

New Fairfield Zoning Board of Appeals New Fairfield, Connecticut

MINUTES August 19, 2021

The New Fairfield Zoning Board of Appeals (ZBA) held a public hearing followed by a business session at 7:00 p.m. on Thursday, August 19, 2021, in the New Fairfield Library Community Room located at 2 Brush Hill Road. Secretary Joanne Brown took the Minutes.

ZBA Members in attendance: Joe DePaul, Chairman; Vinny Mancuso; John McCartney; Dan McDermott and Alternates Ann Brown and Bob Jano. Ann Brown had been appointed by John Apple to represent him, so she would be the voting alternate.

ZBA Members not in attendance: John Apple, Vice Chairman

Town Officials in attendance: Evan White, Zoning Enforcement Officer

Prior to the start of the meeting, the Chairman announced that next month the board will return to Zoom meetings due to the rising numbers of covid cases in Danbury and New Fairfield.

Chairman Joe DePaul called the Meeting to order at 7:00 p.m. and introduced the Board Members. Joe DePaul explained the meeting process and voting and appeal procedures. Secretary Joanne Brown read the agenda. Vinny Mancuso made a motion to adopt the agenda as presented, duly 2nd, approved 5-0.

Continued Application # 29-21: Olivet, 18 Indian Hill Lane, for variances to Zoning Regulations 3.0.6B Swimming Pools, 3.2.5A&B, 3.2.6C Rear Setback to 42', 3.2.11, 7.1.1.1A&B and 7.2.3A&B for the purpose of installing a 21' above-ground swimming pool. Zoning District: R-44; Map: 23; Block: 21; Lot: 11.

Denise Olivet presented her proposal to install a 21' above-ground swimming pool 4' off the house requiring a 42' rear setback increasing nonconformity by 6.5'. Joe DePaul stated that he had walked the property and noted the ground sloped upward at the rear. The brief discussion ensued over the size of the pool and other areas of placement. Joe DePaul asked the public for comment. None given. The board entered into the Business Session. Ann Brown noted that the pool could not be moved any closer to the house. Vinny Mancuso saw no issues with the application. Joe DePaul made motion to grant a rear setback to 42' to allow installation of an above-ground pool per the plans as submitted; the hardship being the slope of the lot, duly 2nd, approved 5-0. Variance granted.

While in the Business Session, Vinny Mancuso made a motion to accept the Minutes as presented, duly 2nd, approved 3-0-2, John McCartney and Dan McDermott abstaining.

Application # 33-21: 95 Louise's Lane LLC, 7 Lake Drive North, for variances to Zoning Regulations 3.2.5A&B, 3.2.6A Front Setback to 24.5', 3.2.6B Side Setback to 11.9', 3.2.6C Rear Setback to 42.9', 3.1.1.1, 7.1.1.2A&B and 7.2.3A,B&E for the purpose of constructing a 2-bedroom residence. Zoning District: R-44; Map: 15; Block: 1; Lot: 8.

Prior to opening Application # 33-21, Joe DePaul noted that this application would need to be continued until next month because it was not correctly advertised. The property was incorrectly measured from the 430 line and not the 440 line. Joe DePaul referred to a May 15, 2017 correspondence with the then Town Attorney, Jack Keating, which noted that for purposes of the regulations, the 440 line will be considered a lot line and the rear setback is measured from the nearest rear lot line. Where the property owner owns below the 440 line, the nearest rear lot line is the 440 line.

Caren Carpenter, Architect, noted that the application would be continued and gave a brief overview of the property. The proposed 2500 sq. ft. house would be 3 levels (one story in front and three stories in the rear). The basement would contain a mechanical room in front, walk out in the rear with a small lavatory. Joe DePaul questioned why the house was not centered on the property. Ms. Carpenter replied that she thought it would be better to ask for only one side setbacks instead of two. The roof height would be 21.8' on average. No neighbor's views would be impacted. Joe DePaul noted that if the lot is a legal building lot, the board must grant a variance to build. Zoning Regulations cannot take away an owner's right to use their land. If the town prevents someone from putting a house on a legal building lot, it becomes a "taking," and the town would have to compensate the owner of the property. It has always been the policy of the ZBA to grant a variance to allow construction on a legal building lot. The Chairman noted that the board has the right to control the size and location of the house.

Joe DePaul asked the public for comment. Joan Archer, 9 and 11 Lake Drive North, noted both her personal and public opposition to the application as an abutting neighbor and member of the board of the Candlewood Lake Authority and Wetlands Committee. Ms. Archer stated that although she sympathized with the applicants, she has many concerns with regard to public safety and traffic, emergency vehicles access and possible future damage to her septic and driveway from construction equipment. Ms. Archer submitted a letter from 1981 from the town Health Department noting that the lot was unbuildable. Ms. Archer stated that this did not take away the value of the property due to its lake frontage and produced a spreadsheet of valuations of other lake front unbuildable lots.

Vinny Mancuso asked Evan White if the lot was unbuildable. Mr. White noted that the property was under review by the Health Department and Tim Simpkins has not approved the well or septic placement. John McCartney questioned if the lot was taxed as an unbuildable lot.

Pamel Lieneck, 12 Lake Drive North, noted her safety and environmental concerns. Emails and letters from Stephanie and Peter Rescigno, 27 Lake Drive North, Brendan and Erin McCollam, 1 Lake Drive North, and Sandra Colesworthy, 39 Lake Drive North, were read into the record voicing their concern and opposition. Glenn Moore, 24 Lake Drive North, also noted his concern and opposition. Attorney, Dan Casagrande, Cramer and Anderson, representing Robin Edwards, 5 Lake Drive North, highlighted three points that the board should take into account when looking at this proposal including the applicant's failure to provide any proof that the proposed construction has been approved by FirstLight or the New Fairfield Health Department; the negative impact that the application will have on the use, enjoyment and value of the property at 5 Lake Drive North and the failure to provide proof that the property will have no economic value if the variance is not granted. Mr. Casagrande noted that if the applicant's property was deemed unbuildable, it still would retain significant economic value due to its position on the lake.

Doug Jaslow, 42 Lake Drive North, stated his opposition to the proposal noting his concern over traffic and runoff into the lake. John McCartney commented that the 1981 letter was of little consequence since technology is much different with engineered systems and many issues can be solved. Mr. McCartney did agree that the roads were narrow and congested but that was not a reason to deny the request. Joe DePaul noted that the public was entitled to see the well and septic placement before ruling. Dan McDermott agreed. Joe DePaul stated that he would consult the Town Attorney. Ann Brown noted that the setbacks needed to be revised using the 440 line.

Vinny Mancuso made a motion to continue Application # 33-21 until next month, duly 2nd, approved 5-0.

Application # 34-21: Budich, 8 Big Trail, for variances to Zoning Regulations 3.1.5A&B, 3.1.6A Front Setback to 42.1', 3.1.6B Side Setbacks to 26.3' and 1.4', 3.1.1.1, 7.1.1.2A&B and 7.2.3A,B&E for the purpose of constructing a 1-story addition with a 2-car garage underneath and dormer above the kitchen. Zoning District: R-88; Map: 5; Block: 1; Lot: 17.

Todd Budich presented his proposal to construct a two-car garage and addition level to the road on Big Trail. Mr. Budich noted that his property was .45 acres in a R-88 2 acre zone. Mr. Budich pointed out the placement of the septic and the B100 field which precluded the garage to be placed to the left or rear of the house. Mr. Budich had a letter of support from the abutting owner noting that the property was unbuildable. A brief discussion over other placement areas ensued. Mr. Budich noted the placement of a curtain drain in the rear of the property which he did not want to disturb and explained if the garage was placed in the back, extensive excavation would cause runoff on the neighbor's property. Ann Brown noted that she lived in the development and could attest that the neighboring property was not going to be built on. Vinny Mancuso said he had no issue with the application. Joe DePaul stated that the side setbacks in a R-88 Zone was 35' and he had a huge issue with such a massive increase in

nonconformity. Joe DePaul asked the public for comment. None given. The board entered into the Business Session. Joe DePaul noted his opposition to a 1.4' setback given that the applicant had alternatives to place the garage. Ann Brown noted that due to the placement of the septic and B100 and the fact that the adjacent lot was unbuildable, she had no issue with the application. Vinny Mancuso noted that placing the garage on the flat area would not cause additional runoff. Joe DePaul made a motion to grant a front setback to 42.1', side setbacks to 26.3' and 1.4' to allow construction of a two-car garage, dormer, and a one-story addition per the plans as submitted; the hardship being the narrow shape and slope of the lot, duly 2nd, approved 4-1, Joe DePaul denying. Variance granted.

Application # 35-21: Rus, 2 Barn Brook Drive, for variances to Zoning Regulations 3.0.6B Swimming Pools and 3.1.6B Side Setback to 25' for the purpose of installing an in-ground pool. Zoning District: R-88; Map: 13; Block: 2; Lot: 1.5.

Lukasz and Heather Rus presented their proposal to install an in-ground pool. The lot is very oddly shaped and there are no other alternatives for placement with the septic. A brief discussion ensued over the shape of the lot and how zoning laws were changed to develop the land. Joe DePaul asked the public for comment. Caren Carpenter, 32 Elwell Road, noted her opposition noting that this is a self-created hardship. Ms. Carpenter stated that the applicants bought the land knowing that there was no room for a pool. Mr. Rus noted that Wetlands approved the placement with the position of the pond. Ann Brown questioned whether the pool could be relocated to the corner. Mr. Rus stated that would place the pool closer to the neighbors and increase the 25' setback. Joe DePaul asked the public for comment. None given. The board entered into the Business Session. The board saw no problems with the application. Joe DePaul made a motion to grant a side setback to 25' to allow installation of an in-ground pool per the plans as submitted; the hardship being the irregular shape of the lot, duly 2nd, approved 5-0. Variance granted.

Application # 36-21: Santomero, 2 Dunham Drive, for the purpose of holding a public hearing for an Automobile Dealer's License/Repairer's License. Zoning District: LI; Map: 24; Block: 15; Lot: 26.

William Francisco came in front of the board seeking to obtain approval for an automotive shop. The applicant has been at the location for over a year and is seeking to legitimize the business. The applicant noted the landlord has stipulated that no more than 5-6 cars should be parked onsite at a time. The applicant will have to obtain other special permits from the town and approval from the Fire Marshall if the board grants a location approval. A lengthy discussion ensued regarding the Zoning Districts and if the applicant is entitled to operate in town. Joe DePaul asked the public for comment. None given. The board entered into the Business Session. Joe DePaul made a motion to approve the location for an automotive repair shop at 2 Dunham Drive, Unit 4, per the plans as submitted, duly 2nd, approved 4-0, John McCartney abstaining.

Vinny Mancuso made a motion to adjourn the meeting at 8:43 p.m., duly 2nd, approved 5-0.