

**Borough of Fenwick
Zoning Board of Appeals
Public Hearing and Special Meeting – February 1, 2021
Virtual Meeting
Minutes**

A Special Meeting of the Borough of Fenwick Zoning Board of Appeals was held on Monday, February 1 at 4:00 p.m. via the Zoom meeting format.

MEMBERS PRESENT: Robert Gay, Martha Staniford, Peter Brainard, Laurie Goldsmith, (Alternate), Ann Pulver (Alternate), Frank Gilhool (Alternate).

MEMBERS ABSENT: Kathy Berluti, Becki Renshaw.

OTHERS PRESENT: Marilyn Ozols, ZEO; Attorney E. Cassella, George Penniman, Carol Robertson, John Coutts

1. Call to Order.

Chairman Gay called the meeting to order at 4:02 p.m. He seated alternate F. Gilhool and indicated that R. Gay, M. Staniford, P. Brainard, L. Goldsmith, and F. Gilhool would be the voting members for this meeting.

- 2. Public Hearing: ZBA21-001. 25 Pettipaug Avenue, map 10, lot 22.** Maura Bulkeley, owner, Brooke Girty, applicant; request for variance of Section 5.1.2 (15% maximum coverage, 17.8% proposed – reduction of 1 square foot); and 8.2/8.5/8.6 (no change, extension or expansion of a nonconforming characteristic) to permit reconfiguration and renovation of existing house. Coastal Site Plan Review required.

Attorney E. Cassella presented on behalf of the applicant. He stated that the variances are required because the existing historical house is currently nonconforming with respect to coverage at 5,051 square feet or 17.8% where 15% is required; the request is for 5,050 square feet; all of the activity is within the setback; and there is a net reduction of 1 square foot. He displayed a color-coded site plan (Exhibit H) to identify the items to be removed and the items to be added and displayed the elevation drawings to further identify the detail of the changes. He stated that much of the change is on the west elevation and he used photographs (Exhibit I) to point out the 2-story bump-out to be removed and the new second floor infill. He concluded that the variance represents a reduction in nonconformity; the additions are all in areas that are otherwise compliant with Zoning; and it is a beautiful design.

P. Brainard asked for clarification of the porch “square off”. Attorney Casella demonstrated on the site plan and photographs the corner of the porch that would be filled in, noting that the new porch roof will match the existing porch and the porch will not be enclosed.

R. Gay asked about the hardship. Attorney Cassella stated that there is a change to the nonconformity; all of the change is otherwise in compliance with the regulations and all of the new construction is within the area of existing development; it is a reduction in nonconformity which can be used in lieu of hardship; and it is an existing nonconforming house with not much being done.

E. Cassella stated that Jack Schneider, abutter, had emailed to indicate that he had reviewed the plan and approves (Exhibit J).

There was no public comment.

R. Gay verified that no one else wished to speak, and closed the public hearing at 4:20 p.m.

3. Possible decision: ZBA 21-001, 25 Pettipaug Avenue.

L. Goldsmith asked if there is a minimum amount for reduction in nonconformity to justify a variance. R. Gay replied that reduction in nonconformity is an acceptable rationale in lieu of hardship, but the Board needs to make its decision based on the facts of the case. M. Staniford noted that if they decide to grant the variance, it is not necessarily because of the .001 reduction, but because of other terms. P. Brainard stated that this is a very old house; coverage is already over 50% making it difficult to do anything; and they are not making it worse. R. Gay added that it is not a grandiose redo of the house, which they might not look on too favorably; the applicant is actually streamlining the house because of the elimination of the wall of windows; what is being added you almost don't see; and the changes are within the framework of the house as it stands now. Members agreed.

Based on the discussion in and following the hearing, **M. Staniford moved to grant a variance of Sections 5.1.2 (15% maximum coverage, 17.8% proposed – reduction of 1 square foot); and 8.2/8.5/8.6 (no change, extension or expansion of a nonconforming characteristic) to permit reconfiguration and renovation of the existing house. The motion was seconded by L. Goldsmith and approved unanimously.**

The motion carried, 5-0-0.

IN FAVOR: Gay, Staniford, Brainard, Goldsmith, Gilhool

OPPOSED: none

ABSTAINED: none

The minimal changes to the property have no adverse impacts on the coastal resources.

R. Gay moved to find application ZBA21-001, 25 Pettipaug Avenue, consistent with the goals and policies of the Connecticut Coastal Management Act. The motion was seconded by M. Staniford and approved unanimously.

The motion carried, 5-0-0.

IN FAVOR: Gay, Staniford, Brainard, Goldsmith, Gilhool

OPPOSED: none

ABSTAINED: none

The record plans are:

- *Site Development Plan, Property of Maura Bulkeley, 25 Pettipaug Avenue, Borough of Fenwick* by Angus McDonald Gary Sharpe & Associates, Inc., Oct 23, 2020
- *Bulkeley Cottage, 25 Fenwick Avenue, Fenwick, CT* by Brooke Girty Design
 - *Proposed Plan* (first floor) dated 7/20/2020, rev. 1/21/2021, sheet A1
 - *Proposed Plan* second floor) dated 7/20/2020, rev. 1/21/2021, sheet A2
 - *Proposed Elevations* (east & north), dated 7/20/2020, rev. 1/21/2021, sheet A3
 - *Proposed Elevations* (west & south), dated 7/20/2020, rev. 1/21/2021, sheet A4

4. Public Hearing: ZBA21-002. 20 Fenwick Avenue, map 10, lot 52. Carol Robertson, owner and applicant; request for variance of Section 4.3.11.2a (26.13' setback from property line) to install ac units 10' from property line. Coastal Site Plan Review required.

G. Penniman, architect, presented. He reminded the Board that this is a project that is currently underway and stated that the new mechanical system needs three condenser units to manage the whole house – previously there was air conditioning only on one floor and a single condenser unit was sufficient; the logical location from a building point of view is on the side of the house where the previous unit was located; the three units will extend to within 10 feet of the property line; immediately to the north is a 41 foot wide strip of land that can't be built on so the nearest property owner is Jones and that house is 62 feet from the Robertson property line and 72 feet from the closest condenser; the area is heavily planted which further reduces the impact. C. Robertson added that the existing condenser can actually be seen and the new ones will be screened; the old unit had a 75 dba rating and the new ones are rated at 51 dba which means the neighbors are not likely to hear anything annoying; and Andrea Jones, the nearest neighbor to the north, is okay with the location.

Members asked about alternate locations. G. Penniman stated that there are limits on the distance the ac lines can extend; they would be in front of the new bay window if located adjacent to the bilco; the units are lower

than the existing hedge; the proposed locations will be better hidden from both Fenwick Avenue and the Jones house than the current unit.

Members agreed that the new units will be better hidden and more quiet than the existing unit. M. Ozols reminded the Board that the intent of the regulation is to keep noise impact away from windows on adjacent properties.

P. Brainard reminded the members that it is not about whether the neighbor is okay because a variance is in perpetuity and property owners can change. He added that this may be easier because of the strip of land between the Robertson's and Jones' that is owned by the Coutts family.

F. Gilhool stated that this is a unique situation where the strip of Coutts property provides a level of comfort so that the proposal does not violate the spirit of the regulation; there already was an ac unit in this area and the new units reduce the sound meaningfully; the new units will be better hidden and will be well off from the neighbor's house.

R. Gay noted that any location along the side of the house where the current unit is located will require a variance. He added that the Board needs to decide whether the variance is consistent with the spirit of not interfering with the neighbor's quiet.

John Coutts, 18 Agawam Avenue and owner of the strip of land, stated that he has no problem with the units and these are more quiet than what is there; the issue is whether the Board wants to break the ordinance.

Members continued to discuss alternate locations with the applicant including behind the garage, by the back stoop, south of the bilco, bunched together, and depressed below grade outside of the bay window.

G. Penniman noted that they will not function if placed behind the garage because that location is too far from the air handler; the units will stick out into the yard if by the back stoop; depressed into the ground presents other issues; if the variance is for a 20' setback rather than a 10' setback, they could be located in a straight line along the side of the house and not be any closer to the property line than the existing unit.

After considerable discussion, members agreed that placing one unit in the approximate old location, one unit next to it, and the third unit tight to the bilco would not encroach any further into the setback than is currently the case and would be a good compromise. G. Penniman estimated the location to be approximately 19 feet from the property line.

R. Gay verified that no one else wished to speak, and closed the public hearing at 5:02 p.m.

5. Possible decision: ZBA21.002, 20 Fenwick Avenue.

M. Staniford stated that the location of ac units is extremely contentious so needs to be considered very carefully. R. Gay added that the compromise complies with the spirit of the regulation which is to minimize noise impact on the neighbors and that the strip of land between this house and the neighbor represents a unique situation. P. Brainard agreed, noting that the rationale for the regulation is to minimize noise for the neighbor; there is a big distance from the proposed ac units to the Jones' house; the side of the house is already in the setback; the existing ac unit is already non-conforming; and the new units will be more quiet than the existing unit. F. Gilhool summarized that this creates a unique situation.

M. Staniford reminded everyone that no variance is precedent setting and approving this variance does not mean that future different requests will be granted.

Based on the discussion in and following the hearing, **F. Gilhool moved to grant a variance of Section 4.3.11.2a (26.13' setback from property line) to install two ac units in line with the location of the existing ac unit approximately 19 feet from the property line and a third unit further to the south of the first two. The motion was seconded by L. Goldsmith and approved unanimously.**

The motion carried, 5-0-0.

IN FAVOR: Gay, Staniford, Brainard, Goldsmith, Gilhool

OPPOSED: none
ABSTAINED: none

The minimal change to the property has no adverse impacts on the coastal resources.

M. Staniford moved to find application ZBA21-002, 20 Fenwick Avenue, consistent with the goals and policies of the Connecticut Coastal Management Act. The motion was seconded by F. Gilhool and approved unanimously.

The motion carried, 5-0-0.

IN FAVOR: Gay, Staniford, Brainard, Goldsmith, Gilhool
OPPOSED: none
ABSTAINED: none

The record plans are:

- *Robertson Additions and Renovation, 20 Fenwick Ave, Borough of Fenwick, Architectural Site Layout* by Penniman Architects dated 1/21/2021

6. Approval of Minutes: October 27, 2020.

M. Staniford moved to approve the minutes of the October 27, 2020 special meeting as written. F. Gilhool seconded the motion and it was approved unanimously.

The motion carried, 5-0-0.

IN FAVOR: Gay, Staniford, Brainard, Goldsmith, Gilhool
OPPOSED: none
ABSTAINED: none

7. Other Business.

M. Ozols reported that the training with Attorney Zizka that was requested by the Board is in the process of being scheduled for a Saturday morning via Zoom.

8. Adjournment.

F. Gilhool moved to adjourn the meeting at 5:13 p.m. M. Staniford seconded the motion and it was approved unanimously.

Respectfully submitted,
Marilyn M. Ozols
Acting Recording Secretary