

**Borough of Fenwick  
Zoning Board of Appeals  
Public Hearing and Special Meeting – April 1, 2017  
Minutes**

The Special Meeting of the Borough of Fenwick Zoning Board of Appeals was held on Saturday, April 1, 2017 at 7:00 p.m. at 4 Nibang Avenue.

**MEMBERS PRESENT:** Robert Gay, Peter Brainard, Martha Staniford, Becki Renshaw, Kathy Berluti (Alternate).

**MEMBERS ABSENT:** Laurie Goldsmith, Jill Bornstein (Alternate), Nancy Haviland (Alternate).

**OTHERS PRESENT:** Marilyn Ozols, ZEO; Eric Glance, CSM Builders; Rick and Debbie Neely, Ethel Davis.

**1. Call to Order.**

Chairman Gay called the meeting to order at 9:04 a.m. and seated K. Berluti as a voting member. A quorum was established (Gay, Brainard, Staniford, Renshaw, Berluti).

**2. Public Hearing: ZBA 17-001. 4 Neponset Avenue, map 11, lot 11.** Richard & Deborah Neely, owners; CSM Development, applicant; request for variance of Section 4.3.11.2 (20' setback from property line for ac units and generators) to permit generator 6' from side property line and ac units 11' from side property line. Coastal Site Plan Review required.

E. Glance, CSM Development, and R. Neely presented. E. Glance stated that they were proposing a generator and mini-split units (heat and air conditioning) at the corner of the house adjacent to the Davis property. He indicated the proposed locations on the site plan and oriented the locations to the Davis house and garage, noting that the Davis house is 85' from the proposed locations, the corner of the Neely house is already in the setback, there is currently no living space in the garage on the Davis property, the generator must be 3' from any window but moving it closer to the house would still place it in the setback. Chairman Gay asked if there were other places on the lot where the generator could go. E. Glance stated that the distance from the side of the house to the property line on the Goldsmith side is 29'6" which does not allow placement there without a variance. It would have to go in the patio to meet setback, but this location would be wide open to the Goldsmith windows. He added that the high tide comes up to the septic tank location, so the generator cannot be placed farther back on the property; this location is the most secluded, has the least impact as far as noise is concerned, and is blocked by bushes and the house.

E. Davis, 6 Neponset Avenue, stated that in her opinion this is the most logical place for the units to go and they are blocked from her house by her garage.

In response to a question about hardship, E. Glance stated that most issues with generators relate to view and sound, and if they are not in this location they will be in view from the street and golf course. He added that they can synchronize all the generators in the area to go on at the same time to minimize the impact. Chairman Gay noted that this addresses the spirit of the law but not the hardship. E. Glance demonstrated issues with other areas on the lot relating to septic location, high tide, patio set in concrete, and setback requirements, and noted that the patio, the only other possible area on the lot, would be an issue for the Goldsmiths. R. Neely stated that the frequent loss of power is a hardship in the Borough where power service is unreliable.

P. Brainard asked about the issue related to mechanical units that had brought applicants to the ZBA in the past. ZEO Ozols stated that previously they had counted for coverage so that any property that was nonconforming as to coverage could not add an ac unit or generator without a variance. P&Z had amended the regulations to address this and ac units and generators are no longer included in the coverage calculation.

E. Glance stated that the generator could go closer to the house but it would still be in the setback and they are trying to keep the vapor as far from the windows as possible. Chairman Gay noted their predicament that a

variance is in perpetuity - in the future there could be living space in the garage and a variance allows the generator to be placed closer to that living space than it would normally be allowed to go. P. Brainard added that the garage is not as close to the property line as a building is allowed so living space could potentially be even closer in the future.

M Staniford noted that the proposed location can be seen from the street; it interrupts the public view which is part of what the regulations protect; if it is moved closer to the house it can be out of the public view. Chairman Gay noted that P&Z could require it be placed closer to the house to protect the public view if they choose. E. Davis stated that the proposed location is the neighborly location; it could also be seen in the public view in the other locations.

In response to a question from Chairman Gay, ZEO Ozols stated that a strict interpretation of the regulations would not allow the units to be placed as proposed. ZBA can also consider the intent of the regulation which is to protect the neighbors from negative impacts caused by the placement of mechanicals and a unique situation where a more compliant location might have a greater impact on neighbors than a less compliant location.

Chairman Gay stated that there are many close houses in the Borough, but the constraints of the septic system and the tide create a hardship in this instance. P. Brainard countered that the fact that there are many houses that are close means this is not unique. Chairman Gay stated that it is the high tide that makes it unique and although there is room in the rear of the house, it is limited. K. Berluti agreed that they have limited options due to the water level and R. Renshaw added that the house is already nonconforming which limits their options. It was noted that the generator cannot go in the garage because of carbon monoxide concerns. Chairman Gay summarized that water covering more than half the lot in a high tide creates a unique hardship, the location choices are extremely limited, and aesthetically, this is the preferred location.

Members suggested that perhaps P&Z should consider amending the regulations to address situations like this. ZEO Ozols noted that the regulation was enacted to protect the neighbors by requiring mechanicals to be set back from the property line. The ZBA is the board that addresses unique circumstances where an exception to the regulations meets the intent better than the regulation itself.

M. Staniford stated that the proposed location is the best for the neighbors.

After asking for any further comment, Chairman Gay closed the public hearing.

### **3. Possible decision: ZBA 17-001. 4 Neponset Avenue.**

Chairman Gay asked if there were additional comments beyond those expressed in the hearing.

P. Brainard expressed concern that the proposed location is 30' from the Davis garage, and ZBA needs to consider the property, not whether the current owner is okay with the proposal. In the future a neighbor could be impacted. This is clearly the best location right now, but a variance allows the generator to be located just 6' from the property line. Although this might be fine for quite some time, in the future there could be a house with a window at the setback for that property and this variance will have allowed the generator to be close to that window. He stated that he sympathized with the need but felt that this type of situation should be addressed by a new zoning regulation that allows mechanical units to be closer in certain identified situations.

Chairman Gay stated that the next person might have some recourse, for example with bushes along the property line, but the tide that restricts the available area on this property is a hardship.

M. Staniford stated that the houses on Neponset are closer than in other areas in Fenwick and the lots are smaller; that she does not see the tide as a hardship but rather sees the uniqueness of the Neponset area and the need to support neighborliness as the issue; and that the area affected by the tide changes but the configuration and size of these lots puts any utility location on the lot in public view. She added that she believes this to be the appropriate location, but P&Z might move it 2' to better protect the public view.

Chairman Gay repeated his opinion that the fact that one half of the property is under water in a high tide creates a hardship.

Based on the discussion in and following the hearing, **M. Staniford moved to grant a variance of Section 4.3.11.2 (20' setback from property line for ac units and generators) to permit a generator 6' from the side property line and ac units 11' from the side property line for application ZBA17-001 as shown on the plans submitted. The motion was seconded by K. Berluti and approved 4-1-0.**

**The motion carried, 4-1-0**

IN FAVOR: Gay, Staniford, Renshaw, Berluti

OPPOSED: Brainard

ABSTAINED: none

Members requested that P&Z review the regulation on generators with an eye toward accommodating them on smaller lots with consideration for neighbors. ZEO Ozols reminded them that the regulation was enacted to protect neighbors from being impacted by the limited areas for placement on smaller lots. The intent was to require the location to be as far as possible from windows and outside seating areas on neighboring properties. Unique situations where the regulation does not have this effect go to the ZBA. Members felt that there should be some mechanism other than a variance based on hardship to address situations like Neponset Avenue where all the lots are small.

Members noted that in their discussion of the application, they specifically considered that the proposed location would remove the mechanical units from the 100 year flood hazard area and from the area of the property affected by extreme high tides.

**A motion was made by Chairman Gay to find the application consistent with the goals and policies of the Connecticut Coastal Management Act. The motion was seconded by R. Renshaw, and approved unanimously.**

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

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

OPPOSED: none

ABSTAINED: none

The record plan is:

- Copy of *Property Survey of Land of Richard B. & Deborah D. Neeley, Neponset Avenue*, by Richard W. Gates, dated Feb. 3, 2006 modified to show ac and generator locations and marked as Exhibit C.

## **5. Approval of Minutes: August 25, 2016.**

**M. Staniford moved to approve the minutes of the August 25, 2016 special meeting as corrected. P. Brainard seconded the motion and it was approved unanimously.**

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

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

OPPOSED: none

ABSTAINED: none

## **6. Other Business.**

Chairman Gay inquired as to the status of the Sciame appeal. The Appellate Court accepted the Sciame appeal of the Superior Court decision and that process is proceeding. A hearing date has not yet been set. P. Brainard asked that members be notified of that date as some may want to attend.

## **7. Adjournment.**

**M. Staniford moved to adjourn the meeting at 9:50 a.m. Chairman Gay seconded the motion and it was approved unanimously.**

Respectfully submitted,  
Marilyn M. Ozols  
Acting Recording Secretary