

New Fairfield Zoning Board of Appeals New Fairfield, Connecticut

SPECIAL MEETING MINUTES March 19, 2024

The New Fairfield Zoning Board of Appeals (ZBA) held a Special Meeting and public hearing followed by a business session at 7:00 p.m. on Tuesday, March 19, 2024 at the Company A Firehouse, located at 302 Ball Pond Road, New Fairfield. Secretary Joanne Brown took the Minutes.

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

ZBA Members not in attendance: Christine Garabo, Jennifer Hilderbrand 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 7:04 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. Chairman DePaul stated that Continued Application # 04-24 had been withdrawn by the applicant and that Application # 08-24 had requested to be unopened and moved to the ZBA's meeting next month.

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 pickleball/tennis court. Zoning District: R-44; Map: 2; Block: 4; Lot: 20.

Joe DePaul noted that the Goldman's legal counsel, Neil Marcus, was unable to attend the meeting. Attorney Daniel Casagrande thanked the board on behalf of his clients, appellants Donald and Cheryl Smith, for the time and attention in hearing this matter. He reminded the board that it is not their job to negotiate a compromise but to apply the facts of law regarding two issues: are pickleball courts customarily and reasonably related to the principal use of private residential lots and is a solid fence surrounding the recreational court legal or illegal. Attorney Casagrande asked the board to consider Zoning Regulation 1.5.2E as it relates to objectionable noise and asked that either the board overturn the permit or modify it to not allow pickleball. Attorney Casagrande noted that the Goldman's could then go to the Zoning Commission to petition to amend the Zoning Regulations. Joe DePaul asked the public for comment. None given. Chairman DePaul made a motion to close the public hearing, duly 2nd, approved 5-0. Joe DePaul made a motion to enter into the Business

Session, duly 2nd, approved 5-0. The board had a lengthy discussion on the subject appeal. Joe DePaul stated that he visited several pickleball courts to watch the game and did not find it objectionable. Chairman DePaul noted that found the game like tennis and paddle tennis and is similar to what the Zoning Regulations currently allow. Olivia Micca researched noise levels of sports currently allowed and noted that basketball emits more decibels at 80 decibels than pickleball and noted that basketball is currently allowed under the Zoning Regulations. A brief discussion ensued over the issue of the solid fence. Ann Brown agreed that the permit should be clarified not to allow a solid fence and that any fence must conform to the current Zoning Regulations. Olivia Micca noted that the fencing would mitigate and reduce the noise. Joe DePaul stated that the Zoning Regulations are not set up to mitigate noise, but the board could vary the regulation and allow noise mitigation at a later time. Vinny Mancuso agreed that the board should not make playing pickleball illegal. John Apple agreed with Daniel Casagrande that the board cannot compromise and stated there was no reason to go against the ZEO's approval of the permit. Joe DePaul made a motion to grant an appeal of the ZEO's decision to issue a Zoning Permit to allow a tennis court/pickleball court at 18 Misty Brook Lane and declare that pickleball is not an allowed principal or accessory use in the residential zones in the Town of New Fairfield, duly 2nd, denied 0-5. Appeal denied.

Joe DePaul made a motion to modify the ZEO's Zoning Permit to prohibit construction of a solid fence and reiterate that the fence must adhere to the current Zoning Regulations, duly 2nd, approved 5-0.

Chairman DePaul clarified the reasons why the board made this decision. He and made a motion to adopt the reasons the board denied the appeal at 18 Misty Brook Lane based upon the following reasons:

1. The ZBA has reviewed the Zoning Regulations and the opinion from Town Counsel dated February 15, 2024.
2. Based upon the review of Section 3.0.7 of the New Fairfield Zoning Regulations (the "Regulations"), the ZBA believes that pickle ball is the equivalent of "paddle tennis courts" as defined in Section 3.0.7 of the Regulations.
3. Based upon a review of Section 2.1 of the Regulations concerning the definition of impervious surface, the ZBA holds that "other similar recreational courts" do include pickle ball courts as well.
4. The ZBA holds that the Zoning Enforcement Officer (ZEO) was correct in issuing the zoning permit for 18 Misty Brook Lane, New Fairfield, Connecticut.
5. As part of this resolution, the ZBA adopts the analysis by Town Counsel, and also incorporates all caselaw that was cited in Town Counsel's February 15, 2024 letter.

Duly 2nd, approved 5-0.

While in the Business Session, Olivia Micca made a motion to accept the Minutes as presented, duly 2nd, approved 5-0.

Continued 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.

The applicant withdrew Application # 04-24.

Application # 05-24: Glattstein, 65 Bogus Hill Road, for variances to Zoning Regulations 3.2.5A&B, 3.2.6C Rear Setback to 23', 3.2.8, 3.2.11, 7.1.1.2 and 7.2.3A,B&E for the purpose of constructing a vertical expansion with roof deck and screened porch. Zoning District: R-44; Map: 11; Block: 2; Lot: 26.

Caren Carpenter gave a brief overview of the proposal to remove the existing roof and construct a roof deck and screened porch. The current rear setback overhang is 22.8' and proposed rear setback would be 23' slightly decreasing nonconformity. Ms. Carpenter noted that two letters of support from neighbors were included with the application and there are no view issues since the house sits so far below grade and cannot be seen from the street. Joe DePaul asked the public for comment. None given. The board entered into the Business Session. Ann Brown noted that the proposal is not increasing nonconformity and no views are affected. Joe DePaul made a motion to grant a rear setback to 23' to allow construction of a vertical expansion with roof deck and screened porch per the plans as submitted; the hardship being the slope of the lot, duly 2nd, approved 5-0. Variance granted.

Application # 06-24: Royal Fern LLC, 335 State Route 39, for variances to Zoning Regulations 3.2.5A&B, 3.2.6B Side Setbacks to 16.91' and 18.5', 3.2.6C Rear Setback to 42.75', 3.2.8, 3.2.11, 7.1.1.2 and 7.2.3A,B&E for the purpose of constructing a deck. Zoning District: R-44; Map: 2; Block: 8; Lot: 5.

No one was present for the application. Ann Brown made a motion to move Application # 06-24 to the end of the agenda, duly 2nd, approved 5-0.

Application # 07-24: Pauker, 142 Lake Drive South, for variances to Zoning Regulations 3.2.5A&B, 3.2.6B Side Setbacks to 17.1' and 22' (pool), 3.2.6C Rear Setback to 10', 3.2.7, 3.2.8, 3.2.11, 7.1.1.2 and 7.2.3A,B&E for the purpose of demolishing an existing house and constructing a new single-family house. Zoning District: R-44; Map: 25; Block: 1; Lot: 33.

Peter Coffin, Doyle and Coffin, presented his client's proposal to rebuild a house in the existing footprint. Mr. Coffin explained that this property is situated on an island and completely surrounded by the 440 line. Mr. Coffin explained that the new proposal would pull the existing house further back and slightly decrease nonconformity from the existing 9.8' overhang to 10'. No neighbor's views would be affected. A brief discussion ensued over the setbacks and the location of the pool and septic. Joe DePaul asked the public for comment. None given. The board entered into the Business Session. Joe DePaul made a motion to grant a rear setback to 10' and a side setback to 17.1' to allow a tear down and reconstruction of an existing house per the plans as submitted, noting a reduction in

nonconformity; the hardship being the location of the 440 line, duly 2nd, approved 5-0.
Variance granted.

Application # 08-24: Bothwell and Scott, 10 and 10A Fawn Crest Drive, for variances to Zoning Regulations 3.0.2A Table of Zoning Requirements-Residential Districts, Existing Lots, and Divisions into Four (4) Lots or Less, 3.1.5B, 7.1.2.2 Vacant Lots Not in Validated Subdivision or Recorded Approved Subdivision and Resubdivision, 7.2.1 General, 7.2.2 Non-conforming Use of Land, 7.3. Accessways and 7.2.3A&B Requirements for Accessways for the purpose of allowing use of a shared accessway to construct two single-family houses. Zoning District: R-88; Map: 18; Block: 1; Lot: 5 & 5.1.

Matthew Ranelli, Agent, requested that Application # 08-24 be unopened and moved to the next regular ZBA meeting in April. The Application was left unopened.

Application # 06-24: Royal Fern LLC, 335 State Route 39, for variances to Zoning Regulations 3.2.5A&B, 3.2.6B Side Setbacks to 16.91' and 18.5', 3.2.6C Rear Setback to 42.75', 3.2.8, 3.2.11, 7.1.1.2 and 7.2.3A,B&E for the purpose of constructing a deck. Zoning District: R-44; Map: 2; Block: 8; Lot: 5.

No one was present for the Application. Application # 06-24 was left unopened.

Vinny Mancuso made a motion to adjourn the meeting at 7:54 p.m., duly 2nd, approved 5-0.