

New Fairfield Zoning Board of Appeals
New Fairfield, Connecticut 06812
MINUTES
November 19, 2020

The New Fairfield Zoning Board of Appeals (ZBA) held a public hearing followed by a business session on **Thursday, November 19, 2020** at 7:00 p.m. **via Zoom Web Conference (Meeting ID 927 1861 9753.)**. Secretary Joanne Brown took the Minutes.

ZBA members in attendance: Joe DePaul, Chairman; John Apple, Vice Chairman; John McCartney; Dan McDermott and Alternates Ann Brown and Bob Jano.

ZBA members not in attendance: Vinny Mancuso

Town Officials in attendance: Evan White, Zoning Enforcement Officer.

Assistant Broadcast Coordinator, Quintin Flower, from the Town of New Fairfield, gave an overview of how the Zoom Web Conference would proceed. Chairman Joe DePaul called the Meeting to order at 7:00 p.m. and introduced the Board Members. Secretary Joanne Brown read the Agenda. John Apple made a motion to adopt the agenda, duly 2nd, approved 5-0.

Continued Application # 29-20: Marandi, 31 Inglenook Drive, for variances to Zoning Regulations 3.0.6B Swimming Pools, 3.2.5A, 3.2.6A Front Setback to 20', 3.2.6B Side Setback to 8', 3.2.11, 7.1.1.1A&B and 7.2.3A&B for the purpose of installing a 6.8'x6.8' hot tub. Zoning District: R-44; Map: 41; Block: 8; Lot: 38.

Reza Marandi, applicant, returned to the board noting that he obtained a letter of support for the proposed hot tub location from his neighbor as requested. Mr. Marandi took the board's suggestion into consideration to increase the side setback from 8' to 11'. Mr. Marandi noted that he had met with ZEO, Evan White, and Eric in the Building Department and had installed the hot tub on a concrete slab. Mr. Marandi noted that he was waiting to find a suitable electrician to hook up the hot tub. Joe DePaul provided photos of the hot tub sitting on the deck. John Apple questioned why the applicant installed the hot tub without waiting to get the variance approved. Mr. Apple also noted that the applicant was not present at last month's meeting and did not notify the board. The applicant replied that he thought that he had done what the board had wanted and needed to get the concrete slab poured before the cold. Joe DePaul countered and read the minutes from last month noting that the board suggested that the hot tub be placed to the rear of the deck, not at the front of the deck where it was currently placed. Evan White confirmed that neighbor, Priscilla Beaulieu, sent in a letter of support for the proposal. Bob Jano noted that he did not see a hardship in this case. Joe DePaul asked the public for comment. None given. The board entered into the Business Session. Bob Jano commented that there was no hardship. John Apple stated that the hot tub was installed prior to the board voting on it and, therefore, it was an illegal hot tub. Joe DePaul made a motion to grant a front setback to 20' and a side setback to 11' to allow placement of a hot tub per the plans as submitted and modified; the hardship being the size and shape of the lot, duly 2nd, denied 2-3. Variance denied.

Continued Application # 35-20: Buchwald, 29 Sail Harbour Drive, for variances to Zoning Regulations 3.0.6B Swimming Pools and 3.2.6C Rear Setback to 36.7' for the purpose of installing an 18'x24' in-ground gunite swimming pool. Zoning District: R-44; Map: 2; Block: 1; Lot: 04.

Laurie Potter, Scott Swimming Pools, returned to the board with a revised proposal. The size of the pool was reduced and relocated closer to the house now requiring a 43.1' rear setback. A letter from Tim Simpkins, Health Director, was read into the record stating that the septic tank and pump could not be moved. Bob Jano noted that he did not see a hardship. The size of the lot was discussed. John McCartney questioned the impact of the impervious coverage. Evan White noted that zoning regulations allowed up to 25% maximum impervious coverage, but a storm water management plan would have to be put in place. The cost of these systems and beneficial impact to the town was discussed. John McCartney noted that by installing a pool, the water mitigation system would help the town and questioned who would be responsible in town to check that it was installed correctly. Evan White stated that he checked the water mitigation systems and calculations which take at least two weeks over the permit process which are then checked by the town engineer. Joe DePaul asked the public for comment. None given. The board entered into the Business Session. John Apple agreed with Bob Jano that there was no hardship but stated that pools collect water, thereby helping the town improve water mitigation. Ann Brown noted the decrease in the rear setback. John McCartney stated that he did not have a problem with the application. Joe DePaul made a motion to grant a rear setback to 43.1' to allow construction of a pool per the plans submitted and modified; the hardship being the narrow shape of the lot, duly 2nd, approved 5-0. Variance granted.

While in the Business Session, John McCartney made a motion to adopt the minutes as presented, duly 2nd, approved 3-2, John Apple and Dan McDermott abstaining.

Continued Application # 37-20: Ramesh and Dash, 5 Sylvan Road, for variances to Zoning Regulations 3.2.6B Side Setbacks to 4' and 7.5', 3.2.6C Rear Setback to 8', 7.1.1.2 and 7.2.3A,B&E for the purpose of constructing wooden steps with landing to the 440 line. Zoning District: R-44; Map: 25; Block: 2; Lot: 9.1.

Joe DePaul noted that Neil Marcus, the town attorney, was consulted on this application and would be present at the meeting. Mr. DePaul told the neighbors who were present on the meeting that the applicant is entitled to build inside the setbacks which is out of the board's control. The area within the setbacks is the subject of the board's vote, but the applicant can construct steps that are on grade and would not be considered structures, and, therefore, would not require a variance.

Joe Reilly, agent for the applicant, gave an overview of the application and noted that inside the building envelope the stairway does not require a variance but outside the building envelope they do. Mr. Reilly stated there was another option available to the applicant which would be to obtain a special permit and construct a concrete or stone stairway on grade to the 440 line requiring equipment and heavy construction. Joe DePaul asked the public for comment. Neighbors, Caryn Angelson and Bill Topf, 4 Glen Holly Road, again voiced their concern that the structure should be

removed since it was constructed without permits undermining the process and the zoning regulations. Ms. Angelson noted that the applicants knew the process, having obtained a variance in April 2019, and created a self-hardship since they bought a lot which had unobstructed views but no access to the lake. Mr. Topt commented that the whole structure was an eyesore from his property but also from their neighbor's property at 43 Sylvan who directly face the property.

A letter from Attorney Richard Roberts of Halloran Sage was read into the record noting that the applicant has reasonable and valuable use of the property and therefore has no basis for hardship. Town Attorney Neil Marcus noted that Attorney Roberts hit the nail on the head in discussing the real issue of hardship and gave a lengthy explanation regarding if a property has reasonable use, the right to grant a variance is limited. Hardship in the State of Connecticut is a tough standard to achieve. Attorney Marcus analyzed the situation and noted that the issue to be considered is does the applicant's right to access the lake outweigh the consideration of hardship. Mr. Marcus also stated that Mr. Riley just defeated the need by offering a recognizable alternative by using stone and concrete on grade that does not require variances. Attorney Marcus noted that it was the board's responsibility to uphold the integrity of the zoning regulations by considering the right of the owner's to access the lake, the neighbor's objections, and if there is actual hardship. A brief discussion ensued about whether the applicants can use town beaches or amenities and the debris piled at the shore of the property.

Joe DePaul questioned Attorney Marcus on whether an applicant who had installed something illegally should be "punished" or the application treated like a "new" application. Attorney Marcus noted that it is best to act on the application as if new to reach a better decision. The board entered into the Business Session. John McCartney made a few comments, noting that the Candlewood Lake Authority should be contacted for cleanup for the lake. Mr. McCartney noted he is troubled by seeing an increase in "build and then seek forgiveness" properties and stated that Mr. Riley should have held off construction. A brief conversation ensued about safety, handrails and stone walking paths. Ann Brown noted that she did not see hardship. John Apple did not want to grant a variance to increase nonconformity and noted that equipment coming in and blasting to construct stone steps might alter the landscape in a different way. Joe DePaul made a motion to grant a side setback to 4' and 7.5' and a rear setback to 8' to legalize construction of a stairway per the plans as submitted; the hardship being the steepness of the lot, duly 2nd, denied 0-5. Variance denied.

Application # 43-20: Shiro, 11 Knolls Road, for variances to Zoning Regulations 3.2.5A&B, 3.2.6A Front Setback to 35', 3.2.6C Rear Setback to 34.5', 3.2.8, 3.2.11, 7.1.1.2 and 7.2.3A&B for the purpose of constructing an open deck with stairs. Zoning District: R-44; Map: 40; Block: 3; Lot: 17-19.

Agent, Joe Coelho, appeared in the front of the board with a proposal to construct a deck with stairs staying within the existing setbacks and squaring off an existing "L-shaped" area of the house. There would be no increase in nonconformity with an existing front setback to 35' and rear setback to 34.5'. The board saw no issue with this application. Joe DePaul asked the public for comment. None given. The board entered into the Business Session. Joe DePaul made a motion to grant a front setback to 35' and a rear setback to 34.5' to allow construction of a deck

per the plans as submitted, noting no increase in structural nonconformity; the hardship being the small size and shape of the lot, duly 2nd, approved 5-0. Variance granted.

Application # 44-20: Neves, 26 Fox Run (CI), for variances to Zoning Regulations 3.2.8 for the purpose of constructing a master bedroom addition and in-ground pool. Zoning District: R-44; Map: 15; Block: 1; Lot: 226.

Agent Joe Reilly approached the board with a proposal for a master bedroom addition and in-ground pool installation. No setbacks are needed. The only Zoning Regulation to be varied is 3.2.8 Maximum Impervious Coverage due to the proposal exceeding the maximum amount (25%), by 2.9% (27.9%). The addition would be one story and approximately 600 square feet. Joe DePaul asked the public for comment. None given. John McCartney questioned if the removal of a paved area would decrease the amount of impervious coverage. Evan White noted the reduction was already included in the calculation of impervious coverage presented. The board entered into the Business Session. Joe DePaul made a motion to allow construction of an addition and an in-ground pool to vary Zoning Regulation 3.2.8 Maximum Impervious Coverage per the plans as submitted; the hardship being a through lot with an irregular shape, duly 2nd, approved 5-0. Variance granted.

Application # 45-20: Keltos, 8 Muller Street, for variances to Zoning Regulations 3.0.6B Swimming Pools, 3.2.5A&B, 3.2.6C Rear Setback to 40.5', 3.2.11, 7.1.1.2 and 7.2.3A&B for the purpose of installing a hot tub and patio in the rear of the property. Zoning District: R-44; Map: 31; Block: 4, Lot: 10.

Lisa Keltos appeared in front of the board to request a rear setback to 40.5' to install a patio and hot tub. Ms. Keltos was granted a previous side variance, but surveyors noted the location of the leaching fields were off on the survey and would not support installation of the patio. By moving the patio and hot tub to the rear the applicant can build a larger patio away from the neighbors. Joe DePaul asked the public for comment. None given. Joe DePaul noted that the applicant is reducing nonconformity. The board entered into the Business Session. The board saw no problem with the application. Joe DePaul made a motion to grant a rear setback to 40.5' to allow installation of a hot tub and patio per the plans as submitted, noting a reduction in nonconformity; the hardship being the narrow shape of the lot, duly 2nd, approved 5-0. Variance granted.

Dan McCartney made a motion to adjourn the meeting at 8:56 p.m., duly 2nd, approved 5-0.