

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

**MINUTES  
October 18, 2007**

The New Fairfield Zoning Board of Appeals held a regular public hearing followed by a business session at 7:00pm on Thursday, October 18, 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 Joe DePaul. Joe DePaul left the meeting at 9:23pm

ZBA members absent: Croix Sather, Vice Chairman

Town Officials in attendance: Maria Horowitz, Zoning Enforcement Officer

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 at some point there would be a 4 member Board. John Day gave the definition of a recusal.

Secretary, Laurie Busse read the proposed agenda for the meeting. John Day read a letter into the meeting requesting Application # 37-07, Riggs, 1 Saddle Ridge Road be withdrawn. John Day made a motion to remove Application # 37-07 from the Agenda and adopt the Agenda as amended, duly 2nd, approved 5-0.

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

**Continued Application # 34-07:** Thomas Murrin and Maryann Welsh, 17 Fieldstone Drive, for variances to zoning regulations for the purpose of constructing an above ground pool with a deck, and enlarging and legalizing a rear deck.

Maureen Walker made a motion to bring Continued Application # 34-07 to the floor, duly 2nd, approved 5-0.

The applicants and their attorney Raymond Lubus approached the Board. Attorney Lubus recapped on last month explaining the triangle shaped lot is .62 of an acre and is nonconforming in size. The applicants have revised their plans since last month. They will cut the rear illegal deck by 8' 2" in width and utilize the existing stairs. This plan will encroach 8' on the rear setback. They will move the pool and side deck closer to the side of the home and will not encroach any further on the front setback including the overhangs than the existing home; but the pool with deck will encroach on the rear setback by 4'. Pictures were submitted for the record. The new requested setbacks are 16.68' for the rear. Discussion followed; the Board acknowledged the applicants did a good job of reducing non-conformity however; the rear deck was built illegally and increases non-conformity by 8', if this deck had never been built, would they allow such a large increase in non-conformity. Attorney Lubus stated the home was built in 1978 and the 1<sup>st</sup> field card in 1981 shows a 12' x 12' deck. Maria Haussherr-Hughes stated

her files indicate the home was built in 1969 and the 1971 field card does not show a deck and there are no permits in the file for a deck. Attorney Lubus examined the 1971 Field Card. John Day asked Attorney Lubus if he contests the 1<sup>st</sup> deck was constructed after 1971 and before 1981? Attorney Lubus agreed the deck was built after 1971. The Board discussed the pool being so close the front setback. The pool will not be any closer to the front setback than the existing house including the overhangs. John Day explained how to move forward with the application. Attorney Lubus requested a short break to discuss the options with his clients.

Maureen Walker made a motion to take a 10 minute break, duly 2nd, approved 5-0.

Back from the break, Attorney Lubus requested to bifurcate the application. He would like the illegal rear deck to be voted on separately from the pool and new side deck combination. The setbacks are as follows. The illegal rear deck is 16.5' from the rear property line and increases nonconformity by 8'. The pool and new side deck combination will be 20' from the rear property line; which increase nonconformity in the rear of the house by 4'. The Board inquired if the applicant would consider further reducing the size of the rear deck so it would be just wide enough for an exit and stairs. The applicant considered this, but wants the deck to cook out on and for safety reasons does not want the grill too close to the house.

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 first discussed the pool and side deck combination. The proposal increases nonconformity by 4' in the rear of the house. There is no increase in nonconformity in the front or side of the house. Some of the Board members also discussed how oddly shaped the lot was, and while they would not normally be in favor of a 4' increase in nonconformity, the lot is so oddly shaped and the applicants did a good job of listening to the Board's recommendations and giving the Board what they were looking for, they would be in favor of a 4' increase in nonconformity, however, they would not be in favor of increasing nonconformity for the rear deck. Other members of the Board discussed if the Town does not enforce the applicants to tear down the rear deck, then what's the point. There was more discussion on the Board has allowed a 4' increase in nonconformity for garages to take cars off the street, but cannot remember one for a pool, which is not a necessity.

John Day made a motion to grant the variance for a rear setback of 20' for the purpose of constructing a pool and associated deck contiguous to the rear wall of the house subject to the plans revised, discussed and submitted at tonight's meeting. The hardship is the irregular size and shape of the lot. Duly 2nd, approved 4-1. John Day was opposed; all others in favor.

The Board discussed the rear deck and if it had never been built, they would not allow such a large increase in nonconformity. The Board also discussed they had just voted to increase nonconformity in the rear by 4' and would they allow an additional 4' increase. Discussion followed a rear exit is needed for emergencies and if the Town does not enforce the applicants to take down the rear deck; then what's the point of not legalizing it.

John Day made a motion to grant a variance for a rear setback 16.5' for the purpose of legalizing the rear deck, subject to the plans revised, discussed, and submitted at tonight's meeting. The hardship is the odd shape nonconformity size of the lot. Duly 2nd, denied 2-3. Application Denied. John Day, Maureen Walker, Joe DePaul were opposed to this motion. John Apple and Bob Jano were in favor.

While still in the business session the Board discussed the Minutes to the September 20 meeting. John Day made a motion to approve the Minutes as amended, duly 2nd, approved 5-0.

**Continued Application # 35-07:** William Thoma, 31 Merlin Avenue, for variances to zoning regulations for the purpose of changing a twice previously approved variance to legalize a rear deck and balcony.

Joe DePaul made a motion to bring Continued Application # 35-07 to the floor, duly 2nd, approved 5-0.

Daniel Manzi of Bellavin Const. approached the Board. He continued the application because he gave incorrect setbacks. The correct setbacks were advertised for this meeting. The Board discussed the 2 previous variances and how they were reluctant to allow any type of rear deck at all. The variance approved was strictly for a 3' x 3' rear landing with stairs to grade. The balcony was not in any of the previous proposals and was built without a permit. The proposal in 2005 indicates the rear deck was removed all together. In the 2007 proposal the Board agreed to a bare minimum for a 3' x 3' landing strictly as a 2<sup>nd</sup> exit from the home in case of a fire. There was further discussion that with today's technology a developer should be able to give the correct setback without being off by a few inches.

John Day explained how to move forward. Mr. Manzi stated he would like to bifurcate his application between the upper balcony and the 3' x 3' landing with stairs to grade. Maria Horowitz had no comment.

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 the 2" expansion comes from the support beam and not the deck itself. Some members still had concerns that there is no excuse to be off by 2 inches and this is the 3<sup>rd</sup> variance for the same thing. Other members stated they would be inclined to allow the additional 2 inches of nonconformity.

John Day made a motion to grant the variance for a 2 inch expansion for the lower rear landing only with a rear setback of 45' 10" subject to the plans submitted and the construction of the lower landing already in place. The hardship is the irregular size and shape of the lot, duly 2nd, approved 4-1. John Apple was opposed.

The Board discussed the balcony was built without a permit and plans have never been submitted to the Board. If the balcony was part of the previous proposal on variance # 01-05 and # 03-07 would they have allowed it? The Board reviewed the Minutes to the prior meetings and noted that in 2005 a rear deck was part of the proposal at which time the Board expressed concerns the proposal was encroaching too far on the rear setback

and the applicant continued to the following meeting and ultimately removing the deck from the rear of the home and placed it on the side, which the Board approved. In 2007 this applicant wanted to remove the side deck and have a rear deck stating he would construct a bare minimal landing that would be used as a fire exit only. In 2007 the Minutes show that the Board was very reluctant to allow the 3' x 3' landing with stairs to grade and most likely they would not have approved the balcony. If the Board should allow this balcony then there would be no limit to this developer or other developers to build outside of an approved variance.

John Day made a motion to grant the upper balcony the hardship is the irregular size and shape of the lot, subject to the construction as it presently exists, noting that no plans were ever submitted, duly 2nd, denied 0-5. Application Denied.

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

Maureen Walker made a motion to bring Application # 40-07 to the floor, duly 2nd, approved 5-0.

Mr. Vigliano approached the Board and discussed the existing home is 33.59' from the front setback and he would like to construct two (2) 10' x 16' solar panels 16' from the front setback. Mr. Vigliano explained the solar panels cannot go on the roof because there are too many trees and the panels would not receive enough sunlight to work properly. If he was to move the panels closer to his home, then he would have to "deforest" more trees and this is not environmentally friendly. The Board stated their position on increasing nonconformity by 16' and looked for other areas to put the solar panels. If the solar panels were moved to the side of the house, a side and rear setback would be required, but were not advertised. There is a deck in the rear of the house not shown on the survey. The applicant must find out the setback from the closest point of the deck to the property line. The applicant noted the footing for the solar panels must be 5' away from the septic and was also concerned with "deforesting" more trees to make room for the solar panels.

The Board discussed the use variance that was being requested and they were not sure if a use variance was needed, as this is a means of heating a private residence and should fall under that category. Maria Horowitz stated solar panels are not in the zoning regulations so Zoning does not recognize them. There was further discussion the solar panels are a structure and is a use variance required for a structure? Legal counsel may have to be obtained. There was discussion if the applicant would be over lot coverage. The collector area of the solar panels move with the sun so are they considered removable structures and not permanent. Maria Horowitz stated the term removable means visibly temporary.

John Day advised the applicant how to move forward with the application. The applicant stated he would like to continue the application to the next meeting. Maureen Walker made a motion to continue the application to the November 15, 2007 meeting, duly 2nd, approved 5-0.

**Application # 41-07:** Culver Bolmer Jr., 3 Bogus Hill Road, for variances to zoning regulations for the purpose of constructing a single family home.

Maureen Walker made a motion to bring Application # 41-07 to the floor, duly 2nd, approved 5-0.

Mr. Bolmer approached the Board and explained his plans to rebuild a home. The original home was ordered to be torn down by the Board of Health. Mr. Bolmer plans to push the new home further away from the front setback and center it more on the property. The property is an incredibly narrow piece of land and is incredibly long. The proposed new home will be over 500' from the rear setback; however due to the rock and ledge it would be impossible to put the house any further back than 27' 6" from the front setback. The house will be 25' x 25'. The new front setback will be 27' 6". The north side setback will go from 20' to 10' and the south side setback will go from 1' to 10' 2". All setbacks include the overhangs. The Board discussed that while the north side of the house went from conforming to nonconforming the front setback and the south side setback had a huge decrease in nonconformity. The side setbacks are not the same as the ones advertised however, they are within the advertised setbacks. Maria Horowitz stated she was glad to see the old house was gone

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.

In the business session the Board discussed if this was a vacant lot they would allow some type of home. The applicant has done a good job of decreasing nonconformity in the front and on one side of the home. The lot is incredibly narrow and has a tremendous amount of rock and ledge.

John Day made a motion to grant the variance for a front setback to 27' 6" a north side setback to 10' and a south side setback to 10' 2" subject to the plans submitted and discussed at tonight's meeting. The hardship is the irregular size, shape, slope and rock on the lot, duly 2nd, approved 5-0.

**Application # 42-07:** Ursula Howard, 57 Lake Drive South, for variances to zoning regulations for the purpose of constructing a heated sunroom, extending a deck and raising the roofline.

Maureen Walker made a motion to bring Application # 42-07 to the floor, duly 2nd, approved 5-0.

Attorney Ed Hannafin and Dr. Elliot Howard approached the Board. The property is owned by Mrs. Howard and Attorney Hannafin has an authorization from her. They explained the sunroom is not really a sunroom, but rather an extension of the existing living room. There will be a height expansion on the south section of the house. The increase in height will be 4.7' to allow for standing room in this side of the house. The height will not affect any of the neighbor's views of the lake, as all of the neighbor's properties are higher up on the hill than theirs. There will be no increase in the number of bedrooms. They plan to extend the deck; however it will not go past the existing home and will not encroach any further on the 440 Contour Line than the existing home and will not increase nonconformity. Attorney Hannafin stated he just received a new map from the surveyor and the new map showed the deck coming past the existing rear setback of 18.7'. Attorney Hannafin stated they will alter the plans so as not to exceed

the existing rear setback of 18.7'. The expansion of the living room will go over the top of the existing patio and that addition won't go any closer to the 440 Contour Line than the corner of the existing structure. The deck extension will not come any closer to the 440 Line than the existing building.

John Day asked for any further public comment—none heard

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

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 addition to the home does not increase nonconformity as it will not go past any existing setbacks. The deck expansion does not encroach any further on the 440 Contour Line than the existing structure therefore not increasing nonconformity.

John Day made a motion to grant the variance for a side setback to 15' and a rear setback to 18.7' subject to the plans submitted, discussed and revised, noting the new plans submitted will be changed so the rear setback does not exceed 18.7' and does not increase nonconformity. The hardship is the shape and slope of the lot duly 2nd, approved 5-0.

**Application # 43-07:** Peter and Briggett Hyland, 5 Overlook Road, for variances to zoning regulations for the purpose of constructing a deck.

Maureen Walker made a motion to bring Application # 43-07 to the floor, duly 2nd, approved 5-0. Joe DePaul left the meeting at 9:23pm prior to this application being opened.

Peter Hyland and his representative Tammy Zinick approached the Board and explained their plans. The house was around 1930 and is preexisting, nonconforming. The proposed front covered porch will not come any closer to the front setback than the existing home and will not come any closer to the side setback than the existing home. Therefore nonconformity will not increase. The 12' addition on the other side of the home meets the 20' required side setback however it encroaches on the rear setback but does not come any closer to the rear setback than an existing rear covered porch, therefore not increasing nonconformity. There will be a height expansion as well. Due to the unusual layout of the roof line, the height expansion will be anywhere from 3' 2" to 3' 10". A height variance is not required and the height expansion will not impose on the neighbors. There will be no increase in the number of bedrooms. Maria Horowitz stated she did not have any issues with this application.

John Day asked for any public comment—none heard.

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

In the business session the Board discussed the vertical expansion does not significantly increase the height of the home or impact on the neighbors. There is some expansion on the ground; however there is no increase in nonconformity. The east side expansion encroaches on the side setback but is within zoning regulations and is not in front of us.

John Day made a motion to grant a variance for a front setback of 27' 9" a side setback of 8' 8" and a rear setback of 47' subject to the plans submitted, noting there is no increase in nonconformity and a height variance is not required. The hardship is the size and slope of the lot, duly 2nd, approved 4-0.

John Apple made a motion to adjourn the meeting at 10:00pm duly 2nd, approved 4-0.