

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

**MINUTES
January 18, 2007**

The New Fairfield Zoning Board of Appeals held a regular public hearing followed by a business session at 7:00pm on Thursday, January 18, 2007, in the New Fairfield Senior Center. Secretary, Laurie Busse, took the minutes.

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

ZBA members absent: Joe DePaul and John Apple

Town Officials in attendance: Maria Haussherr-Hughes

Chairman, John Day called the meeting to order at 7:06pm, introduced the Board members and explained the meeting process and voting procedures of a 4-member Board. John Day gave the definition of a recusal.

Secretary, Laurie Busse read the proposed agenda for the Meeting. John Day made a motion to approve the Agenda, duly 2nd, approved 4-0.

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

Application # 56-06: Maura Keenan & Jody Rajeula, 8 Calverton Drive, for variances to zoning regulations for the purpose of constructing a 1st and 2nd story additions.

Croix Sather made a motion to bring Application # 56-06 to the floor, duly 2nd approved 4-0.

The property owners along with their builder, Bill Strolin, approached the Board and explained their plans to square off the existing house and then build a 2nd story. The house will go from 2 bedrooms to 3 bedrooms and they will add a bathroom. There is ledge and slope on the property. The Board discussed the 2nd story addition and squaring off one side of the house would not increase non-conformity but the side of the house where they were requesting a front setback to 4'5" would increase non-conformity by over a foot. The Board discussed ways of reducing non-conformity. John Day explained how to move forward with the application. The applicants requested a 5-minute break. Croix Sather made a motion to take a 5-minute break.

Back from the break the applicants stated they would like to pull back the part of the addition that is increasing non-conformity so that it does not exceed the existing front setback of 5.7' and the rest of the plans will remain the same.

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

Bob Jano made a motion to enter the business session, duly 2nd approved 4-0.

In the business session the Board discussed the vertical expansion will not have an impact on the neighbors and how the applicants agreed to change their plans so that non-conformity is not increased. The slope of the property was also discussed.

John Day made a motion to grant the application with a front setback of 5.7' subject to the stipulation the builder agreed to change the plans at tonight's meeting so the addition does not exceed the existing 5.7' front setback; the hardship is the slope and size of the property. Duly 2nd; approved 4-0.

While still in the Business Session the Board discussed the Minutes of the December 21, 2006 meeting, noting the word "kilt" should be changed to "kiln". Bob Jano made a motion to accept the minutes of the December 21, 2006 meeting as amended, duly 2nd approved 4-0.

Application #57-06: Hugh Burrell Trustee, 7 Sylvan Road for variances to zoning regulations for the purpose of relocating a portion of a previously approved access way that will serve 3 homes.

Croix Sather made a motion to bring application # 57-06 to the floor, duly 2nd approved 4-0.

Peter Young representing the applicant approached the Board and explained at the August 17, 2006 meeting he received a Variance #37-06 to construct an access way that will serve 3 homes, 2 existing and 1 new home. Since that time he has spoken to the neighbors and staked out the access way and determined that although the access way would have more of a curve to it, it would be more conducive to the natural grade of the land and have less of an impact on the abutting property owner, if the access way was moved over 12'. Moving a portion of the access way over 12' is the only change to the variance Mr. Young is requesting. The old map # is 05016Z and the new map # is 05016ZR2.

John Day verified the previous application # 37-06 was not appealed. It was not appealed. John Day asked for any further public comment—as follows:

Charlie Fenwick: Mr. Fenwick showed photos and stated that no one on Chestnut Hill Drive was notified or knew of the previous variance, and the minutes of the August 17, 2006 meeting state Chestnut Drive not Chestnut Hill Drive. Mr. Fenwick stated that a development was going to go in behind them on a 26-acre parcel and that it's been subdivided; an acre has already been broken off and that 1 house has already been authorized to go on the 26 acres. For 33 years the access road has been 10' to 12' wide and it ends not where the map shows you it ends but rather at the beginning of Mr. Bassani's & Mr. Pottch's property line.

Chairman Day stated the appeal period for the August 17, 2006 meeting has lapsed; as a matter law the issue of the variance being granted for 3 houses on the access way is done. All we're hearing tonight is not whether a variance should be granted for relocating a portion of that access way. If we deny this variance that does not in any way restrict the applicant's right to build the access way with 3 homes on it, all we're talking about tonight is where it is. That's all we're talking about.

Mr. Fenwick stated there are huge trees that are 60' tall that were planted 33 years ago by his late wife. He has concerns that these trees will be cut down. Mr. Fenwick also stated that Sylvan Road is not part of Briarwood Association and properties on Sylvan Road should not be accessed within the Briarwood Association. Mr. Fenwick stated that if the Legal notice had stated Chestnut Hill Drive instead of Sylvan Road, they would have been at the August 17, 2006 meeting because he believes that by allowing 1 new home would be a prerequisite to multiple homes and he does not want an entire subdivision using Chestnut Hill Drive as a main road to a very large subdivision. The abutting property owners were not notified of this or the previous application. Other Boards and Commissions require an applicant to send abutting property owners certified letters of any work that will be done.

Chairman Day explained that if multiple lots were cleared this would be a subdivision and the applicant would have to go to the Planning Commission. As of tonight the Planning Commission has not received a subdivision application or a lot line revision application for this property. John Day stated that State Statutes do not require the Zoning Board of Appeals to send certified letters to the abutting property owners and that the Legal Notice is advertised in the Citizen News. The address given in the Legal Notice is the legal mailing address of the property. Mr. Fenwick stated that the restrictions of the Briarwood Community state that a property cannot be subdivided or split. It must be conveyed or sold in its entirety. John Day reminded Mr. Fenwick those issues are not before the Board tonight. If the Board votes against the application tonight, the access way stays as is with 3 homes on it. The Zoning Board of Appeals cannot take back a variance or revote on an application.

Mr. Fenwick read the Subdivision Regulations. John Day explained subdivision regulations belong in the Planning Commission; the Zoning Board of Appeals deals with zoning regulations.

Roger Wise, Planning Commission: Wants to nip this in the bud, the access way is supposed to be 25' wide and before something comes before the Planning Commission regulations need to be complied with. John Day stated the Zoning Board of Appeals has no jurisdiction over Planning Regulations.

Joe Hart, 15 Chestnut Hill Drive: The property was subdivided according to the field card of 7 Sylvan Road. Originally purchased in 1980. Subsequently transferred and subdivided to the Hugh Burrell Trust on 01/11/2005, one lot being 1.5 acres and the remaining 26.2 acres. John Day read variance # 37-06 into the meeting. Mr. Hart wanted to clarify that this access way was not going to 5 Sylvan Road, which is the 1.5-acre parcel that was split off, but was only going to 7 Sylvan Road. John Day clarified that the access way was only going to 7 Sylvan Road and the variance stipulates the existing access to 7 Sylvan Road be shut down. If this access way were to go to 5 Sylvan Road in addition to 7 Sylvan Road, then the applicant must come back before the Board. Mr. Hart stated he had concerns that if the access way was moved over to the right, it would be more feasible to future development and if denied it may prevent the future development of 10-15 houses up there. Mr. Hart stated that if the home will be accessed off of Chestnut Hill Drive then the address in the Legal Notice should read Chestnut Hill Drive and not 7 Sylvan Road. John Day stated the variance granted in August limited the access way to the 3 homes, two of which exist. The property owner would have to come back to the Zoning Board of Appeals with any additional houses

and that matter is not before us tonight. The Legal Notice requirements are that we use the Legal Mailing address of the property.

Peter Young: stated 5 Sylvan Road is cleared and permitted and 7 Sylvan Road a view was cut on. These are 2 separate lots and there will be one house on each lot. 5 Sylvan Road will access 5 Sylvan Road.

John Day stated the discussion must be limited to 7 Sylvan Road and the access way to it.

Steve Delcampo, 7 Chestnut Hill Drive: verified the access way is for 2 existing homes and one new home. If wetlands are on this property were the proper permits secured. Maria Haussherr-Hughes stated that if it needed to go before wetlands, they would have done that. Peter Young stated he has a permit from the Inland/Wetlands Commission. Mr. Delcampo inquired if the applicant can access 5 Sylvan Rd. through 7 Sylvan Rd. John Day reminded him that all discussion relating to 5 Sylvan Rd. is eliminated.

John Perez, 25 Chestnut Hill Drive: stated his primary concern is there is no access to improvements through Chestnut Hill Drive, this will disrupt the flow of traffic and does not want multiple homes being accessed off of Chestnut Hill Drive. John Day explained that in August only one house was being added onto the access way and the Board made sure the access way was safe for EMS vehicles. There was no mention by the applicant of further development on this lot other than the one new house. No one said this would allow future development of the land.

John Bassani, 19 Chestnut Hill Drive: wanted clarification there will only be one home added behind his property. John Day again stated there will only be 1 new home on the access way unless they come back to Zoning Board of Appeals or Planning. Mr. Bassani said he is in favor of shifting the access way 12' over because he is directly affected by the access way and shifting the access way over will have less of an impact on him.

Alan Pottch, 18 Chestnut Hill Drive: concerns of width of driveway and is anything being proposed tonight to change that—John Day read variance # 37-06 which stated there will be a 25' wide travel way, the black top part will be 18' narrowing down to 14'. The only thing being requested tonight is to move a portion of the access way 12' sideways and that is the only thing the Board will vote on. If the access way is moved, will there be a lot of trees taken down?

Peter Young: stated he met last Monday with John Hodge, Mr. Fenwick, Ralph Gallagher, and Hugh Burrell regarding the issues presented tonight. They walked the property and measured the trees that are on his property and not on the access way and understand the residents' concerns. The lower branches of the north side of the trees are dead and would be removed; in addition they will plant new trees in between the older trees to help preserve Mr. Fenwick's privacy. None of the big trees would be cut in the access way as they are not on the access way, they are actually on the other people's property. The property owner on the other side of Mr. Fenwick had concerns with drainage as water runs off the existing access way into his yard. Mr. Young will install catch basins and will curb the portion of the access way where water runs off.

John Hodge, 1st Selectman: stated he visited the site 2 times with Mr. Hart, Mr. Fenwick, Mr. Gallagher and Mr. Young. Mr. Gallagher told him he understood the residents' concerns this would be a prerequisite for a future subdivision and agreed to hire a licensed arborist to protect the trees on Mr. Fenwick's property and would put in writing to covenant there would be no additional houses being built.

Peter Young: could not speak for Ralph Gallagher regarding future development but believed that he may put in writing a covenant not to open the land up for future development.

Joe Hart, 15 Chestnut Hill Drive: asked if there is a difference between an access way and a driveway and are there any setbacks required for a driveway/access way—No there is not was the answer to both questions. Mr. Hart was still concerned with future development if the variance stipulates access from 7 Sylvan Road is cut off that could be used as a hardship. Mr. Hart would like a copy of the maps.

John Day explained hardship arises from the land and it is very rare and unusual for the Board to vary a variance and if they were to vary a variance a 2nd time, the circumstances would have to be compelling. Mr. Hart is welcome to go into Land Use to view or purchase a copy of the maps if a large-scale copier is available.

Steve Delcampo, 7 Chestnut Hill Drive: stated if only one house is being built, he is OK with that but will the new access way affect the drainage on Chestnut Hill Drive? Will the applicant repair any damage he causes to the street? Mr. Young stated they would improve the drainage. Mr. Young stated in order to do work on a Town road a bond must be posted and either he will make the required repairs or the Town will do it with the money from the Bond.

Maria Haussherr-Hughes stated she has no problem with the driveway being moved over 12'.

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

Bob Jano made a motion to enter the Business Session, duly 2nd approved 4-0.

In the Business Session the Board discussed the variance has already been granted to put a 3rd house on an access way; they have been asked by the applicant to vary the variance by moving a portion of the access way over by 12'. They have been given a land-based reason to consider the change. Moving the access way over 12' would have less of an impact on the natural grade and there is no bearing whatsoever on any of the other matters of concern raised by the community in connection with this project.

John Day made a motion to grant the variance the hardship being the slope of the land referring not only to the slope where the grade is going to be moved but also the slope of the original access way which created the predicate hardship in the prior proceeding; subject to the plans as submitted, duly 2nd, approved 4-0.

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 Application # 58-06 to the floor, duly 2nd, approved 4-0.

Peter Young, approached the Board. Mr. Young explained he plans to build a single-family residence. Mr. Young has not yet received an approval letter from the Town Sanitarian, Rich Jackson, approving the septic site and he would like to continue to next month. The plans were not discussed.

Croix Sather made a motion to continue to the February 15, 2007 meeting, duly 2nd, approved 4-0.

Application # 59-06: Lawrence & Ellen Heller, 333 Whaley Route 39, for variances to zoning regulations for the purpose of constructing rear dormers, enlarging the front gable roof and legalizing and extending a rear deck.

Croix Sather made a motion to bring Application # 59-06 to the floor, duly 2nd, approved 4-0.

The applicant's representative, Don Olson, approached the Board. Mr. Olson explained the dormers will not impact the footprint on the ground and he wanted to enlarge the entryway. The existing header height of the entryway is 6'3". Mr. Olson proposes adding a front dormer and raising the front fascia to 8'. The overhangs will not change the existing setbacks. This is a straight vertical expansion.

Chairman Day stated there is previous variance # 77-88 on the property; this variance was to build the existing home. This variance granted a 10' side setback. The survey provided shows the house is 0.3' from the property line. The applicant's neighbor, Arthur Lutes stated a carport used to be on that side of the house and the carport evolved into a garage. Maria Haussherr-Hughes stated she did not show any permits for the carport or for the conversion of the carport to a garage. Chairman Day explained that if the addition was there more than 3 years it is legally grandfathered.

John Day explained the difference between buildings and structures and how "grandfathering" is applied. The deck is preexisting and is 26.6' from the rear setback and does not have stairs. Mr. Olson would like to add stairs to the side of the deck. The 1981 Field Card shows the deck is 15' L x 8' W. The 2004 Field Card shows the deck is a rectangle shape. The existing deck is not the same size or configuration as either of the field cards. The existing deck appears to be 2' wider and has the corner cut off. The Board discussed the deck would increase non-conformity on an already non-conforming lot. The house is 36.6' from the rear property line. There was discussion if the property exceeded the 20% lot coverage.

Art Lutes stated he was concerned if the deck was going to increase in size, but he is OK with stairs being added. John Day explained that since the deck was built outside of the building envelope without permits, the entire deck is in front of the Zoning Board of Appeals.

Joe Sandler, 339 Whaley Road, Route 39 asked, "In regards to the deck if all the applicant wanted to do was add steps to the deck?"

John Day explained how to move forward with the application. Mr. Olson said he would like to take a break so that he can call his clients to give them their options. Maureen Walker made a motion to take a 5-minute break, duly 2nd, approved 4-0.

Back from the break Mr. Olson stated his clients would like to withdraw the deck from the application and have the Board vote on the front and rear dormers. John Day stated this would be treated as a modification and no forms needed to be filled out.

Maureen Walker made a motion to enter the business session, duly 2nd approved 4-0.

In the business session the Board discussed there will be no action taken on the deck and they will vote on the front and rear dormers. The Board discussed the dormers are a vertical expansion and will not increase nonconformity. There will be no change in the footprint on the ground.

John Day made a motion to grant a front setback to 23.6' and 2 side setbacks to 19.6' and 7' and a rear setback to 36.6' for the purpose of constructing front and rear dormers subject to the plans submitted, the hardship is the irregular size, shape, and slope of the property. Duly 2nd, approved 4-0. This variance is limited to the dormers on the roof and eliminates the deck.

Croix Sather made a motion to adjourn the meeting at 9:45pm, duly 2nd, approved 4-0.