

New Fairfield Zoning Board of Appeals New Fairfield, Connecticut

MINUTES January 18, 2024

The New Fairfield Zoning Board of Appeals (ZBA) held a public hearing followed by a business session at 7:00 p.m. on Thursday, January 18, 2024 in the Community Room of the New Fairfield Public Library. Secretary Joanne Brown took the Minutes.

ZBA Members in attendance: Joe DePaul, Chairman; John Apple, Vice Chairman; Christine Garabo and Alternates Ann Brown and Vinny Mancuso.

ZBA Members not in attendance: Jennifer Hilderbrand; Olivia Micca and Alternate Peter Hearty.

Town Officials in attendance: First Selectman Melissa Lindsay and ZEO Evan White.

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

Continued Application # 51-23: Aquarion Water Company of CT, 19 Knollcrest Road, for variances to Zoning Regulations 3.0.10 Mechanical Equipment, 3.2.5A&B, 3.2.6A Front Setback to 36.4' (treatment facility) and 6' (propane tank), 3.2.6B Side Setbacks to 5' and 7.6' (treatment facility) and 3.5' (propane tank) and 4' (generator), 3.2.6C Rear Setback to 17.6' (treatment facility), 3.2.7, 3.2.8, 3.2.11, 7.1.1.2 and 7.2.3A,B&E for the purpose of constructing a 14'x20' treatment facility and installing a generator and propane tank. Zoning District: R-44; Map: 10; Block: 3; Lot: 96.

Zak Kuegler, Synder Civil Engineering, Bill Dwinells, Aquarion, and Nick Masse, Synder Civil Engineering, returned to the board with revised setbacks for the generator and propane tank as requested at last month's meeting. The generator was moved back 4' from the front setback and 1.5' from the side setback and propane tank moved 3.5' from the previously proposed setback. Joe DePaul questioned why the propane tank was not moved to the rear of the property. Mr. Keugler explained that the propane tank could not be moved to behind the treatment facility because it would impede access to the well pump and the garage door. The generator and propane tank adhere to the required 10' regulations needed regarding separating combustibles. A brief discussion ensued over setbacks for mechanical equipment and the easement to the rear of the property. ZEO Evan White noted that there is a 10' setback for all mechanical

equipment. Mr. Kuegler also noted that the existing generator and propane tank located across the street from the proposed facility which will be removed and moved to the new facility. Christine Garabo stated that moving the existing equipment to the new facility would be an improvement to the neighborhood by moving it further off the road. Joe DePaul asked the public for comments. None given. The board entered into the Business Session. Vinny Mancuso noted that the applicant made some improvements and Christine Garabo stated that the equipment would be in a better location. Joe DePaul made a motion to grant a front setback to 36.4', side setbacks to 5' and 7.6' and rear setback to 17.6' for the treatment facility, a front setback to 6' and a side setback to 3.5' for the propane tank and a side setback to 4' for the generator to allow construction of a water treatment facility with a propane tank and a generator, per the revised plans as submitted; the hardship being the irregular shape of the lot, duly 2nd, approved 5-0. Variance granted.

While in the Business Session, Christine Garabo made a motion to accept the minutes as presented, duly 2nd, approved 5-0.

Appeal # 50-23: Goldman, 18 Misty Brook Lane. An appeal on behalf of Smith, 12 Misty Brook Lane, for a zoning permit issued on October 6, 2023 for a pickle ball/tennis court. Zoning District: R-44; Map: 2; Block: 4; Lot: 20.

Attorney Daniel Casagrande, Cramer & Anderson, appeared in front of the board to represent Donald and Cheryl Smith's appeal of the ZEO's issuance of a zoning permit to Joshua and Amy Goldman located at 18 Misty Brook Lane. The Smiths are abutting neighbors with their house situated higher than the Goldman's property in the rear. The Smiths are requesting that either the ZBA revoke the ZEO's permit or modify the zoning permit not to allow pickleball. Attorney Casagrande gave a lengthy presentation of the following arguments:

1. Pickleball courts are not an expressly permitted accessory use and are thus prohibited;
2. Pickleball courts do not satisfy the judicial standards for permitted accessory uses;
3. Pickleball courts have gained popularity only in the last few years;
4. The noise from pickleball games exceed standards for noise statutes;
5. Pickleball courts cause substantial reductions in neighboring property values;
6. The pickleball craze has led to numerous lawsuits seeking injunctive relief and maintaining damages for nuisance and other claims;
7. The ZEO erred in allowing a solid fence surrounding the court.

Attorney Casagrande explained his interpretation of Zoning Regulations 1.5.2A noting that uses of land and the improvements thereon including buildings or structures that are not specifically permitted in the various zoning districts shall be prohibited and stated that the regulations should be interpreted as written. Attorney Casagrande stated that if the homeowners have an issue with the regulations, they should go to the Zoning Commission. Objectionable noise and devaluation of property values was discussed. Ann Brown asked if the information presented about property values was for private pickleball courts or public courts. Joe DePaul questioned why the Sail Harbour Association approved the permit. Attorney Casagrande noted that since Zoning approved the permit, the Sail Harbour Association had to allow it. Attorney Casagrande also noted that the solid 10' fence was an issue and illegal. He urged the board to take his client's concerns over the noise, decrease in property values, reasonable incidental use and emotional distress into account.

Attorney for the Goldman's, Neil Marcus, Cohen & Wolf, presented his rebuttal to Attorney Casagrande's presentation noting that the real issue here is whether the ZEO erred in issuing a permit on October 6, 2023. Attorney Marcus stated that the permit was issued to construct a tennis court, associated retaining walls, freestanding gazebo (pergola) and freestanding masonry fireplace. Attorney Marcus countered Attorney Casagrande's interpretation of permitted uses using bocce, volleyball, badminton, etc. are not specifically permitted and therefore would be prohibited and stated that it is under Zoning, not ZBA, to prohibit such a use. Attorney Marcus presented a letter for the record from Mark Fitzgerald in Ridgefield regarding a similar case regarding a Little League field in Ridgefield where the neighbors were concerned over noise and property values. In a subsequent study, Mr. Fitzgerald found that properties close to the field sold at similar prices and property values were not diminished. A lengthy discussion followed regarding the use of tennis courts and how they could be used for other sports and reasons. Attorney Marcus addressed the issue of the fence and noted that the proposed fence is a 10' chain link fence and not solid but will be covered with a see through wind screen. Landscape Architect Abigail Adams also noted that the chain link fence would be heavily screened by 40-50 14'-15' arborvitae trees and the homeowners are going to great lengths to mitigate any noise. Attorney Marcus also noted that if there were any sound violations, it would be up to the ZEO to enforce them.

Attorney Casagrande reiterated that his clients are looking to the ZBA to overrule or modify the existing permit. Joe DePaul questioned what reasonable use was and what constituted a violation and that it was an assumption that the court would be used for pickleball. Casagrande noted that the burden of proof should be on the homeowner. Another lengthy discussion ensued over whether the Zoning Regulations deal with specific uses, i.e., soccer, lacrosse, etc. and whether those sports are prohibited because they are not specifically permitted. Christine Garabo stated that the fence height was indicative of what sport would be played (tennis) and understood the noise issue. Joe DePaul asked the public for comment. Donald Smith, appellant, stated that the plans clearly indicate that the Goldman's will be using the court for pickleball noting their use of noise abatement panels and voiced his concern over the noise and pitch

levels. Mike Ciszek stated that if the board put limitations on what type of games could be played on courts, there would be an issue in the community.

The board asked the appellant if the appeal could be continued until next month for further review. Attorney Casagrande agreed and signed the continuance form. Vinny Mancuso made a motion to continue Appeal #50-23 to next month, duly 2nd, approved 5-0. Appeal continued.

Application # 52-23: Ferrara, 51 Lake Drive North, for variances to Zoning Regulations 3.2.5A&B, 3.2.6C Rear Setback to 20', 3.2.11, 7.1.1.2 and 7.2.3A.B&E for the purpose of constructing a vertical expansion. Zoning District: R-44; Map: 15; Block: 1; Lot: 37-39.

Erich Diller, Evolve Design, presented his client's proposal for a vertical expansion in the existing footprint with no increase in nonconformity. The five-bedroom house would remain five bedrooms but with lower floor bedrooms expanded and two moved upstairs. There are no view impacts to the neighbors. The height of the roof would remain the same. The chimney is not working but might have to be addressed in the future to make code. The only setback needed is a rear setback to 20'. Joe DePaul asked the public for comment. None given. The board entered into the Business Session. The board saw no issues with the proposal. Joe DePaul made a motion to grant a rear setback to 20' to allow construction of a vertical expansion per the plans as submitted, noting no increase in structural nonconformity; duly 2nd, approved 5-0. Variance granted.

Application # 53-23: Ciszek, 13 Lake Drive North, for variances to Zoning Regulations 3.0.9C Pergolas, 3.2.5A&B, 3.2.6B Side Setback to 10.5', 3.2.6C Rear Setback to 0', 3.2.11, 7.1.1.2 and 7.2.3A&B for the purpose of expanding an existing deck. Zoning District: R-44; Map: 15; Block: 1; Lot: 11.

Homeowner Mike Ciszek and Agent, Kevin Bennett, Hilts LLC, presented their proposal to replace and expand an existing deck. The existing deck is 354 square feet, and the new deck will be 440 square feet with a pergola. The proposal is not getting any closer to the 440 line and not increasing nonconformity. A brief discussion ensued over the correct setbacks required and location of the stairway within the setbacks. Joe DePaul asked the public for comment. None given. The board entered into the Business Session. Joe DePaul made a motion to grant a side setback to 10.5' and a rear setback to 1.0' to allow construction and expansion of a deck per the plans as submitted, noting that the stairway is coming no closer to the 440 line than the existing deck, the hardship being the narrow shape of the lot; duly 2nd, approved 5-0. Variance granted.

Vinny Mancuso made a motion to adjourn the meeting at 8:52 p.m., duly 2nd, approved 5-0.