

**Borough of Fenwick  
Zoning Board of Appeals  
Public Hearing and Special Meeting – July 23, 2019  
Minutes**

A Special Meeting of the Borough of Fenwick Zoning Board of Appeals was held on Tuesday, July 23, 2019 at 5:00 p.m. at 4 Nibang Avenue.

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

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

**OTHERS PRESENT:** Marilyn Ozols, ZEO; Brooke Girty, Ed Cassella, Joe Shea.

**1. Call to Order.**

Chairman Gay called the meeting to order at 5:05 p.m. and indicated that R. Gay, L. Goldsmith, K. Berluti, B. Renshaw, and A. Pulver would be the voting members for this meeting.

**2. Election of Officers.**

Members noted that they had elected officers at the previous meeting, but that this is a new fiscal year. They concurred with keeping the same slate of officers.

**R. Gay moved to nominate R. Gay for Chairperson, M. Staniford for Vice Chairperson, and B. Renshaw for Secretary. L. Goldsmith seconded the nominations and R. Gay was elected Chairperson, M. Staniford was elected Vice Chairperson, and B. Renshaw was elected Secretary.**

**The motion carried, 5-0-0.**

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

OPPOSED: none

ABSTAINED: none

- 2. Public Hearing: ZBA 19-001. 20 Nibang Avenue, map 10, lot 3.** J. M. Zubretsky, trustee, owner; E. Cassella, applicant; request for variance of Section 5.3.2 (32.5' side yard required, 19' requested for building addition), Section 5.3.3 (32.9' rear yard required, 16.8' requested for relocated pool), Sections 8.2/8.5/8.6 (no change to nonconformity) to permit 22'2"x8' addition over existing garage and replacement of existing pool with new pool farther from property and CJL lines.

Attorney E. Cassella and B. Girty presented. Attorney Cassella stated that they had received HDC approval, P&Z approval for those items that met the setback, and that they were now applying for a variance for items in the setback area, after which they will need to go back to P&Z. He and B. Girty pointed out the approved additions on the site plan and elevation drawings. They also pointed out the 8'x22' east addition and the existing and relocated pool. Attorney Cassella stated that the old pool was 12.3 feet off the rear, side and side CJL setback lines, and the proposed pool complies with the side lot and CJL setbacks and is more conforming as to the rear setback. He entered 6 photographs into the record (Exhibit I) and pointed out the locations of the pools and proposed addition on them. He added that the new patio will be dry laid (pervious) as opposed to the current impervious patio, and the old pool area will become lawn, thus decreasing both coverage and impervious coverage. Relative to the addition, he stated that it will go above the existing garage and within the existing footprint. Further, because this is the second widest lot in the Borough and the side setback is a function of lot width, the proposed 19' setback would be compliant on 75% of the lots in Fenwick and the addition would be allowed. He distributed an analysis of the area and width of the lots in Fenwick (Exhibit J) to illustrate his point and stated that the fact that the lot width calculation makes this setback larger than almost all of the lots in the Borough and the lot area calculation for the rear setback makes this setback larger than almost all of the lots in the Borough, creates an undue hardship and exceptional difficulty, which is a reason to grant a variance.

Additionally, he asserted that the reduction in nonconformity for the pool can be a standalone basis for granting a variance for both the addition and the pool.

M. Ozols clarified that the variances relate only to the side and rear setbacks, not to the CJL setback which must go to P&Z. Attorney Cassella added that that application is for a special permit for an accessory structure within the CJL setback.

Relative to the CAM application, Attorney Cassella stated that the site design includes roof infiltration and appropriate sedimentation and erosion controls.

R. Gay asked how the pool would drain and J. Shea (contractor) indicated that the pool is only drawn down about 18" a year and that discharge goes onto the lawn where it is filtered by the sandy soil.

The applicants clarified that there will be no change to the existing covered porch and sunroom.

B. Renshaw noted that the pool was becoming less nonconforming so that seemed easy.

Members noted that the addition could be moved to the front of the house in the area of the existing porch where it would create the same amount of interior space but not require any variances. B. Girty stated that it is an option, but the owners like the existing porch and the last remodel added variety to the front of the house which they would like to maintain. Members also noted that, although it is not their concern, the house aesthetics are improved with the side addition.

Attorney Cassella further addressed the hardship stating that the width of the lot applies a 32 foot setback and the reduction in nonconformity can be viewed as relevant to any activity on the lot, not just the pool relocation; the existing coverage is compliant – they are not overbuilding, there is room on the lot, and the coverage is reduced.

R. Gay added the additional peculiarity of the garage already being on the lot line, noting that if this were not the case, they would probably not consider granting the variance. Additionally, the Borough is the neighbor on all sides of this property, and, while not an oddity, is mitigating in that no neighbors are impacted by the addition, and it does not create a congested look or violate the intent of the Zoning regulation to keep low density. However, there is an alternate, complying location for the addition, making it troubling to allow an increase in nonconformity.

R. Gay verified that no one else wished to speak and **L. Goldsmith moved to close the public hearing. K. Berluti seconded the motion and it was approved unanimously.**

**The motion carried, 5-0-0**

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

OPPOSED: none

ABSTAINED: none

### **3. Possible decision: ZBA19-001 20 Nibang Avenue.**

R. Gay reviewed the thoughts expressed in the hearing and asked each member to comment.

A. Pulver stated that the addition is not infringing on anyone else's space, looks better, and is not significant relative to the whole house. She added that she has no issue with the pool.

L. Goldsmith stated that she has no issue with the pool but does have a concern with making something more nonconforming when there is another option.

B. Renshaw agreed with A. Pulver noting that there is already a nonconforming structure there and this little addition on top is not significant. Further, moving the addition to the front might ruin the front of the house.

K. Berluti stated that the pool is not an issue and no neighbors are impacted by the addition.

Members agreed to vote on the two requests separately and R. Gay summarized that the pool relocation is a reduction in nonconformity – it is farther from the rear property line and not in the side setback.

Based on the discussion in and following the hearing, **B. Renshaw moved to grant a variance of Section 5.3.3 (32.9' rear yard required, 16.8' requested for relocated pool), to permit replacement of the existing pool with a new pool farther from the property and CJL lines, as shown on the plans submitted. The motion was seconded by K. Berluti and approved unanimously.**

**The motion carried, 5-0-0**

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

OPPOSED: none

ABSTAINED: none

Relative to the side addition, L. Goldsmith stated that it is aesthetically preferable in the proposed location and she can consider the overall reduction in nonconformity.

R. Gay stated that the width of the lot is a consideration; the garage and house are already in this location; the addition is over the ugly garage roof and improves the appearance of the house; it is not crowded – there are no neighbors; and the small addition does not impede and views. But, the addition could be put someplace else.

A. Pulver stated that the Board has done a thorough analysis and should proceed with a vote.

Based on the discussion in and following the hearing, **A. Pulver moved to grant a variance of variance of Section 5.3.2 (32.5' side yard required, 19' requested for building addition) and Sections 8.2/8.5/8.6 (no change to nonconformity) to permit a 22'2"x8' addition over the existing garage, as shown on the plans submitted. The motion was seconded by K. Berluti and approved unanimously.**

**The motion carried, 5-0-0**

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

OPPOSED: none

ABSTAINED: none

Members noted that there were no issues with the Coastal Site Plan Review.

**R. Gay moved to find application ZBA19-001, 20 Nibang Avenue, consistent with the goals and policies of the Connecticut Coastal Management Act. The motion was seconded by L. Goldsmith and approved unanimously.**

**The motion carried, 5-0-0.**

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

OPPOSED: none

ABSTAINED: none

The record plans are:

- *Proposed Improvements The Zubretsky Cottage, 20 Nibang Avenue, Borough of Fenwick*, by Richard W. Gates, Land Surveyor, & Thomas E. Metcalf, P.E., L.S., dated May 31, 2019, rev. through 6/25/19
- *The Zubretsky Cottage, 20 Nibang Avenue, Fenwick, Old Saybrook, CT*, by Brooke Girty Design, May 28, 2019
  - *Proposed Plan*, sheet A1
  - *Proposed Elevations*, sheet A2

#### **4. Approval of Minutes: January 12, 2019.**

**B. Renshaw moved to approve the minutes of the January 12, 2019 special meeting as submitted. L. Goldsmith seconded the motion and it was approved unanimously.**

**The motion carried, 5-0-0.**

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

OPPOSED: none

ABSTAINED: none

#### **6. Other Business. None.**

#### **7. Adjournment.**

**B. Renshaw moved to adjourn the meeting at 5:52 p.m. K. Berluti seconded the motion and it was approved unanimously.**

Respectfully submitted,  
Marilyn M. Ozols  
Acting Recording Secretary