

**BOROUGH OF FENWICK
PLANNING AND ZONING COMMISSION
INLAND WETLANDS AGENCY
SPECIAL MEETING
WEDNESDAY, MAY 15, 2019**

MINUTES

Present: Chuck Chadwick – Chair, Sallie Boody, T. Van Itallie, Bill Christensen, Art Wright, Rick Neely (Alternate), Marilyn Ozols – ZEO, Attorney Michael Zizka – Commission Counsel.

Absent: None.

Members of Public: None.

1. **Call to Order.** C. Chadwick called the meeting to order at 4:30 p.m. and thanked Attorney Zizka for attending. A quorum was established (Chadwick, Boody, Wright, Van Itallie, Christensen).

2. **Proposed Amendments to Zoning Regulations.**

a. **Section 8 - Non-Conformance.**

M. Ozols reminded the Commission that she had requested that Attorney Zizka update this section to bring it into compliance with recent changes in state statutes. Attorney Zizka stated that based on the language in the statutes, the intent of the owner must be considered. Mere cessation of use is not considered abandonment and the voluntary removal of a non-conforming structure is not deemed to be evidence of abandoning the non-conformity. He reviewed the proposed language and members discussed the draft with him. It was agreed that a definition for “non-conforming lot” should be added.

The proposed Section 8.4 provides a means for the homeowner to clarify when it is not the intent to abandon a non-conformity; it gives the landowner a benefit that he would not have without this specific language, but does not preclude him from making an argument at a future time even if the procedure is not followed.

T. Van Itallie did not believe that 8.4 and 8.7, which in various circumstances require the landowner to file notices of an intent of non-abandonment, did not square with the applicable governing statute (CGS 8-2), and represented traps for the unwary landowner which could improperly contribute to the loss of a property right - the legal non-conforming use/structure.

Attorney Zizka disagreed, stating that the provisions did not take away any property rights but simply gave zoning officials an administrative mechanism to help determine the landowner's intent. Even without filing a notice under these provisions, the landowner would retain the ability to claim non-abandonment before the ZBA if an enforcement order was issued.

After discussion, T. Van Itallie remained in disagreement with Sections 8.4 and 8.7 regarding termination and finding of non-abandonment.

The proposed Section 8.10 sets out a procedure whereby the Commission is able to make a determination regarding a lawful nonconformity and allow the property owner to avoid the more contentious route of appealing a Cease and Desist to the Zoning Board of Appeals. It was noted that if the Commission deems a use not to be a lawful non-conformity and the use continues, a Cease and Desist will be issued and it will have the normal ZBA appeal opportunity.

b. **Section 5.2.3 – 50-foot setback.**

The changes to Section 5.2.3.1 are intended to address ambiguities in the current language. After discussion of what should be permitted in the 50-foot buffer area, it was agreed to delete “or other accessory structure” and thereby limit the permitted structures to those specifically related to the

shoreline. The last sentence in paragraph 5.2.3.1 will also be deleted since the deletion of “accessory structure” makes it unnecessary.

The changes to Section 5.2.2.3 are clarifications to the existing language. It was requested that municipal infrastructure be included in this section in order to allow improvements to existing roads.

c. Short Term Rental Regulations.

Members reviewed the new definitions and the change to the definition of “dwelling unit”. The last sentence in Section 4.3.13 is new in order to clarify when a rental becomes a commercial use.

Section 4.3.14 provides criteria for short term rentals. After discussion, it was agreed that the number of rentals should be based on the calendar month rather than a 30-day period and that, contrary to the decision at the March 30 meeting, if any part of a rental falls in a calendar month, it counts as one of the three maximum rentals for that month. Thus, a rental that overlaps months will count as one of the distinct rentals for each of those months. It was agreed that this is more restrictive and serves to reduce the possible rentals in the month.

In response to questions, Attorney Zizka explained that it is legally permissible to enact both an ordinance and a zoning regulation. They can work in parallel and people will need to abide by both, so, ultimately, the most stringent requirements of each will control.

At 7:25 W. Christensen left the meeting and R. Neely was seated in his place.

The revised language for all three proposals will be reviewed at the meeting already scheduled for Monday, May 20 with the intent to finalize them and schedule a public hearing date.

3. Approval of Minutes of previous meetings: Planning & Zoning/Inland Wetlands – March 30, 2019.

S. Boody moved to accept the Borough of Fenwick Planning and Zoning Commission minutes for the March 30, 2019 meeting as corrected. A. Wright seconded the motion and it was approved unanimously.

Approved 5-0-0

For: Chadwick, Boody, Wright, Van Itallie, Neely.

Against: None.

Abstain: None.

4. Staff Report.

M. Ozols reported that

- The Zubretsky application will be heard on Monday, May 20.
- The work on the Arneault house will probably not start until after Labor Day.
- The emergency work on the Hepburn Family Preserve property has been completed. It did not come to P&Z because it is temporary to fix the blocked flow to the pond. The application for the permanent dune construction and creek realignment should come to P&Z by the end of the summer.

5. Other Business.

None.

6. Adjournment.

At 7:38 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