

**BOROUGH OF FENWICK
PLANNING AND ZONING COMMISSION
INLAND WETLANDS AGENCY
SPECIAL MEETING
TUESDAY, NOVEMBER 19, 2019**

MINUTES

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

Absent: None.

Members of Public: Brooke Girty, Frank Gilhool, Frank Keeney.

1. Call to Order.

C. Chadwick called the meeting to order at 5:01 p.m. and seated R. Neely as a voting member. He stated that T. Van Itallie and R. Keeney were present by phone but would not be voting. A quorum was established (Chadwick, Boody, Wright, Christensen, Neely).

2. ZSP19-005. 6 Mohegan Avenue, map 10, lot 13-2. A Piece of Paradise, owner; Brooke Girty Design, applicant; Site Plan / Coastal Site Plan Review for north side addition and breakaway screen panels below existing residence.

S. Boody stated that there was no indication in the file that the abutters had been notified as required.

B. Girty presented. She oriented the Commission on the site plan and stated that the owners want to add one more bedroom to the living space on the second floor; the codes have changed since the house was built and the addition is proposed for what is now the only buildable area on the lot; it is currently a 3 bedroom house and will go to a 4 bedroom house.

S. Boody stated that the B100a form signed by CRAHD indicates that it is currently a 4 bedroom house and this will not change. Members discussed the discrepancy and M. Ozols stated that the health code allows the addition of one bedroom, but if the Commission chooses to approve the application it can add a stipulation that CRAHD clarify its approval prior to issuance of a zoning permit.

B. Girty stated that there is no living space on the ground level, only an entryway and storage; they are proposing to add screens to the existing open area on the south side under the existing first floor overhang; on the next floor the proposal is to add a new bedroom in the front; on the top floor they will add closets for the master bedroom. She pointed out the addition on the elevations, noting the front gambrel addition with an inset porch and the south side screens. She stated that the work is all in the buildable area of the property and it is not over on lot coverage.

T. Van Itallie referred to the CJL line on the site plan and the 50 foot setback from the beach, and stated that a good chunk of the house is in this area, which is a prior nonconforming area. He referred to the west elevation drawing which shows new construction and a peaked roof (a vertical addition) and questioned to what degree this peak falls in the nonconforming area.

B. Christensen stated that he sees this as an addition to the existing structure where the proposal is all within the conforming section. A. Wright and S. Boody agreed. C. Chadwick added that the question relates to whether some characteristic of the nonconforming structure is being enlarged. S. Boody read Section 8.2 of the Regulations for the Commission's consideration. A. Wright interpreted the section to state that one cannot alter the non-conforming characteristic of the structure but can add on in a conforming area.

C. Chadwick asked if there were any members of the public that wished to speak. There were none.

Members discussed the abutter notification requirement in the Regulations, noting that Gosin, the Borough, and the Land Trust would need to be notified. M. Ozols noted that all abutters had been notified of the HDC application, so they were aware of the proposed activity. A. Wright referred to Section 4.5.3 of the Regulations and R. Neely stated that it is the applicant's responsibility to provide notification. B. Girty stated that she did not know if this had been done or not, but indicated that if the neighbors had not been notified, they would have the right to appeal if the application is approved.

R. Neely moved to continue the application for the purpose of providing evidence that the neighbors have been notified in accordance with the regulations and clarification on the number of bedrooms reviewed by CRAHD. S. Boody seconded the motion.

Members discussed the motion. A. Wright stated that he would consider an approval with a stipulation that the applicant confirms that all abutters have been notified or that they have no objection. B. Christensen stated that the Commission must go by the rules that have been laid out.

The chair called for a vote and **the motion failed 2-2-0.**

For: Boody, Neely.
Against: Chadwick, Wright.
Abstain: Christensen.

Members discussed the date of receipt (November 6) and Attorney Zizka reminded them that a site plan is automatically approved if there is no action within 65 days of receipt.

S. Boody moved to deny the application with the stipulation that the application is deemed resubmitted at tonight's meeting without any further application fee. B. Christensen seconded the motion and it was approved unanimously.

Approved 5-0-0.

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

A meeting to hear the resubmitted application was set for Monday, December 2, 2019 at 12:00 noon.

3. Proposed Regulation Amendments: definitions and regulations relative to front yard and walls as structures.

Attorney Zizka stated that the issues encountered determining the front yard are common in municipalities with "crazy lot lines" as opposed to rectangular and square lots. In addition, Fenwick has a number of discontinued roads, which makes the definitions even harder to apply. Fenwick has relatively few lots, but many discontinued streets and irregular lots. He added that the accessway definition likely was adopted from another municipality and probably based on flag lot configurations; difficulty arises when this definition is applied instead to lots on discontinued road. He reviewed the various interpretations for front lot line under the existing regulations and the four options proposed in the draft regulations, noting that the Commission should also consider the possibility that the Borough may discontinue all of its roads to privatize them in the future, and the definitions should still stand if this occurs. He stated that in cases where a road is discontinued, it still serves as an accessway or private easement and this should be a consideration in determining the front lot line from which the setback is measured. Measuring from the original front lot line serves the purpose of maintaining the same structure configuration as when there was a road, and of maintaining the same distance from the vehicles which still have a legal right over the accessway. He added that it is typical to have front, side, and rear lot lines in order to have setbacks, and this necessitates definitions. He stated that the regulations need to exactly define what the Commission wants to be the front lot line in order to preclude ambiguity in the future. He clarified that the situation created by a discontinued road is distinguishable from the situation where additional land that is not a road is acquired.

Members discussed the draft language and alternate language at length, inclusive of diagramming various configurations to understand the application of the definitions.

C. Chadwick stated that he would like time to consider all the work that was done on maps and the information that Attorney Zizka has provided. The Commission is also in receipt of comments from F. Gilhool. He suggested that the Commission do some homework. M. Zizka stated that he had a couple questions, but otherwise agreed with the front designation on the maps as determined under the application of the proposed language.

Members agreed to review the material and continue the discussion at the next meeting following the special meeting for the 6 Mohegan Avenue application.

Attorney Zizka reviewed the other points in his memo dated November 19, noting that a zoning violation has to be something someone is actually doing on his property, not how he is advertising it, and Connecticut uses the term stone fence to mean a wall so the difference is clarified in the draft regulation. He added that the draft language is presented for the Commission’s consideration and is not meant to be a recommendation.

F. Gilhool, 10 Sequin Avenue, reviewed the information in his memo dated November 19, noting that the draft is materially better than the existing language and that, since the discontinued roads continue to be used, the front lot line should remain as it was prior to the discontinuance. He also reminded the Commission that he had submitted pictures of a number of garages in the Borough to substantiate his contention that no garages have been elevated, and he requested that the Commission consider having the Wilsons drop the garage because it is a “violation” of the regulations. He added that he would like to see the Borough consider that no walls be built with dirt filled behind them, noting that the rules were put in place for Fenwick to stay like it is; allowing for barriers and land filling creates a community that is not what Fenwick is.

In reference to the discussion of raising the grade, M. Ozols reminded the Commission that compliance with the Flood Ordinance will require property owners to raise buildings when they reach the substantial improvement threshold, and this may be a reason to allow a change in grade. B. Christensen asked R. Keeney if his garage has flooded. R. Keeney stated that it has and that he has had five inches of sand in it. He added that the Wilson lot is further from the beach but at the same elevation.

Attorney Zizka stated that the recent Connecticut Supreme Court case Mayer-Wittman v. Zoning Board of Appeals of the City of Stamford supported reduction in nonconformity as a basis for a variance and, in a footnote, supported the constitutional right to rebuild a structure damaged by flooding even when rebuilding required variances in order to achieve FEMA compliance.

4. Fee Schedule.

C. Chadwick summarized that the revised schedule adds a fee for a Finding of Nonconforming Structure or Use, corrects the fee for Special Permits, and clarifies when a fee for review of a Flood Addendum is required. Members discussed the fee for Finding of Nonconformity, noting that it should not cost more to proactively address the subject before the Planning and Zoning Commission than to wait for a Cease and Desist and appeal it to the ZBA in a more adversarial setting. It was agreed that the fee should be the same as for the Appeal of a ZEO Order.

Based on this discussion the proposed fee schedule with the P&Z changes is as follows:

Application	Fee
Zoning Permit	\$150
Special Flood Hazard Area Permit (Addendum to Zoning Permit)	A Zone: \$150 V Zone: \$300 (for substantial improvement not attached to a

	Site Plan or Special Permit application)
Site Plan Review/Coastal Site Plan Review; Special Permit/Coastal Site Plan Review	\$1,200
Site Plan Review/Coastal Site Plan Review – Section 4.3.11 Air Conditioners & Generators	\$500
Modification of Previously Approved Site Plan Requiring Commission Review	\$200 (unless waived by Commission)
Finding of Nonconforming Use or Structure	\$800
Regulation Amendment	\$1,200
Variance/Coastal Site Plan Review (ZBA)	\$1,200
Appeal of ZEO decision/order (ZBA)	\$800
Inland Wetlands Permit	Significant Impact: \$1,200 No Significant Impact: \$800
STATUTORY FEES	As may be required by law*

* Current statutory fee is \$60 added to each separate application above (Flood permit is an addendum, not a separate application).

C. Chadwick moved to forward the proposed fee structure with the new fee for Finding of Nonconforming Structure or Use, the correction of the Special Permit fee, and the clarification of the Flood Addendum fee to the Board of Warden and Burgesses for adoption. B. Christensen seconded the motion and it was approved unanimously.

Approved 5-0-0

For: Chadwick, Christensen, Wright, Christensen, Neely.

Against: None.

Abstain: None.

5. **Approval of Minutes** of previous meeting: Planning & Zoning/Inland Wetlands – October 8, 2019.

S. Boody moved to accept the Borough of Fenwick Planning and Zoning Commission minutes for the October 8, 2019 meetings as presented. R. Neely seconded the motion and it was approved unanimously.

Approved 5-0-0

For: Chadwick, Christensen, Wright, Christensen, Neely.

Against: None.

Abstain: None.

6. **Staff Report.**

M. Ozols reported that:

- Applications are still anticipated for the Shoreline Resiliency project at the Hepburn Family Preserve, Maple Avenue / Nibang Avenue Intersection Improvements, 34 Pettipaug, 2 Agawam, possibly 104 Sequassen, possibly 7 Pettipaug.
- An application has also been received for a Finding of Nonconforming Use or Structure for 15 Pettipaug (Van Itallie).

7. **Other Business.**

None.

8. **Pending Litigation:** 9 Pettipaug, LLC and Eniotna, LLP v Planning & Zoning Commission for the Borough of Fenwick. Executive Session anticipated.

A. Wright moved to go into executive session at 7:23 p.m. to discuss pending litigation and invite Attorney Zizka and M. Ozols to attend. S. Boody seconded the motion and it was approved unanimously.

Approved 5-0-0

For: Chadwick, Christensen, Wright, Christensen, Neely.

Against: None.

Abstain: None.

B. Christensen left the meeting during the executive session.

S. Boody moved to come out of executive session at 7:54 p.m. A. Wright seconded the motion and it was approved unanimously.

Approved 4-0-0

For: Chadwick, Christensen, Wright, Christensen, Neely.

Against: None.

Abstain: None.

No actions were taken during the executive session.

9. **Adjournment.**

At 7:54 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