

**Borough of Fenwick  
Zoning Board of Appeals  
Public Hearing and Special Meeting – August 25, 2016  
Minutes**

The Special Meeting of the Borough of Fenwick Zoning Board of Appeals was held on Thursday, August 25, 2016 at 7:00 p.m. at 4 Nibang Avenue.

**MEMBERS PRESENT:** Robert Gay, Peter Brainard, Martha Staniford, Laurie Goldsmith, Becki Renshaw, Nancy Haviland (Alternate).

**MEMBERS ABSENT:** Kathy Berluti (Alternate), Jill Bornstein (Alternate).

**OTHERS PRESENT:** Marilyn Ozols, ZEO; Attorney Ed Cassella, Brooke Girty.

**1. Call to Order.**

Chairman Gay called the meeting to order at 7:15 p.m. All regular members were present and seated. A quorum was established (Gay, Brainard, Staniford, Goldsmith, Renshaw).

Alternate Haviland was seated in the audience since she is an abutter to the property that is the subject of the variance application.

**2. Election of Officers.**

On a motion by R. Renshaw, Bob Gay was nominated for Chairperson. P. Brainard seconded the nomination and **Bob Gay was unanimously elected Chairperson.**

**The motion carried, 5-0-0.**

IN FAVOR: Gay, Brainard, Staniford, Goldsmith, Renshaw

OPPOSED: none

ABSTAINED: none

On a motion by Chairman Gay, Peter Brainard was nominated for Vice Chairperson. L. Goldsmith seconded the nomination and **Peter Brainard was unanimously elected Vice Chairperson.**

**The motion carried, 5-0-0.**

IN FAVOR: Gay, Brainard, Staniford, Goldsmith, Renshaw

OPPOSED: none

ABSTAINED: none

On a motion by Chairman Gay, Martha Staniford was nominated for Secretary. R. Renshaw seconded the nomination and **Martha Staniford was unanimously elected Secretary.**

**The motion carried, 5-0-0.**

IN FAVOR: Gay, Brainard, Staniford, Goldsmith, Renshaw

OPPOSED: none

ABSTAINED: none

**3. Public Hearing: ZBA 16-002. 6 Mohegan Avenue, map 10, lot 13-002.** A Piece of Paradise LLC, owner and applicant; request for variance of Section 5.2.3 (50' coastal resource setback), 5.4.1 (50' Coastal Jurisdiction Line setback) and 8.4/8.5/8.6 (no expansion or extension of nonconforming structure) to permit east addition 31.7' from beach and 42' and 43.9' from CJL and south construction 12.8' from beach and 12.9' from CJL. Variances are needed to add open porch above and garage below on east side, and screen existing ground level open porch and add screened porch and pergola above on south side. Coastal Site Plan Review required.

Ed Cassella (attorney) and Brooke Girty (designer) presented. Attorney Cassella described the parcel, noting the lot line revision in the area of the pier which did not appreciably change any of the zoning data. He

stated that the modifications are proposed on the east (first floor garage, second floor porch to sunroom) and south (convert deck to porch and add pergola roof above); in 2011 when the lot was developed there were no beach or Coastal Jurisdiction Line setback requirements; the house was compliant when it was constructed and is, therefore, considered legal, nonconforming; the north side is being expanded but in a compliant location. He marked the compliant area on the site plan (Exhibit J) indicating the small, irregularly shaped buildable area that remained.

B. Girty reviewed the proposed construction indicating the changes on the floor plan, and stated that this was originally planned as a guest house, but since it is now being used by the family, they see a need for more space; they are staying within the footprint except in the front where they are expanding completely within the setbacks. She used photographs of the existing house (Exhibit K) and a model of the house (Exhibit L) to demonstrate the areas that would be changing.

Attorney Cassella stated that the regulations enacted in 2011 created a peculiar hardship whereby application of the new setbacks to a large 57,000 square foot lot created only a small, irregular building area, which he contended was unique in the Borough. He added that the proposed construction is designed to not go beyond the existing footprint so they are not increasing the nonconformity. He reminded the members that they need to make two findings in order to grant a variance: 1) the proposal is consistent with the comprehensive plan, and 2) there is a hardship based on the application of the regulations. He indicated his belief that both of these are true. Relative to the CAM application, he stated the only potential ground level disturbance is at the garage; it is close to 50 feet from the coastal resource and they will utilize silt fence; on the south side all the work is on the second floor so there will be no impact on the coastal resources.

P. Brainard asked whether the lot could be built on now if it were vacant. The response was probably not.

Chairman Gay summarized the hardship as the change in the regulations which created a situation where the only thing that can be changed is the front porch.

Chairman Gay asked for comments from the public.

N. Haviland stated that she had been told by the owner that the house has been sold, which is contrary to the claim that the family would like more space. Chairman Gay indicated that ownership is not relevant to the request; neither are family changes or changes in usage.

Members reviewed the variances and noted that they could treat them separately or as a whole.

L. Goldsmith indicated that she felt this was created by the owner who drew the lot line. Attorney Cassella stated that the lots are in different ownership and it was an approved building lot that could be built on at the time.

Chairman Gay asked if there was any further comment and hearing none, closed the public hearing.

#### **4. Possible decision: ZBA 16-002: 6 Mohegan Avenue.**

Chairman Gay summarized the proposal as basically two porches with all work within the current footprint of the house; the regulations affected are environmental, that is they relate to the impact on the coastal resources; all of the expansion is upward so they are not getting any closer to the resources; they are enclosing existing space and going up, not out, so they are not further impacting the resources.

L. Goldsmith asked about the current surface in the area of the garage. Members noted that since there is building over it, it already counts as impervious regardless of the surface.

P. Brainard stated that it is not the only lot with multiple coastal resource setbacks and he felt they should have to abide by the regulations. Chairman Gay asked if this would be the same if the house had been there for a while before the zoning regulations changed and noted that the regulations have sections on nonconformity and variances because they don't expect a house to be frozen in stone. He added that they are staying on the footprint of the house that was complying when the house was built, and he did not think that enclosing existing areas and building up had an environmental impact.

R. Renshaw stated that she would have a concern if they were requesting to go out instead of up and Chairman Gay agreed.

L. Goldsmith asked about the hardship. Members stated that the identified hardship was that the regulations had changed putting both of these porches in the setback so that the house could not be changed vertically on either of these two sides.

P. Brainard stated that he did not believe that the applicant created his own hardship but he did “shoehorn” a house onto a lot that did not previously exist. He was reminded that it was an approved lot.

M. Ozols reminded the Board that they should consider the intent of the regulation which is to protect the coastal resources; unlike property line setbacks which are related to light and air, these setbacks are related to protection of the environment and are designed to keep activity away from the coastal resources. Chairman Gay stated that he did not believe the proposal violates the spirit or intent of the regulations, although it would if they were expanding the footprint. Other members noted that building bulk adjacent to the resource can also have an impact. P. Brainard added that they were not duty bound to grant variances simply because the regulations had changed.

**A motion was made by R. Renshaw to grant a variance of Section 5.2.3 (50’ coastal resource setback), 5.4.1 (50’ Coastal Jurisdiction Line setback) and 8.4/8.5/8.6 (no expansion or extension of nonconforming structure) to permit an east addition 31.7’ from beach and 42’ and 43.9’ from the CJL and south construction 12.8’ from the beach and 12.9’ from the CJL in order to add an open porch above and garage below on the east side, and screen the existing ground level open porch and add a screened porch and pergola above on the south side for application ZBA16-002 as shown on the plans submitted with the stipulation that there is no expansion of the existing footprint on the south or east sides. The motion was seconded by Chairman Gay.**

**The motion failed, 2-3-0 and the variances were not granted.**

IN FAVOR: Gay, Renshaw

OPPOSED: Brainard, Staniford, Goldsmith

ABSTAINED: none

After the vote, Attorney Cassella inquired as to whether the vote might have been different if the request had been only for one or the other, rather than for both the east and south sides. The Board declined to answer. B. Girty submitted the architectural drawings indicating they were different from the ones on file (Exhibit M).

## **5. Approval of Minutes: April 30, 2016.**

**M. Staniford moved to approve the minutes of the April 30, 2016 special meeting as submitted. L. Goldsmith seconded the motion and it was approved unanimously.**

**The motion carried, 5-0-0.**

IN FAVOR: Gay, Brainard, Staniford, Goldsmith, Renshaw

OPPOSED: none

ABSTAINED: none

## **6. Other Business. None.**

## **7. Adjournment.**

**P. Brainard moved to adjourn the meeting at 8:23 p.m. L. Goldsmith seconded the motion and it was approved unanimously.**

Respectfully submitted,

Marilyn M. Ozols  
Acting Recording Secretary