

**BOROUGH OF FENWICK
PLANNING AND ZONING COMMISSION
INLAND WETLANDS AGENCY
SPECIAL MEETING
SATURDAY, MAY 20, 2017**

MINUTES

Present: Chuck Chadwick – Chair, Sallie Boody, Bill Christensen, Art Wright, Rick Neely (Alternate), Marilyn Ozols – ZEO.

Absent: Rosalind Shenkman, T. Van Itallie (Alternate).

Members of Public: Brooke Girty, Eric Glance, Deb Neely.

1. Call to Order.

C. Chadwick called the meeting to order at 9:00 a.m., and seated R. Neely as a voting member. A quorum was established (Chadwick, Boody, Christensen, Wright, Neely).

2. ZSP17-002, 12 Neponset Avenue, map 11, lot 8. Martha Staniford & Matthew Myers, owners and applicants; Site Plan and Coastal Site Plan Review to regrade yard to create level area southeast of porch and terrace. Continued from April 8, 2017.

No one was present to represent the applicant; Chairman Chadwick asked M. Ozols to summarize the changes. She stated that, based on the Commission's suggestion at the last meeting, the revised plan lowers the grade in the area immediately behind the house rather than add fill to raise the grade to meet the high point. The current plan shows no fill in the flood zone which was an issue at the last meeting, does not include any retaining walls or significant slopes, and adds one step down from the terrace to meet the revised grade. Additionally, the tidal wetland line was reflagged as requested by the Commission. She stated that the professional who flagged the line had noted that generally he does not find a significant discrepancy over time and that was the case here also.

B. Girty arrived at this time. In response to questions from the Commission, she stated that the current plan shows no encroachment into the 50' setback, the highest existing grade is lowered by 9" to the new grade, and there is a gradual slope with no retainage or fill.

Chairman Chadwick read from the letter prepared by T. Metcalf, Borough Engineer:

"This is further addressed in Technical Bulletin 5- Free- of-Obstruction Requirements by the Federal Emergency Management Agency (FEMA) which provides guidance concerning standards of the National Flood Insurance Program (NFIP). This Bulletin states: "...Generally, it is unreasonable to expect that the addition of 1 to 2 feet of site-compatible, non-structural fill in a V zone will lead to adverse effects on buildings. Thus, placement of up to 2 feet of fill under or around an elevated building can be assumed to be acceptable (without engineering analysis or certification)...". The Bulletin acknowledges that engineering methods and models for analyses associated with small quantities of fill are almost impossible to perform which adds to the difficulty in administering requirements associated with fill placement. Additionally, the Bulletin states that "...The local official is expected to use discretion in such cases [placement of non-structural fill in a V zone] to achieve the desired performance while giving deference to the general intent of these criteria."

So, given the minimal, if any, fill placement, that the fill placement is non-structural and incidental and that existing grading/drainage patterns will not be significantly altered, I believe the grading and any incidental fill placement, including topsoil can be permitted."

M. Ozols reviewed FEMA's interpretation of the difference between "structural fill" which is not permitted in a V Zone and "landscaping or aesthetic fill" which is what is placed to soften the appearance of a house that has been elevated on piers. FEMA's concern is with large amounts of fill, not the first foot or so, which should be in a form that will not impact other properties in a flood. They allow some local discretion here because they don't know the particulars of the specific sites.

Chairman Chadwick noted that this discussion addresses the concerns expressed by Commissioner Van Itallie at the last meeting and the Commission is likely to see this more frequently in the future as other property owners raise buildings in response to sea level rise concerns.

In response to a Commission question, M. Ozols stated that applicants are required to reimburse the Borough for the expense incurred when the Borough Engineer reviews a plan/application.

Based on the discussion, **S. Boody moved that the Commission finds that application ZSP17-002, 12 Neponset Avenue, for Site Plan and Coastal Site Plan Review to extend the porch and stone terrace and regrade the yard to create a 30'x50' level area southeast of the porch and terrace, as modified by the Site Development Plan revised through 4/25/17, with the stipulations noted, is consistent with the goals and policies of the CT Coastal Management Act and that it complies with the review standards in the Borough of Fenwick Zoning Regulations, and approves the application based on the plans and documents submitted with the following stipulations:**

- 1. In order to avoid encroachment onto adjacent properties by construction equipment, the side property lines shall be clearly marked in the field prior to the start of construction.**
- 2. A crushed stone construction entrance shall be installed if deemed necessary by the Zoning Enforcement Officer during construction.**
- 3. An existing conditions survey reflecting final topography shall be submitted prior to issuance of Zoning Compliance for a Certificate of Occupancy. All surveys and certifications shall be prepared by a licensed surveyor.**
- 4. The approved site plan shall be endorsed by the Commission chairman and filed on the Land Records of the Town of Old Saybrook prior to issuance of a Zoning Permit.**
- 5. In accordance with the adopted fee schedule, the applicant shall reimburse the Borough for all engineering fees prior to issuance of a Zoning Permit for construction and prior to issuance of Zoning Compliance for a Certificate of Occupancy. Reimbursement shall include all costs incurred to that point in time.**
- 6. This decision supersedes the approval granted on April 8, 2017.**

A. Wright seconded the motion.

In response to a question, M. Ozols clarified that this motion was superseding rather than amending the previous vote since various stipulations in the first vote would need to be modified and having all of the information in one vote is more clear.

The motion was approved unanimously.

Approved 5-0-0

For: Chadwick, Boody, Christensen, Wright, Neely.

Against: None.

Abstain: None.

The record plans for this application are:

- *Site Development Plan for Property of Martha Staniford, 12 Neponset Avenue, by Angus McDonald Gary Sharpe & Associates, dated February 13, 2007, revised through 4/25/17*
- elevation drawings marked as Exhibit C:
 - *Myers South Elevation*
 - *Myers East Elevation*
 - *Myers West Elevation*
 - *Myers Terrace & Screened Porch*

3. ZSP17-003, 4 Neponset Avenue, map 11, lot 11. Richard & Deborah Neely, owners, CSM Development, applicant; Site Plan and Coastal Site Plan Review to install generator and ac units on east side of property.

R. Neely recused himself for this application. E. Glance presented. He indicated the locations of the units, the location of the garage on the adjacent property, and the proposed shrubbery screening on the plans already submitted and noted that the generator will not be seen from the road. M. Ozols clarified

that the FEMA flood zone line is drawn based on elevation 13 as indicated on the best information available to FEMA. This is not as accurate what a surveyor on the property can determine and in this case elevation 13 actually occurs adjacent to the house in the locations where the units will be placed. The applicant indicated that the units would be placed on slabs and the tops of these slabs will be above the existing grade (elevation 13).

In response to questions, E. Glance stated that the generator is run by propane from an existing tank on the property located near the flagpole that is shown on the plan; the proposed locations for the units takes into consideration the flood zone and placement out of sight from the road; in a perfect scenario all neighbors will coordinate testing; the test time is set by the installer but can be adjusted remotely; the typical test runs about 10 – 15 minutes although the manufacturers recommend 20. Chairman Chadwick noted that as the number of individual generators increases, the Borough may want to enact a regulation to address the coordination of testing. M. Ozols stated that an ordinance would be more appropriate than a zoning regulation because zoning cannot be applied retroactively and an ordinance could apply to both existing and new units.

A. Wright inquired about abutter comments. M. Ozols stated that notice had gone out for both this meeting and the ZBA meeting. The only abutter at the ZBA meeting was the property owner on the side where the units will be placed and she had no objection to the location.

Based on the discussion, **S. Boody moved that the Commission finds that application ZSP17-003, 4 Neponset Avenue, for Site Plan and Coastal Site Plan Review to install a generator and two ac units on the east side of the property, with the stipulations noted, is consistent with the goals and policies of the CT Coastal Management Act and that it complies with the review standards in the Borough of Fenwick Zoning Regulations, and approves the application based on the plans and documents submitted with the following stipulations:**

- 1. The units shall be installed such that the base of each unit is above elevation 13.**
- 2. The bel rating for the proposed units shall be submitted to the ZEO prior to issuance of a Zoning Permit.**
- 3. Every effort shall be made to coordinate the test schedule for the generator with that of neighboring property owners.**
- 4. Certification of the final installation location (distance to property line and elevation) shall be submitted prior to issuance of Zoning Compliance. This certification shall be prepared by a licensed surveyor.**
- 5. A copy of the survey submitted with the application shall be filed on the Land Records of the Town of Old Saybrook prior to issuance of a Zoning Permit.**

W. Christensen seconded the motion.

In response to Commission inquiry, M. Ozols clarified that the location of the mechanicals is shown on the plan modified by the applicant and, therefore, not signed by a licensed professional. Plans that are not signed and sealed cannot be filed on the land records. Since the bulk of the information about the property is on the survey, and the location of the mechanicals can be measured from the house, it did not seem necessary to require the applicant to incur the additional expense of having the surveyor redo the plan.

The motion was approved unanimously.

Approved 4-0-0

For: Chadwick, Boody, Christensen, Wright.

Against: None.

Abstain: None.

The record plans for this application are:

- *Topography Survey of Land of Richard B. & Deborah D. Neely, Neponset Avenue* by Richard Gates dated May 1, 2017
- site plan excerpt indicating locations of mini-splits and generator
- *Drawings Provided by CSM Development* dated 3/28/17

- *Neely Residence North View, Landscape Plan Elevation View*
- *Neely Residence South View, Landscape Plan Elevation View*
- *Plan View with Setbacks from Ethel Davis, Landscape Plan Elevation View*
- *Site Pictures, Landscape Plan Elevation View*

R. Neely resumed his seat as a voting member at this time.

4. ZSP17-004, 18 Pettipaug Avenue, map 10, lot 44. Christopher & Eileen Millard, owners, Brooke Girty, applicant; Site Plan and Coastal Site Plan Review to install ac unit on west side of house.

A. Wright stated that he is an abutting property owner but the proposal does not impact him in any way and he believes he can review the application objectively.

B. Girty presented. She stated that there is no survey for this property but the lot is the equivalent of 2½ lots in size and the proposed location is almost in the middle of the property so there is a lot of space between the unit and the property line. She demonstrated the location on a Google Earth map and stated that the plantings and unit are existing (photo marked Exhibit H submitted to show location); the contractor installed the unit at the time the interior work was approved based on a misunderstanding; the application was delayed so that it could be submitted with other similar applications.

Commission members discussed the need for a survey. M. Ozols indicated that if there is a significant distance to the property line or a plan is submitted that demonstrates the location based on record surveys of the affected property or adjacent property, she does not require the property owner to incur the expense of a new survey. If there is not good information on record and/or the location is tight, she will require a new signed and sealed plan. The Commission concurred with this.

Based on the discussion, **A. Wright moved that the Commission finds that application ZSP17-004, 18 Pettipaug Avenue, for Site Plan and Coastal Site Plan Review to install an ac unit on the west side of house with the stipulation(s) noted, is consistent with the goals and policies of the CT Coastal Management Act and that it complies with the review standards in the Borough of Fenwick Zoning Regulations, and approves the application based on the plans and documents submitted with the following stipulation:**

1. **The HVAC units shall be screened as indicated on the plans approved by the Historic District Commission.**

R. Neely seconded the motion and it was approved unanimously.

Approved 5-0-0

For: Chadwick, Boody, Christensen, Wright, Neely.

Against: None.

Abstain: None.

The record plan for this application is the plan marked Exhibit B.

5. ZSP17-005, 28 Fenwick Avenue, map 10, lot 31. Stephen Munn, owner, Brooke Girty, applicant; Site Plan and Coastal Site Plan Review to install HVAC units on south and west sides of house.

B. Girty presented. She stated that the site plan was based on surveys of the adjacent properties (Ryder, Wade) and found monuments; the house was measured and the distances to the monuments measured to develop the plan; they are utilizing both mini-splits and one traditional ac unit; the units are electric; the Ryder property has an older ac unit that faces this house and is probably louder than what is proposed here; the locations can all be easily screened. She reviewed the locations of the piping, indicating the areas where they were able to put the piping inside the house. No comments were received from the abutters for either this application or the HDC application.

Based on the discussion, **S. Boody moved that The Commission finds that application ZSP17-005, 28 Fenwick Avenue, for Site Plan and Coastal Site Plan Review to install HVAC units on the south and west sides of house, with the stipulations noted, is consistent with the goals and policies of the CT Coastal Management Act and that it complies with the review standards in the**

Borough of Fenwick Zoning Regulations, and approves the application based on the plans and documents submitted with the following stipulations:

- 1. The HVAC units shall be screened as indicated on the plans approved by the Historic District Commission.**
- 2. The bel rating for the proposed units shall be submitted to the ZEO prior to issuance of a Zoning Permit.**

R. Neely seconded the motion.

S. Boody expressed concern about setting a precedent for multiple exterior pipings, noting that it was unclear how much piping would be visible on the outside of this house. B. Girty clarified the locations and members noted that this is primarily a concern for HDC.

A. Wright noted that the location is very close to the side property line and wondered if a survey should be required. B. Girty stated that the adjacent property lines are known. M. Ozols clarified that when necessary she can measure final locations and that she accepts an architectural site plan when it is based on other survey information on file.

The motion was approved unanimously.

Approved 5-0-0

For: Chadwick, Boody, Christensen, Wright, Neely.

Against: None.

Abstain: None.

The record plan for this application is:

- *The Munn Cottage - Site Plan, Pettipaug Avenue, Feb. 14, 2017*

- 6. Status. ZSP12-004: 20 Mohegan Avenue, map 10, lot 13-1, A Piece of Paradise, LLC, owner; 10 Mohegan Avenue, map 10, lot 13, 273 Water Street, LLC and Fenwick Acquisition, LLC owner; Frank Sciame, applicant. Site Plan/Coastal Site Plan Review to restore dune and vegetation and to remove stone patio/restore area. Approved with Conditions, September 6, 2012. Executive Session anticipated.**

At 10:07, **A. Wright moved to go into executive session to discuss the “pending claim” that the Commission has against Mr. Sciame, as expressed by the order issued in 2007 and the subsequent Commission action approving the remediation claim, and to invite ZEO Ozols to attend. S. Boody seconded the motion and it was approved unanimously.**

Approved 5-0-0

For: Chadwick, Boody, Christensen, Wright, Neely.

Against: None.

Abstain: None.

At 10:35, W. Christensen moved to come out of executive session. R. Neely seconded the motion and it was approved unanimously.

Approved 5-0-0

For: Chadwick, Boody, Christensen, Wright, Neely.

Against: None.

Abstain: None.

No actions were taken.

- 7. Approval of Minutes of previous meeting: Planning & Zoning/Inland Wetlands – April 8, 2017.**

S. Boody moved to accept the Borough of Fenwick Planning and Zoning Commission minutes for the April 8, 2017 meeting as submitted. W. Christensen seconded the motion and it was approved unanimously.

Approved 5-0-0.

For: Chadwick, Boody, Christensen, Wright, Neely.

Against: None.

Abstain: None.

8. Staff Report.

M. Ozols reported that:

- Anticipated applications include redevelopment of 24 Pettipaug Avenue (Wright), improvements and ac/generator at 41 Pettipaug (Keeney), and dune restoration at the Hepburn Dune,
- Preliminary drafts of the updated POCD were emailed to members. A meeting will need to be scheduled in the near future for discussion so that a hearing can be scheduled before fall and adoption can be set for fall. There was some confusion as to the various files distributed by email and M. Ozols will redistribute them. Chairman Chadwick will speak briefly at the Annual Residents' Meeting to inform the residents that the Plan is being updated and there will be a public hearing where they can provide input.
- The State has a new draft POCD out for public comment. The comment period closes in October. M. Ozols will be reviewing it to make sure the Borough is depicted correctly, especially in the locational guide map (which designates Priority Funding, Balanced Priority Funding, Village Priority Funding, Conservation, and Undesignated Areas). Earlier in the year, she contacted CT OPM about their list of communities eligible for grants based on the status of their POCD; they indicated it was an error on their part not to include Boroughs and they have updated the list and included Boroughs as municipalities.

9. Other Business.

A. Wright reported that there was a question at the Burgess meeting about whether there were regulations governing the length of house rentals or the number of people that can be there. There is a sense on the part of the Burgesses that there may be increasing pressure for varying types of occupancy. The Zoning Regulations list single family dwellings and one accessory apartment as permitted uses and define family as it relates to occupancy. The Commission will consider this subject at a future meeting.

10. Adjournment.

At 10:55 a.m., it was moved by R. Neely and seconded by S. Boody to adjourn the meeting. The motion passed unanimously.

Respectfully submitted,

Marilyn Ozols, Acting Secretary