



# ***ZONING REGULATIONS***

## ***Planning & Zoning Commission Borough of Fenwick, Connecticut***

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## **BOROUGH OF FENWICK ZONING REGULATIONS**

### **CONTENTS:**

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<b>SECTION 1 -</b>	<b>PURPOSE AND AUTHORITY; GENERAL PROHIBITIONS</b>	<b>Page 1</b>
<b>SECTION 2 -</b>	<b>DEFINITIONS</b>	<b>Page 1</b>
	2.1 <i>Protocol</i>	
	2.2 <i>Definitions</i>	
<b>SECTION 3 -</b>	<b>ESTABLISHMENT OF A DISTRICT</b>	<b>Page 11</b>
	3.1 <i>Residential District “A”</i>	
<b>SECTION 4 -</b>	<b>PERMITTED USES / ACCESSORY USES / SPECIAL PERMITS</b>	<b>Page 11</b>
	4.1 <i>General Provisions</i>	
	4.2 <i>Permitted Uses</i>	
	4.3 <i>Accessory Uses and Structures</i>	
	4.4 <i>Special Permits</i>	
	4.5 <i>Site Plan Review</i>	
	4.6 <i>General Prohibitions</i>	
<b>SECTION 5 -</b>	<b>BULK REQUIREMENTS</b>	<b>Page 21</b>
	5.1 <i>Lot Area, Shape, and Maximum Coverage</i>	
	5.2 <i>Building Size, Height, and Location</i>	
	5.3 <i>Yards</i>	
	5.4 <i>Conservation Restrictions</i>	
<b>SECTION 6 -</b>	<b>ADMINISTRATION OF ZONING REGULATIONS</b>	<b>Page 25</b>
	6.1 <i>Permit Requirements</i>	
	6.2 <i>Applicant / Who Can Apply</i>	
	6.3 <i>Application Submittal</i>	
	6.4 <i>Waiver of Certain Supporting Information</i>	
	6.5 <i>Application Review / Determination</i>	
	6.6 <i>Time for Decision</i>	
	6.7 <i>Issuance of Zoning Permit</i>	
	6.8 <i>Expiration of Zoning Permit</i>	
	6.9 <i>Final Certificate of Zoning Compliance / Certificate of Occupancy</i>	
	6.10 <i>Fees</i>	
	6.11 <i>Enforcement</i>	
	6.12 <i>Authority of Zoning Enforcement Officer</i>	
	6.13 <i>Enforcement of Site Plan Approval, Special Permits, and Variances</i>	
	6.14 <i>Civil Penalties: Violation of Enforcement Order</i>	
	6.15 <i>Criminal Penalties</i>	

<b>SECTION 7 -</b>	<b>ENVIRONMENTAL PROTECTION</b>	<b>Page 31</b>
	7.1 <i>Consideration for Restoration and Protection of Long Island Sound</i>	
	7.2 <i>Sedimentation and Erosion Control</i>	
	7.3 <i>Flood Plain Construction Zone Requirements</i>	
	7.4 <i>Burning Underbrush</i>	
<b>SECTION 8 -</b>	<b>NON-CONFORMANCE</b>	<b>Page 33</b>
	8.1 <i>Non-Conforming Uses</i>	
	8.2 <i>Non-Conforming Structures</i>	
	8.3 <i>Non-Conforming Lots</i>	
	8.4 <i>Change to Conformity</i>	
	8.5 <i>Change to Non-Conformity</i>	
	8.6 <i>Extension or Expansion of a Non-Conforming Use or Improvement</i>	
	8.7 <i>Termination of Non-Conforming Use of Characteristic</i>	
	8.8 <i>Casualty</i>	
	8.9 <i>Accessory Uses</i>	
	8.10 <i>Determination of Non-Conforming Status by Commission</i>	
<b>SECTION 9 -</b>	<b>ZONING BOARD OF APPEALS</b>	<b>Page 37</b>
	9.1 <i>Duties / Responsibilities</i>	
	9.2 <i>Zoning Regulations</i>	
	9.3 <i>Powers and Duties</i>	
	9.4 <i>Prohibition of Use Variances</i>	
	9.5 <i>Procedural Provisions</i>	
	9.6 <i>Conditions, Safeguards, and Stipulations</i>	
<b>SECTION 10 -</b>	<b>AMENDMENTS</b>	<b>Page 39</b>
<b>SECTION 11 -</b>	<b>VALIDITY</b>	<b>Page 39</b>

## **BOROUGH OF FENWICK ZONING REGULATIONS**

### **SECTION 1 - PURPOSE AND AUTHORITY**

The Zoning Regulations of the Borough of Fenwick, hereinafter called the “**Regulations**” are adopted under authority of Chapter 124 of the Connecticut General Statutes and Ordinances of the Borough of Fenwick, and are designed to preserve the Borough of Fenwick as a family residential community and promote the public health, safety, comfort, convenience and general welfare of its residents. No land or improvement within the Borough of Fenwick shall be used for any purpose except as expressly and specifically permitted by these Regulations.

### **SECTION 2 - DEFINITIONS**

#### **2.1 PROTOCOL**

When the singular number or the masculine gender is used in these Regulations, it shall be read to include the plural number or the feminine or neuter gender wherever the circumstances involved naturally require. The term “shall” is always interpreted as mandatory. The term “person” shall include a corporation, partnership, association, limited liability company, limited liability partnership, and any other legally recognized entity, as well as an individual. As used in these Regulations, the following terms shall have the meanings hereinafter assigned to them. Words or phrases used in these Regulations shall be interpreted so as to give them the meaning they have in common usage and to give these Regulations their most reasonable application. Unless the context requires a different interpretation, all references to federal, state or municipal statutes, regulations, ordinances or other laws shall be deemed to pertain to the laws as they may have been most recently amended.

#### **2.2 DEFINITIONS**

**Abandoned:** In reference to a use, including the use of a structure, “abandoned” means that the use was intentionally terminated, without any intention by the property owner to resume the use.  
(Added 8/1/19)

**Accessory Apartment:** A dwelling unit that is located on the same lot as the principal dwelling unit.  
(Amended 6/1/14)

**Accessory Building or Structure:** A building or structure that is both (1) located on the same lot as the principal building or structure, and (2) used in a manner subordinate or incidental to the use of the principal building or structure. See ***Principal Building or Structure*** and also ***Building*** and ***Structure***.

**Accessory Use:** A use clearly subordinate and customarily incidental to the principal use, and located on the same lot with such principal use.

**Accessway:** Either any portion of a lot that provides access to and from a public street but that has a width of fifty (50) feet or less, measured perpendicular to the direction of vehicular travel through the accessway; or any private roadway that leads from a public street to an Interior Lot.

**Attic:** An unfinished space between the ceiling joists of the top story and the roof rafters.

**Basement:** The space between the lowest constructed surface of a building and the floor above, provided that the finished surface of the floor above is not more than six (6) feet above grade for more than fifty percent of the perimeter of the building and not more than twelve (12) feet above grade at any point. If

the finished surface of the floor above does not meet the foregoing criteria, the space above the lowest constructed surface of the building shall be considered the first story of the building.

**Borough:** Shall mean the Borough of Fenwick.

**Borough Map:** A map entitled “Borough of Fenwick, Conn., dated August 1934, by John T. Henderson, Civil Engineer, Hartford, Conn., Scale 200=1”.

**Building:** Any structure having a roof and intended for shelter, housing or enclosure of persons, animals or materials.

**Building Code:** The State Building Code adopted pursuant to Section 29-252 of the Connecticut General Statutes and any State or local regulations or addendums adopted pursuant thereto and in force within the Borough.

**Building Footprint:** See *Footprint*.

**Building Height:** See *Height*.

**Building Official:** Any state or municipal officer or other designated authority charged with the administration and enforcement of the State Building Code within the Borough.

**Building Permit:** A written document issued by a Building Official, in accordance with Section 29-263 of the Connecticut General Statutes, that allows for a building or other structure, or part thereof, to be constructed, reconstructed, demolished, enlarged, extended, moved or substantially altered.

**Coastal Jurisdiction Line:** The location of the topographical elevation of the highest predicted tide for the period beginning in 1983 and ending in 2001, referenced to the most recent National Tidal Datum Epoch as published by the National Oceanic and Atmospheric Administration and described in terms of feet of elevation above the North American Vertical Datum of 1988. (*Amended 10/15/12*)

**Coastal Site Plan:** Any Proposed Plan or Site Plan submitted to the Commission in accordance with Section 22a-109 of the Connecticut General Statutes.

**Commission:** The Planning and Zoning Commission of the Borough of Fenwick.

**Corner Lot:** See *Lot, Corner*.

**Coverage:** See *Lot Coverage*.

**Date of Receipt:** For the purposes of establishing a time by which a hearing must be held or a decision must be made on zoning applications, the “date of receipt” shall be as defined in Section 8-7d of the Connecticut General Statutes. As of the date of adoption of these Regulations, the statute defined the “date of receipt” to be the earlier of: (1) the day of the next regularly scheduled meeting of the Commission following submission of the application; or (2) 35 days after submission.

**Detached:** Physically separated from another structure, or connected to another structure only by a porch, breezeway, fence, common foundation, or similar architectural features.

**Development:** Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, dredging, filling, grading, paving, or excavation operations.

**Disturbed Area:** An area where ground cover is destroyed or removed.

**Domicile:** A person's fixed, permanent, and principal home for legal purposes. *(Added 10/1/19)*

**Domiciliary Occupants:** As used with respect to any dwelling unit, the term means the person or persons who either (1) currently use the dwelling unit as a domicile; or (2) are the owners of record of the dwelling unit. *(Added 10/1/19)*

**Dwelling:** A building containing one (1) dwelling unit, with or without a single accessory apartment unit. No accessory apartment is allowed within a detached accessory structure.

**Dwelling Unit:** One (1) or more rooms in a building that are collectively arranged, designed, or intended for use as a domicile or seasonal home by one (1) family, and that include lawful cooking space and lawful sanitary facilities reserved for the occupants thereof. *(Amended 10/1/19)*

**Earth Materials Removal:** Removal, excavation, or mining of soil materials such as, loam, top soil, peat, sand, gravel, clay, and bedrock.

**Easement:** A legally recognized property interest that entitles its holder to a specific limited use or enjoyment of land owned by another person. Examples include rights-of-way for vehicular travel and access.

**Enlarge or Extend:** (1) To increase the horizontal or vertical dimensions of a structure or of the portion of a parcel of land that is devoted to a particular use; or (2) to substantially change the nature of a use. *(Added 8/1/19)*

**Family or Family Unit :** Any number of individuals, related by blood, legal adoption or marriage, living together as a single housekeeping unit; or no more than three persons not so related and living together as a single housekeeping unit. The term “family” shall include servants who reside on the premises and are compensated for specified housekeeping or healthcare duties.

**Flood Hazard Compliance Modification:** Any modification that must be made to an existing building or other structure in a Special Flood Hazard Area in order to make the building or structure comply with the Borough of Fenwick Ordinance Concerning Flood Plain Construction Zone Regulations or the Connecticut State Building Code. Such modifications may include, but are not limited to, raising the first floor and any existing higher floors of such buildings, provided the modified building will not have any basement or cellar below the BFE. *(Amended 6/1/14)*

**Floor Area:** See *Gross Floor Area*.

**Footprint:** When referring to a building or other structure, the ground area vertically below all portions of the structure that are roofed or enclosed by walls, together with the area of all attached open porches and decks.

**Front Lot Line:** See *Lot Line, Front*.

**Front Yard:** A yard measured from the front lot line and extending the full width of the lot. See definition for *Yard*. *(Amended 6/1/13)*

**Frontage:** The boundary of the lot abutting a public street and having permitted vehicular access to a public street.

**Golf Course:** A tract of land principally used to play golf, including tees, greens, fairways and hazards. The term also includes any accessory structures necessary for the operation and maintenance of the course and comfort of its patrons.

**Grade:** The finished ground level adjoining the base of all exterior walls of a building or structure and any related earth retaining structure.

**Gross Floor Area,:** The sum of the gross area of all floors within a structure, measured from the exterior faces of exterior walls. Gross floor area includes any area that is capable of being used for human occupancy, including garage or attic space, whether finished or not, provided the area has structural headroom of at least six (6) feet eight (8) inches in height. An unfinished basement shall not be included in total gross floor area calculations. For the purposes of these Regulations, a basement shall be considered unfinished if it is both not heated and not used for purposes other than utilities or storage.

**Habitable Space:** Building space that is used or designed for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, hallways, storage, or utility spaces and similar areas are not considered habitable areas.

**Height:** The vertical distance between a horizontal plane through the highest point of a building or structure, excluding chimneys, and lowest point of a building or structure which is visible above existing *natural* grade prior to site grading. The height of any retaining wall constructed to create a site platform, and of any backfill along the foundation in excess of the existing natural grade, shall be included as part of the measured height. Exterior height to be measured from the lowest point within ten (10) feet of the exterior wall of the dwelling.

**High Tide Line:** The highest point reached by the water at the time of high tide, including spring high tides and other unusually high tides exclusive of storm surges. The high tide line is often determinable by a visible line of oil, scum, crushed shell, debris, vegetation, or any combination of these.

**Improvement:** Any structural addition to, or other change in, the condition of the land including the underground installation of utilities.

**Interior Lot:** A lot having the required lot area and having lawful access onto a public street by an accessway, but not having at least 50 feet of frontage on a public street.

**Lot:** A plot or parcel of land occupied or capable of being occupied, in conformity with all applicable governmental regulations, by one principal building and any accessory structures or uses customarily incidental thereto. A lot shall not be approved for building purposes unless it meets the minimum requirements of the Building Code and all applicable fire codes, health codes, historic district regulations, and current zoning requirements. Lot boundaries shown on the Borough Map do not necessarily reflect the current legal boundaries of lots.

**Lot, Corner:** A lot having frontage on two intersecting public streets.

**Lot Coverage:** The percentage of the total area of a lot comprising, cumulatively, (1) the footprint, plus (2) the ground area vertically below all structures that are not included in the footprint, with the exception of (a) free-standing mechanical or electrical devices, such as air conditioners, generators, and pool mechanicals, and (b) utility platforms, and (c) easily removable slate patios, pavers, and similar features. For the purposes of this definition, a feature is “easily removable” if a single person could readily remove it from the ground without the use of power tools or mechanized equipment. Structures that are located below the surface of the ground shall not be included in lot coverage. (*Amended 6/1/13, 9/1/16*)



**Lot Line, Front:** Any line separating a lot from a public street. Corner lots and sandwich lots (see definition) shall be deemed to have a front lot line along each adjacent street. If street right-of-way boundaries have not been officially established, the boundaries shall be deemed to be twenty-five (25) feet distant from the center line of the existing traveled way. The front lot line of any interior lot that has no frontage on a public street shall be deemed to be the lot line at which the accessway enters the lot. The line at which the accessway abuts the remainder of the lot shall be deemed to be part of the front lot line for the purposes of these Regulations.

**Lot Line, Rear:** Except with respect to corner lots and sandwich lots (see definition), any lot line or portion of a lot line that is parallel to, or within 45 degrees of being parallel to, the line along which lot frontage is measured shall be deemed to be a rear lot line. Corner lots and sandwich lots shall be deemed to have no rear lot lines.

**Lot Line, Side:** Any lot line that is not a front lot line or a rear lot line as defined herein.

**Lot Proper:** The portion of an Interior Lot exclusive of the accessway.

**Lot, Sandwich:** Any lot that is located between two non-intersecting public streets.

**Lot Width:** For lots that are not Interior Lots, as defined herein, the lot width shall be measured parallel to a straight line passing between the two points of intersection of the front lot line with the side lot lines or, on corner lots, the two points of intersection of the front lot line with the other front lot line and the side lot line. For Interior Lots, lot width is measured perpendicular to the direction of vehicular travel at the line where the accessway enters the Lot Proper.

**Marine Facility:** A dock, wharf, slip, basin, or similar landing facility for water-borne vessels. For the purpose of this definition, a dock shall include all portions of the structure located waterward of the Mean High Water Line as defined in Section 22a-359(c) of the Connecticut General Statutes, including a fixed pier, a floating dock and any access ramp.

**Mean High Tide Line:** The maximum height reached by a rising tide, including spring high tides and other high tides that occur with periodic frequency, but not including storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against the coast by strong winds such as those accompanying a hurricane or other intense storm. The mean high tide line may be determined by a line or mark left upon tide flats, beaches, or along shore objects that indicates the intersection of the land with the water's surface. The line or mark may be (1) a line of oil or scum along shore objects, (2) a more or less continuous deposit of fine shell or debris on the foreshore or berm, (3) physical marking or characteristics, vegetation lines, tidal gauge, or (4) any other suitable means delineating the general height reached by a rising tide.

**Mobile Home:** Any structure that is transportable in one or more sections, built on a chassis, and designed to be used with or without a permanent foundation when connected to the required utilities.

**Motor Vehicle:** Any motorized means of transportation on wheels.

**Non-Conforming:** As used in these Regulations, the word "non-conforming" always means legally non-conforming (i.e., lawful when established but currently not in conformance with the Regulations) unless the context clearly requires a different interpretation. *(Added 8/1/19)*

**Non-Conforming Building or Other Structure:** Any building or other structure that does not presently conform to these Regulations, but that conformed to any applicable zoning regulations and was otherwise lawful when created, and the use of which has not been abandoned. *(Added 8/1/19)*

**Non-Conforming Characteristic:** Any characteristic of any use or structure that does not presently conform to these Regulations, but that conformed to any applicable zoning regulations and was otherwise lawful when created, and that has not been abandoned. *(Added 8/1/19)*

**Non-Conforming Lot:** Any lot having an area that does not presently conform to the minimum lot size requirements of these Regulations, but that conformed to any applicable zoning regulations and was otherwise lawful when created. *(Added 8/1/19)*

**Non-Conforming Use:** Any use of land or improvement that is not presently permitted by these Regulations but that conformed to any applicable zoning regulations and was otherwise lawful when created, and has not been abandoned.

**Parking:** Placing and leaving a motor vehicle in a space that is reserved for or capable of occupancy by motor vehicles. If the motor vehicle is regularly used for travel by the driver, a family member of the driver or a guest of the family, or is a substitute for a motor vehicle regularly used by such person, the act of placing and leaving the vehicle in such a space shall be considered “parking” regardless of the length of time the vehicle remains in the space. If the motor vehicle is not regularly used for travel by the driver, a family member or guest of the family, then leaving the vehicle in a space for more than three consecutive days shall be considered “storage” and not “parking” of such vehicle.

**Parking Space:** Any space normally utilized for the parking of a vehicle.

**Primary Occupancy:** Occupancy of a dwelling unit by domiciliary occupants. *(Added 10/1/19)*

**Principal Building or Structure:** A building or structure within which the principal use of a lot or parcel is conducted or intended to be conducted. When a lot or parcel is used for residential purposes, the home shall be deemed the principal building. Detached garages, sheds, gazebos, docks, pools, and other buildings and structures on residential lots shall be deemed to be accessory buildings or structures.

**Principal Use:** The primary purpose for which land, water, or a building or structure is designed, arranged, or intended, or for which it is or may be occupied or maintained.

**Proposed Plan:** The entire package of documents submitted to the Commission or other municipal agency or official to aid in determining the conformity of a proposed building, use or structure with specific provisions of the Zoning Regulations. A Proposed Plan would normally show any and all existing and proposed changes to the subject lot, as well as any accessory structures, wells, and primary / reserve sub-surface sewage disposal systems. An A-2 Survey, prepared by a Connecticut Licensed Surveyor, shall be filed at the time of Certificate of Occupancy request, on all construction projects requiring approval by the Commission, Zoning Enforcement Officer or Zoning Board of Appeals. A Connecticut Licensed Engineer shall prepare any Proposed Plans that involve the construction, erection or placement of new structures or of any additions to existing structures that would change the footprint of such structures. Compare the term “*Site Plan.*”

**Public Street:** Any street that has been, and still is, accepted by the Borough, Town or State for vehicular travel by the general public. Such roads do not include roadways that were abandoned or discontinued as public streets.

**Rear Lot Line:** See *Lot Line, Rear*.

**Rear Yard:** A yard measured from the rear lot line and extending the full width of the lot. See definition for *Yard*. (Amended 6/1/13)

**Refuse:** Waste, junk, garbage, debris, rubbish or trash, but not including sewage collected or disposed of in lawful facilities.

**Roadway:** Any land area that has been publicly or privately prepared and made open for vehicular travel, and that has regularly been used for vehicular travel. The term “roadway” includes, but is not limited to, a public street.

**Sandwich Lot:** See *Lot, Sandwich*.

**Seasonal Home:** A building that is not properly equipped or otherwise available for year-round use, but that (1) would otherwise be capable of use as a domicile, and (2) is used on a seasonal basis in the same manner as a domicile would customarily be used. (Added 10/1/19)

**Setback:** The minimum distance between a property line and the nearest portion of any building.

**Short-term Occupancy:** Transient occupancy of a dwelling unit by one family for residential purposes other than use as a domicile. (Added 10/1/19)

**Short-Term Occupancy Interval:** The period of time, measured in consecutive days, during which a dwelling unit is leased or otherwise made available for short-term occupancy by any family. (Added 10/1/19)

**Side Lot Line:** See *Lot Line, Side*.

**Side Yard:** A yard measured from a side lot line and extending the full depth of the lot. See definition for *Yard*. (Amended 6/1/13)

**Sign:** A message, announcement, declaration, demonstration, display, illustration, insignia, surface or space erected or maintained in view of the observer thereof for identification, advertisement or promotion of interests of any person, entity, product or service, including the sign structure, supports, lighting system and any attachments, ornaments or other features used to draw attention of observers.

**Site Plan:** A type of Proposed Plan that may be approved only by the Commission (i.e., not by the Zoning Enforcement Officer) pursuant to Section 4.5 of these Regulations. In accordance with Section 4.5, every site plan shall also be deemed to be a Coastal Site Plan unless specifically exempt.

**Special Permit:** A special form of Zoning Permit that may be granted by the Commission if the applicant meets certain additional standards or safeguards specified in these Regulations.

**Storage:** Placing and leaving an item in an area for more than three consecutive days.

**Story:** A portion of a building located between the surface of any floor, other than a basement floor, and the floor above it, or if there is no floor above it, then the space between the floor and the ceiling above it.

**Street:** Any roadway, not less than sixteen (16) feet in width, that has been dedicated for vehicular use by a written instrument, such as a deed or easement, or on a subdivision plan, site plan or similar document filed in the official records of the Town or Borough. The street line of any street shall be deemed to be the line shown on the Borough Map, unless the Commission finds that a more accurate depiction of the actual street line has been determined by a survey provided to the Commission.

**Structure:** Except as provided herein, a “structure” is anything (including any building) constructed, erected, or assembled that requires a location on or within the ground, or attachment to something having a location on or within the ground, including anything located on, above or beneath the water which is not primarily utilized or intended for navigation. Examples include: dwellings, decks, porches, docks, swimming pools, hot tubs, saunas, fences over six feet, sheds, accessory buildings, wells and subsurface sewage disposal systems. However, the term “structure” shall not include driveways, walks, parking areas, curbing, and fences that are six feet in height or less.

**Tidal Wetlands:** Areas that border or lie beneath tidal waters, such as, but not limited to banks, bogs, salt marsh, swamps, meadows, flats, or other low lands subject to tidal action, including those areas now or formerly connected to tidal waters, and whose surface is at or below an elevation of one foot above local extreme high water; and upon which may grow or be capable of growing some, but not necessarily all, of the plants so listed within Section 22a-29(2) of the Connecticut General Statutes.

**Total Floor Area:** See *Gross Floor Area*.

**Utility Platform:** A platform of no more than sixteen s.f. that is attached to a residential structure and maintains a minimum eight (8') foot vertical clearance from the ground for the purpose of placing an electric meter, water meter or other utility in a special flood hazard area. (*Added 9/1/16*)

**Vehicle:** Any motorized means of transportation, including but not limited to automobiles, trucks, golf carts, and boats; as well as any trailer or other non-motorized conveyance that is customarily attached to a motorized vehicle for the transportation of people or things.

**Watercourses:** Areas identified and defined as watercourses in Section 22a-38 of the Connecticut General Statutes, including, at the time of enactment of these Regulations, “rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs and all other bodies of water, natural or artificial, vernal or intermittent, public or private, which are contained within, flow through or border upon the state or any portion thereof, not regulated pursuant to the tidal wetland statutes”. The statute also provides “Intermittent watercourses shall be delineated by a defined permanent channel and bank and the occurrence of two or more of the following characteristics: (1) evidence of scour or deposits of recent alluvium or detritus, (2) the presence of standing or flowing water for a duration longer than a particular storm incident, and (3) the presence of hydrophytic vegetation.”

**Wetlands, Inland:** Areas defined as wetlands in Section 22a-38 of the Connecticut General Statutes, including, at the time of enactment of these Regulations, “land, including submerged land, not regulated pursuant to sections 22a-28 to 22a-35 [of the Connecticut General Statutes], inclusive, which consists of any of the soil types designated as poorly drained, very poorly drained, alluvial, and floodplain by the National Cooperative Soils Survey, as may be amended from time to time, of the Natural Resources Conservation Service of the United States Department of Agriculture.”

**Yard:** An open, unoccupied space on a lot, measured from a designated lot line, that is unobstructed from the ground upward by the building or its mechanicals (such as air conditioning units, generators, chimneys, etc.) or by any other structures, except as otherwise permitted within these Regulations. (Amended 6/1/13)

**Zoning:** A technique for public control of land use, wherein a community is divided into districts, or zones, and wherein regulations are adopted to govern the activities and kinds of uses and buildings that can take place or be erected within each zone. The uses permitted within each zone are established in accordance with a comprehensive plan for the community's future.

**Zoning Enforcement Officer:** The agent of the Commission responsible for enforcement of the Zoning Regulations. The Zoning Enforcement Officer serves at the pleasure of the Commission.

**Zoning Permit:** A written document issued by the Zoning Enforcement Officer, indicating that the proposed building, use, or structural change is in conformity with these Regulations, or is a valid non-conforming use under these Regulations.

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## **SECTION 3 - ESTABLISHMENT OF THE RESIDENTIAL DISTRICT “A”**

### **3.1 RESIDENTIAL DISTRICT “A”**

For the purposes of these Regulations, all property within the limits of the Borough of Fenwick, as shown on the Borough Map, is hereby declared to comprise one zoning district, to be known as the **Residential District “A”**. The Borough Map is hereby made a part of these Regulations.

## **SECTION 4 - PERMITTED USES / ACCESSORY USES / SPECIAL PERMITS**

### **4.1 GENERAL PROVISIONS**

In Residential District A, no building or other structure shall be constructed, reconstructed, enlarged, extended, moved or structurally altered, and no lot shall be used, for any purpose other than one or more of the following uses. All uses that are not expressly permitted pursuant to Section 4 of these Regulations are prohibited. Unless specifically permitted in the Regulations, no development shall be allowed within fifty (50) feet of tidal wetlands, coastal bluffs or escarpments, beaches, or dunes. In addition, all development must be compatible with the natural and traditional river way scene and must comply with all applicable requirements of the Lower Connecticut River Conservation Zone, referenced within Chapter 477a of the Connecticut General Statutes. Any application submitted to the Zoning Enforcement Officer, the Commission, or the Zoning Board of Appeals of the Borough of Fenwick may, at the option of such Commission or Board, be referred to the Connecticut River Gateway Commission, Office of Long Island Sound Programs, or other agency for comment. *(Amended 10/15/12)*

### **4.2 PERMITTED USES**

The following principal uses, subject to the limitations and restrictions hereinafter prescribed, may be reviewed and approved by the Commission or, to the extent provided herein, by the Zoning Enforcement Officer if they comply with these Regulations. Any uses for which Site Plan review and approval or a Special Permit is expressly required may be approved only by the Commission pursuant to Sections 4.4 and 4.5 of these Regulations.

#### **4.2.1 Single-family dwellings**

Site Plan review and approval by the Commission shall be required for the construction of any new single-family dwelling, for the reconstruction or replacement of any single-family dwelling, and for any addition or modification to an existing single-family dwelling whereby the footprint of the dwelling would be increased by at least 200 square feet or the height of any portion of the dwelling would be increased. There shall not be more than one (1) dwelling per residential lot. Notwithstanding the foregoing provisions, the installation of mobile homes or similar manufactured homes is not permitted within the Borough of Fenwick, except to the extent such installation may be required to be permitted by State or federal law. *(Amended 10/15/12)*

#### **4.2.2 Golf Course, Parks, Parkland, Playgrounds and Recreational Areas**

The establishment, expansion or other alteration of these uses shall require Site Plan review and approval, except that minor modifications to existing uses may be approved by the Zoning Enforcement Officer if such modifications do not require the alteration of any exterior portions of

a building or structure and do not require the development of additional areas of land. A park or recreational use shall not include camping.

#### **4.2.3 Municipal Uses**

Municipal uses and buildings of the Borough of Fenwick shall be permitted, provided that any buildings, structures or other development shall require Site Plan review and approval.

#### **4.2.4 Gardening** *(Amended 10/15/12)*

Gardening on residential properties only, but excluding tidal wetlands, coastal bluffs and escarpments, beaches and dunes.

#### **4.2.5. Uses Allowed Under State Law** *(4/1/22)*

Certain uses not expressly permitted under these Regulations may nonetheless be allowed under certain provisions of State law. Such uses shall be permitted only under the specific circumstances described in the applicable provisions of State law and only if the applicant for such use specifies in the application the particular provisions of State law the applicant believes are relevant to the use. The Commission may deny any such application if it finds that the provisions of State law cited by the applicant do not require such use to be permitted.

#### **4.2.6 Opting Out of Certain Provisions of Public Act 21-29** *(5/1/22)*

The Borough of Fenwick hereby opts out of the provisions of Section 6, subsections (a) through (d), inclusive, of Public Act 21-29.

### **4.3 ACCESSORY USES AND STRUCTURES**

#### **4.3.1 Accessory Uses Generally**

Except as provided and limited below, an accessory use (see definition in Section 2.2) to a principal use permitted within the Residence District A pursuant to Section 4.2 shall also be a permitted use. All accessory uses shall be subject to Site Plan review and approval by the Commission, except as provided in Section 4.5.5 of these Regulations.

#### **4.3.2 Accessory Structures Generally**

Only one detached accessory building shall be allowed on any lot. Accessory buildings shall be used only as garages or for storage of materials, subject to the limitations set forth in Sections 4.3.9 and 4.3.10 of these Regulations. No detached accessory building shall contain any habitable living space or be used as a separate dwelling unit. All accessory structures shall receive utilities from the principal dwelling or other principal structure on the same lot. An accessory structure must be located on the same lot as the principal use to which it is accessory. No accessory structure shall be constructed on any lot prior to the construction and legal occupancy of the principal building on the same lot. Wells, sub-surface sewage disposal systems, and underground utilities shall be exempt from the one accessory structure rule and shall be permitted to be installed prior to legal occupancy of the principal building.

#### **4.3.3 Parking or Storage of Motor Vehicles**

A. The parking of motor vehicles is allowed as an accessory use. See also Section 4.3.5.



**B.** The storage of more than three (3) motor vehicles, including golf carts, on any lot is not allowed.

**C.** Unregistered or inoperative motor vehicles, with the exception of golf carts, shall not be parked or stored outside of a garage.

**D.** Vehicles may be covered, provided such covering material is dark green, tan, brown, or grey, in good condition, and securely fastened.

**E.** Vehicles having a gross vehicle weight rating (GVWR) of more than 10,000 pounds shall not be parked overnight or stored, except as provided hereafter. Commercial vehicles used in the course of construction may be stored on the construction site during the active period of such construction, provided that such construction has been authorized by a Building Permit and the Zoning Enforcement Officer has been given written notice that such vehicle will be stored on the site and of the nature of the use of such vehicle.

**F.** The storage of any type of motor home, recreational vehicle, or camper is not permitted.

#### **4.3.4 Parking or Storage of Boats and Trailers**

**A.** The parking or storage on residential property of boats that have a length of 16 feet or less, and of boat trailers capable of carrying only boats that have a length of 16 feet or less, is permitted at any time. The parking and storage of longer boats or boat trailers on residential properties is allowed only during the months of April, May, June, July, August, September and October, and only for periods not to exceed seven (7) days in total.

**B.** The storage of trailers other than boat trailers is not allowed, except as provided hereafter. Commercial trailers used in the course of construction may be stored on the construction site during the active period of such construction, provided that such construction has been authorized by a Building Permit and the Zoning Enforcement Officer has been given written notice that such trailer will be stored on the site and of the nature of the use of such trailer.

#### **4.3.5 Garages**

A private garage shall be permitted as an accessory use to a dwelling, provided that no business, service or industry is carried on in the garage. If the garage is a detached building, it shall be counted as the one detached building allowed on the lot pursuant to Section 4.3.2.

#### **4.3.6 Marine Facilities, Docks and Jetties**

These uses shall be subject to Site Plan Review pursuant to Section 4.5 of these Regulations. See Section 5.2.3 and the Fenwick Harbor Management Plan for other limitations on such uses.

#### **4.3.7 Swimming Pools, Hot Tubs, Spas and Saunas**

Except for saunas, these uses shall be allowed only as in-ground or deck-enclosed structures, but all shall be subject to Site Plan Review pursuant to Section 4.5 of these Regulations.

#### **4.3.8 Signs**

Signs are not allowed as accessory uses within the Borough, except for: (1) mandated traffic signs; (2) safety-related signage; and (3) signs for municipal or other governmental purposes. Street-number and name-identification markers and plates on houses, mailboxes and mailbox posts shall not be deemed to be signs for the purposes of this regulation.

#### **4.3.9 Waste Materials Including Structural Materials**

No land shall be used for the storage or keeping of any type of waste, scrap material or debris; unregistered, or partially or wholly dismantled, motor vehicles; motor vehicle or marine parts; abandoned materials; junk or similar materials, except (1) on a temporary basis, meaning, for purposes of this section, no more than ten days; or (2) as set forth in Section 4.3.10 of these Regulations.

#### **4.3.10 Construction Operations / Material Storage**

One or more containers may be used for temporary storage of waste materials in connection with a construction operation upon the same premises, secured by a legally issued building permit. In addition, construction materials for use on any premises may be stored or kept within a completely enclosed building on such premises during any non-construction period occurring between July 1 and the Tuesday immediately following Labor Day of any calendar year, provided such materials are not visible from adjacent properties or from a public street.

#### **4.3.11 Air Conditioning Units and Generators** *(Amended 10/15/12, 6/1/14, 12/6/17)*

4.3.11.1 Applications for exterior air conditioning units or generators shall include:

- a. unit dimensions;
- b. bel rating for air conditioning units or decibel level and test schedule for generators; and,
- c. for new installations, locations of windows, decks, and patios on adjacent residential properties.

4.3.11.2 Exterior air conditioning units or generators shall be located such as to minimize noise and visual impact on neighboring properties and shall:

- a. be located the minimum yard or 20 feet from the property line, whichever is greater;
- b. be located at least 30 feet from any existing window, patio, or deck on an adjacent residential property; and
- c. be fully enclosed with structural and/or vegetative screening that will assist in noise buffering if located within 30 feet of the property line with another residential property. Where a house wall may reflect sound back over the screening, sound absorbing material or vegetation shall be required along that wall.

4.3.11.3 All proposed exterior air conditioning units and/or generators shall be shown on any site plan review application for new construction and the location, screening, and noise

generation information shall be reviewed in conjunction with that application. In addition, site plan approval shall be required whenever an exterior air conditioning unit and/or generator is proposed to be installed to serve any building or structure that was constructed after December 6, 2017. The installation of an exterior air conditioning unit and/or generator designed to serve any building or structure that was constructed before December 6, 2017 shall require either a Zoning Permit or site plan approval in accordance with Section 4.3.11.4 of these Regulations.

4.3.11.4 In reviewing an application for an exterior air conditioning unit or generator, the Commission or its agent shall consider:

- a. the location selected relative to any window, deck or patio for an existing residential dwelling on an adjacent property;
- b. the decibel level or bel rating; and
- c. possible alternative locations.

4.3.11.5 The Commission's agent may deny an application for a Zoning Permit for an exterior air conditioning unit or generator where the agent finds that an alternative location farther removed from adjacent residences is reasonably available. In the event of such denial, the applicant may request Site Plan Review by the Commission for the air conditioning unit or generator.

4.3.11.6 Nothing in this section shall be deemed to prohibit the replacement of existing air conditioning units or generators provided that the replacement has the same or lower decibel level / bel rating and is in the same location. Building and Zoning Permit applications shall be required prior to replacement.

4.3.11.7 The provisions of Sections 4.3.11.1 through 4.3.11.6, inclusive, shall not be deemed to apply to portable air conditioning units that are or may be mounted in windows.

#### **4.3.12 Accessory Apartment. (Amended 6/1/14)**

Only one accessory apartment may be allowed on any lot. An accessory apartment must be located in the same building as the principal dwelling unit; must have less floor area than the principal dwelling unit; must be used solely by members of the family occupying the principal dwelling unit; and must be capable of access to and from the principal dwelling unit by interior doors or passages.

#### **4.3.13 Home Occupations and On-Site Commercial Activities.**

Except as provided in Section 4.3.14 of these Regulations, no dwelling or parcel shall be used for business or commercial purposes or activities, including on-site tag sales, estate sales, or similar activities, unless the use or activity (1) does not attract or encourage customers or clients to the premises; (2) is conducted entirely within an existing dwelling or existing accessory structure solely by members of the same family occupying the dwelling unit; (3) has no exterior display, exterior storage of materials or other exterior evidence of its existence; (4) has no signage advertising its existence; and (5) does not occupy more than 30% of the floor space of the dwelling unit. When the owner of any dwelling unit allows other persons, with or without a lease, to have the primary occupancy of that dwelling unit for purposes other than a domicile, such use shall be deemed to be a commercial use and shall not be allowed except as provided in Section 4.3.14. (Amended 9/1/16, 10/1/19)

#### **4.3.14 Short-Term Residential Use of Dwelling Units.**

Notwithstanding the provisions of Section 4.3.13, the owner of a dwelling unit may allow one family, with or without a lease, to have short-term occupancy of that dwelling unit, but only under the following circumstances: (1) the uses of the dwelling unit must be no different in nature than those that are customary and incidental to a domicile; (2) no short-term occupancy interval shall be less than fourteen consecutive calendar days; and (3) no more than ten short-term occupancy intervals shall be permitted in any calendar year. The purpose of this section is to protect the single-family residential character of the Borough and to prohibit the rapid turnover of occupants within any particular dwelling unit in order to enhance neighborhood safety, stability and security and to reduce the possibility of conflict with nearby residents. *(Added 10/1/19)*

#### **4.4 SPECIAL PERMITS**

No additional uses are currently allowed by Special Permit in the Borough pursuant to these Regulations. Certain types of structures require a Special Permit, as set forth in other sections of these Regulations. The Commission may issue a Special Permit only if it determines that the proposed structure will not adversely affect the natural and traditional riverway scene and will not significantly block existing views of the water. All Special Permit applications shall be subject to the requirements for Site Plan Review in Section 4.5. *(Amended 10/15/12)*

#### **4.5 SITE PLAN REVIEW**

Site Plans are a form of Proposed Plan that must be submitted at the time of application for approval of certain structures and uses, as set forth elsewhere in these Regulations.

##### **4.5.1 Site Plan Requirements** *(Amended 10/15/12)*

All Site Plans shall be based upon and include a Class A-2 survey prepared by a land surveyor licensed to practice in the State of Connecticut. The survey and plans shall contain the embossed seal and original signature of the land surveyor. Site Plans shall include all information and documentation required of Proposed Plans pursuant to Section 6.3 of these Regulations, and shall also show:

1. All proposed landscaping features, specifying plantings and lawn areas.
2. The location of all existing or proposed exterior lighting or signs.
3. The locations and numbers of all existing monuments, iron pins, reference marks, and proposed monuments or iron pins.

A complete application shall consist of the application fee, and five (5) copies of all of the information identified above and in Section 6.3 of these Regulations. All information shall have been prepared by persons possessing the necessary expertise to prepare it and shall be presented with adequate clarity and professionalism to permit the Commission to understand it and make a determination in accordance with the powers and duties stipulated in the Zoning Regulations. If a plan is revised after the original submission, the new plan shall clearly indicate the revisions and the date thereof on each sheet that has been revised and new electronic copies as described in Section 6.3c shall be submitted. The presentation of a complete application, as described herein, is the obligation of the applicant, and failure to meet this criterion shall be grounds for denial without prejudice to future, complete applications.

Whenever any residential structure is located partially or wholly within a Special Flood Hazard Area or would have a gross floor area of 5,000 square feet or more, the applicant's Proposed Plans must be prepared by a Connecticut-licensed engineer and must include building elevations

prepared by an architect and/or landscape architect. Such plans must show, in addition to any other requirements set forth in these Regulations, information on existing and proposed topography, building design and height measurements, proposed grading including cuts, fills and retaining walls, any required buffer area, proposed landscaping and plans for access to the waterfront, if applicable.

All documentary evidence in support of the application shall be filed with the Commission and be available for public inspection no less than fifteen (15) days prior to the day of the meeting or public hearing or any reconvening thereof. All other persons wishing to present documentary evidence in the proceeding should file such evidence on or before the date of the meeting or hearing. Nothing in this Section shall prohibit the Commission, in the exercise of its discretion, from receiving evidence from any person at a later time provided such information is submitted prior to the conclusion of the meeting or hearing. The Commission may refuse to consider documentary evidence or other information, including but not limited to any proposed modifications to the applicant's plans, that is not submitted sufficiently in advance to provide the Commission's members, staff, or consultants a reasonable time to properly review it.

The Commission shall refer a copy of any site plan submitted for a shoreline flood and erosion control structure, as defined in Section 22a-109(c) of the Connecticut General Statutes, to the Commissioner of Energy and Environmental Protection within fifteen days after the day of receipt of such application, as such day of receipt is defined in Section 8-7d of the Connecticut General Statutes.

#### **4.5.2 Waiver of Certain Requirements for Applications**

The Commission or its designated agent may waive any of the requirements for a zoning Site Plan if the applicant requests such a waiver in writing, specifying the subsections proposed to be waived and the reasons for such waiver(s), and the Commission or its designated agent determines that the information is not needed to determine whether the proposed use or structure conforms with the requirements of these Regulations.

#### **4.5.3 Notification of Abutting Property Owners** *(Amended 10/15/12)*

Each applicant for a Site Plan or Special Permit approval shall mail notification of the application to each of the property owners listed as required in Section 6.3 of these Regulations. If these regulations do not require the Commission to hold a public hearing, the applicant must mail such notification at least five (5) days before the next scheduled Commission meeting in order for the Commission to be obliged to consider the merits of the application at that meeting. Such notification shall consist of a description of the proposal in sufficient detail to allow the recipients to understand the scope and nature of the proposed activity, and shall also include a notice of the date of the next scheduled Commission meeting and a statement that the Commission may consider and act upon the application on that date. Nothing in this section shall be deemed to require the Commission to act, or to abstain from acting, on the merits of the application at the next scheduled Commission meeting, and the Commission may, in its discretion, decide to hold an optional public hearing on such application. If these regulations require the Commission to hold a public hearing on the application, the applicant must mail such notification at least five (5) days before the public hearing at which the application is scheduled to be heard. Such notification shall include a copy of the legal notice, which the Commission shall provide to the applicant. Proof of mailing of any notification required by this section shall be evidenced by a certificate of mailing. All certificates shall be provided to the Commission at least three (3) days prior to the respective meeting or hearing.

#### **4.5.4 Site Plan Review Standards**

The entire Borough of Fenwick is located within the coastal boundary as defined in Section 22a-93 of the Connecticut General Statutes. Therefore, all buildings, uses and structures within the Borough are subject to the procedures and standards set forth in the Coastal Management Act, which comprises Chapter 444, Sections 22a-90 to 22a-112 of those Statutes. Those procedures and standards shall be deemed to be incorporated into these Regulations by reference and shall be in addition to any specific standards or procedures set forth below. In addition, the Site Plan review standards set forth below incorporate standards and procedures authorized by Chapter 124 of the Connecticut General Statutes. Site Plan applicants should review the Coastal Management Act as well as these Regulations in order to be familiar with all applicable procedures and criteria for approval and any persons submitting a site plan shall demonstrate that the adverse impacts of the proposed activity are acceptable and shall demonstrate that such activity is consistent with the goals and policies in Section 22a-92 of the Connecticut General Statutes.

In situations in which these Regulations require the approval of a Site Plan by the Commission, the Commission shall employ the following standards. The Commission may deny or require modification of any Site Plan that it finds is not consistent with these standards. When approving, modifying, conditioning or denying a Site Plan on the basis of the criteria listed in subsection (b) of Section 22a-106 of the Connecticut General Statutes, the Commission shall state in writing the findings and reasons for its action. Except when the application is denied, the Commission shall also make a written finding that the proposed activity with any conditions or modifications (1) is consistent with all the applicable goals and policies in Sections 22a-92 of the Connecticut General Statutes; and (2) incorporates as conditions or modifications all reasonable measures that will mitigate the adverse impacts of the proposed activity on both coastal resources and the future water-dependent development activities.

**a. Preservation of Landscape.** Proposed site development shall maintain the essential natural characteristics of the site, such as major landforms, natural vegetative and wildlife communities, hydrologic features, scenic qualities and open space that contributes to a sense of place. Excavation, filling, grading and removal of earth materials and the removal of existing vegetation should be generally limited to the extent necessary to reasonably accommodate the needs of the proposed or existing uses while avoiding substantial and unnecessary changes to the landscape. The smallest practical area of land should be exposed at any one time during development and the length of exposure should be kept to shortest practical time. Disturbed areas shall be replanted with trees, shrubs and ground cover, which is compatible with existing vegetation.

**b. Relation of Buildings and Structures to Environment.** Structures shall be adapted to the existing terrain, rather than altering the earth form to create a platform development site. The design of the proposed project or development shall, to the extent practicable, be related harmoniously to the terrain and to the design and siting of existing buildings in the vicinity of the site. All buildings and other structures shall be sited to protect the character of the neighborhood. The Commission may consider the proper functional, visual, and spatial relationships of all structures, buildings, landscaped elements, and paved areas.

**c. Site Design.** Development shall be located so as to minimize disturbance of sensitive areas. Site design shall preserve and enhance the existing natural landscape where possible. New landscaping should be compatible with existing natural vegetation. Use of native species is recommended and plants listed on the Connecticut Invasive Plant List shall be avoided. All

development should be designed to protect and preserve the scenic and traditional character of the area and to promote and retain visual buffering between the building and the River or its tributaries.

**d. Scenic Views.** Proposed structures or additions thereto shall be designed with special consideration for potential impacts on any existing views of the Connecticut River, its tidal wetland areas or tributaries, or Long Island Sound from (1) public streets, (2) other public areas, such as parkland, and (3) adjacent properties. The Commission may request a viewshed analysis or simulation as a means of evaluating the potential impacts.

**e. Buffer Areas.** All buffered and/or screened areas, including setback areas (landscaped and usable), shall be so designed as to be consistent and compatible with nearby residential uses and properties.

**f. Water Quality and Drainage.** The proposed use shall be designed to minimize any risk of surface-water or groundwater pollution, soil erosion and sedimentation, and water diversion. Proper surface drainage shall be provided to assure that surface waters will not adversely affect neighboring properties or public storm drainage facilities. Insofar as possible, natural drainage courses and swales shall be properly stabilized and drainage-impounding areas shall be utilized to dispose of water on the site through natural percolation to a degree equivalent to that prior to development. Also, appropriate erosion control measures shall be employed, including slope stabilization measures and the seeding of exposed areas to replace vegetative cover.

**g. Utilities.** The placement of electric, telephone, or other utility lines and equipment shall be underground where possible, and coordinated with other utilities.

**h. Other Site Features.** Exposed storage or utility areas, exposed machinery installations, and service areas shall be designed with screen plantings, fencing, or other screening methods to be compatible with the environment and the surrounding properties.

**i. Natural and Historical Resources.** The Site Plan shall be designed to minimize any damage or destruction to locally significant natural or historical resources. All proposed structures shall be consistent with the historic residential character of the Borough of Fenwick and may also require Borough Historic District Commission approvals, in addition to required zoning approvals.

#### **4.5.5 Exceptions to Site Plan Review Requirement** *(Amended 10/15/12, 12/6/17)*

The following uses shall require a Zoning Permit but shall be exempt from Site Plan review and approval:

**a.** Pedestrian walks and at-grade decks or terraces, underground electrical utility connections, essential gas, telephone, water and sewer service lines, and such other minor structures, except in or within 50 feet of tidal wetlands, coastal bluffs and escarpments, beaches and dunes, as will not substantially alter the natural character of coastal resources or restrict access along the public beach;

**b.** Minor additions to or modifications of less than 200 square feet to existing accessory buildings and structures, such as garages and utility sheds;

- c. Additions, renovations, or reconstruction of existing single-family dwellings that do not increase the footprint by 200 square feet or more and do not increase the height of any portion of the dwelling;
- d. Activities that require a Building Permit but do not modify the existing footprint, size, or shape of the structure;
- e. Construction of new or modification of existing fences, walls, and signs as will not substantially alter the natural character of coastal resources or restrict access along the public beach; and
- f. Activities conducted for the specific purpose of conserving or preserving soil, vegetation, water, fish, shellfish, wildlife and other coastal land and water resources.

Notwithstanding the foregoing provisions, the installation of exterior air conditioning units or generators may require site plan approval in accordance with Section 4.3.11 of these Regulations. In addition, no Shoreline Flood and Erosion Control Structure, as defined in Section 22a-109(c) of the Connecticut General Statutes, shall be exempt from Site Plan review.

#### **4.5.6 Expiration of Site Plans**

Except as may otherwise be provided by state law, the approval of a site plan shall expire two (2) years after the date of approval unless the work allowed under such site plan has been commenced during that period. For purposes of this Section 4.5.6, the term “work” shall be construed to mean any site work, site grading or site preparation other than the clearing of vegetation. The Commission may also terminate the approval of a site plan if it determines, after providing notice and a hearing to the permittee, that the permittee has not made substantial progress toward completion of the permitted site development and is no longer making reasonable efforts to continue such work. *(Amended 9/1/16)*

### **4.6 GENERAL PROHIBITIONS**

Anything contrary in these Regulations notwithstanding, no land or improvement thereon within the Borough of Fenwick Residential District shall be used for:

**4.6.1** A dump, sanitary landfill or other waste disposal facility.

**4.6.2** The removal or installation of earth products except:

1. To the extent necessary in the excavation for the foundation, trench and related site excavation for any building, swimming pool, or subsurface sewage disposal system after issuance of a zoning, septic and/or building permit for such structure;
  2. Land grading incidental to the construction of any such structure or of access ways and parking facilities serving the same, provided the removal or installation shall not exceed 900 cubic feet of earth materials;
  3. For use on other parts of the same lot or adjoining lot under the same ownership if the quantity removed or installed does not exceed in the aggregate 100 cubic yards; or
  4. Beach or dune nourishment approved by the Planning and Zoning Commission.
- (Amended 10/15/12)*



## **SECTION 5 - BULK REQUIREMENTS**

### **5.1 LOT AREA, SHAPE AND MAXIMUM COVERAGE**

#### **5.1.1 Minimum Lot Size**

No building shall be constructed, enlarged, extended or moved on a lot containing less than TWENTY THOUSAND (20,000) square feet.

#### **5.1.2 Maximum Lot Coverage** *(Amended 6/1/14)*

Except as provided in this section, the building(s) and other accessory structure(s) on any lot shall not exceed a combined, maximum lot coverage of 15%. See definition for what is included when calculating lot coverage. When a Flood Hazard Compliance Modification requires raising the elevation of the first floor of an existing principal building, the maximum lot coverage requirement shall not apply to any entry stairs, platforms and open porches necessary for ingress and egress to the first floor, subject to the following limitations: (1) the area exceeding a lot coverage of 15% shall not be greater than 15 square feet per entrance per each additional foot that the first floor is to be elevated; and (2) the total area exceeding a lot coverage of 15% shall not be greater than 225 square feet. The ***Proposed Plan*** (see Definition) submitted for zoning approval must indicate existing, proposed and total lot coverages and how they were computed.

### **5.2 BUILDING SIZE, HEIGHT AND LOCATION**

No building or other structure shall be constructed, enlarged, extended, moved, or utilized in such manner as to:

#### **5.2.1** *(Reserved for future use. 4/1/2022)*

#### **5.2.2 Exceed a height of 35 feet.** *(Amended 9/1/18)*

Except as otherwise provided in this section 5.2.2, no building or other structure shall be constructed, reconstructed, enlarged, extended, moved or structurally altered in such a manner as to exceed a height of thirty-five (35) feet.

5.2.2.1 Spires, cupolas, towers, flagpoles, and other similar architectural features occupying not more than ten (10) percent of the building footprint and not designed for human occupancy may be constructed, reconstructed, enlarged, extended, moved or structurally altered to a greater height if the Commission approves a Special Permit for such features and determines that such additional height is both necessary and reasonable for the proposed use. The height of the structure will be measured from the lowest point within ten (10) feet of the exterior of the building. (See ***Height*** definition).

5.2.2.2 The Commission may grant a special permit for a greater height in order to allow a structure existing as of 9/1/2018 to be raised so much as is necessary to comply with the FEMA flood-zone standards applicable to new construction. Such special permit may be granted only if (a) that the structure remains on essentially the same footprint, meaning that the footprint may be altered only so much as may be necessary to accommodate the physical act of raising and resetting the structure; (b) the structure is raised only the minimum amount necessary to comply with FEMA requirements for the flood zone in which it is located (e.g.,

first floor one foot above 100-year flood elevation); and (c) that there is no increase in building volume other than what is caused by the increased height.

**5.2.3 Be located within fifty (50) feet of any watercourse, tidal wetland, coastal bluff or escarpment, beach or dune, except as follows** *(Amended 9/1/18, 8/15/19):*

**5.2.3.1** The Commission may grant a Special Permit to allow a marine facility, dock, boardwalk, or fence to be located within such fifty (50) foot buffer area if it finds that (a) such structures are typical and customary in shoreline areas for privacy, for access to the shoreline, or for access to and the passive enjoyment or protection of the natural resources specified in Section 5.2.3, above; and (b) the structure complies with all pertinent regulatory criteria, including the standards set forth in Sections 4.4, 4.5 and 7.3 of these Regulations and the Connecticut Coastal Management Act. Public improvements, such as road or drainage structures, may also be allowed within the fifty-foot buffer area. No other structures shall be allowed within that buffer area.

**5.2.3.2** The Commission may grant a Special Permit to allow dune construction, beach nourishment, seawalls, revetments or similar structures, or to allow site development necessary for the reasonable use of the lot, within such fifty (50) foot buffer area if it finds that such improvement is consistent with all pertinent regulatory criteria, including those set forth in Sections 4.4, 4.5 and 7.3 and the Connecticut Coastal Management Act.

## **5.3 YARDS**

### **5.3.1 Front Yard**

The minimum front yard shall be 30 feet, except that no building need be set back more than one-fourth the depth of the lot, measured perpendicular to the front lot line. See Definitions for ***Front Lot Line, Front Yard, Yard, and Street***. *(Amended 6/1/13)*

### **5.3.2 Side Yard**

Except as provided in Section 5.3.5, the minimum side yard shall be one-eighth the width of the lot or ten feet, whichever width is greater. (See definition of ***Lot Width***). Under no circumstances will a building or its mechanicals (such as air conditioning units, generators, chimneys, etc.) be allowed closer than 10 feet from a side property line. For lots that abut Long Island Sound, South Cove, or the Connecticut River, a side yard of no less than 25 feet must be maintained on at least one side of the lot and no vegetation, structure, or other physical object having a height of four (4) feet or more shall be located, placed or allowed to remain in that portion of such side yard constituting its minimum required width. See Definition for ***Side Yard, Yard***. *(Amended 6/1/13, 12/6/17)*

### **5.3.3 Rear Yard**

Except as provided in Section 5.3.5, the minimum rear yard area for every lot other than a corner lot or sandwich lot (see definition) shall be 15% of the total lot area. The setback from the projection of the building closest to the rear property line shall be used to calculate the 15% rear yard area. For irregularly shaped lots, no portion of the minimum rear yard shall be less than ten (10) feet from the rear lot line. See Definition for ***Rear Lot Line, Rear Yard, Yard***. *(Amended 6/1/13, 12/6/17)*

### **5.3.4 Setback Infringements** *(Amended 6/1/14, 9/1/16)*

No structure at or above ground level, including mechanicals such as air conditioning units, generators, chimneys, etc., shall be allowed within the designated yards.

**5.3.4.1.** When a Flood Hazard Compliance Modification requires raising the elevation of the first floor of an existing principal building, the setback requirement for any utility platforms or entry stairs, platforms and open porches necessary for ingress and egress to the first floor shall be reduced to five (5) feet.

**5.3.4.2** If the Commission or Zoning Enforcement Officer finds that an access ramp must be added to a dwelling in order to satisfy the requirements of any federal or state law, including but not limited to the Americans with Disabilities Act, and further finds that a ramp cannot be reasonably accommodated on the lot without intruding into a required yard, the Commission or Zoning Enforcement Officer may issue a zoning permit for such ramp, provided (1) the ramp is designed to have as small an intrusion into the yard as reasonably possible; and (2) the applicant submits a written acknowledgment and confirmation that the ramp must and will be dismantled and removed when the person or persons who required the ramp no longer occupy the premises.

**5.3.5 Exceptions to Minimum Yard Requirements** *(new 12/6/17)*

A developed lot (i.e., a lot already containing a building or other structure) may lawfully be merged with one or more adjoining, undeveloped lots, even where the location of any existing structure on the merged parcel, after and solely due to the merger, would no longer conform to the minimum yard requirements set forth in Sections 5.3.2 or 5.3.3. Any existing structure that does not conform to the minimum yard requirements set forth in Sections 5.3.2 or 5.3.3 solely due to such a merger shall be deemed to be lawfully non-conforming, and any changes to such structure after such merger must comply with all applicable provisions of Section 8 of these Regulations.

**5.4 CONSERVATION RESTRICTIONS**

**5.4.1 Conservation Buffer Area**

Except as provided in Section 5.2.3 of these Regulations, no building or other improvement shall be constructed, reconstructed, enlarged, extended, moved or structurally altered within 50 feet, measured in a horizontal plane, of any point of the coastal jurisdiction line of the Connecticut River, tidal marshes, or Long Island Sound. *(Amended 10/15/12; Amended 9/1/18)*

**5.4.2 Vegetation Buffer Zone** *(Amended 10/15/12)*

There shall be no cutting of vegetation within a strip of land extending 50 feet in horizontal distance inland from the coastal jurisdiction line (as that line is defined in Section 2.2 of these Zoning Regulations) of the Connecticut River or any of its tributaries or associated tidal wetlands or Long Island Sound, except as provided in this section:

- a. A footpath not to exceed five feet in width is permitted provided that a cleared line of sight to the water through the buffer strip is not created.
- b. Stairs or similar structures may be allowed with a permit from the Zoning Enforcement Officer to provide shoreline access in areas of steep slopes or unstable soils, provided that the structure is limited to a maximum of five feet in width and does not extend below or over the coastal jurisdiction line of the Connecticut River

or its tributaries or the upland edge of a tidal wetlands, and the applicant demonstrates that no reasonable access alternative exists on the property.

- c. A vegetation buffer shall not be required for areas that have been mapped and designated, by the Borough Zoning and Planning Commission as “developed areas”. In such developed areas, property owners are encouraged, where feasible, to maintain a vegetation area of native plantings immediately adjacent to the water to avoid erosion and enhance the scenic quality of the scene and to minimize the spread of invasive plant species which can out-compete native species and reduce plant diversity.
- d. Clearing of invasive species may be allowed with a permit from the Zoning Enforcement Officer upon application and submission of a removal plan and/or field marking of the material to be removed prepared/performed by a qualified professional.

## **SECTION 6 – ADMINISTRATION OF ZONING REGULATIONS**

### **6.1 PERMIT REQUIREMENTS**

A Zoning Permit must be issued before (1) any improvement may be made or placed upon any land; and (2) before any change may be made in the location or ground area covered by any improvement; and (3) before any construction, demolition or alteration activities of any building or structure may begin; and (4) before any excavation for any building or structure for use or occupancy may be commenced. A Zoning Permit shall be required regardless of whether a Special Permit, Site Plan approval or variance is also required or has already been granted. Any application for a Special Permit or Site Plan approval must include, at a minimum, all of the information and documentation required for a Zoning Permit under Section 6.3 of these Regulations, in addition to any other information necessary for the Special Permit or Site Plan review.

### **6.2 APPLICANT / WHO MAY APPLY**

The application shall be signed by the applicant(s). If the subject property is not owned by the applicant(s) at the time the application is made, the application must include the actual property owner's name(s) as well as other pertinent data, as requested. If the applicant is not the owner, the owner shall also include a statement authorizing the applicant to act as his or her agent in making application to the Commission(s).

### **6.3 APPLICATION SUBMITTAL**

A complete application for a Zoning Permit shall be submitted to the Zoning Enforcement Officer and shall consist of:

#### **6.3.1 Form**

An original completed application, signed personally by the legal owner or owner's agent, along with three (3) copies of the application form with supporting information, as prescribed by these Regulations. Any submittals created by a Connecticut-licensed professional architect, engineer, or land surveyor must have original stamp and signature included on all copies.

#### **6.3.2 Supporting Information**

The application form shall be accompanied by, in writing, the following:

**a.** An original ***Proposed Plan***, signed and stamped by the originator, with a scale of one (1) inch equals twenty (20) feet, showing the tax map, lot number or numbers of the land to which such application relates, and clearly disclosing the following information:

1. All revision dates and necessary definitions and legends, and the true scale of the survey, in which one inch (1") shall be equal to no more than twenty feet (20').
2. The direction of true north.
3. The actual shape and dimensions of the lot to be used.
4. The exact size and location on the lot of existing and proposed buildings and structures, with all mechanical and electrical appurtenances, including generators, heat pumps, and air conditioning units; utilities; septic system areas; wells; driveways and parking areas; and drainage facilities.

5. The location of all required setbacks or yard lines, and of all easements.
  6. A computation of lot and building coverage with indication of how it was computed.
  7. Topographic contours at an interval no greater than five feet and indication of the datum on which the elevations were based.
  8. Watercourses, inland wetlands and tidal wetlands, tidal marshes, floodprone and flood hazard areas, and any proposed alterations or encroachments into such areas.
  9. The location and name of all streets, roads, or highways that pass through or adjoin the lot or, if no such street, road, or highway passes through or adjoins the lot, the entire route of vehicular access to the lot from such a street, road, or highway.
  10. A detailed plan for erosion and sedimentation control covering all proposed work, which shall indicate measures taken to control erosion and sedimentation both during and after construction.
  11. A list, keyed to the Proposed Plan, of the names and addresses of the record owners of abutting land, and land directly across any roadway from the land to which the application relates. The record owner(s) shall be deemed to be the person(s) identified as the owner(s) of the relevant property or properties on the records of the Old Saybrook Tax Collector as of the date the list is provided to the Commission pursuant to this section 6.3.2.
  12. If subsurface sewage disposal facilities or wells must be constructed or altered for the proposed use pursuant to the Public Health Code or other applicable requirements, the applicant must provide written proof that all such requirements will be or have been met.
- b.** A complete and comprehensive statement describing the improvement or change and the use made or to be made thereof.
1. An A-2 survey by a licensed, registered land surveyor of the State of Connecticut, showing the locations of all above ground structures and their foundations with reference to all front, side, and rear setbacks at the time any new foundation is constructed and, for property within a Special Flood Hazard Area, a completed application and Elevation Certificate prepared by a registered Professional Engineer. All required documentation, such as Plans, As-Builts, and Architectural Drawings, must be sealed with original signatures. Electronic copies of all maps, plans, surveys, drawings and similar documents shall also be provided. Such copies shall be submitted as pdf (Portable Document Format) files on CD or DVD media unless the Commission or its agent agrees to a different electronic format or medium.
  2. Whenever a public hearing is required or scheduled, the Commission shall provide the applicant with a copy of the legal notice and the applicant shall mail a copy to each of the property owners listed in 6.3.2a.11 above. Proof of mailing shall be evidenced by a certificate of mailing. All certificates shall be provided to the Commission at least three (3) days prior to the hearing.
  3. A Certificate of Appropriateness from the Historic District Commission.

#### **6.4 WAIVER OF CERTAIN SUPPORTING INFORMATION**

The Zoning Enforcement Officer may waive the submission of any supportive documentation that he or she deems unnecessary to determine compliance with these Regulations.

#### **6.5 APPLICATION REVIEW / DETERMINATION**

The Zoning Enforcement Officer shall grant the application and issue a Zoning Permit if it is found that the proposed improvement or change, and the land upon which it is to be situated complies with all the pertinent requirements of these Regulations, including any Site Plan approvals, Special Permits, or variances granted therefore. The Zoning Enforcement Officer shall deny the application if any of the following occurs:

##### **6.5.1 Lack of Information**

The Zoning Enforcement Officer is unable to determine whether or not the proposed improvement or change, and the land upon which it is to be situated, complies with all such pertinent requirements because of the failure of the applicant to supply any required information.

##### **6.5.2 Noncompliance**

The Zoning Enforcement Officer finds that the proposed improvement or change, or the land upon which it is to be situated, does not comply with all of the pertinent applicable Zoning Regulations and requirements within.

#### **6.6 TIME FOR DECISION**

The Zoning Enforcement Officer may grant or deny an application for a Zoning Permit within thirty (30) days after receipt of such application by him, unless the applicant consents in writing to an extension of that period. If such application is neither granted nor denied within such period, it shall be considered denied upon the expiration thereof. In the event of denial, other than by expiration of the period for decision, the Zoning Enforcement Officer shall issue, within five (5) days after his decision, written notice of denial to the applicant either personally or by certified mail.

The Zoning Enforcement Officer shall forward directly to the Commission, within fifteen (15) days of receipt, any application that is deemed to require Site Plan approval or a Special Permit. The Commission must schedule a hearing to review and consider any application for a Special Permit. The Commission shall decide upon any application for Site Plan approval or a Special Permit within the time required by State law (as of the time of enactment of these Regulations, the relevant statute is Section 8-7d) of the Connecticut General Statutes. The Commission shall decide all other applications within 65 days after the meeting at which the application is received. For the purposes of these Regulations, the “receipt” of an application by the Commission shall be deemed to be the date of the first regular meeting of the Commission after the date of submission of the application to the Commission or the Zoning Enforcement Officer, or 35 days after the date of such submission, whichever comes first.

#### **6.7 ISSUANCE OF ZONING PERMIT**

Each Zoning Permit granted shall be issued in writing and shall specify the name of the owner(s) of record, and the tax map and lot number of the specific land parcel as well as the actual address, and shall

describe in detail the particular improvement or change(s) being authorized. Either the chairman of the Commission or the Zoning Enforcement Officer shall sign any Zoning Permit or Certificate of Zoning Compliance.

## **6.8 EXPIRATION OF ZONING PERMIT**

Except as may otherwise be provided by state law, a Zoning Permit shall expire one (1) year after the date of approval unless the work allowed under such permit has been commenced during that period. For purposes of this Section 6.8, the term “work” shall be construed to mean any site work, site grading or site preparation other than the clearing of vegetation. The Commission may also terminate the approval of a Zoning Permit after work has commenced if it determines, after providing notice and a hearing to the permittee, that the permittee has not made substantial progress toward completion of the permitted work and is no longer making reasonable efforts to continue such work.

## **6.9 FINAL CERTIFICATE OF ZONING COMPLIANCE.**

It shall be unlawful for any newly erected structure or addition for which a building permit has been issued to be occupied or used, or for any building or premises or part thereof to be converted or changed from one type of occupancy to another until a Final Certificate of Zoning Compliance has been issued by the Commission or its designated agent.

### **6.9.1 Request for Final Certificate of Zoning Compliance**

Upon written request by the applicant, the Zoning Enforcement Officer shall inspect the building or premises and shall determine whether the building or premises complies with these Regulations. If such building or premises does not comply, the Zoning Enforcement Officer shall provide a written description to the applicant of the manner in which compliance is lacking. When the building or premises is found to be in conformance, the Zoning Enforcement Officer shall issue a Final Certificate of Zoning Compliance.

NOTE: A Certificate of Occupancy shall not be issued by the Building Official unless and until (1) the building or premises complies with all provisions of the State of Connecticut Building Code, (2) a Final Certificate of Zoning Compliance has been issued, (3) any required Certificate of Appropriateness has been issued by the Historic District Commission, and (4) any required discharge permit has been issued by the Sanitarian.

### **6.9.2 Updated *Proposed Plan* / A-2 Survey**

An updated *Proposed Plan*, as well as an A-2 Survey, as defined within, must be prepared and presented to the Zoning Enforcement Officer for review and approval prior to issuance of either a Certificate of Occupancy or Final Certificate of Zoning Compliance. Such documentation must include necessary seal and original signature.

### **6.9.3 Compliance with Special Flood Hazard Area Requirements**

For those properties wholly or partially within a Special Flood Hazard Area, an “As Built” Elevation Certificate prepared by a registered Professional Engineer must be prepared and presented to the Zoning Enforcement Officer for review and approval prior to issuance of either a Certificate of Occupancy or Final Certificate of Zoning Compliance. Such documentation must include necessary seal and original signature. (*Amended 9/1/16*)



#### **6.10 FEES**

The Commission, as well as the Zoning Board of Appeals, shall review the established fee schedule annually and make any necessary fee change recommendations to the Board of Warden and Burgesses of the Borough of Fenwick for any recommended fee change approvals. The Board of Warden and Burgesses shall establish necessary fees for any applications required under these Regulations.

Such fees shall be paid by check or money order payable to the Borough of Fenwick, and shall be used to defray the costs of processing the application, including publication costs of required legal notices, and professional review(s) and other costs arising out of a particular application. All applicable fees shall be paid at time of Application, otherwise such applications shall not be accepted by the Borough or acted upon by that Commission and shall be returned directly to the Applicant.

#### **6.11 ENFORCEMENT**

The Borough of Fenwick shall enforce these Zoning Regulations, through either the Zoning Enforcement Officer or other agent appointed by the Commission. The enforcement official shall serve at the pleasure of the Commission. In the absence or during the incapacity of the person so appointed, the Chairman of the Commission may act as, and shall have all the powers and duties of the Zoning Enforcement Officer. The Zoning Enforcement Officer or other designated agent is hereby authorized to inspect or cause to be inspected any building, place or use, and to order in writing the remedying of any conditions found to exist in violation of these Regulations.

#### **6.12 AUTHORITY OF ZONING ENFORCEMENT OFFICER**

The Zoning Enforcement Officer shall have all such authority as is prescribed by the Connecticut General Statutes and as can otherwise by law be conferred upon such official to enforce these Regulations. In addition, the designated official shall review and decide upon all applications presented for a Zoning Permit and/or Certificate of Zoning Compliance pursuant to these Regulations. The Zoning Enforcement Officer may, in his or her discretion, take an appeal from any decision of the Zoning Board of Appeals in the manner prescribed therefore by State law and may, to the extent allowed by State law, withhold the granting of any Zoning Permit or Certificate of Compliance in connection with any use or improvement involved in such decision of the Board pending final judgment or disposition of the appeal.

#### **6.13 ENFORCEMENT OF SITE PLAN APPROVALS, SPECIAL PERMITS, AND VARIANCES**

Within ten (10) days following the granting of any Site Plan approval, Special Permit or variance, the granting authority shall deliver to the Zoning Enforcement Officer a copy of the writing embodying such Site Plan approval, Special Permit or variance. The Zoning Enforcement Officer shall keep each such writing, together with an appropriate index by location of the premises affected, and shall enforce the provisions of such Site Plan approval, Special Permit or variance, including any conditions imposed, as in the case of these Regulations themselves.

#### **6.14 CIVIL PENALTIES: VIOLATION OF ENFORCEMENT ORDER**

Any person, who having been served with an order to discontinue or remedy a violation of any provision of these Regulations, fails to comply with such order within ten (10) days after such service, or, when the violation involves grading of land, the removal of earth or soil erosion and sediment control, fails to comply with such order immediately, or continues to violate any provision of these regulations specified

in such order shall be subject to a civil penalty as provided by Section 8-12 of the Connecticut General Statutes.

Additionally, in accordance with Section 22a-108 of the Connecticut General Statutes, any activity undertaken within the coastal zone without the required coastal site plan review and approval shall be considered a public nuisance and shall be subject to enforcement remedies authorized in that Section.

#### **6.15 CRIMINAL PENALTIES**

The owner or agent of any building or premises where a violation of any provision of these Regulations has been committed or exists, or the lessee or tenant of a building or the entire premises where such violation has been committed or exists, or the agent, architect, builder, contractor or any other person who commits, takes part or assists in any such violation who maintains any building or premises in which any such violation exists, may be fined or imprisoned as provided in Section 8-12 of the Connecticut General Statutes.

## **SECTION 7 – ENVIRONMENTAL PROTECTION**

### **7.1 CONSIDERATION FOR RESTORATION AND PROTECTION OF LONG ISLAND SOUND**

All development established and conducted in the Borough shall include reasonable consideration for restoration and protection of the ecosystem and habitat of Long Island Sound. To insure that water quality is maintained, and to correct existing problems, these Regulations encourage pervious surfaces of roads, driveways, and parking areas, encouraging infiltration and subsequent stormwater renovation; curbless roads and driveways; as necessary limit application of fertilizers and broad based pesticides particularly in months with historically high or low average precipitation. The Commission or Zoning Enforcement Officer may require modifications to any zoning application to include reasonable measures to reduce hypoxia, pathogens, toxic contaminants and floatable debris in Long Island Sound in accordance with such best management practices as may be recommended by the Connecticut Department of Environmental Protection, the Sea Grant Marine Advisory Program, or other recognized source.

### **7.2 SEDIMENTATION AND EROSION CONTROL**

In accordance with Section 22a-329 of the Connecticut General Statutes, proper provision shall be made for soil erosion and sediment control in connection with any development within the Borough. A separate soil erosion and sediment control plan shall be submitted for any application for development where the disturbed area of such development is more than 20,000 square feet.

#### **7.2.1 Erosion and Sedimentation Control**

Site Plan approval shall not be granted for any structure or use, nor shall any Special Permit be issued for any use or structure in the Conservation Buffer Area described in Section 5.4.1 of these Regulations, unless the Commission finds that the Proposed Plan meets the following criteria:

- a. The Proposed Plan shall so integrate the improvements to be made with the topography and soils of the premises as to create the least erosion potential;
- b. All natural vegetation shall be retained and protected except that which must necessarily be removed to carry out the Proposed Plan;
- c. The area of land exposed by removal of natural vegetation at any one time during the course of development shall be kept to the minimum necessary to carry out the Proposed Plan;
- d. When land is exposed during the course of development, such exposure shall be kept to the shortest possible duration;
- e. Whenever the Commission shall deem it necessary, temporary vegetation and/or mulching shall be used to protect areas exposed during development;
- f. The Commission may require sediment basins (debris basins, de-silting basins or silt traps) to be installed and maintained to remove sediment from runoff waters from land undergoing development;

- g. Proper provision shall be made to accommodate effectively the increased runoff caused by change in soil and surface conditions during and after development; and
- h. The permanent final vegetation and improvements shall be installed as soon as practical in the course of development.

#### **7.2.2 Installation**

All sedimentation and erosion control measures shall be installed in accordance with "Connecticut Guidelines for Soil Erosion and Sediment Control", as such may be amended from time to time, available from the Connecticut Department of Energy and Environmental Protection. The Commission or its Agent may require such different or additional erosion and sediment control measures as contained in the Guidelines in the event that the ones depicted on the approved plans prove to be inadequate. *(Amended 10/15/12)*

#### **7.2.3 Bond** *(Amended 10/15/12)*

The Commission may require a cash bond, or other financial security in its discretion, in an amount satisfactory to guarantee installation, maintenance and removal of soil erosion and sediment control devices and remediation of any damage caused by the failure of the sediment and erosion control. The bond shall remain in the name of the Borough in escrow as a guarantee against the failure on the part of the developer to perform the site work as required. If at any time any of the site work covered by the bond shall fail or suffer damage or loss or prove inadequate, the Borough will notify the developer and if the developer fails to take corrective action and repair the damage or loss within two (2) days of the date of notification, the Borough may withdraw funds from the bond in an amount sufficient to perform corrective action or repair on its own behalf. Where such bond is required, no Zoning Permit shall be issued until such bond has been accepted by the Commission or its agent. The Zoning Enforcement Officer, at the recommendation of the Borough Engineer, shall have the discretion to release the bond when the work is complete and the site is sufficiently stabilized but may defer such decision to a majority vote of the Planning and Zoning Commission, which shall meet to consider the request within 35 days of submission of the request.

### **7.3 FLOOD PLAIN CONSTRUCTION ZONE REQUIREMENTS** *(effective February 6, 2013)*

In order to prevent and minimize loss of life, bodily injuries, and property damage, both private and public; to promote public health and safety; to help control and minimize the extent of floods; and to reduce the depth and violence of flooding, all buildings, structures and uses must comply with the Borough of Fenwick's Ordinance regarding construction and development in Special Flood Hazard Areas, as designated on the applicable Federal Flood Insurance Rate Map for the Borough of Fenwick. No zoning permit, special permit, or other zoning approval shall be issued for any proposed new building, structure, or use, or for any proposed modification or alteration of an existing building, structure or use, unless the applicant demonstrates compliance with the applicable provisions of that Ordinance.

### **7.4 BURNING UNDERBRUSH**

The burning of undergrowth shall be in accordance with those regulations of the Connecticut Department of Environmental Protection, which are in existence from time to time to control and abate air pollution, and in accordance with all other provisions of applicable law. Required Burning Permits are to be issued by the Borough Burning Official, as appointed by the Department of Energy and Environmental Protection, or Borough Fire Marshal, as appointed by the Borough of Fenwick.

## **SECTION 8 - NON-CONFORMING USES AND STRUCTURES** *(Section Amended 8/1/19)*

### **8.1 NON-CONFORMING USES**

Any non-conforming use of any structure or property may be continued until it is abandoned, but the use may not be enlarged or extended.

### **8.2 NON-CONFORMING STRUCTURES**

Any non-conforming structure may be maintained in its present dimensions, but the non-conforming portions of such structure may not be extended horizontally or vertically.

### **8.3 NON-CONFORMING LOTS**

If a conforming structure is located on a non-conforming lot, the structure may be reconstructed, extended or expanded unless (1) doing so would make the structure itself non-conforming; or (2) the lot abuts other land that is or was held in the same ownership as such lot, as evidenced in the Land Records of the Town of Old Saybrook, at any time after [insert an appropriate date].

### **8.4 CHANGE TO CONFORMITY**

When any non-conforming structure or use is intentionally made more conforming to the current Regulations, such change shall be deemed to be an abandonment of the previously non-conforming characteristic of the structure or use unless, before or within 30 days after such change, the property owner files with the Commission or its designated agent a written notice of intent to reestablish such non-conforming aspect and a statement of when the property owner intends or expects to do so.

### **8.5 CHANGE TO NON-CONFORMITY**

A non-conforming use of any land or improvement may not be changed to a different non-conforming use. A non-conforming characteristic of any land or improvement may not be changed to a different non-conforming characteristic or increased in numerical magnitude.

### **8.6 EXTENSION OR EXPANSION OF A NON-CONFORMING USE OR IMPROVEMENT**

No non-conforming use or structure, and no non-conforming characteristic of any use or structure, shall be enlarged or extended except as may otherwise be allowed under these Regulations.

A non-conforming structure may be extended or expanded into a conforming area of a lot unless such change would create, extend or expand another non-conformity, such as a lot-coverage violation.

When a lot is legally non-conforming as to lot coverage, no zoning permit shall be granted for the vertical expansion or extension of any structure other than a building that existed at the time the lot first became non-conforming as to lot coverage, nor shall any new structure be constructed, erected or placed over such structure.

When the elevation of the first floor of an existing principal building must be raised to meet the current National Flood Insurance Program requirements, the limitations of this section shall not apply to such required modification, nor to any entry stairs, platforms and open porches necessary for ingress and egress to the raised first floor, subject to the following limitation: if lot coverage is already non-conforming, the existing lot coverage shall not be increased by more than 15 square feet per entrance per each additional foot that the first floor is to be elevated, nor by a total of more than 225 square feet.

A roof may not be constructed over a non-conforming deck or other open, non-conforming structure. However, the portion of any non-conforming structure having a roof as of December 15, 2011 may be fully enclosed.

## **8.7 TERMINATION OF NON-CONFORMING USE OR CHARACTERISTIC**

### **8.7.1 General Rule Regarding Termination of Non-Conformity**

Except as provided below, when a property owner ceases to conduct a non-conforming use, or removes a non-conforming structure or non-conforming characteristic of a structure, the property owner may notify the Commission of the owner's intention to maintain such use, structure or characteristic in the manner provided Section 8.7.2. If the owner does not provide such notice, the Commission may deem such use, structure or characteristic to be abandoned for purposes of determining whether any enforcement orders or other enforcement measures should be undertaken.

### **8.7.2 Notice of Non-Abandonment**

No later than 30 days after the cessation of a non-conforming use or the removal of a non-conforming structure or characteristic, a property owner may file with the Commission or its designated agent a written notice of intent to maintain such non-conforming use, structure, or characteristic, which notice must include a statement of when the property owner intends or expects to do so. If such use, structure or characteristic has not been reestablished within one year of the date of cessation, the property owner may provide a new written notice of intent to reestablish the use, structure or characteristic no later than 30 days after the anniversary date of cessation, and no later than 30 days after every subsequent anniversary date until the use, structure or characteristic is reestablished.

### **8.7.3 Finding of Abandonment**

If notice of non-abandonment is not provided in the manner set forth in Section 8.7.2, the Commission or its designated agent may send a written notice to the property owner of the Commission's intention to find that the relevant use, structure or characteristic has been abandoned. Such notice shall be sent to the property owner by certified mail at the property owner's mailing address, as listed in the records of the Borough of Fenwick's Tax Collector as of the date of mailing. If the property owner, within 30 days after the mailing date of such notice, does not submit to the Commission or its designated agent a written notice of intent to maintain such non-conforming use, structure, or characteristic, which notice must include a statement of when the property owner intends or expects to do so, the Commission or its designated agent may issue a written finding that such use, structure or characteristic has been abandoned and may file such finding on the land records of the Town of Old Saybrook,

provided that written notice of such filing shall be mailed to the property owner at the mailing address specified above at least seven (7) days before the date of such filing.

#### **8.7.4 Appeal of Finding**

If the Commission makes a finding of abandonment of a use, structure or characteristic pursuant to Section 8.7.3, such finding may be appealed to the Zoning Board of Appeals in accordance with state law. Any enforcement order issued by the Zoning Enforcement Officer because of a finding of abandonment may be appealed to the Zoning Board of Appeals in accordance with state law.

### **8.8 CASUALTY**

#### **8.8.1 Occurrence of Casualty**

If any non-conforming building or structure or any building or structure containing a non-conforming use or characteristic is damaged or destroyed by fire or other casualty, the building or structure may be restored, and the non-conforming use resumed, but only to the same extent as the building, structure or use existed prior to the date of such damage or destruction, and only in conformance with Section 8.8.2.

#### **8.8.2 Notice of Intention**

If the restoration or resumption of use is not started within one (1) calendar year after the date of the casualty, or if the work is not completed within twenty-four (24) calendar months after the date such work commenced, the property owner must submit to the Commission or its designated agent a notice or notices of non-abandonment in accordance with Section 8.7.2. If such notices are not provided, the Commission or its designated agent may proceed as set forth in Section 8.7.3.

### **8.9 ACCESSORY USES**

The provisions of Section 8 shall not be construed to permit or allow accessory uses or structures for any non-conforming use to be established, constructed, erected, extended, expanded, or altered.

### **8.10 DETERMINATION OF NON-CONFORMING STATUS BY COMMISSION**

Any person who claims to have a lawfully non-conforming structure or use may file an application with the Commission for a formal determination of the issue.

#### **8.10.1 Form of Application**

The application shall provide, at a minimum, the name of the applicant; the name of all owners of record of the property; the address and assessor's parcel number of the property; a description of any structures or uses that the applicant claims to be legally non-conforming; the date (as closely as the applicant can determine) upon which any such structure was erected, constructed or placed on the property; the date (as closely as the applicant can determine) upon which any such use was commenced on the property; and, if a non-conforming use is claimed, a description of the manner in which use has been conducted

since it began. It will be to the applicant's advantage to provide in support of the application, as much documentary evidence as is available to support the claim of lawful non-conformity.

### **8.10.2 Public Hearing**

Upon the receipt of such application, the Commission shall schedule a public hearing. The applicant shall be required to send notice of such hearing to all owners of property that abuts or is within 100 feet of the relevant lot. Such notice must be sent no later than ten (10) days before the date of the public hearing. The Commission shall not approve any application unless certificates of mailing or other credible evidence of mailing is provided on or before the day of commencement of the hearing. The notice must state the date, time and location of the public hearing and must be accompanied by a copy of the application.

### **8.10.3 Decision**

Following the close of the public hearing, the Commission may issue any one of the following findings based on the evidence received before and during the public hearing:

- a. That a structure is lawfully non-conforming in its entirety;
- b. That a structure is lawfully non-conforming as to one or more, but not as to all, of its aspects
- c. That a use is lawfully non-conforming in its entirety;
- d. That a use is lawfully non-conforming as to one or more, but not as to all, of its aspects
- e. That the applicant has failed to prove that a use or structure is non-conforming but that the Commission's decision is made without prejudice, meaning that the applicant may file a new application of additional evidence can be provided
- f. That the evidence indicates that a structure or use is not legally non-conforming.

In the event the Commission finds that a structure or use is wholly or partly legally non-conforming, it shall issue a written notice of its decision, describing the nature and extent of legal non-conformity, which notice may be submitted for filing on the land records. Such decision shall be deemed binding on the Commission and its agent unless the Commission later finds that such decision was based upon a misrepresentation of facts.



## **SECTION 9 - ZONING BOARD OF APPEALS**

### **9.1 DUTIES & RESPONSIBILITIES**

The Zoning Board of Appeals shall have the duties and powers provided in Chapter 124 of the Connecticut General Statutes.

### **9.2 ZONING REGULATIONS**

The Zoning Board of Appeals may, in appropriate cases after public notice and public hearing, and subject to appropriate conditions and safeguards, determine and vary the application of these Zoning Regulations in harmony with their general purpose and intent.

### **9.3 POWERS AND DUTIES**

In accordance with Section 8-6 of the Connecticut General Statutes, the Zoning Board of Appeals shall have the following powers and duties:

#### **9.3.1 Appeals**

To hear and decide any appeals where it is alleged that there is an error in any order, requirement or decision made by the Zoning Enforcement Officer.

#### **9.3.2 Application for a Variance**

To determine and vary the application of these Regulations in conformity with the general purpose and intent and with due consideration for conserving the public health, safety, convenience, welfare, and property values solely with respect to a parcel of land where, owing to conditions especially affecting such parcel but not affecting property generally within the Borough, a literal enforcement of such Regulations would result in exceptional difficulty or unusual hardship so that substantial justice will be done and the public safety and welfare secured.

### **9.4 PROHIBITION OF USE VARIANCES**

Pursuant to Chapter 124 of the Connecticut General Statutes, no variance shall be issued by the Zoning Board of Appeals so as to permit establishment, continuation or expansion of any use of a lot or structure, which use is not otherwise permitted by these Regulations.

### **9.5 PROCEDURAL PROVISIONS**

If an application for the granting of a variance is joined with an appeal from an order, requirement or decision of the Zoning Enforcement Officer, the Zoning Board of Appeals shall first decide the issues presented by the appeal. Whenever the Zoning Board of Appeals decides to grant a variance it shall state upon its records the reasons for such decision.

No variance shall be effective until a copy thereof, certified by the Zoning Board of Appeals, containing a description of the premises to which it relates and specifying the nature of the variance, including the Regulation which is varied in its application, and stating the name of the owner of record, is recorded in the Old Saybrook Land Records.

## **9.6 CONDITIONS, SAFEGUARDS AND STIPULATIONS**

Whenever the Zoning Board of Appeals decides to grant a variance it shall be authorized to attach to the grant of such variance such conditions, safeguards and stipulations as it may deem necessary or appropriate to prevent or diminish any adverse effect of the use or characteristic of land or improvements authorized thereby upon the health, safety and welfare of the Borough, any undue annoyance or disturbance of the occupants of the premises in the general neighborhood of such use or characteristic and any impairment of the suitability, usefulness or value of premises in the general neighborhood of such use or characteristic for uses permitted within the Borough thereof under these Regulations and predominantly existing therein.

## **SECTION 10 - AMENDMENTS**

These Regulations may be amended and changed in accordance with the provisions of Chapter 124 of the Connecticut General Statutes.

## **SECTION 11 - VALIDITY**

If any section, paragraph, provision or part of these Regulations shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of these Regulations as a whole or any part or provision thereof other than the part so decided to be invalid or unconstitutional.

### **11.1 Separability**

In the event the Court finds any provision of these Regulations to be invalid or ineffective in whole or part, the effect of such a decision shall be limited to the particular provision that is expressly held to be invalid or ineffective and all other provisions of these Regulations shall continue to be separately and fully effective.

### **11.2 Enacting Clause**

The Commission, acting under the authority of the Zoning Enabling Act, hereby amends and restates these Regulations as the Borough of Fenwick Zoning Regulations.

The provisions of the existing Zoning Regulations, adopted August 1992 and effective September 30, 1992 and any amendments thereto, as so far as they are the same as these Regulations, are to be deemed continued and not as new enactments. Any and all provisions of said prior Regulations and amendments thereto which are inconsistent with the provisions of these Regulations are hereby amended, but this shall not affect any violation thereof already existing or any penalty incurred and the same may be prosecuted as if these Regulations had not been adopted.



Borough of Fenwick  
Zoning Regulations  
Chronology

<b>Effective Date</b>	<b>Action</b>
September 29, 1947	zoning powers adopted
July 1, 1982	ordinance amended
September 30, 1992	zoning regulations adopted (7/1/82 repealed)
December 20, 2006	amended
August 28, 2008	amended
December 15, 2011	amended and restated
October 15, 2012	amended sections, 2.2, 4.1, 4.2.1, 4.2.4, 4.3.11, 4.4, 4.5.1, 4.5.3, 4.5.5, 4.6.2, 5.2.3, 5.3.2, 5.3.3, 5.4.1, 5.4.2, 7.2.2, 7.2.3
February 6, 2013	amended section 7.3
June 1, 2013	amended sections 2.2, 5.3.1, 5.3.2, 5.3.3, 5.3.4
June 1, 2014	amended sections 2.2, 4.3.11, 4.3.12, 5.1.2, 5.3.4, 8.6
September 1, 2016	amended sections 2.2, 4.3.13, 5.3.4, 6.9.3
December 6, 2017	amended sections 4.3.11, 4.5.5, 5.3.2, 5.3.3, 5.3.5
September 1, 2018	amended sections 5.2.2, 5.2.3, 5.4.1
August 1, 2019	amended definitions and section 8
August 15, 2019	amended section 5.2.3
October 1, 2019	amended definitions and sections 4.3.13, 4.3.14
April 1, 2022	add section 4.2.5, delete section 5.2.1
May 1, 2022	added section 4.2.6