

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

REVISED MINUTES
September 20, 2007

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

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

ZBA members absent: Bob Jano

Town Officials in attendance: Maria Horowitz, Zoning Enforcement Officer

Chairman, John Day called the meeting to order at 7:02pm, 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. John Apple made a motion to adopt the Agenda, duly 2nd approved 5-0.

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

Continued Application # 29-07: Town of New Fairfield Free Public Library, 2 Brush Hill Road, for variances to zoning regulations for the purpose of constructing 2 additions and a front vestibule.

Joe DePaul made a motion to bring Continued Application # 29-07 to the floor, duly 2nd, approved 5-0.

Bob Rawlings, PBC Chairman, Linda Fox, Library Director, Sarah Marsh, Sharon Holm, and Ed Sbordone of the Library Board of Trustees approached the Board and recapped on last month's meeting. The Library Board requested that parking be removed from the application and if it was needed, they would come back at a later date and would like to bifurcate each of the additions. The Library has some answers to the questions the Board asked last month.

The first item discussed was lot coverage. The State took a portion of the Library's property in 1954. Discussion followed how much property was taken due to Eminent Domain. It was determined the State took approximately 4.1% of the property. If you include the property taken by the State then the existing Library is at 21.4% of lot coverage and the additions will bring them to 28.6% of lot coverage. If you do not include the property taken by the State and view the property as it stands today, the existing Library is at 25.5% of lot coverage and the addition will bring them to 34% of lot coverage. The zoning regulations for the BC District are 25%. Discussion followed the Board rarely approves variances on lot coverage. The Library believed special

consideration should be made for Town owned buildings. The Board stated the Library is no different than anyone else and the variance goes with the property, not the owner, and there is nothing stopping the Town from selling the building to a private owner.

The Library revised the plans so as not to increase nonconformity. The front will be no closer to the front setback than the existing building. The side addition will be pulled back. The new rear setback will be 2' which does not increase nonconformity and the side setback will be ½' closer to the setback than the original building. The elevator will be in the rear addition. The Library has determined this is the only area to put an elevator. The rear addition is moving closer to the rear boundary, but not any closer than the concrete tank. The existing Library is already over the rear boundary line. The Boards discussed reducing the size of the rear addition to help reduce the amount of lot coverage.

Discussion focused on lot coverage and if the Zoning Board of Appeals is not going to grant a variance for lot coverage than all of the other variance requests would be off the table. The Board also discussed which formula for lot coverage they would use, either before or after the State took the land. If they used the formula before the State took the land, then the Library would be able to expand, just not as much as they would like to. If they use the existing boundaries then the Library is already over lot coverage and any type of expansion would increase nonconformity. The Town owns contiguous property, the Library, Town Hall, and Veterans Field and perhaps some consideration should be made for contiguous lots. The Town will have to see if combining the 3 lots or swapping land with any of the lots would help reduce lot coverage, noting that Town Hall and the gazebo will then be included in the lot coverage issue, but is worth looking into. The Library discussed a 2nd story addition was not possible because there are no weight bearing walls on the interior of the Library.

John Day explained how to move forward with the Application. The Library Board stated they would like to withdraw their application. Croix Sather made a motion to have Application # 29-07 withdrawn, duly 2nd, approved 5-0.

Application # 33-07: Scott and Linda Roberti, 26 East Lake Road, for variances to zoning regulations for the purpose of constructing an in ground pool.

Maureen Walker made a motion to bring Application # 33-07 to the floor, duly 2nd, approved 5-0.

Scott Roberti and his representative Mark Tunkel approached the Board and explained the pool will be on the side of the house, however it will extend into the front setback. This is an interior lot and aesthetically the front of the house looks like the rear of the home. The boundaries were established when the subdivision was put in. Mr. Roberti submitted pictures of his home. The Board discussed finding another location for the pool. The large amount of wetlands and slope on the property prevents the pool from being put in another location. Maria Horowitz commented the pool must be behind the front line of the house however, this is a unique situation. The Board discussed the house being where it is, is a manmade hardship.

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

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

In the business session the Board discussed when the subdivision was put in, the boundary lines to the property were set in an unusual way, and this is a man made hardship. The property has more than enough land for the pool, will not increase nonconformity, and there will be no adverse impact on the neighbors. The lot is an irregular shape and there is a substantial amount of slope and wetlands on the property.

John Day made a motion to grant a variance for the in ground pool to extend into the front yard with a front setback of 40' subject to the plans submitted. The hardship is the irregular shape, slope and wetlands on the property; duly 2nd, approved 5-0.

While still in the business session Maureen Walker made a motion to accept the Minutes to the August 16, 2007 meeting, duly 2nd, approved 5-0.

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 and enlarging and legalizing a rear deck.

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

The applicants approached the Board and explained they have a triangle shaped lot. They are unsure if the house required a variance to be built. The deck was replaced two years ago. Maria Horowitz stated the 1981 field card shows a 12' x 12' deck which is now 24' x 16'. Both of the decks were built without permits. The above ground pool is 27' round and will increase nonconformity by 7 to 8'. John Day explained how they view structures that were built without permits. The Board discussed moving the deck to the side of the house where they would not require a variance. This would bring the deck no further to the rear setback than the existing house. They Board discussed pulling the pool further back and closer to the home; a different shaped pool was also discussed. The applicants requested if they would be able to have stairs in the rear of the home going down to the patio. The Board noted in rare and unusual cases stairs to grade have been allowed, but they are very specific.

John Day explained how to move forward with the application. The applicants requested a continuation to the next meeting. John Apple made a motion to continue application 34-07 to the October 18 meeting duly 2nd, approved 5-0.

Joe DePaul made a motion to take a short break duly 2nd, approved 5-0.

Application # 35-07: 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 Application # 35-07 to the floor, duly 2nd, approved 5-0.

Daniel Manzi approached the Board explaining he had to build a balcony in addition to the 3' x 3' landing because that is where the sliding glass door is. The posts that support the balcony and the previously approved landing stick out 2 inches beyond the varied 46' setback. The Board discussed his application is showing the incorrect setback. If he

exceeded the varied 46' setback by 2" then the correct requested setback is 45'10" not 46' 2". Further discussion focused on the 2 previous variances #01-05 and #03-07. The Board stated they clearly remember this application. The original variance #01-05 was for a side deck. During the public hearing on #03-07 Mr. Manzi had requested to remove the side deck and construct only a 3' x 3' landing; nothing else. The Board approved the 3' x 3' landing stipulating that was the only structure to be constructed. John Day explained how to move forward. The applicant requested a continuation to the October 18 meeting. The secretary stated she would need the new setback in writing prior to the cut off date of September 25, 2007.

Maureen Walker made motion to continue to the October 18 meeting duly 2nd, approved 5-0.

Application # 36-07: Jason King, 4 Charcoal Ridge Road East, for variances to zoning regulations for the purpose of constructing an in ground pool.

John Apple made a motion to bring Application # 36-07 to the floor, duly 2nd, approved 5-0.

Jason King and his contractor Scott Knight approached the Board. They explained they have a preexisting nonconforming lot with 2 fronts and 2 rears and no sides. The front of the property is on Charcoal Ridge Road East and the rear of the property is on Charcoal Ridge Road West. The Board discussed moving the pool by 1' so that it is no closer to the rear setback, noting it is the rear setback opposite the driveway. The existing home is 23' 9" from this rear setback. The applicant asked if they can change it to 24' so they have an even number to work with. Maria Horowitz stated they can move the pool as long as it does not come into the front line of the home.

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

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

In the business session the Board discussed lots with 2 fronts and 2 rears have a built in hardship and discussed nonconformity. Croix Sather noted the deck was in the legal notice and not discussed. The application does not request a deck, however the ZEO's Noncompliance report states a deck is in the project and in front of the Board.

Croix Sather made a motion to move back into the public session duly 2nd, approved 5-0.

In the public session, the applicants stated they are looking to replace the enclosed 12' x 15' porch with a larger 12' x 25.5' deck and added this to the application. The Board noted the deck could only be discussed because it was already advertised; otherwise they would have had to come back. The deck is not getting any wider and it's not getting any closer to the particular rear boundary discussed earlier but it is moving toward the north front of the house and it is not increasing nonconformity.

John Day made a motion to go back into the business session duly 2nd, approved 5-0.

Back in the business session the Board discussed none of the proposals will increase nonconformity.

John Day made a motion to grant the variance for a rear setback to 24' the hardship is the dual fronts and dual rear setbacks. Subject to the plans as submitted with one change and that is with respect to the pool is granted to 24' from the rear setback which will require a slight adjustment to the original proposal duly 2nd, approved 5-0.

Application # 37-07: David and Nancy Riggs, 1 Saddle Ridge Road, for variances to zoning regulations for the purpose of constructing a utility room.

Croix Sather made a motion to bring Application # 37-07 to the floor, duly 2nd, approved 5-0.

Kevin Murray, contractor approached the Board and explained his plans to build a utility room on the side of the home. It will encroach on the side setback by 4' 4". The utility room will act as a shed and have an entrance only from the outside of the home; additionally there will be no heat, electric, or plumbing. The applicant is not able to put a shed on his property due to the steep slope and the location of the pool. The Board discussed sliding the utility room toward the rear of the house. The applicant noted this would interfere with the pool mechanics. Maria Horowitz stated this is a conforming lot and the utility room will make this a nonconforming lot. Board members stated it would be very unusual for them to make a conforming lot nonconforming. The Board discussed the pool mechanics are a man made hardship.

John Day explained how to move forward with the application. Mr. Murray requested a continuation. Maureen Walker made a motion to continue the application to the October 18 meeting duly 2nd, approved 5-0.

Application # 38-07: Ellen Betancourt, 81 Ball Pond Road, for variances to zoning regulations for the purpose of constructing a deck.

Maureen Walker made a motion to bring Application # 38-07 to the floor, duly 2nd, approved 5-0.

Ellen Betancourt approached the Board and explained she has a small nonconforming lot. The deck will be 22' x 10' and will be 34' off the rear setback. The existing house is 17.8' off the rear setback; therefore the deck will not increase nonconformity.

John Day asked for any public comment—none heard.

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

In the business session the board discussed there is no increase in nonconformity and the deck is considerably less toward the rear setback than the existing house. The side setback is not required.

John Day made a motion to grant a variance for a rear setback of 34' subject to the plans submitted, noting there is no increase in nonconformity. The hardship is the nonconforming size of the lot, duly 2nd, approved 5-0.

Application # 39-07: Philip Wagenheim, 1 Partridge Lane, for variances to zoning regulations for the purpose of constructing a detached 2 car garage.

Joe DePaul made a motion to bring Application # 39-07 to the floor, duly 2nd, approved 5-0.

Alfred Sacco, architect, approached the Board noting the homeowner had been present earlier, but had to leave due to an emergency. Mr. Sacco presented a model of the garage and pictures of the property were submitted into the record. Due to the steep slope of the property, the garage will be 1' away from the front setback. The home is situated at the bottom of a steep slope and the driveway is not passable with snow on the ground. There is a 2-car parking area off the street at the top of the property. This is where the applicant would like to construct a 2-car garage. Mr. Sacco stated there are many garages on the Isle close to the street. The Board noted that much of the construction on Candlewood Isle predates zoning regulations and therefore would be grandfathered; they are not garages that the Board granted variances for.

Maria Horowitz stated this is a conforming lot and the garage would make it nonconforming. The Board discussed applications that were in front of them earlier in the evening and the applicants had to continue or withdraw so they can find a way not to increase nonconformity.

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

Steven Ward, 2 Partridge Lane: Mr. Ward has concerns if the garage is built only 1' away from the road, the driver's visibility when backing out of the garage would be extremely limited and jeopardize the safety of his 3 children who play in the street. Mr. Ward does not want to see a precedent set for garages being built so close to the road.

Rich Price, 29 Lake Drive South: Mr. Price stated his property is adjacent to the applicant's and also has concerns with safety and drivers backing out of the garage. Partridge Lane is a very small road and it is tough to get 2 cars around each other in good weather. If you put a garage right up to the road, it will be very difficult in the winter just to keep one lane open. Currently there are no problems with snow removal on Partridge Lane. While there are homes with garages, none of them are 1' away from the road. Mr. Price also has concerns about setting a precedent for garages, and is afraid that if this garage is approved then garages 1' away from the road will pop up like mushrooms all over Candlewood Isle.

Jefferson Guthrie: Mr. Guthrie stated Partridge Lane is a small side road with only 3 homes and does not get a lot of traffic there is no problem with snow removal. Mr. Guthrie stated he has driven down the applicant's driveway in the winter and it is not passable even in a Jeep when there is snow in the driveway. During the summer and the spring his car has suffered damage from debris and acorns falling from the trees.

John Day asked if there was any further public comment—none heard.

Mr. Sacco stated everyone is concerned for safety. The fact is the parking area already exists and the applicant is backing in and out of it without any issues. The parking area is a small space and while he can expand toward the back, but the slope is an issue and don't want to do anything to the site if they don't have to.

Croix Sather made a motion to move into the business session, duly 2nd, approved 5-0.

In the business session the Board discussed off street parking is already available so the garage will not take the cars off the road and it will make a conforming lot nonconforming. Some of the Board members discussed that a 1' setback is hard to do on a nonconforming lot and is never done on a conforming lot.

John Day made a motion to grant a variance for a 1' front setback subject to the plans submitted. The hardship is the extreme slope duly 2nd, denied 0-5. John Day explained the 6 month rule.

Chairman Day asked if there was any other business to come before the Board tonight—none heard. Croix Sather made a motion to adjourn the meeting at 10:02pm, duly 2nd, approved 5-0.