

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

**MINUTES  
November 15, 2007**

The New Fairfield Zoning Board of Appeals held a regular public hearing followed by a business session at 7:00pm on Thursday, November 15, 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, and Joe DePaul. Croix Sather, Vice Chairman joined the meeting at 10:30pm

ZBA members absent: John Apple

Town Officials in attendance: Maria Horowitz, Zoning Enforcement Officer

Chairman, John Day called the meeting to order at 7:08pm, introduced the Board members and explained the meeting process and voting procedures of a 4 and 5 member Board, noting a 5<sup>th</sup> member may show up later tonight. 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 4-0.

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

**Continued Application # 40-07:** Peter Vigliano, 19 Hilldale Road, for variance to zoning regulations for the purpose of constructing 2 solar arrays

Bob Jano made a motion to bring Continued Application # 40-07 to the floor, duly 2nd, approved 4-0.

Mr. Vigliano approached the Board and discussed the changes he made from last month's meeting. The Use Variance for zoning regulation 3.2.1 has been dropped. The new front setback is 33.59' and a rear setback of 22.66' has been added. These new setbacks are the same as the existing home, therefore nonconformity will not increase. He will be under 20% lot coverage. Mr. Vigliano submitted into the record Planning Regulations, a letter from the solar panel company dated 10/24/07, a letter from the CT Clean Energy Fund dated 11/14/07 and pictures of solar panels that outline the use of solar energy is encouraged. The Board noted their decisions must be based on the Zoning Regulations and not on any other regulations such as Planning or other energy sources.

The Board discussed the location and the size of the solar panels. There will be 2 arrays which are each 16' long and each array will be mounted on an 8' pole. The mounts will go in the middle of the array. The angle of the arrays will not exceed 45%. The total height of the arrays on the poles will not exceed 16'. Josh Carter from the solar company stated the arrays will be at their highest point in the winter and the

applicant is interested in purchasing the model that must be manually adjusted. The arrays will be outside of the building envelope and discussion focused on what types of structures are allowed in the front yard. The applicant stated he would be willing to move the arrays behind the front line of the home, noting the entire arrays, not just the poles would be behind the front line of the home. The applicant may have to angle the arrays or turn them sideways so as not to require a variance for a side setback. To clarify the matter, Chairman Day stated the plot plan submitted shows the front line of the house is line number 85.37 and the rear line of the house is line number 233. The entire arrays will be in between line numbers 85.37 and 233 on the plot plan submitted at tonight's meeting. The Board discussed if they would allow two poles with two 16' panels or if they would allow one pole with one panel with approximately the same square footage as the two panel scenario, which may slightly increase the height of the structure.

Myron Liebowitz, 30 Hilldale Road, stated he lives across the street and does not object to the solar panels in the front yard because this is not an intrusive device, there is no noise level and there is no environmental impact.

Maria Horowitz stated the zoning regulations do not cover solar panels and that is why the applicant originally requested a use variance. John Day read the definition of structures from pg 10 in the zoning regulations into the meeting. Solar panels are not listed, however other structures are listed including antennas and solar panels could fall under the category of an antenna, which may be in the front yard. Other Board members stated if solar panels are not in the zoning regulations then we should not be discussing them.

John Day asked for any further public comment—none heard

Maureen Walker made a motion to move into the Business Session, duly 2nd, approved 4-0.

In the Business Session the Board discussed the square footage would not change if there were 2 separate arrays with 2 poles or if there was one array twice the size with one pole. Nonconformity will not increase. The Board discussed they had a hard time believing a Use Variance would be required for solar panels and they are willing to treat the solar panels as another type of structure. The Board discussed the applicant's willingness to work with the Board by relocating the arrays. The Board discussed there are lots of things listed in the definition of structures that there aren't specific zoning regulations for, this is one of them.

John Day made a motion to grant the variance the hardship being the slope and nonconforming size of the lot subject to the following changes in the proposal from the way it was proposed, revised and advertised. The array will remain substantially the same number of square feet however it will be no closer to the rear boundary than 22.66' and it will be no closer to the front boundary than the north corner of the house which on the plot plan before us touching a draftsman line of 85.37, stipulating the array does not require a side variance and that the array may have 2 poles instead of one, but if there are 2 poles the arrays need to be contiguous, touching or attached so that visually it appears as much as possible to be a single array duly 2nd, approved 4-0.

The Board discussed the Minutes from the October 18, 2007 meeting. Maureen Walker made a motion to approve the Minutes from the October 18, 2007 meeting, duly 2nd, approved 4-0.

**Application # 44-07:** Town of New Fairfield, 3 Brush Hill Road, for variances to zoning regulations for the purpose of constructing an awning

Bob Jano made a motion to bring Application # 44-07 to the floor, duly 2nd, approved 4-0.

Steve Merullo, Director of Buildings and Grounds approached the Board and explained the roof of the building sticks out over the existing front stoop thus creating ice and water in bad weather. For safety reasons the Town would like to construct a 9' 8" x 8' black 17 ounce vinyl coated fabric awning with sides which will be up year round. The awning will have front support posts 2" in diameter which will sit on the last corner of each step. Pictures of the proposed awning were submitted noting the awning would not have lettering as the pictures showed. They are not changing the gable, they are constructing an awning. The awning will come no closer to the front setback than the existing stoop and will not be any higher than the existing building. The Board discussed this would be considered a vertical expansion because the stoop is considered a structure as it is more than 2' from the ground. If the stoop was less than 2' from the ground and not considered a structure, nonconformity would clearly be increased. Maria Horowitz loved John Day's explanation.

Steve Merullo asked if at some point they can change the awning to a wooden overhang/portico similar to the picture of the Town Hall above the table. John Day explained the variance and the motion is for the plans submitted. If plans are changed and are the same dimensions, Mr. Merullo should submit them to the Board secretary who would then contact him. If Chairman Day feels they are within the scope of the project approved, he will approve them, if not he will have to come back to the Zoning Board of Appeals for that.

John Day asked for any further public comment—none heard

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

In the business session the Board first discussed this is a straight vertical expansion because the stoop is higher than 2' from the ground and falls within the zoning regulations. They are not increasing nonconformity. The Board is attracted to the proposal that is not technically before them which is to construct the wooden overhang. The Board concurred that if the Town makes that change to construct the wooden overhang and it fits within the same dimensions as the awning which will allow them to depart from the proposal as it exists in the record tonight, then the Town must contact the Board secretary.

John Day made a motion to grant a variance with a front setback of 12' subject to the plans submitted subject to the comment on changing to a wooden overhang. The hardship is the irregular size and nonconformity of the lot. Duly 2nd, approved 4-0.

**Application # 45-07:** Allan J. and Linda R. Finn, 249 Ball Pond Road, for variances to zoning regulations for the purpose of constructing a 2<sup>nd</sup> story addition.

Bob Jano made a motion to bring Application # 45-07 to the floor, duly 2nd, approved 4-0.

Mr. Finn approached the Board and explained he is adding a 2<sup>nd</sup> story to an existing 1 story part of his home. There is no increase in nonconformity; the footprint on the ground will not change. A height variance or a use variance is not required.

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 this is a classic vertical expansion that does not increase nonconformity, does not impact the neighbors, and does not change the foot print on the ground.

John Day made a motion to grant the variance for a front setback of 55' subject to the plans submitted. The hardship is the irregular size and shape of the lot, duly 2nd, approved 4-0.

**Application # 46-07:** Ronald E. and Winifred C. Graiff, 52 Bogus Hill Road, for variances to zoning regulations for the purpose of constructing a detached garage.

Maureen Walker made a motion to bring Application # 46-07 to the floor, duly 2nd, approved 4-0.

Mr. Graiff and his attorney, Raymond Lubus approached the Board. They explained the plans to construct a separate 2 bay garage. There is an existing 3 bay garage attached to the house, in addition to the home there is a pump house and an existing nonconforming legally grandfathered 2<sup>nd</sup> garage on the property. The applicant is proposing to construct the new garage near the location of the existing nonconforming garage, however, the new garage will be constructed in such a location that it meets zoning setbacks and he will take down the existing nonconforming garage upon completion of the new conforming garage. The new garage will be used for boat storage. The property used to be 2 separate lots and had been combined into 1 lot. The property size is just under 1 ½ acres. The property is a very odd shaped lot with an extremely small rear yard, a normal size front yard and very large and oddly shaped side yards. Mr. Graiff submitted a topography map noting the slope on the property goes from 458' to 446'. There is a significant amount of ledge on the property as well. Pictures of the slope and ledge were submitted into the record. Mr. Graiff has an Inland/Wetlands permit dated Sept 13, 2007 to construct the garage in this location. Mr. Graiff did not want to cut down any 100 year old oak trees, but he didn't care about cutting down the black birch tree to construct the garage.

John Day read a letters from Patricia Wreath and Allan & Rebecca Deutscher into the meeting. The letters stated they are Mr. Graiff's neighbors and do object to the garage being built as it will prevent them from looking at covered boats in the woods.

Discussion followed regarding zoning regulations 3.1.1c vs. 3.1.1g. 3.1.1g allows for one boat, 3.1.1c is for motor vehicles and the application and the letters from the neighbors clearly states the garage will be used for boat storage. Attorney Lubus noted that boats are regulated by the Dept. of Motor Vehicles, and therefore should be considered a motor vehicle. Discussion followed, if boats are considered motor vehicles, then why does the Town have separate zoning regulations for boats and motor vehicles? There was further discussion the slope is a clear hardship, and they are offering to remove a nonconforming building. The draw back is the boat vs. motor vehicle issue. Maria Horowitz stated she does not have any issues with the proposal. The zoning regulations allow for up to 3 bays and one additional space for each 10,000 square feet of land in excess of the maximum lot size. Therefore the amount of land is not an issue; it is just that the garages cannot be connected due to the slope and ledge on the land.

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

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

In the business session the Board discussed they do not have any issues with trading off a nonconforming building for a conforming building. They do have concerns with the wording in the application and the Board's decision maybe misinterpreted as the Board taking a view on motor boats versus motor vehicles. One suggestion is to treat this as a proposal for a garage and the property owner and the appropriate Town Officials take them wherever they take them. The Board discussed the steep slope and ledge on the property are clear hardships, and nonconformity will actually be reduced if the old garage is taken down and the new one constructed

John Day made a motion to grant the variance to zoning regulations 3.1.1c subject to the plans submitted and discussed at tonight's meeting. The hardship is the irregular size, shape, slope and ledge present on the property, noting that by making the motion for the approval of additional garage space for motor vehicles whose terms are defined in the regulations without commenting on the interpretation of those terms to this particular case one way or the other and otherwise subject to the plans submitted to the Board and placed in the record further stipulating the old nonconforming garage is torn down upon completion of the new conforming garage July 2nd, approved 4-0.

**Application # 47-07:** William and Rosario, 17 Knolls Road, for variances to zoning regulations for the purpose of constructing shed dormers.

Maureen Walker made a motion to bring Application # 47-07 to the floor, July 2nd, approved 4-0.

Bill Kelley and his representative Sean Condon approached the Board and explained their plans to build a bay window and a shed dormer. There will not be any change in the footprint on the ground, there will be no increase in nonconformity, and they have a small nonconforming lot of approximately ¼ acre.

John Day asked for any further public comment—none heard

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

In the business session the Board discussed the height expansion is a typical vertical expansion and does not require a height variance and does not impact any of the neighbors. The construction of the dormers does not increase nonconformity.

John Day made a motion to grant the variance for a front setback to 15' and a rear setback to 35' subject to the plans submitted, and discussed. The hardship is the irregular size and shape of the lot duly 2nd, approved 4-0.

**Application # 48-07:** Holly Eula Bell, 8 Hampton Road, for variances to zoning regulations for the purpose of constructing a deck.

Maureen Walker made a motion to bring Application # 48-07 to the floor, duly 2nd, approved 4-0.

The applicants approached the Board and explained their plans to square off the existing home by constructing a deck. The deck will go no closer to the side or rear boundaries than the existing home. They will not increase nonconformity. The deck will remain an open deck. A letter which was dated 10/08/2007 and was signed by several of the neighbors was read into the meeting. The letter indicated the neighbors do not object to the construction of the deck.

John Day asked for any public comment—none heard.

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

In the business session the Board discussed the construction of the deck squares off the existing house and does not increase nonconformity.

John Day made a motion to grant a variance for a rear setback of 39' subject to the plans submitted. The hardship is the size, shape and nonconformity of the lot, duly 2nd, approved 4-0.

**Application # 49-07:** Robert Matarazzo, 157 Ball Pond Road, for variances to zoning regulations for the purpose of legalizing a deck.

Bob Jano made a motion to bring Application # 49-07 to the floor, duly 2nd, approved 4-0.

Bob Matarazzo approached the Board and explained the property has 2 homes on it. The cottage had burnt down and was rebuilt. Mr. Matarazzo had a building permit to construct a deck that was less than 2' off the ground. However, when the deck was completed, it was more than 2' from the ground. Mr. Matarazzo tried to correct this problem by having dirt poured around the deck; however this only compounded the problem. The 2<sup>nd</sup> house is nonconforming and legally grandfathered, because the deck is not in the original spot it has to be less than 2' from the ground. The deck does not encroach on the setbacks and they do not need front side or rear variances. They need a variance for zoning regulations 2.4.3 only.

John Day explained how to move forward when construction has already taken place and needs to be legalized.

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

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

In the business session the Board discussed they neither penalize nor reward an applicant for constructing something without a permit. They view the plans as if they were never built. Dimensionally, the deck is fine and does not encroach on any of the setbacks. The position the Board took was they would have granted the variance for this because there is no increase in nonconformity.

John Day made a motion to grant the variance for zoning regulations 2.4.3a&b subject to the construction as built. The hardship is the shape and size of the lot, duly 2nd, approved 4-0.

**Application # 50-07:** Philip Wagenheim, 1 Partridge Lane, for variances to zoning regulations for the purpose of constructing a 2 car detached garage.

Maureen Walker made a motion to bring Application # 50-07 to the floor, duly 2nd, approved 4-0.

Mr. Wagenheim approached the Board along with his architect, Alfred Sacco, and realtor Jefferson Guthrie. They explained back in September 2007 their application for a 2 car garage 1' away from the front setback was denied. Since then they have revised their plans and the Chairman agreed the plans had been significantly changed enough to allow them to come back before the Board within 6 months. The garage will still have 2 bays and will now be 10' from the front setback. The lot is almost 1 ½ acres. The construction of the garage will make the conforming lot nonconforming. The Board looked for other locations to construct the garage. The Zoning Commission is currently revising their zoning regulations which would include a new water front district. The proposed but not yet adopted regulations would require a 20' setback, thus the garage would still increase nonconformity under the new proposed zoning regulations as well. The Board explained their position on making a conforming lot nonconforming.

The applicants explained the driveway is so steep in 2005 the tax assessor gave them a reduction on their taxes because of it. The septic system is built into a 12' high retaining wall and pumps up. The applicant cannot park in the driveway during winter months because he is unable to get up to the driveway with even the smallest amount of snow on the ground, and at which point he traded in his car for a jeep, which could not make it up the driveway either. When Mr. Wagenheim parks on top of the driveway his car is pelted by acorns and then during snow storms it is plowed in and he cannot dig it out. Currently he must park his car under the roof overhang by the front door. Mr. Wagenheim stated the only way for him to get out of his driveway in winter months is by having a 90' tall monolift with a drawbridge to get the cars from the bottom of the driveway to the top of the driveway. The applicant cannot access his property from Sunrise Road because his septic system leaching fields are in that portion of the yard. Mr. Wagenheim explained this is his weekend home, and if it snows during the week, the driveway is impossible to get up or down by the time he gets there on the weekend.

The Board members agreed the slope of the driveway is excessive. However that home was built in the mid 1940's and for the past 60 years the owners of that house have survived the driveway during winter months. They Board has granted variances for

homes on Candlewood Lake, however these garages provided off the street parking. This home has off the street parking and the garage would greatly increase nonconformity.

John Day asked for any further public comment—as follows:

Steven Ward, 2 Partridge Lane: The construction of a 2 car garage so close to the road will set a precedent for all other homes to follow and take away from the aesthetics of the area. To back out of a garage so close to the road is a safety issue because the garage may block the drivers' vision, where as currently there is no garage to block the drivers' view. Also, Mr. Ward believes by the time snow falls on the ground all of the acorns have fallen off the trees.

Richard Price, 29 Lake Drive South: Stated the construction of the garage would set a precedent.

The applicant replied that Mr. Price has a 3 bay garage 5' from the road and submitted a picture into the record. The picture shows the garage predates zoning regulations and is legally grandfathered.

The Board again discussed their position on making a conforming lot nonconforming and suggested other ways of dealing with a steep driveway such as putting heat or PVC pipes under the driveway to melt away the ice and snow. The applicant stated this is a weekend home and he would have to leave the system on all day everyday, as he would not be able to work the system remotely. This would not be cost effective. The Board also suggested having a professional engineer look at the driveway to see if it can be redone. The applicant stated his septic guy who is not an engineer told him it can't be done and again, it would not be cost effective.

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

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

In the business session the Board discussed while the change in the plans was significant enough to come back with in 6 months, it does not give the OK to approve a variance. The Board discussed they cannot recall when they have granted a variance that would make a conforming lot nonconforming. The Board discussed their driveway hardships on their own lots and how they have to deal with what they have as well as the previous owners of that home have been figuring out how to get up and down that driveway in the winter months for 60 years.

John Day made a motion to grant the variance for a 10' front setback subject to the plans submitted. The hardship is the irregular slope and shape of the lot. Duly 2nd, denied 0-4. Application Denied.

**2008 Meeting Schedule:** Croix Sather joined the meeting at 10:30pm. The Board discussed the 2008 meeting schedule; all meetings will take place on the 3<sup>rd</sup> Thursday of the month. The application deadline had been changed to either a Monday or a Tuesday 3 times due to holiday weekends.

John Day made a motion to adopt the 2008 Meeting Schedule, duly 2nd, approved 5-0.



**Adoption of 15 day appeal period rule from appealable determinations of the Zoning Commission:**

John Day explained he spoke to Gail McTaggart regarding appeals of the Zoning Commission. John Day explained an appeal from the Zoning Commission is not the same as a Cease and Desist Order or a variance. The appeals from the Zoning Commission are few and far between, however by State Statute this is a 30 day appeal period. Gail McTaggart suggests changing the appeal period from the Zoning Commission to 15 days, to be consistent with the Zoning Board of Appeals. John Day stated he has spoken to Gail McTaggart, Faline Fox and Jack Keating on this issue and all of them are in agreement a 15 day appeal period would be best. This is only for appeals of the Zoning Commission and not Cease & Desist Orders or applications for a variance in the ordinary course. It would be only for decisions of the Zoning Commission itself in an appeal to us in which there are very very few.

John Day made a motion for the adoption of a rule providing for a 15 day appeal period from the Zoning Commission determinations appealable to the Zoning Board of Appeals, duly 2nd, approved 5-0.

Croix Sather and Joe DePaul will be leaving the Board and John Day wanted to go on record recognizing their patience and the contribution they have made to the Town. It has been a pleasure to work with Board members who are capable of putting politics aside and simply doing what's best for the Town without regard to any of the other local issues that distract people from time to time. They have done outstanding jobs and we appreciate their efforts and supports.

Maureen Walker made a motion to adjourn the meeting at 10:45pm duly 2nd, approved 5-0.