

**BOROUGH OF FENWICK
PLANNING AND ZONING COMMISSION
INLAND WETLANDS AGENCY
SPECIAL MEETING
MONDAY, MARCH 4, 2019
MINUTES**

Present: Chuck Chadwick – Chair, Sallie Boody, T. Van Itallie, Rick Neely (Alternate), Marilyn Ozols – ZEO.

Absent: Art Wright, Bill Christensen.

Members of Public: Attorney Terry Lomme, Brooke Girty, Cindy Patterson, Frank Keeney, Bill Webster.

1. **Call to Order.** C. Chadwick called the meeting to order at 5:01 p.m. and seated R. Neely as a voting member. A quorum was established (Chadwick, Boody, Neely, Van Itallie).
2. **ZP19-001, 11 Pettipaug Avenue, map 10, lot 26, Hall Wilson, owner;** Antoine Arnault, applicant; Site Plan and Coastal Site Plan Review for renovation of existing dwelling; demolition of attached garage; installation of new cabana, shed, and inground swimming pool; and associated site work, to be completed in two phases.

T. Lomme and B. Girty presented. T. Lomme stated that the Arnaults are the applicants and the Wilsons are the owners and he distributed a copy of Exhibit G – Letter from the Arnaults. He stated that the property is approximately 34,000 square feet with both a house and an attached garage; the plan is to remove the garage, add a cabana, shed, and inground swimming pool, and enclose the existing deck; the plans have been approved by HDC and the Health District; and a coverage variance has been granted. He added that it is the Arnault's intention to do the work in two phases with a shorter phase this year and a longer phase after the summer moratorium; and that the property will be appropriately buttoned up and landscaped over the summer. He displayed a copy of the site plan with the existing and proposed footprints highlighted (**Exhibit P**).

B. Girty pointed out the locations of the proposed changes on a photograph of the south side of the existing house (**Exhibit Q**), compared the plane of the front face to the adjacent houses on an aerial photograph (**Exhibit R**), highlighted the changes to each side of the house on the elevation drawings, pointed out the pool location on the site plan, and stated that the access is proposed to be from Pettipaug Avenue similar to the Schneider house which they now rent.

T. Lomme stated that a new septic system is proposed and has been approved by the Health Department; the new system is farther from the beach/water than the existing system; the underground oil tank was replaced 7 – 10 years ago but because he has been unable to locate a town record for this he submitted a copy of the real estate disclosure form regarding the oil tank (**Exhibit S**). He added that the ultimate plan is to abandon or remove the tank and convert to propane, installing a 1,000 gallon underground propane tank instead of the 500 gallon one shown on the plan.

R. Neely asked about the Metcalf letter and it was noted that the pool fence is covered by the building code, the landscape plan is now part of the application, and the exterior lights are covered by one of the proposed stipulations. Relative to the comment about the generator and ac units, B. Girty submitted an aerial photo indicating the distances to abutters as well as the specifications for the proposed units (**Exhibits T, U, and V**). Relative to the comment about stormwater infiltration, M. Ozols stated that they had discussed this with T. Metcalf who agreed that storm perimeter trenches would satisfy this requirement. She added that the actual design will need to be reviewed by T. Metcalf. Relative to the paved apron, M. Ozols reminded the members that they have declined to require this in the past and that

paved aprons are discouraged by HDC. Members noted that they have not noticed an issue with driveway entrances causing deterioration of the road pavement.

T. Van Itallie inquired as to the distance from the new construction to the seawall / coastal resource. B. Girty measured it at about 67 – 68 feet.

C. Chadwick asked if there was any public comment. Frank Keeney, 41 Pettipaug Road, thanked B. Girty for the tremendous job redesigning an old, tired house to give it new life for years to come and he encouraged the Commission to approve the application.

R. Neely noted that this is a good project and, based on the discussion, moved that the Commission finds that the application for Site Plan and Coastal Site Plan Review to renovate the existing dwelling; demolish the attached garage; construct a new cabana and shed, install an inground swimming pool and complete associated site work in two phases at 11 Pettipaug Avenue, with the stipulations noted, is consistent with the goals and policies of the CT Coastal Management Act and that it complies with the review standards in the Borough of Fenwick Zoning Regulations, and approves the application based on the plans and documents submitted with the following stipulations:

- 1. There shall be no temporary on-site stockpiling of demolition debris. Any demolition debris/material, inclusive of the abandoned septic system shall be loaded directly into trucks or dumpsters for removal from the site. No demolition material shall be buried onsite.**
- 2. Silt fence shall be installed if deemed necessary by the Zoning Enforcement Officer at the time of construction and the site shall be stabilized at all times in accordance with best management practices. Final stabilization shall be required prior to issuance of Zoning Compliance for a Certificate of Occupancy.**
- 3. All exterior lighting shall comply with Section 4.5.1 of the Zoning Regulations and shall be directed so as to minimize wash onto neighboring properties.**
- 4. The Worcester landscape plan revised through 10/10/2018 and approved by HDC on November 3, 2018 shall be a required component of this approval. Any modifications must be approved by the Commission or its agent.**
- 5. Stormwater infiltration shall be designed and installed to the satisfaction of the Commission's engineer.**
- 6. The applicant shall verify that there is no buried oil tank on the property or shall verify that any existing oil tank has been abandoned in accordance with all building code requirements.**
- 7. The applicant shall verify compliance with Section 4.3.11 Air Conditioning Units and Generators prior to issuance of a zoning permit.**
- 8. Phase 1 shall include removal of the garage and the installation of the pool, storage facility, and cabana as well as landscaping sufficient to give a completed appearance to the site.**
- 9. No open foundations shall be installed in Phase 1.**
- 10. The applicant shall make every effort to build and finish each phase during the 10 month period from September through June and shall minimize any disturbed or unfinished appearance of the site and building between July 1 and Labor Day.**
- 11. An existing conditions survey (including the buildings, pool, septic system, drainage structures, driveway and patio/terrace) with distances to property lines, certification of finished ridge elevation from natural grade, and calculation of post construction coverage shall be submitted prior to issuance of zoning compliance for a Certificate of Occupancy. Such surveys shall be required following each phase of construction. All surveys and certifications shall be prepared by a licensed surveyor.**
- 12. Revised plans shall be submitted to address the above conditions and the approved site plan shall be endorsed by the Commission chairman and filed on the Land Records of the Town of Old Saybrook.**

13. **In accordance with the adopted fee schedule, the applicant shall reimburse the Borough for all engineering fees prior to issuance of a zoning permit for construction and prior to issuance of zoning compliance for a Certificate of Occupancy. Reimbursement shall include all costs incurred to that point in time.**

S. Boody seconded the motion and it was approved unanimously.

Approved 4-0-0

For: Chadwick, Boody, Van Itallie, Neely.

Against: None.

Abstain: None.

The record plans for this application are:

- *Site Development Plan Property of Hall Wilson, 11 Pettipaug Avenue, Borough of Fenwick*, by Angus McDonald Gary Sharpe & Associates dated 9/18/18 rev. through 12/27/18
- *East Elevation* (proposed) received 1/30/2019
- *West Elevation* (proposed) received 1/30/2019
- *North Elevation* (proposed) received 1/30/2019
- *South Elevation* (proposed) received 1/30/2019
- *Worcester landscape plan revised through 10/10/2018*

3. Proposed Amendments to Zoning Regulations Section 8 - Non-Conformance.

M. Ozols explained to the Commission that the current language in the Zoning Regulations is not in compliance with the recently passed law in Connecticut that allows nonconforming structures to be replaced unless they are intentionally abandoned and that she had asked Attorney Zizka to draft new language that would comply with the statute. During discussion, it was noted that although it is no longer allowable to set a maximum time period for reconstruction, a section was proposed by Attorney Zizka that would put some responsibility on the owner to establish intent to not abandon the nonconformity. R. Neely expressed concerns about this section as well as the application of the word “intentional”. After discussion, it was agreed that Attorney Zizka will be asked to address the language in this regulation when he attends a future meeting to discuss short term rental regulations. R. Neely agreed to prepare specific questions to forward to Attorney Zizka prior to the meeting.

C. Chadwick noted that the Commission should also clarify any ambiguity in Section 5.2.3 (50 foot setback from any watercourse, tidal wetland, coastal bluff/escarpment, beach or dune) the next time it amends the regulations.

4. Short Term Rental Regulations. Discussion in anticipation of proposed regulations for public hearing in late spring or early summer.

M. Ozols distributed an email from A. Wright encouraging the Commission to move forward on the topic and recommending a minimum of seven days and no more than three distinct rentals in any one calendar month.

C. Chadwick stated that he had reported to the Burgesses after the last P&Z meeting and the Burgesses expressed concern that the Commission had not moved forward with a regulation. He stated that the Commission should continue to consider the subject, but he is not convinced that there is consensus in the Borough as to how short-term rentals should be regulated or that the proposal by the Burgesses represents the majority view relative to the period of time that should be permitted. He reminded the Commission that although there seems to be agreement in opposition to nightly rentals, the regulation needs to find a balance between the need for rental income and the impact that rentals have on neighbors and the character of the Borough. Additionally, the regulations must not be confiscatory or be set up such that properties could be grandfathered in a manner that results in continuation of the behavior that has created the issue.

Discussion included the following:

- Town of Chester recently enacted a short-term rental regulation which may be helpful.
- Should the regulations differentiate between high season and off-season rentals?
- If the concern is the number of people or the number of cars, these same numbers can occur with owner occupied extended families.
- Inappropriate rentals that are clear zoning violations should not be confused with regular rentals.
- Renters are more likely to have less sensitivity to the character of the neighborhood or the flow of activity.
- One-night rentals should be prohibited.
- A seven-day minimum with no more than three rentals per month and family use only should substantially eliminate the compulsion to go through the grandfathering process. If current renters are essentially prohibited from their traditional rental practices by the regulation, they will be forced to seek to be grandfathered and members of the community will be alienated.
- Because it's too difficult to find two-week renters to make that length of time work, there should be a reasonable compromise.
- The process for grandfathering a certain use for a property should be set out in the regulation.
- A zoning regulation is cheaper and easier to enforce than an ordinance, but the Burgesses have the authority to enact an ordinance if P&Z does not move forward with a regulation.
- It is not the intention of P&Z to not address the issue. Something should be put together and brought to a public hearing and people should be urged to attend and comment on the actual language.
- Too short a time period may impact people who embody a lot of what Fenwick is and Fenwick will lose out if they leave.
- Rental should be defined in a way that addresses the use of the property as opposed to the number in the family or the duration of time.
- The longer the minimum period of time is, the greater the chance is for avoiding events or "commercial uses".

Members concurred that they need to determine the appropriate length of time / number of distinct rentals within a set time and a process for determining grandfathered status and then bring a proposal to public hearing. C. Chadwick will contact Attorney Zizka about revising the language and drafting a section on the process for grandfathering a property and another meeting will be scheduled in the near future in order to continue to move the subject forward.

5. Approval of Minutes of previous meeting: Planning & Zoning/Inland Wetlands – October 27, 2018.

R. Neely expressed concern as to whether statements by Attorney Zizka were accurately represented in the minutes. Members agreed that the minutes should be forwarded to Attorney Zizka for review for accuracy and R. Neely **moved to table the Borough of Fenwick Planning and Zoning Commission October 27, 2018 minutes. S. Boody seconded the motion and it was approved unanimously.**

Approved 4-0-0

For: Chadwick, Boody, Van Itallie, Neely.

Against: None.

Abstain: None.

6. Staff Report.

M. Ozols reported that:

Hepburn Preserve. GZA Geotechnical has been working on the plans for the hybrid living shoreline (salt marsh creation and stone sills) at the Hepburn Preserve. P&Z can expect an application in the near future. The LPLT has been seeking grants to fund the work.

Anticipated Applications. In addition to the Hepburn Preserve, P&Z can expect an application for additions and modifications at 20 Nibang (Zubretsky); and an in-ground pool at 29A Pettipaug (Pulver).

10 Mohegan Avenue. A minor modification to the approved plan for a vestibule on the north side of the addition has been approved administratively.

7. Other Business.

None.

8. Adjournment.

At 7:20 p.m., it was moved by S. Boody and seconded by R. Neely to adjourn the meeting. The motion passed unanimously.

Respectfully submitted,
Marilyn Ozols, Acting Secretary