

**Borough of Fenwick
Zoning Board of Appeals
Public Hearing and Special Meeting – January 12, 2019
Minutes**

A Special Meeting of the Borough of Fenwick Zoning Board of Appeals was held on Saturday, January 12, 2019 at 9:00 a.m. at 4 Nibang Avenue.

MEMBERS PRESENT: Robert Gay, Martha Staniford, Laurie Goldsmith, Ann Pulver (Alternate), Kathy Berluti, Becki Renshaw, (Alternate).

MEMBERS ABSENT: Peter Brainard, Jill Bornstein (Alternate).

OTHERS PRESENT: Marilyn Ozols, ZEO; Terry Lomme, Brooke Girty, Matt Myers, Frank Keeney, Bev Keeney, Lori Arute, Scott Pulver.

1. Call to Order.

Chairman Gay called the meeting to order at 9:00 a.m. and indicated that R. Gay, M. Staniford, L. Goldsmith, K. Berluti, and B. Renshaw would be the voting members for this meeting.

2. Election of Officers.

On a motion by M. Staniford, R. Gay was nominated for Chairperson. K. Berluti seconded the nomination and **R. Gay was unanimously elected Chairperson.**

The motion carried, 5-0-0.

IN FAVOR: Gay, Staniford, Goldsmith, Berluti, Renshaw

OPPOSED: none

ABSTAINED: none

On a motion by R. Gay, M. Staniford was nominated for Vice Chairperson. K. Berluti seconded the nomination and **M. Staniford was unanimously elected Vice Chairperson.**

The motion carried, 5-0-0.

IN FAVOR: Gay, Staniford, Goldsmith, Berluti, Renshaw

OPPOSED: none

ABSTAINED: none

On a motion by R. Gay, B. Renshaw was nominated for Secretary. M. Staniford seconded the nomination and **B. Renshaw was unanimously elected Secretary.**

The motion carried, 5-0-0.

IN FAVOR: Gay, Staniford, Goldsmith, Berluti, Renshaw

OPPOSED: none

ABSTAINED: none

- 2. Public Hearing: ZBA 18-001. 11 Pettipaug Avenue, map 10, lot 26.** Hall Wilson, owner; Antoine Arnault, applicant; request for variance of Section 5.1.2 (15% maximum coverage) and 8.5 (no change to nonconformity) to permit modifications to existing house and substitution of pool and shed for garage and portion of house, reducing coverage from 18.2% to 18.1%. Coastal Site Plan Review required.

Attorney T. Lomme and B. Girty presented. Attorney Lomme displayed the site plan and stated that the property includes about 34,000 square feet; it currently contains a house and garage; and they are actually reducing the coverage. He continued that because they are reducing coverage, they are requesting a variance based on a reduction in non-conformity (bringing the property more into conformance) rather than hardship, and that he had submitted a brief to support this. He pointed out the areas on the plan where the coverage changes

and noted that the Arnaults have rented in Fenwick for several years, are familiar with Fenwick, and will make the house look like it should. He stated that last year there had been a change in the law and he believed PA17-39, which states that a preexisting nonconformity can be replaced, would allow what they are proposing without a variance, but Zoning's legal counsel disagreed, so he believed it was more appropriate to request a variance than to appeal the decision of the ZEO. M. Ozols clarified that counsel had advised her that because the proposal replaces building coverage with pool coverage in a different location, he did not believe it was protected by the statute. Attorney Lomme added that currently there is no judicial guidance as to how the statute should be interpreted.

B. Girty stated that the Arnaults love the neighborhood and want to include many of the characteristics common in Fenwick in the design and that this house is perfect for them because they need twelve bedrooms. She added that they like that at the Schneider house, they can look over the grass to the lighthouse, and she had reviewed the surveys for the properties along this part of Pettipaug Avenue and determined that this house is set back farther than the others. Therefore, they are extending the wraparound porch 12 feet, which will put it in line with the Bornstein house and should not impact the view from Arute or Van Itallie. She displayed an aerial photograph (Exhibit O) to demonstrate this and noted that L. Van Itallie had reviewed the plans for HDC and had no issue.

M. Staniford stated that the porch extension contributes to the coverage. B. Girty agreed and used a copy of the site plan with the existing coverage highlighted in yellow (Exhibit P) to indicate the existing and proposed coverage.

On a street side photo of the house (Exhibit Q), she indicated a second floor piece that had been added at some point in time and would be removed. B. Girty noted that the three car garage would not be needed and would be removed and replaced with a shed for a golf cart, and she stated that they want to change the parking to tuck in the cars so that they will be less visible. She pointed out this change on the landscape plan; noted that the plans had been reviewed by HDC; and reviewed all the elevation drawings.

A. Pulver stated that the proposal is a lot more open and open to the sky than what is there and that the porch has a pass through look.

L. Arute, 9 Pettipaug Avenue, stated that from her house, they will be looking at porch and house rather than land and water. R. Gay responded that the new part that they will see is open porch that they can see through.

B. Girty presented photos of the views from various locations (Exhibits R to Y) and members reviewed them.

B. Girty continued that there is not a lot of private area on the property but there is more space on the Arute side to accommodate an outdoor living area like people are now adding in order to better inhabit their properties. She indicated the proposed location of the terrace on the landscape plan, noting that the Arute driveway abuts the property line affecting the perception of the size of the yard, and added that the proposed terrace, which does not count for coverage, is similar to what is on all 9 other properties.

R. Gay reviewed which items are being removed or added and are relevant to the variance application. He noted that except perhaps for the Haviland house, this is the longest house in the Borough and the biggest change visually for most people in the Borough is the removal of the rear portion; visually, the house will be dramatically different in the rear.

M. Myers, 12 Neponset Avenue, stated that HDC had approved the design with no stipulations indicating that it is consistent with the design criteria.

R. Gay continued that visually they are removing an enormous amount of the building that looms out and fills air space; that they are not claiming hardship but rather are reducing the nonconformity relative to coverage which relates to light and air and the purposes of Zoning; and that they are eliminating bulk so it is not just the de minimus reduction in coverage, but the visual reduction in bulk and in air space with an emphasis on community space.

M. Staniford stated that she is more concerned with the extension towards the water that is adding to space use.

Attorney Lomme stated that if the extension was increasing coverage, they would be looking for a hardship variance which would be different; the extension is significantly set back from the allowed building setback in the front; the house as proposed will be more attractive than what is there and will include a code complying septic system.

B. Girty stated that the front is open porch that you can look through, not solid wall or arborvitae, but acknowledged that it is hard on neighbors who have gotten used to the use of a neighbor's land. She offered to lay out all the adjacent surveys to show the front edge of each house, but members felt that the aerial photograph provided sufficient information.

R. Gay noted that the most sensitive part of the proposal is the porch but there is so much view in Fenwick that this should not be an issue; he is most concerned with how the back of the house now looms and this is being addressed.

M. Staniford asked if any of the neighbors had sent letters. M. Ozols replied that they all had been notified but no letters were received.

L. Arute, 9 Pettipaug Avenue, stated that it is not that she does not like the proposal, but that all of the improvements are on their side of the property and they are concerned with the view being obstructed; it feels like an awful lot of change in a very small area.

F. Keeney, 41 Pettipaug Avenue, asked if the current porch conforms to setback. The answer was yes. He then asked if the proposed porch conforms to setback and the answer was yes.

Attorney Lomme stated that no setback variances are being requested.

S. Pulver, 29A Pettipaug Avenue, stated that the property is already grandfathered for coverage and they are only reconfiguring it; they are taking what they are entitled to and making it more appealing.

R. Gay repeated that if they are moving towards conformity, that is a basis for a variance.

L. Goldsmith asked if the Board had granted any other variances based on reduction in nonconformity and if there could be an issue with setting a precedent.

M. Ozols stated that one had been granted for 10 Park Avenue, but they should not be concerned with precedent since each case must be considered on its own merits and the courts had established that reduction in nonconformity is a legal basis for a variance. She clarified for the Board that even though it might be a legal basis for a variance, only the ZBA can grant a variance; a ZEO cannot grant a variance or issue a permit without the variance; the Board can legally grant a variance if it finds the proposal reduces a nonconformity and is consistent with the comprehensive plan for the Borough.

F. Keeney, 41 Pettipaug Avenue, stated that the Board had been articulate about the reasons for granting a variance but he had not heard any rationale for not granting one.

R. Gay stated that the reduction in the current looming characteristic of the building and the proposed design, which is consistent with the architectural character of the other houses in the row, are in conformance with the comprehensive plan.

Attorney Lomme added that the proposed construction does not extend into the setback.

F. Keeney, 41 Pettipaug Avenue, noted that this is a once in a lifetime opportunity to breathe new life into one of the most historic homes in the Borough and he encouraged the Board to grant the variance.

S. Pulver, 29A Pettipaug Avenue, stated that he hoped the Board will validate this great opportunity for Fenwick.

Attorney Lomme added that the current owners understand that this is a change to their house and are in favor of the proposal.

R. Gay verified that no one else wished to speak and **B. Renshaw moved to close the public hearing. M. Staniford seconded the motion and it was approved unanimously.**

The motion carried, 5-0-0

IN FAVOR: Gay, Staniford, Goldsmith, Berluti, Renshaw
OPPOSED: none
ABSTAINED: none

3. Possible decision: ZBA 18-001. 11 Pettipaug Avenue.

Chairman Gay summarized that their vote was not based on hardship but rather on the legal basis that the proposed design reduces the current nonconformity. M. Staniford noted that the reduction was only .1%. R. Gay agreed, but indicated that the visual reduction is significant and the proposal, with the reduction, is consistent with the comprehensive plan inclusive of the intent of the regulations.

Based on the discussion in and following the hearing, **B. Renshaw moved to grant a variance of Section 5.1.2 (15% maximum coverage) and 8.5 (no change to nonconformity) to permit modifications to the existing house and substitution of a pool and shed for a garage and portion of the house, reducing coverage from 18.2% to 18.1% for application ZBA18-001, 11 Pettipaug Avenue, as shown on the plans submitted. The motion was seconded by M. Staniford and approved unanimously.**

The motion carried, 5-0-0

IN FAVOR: Gay, Staniford, Goldsmith, Berluti, Renshaw
OPPOSED: none
ABSTAINED: none

Members determined that the change in coverage had no adverse impacts on the coastal resources.

A motion was made by L. Goldsmith to find application ZBA18-001, 11 Pettipaug Avenue, consistent with the goals and policies of the Connecticut Coastal Management Act. The motion was seconded by R. Gay, and approved unanimously.

The motion carried, 5-0-0.

IN FAVOR: Gay, Staniford, Goldsmith, Berluti, Renshaw
OPPOSED: none
ABSTAINED: none

The record plans are:

- Improvement Location Survey Property of Hall Wilson Showing proposed Improvements by Angus McDonald Gary Sharpe & Associates dated 10/19/18
- Property Survey Plan Property of Hall Wilson Showing proposed Improvements by Angus McDonald Gary Sharpe & Associates dated 9/18/18 rev.10/19/18
- Landscape Plan, dated 10/10/18
- Elevation Drawings labeled Exhibits I through J
 - East Elevation (proposed)
 - North Elevation (proposed)
 - South Elevation (proposed)
 - West Elevation (proposed)

4. Approval of Minutes: April 1, 2017.

B. Renshaw moved to approve the minutes of the April 1, 2017 special meeting as presented. R. Gay seconded the motion and it was approved unanimously.

The motion carried, 5-0-0.

IN FAVOR: Gay, Staniford, Goldsmith, Berluti, Renshaw
OPPOSED: none
ABSTAINED: none

6. Other Business.

M. Staniford stated that in the past they had had some really good training and requested an update session. It was suggested that this be scheduled for May with Attorney Zizka.

7. Adjournment.

M. Staniford moved to adjourn the meeting at 10:25 a.m. B. Renshaw seconded the motion and it was approved unanimously.

Respectfully submitted,
Marilyn M. Ozols
Acting Recording Secretary