansion variance requested before she issues a C&D on the height of the home. John Day stated to be clear there are now procedural issues to follow. Even if a variance was granted for the home, it may not cover the height of the home. A variance for the height of the home was not advertised in the Legal Notice and is not on the Application and does this Board have the authority to legalize the house based on the height issue. John Day stated they do not have a precise measurement on the height, but it would be the difference between a crawl space and a full basement.

Maria Haussherr-Hughes read zoning regulations 2.4.4 into the meeting that state any changes to restorations including roofline, height, dimensional changes, closer to the border and decks go before the ZBA. Maria Haussherr-Hughes stated the plans the applicants have contain her notes indicating they could not build the upper deck and the lower deck needed a variance. John O'Brien confirmed this information and stated he did not request a variance because he was unfamiliar with the process and if he got it, he got it, if not he would tear them down.

The Board discussed that at some point the applicant knew they needed a variance for the deck and they had to have been aware of the full basement versus the crawl space because the 2005 minutes reflect the builder was chiseling away rock when he knew he should not be. The applicants also had to have been aware from the drawings their builder gave them that the house was taller than the original and this is the same discussion they had in December 2005.

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

Croix Sather made a motion to enter the business session, July 2<sup>nd</sup>; approved 5-0.

In the business session John Day reminded the Board they will be voting on the revised setbacks. The Board discussed this is the Route 37 barn again, when the builder had dirty hands and the owner had clean hands. If they used this as a basis for a variance then it would be open season on variances. The Board does not want to impose cost to the homeowners but the alternative is worse. The Board must look at the elements on the ground. John Day stated he has a hard time with the improvements of enlarging and moving the home even within the tragedy of a fire.

The Board discussed that on a vacant lot, they always look for ways to reduce nonconformity especially when the home would be located so close to the front setback. If this application had come in front of them as a vacant lot, they would have discussed moving the house further away from the boundaries. Further discussion included the building permit granted was to rebuild exactly what they had in the same exact location. The home being pushed 10' forward is too much of an increase in nonconformity. The new side setback encroaches on the neighbor who has voiced his concerns and they do not know how to solve this issue without tearing down the house.



Croix Sather stated you can make the argument of buildings to buildings & structures to structures, but the applicants are willing to remove the decks and overhangs and the applicants are willing to make sacrifices to work with the Town. They did not intentionally put themselves in this situation.

John Day made a motion to grant a front setback to 12'; the south side setback to 7'; and the north side setback to 11' subject to the decks and soffits being removed. The hardship is the slope and irregular size of the lot and it's contiguous to community owned property in the front. Duly 2nd, denied 3-2. Croix Sather and Maureen Walker were in favor of this application. John Day, Joe DePaul, and Bob Jano were opposed to the application.

Croix Sather wanted to comment on his vote stating that in consideration of all the evidence and circumstances of this he believes the applicants are making a great effort trying to correct this and he took that into account.

John Day explained how to move forward with a denied Application. Attorney Lubus stated that now that they are done in the business session, there has already been correspondence from Town Counsel.

Croix Sather made a motion to adjourn the meeting at 11:55pm.