

**BOROUGH OF FENWICK
PLANNING AND ZONING COMMISSION
INLAND WETLANDS AGENCY
SPECIAL MEETING
MONDAY, SEPTEMBER 30, 2019**

MINUTES

Present: Chuck Chadwick – Chair, Sallie Boody, Art Wright, T. Van Itallie, Bill Christensen, Rick Neely (Alternate), Ralph Keeney (Alternate), Marilyn Ozols – ZEO.

Absent: None.

Members of Public: Brooke Girty, Hall and Connie Wilson, Frank Gilhool, Frank & Bev Keeney, Tom Riggio, Kathy Berluti, David Savin, Charles Andres, Valerie Bulkeley, Jessica Gay, Joan Wright, Matt Myers, Charles B. Robertson, Bill Webster, Wayne & Lori Arute, Patsy & Sam Jones.

1. **Call to Order.** C. Chadwick called the meeting to order at 5:00 p.m. A quorum of all regular members was established (Chadwick, Boody, Wright, Van Itallie, Christensen).

2. **ZSP19-002. 29A Pettipaug Avenue, map 10, lot 20-1.** Robert and Ann Pulver, owners; Brooke Girty Design, applicant; Site Plan / Coastal Site Plan Review for deck mounted swimming pool.

B. Girty presented. She stated that the pool is constructed first and then the deck is attached to the swimming pool. She indicated the deck location on both the site plan and floor plan and stated that the existing deck will look like it continues and the pool will be set into it; that the platform is 4 feet in height so it constitutes a barrier for the swimming pool and no railing is needed; that the pool is 9'2"x18'9"; that there will be planting around the deck; that the mechanicals will be under the existing deck and that is shown on the site plan; that coverage will increase from 12.8% to 14.2%; and that the existing roof drainage will not be impacted as the water will run through the deck to the drainage trench. She submitted a flood hazard addendum (EXHIBIT H) and a site plan revised through 9/30/19 (EXHIBIT I).

M. Ozols reviewed the proposed stipulations in her memo to the Commission (dated 9/29/19).

Members of the public and Commission members asked about and discussed pool drainage. B. Girty indicated that it is a small plunge pool, only 4 feet deep, and there already is an enormous drainage system on the property.

A. Wright stated that this is a minor addition that does not significantly impact any of the site plan review criteria.

Based on the discussion, S. Boody moved that the Commission finds that the application for Site Plan and Coastal Site Plan Review to construct a deck mounted swimming pool at 29A 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. The gravel trench for the collection and infiltration of roof runoff that will now be below the deck shall not be removed.
2. Silt fence and/or hay bales shall be installed at the time of construction if deemed necessary by the Zoning Enforcement Officer.

3. The location of the pool mechanicals shall be under the deck and behind the lattice as indicated at the meeting.
4. All work shall comply with the Borough of Fenwick Flood Ordinance.
5. The applicant shall make every effort to build and finish construction during the 10-month period from September through June or to minimize any disturbed or unfinished appearance of the site and building between July 1 and Labor Day.
6. An existing conditions survey (including the buildings and pool) with distances to property lines, and calculation of post construction coverage shall be submitted prior to issuance of zoning compliance for a Certificate of Completion. All surveys and certifications shall be prepared by a licensed surveyor.
7. 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.
8. In accordance with the adopted fee schedule, the applicant shall reimburse the Borough for any 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.

A. Wright seconded the motion.

Members discussed the motion and no stipulations regarding drainage or pool drainage were added.

The motion was approved unanimously.

Approved 5-0-0.

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

Against: None.

Abstain: None.

The record plans for this application are:

- *Improvement Location Survey, Property of Robert S. Pulver & Ann R. Pulver, 29A Pettipaug Avenue* by Angus McDonald Gary Sharpe & Associates dated October 6, 2015 rev. through 6/23/16
 - *The Pulver Residence, Proposed Pool* by Brooke Girty Design
 - First Floor Partial Plan, Sheet A1 dated 2/11/19 rev. through
 - West & South Elevations, Sheet A2 dated 2/11/19 rev. 9/30/2019
3. **ZSP19-003. 37 Pettipaug Avenue, map 5, lot 120.** Hall and Connie Wilson, owners; Brooke Girty Design, applicant; Site Plan / Coastal Site Plan Review for new single-family dwelling with attached garage and associated site work.

B. Girty presented. She submitted additional exhibits:

- EXHIBIT K: CRAHD approval (also emailed earlier in the day)
- EXHIBIT M: Site plan revised through 9/19/19 with additional revisions
- EXHIBIT N: Engineer plans dated 9/24/19 sheets S0 through S5
- EXHIBIT O: ac and generator information
- EXHIBIT P: Elevation Certificate

She oriented people on the site plan and stated that the Wilsons own half of the discontinued road; they decided on a long, thin house so that neighbors could retain a view; the house is in an A flood zone so it must be raised; they don't want a flight of stairs up from the garage so they put the garage on the end, three feet lower than the house and only five steps up; there is a little retaining wall on the east side that will be planted out; the proposed house locations is equidistant between the lot lines; the septic is in the northwest corner. She added that the plan has been revised to show silt fence and a stockpile location,

delete the split rail fence that is no longer there, better define the wall for the gradually sloping driveway, indicate that the planting bed will be 5 feet wide at the property line, the top of the wall will be 6" above the driveway to hold a tire, and the ac and generator will be on the deck at elevation 11. She reviewed the grading, noting that the neighbor to the north is at elevation 9 and this lot drops down 1 foot in the back; on the south side, the grade stays the same to accommodate the flood vents; there will be excavation for the garage; the foundation will be at grade on two sides. She stated that the structural engineer has added flood vents to the plan along with calculations and elevations and there is only a crawl space under the house. She stated that there is an easement in place for the water utility (the volume and page are in the notes); electrical service will be buried and will come off the existing transformer. C. Chadwick clarified that there will be trenching for the utilities.

B. Girty addressed the engineering review comments stating that there is a note about the discontinued road on the plan; details for the gravel drive and the driveway retaining wall have been added to the plan; the highest drop on the wall is 2 feet with 6 inches above the driveway; the wall will be poured concrete with stone facing; the eastern retaining wall will be no more than 30 inches in height to hold the terrace and will not need a handrail; there will be no grading on Borough property; the arrangement for access to the cottage is just to drive up the old Sequin Avenue and cut into the house; their engineer has spoken with the Commission's engineer about the drainage – there is a low spot on the southwest corner; it is not a lot of water for a yard drain; they are reducing the drainage in the area of the house so they will add a yard drain to hold 25% of the first inch of rain on the lot. C. Chadwick clarified that the runoff from the structure will go to dedicated drainage around the structure.

S. Boody noted that the application states that the work will be finished by July, 2019. B. Girty stated that it should indicate July, 2020.

In response to further questions, B. Girty stated that the laundry yard and the terrace are not part of the coverage and the building height is 31 feet, well under the 35 feet permitted.

M. Ozols reminded the Commission that none of the information submitted at the meeting had been reviewed.

C. Chadwick allowed public comment.

S. Jones, 31 Pettipaug Avenue, stated that the transformer is at the west side of the Bulkeley driveway and the water utility is in the triangle. He asked if 11 feet is the correct height for generators in the Borough. M. Ozols stated that the height is dependent on the specific flood zone.

P. Jones, 31 Pettipaug Avenue, stated that there are two huge drains and a low retaining wall on their property and the water drains quickly.

F. Gilhool, 10 Sequin Avenue, stated that he is the abutting neighbor to the north, B. Christensen is the brother-in-law of the presenter, and R. Keeney is an abutting property owner.

C. Chadwick stated that R. Keeney is not seated as a voting member. B. Christensen agreed to recuse himself and R. Neely was seated.

F. Gilhool, 10 Sequin Avenue, stated that he is happy Hall and Connie are moving next door; he loves the design; he bought his house with full knowledge that a house could be built next door; he tried to work outside of the meeting but has not been successful. He stated that he has two issues: 1) the setback has been calculated incorrectly, and 2) the retaining wall structure is set on the property line. He submitted photos of other houses in the Borough to show that every house in Fenwick is at grade. EXHIBIT Q.

Chuck Andres, an attorney practicing zoning and land use law and representing F. Gilhool, stated that he had submitted a letter earlier in the day and reviewed the points in it. He stated that the front yard setback of 30 feet should be measured from the edge of the discontinued Sequin Road because it is an interior lot and the frontage is on the accessway, which is the discontinued road. He added that this is

consistent with the purpose of a front yard which is to create an unobstructed area in front of the house, and the problem can be solved by either eliminating the porch or moving the house back.

He referenced Section 4.5.4a, which discusses harmony and design, and stated that the proposed alignment intrudes with the aligning of the houses on either side and the Commission has the authority under the regulations to consider this. He indicated the existing alignment on a printout from the Old Saybrook GIS (EXHIBIT R *not submitted*).

He inquired about the amount of fill.

B. Girty responded that it is under the amount that would require a separate application.

C. Andres pointed out the existing contours on the Gilhool lot, which slopes, and indicated that the applicant is bringing in a lot of fill and putting a retaining wall within 3 feet of the property line, which is a concern because the Gilhool property will now be lower. He added that the reason for this is to have less steps, which is not necessary and seems to be unprecedented in the Borough. He added that the retaining wall is a structure and does not comply with setback requirements because, although fences under 6 feet in height are excluded from the definition, walls are not.

In response to a request to summarize his concerns, he stated that 1) the front yard should be 30 feet from the edge of the abandoned accessway according to the requirements for an interior lot; 2) a structure cannot be in the required yard/setback area and by definition the retaining wall is a structure and, although it is retaining only 2 feet of soil, it is 2½ feet tall.

F. Gilhool, 10 Sequin Avenue, added that the wall is built to retain a driveway to an elevated garage.

B. Girty stated that this is not the only elevated garage. The Commission just heard an application to raise the Gosin garage; raising structures is needed to accommodate the flood regulations; they could remove the wall and slope the driveway, but this is nicer. She added that they could turn the house, but they chose not to in order to retain the neighbors' views, and that they had cut back the south porch in favor of this porch which the neighbors can see through. She added that she can see through four porches from her house.

Members continued to discuss the alignment, drainage, retaining wall as a structure, and front yard. R. Neely asked what Attorney Zizka had said relative to the front yard and M. Ozols indicated that he had said he was comfortable with the existing interpretation.

F. Gilhool, 10 Sequin, stated that things got mixed up when the roads went private, but this was not intended to create a benefit to the property owners; they could address the problem by moving the house back or taking the porch off; and that HDC had approved the project with the understanding that the house could be moved back. He added that he had spoken with Attorney Hudson who stated that discontinuing the road was for the purpose of keeping the roads private, not to create a benefit.

B. Girty stated that the land is low and is going to flood; they need to do everything they can to get out of the flood; Frank Sciamie lifted his house but not his garage and had to sandbag the garage every time the area flooded; when people build a house, they raise the grade but you don't see it later, you just see the final grade; if they move the house then they are behind the front house and have no view; the porch can't be where it overlooks cars on the adjacent lot or where there is no view; considering the size house that could have been built on this lot, this is minimal; there is some room to move the house closer to the septic system, but there would be no view on a property that was just bought.

M. Ozols reminded the Commission that the materials submitted at the meeting had not been reviewed and stated that she believed Attorney Andres' claim that a retaining wall is a structure that can't be in the setback is valid, even though it had never been addressed that way in the past.

A. Wright stated that where the accessway first hits the property determines the front lot line; the discontinued road has been merged into the overall property; and the houses are lined up. He added that they will need to continue the application because they need to look at the new documents.

Members added that they should also hear from their attorney and at least get a reinterpretation of the front yard and input on the retaining wall as a structure.

A. Wright moved to continue application ZSP19-003 to the October 8, 2019 Planning & Zoning Commission meeting. R. Neely seconded the motion and it was approved unanimously.

Approved 5-0-0.

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

Against: None.

Abstain: None.

There was additional discussion on the width of the discontinued road and any restrictions in the transfer. C. Chadwick stated that it will be researched for the next meeting.

B. Christensen resumed his seat.

4. Short Term Rental Regulation and Application for Finding of Non-Conforming Use or Structure – Discussion

C. Chadwick stated that because he may submit an application in the future, he was recusing himself for this discussion. R. Neely stated that anyone else who may apply in the future should probably also not be part of the discussion of the process. T. Van Itallie also recused himself but stated that he did not think it necessary for this part of the discussion. A. Wright agreed that it was not necessary when the Commission was acting administratively.

A. Wright chaired the discussion and seated R. Keeney and R. Neely.

M. Ozols stated that they had received information in their packets that included a copy of what was sent out in a blast on August 8 and has been on the website since that date, some general guidelines to help both applicants and the Commission in dealing with any applications for grandfathering that may be received, and a copy of the application form.

She also reminded the Commission that rentals that could be deemed to be primarily for the purpose of providing an event venue would not have been consistent with either the prior or current regulations and therefore should not be considered legally established. These rentals were frequently for less than one week.

Similarly, rentals to multiple unrelated persons would not have been family use, which has always been all that zoning allowed, should also not be considered as legally established. Such uses are not entitled to any grandfathered status.

She also reminded the Commission that if they are convinced by an applicant that a now nonconforming use was legally established, they should be very careful to frame any action in such a manner that the limits of what is grandfathered will be clear going forward. It is appropriate to add very specific stipulations to any decision that is made.

She added that the second point that she wanted to address related to rental commitments made prior to the July 20 P&Z meeting. She stated that technically all rentals occurring after October 1 must be compliant, but that the Commission had indicated that these may be allowed as a courtesy. She stated that she was not comfortable speaking for the Commission relative to this. She added that she had received one response early on regarding a single week rental next July where the rental agreement was signed well before the July 20 P&Z meeting and she believes this should be allowed. However, copies of eight weekend commitments were received today. She requested the Commission's direction as to whether or not they should be allowed and noted that any other noncomplying use will be cited as a violation unless the Commission recommends otherwise. She circulated copies of the eight agreements among the members and noted that the owner indicated that he has met with all of them to ensure that they are family rentals with no events and that he will not be requesting to be grandfathered.

Members first discussed the general grandfathering information and indicated that the information provided included many good examples and covered all the parameters.

A. Wright allowed comments from the public.

C. Robertson, 20 Fenwick Avenue, stated that people were surprised by the outcome of the P&Z meeting and they now also have the effect of grandfathering; the guidelines are too ambiguous and should be more stringent; the Commission should look only to rental agreements on file or the applicant should have the burden of providing copies of the agreements and tax returns showing the income; it should be a 10 year look back; because the issue has been contested for the past few years the contested use should not be the basis for establishing a non-conformity; the Commission should take the lowest number per year in any look back; additional restrictions for duration and season should be created.

L. Arute, 9 Pettipaug Avenue, questioned how the board determined that anyone should be grandfathered since this was never a permitted use.

A. Wright responded that there was never a prohibition against rentals; if it was for use as a domicile, it was permitted.

L. Arute, 9 Pettipaug Avenue, did not agree because if a number of homes are rented, the family atmosphere is not preserved. She also stated that the regulations never allowed advertising.

A. Wright stated that creating a transient population and a lot of activity is something that the Commission has to consider in looking forward, but the Commission does have to allow someone to continue a nonconforming use that was legally established before the regulation was adopted; that is the law in the state of Connecticut. The burden is on the applicant, not the Commission, to prove that over a course of time that they have in fact been legally noncompliant. The Commission will look into the question of advertising.

S. Jones, 31 Pettipaug Avenue, asked about the situation with the Fire Marshal and who will be responsible for policing grandfathered uses.

A. Wright stated that although it is not part of zoning, people have to comply with all fire code requirements; the Commission will look at applications for legal nonconformity and the ZEO will monitor for compliance.

J. Wright, 549 Maple Avenue, asked about the punishment for violations.

A. Wright stated that violations would be cited and violators taken to court if they do not come into compliance.

V. Bulkeley, 30 Pettipaug Avenue, asked about the difference between a regulation and an ordinance and stated that the thought of grandfathering is a total anathema to residents, and they are upset.

A. Wright stated that an ordinance is passed by the Borough and a regulation by P&Z; they each have a different process for enforcement; regulations can be enforced by P&Z, but an ordinance can only be enforced by going to court.

M. Ozols explained that a violation is addressed with a Notice of Violation / Cease and Desist; any continued violation would then be a violation of that Order; and further violation could result in P&Z taking the violator to court.

J. Gay, 44 Sequassen Avenue, recalled that Attorney Zizka had explained that Commission members do not need to recuse themselves when making policy, only when applying policy, and had also explained grandfathering.

M. Ozols stated that the Commission had set up a process whereby anyone contending that they should be grandfathered had to convince the Commission, all Borough residents, that they were entitled to continue the use. Without this, the process would be for the ZEO to issue an Order if a violation was perceived and

the person would then have to explain to the ZEO why he/she should be grandfathered; the ZEO could then withdraw or continue the Order; if the person disagreed, he/she could appeal the ZEO's decision to the ZBA, not P&Z.

At this time S. Boody left the meeting.

T. Riggio, 30 Fenwick Avenue, expressed concern that a renter could have 30 or 40 people in a house as guests.

A. Wright stated that the regulations can't enforce against guests differently for renters than for residents; they have to be treated the same.

D. Savin, 37 Sequassen Avenue, stated that they had consulted with three attorneys including Campbell Hudson and grandfathering must be for a long time and be open and notorious; the Commission members should recuse themselves if they have an interest in the outcome; and that the legal notice was published in the Middletown Press and no one reads that paper.

M. Ozols stated that the legal notice was also posted on website, on the kiosk, and in the office and that the minutes were posted on the website and everyone who signed up was notified by email when they were.

C. Robertson, 20 Fenwick Avenue, stated that this is a behavior that needs clear, strict guidelines that are applied equally to all.

M. Ozols stated that the guidelines are just guidelines; any applicant will need to come in with documentation that convinces the Commission. The burden is on the applicant to find documentation that is convincing.

W. Arute, 9 Pettipaug Avenue, stated that he supported C. Robertson and grandfathering is putting people at risk; there is stress on all the property owners; there are different people every weekend, truckloads of them.

L. Arute, 9 Pettipaug Avenue, stated that consideration should be given to the entire population of the Borough and their property values and safety.

R. Neely stated that the Commission did not approve grandfathering; it is in state law and grandfathering is something that the Commission must adapt to now that it has passed the regulation. The Commission is trying to come up with a process to evaluate that applications for grandfathering are legitimate.

F. Keeney, 41 Pettipaug Avenue, responding to multiple comments that one person could not police the use, stated that there are plenty of people in the Borough that are helping to police some of the activity that is going on and, in fact, have made some changes to some of the more recent rentals that were in clear violation of private property law.

A. Wright stated that no action would be taken on this subject and members should consider the comments by the public. C. Robertson stated that he would forward a copy of his comments to the Commission.

A. Wright turned the discussion back to the 8 commitments made prior to the new regulation and asked the Commission whether they should be allowed.

T. Van Itallie, 15 Pettipaug Avenue, speaking as a member of the public stated that based on the previous communications, they should be allowed.

C. Robertson, 20 Fenwick Avenue, stated that it would be ridiculous to approve them given that they were received at the last minute. He also referred to Section 4.3.13 of the regulations prohibiting exterior signage and stated that the internet is the new signage.

F. Keeney, 41 Pettipaug Avenue, reminded the Commission that the owner has stated he will not be applying for grandfathering and these rentals were all made prior to the regulation.

R. Keeney stated that he did not think that these rentals are the ones to make red flags; the owner has done his best to screen out inappropriate use and these were all booked in advance of the regulations.

R. Keeney moved to allow these eight pre-booked situations to move forward based on the owner's saying that it won't happen again. B. Christensen seconded the motion.

Members further discussed. R. Neely suggested allowing this weekend or making them contingent upon continuing compliance as family rentals.

F. Keeney, 39 Pettipaug Avenue, suggested that the Commission reserve the right to rescind in the future if events unfold that are not compliant.

R. Keeney noted that the owner had stipulated that these commitments had been screened to not allow for weddings, parties, special events.

L. Arute, 9 Pettipaug Avenue, stated that the number in each group indicated that they are not families.

W. Arute, 9 Pettipaug Avenue, stated that the Commission should consider the neighbors.

Members considered amending the motion or making a new motion.

The motion failed 0-4-0.

For: None.

Against: Wright, Christensen, Neely, Keeney.

Abstain: None.

R. Neely moved to allow the upcoming rental this weekend and consider the remaining ones at the next meeting after reviewing the events of this weekend. B. Christensen seconded the motion and it was approved unanimously.

Approved 4-0-0.

For: Wright, Christensen, Neely, Keeney.

Against: None.

Abstain: None.

At this time C. Chadwick and T. Van Itallie returned to their seats and R. Keeney was also seated.

5. **Approval of Minutes** of previous meeting: Planning & Zoning/Inland Wetlands – July 30, 2019.

A. Wright moved to accept the Borough of Fenwick Planning and Zoning Commission minutes for the July 30, 2019 meetings as submitted. B. Christensen seconded the motion and it was approved unanimously.

Approved 5-0-0

For: Chadwick, Christensen, Wright, Van Itallie, Keeney.

Against: None.

Abstain: None.

6. **Staff Report.**

M. Ozols reported that

- The meeting on October 8 will include a proposed addition at 100 Sequassen (Rosenthal).
- Applications are still anticipated for 6 Mohegan (Sciame), the Shoreline Resiliency project at the Hepburn Family Preserve, 34 Pettipaug (Christensen) and possibly 2 Agawam (Reynolds).
- Both the tee box changes on the golf course and the equipment replacement at the playground are subject to administrative review only under Section 4.2.2 of the Zoning Regulations that stated “minor modifications to existing uses (golf course, parks, parkland, playgrounds and recreations areas) 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”.

7. Other Business.

A. Wright inquired whether there have been any issues with contractor vehicles at 11 Pettipaug. M. Ozols stated that she is not aware of any to date, but the contractor has been made aware of the requirements.

C. Chadwick asked about the language in deeds transferring discontinued roads. M. Ozols stated that the land cannot be used to create an additional lot. C. Chadwick asked for a copy of the deed for the next meeting. Members also requested that Attorney Zizka be sent a copy of the correspondence received at the meeting from Attorney Andres and be asked to comment specifically on the issues of the front property line and the wall in the setback. Members added that they should look at amending the regulations to address these issues.

Members asked about fines for violations. M. Ozols stated that there is enabling legislation that allows a citation ordinance with fines that can be levied for each day of a violation. The statute requires appointment of a Citation Hearing Officer if such an ordinance is enacted.

8. Adjournment.

At 8:13 p.m., it was moved by B. Christensen and seconded by T. Van Itallie to adjourn the meeting. The motion passed unanimously.

Respectfully submitted,

Marilyn Ozols, Acting Secretary