

New Fairfield Zoning Board of Appeals New Fairfield, Connecticut

MINUTES April 25, 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, April 25, 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 and Alternate Ann Brown.

ZBA Members not in attendance: Olivia Micca and Alternates Peter Hearty and Vinny Mancuso.

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. Due to a power outage in town affecting the Library, Joe DePaul made a motion to amend the agenda by beginning the meeting at the library and then move to the Company A Fire House for the remainder of the meeting if power were not restored, duly 2nd, approved 4-0. Joe DePaul also made a motion to hear the applications in order, leaving Application #08-24 unopened until Board Member Christine Garabo arrived, then resuming Application #08-24 as the next application to secure a quorum after a board recusal, duly 2nd, approved 4-0. He asked the public if they had any objections to the move and asked if they would like to continue their applications until next month (no objections). All applicants were given the opportunity to obtain a continuance until the next meeting. Notices of the move would be placed on both entrances to the library notifying the public of the change. John Apple made a motion to accept the agenda as modified, duly 2nd, approved 4-0.

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.

Applicant David Clark gave a brief overview of the property located by Squantz Pond. The narrow lot is preexisting nonconforming. Mr. Clark would like to remove the existing pergola and construct a deck. The application would require side setbacks to 16.91' and 18.5' and a rear setback to 42.75'. Joe DePaul questioned whether there was a previous deck since

there were existing footings. The applicant stated that the footings were for the pergola. The rear setback would remain in the same footprint of the pergola and side setbacks will be needed. The impervious coverage would be reduced from 29% to 17%. Mr. Clark noted that he has secured Wetlands approval. Joe DePaul asked the public for comment. None given. The board entered into the Business Session. The application does not increase nonconformity. Joe DePaul made a motion to grant side setbacks to 16.91' and 18.5' and a rear setback to 42.75' to allow construction of a deck per the plans as submitted; the hardship being the narrow shape of the lot, duly 2nd, approved 4-0. Variance granted.

Board Member Christine Garabo arrived at the meeting.

While in the Business Session, Ann Brown made a motion to accept the minutes as read, duly 2nd, approved 4-0-1, Christine Garabo abstaining.

The meeting was then moved to the Company A Fire House after notifications were posted on both entries of the New Fairfield Public Library and recommenced at 7:33 p.m.

Chairman Joe DePaul recused himself and left the building for the next application. Vice Chairman, John Apple, continued the meeting as Chairman.

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.

Peder Scott and Matthew Ranelli, Shipman and Goodwin LLP, came in front of the board seeking a variance for Lots 10 and 10A Fawn Crest Drive. They gave a lengthy history of the property, subsequent subdivision by Gary Mead and change of Zoning Regulations regarding accessways from 20' to 25'. The original lot was 8.4 acres with an accessway and no other direct road frontage. Matthew Ranelli stated that the accessway was approved in 1988 by the Planning Commission when, at the time, the Zoning Regulations required a 20' accessway. The nonconforming lot predated the Zoning Regulations and remained vacant. In 2010 the lot was split by a first cut. The first cut was not classified as a subdivision under the regulations and created two assessed lots. The lots remain undeveloped. The applicant noted that the lot is an approved lot and is unusable without the accessway. Christine Garabo and Ann Brown both questioned if the owner created their own hardship by making a first cut. Mr. Ranelli stated that the accessway was approved in 1988 and the owner had a right of use for a first cut. The board asked for clarification on the timeline and when the regulations on accessways changed. The applicant stated that the regulations changed in the 1990s. Christine Garabo stated that the issue was created by the first cut. Ann Brown questioned the wooden road easement. Peder Scott gave a brief overview of the "passway" which was used by the original owner (Ahrlich) as a pedestrian

walkway and trail to gather firewood. John Apple noted that he understood the property was unbuildable and used for hunting and for gathering wood.

Mr. Ranelli stated that the ZEO at the time, Maria Horowitz, indicated that a first cut was an as of right for the property in 2010. The applicants applied for a building permit with house plans that was then denied by the ZEO (then Tom Gormley). Four years later, Attorney Neil Marcus acquired an affidavit from Ms. Horowitz that she approved the first division map as filed by SDC Builders on December 23, 2014. Regarding Maria Horowitz's affidavit, Christine Garabo stated that Maria Horowitz, who signed the letter in 2014, was no longer a town employee and confirmed the details from memory four years later with no statutes or approved signatures. The applicant noted that it is their belief that the lot predates zoning and meets the requirements. John Apple asked what year the last purchase of the land was. The applicant stated it was in 2004. Ann Brown questioned if the applicant understood that the accessway would require a variance and asked if there were house plans for the lot. The applicant noted that the plans were never accepted due to the accessway. Mr. Ranelli noted that the board can grant a variance to allow accessway to serve two houses. John Apple ascertained that the applicant was looking for the board to vary a 20' accessway. Mr. Ranelli's closing statements noted that the site was initially served by a farm road with exceptional hardships, it is the owner's right to develop the land and the site has never been developed. Peder Scott noted that there are other accessways in the development. Ann Brown questioned if the other accessways only serve one house. The applicant stated they did serve only one house.

John Apple asked the public for comment. Ray Lubus, Attorney representing abutting neighbor Joe DePaul, approached the board. Attorney Lubus noted that the Chairman recused himself and was not present in the room for the application. Attorney Lubus gave a detailed history of the property noting that both sides agree that the 8.4-acre parcel predated the Zoning Regulations and was owned by Robert Ahrlich. There was a 10' passway on the property for pedestrian traffic. Attorney Lubus noted that prior to 1983, New Fairfield did not allow accessways to interior lots and in 1983 each lot was allowed to have its own single 20' accessway. In 1988 Gary Mead obtained approval for the Fawn Crest subdivision. After approval of the subdivision, there was an equal property exchange resulting in a 20' strip to the 8.4 acres of land. On March 2, 1999, the Zoning Regulations changed with a new requirement for accessways to 25'. Attorney Lubus noted that the Ahrlich's were entitled to hardship under the onerous change. The property was sold in 2002 by the Ahrlich's to SDC Builders LLC and at that time it was clear that the Zoning Regulations for an accessway would not have permitted building on the lot at that time as it did not have the necessary 25'. Attorney Lubus noted that the Planning Commission minutes from 2009 reflect that both Peder Scott and Louis Bothwell were aware that the 8.4-acre lot with 20' accessway was unbuildable. Attorney Lubus also gave a history of the ownership of the property, deeded by SDC Builders LLC to Louis Bothwell in 2009 with a second quitclaim deed conveying the 8.4 acre lot to Louis Bothwell and Peder Scott. At that time, the owners did not seek subdivision approval from the Planning Commission or

receive approval from Zoning to authorize the parcel to be split into two separate lots. State law states that the owners are entitled to a first cut if the cut meets the applicable zoning regulations at that time. The lot did not meet the requirements as it did not have a 25' accessway. There was no notation of approval from the Zoning Commission or ZEO on the recorded map when it was recorded by the Town Clerks office and there are documents reflecting that its validity was disputed. In 2010, once the first cut map was recorded, the owners created a new warranty deed dated January 12, 2010 conveying to themselves one of two new lots. In 2011, Louis Bothwell conveyed 50% to his son, Gerald Bothwell with corrections to the deed filed in 2014. The current owners are Gerald Bothwell and Peder Scott. Attorney Lubus noted to the board the importance of recognizing the multiple transfers of property which occurred after SDC Builders LLC acquired the lot from the original owners. Attorney Lubus stated that the subsequent title holders do not have the legal authority to seek a variance when they have knowledge of preexisting zoning conditions. The Zoning Regulations were updated to reflect health and safety rules to allow firetrucks and emergency vehicles to access properties and save lives. Attorney Lubus also produced an affidavit from Gary Mead stating that the interior lots were not buildable and a letter from previous ZEO Tom Gormley in 2014 noting that the applicants did not receive approval and filed the map in the Town Clerk's office without any approval signatures from the Planning Commission or ZEO.

Attorney Lubus closed his remarks noting that the applicant was aware of the hardship and the applicants accepted the regulations when they purchased the property.

Bill Hauck, 12 Fawn Crest Drive, gave a brief overview of his history with Mr. Bothwell and noted that he understood the property not to be a buildable lot. Anthony DeLuca, 3 Douglas Lane, also noted his concern over the setbacks and possible property value loss if the application is approved as all his windows overlook the rear of the property. Peter Bassani, 5 Douglas Lane, voiced his concerns over safety and was assured when he purchased his property that the land behind was an unbuildable lot because there was no accessway.

Matthew Ranelli requested a continuance to go over the material from Attorney Lubus. Mr. Ranelli also reiterated that the applicant has a legal right to develop his land. Mr. Ranelli acknowledged that Mr. Bothwell did contact the neighbors to try to solve the issue and the neighbors' concerns have no bearing on the legal argument. Christine Garabo made a motion to continue Application # 08-24 to next month, duly 2nd, approved 4-0.

Joe DePaul returned to the board.

Application # 09-24: Ramos, 43 Sunset Trail, for variances to Zoning Regulations 3.0.5C Permanent Detached Garages, 3.2.5A, 3.2.6B Side Setback to 4', 3.2.11, 7.1.1.2 and 7.2.3A,B&E for the purpose of tearing down and reconstructing a garage with a vertical expansion. Zoning District: R-44; Map: 15; Block: 5; Lot: 21 and 22.

William Ramos presented his application to modify the roof elevation dormer to accommodate the HVAC system and noted that a letter of support was entered into the file

from abutting neighbor, Pat Callahan. A brief discussion over setbacks ensued. Caren Carpenter explained the addition of the gable with the vertical expansion to the board. The proposal did not increase nonconformity. It was determined that the garage setbacks were not advertised, and the garage portion of the application could not be voted on. Joe DePaul suggested that the application be bifurcated into two parts and the garage continued to next month. The applicant agreed. Joe DePaul made a motion to bifurcate the application into two parts, duly 2nd, approved 5-0. Joe DePaul asked the public for comment. None given. The board entered into the business session. The board had no issues with the vertical expansion. Joe DePaul made a motion to grant a side setback to 4' and a rear setback to 42.6' to allow construction of a vertical expansion per the plans as submitted; the hardship being the irregular shape of the lot, duly 2nd, approved 5-0. Variance granted. Christine Garabo made a motion to continue Application # 09-24B to next month to correctly advertise the garage, duly 2nd, approved 5-0. Application continued.

Application # 10-24: Main, 92 Shortwoods Road, for variances to Zoning Regulations 3.1.6A Front Setback to 33', 7.1.1.1A&B and 7.2.3A,B&E for the purpose of constructing a roof over an existing deck. Zoning District: R-88; Map: 14; Block: 1; Lot: 8.

Jeff and Roseanne Main presented their proposal to construct a roof over an existing deck. Mr. Main noted that the house is preexisting nonconforming and closer than 50' to the road. The applicant would like to construct a roof to wrap around the porch. Mr. Main explained that the house is not parallel to the road. Joe DePaul noted that a similar proposal was submitted in 2006 and turned down by the board resulting in a compromise. A brief discussion ensued over setbacks, measurements, and hardship. The board stated that they would like to read the minutes of the 2006 meeting to gather more information on why the application was amended. The applicant agreed to continue. Christine Garabo made a motion to continue Application # 10-24 until next month, duly 2nd, approved 5-0. Application continued.

Application # 11-24: George, 65 Ball Pond Road East, for variances to Zoning Regulations 3.2.5A&B, 3.2.6A Front Setback to 16.7', 3.2.6C Rear Setback to 42', 3.2.11, 7.1.1.2 and 7.2.3A,B&E for the purpose of constructing a shed dormer. Zoning District: R-44; Map: 22; Block: 5, Lot: 38.

Caren Carpenter presented the proposal to construct a shed dormer which would not increase nonconformity and stay in the same footprint. The proposal would require a front setback to 16.7' and a rear setback to 42' which are both existing. Joe DePaul asked the public for comment. None given. The board saw no issues with the application. The board entered into the Business Session. Joe DePaul made a motion to grant a front setback to 16.7' and a rear setback to 42' to allow construction of a shed dormer per the plans as submitted; the hardship being the small size and shape of the lot, duly 2nd, approved 5-0. Variance granted.

Application # 12-24: Beck, 14 Great Meadow Road, for variances to Zoning Regulations 1.5.11 Fences, 3.1.3A,B,C&D, 3.2.5A&B, 3.2.6B Side Setback to 6.1', 3.2.6C Rear Setback to 0', 3.2.7, 3.2.11, 7.1.1.2 and 7.2.3A,B&E for the purpose of constructing an oversized fence and the parking of a commercial vehicle in excess of ten thousand pound gross vehicle weight rating (GVWR). Zoning District: R-44; Map: 10; Block: 6; Lot: 6-8.

Curtis Beck gave a brief overview of his preexisting nonconforming property with steep slope. He would like to keep a tow truck parked at his house and noted the uses of right regarding commercial vehicles which state that must be parked at least 100' from the property line or placed in driveway or parked behind the garage and buffered from the neighbors. Mr. Beck stated that he is currently trying to move a utility pole behind the garage. Some lines have been moved to a new pole, but cable and telephone lines have not been moved yet. He is seeking a fence variance to 10' to adequately cover the height of the large tow truck he owns. Joe DePaul questioned why he does not park the truck in the 3-level garage he owns. Mr. Beck stated that the height of the truck will not fit through the garage door. Joe DePaul produced photos of the property for the board and noted that there are other oversized vehicles on the property. Joe DePaul stated that it is his opinion that this situation is self-created and not tied to the land. Mr. DePaul noted that the board has historically never approved a 10' fence and that the applicant is asking too much of the board when there is no hardship. Joe DePaul asked the public for comment. None given. The applicant requested a continuance. Christine Garabo made a motion to continue Application # 12-24, duly 2nd, 4-1, Joe DePaul denying. Application continued.

Application # 13-24: SD Consulting LLC, 6 Butternut Lane, for variances to Zoning Regulations 3.0.5C Private Permanent Detached Garages, 3.2.5A&B, 3.2.6B Side Setback to 8', 3.2.11, 7.1.1.2 and 7.2.3A,B&E for the purpose of constructing a 12'x22' detached garage. Zoning District: R-44; Map: 24; Block: 18; Lot: 11.9.

Sev Dauti and Edona Dauti approached the board with their proposal to construct a detached garage on the property. Joe DePaul noted that there is already a garage on the property, and it was a massive increase in nonconformity. A brief discussion ensued over other locations to place the garage. The applicant noted that the septic system was directly behind the house and the garage could not be moved due to the regulations regarding the distance from the septic. The board suggested that the applicant continue the application to explore reorientation of the garage and get a letter from the Health Department stating the location of the septic. Joe DePaul asked the public for comment. None given. Christine Garabo made a motion to continue Application # 13-24 until next month, duly 2nd, approved 5-0. Application continued.

Christine Garabo recused herself from the next two applications.

Application # 14-24: Banks Properties LLC, 60 Saw Mill Road, for variances to Zoning Regulations 4.1.4A,C&D Minimum Building and Structure Setbacks and 8.8A&B Zoning

Board of Appeals to change a previously granted variance for a fence. Zoning District: B/C; Map: 19; Block: 12; Lot: 21.1.

Brad Burns appeared in front of the board to modify a previously granted variance. It was determined that Mr. Burns does not currently own the property and did not have documentation of consent to have the application voted on. Mr. Burns would like to modify the variance to change a portion of the 6' fence to a berm using the same number of trees previously agreed to in a single row rather than a double row. Joe DePaul asked the public for comment. Scott March, 3 Escape Road, was in support of the change. There are also letters of support from abutting neighbors Jennifer Melton, 58 Saw Mill Road, and Tino Punturiero, 5 Escape Road, which were entered into the file. Ann Brown made a motion to move Application # 14-24 to the end of the agenda to see if the applicant could contact the owner, duly 2nd, approved 4-0.

Application # 15-24: Banks, 8 Timber Springs Road, for variances to Zoning Regulations 3.0.4A,B,E&F Minor Accessory Buildings and Structures, 7.1.1.1A&B and 7.2.3A,B&E for the purpose of constructing a pool house with covered patio. Zoning District: R-88; Map: 27; Block: 2; Lot: 14.

Applicant Brad Burns presented his proposal to construct a pool house with an attached covered patio. The application does not require any setbacks but does require a variance since it exceeds the allowable 400 sq. ft. The proposed 18'x30' pool house is 540 sq. ft. A brief discussion ensued regarding the requirements for an accessory structure. Joe DePaul asked the public for comment. None given. The board entered into the business session. Joe DePaul made a motion to grant a variance to allow construction of an 18'x30' pool house with covered patio per the plans as submitted; the hardship being the narrow size of the lot, duly 2nd, approved 4-0. Variance granted.

Application # 14-24: Banks Properties LLC, 60 Saw Mill Road, for variances to Zoning Regulations 4.1.4A,C&D Minimum Building and Structure Setbacks and 8.8A&B Zoning Board of Appeals to change a previously granted variance for a fence. Zoning District: B/C; Map: 19; Block: 12; Lot: 21.1.

The owner of the property was not able to be reached for consent. Christine Garabo made a motion to continue Application # 14-24 until next month, duly 2nd, approved 4-0. Application continued.

Christine Garabo made a motion to adjourn the meeting at 10:45 p.m., duly 2nd, approved 5-0.