

**BOROUGH OF FENWICK
PLANNING AND ZONING COMMISSION
INLAND WETLANDS AGENCY
SPECIAL MEETING
TUESDAY, OCTOBER 8, 2019**

MINUTES

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

Absent: Bill Christensen.

Members of Public: Brooke Girty, Hall and Connie Wilson, Frank Gilhool, Frank & Bev Keeney, Attorney Ed Cassella, Bill Webster, Jessica Gay, Wayne Arute, Carol Robertson, Charles B. Robertson.

1. **Call to Order.** C. Chadwick called the meeting to order at 5:00 p.m. and seated R. Neely. A quorum was established (Chadwick, Boody, Wright, Van Itallie, Neely).
2. **ZSP19-004. 100 Sequassen Avenue, map 11, lot 17-1.** Richard & Vicki Rosenthal, Trustees, owners; Brooke Girty Design, applicant; Site Plan / Coastal Site Plan Review for garage addition with living space above, porch enclosure, elevator, and associated site work.

B. Girty presented. She pointed out the existing house and easements as well as the proposed additions on the site plan, and stated that most of the project was precipitated by the need for a garage; the living space is on the second floor so they are adding an elevator from the garage to the second floor, but not to the third; they propose to replace the external staircase with an enclosed stairway; the floor above the garage will be expanded kitchen and bedroom; the septic system is new; the driveway will stay in pretty much the same place; there will be gravel trenches under the eaves and no gutters; they have applied for septic approval but it has not yet been received; the existing house was not built to the current V Zone, but the addition will be; the lowest floor of the addition will be limited to garage and storage; the setbacks are shown on the plan and the plan conforms to coastal setback requirements; and coverage will be 8.5%.

M. Ozols stated that most of the engineering comments have been met, but the Commission may want to add a stipulation requiring compliance with the Flood Ordinance in addition to the proposed stipulations.

J. Gay, 44 Sequassen Avenue and 98 Sequassen Avenue, asked about the septic location and whether there will be a second kitchen. B. Girty pointed out the location of the septic system and stated that they are expanding the kitchen, not adding a second kitchen.

C. Chadwick asked whether they anticipated completing the work in one season. B. Girty responded that they did.

Based on the discussion and the plans submitted, S. Boody moved that the Commission finds that the application for Special Permit and Coastal Site Plan Review for building additions, and site improvements at 100 Sequassen 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/hay bales shall be installed prior to the start of construction and additional silt fence/hay bales shall be installed if deemed necessary by the Zoning Enforcement Officer**

during construction. 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. Approval by CRAHD shall be required prior to the issuance of a Zoning Permit. Any site design changes that are required by CRAHD shall require review by the Planning and Zoning Commission unless determined by the Zoning Enforcement Officer to be consistent with the approved plan.
4. All exterior lighting shall comply with Section 4.5.1 of the Zoning Regulations and shall be Dark Sky compliant.
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, septic system, drainage structures, and driveway) with distances to property lines, and calculation of post construction coverage shall be submitted prior to issuance of Zoning Compliance for a Certificate of Occupancy. All surveys and certifications shall be prepared by a licensed surveyor.
7. Certification of the actual cost of construction shall be submitted prior to issuance of Zoning Compliance for a Certificate of Occupancy.
8. 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.
9. 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.
10. All construction shall comply with the Borough's Flood Ordinance.

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.

The record plans for this application are:

- *Site Development Plan, Property of Richard B. Rosenthal, 100 Sequassen Ave.* by Angus McDonald Gary Sharpe & Associates dated June 13, 2018 rev through 10/4/19
- *"Rosenthal Cottage, 100 Sequassen Avenue, Proposed Plan* by Brooke Girty Design
 - *First Floor Plan*, Sheet A1, dated June 28, 2018, rev'd through 10/4/19
 - *Second Floor Plan*, Sheet A2, dated June 28, 2018, rev'd through 10/4/19/19
 - *Third Floor Plan*, Sheet A3, dated June 28, 2018, rev'd through 10/4/19/19
 - *North & East Elevations*, Sheet A4, dated June 28, 2018, rev'd through 10/4/19
 - *South & West Elevations*, Sheet A5, dated June 28, 2018, rev'd through 10/4/19
- *"Hall and Connie Wilson Cottage, Pettipaug Avenue (should be Rosenthal, 100 Sequassen Avenue)* by Brooke Girty Design and Morrissey Engineering LLC
 - *First Floor and Foundation Plan*, Sheet S1, dated October 3, 2019
 - *Second Floor Framing Plan*, Sheet S2, dated October 1, 2019
 - *Roof Framing Plan*, Sheet S3, dated October 3, 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. Continued from September 30, 2019.

B. Girty presented. She presented the revised plans and stated that in order to catch this building season, they temporarily removed the porch and retaining walls and now show contours at the terrace and the driveway.

M. Ozols added that the house was moved back slightly so that the front is now 30.6 feet from the edge of the discontinued road. Drainage has also been added to the plan, but the Commission's engineer was not able to speak with the applicant's engineer prior to the meeting about the drainage along the regraded driveway, so there is a proposed stipulation relative to that.

C. Chadwick summarized the issues brought up by Attorney Andres at the previous meeting: setback, retaining walls in the setback, drainage issues caused by the addition of fill, and the viewshed or tie line to the water. Members agreed that all had been addressed. A. Wright added that maintaining the tie line was not actually a requirement.

F. Gilhool, 10 Sequin Avenue, stated that he appreciates and welcomes the changes.

A. Wright stated that the stipulation regarding maintaining access should also include 31 Pettipaug Avenue.

M. Ozols stated that the stipulation regarding the generator and ac elevation was added because, with the changes in the plans, it was now not consistent on all sheets.

C. Chadwick asked about the copies of the Sequin Avenue deed and easement that members had received.

M. Ozols stated that the Commission had asked about them at the prior meeting, so they were included in the information.

B. Girty stated that the code is unclear, and they had endeavored to follow the interpretation they had been given. C. Chadwick responded that the Commission will undertake to rewrite the regulation to remove the ambiguity quickly and will not wait for a convenient time for a public hearing.

Based on the discussion and the plans submitted, S. Boody moved that the Commission finds that the application for Site Plan and Coastal Site Plan Review to construct a new single family dwelling at 37 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. **Silt fence/hay bales shall be installed prior to the start of construction and additional silt fence/hay bales shall be installed if deemed necessary by the Zoning Enforcement Officer during construction. 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.**
2. **All construction shall comply with the requirements of the Flood Ordinance and all utilities/utility service equipment shall be located at elevation 12 or above.**
3. **All construction shall be consistent with HDC Certificates of Appropriateness or modifications thereof.**
4. **The applicant shall endeavor to coordinate the test cycle for the generator with that for other generators in the general area.**
5. **The applicant shall ensure that access to 31 and 39 Pettipaug Avenue is not compromised in any way.**

6. All drainage shall be as approved by the Commission's engineer and shall be designed so as to not adversely impact any neighboring properties.
7. All exterior lighting shall be directed downward and shall comply with Section 4.5.1 of the Zoning Regulations and shall be Dark Sky compliant.
8. 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.
9. An existing conditions survey (including the buildings, 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. All surveys and certifications shall be prepared by a licensed surveyor.
10. Revised plans shall be submitted to address the above conditions to the satisfaction of the Commission's engineer and the revised site plan shall be endorsed by the Commission chairman and filed on the Land Records of the Town of Old Saybrook.
11. 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.

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.

The record plans for this application are:

- *Site Development Plan, Property of Hall M. Wilson & Constance B. Wilson, Sequin Avenue* by Angus McDonald Gary Sharpe & Associates dated August 15, 2019, rev through 10/1/19
- *Hall and Connie Wilson Cottage, 37 Pettipaug Avenue*, Proposed Plan by Brooke Girty Design
 - *Sheet A1, Proposed First Floor Plan*, dated Apr 30, 2019, rev'd through 10/1/19
 - *Sheet A2, Proposed Second Floor Plan*, dated Apr 30, 2019, rev'd through 10/1/19
 - *Sheet A3, Proposed South & East Elevations*, dated Apr 30, 2019, rev'd through 10/1/19
 - *Sheet A4, Proposed North & West? Elevations*, dated Apr 30, 2019, rev'd through 10/1/19
- *Hall and Connie Wilson Cottage, Pettipaug Avenue* by Brooke Girty Design and Morrissey Engineering LLC
 - *General Notes and Typical Details*, dated 10/1/19, sheet S0
 - *Crawl Space and Foundation Plan*, dated 10/1/19, sheet S1
 - *First Floor Framing Plan*, dated 10/1/19, Sheet S2
 - *Second Floor Framing Plan*, dated 10/1/19, Sheet S3
 - *Roof Framing Plan*, dated 10/1/19, Sheet S4
 - *Sections and Details*, dated 10/1/19, Sheet S5

T. Van Itallie asked how the action today would impact a new application if the Commission amended the regulations such that the porch could be returned. M. Ozols responded that any new application is reviewed under the regulations in effect at the time the application is submitted.

4. Short Term Rental Commitments Executed Prior to July 20, 2019 – 21 Pettipaug Avenue.

M. Ozols summarized that these are the commitments provided at the last meeting but not acted on pending review of the rental over the weekend. She distributed a list of the rental dates with commitment dates and number in party. The commitment dates are the Airbnb dates.

E. Cassella stated that he was representing Jack Schneider and wanted to present two facets that are important:

1) Jack is mortified about what has occurred and understands that what has occurred is looked on poorly and he apologizes profusely. Grandfathering is a difficult concept, but what is clear in the regulations is that the use that is allowed is single family residential. A property cannot be used for groups of people that are not related coming together and using a house. It was in your regulations before; it's in your regulations now. This overrides what we're talking about now.

2) The function of events is gray. People have had events in Fenwick for a long time, but renting out his house for people to have events is not a single-family use. There is a fairly well-defined line there and Jack understands that. What we're talking about here is the five remaining rentals this year and the two next year. Jack has confirmed that these are single family uses. He also understands that events, weddings, groups of people are unacceptable.

This may not be legally posited, but it is important to relay this sentiment.

C. Chadwick reviewed the list of rentals. E. Cassella stated that Jack has asked and been told that they are all family units.

C. Chadwick stated that the Commission has expressed an interest in trying to accommodate commitments made prior to the regulation but asked why there are only five more this year. E. Cassella stated that there were other rentals that Jack cancelled, including a church group, because they were not families, and he is planning to use the property at Thanksgiving.

C. Chadwick expressed a concern that this particular individual has not provided the full story in the past. E. Cassella stated that he could not speak to that but that he had asked Jack whether these are family groups because, even under the old regulations, it had to be a family unit. He added that this is a nuance that is not apparent to people on its face but in analyzing a situation like this, it is one of the issues. Jack is in a position where he wants to do whatever he can do to work with the ZEO, the Commission, and the Borough to make this right but he has obligations that he is asking to be approved. E. Cassella added that he understood there were no issues over the weekend and there may be a renter there now.

T. Van Itallie asked the significance of the fact that these rentals were committed to before the regulation was changed and what would happen if they are denied. E. Cassella stated that he was not present to talk about grandfathering, but Jack is trying to cooperate. He is not arguing grandfathering at this time. If these are denied, a Notice of Violation will be issued, and they will appeal to the ZBA and argue that they are grandfathered because they can establish a legal nonconforming use. There are two ways to address grandfathering. Someone can go to the Commission and work with them to establish a legal nonconformity or they can appeal a Notice of Violation to the ZBA. He added that at this time he could not make any representations as to whether Jack would apply for grandfathering because he had not looked into that.

C. Chadwick stated that if it turns out that any of the renters are not a family, the ZEO is justified in citing a violation. E. Cassella stated that he did not disagree.

S. Boody noted that two of the rentals are in the next calendar year and, if allowed, should count against the ten permitted per year.

Members agreed that no issues were observed with the rentals over the weekend and.

The meeting was opened to public comment.

W. Arute, 9 Pettipaug Avenue, stated that he and Lori would like to go on record as stating that they do not believe the board has acted properly in passing the new short term rental regulation for a variety of reasons. They do not think it was passed in the best interest of the Borough as a whole and

there are and will be a number of problems surrounding it. They do plan on pursuing their options to remedy the situation. To further adopt grandfathering conditions around this is inappropriate. Zoning never permitted short term rentals. Fenwick is a single family, residential community. They were never a permitted use, so no one should be considered for nonconforming use.

It was clarified that the agenda item is only to discuss the requests before them. It is not to discuss process and procedures.

Members noted that grandfathering is part of state law, and that every case turns on its facts. There is no methodology. The facts are presented, and a decision is made.

S. Boody added that the Borough residents seem to think that P&Z made up grandfathering and that is not the case. It is not something the Commission imposed; it is part of the state legal system and it's there whether we want it or not.

C. Robertson, 20 Fenwick Avenue, stated that he was unsure whether this would be an agenda item in the future, but he would like to explain why he submitted his letter.

C. Chadwick stated that needs to be deferred to another meeting since it is not on the published agenda.

F. Keeney, 41 Pettipaug Avenue, stated that it is off agenda, but he would like to ask the Commission to investigate an existing violation.

M. Ozols stated that it would be addressed under her report.

T. Van Itallie stated that the item before them was whether to extend the courtesy of allowing these specific rentals to continue without issuing a Cease and Desist.

R. Neely moved to allow the one that began yesterday and the one that begins on October 10, and to allow the following ones individually if the Chairman in consultation with the ZEO has determined no adverse behavior.

There was no second and the motion failed.

C. Chadwick stated that he was concerned that this would become cumbersome and if there were a clear violation, the owner would be cited. R. Neely stated that he did not want to give carte blanche to an absentee landlord. A. Wright stated that there was good reason to recognize that the owner is trying to do the right thing, but the Commission should draw a line in the sand to indicate that none of these rentals could be used to establish any legal nonconformity going forward.

A. Wright moved to allow the three October rentals contracted prior to July 1, but if there is any violation of any sort the Commission will order a Cease and Desist, and these rentals cannot be used in any way, shape, or form as an argument for a legal nonconformity.

R. Neely seconded the motion.

C. Chadwick reminded that Commission that they can say it cannot be used as an argument, but counsel has indicated on several occasions that all it takes is one person with an opinion one way or the other to initiate a legal action. R. Keeney asked about the language at the time the regulation was adopted. A. Wright recalled that they recognized that there may be some rentals committed prior to the change and they would review them.

T. Van Itallie expressed concern about liability and E. Cassella stated that the property owner had entered into contracts for these rentals.

R. Keeney stated that if a rental goes outside the boundary of a family unit, the ZEO can issue a Cease and Desist and this should be communicated loudly. The Commission has the power if conditions (family units only, no parties, etc.) are not met. The Commission does not need to set the Borough up for legal fees.

A. Wright stated that the rentals are nonconforming. The Commission is allowing them in the spirit of community, but the property owner still must follow all other aspects of the regulation. The rentals are not legally conforming.

The Chairman called for the vote.

The motion passed 3-2-0.

For: Wright, Van Itallie, Neely.
Against: Chadwick, Boody.
Abstain: None.

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

Corrections were made for “Robertson”, “C. Robertson”, “water utility” and “T. Riggio”

A. Wright moved to accept the Borough of Fenwick Planning and Zoning Commission minutes for the September 30, 2019 meetings as corrected. T. Van Itallie seconded the motion and it was approved unanimously.

Approved 5-0-0

For: Chadwick, Christensen, Wright, Van Itallie, Neely.
Against: None.
Abstain: None.

6. Staff Report.

M. Ozols reported that:

- An application has been received for 6 Mohegan, so a meeting will be scheduled for the near future.
- Applications are still anticipated for the Shoreline Resiliency project at the Hepburn Family Preserve, 34 Pettipaug (Christensen) and possibly 2 Agawam (Reynolds).
- As a reminder, the goal of zoning is to obtain compliance, not to play “gotcha”, and she has always worked with violators to obtain compliance and has reserved the use of violation notices for flagrant violations or those activities or structures where the property owner has ignored all other attempts to obtain compliance.
- Because it was the first weekend under the new short-term rental regulation, she drove the Pettipaug/Agawam block at around 10:30 both Saturday and Sunday mornings, and drove all of Fenwick around 5:30 on Saturday and around 3:00 on Sunday checking for compliance.
- 25 Pettipaug is currently being used by a group of unrelated persons for a yoga retreat. This is not family usage and is, therefore, not permitted. Members asked how she proposed to proceed. She stated that she would contact the property owner to discuss the violation and if there is resistance to compliance, she would issue a Notice of Violation. Members concurred with this.

7. Other Business.

Religious Holidays.

C. Chadwick stated that there had been complaints that this meeting conflicted with Yom Kippur, but this was unintentional and inadvertent. Members agreed to make every effort not to conflict in the future.

Regulation Amendments.

- Walls as Structures.

Members agreed that walls, especially two foot retaining walls, should not be considered as structures, but were of the opinion that they might want to specify a height lower than the six feet allowed for fences.

- Front yard / Interior Lots.

Members agreed that the current language relative to front yard, front lot line, interior lots, etc. is ambiguous and needs to be fixed. The subject of discontinued roads relative to interior lots and lots which also front on public roads further confuses the issue. Members generally agreed that the front lot line for lots with public road frontage is on the public road and there is not an additional front yard on a discontinued road, and that the setback should be measured from the actual lot line after a discontinued road is merged with a lot, not from the edge of the former road. After considerable discussion, the members did not come to a consensus relative to the front lot line on lots with no direct public road frontage.

- Signage.

Members believed that the regulations referred to onsite signage but agreed to consult counsel on this relative to the statement at the previous meeting that the internet is the new signage.

Attorney Zizka will be asked to draft language to address the issues and members agreed to move forward as soon as possible.

8. Adjournment.

At 7:06 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