

## **New Fairfield Zoning Board of Appeals New Fairfield, Connecticut**

### **MINUTES February 15, 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, February 15, 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, Jennifer Hilderbrand, Olivia Micca and Alternates Ann Brown and Vinny Mancuso.

ZBA Members not in attendance: Alternate Peter Hearty.

Town Officials in attendance: 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. John Apple made a motion to accept the agenda, duly 2<sup>nd</sup>, approved 5-0.

**Continued 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.

The Secretary read a letter into the record from New Fairfield's Town Attorney, Timothy M. Herbst, Marino, Zabel & Schellenberg, regarding the appeal. The letter highlighted the powers of the ZBA in considering an appeal of the ZEO and defined the regulations. The Town Attorney's opinion is that the ZBA has the authority to determine whether pickle ball courts are covered under the Regulations and are permissible by virtue of the terms "paddle tennis court" and/or similar recreation courts in the absence of specific and individualized definitions for basketball courts, tennis courts, paddle tennis courts or other similar recreation courts. The Town Attorney noted that the language concerning fencing that surrounds a tennis court or paddle tennis court is clear and unambiguous.

Chairman DePaul stated that he received a copy of this letter two hours prior to the meeting. Attorney Daniel Casagrande, attorney for the appellant, also stated that he had just received the letter and disagreed with Attorney Herbst's opinion on the ambiguity of similar recreation courts. Attorney Casagrande noted that he believed it was the job of the ZBA to determine the facts and apply those facts to determine reasonable use. Attorney Casagrande also noted that the language in the definition of similar recreational courts is not in the other

section of the regulations and questioned why the drafters did not include the definition in other regulations. Attorney Casagrande prepared a letter to the board summarizing the three issues before the board:

1. The proposed fence surrounding the court is solid. The appellant produced an example of proposed material to be used and referenced in the site plan materials from Acoustifence and produced a video to the board showing the installation of the system. The material contrasts with Attorney Neil Marcus' statements last month that the covering would be "a see-through wind screen". David Smith noted his property line is 160' from the Goldman's back yard and that manufacture recommends a 350-400 foot distance for noise abatement. Mr. Smith also noted that their property sits higher than the Goldman's and the fence would provide no noise reduction for him.
2. The Board's determination that a pickleball court is not a permissible accessory use to residential properties does not mean that schools must also prohibit them on school grounds. Attorney Casagrande addressed a board member's concern regarding the use of pickle ball courts at school by noting that athletic courts are used for educational purposes and are considered to be a component of principal use and not be considered an accessory use.
3. The fact that the Regulations allow tennis and paddle tennis courts as accessory uses is of no help to the Applicants. Attorney Casagrande reiterated his stance that any use not expressly permitted is prohibited and noted that New Fairfield's Zoning Regulations do not define the term "accessory use". The board must find substantial evidence that pickleball courts are customary to private residences based on long usage and reasonably related to the primary residential use.

Attorney Casagrande concluded by noting that the homeowners have the burden of proving that pickleball is a proper accessory use of their property and appealed to the board to take into account his client's rights to use their property in quiet without emotional distress.

A lengthy discussion ensued. Christine Garabo noted that the permit was for a tennis court and ZEO Evan White concurred. Joe DePaul noted that it was the Town Attorney's opinion that the ZBA must determine what is covered under the regulations and that the board must take into account that the homeowner is contemplating playing pickleball. John Apple disagreed with the Town Attorney's stance. Olivia Micca questioned Park and Recreation's use of courts and Attorney Casagrande answered that the use would fall under principal use for education and therefore would be allowed on school grounds.

Attorney Alex Copp, Cohen & Wolf, counsel for the Goldmans, countered Attorney Casagrande's arguments and stated that the issue is conceptually a distinction in the Zoning Regulations 8.2 between use and structure. Attorney Copp noted that use of a structure does not regulate activity on the property using the example of badminton or volleyball on a tennis court. Attorney Copp stated that the ZEO issued a permit to build a structure and believes that it is inappropriate to decide what can or cannot be done on a structure and that activity is not governed by Zoning. Attorney Copp stated that he believed

that it is a legislative determination and should be the responsibility of the Board of Selectman to make such a decision after a commission is formed and public comment heard. Attorney Copp referred to Attorney Herbst's letter noting that similar recreational courts are permissible under Zoning Regulations 2.1 and must be allowed. Attorney Copp asked the board to uphold the ZEO's permit.

A lengthy discussion ensued over the chain link fence and whether the material that would attach to it would make it a solid fence. Landscape Architect, Abigail Adams, stated that the material and manufacturer of the materials to be used has not yet been decided which is indicated on the plans. Joe DePaul asked the public for comment. Attorney Casagrande stated that the proposed fence will be a solid fence. Jennifer Hilderbrand stated that the proposed chain link fence was not a solid fence, and the material would be applied to the fence. Ann Brown asked for an example of an equivalent noise to the noise level of a pickleball game. Bob Jano stated that the neighbors are entitled to have a quiet lifestyle without a recreational court next to them and noted that the community has existing courts to play at their disposal. Mr. Jano stated that the property values could be devalued. Vinny Mancuso stated that he would not like someone dictating what could or could not be done on his property.

Joe DePaul suggested the appeal be continued to next month to have time for the board to examine the letter from the Town Attorney. Christine Garabo made a motion to continue Appeal # 50-23, duly 2<sup>nd</sup>, approved 5-0. Appeal continued.

**Application # 01-24:** Roddy, 51 Knollcrest Road, for variances to Zoning Regulations 3.0.7A Tennis and Basketball Courts for the purpose of constructing a 120'x60' sports court with a viewing area in front of the existing home. Zoning District: R-44; Map: 10; Block: 3; Lot: 85+1.

Agent Jake Danziger presented his client's proposal to construct a sports court in front of the property. The application was previously submitted and withdrawn. Mr. Danziger gave a brief overview of the long, narrow three-acre property with slopes requiring a variance for locating the court in the front of the home. A brief discussion ensued over adequate screening, lighting and whether the neighbors would be impacted. Joe DePaul asked the public for comment. Richard Holzmaier, 45 Knollcrest, had no issues with the application. Joe DePaul noted that the hardship was the slope of the land and that you cannot see the front of the house from the road and saw no issue with the application. The Board entered into the Business Session. Joe DePaul made a motion to grant a variance to allow construction of a tennis court in the front yard, per the plans as submitted, noting no structural setback are needed; the hardship being the size and shape of the lot, duly 2<sup>nd</sup>, approved 5-0. Variance granted.

While in the Business Session, Christine Garabo made a motion to accept the minutes as presented, duly 2<sup>nd</sup>, approved 3-0-2, Jennifer Hilderbrand and Olivia Micca abstaining.

**Application # 02-24:** Notley, 3 Marlboro Road, for variances to Zoning Regulations 3.2.5A&B, 3.2.6C Rear Setback to 47.7', 3.2.11, 7.1.1.2 and 7.2.3A,B&E for the purpose of amending a previously granted variance for a dormer which was measured incorrectly. Zoning District: R-44; Map: 36; Block: 6; Lot: 8-10.

Taryn Notley appeared in front of the board to legalize the setbacks of a previously granted variance that was issued. Mr. Notley explained that there was a mismeasurement. The actual rear setback needed is 47.7', not 49' as listed on the granted variance. The dormer is not getting any closer to the rear and there is no increase in nonconformity. Joe DePaul asked the public for comment. None given. The Board entered into the Business Session. The board had no issue with the application. Joe DePaul made a motion to grant a rear setback to 47.7' to legalize the construction of a dormer; the hardship being the size and shape of the lot, noting that there is no increase in structural non-conformity, duly 2<sup>nd</sup>, approved 5-0. Variance granted.

**Application # 03-24:** Pascarelli and Ramos, 43 Sunset Trail, for variances to Zoning Regulations 3.2.5A, 3.2.6B Side Setback to 17', 3.2.11, 7.1.1.2 and 7.2.3A,B&E for the purpose of constructing a one-story addition. Zoning District: R-44; Map: 15; Block: 5; Lot: 21 and 22.

Caren Carpenter presented the proposal to construct an inside entry courtyard. The applicant started demolition and was unaware of the variance procedure and that the application had not yet been approved. Ms. Carpenter produced an enlarged copy of the plans for the board to see the small area where the variance is requested. 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 17' to allow construction of an inside courtyard entry per the plans as submitted, noting that there is no increase of structural nonconformity; the hardship being the placement of the house on the land, duly 2<sup>nd</sup>, approved 5-0. Variance granted.

**Application # 04-24:** Nanocchio, 3 Croix Hill Road, for variances to Zoning Regulations 3.0.4A-F Minor Accessory Buildings and Structures for the purpose of constructing a 18'x12' shed. Zoning District: R-88; Map: 18; Block: 5; Lot: 31.

Michael and Olga Nanocchio presented their proposal to construct a shed in front of their home, 125' from the street and 30' from the front of the road. Olga Nanocchio explained that the property contained ledge, slopes and water drainage issues with severe ponding leaving the front as the only viable option. A brief discussion ensued over other possible locations for the shed. Christine Garabo suggested that the application be continued until next month so the board can visit the property. Christine Garabo made a motion to continue Application # 04-24 until next month, duly 2<sup>nd</sup>, approved 5-0. Application continued.

Jennifer Hilderbrand made a motion to adjourn the meeting at 9:31 p.m., duly 2<sup>nd</sup>, approved 5-0.