



United States Department of the Interior
NATIONAL PARK SERVICE

FIRE ISLAND NATIONAL SEASHORE

120 Laurel Street
Patchogue, New York 11772
(631) 687-4750

IN REPLY REFER TO:

January 14, 2013

Martin W. Haley, Commissioner
Dept of Bldg and Fire Prevention
Town of Brookhaven
One Independence Hill
Farmingville, NY 11738

Dear Commissioner Haley:

Thank you for the opportunity to review your proposed rewrite of "Introductory Local Law # of 2012" that would amend Chapter 85 Section 166 A. of the Town Code with regard to the reconstruction of exiting nonconforming dwellings on Fire Island. I appreciate your having taken into consideration the National Park Service's comments we provided on January 7, 2013. You are to be commended for the removal of item 2 that would have allowed additions to non-conforming dwellings and accessory structures.

I would like to provide some additional recommendations to your proposed revised language that I believe will help to clarify your revision. My recommendations are as follows:

"Section 1. Legislative Intent. The amendment will permit the rebuilding of non-conforming one- and two-family dwellings and the rebuilding of non-conforming accessory structures in the Residential District on Fire Island. However, nothing herein shall be construed to diminish the requirements set forth by Federal, New York State (CEHA for example) and Suffolk County rules and regulations, or in other Chapters of the Town Code in particular those lot occupancy and building requirements set forth in 85-170 "RD Residential District and OFD Oceanfront Dune District; dimensional requirements" and "Chapter 76. Coastal Erosion Hazard Areas" ."

This revised language does three things. It removes "and building additions" as it is no longer the intent to allow additions without review. It eliminates the discussion of allowing Fire Island residents the same ability as mainland residents to rebuild. As I discussed in my letter of January 7, 2013, Fire Island is not the same as the mainland of Brookhaven. If it was there would be no need for Chapter 85 of the Town Code specifically for Fire Island. Additionally, being subject to the Chapter 36 Part 28 of the Code of Federal Regulations makes Fire Island residents distinct from the mainland of Brookhaven. Finally it articulates the specific Town Code chapter that addresses the Coastal Erosion Hazard Area regulations of the Town of Brookhaven.

In Section 2 regarding the code text amendment I would recommend the following:

“85-166. Conformance required; nonconforming uses; certificates of occupancy.

A. Conformity with article provisions

“1. An existing nonconforming building used as a one- or two-family dwelling with a Certificate of Occupancy, a Certificate of Existing Use or its equivalent, located in the Residential District, whether situated on a conforming or a nonconforming lot, may be structurally altered, restored, repaired in whole or in part, or reconstructed in whole or in part if severely damaged or destroyed by fire or natural disaster, provided that said building does not encroach deeper into any nonconforming front yard, side yard or rear yard than the distance into said front yard, side yard or rear yard than the existing building encroaches and the degree of nonconformity shall not be increased, nor shall the height of the dwelling be increased.”

“2.....”

“3. Non-conforming accessory building(s) or structure(s) when accessory to a one- or two-family dwelling with a Certificate of Occupancy, a Certificate of Existing Use or its equivalent, situated in the Residential District, whether located on a conforming lot or a nonconforming lot may be structurally altered, restored or repaired in whole or in part, or reconstructed in whole or in part if severely damaged or destroyed by fire or natural disaster, provided that said accessory building(s) or structure(s) do not encroach deeper into any nonconforming front yard, side yard, rear yard than the distance into said front yard, side yard, or rear yard than the existing accessory building(s) or structure(s) encroaches and the degree of nonconformity shall not be increased, nor shall the height of the accessory building(s) or structure(s) be increased.”

These paragraphs allow permission for general alterations, restoration, and repairs but tie reconstruction to properties that are severely damaged or destroyed by fire or natural disaster as opposed to allowing the wholesale tearing down of nonconforming buildings and rebuilding to previous dimensions without review by the Board of Zoning Appeals. The code is not designed to perpetuate nonconforming development so reconstruction would be limited to instances where reconstruction is not out of choice by the homeowner, but rather due to a hardship. Additionally it clarifies the height limitations separate from setback limitations, limiting the height of structures to previous heights. As was proposed in the draft revision the term “height” inserted between front yard and side yard seemed out of context.

Thank you again for the opportunity to comment on your proposed revisions. By removing the paragraph that allowed additions to nonconforming dwellings and accessory structures and adding the clarifying language I have recommended above will address the concerns I outlined in my January 7 letter to Supervisor Romaine. Referencing the need to adhere to other sections of the Town’s Code with regard to lot occupancy and building requirements in Chapter 85-170 and Chapter 76 regarding the Town’s Coastal Erosion Hazard Area restrictions address very specific

concerns of the National Park Service. Setting height limitations apart from setback requirements provides greater clarity and limiting reconstruction to severely damaged and destroyed dwellings preserves the long-term objective of the Town's Code to bring properties over time into conformity.

If you have any questions do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Chris Soller".

K. Christopher Soller
Superintendent

cc: Supervisor Romaine
Art Gerhauser
Thomas Corranno