

17273

**Zoning Board of Appeals
April 12, 2024 - 11:00 a.m.
LTV Studios
75 Industrial Road, Wainscott, NY 11975**

Those Present Were:

John L. McGuirk, Chair
James H. McMullan, Vice-Chair
Philip O’Connell, Member
Joseph B. Rose, Member
Andrew Baris, Member
Tim Hill, Village Attorney
Bill Hajek, Village Planner
Tom Preiato, Village Building Inspector
Gabrielle McKay, Deputy Village Clerk
Linda Margolin, Attorney on behalf of 25 Cross Highways LLC – 25 Privet Lane
Richard Walen, Attorney on behalf of opposing neighbor to 25 Privet Lane Application,
Bonacker Property, LLC – 23 Apaquogue Road
Trevor Darrell, Attorney on behalf of Caitlyn Ann MacDonald – 62 Dayton Lane
Mark Webb, Property owner of 11 McGuirk Street

Those Absent Were:

Abigail FitzSimons, Alternate
Shahab Karmely, Alternate

John L. McGuirk: Thank you. Good morning and welcome to the Zoning Board of Appeals meeting for Friday, April 12th, 2024. I'd like to thank LTV Studios for hosting us one more time.

M I N U T E S

John L. McGuirk: We have the minutes from March 8th, 2024. May I have a motion?

Joseph B. Rose: So moved.

John L. McGuirk: Second?

James H. McMullan: Second.

John L. McGuirk: All in favor?

Board in Unison: Aye.

A D J O U R N M E N T S

Lily Lane LP – 29 Lily Pond Lane – SCTM# 301-13-13-12
Hunting Hospitality LLC – 94 Main Street – SCTM# 301-3-8-1

17274

John L. McGuirk: We have two adjournments to May 10th, 2024. Lily Lane LP and Hunting Hospitality LLC.

ORIGINAL HEARING

25 Cross Highway LLC – 25 Privet Lane – SCTM# 301-13-4-17

John L. McGuirk: Uh, the first hearing of the day. We have 25 Cross Highway LLC, 25 Privet Lane. Gabby.

Gabrielle McKay: Application of 25 Cross Highway, LLC, SCTM#301-13-4-17, for Area Variances from Chapter 278, Zoning, to legalize a patio located within the front yard setbacks. Variances of 13.6 feet and 22.3 feet are requested from Section 278-3 A.(5)(a) to legalize a patio that is proposed to be modified to be located 21.4 feet and 12.7 feet from the front yard lot lines where the required setbacks are 35 feet. The subject property is 16,651 square feet in area and is located at 25 Privet Lane in Residence District R-80. This project is classified as a Type II Action in accordance with SEQR.

John L. McGuirk: Okay, we're just going to hold one second. Ms. McKay, who's on sitting on this?

Gabrielle McKay: Um, so I'll just say your names...

John L. McGuirk: That's fine.

Gabrielle McKay: Mr. McGuirk, Mr. McMullan, Mr. O'Connell and Mr. Baris.

John L. McGuirk: Thank you. Good morning.

Linda Margolin: Good morning. My name is Linda Margolin. I'm a partner with the firm of Ackerman, Pachman, Brown, Goldstein, and Margolin. And I represent the applicant. Mr. McGuirk, would you be kind enough to note Mr. Rose's recusal on this matter?

John L. McGuirk: We can.

Gabrielle McKay: Yes. Um, Joe Rose is recused on this matter.

Linda Margolin: And um Mr. Rose has recused as he did the last time this property came before this Board because, um, his family has an interest in a neighboring property that received notice, and he believes he will be directly affected. I believe that was the reason he gave last time. Is that correct?

John L. McGuirk: That is correct, I believe.

Linda Margolin: And is that his continued reason for recusal?

John L. McGuirk: Am I on trial here, Ms. Margolin?

Linda Margolin: Is that his continued reason for refusal because he didn't announce it.

John L. McGuirk: You can ask Mr. Rose, or you can ask our attorney here, but.

Linda Margolin: Okay. Mr. Hill, does that continue to be Mr. Rose's reason for recusal?

John L. McGuirk: We're starting this hearing off all wrong. I'm saying that right now.

Linda Margolin: Oh, no. No, I just, I just...

John L. McGuirk: I'll tell you right now, it's not going to go where it went last time. I'm telling you right now...

Linda Margolin: Okay. At this point, before I proceed, I would like to hand up an aerial, which, um, we prepared in response to the letter that we received late yesterday afternoon from the attorney representing Bonacker Properties (Aerial picture then provided to Board). The Applicant has been before this Board before with a similar but not identical application. The Applicant is now asking for fewer variances, or I should say, lesser variances in order to be able to site a brick level...a grade level brick patio in the front yard. Um, due to the constraints on this property, which is on a triangular piece with two front yards and a relatively small lot, the 35-foot front yard setback would reach to the entirety of the front of the house, and there is no place, um, abutting the front of the house where a brick patio could be sited without a variance. Um, the brick patio that's proposed is relatively modest in size, smaller than we asked for last time, and basically big enough to accommodate some outdoor dining. Um, so let me say, first of all, that, um, the neighbor at 20 Apaquogue, Mr. Brodsky, has emailed this Board and indicated that they have no objection to the application. Um, in order to understand which neighbors are affected by this application, we submitted a number of photographs taken from various vantage points. This photograph is in your packet (received April 5, 2024). It is the view, more or less, from the corner of 23 Apaquogue, the Bonacker Property, and you will see that the house is entirely invisible from this vantage point, there's not only a hedge, but there are several tall trees that completely prevent any view of the house, which would mean that you would be unable to see the brick terrace, or people standing or sitting on the brick. Um, so what are the issues here? Um, the suggestion was made before and the ZBA Determination that was rendered before said that there was an alternate location where this brick patio could be placed. But in order to do that, the Applicant would have to give up the Variance that this Board previously granted in 2004 to place an extension on the house in the same location where the patio would otherwise go. It's not a reasonable position to ask the Applicant to give up the development potential on this lot. That's not a reasonable alternative location, and I will note in passing that Bonacker Properties is on record in 2015, in opposing amendments to the Village Code as indicating that it was important as is understandable to preserve the development potential of the property, even if it hasn't yet been developed. So, the Bonacker Property is vacant, and the objections basically consist of, um, two things. One is that it will change the

17275

character of the neighborhood, and the other is, I think, that the noise of people congregating on the brick patio will be annoying. So, first of all, let me say that the Village Code identifies those things which are noisy, and which require extra setbacks. Those are swimming pools, playing courts, pickleball courts. Um, what we are talking about, people sitting in dining outdoors, is not one of those things. So, it's not identified by the Village Code as a noisy activity, and it is a customary activity that people engage in on residential properties. Um, the other objection about the character of the neighborhood requires this Board to take a hard look at what the neighborhood actually is. I note that the Village Comprehensive Plan from 2002 makes a point about how this Village is comprised of many different neighborhoods with different development patterns. So, the 23 Apaquogue property owned by Bonacker, the objecting neighborhood...neighbor, is part of the Historic Summer Colony Area, which is characterized by larger lots and larger houses. The Applicant's property on Privet, at 25 Privet, is part of an essentially unique triangular parcel which was developed before Zoning existed in this Village and consists of multiple small lots, virtually every one of which, either by dint of prior development or variance, has structures, in four cases swimming pools in the front yard. So, the relevant neighborhood, we believe, is this triangular block bounded by Privet, by Baiting Hollow and by Georgica. It's not the Historic Summer Colony Neighborhood, which is characterized by more generous setbacks and improvements, not generally in the front yard that are not allowed. So, if you look at the neighborhood itself, this triangle, and that's why I brought the aerial, you will see that virtually every lot here is developed in ways that the Village's current setbacks would not allow. So, we don't believe that it's a legitimate objection to say that putting a ground level brick terrace in the front yard with these setbacks would change the character of the neighborhood. It is also important to note from this photograph (referring to aerial submitted to the Board at the meeting) and the others that we submitted, that the property, except for the entrance to the driveway, is completely surrounded by a hedge, which I'm very short, but when I reached like this (motioning above head), it was well above my hand. It's probably somewhere between 12 and 15 feet. It's a privet hedge with trees further shielding the patio from anyone's view at a street level. So, what is the issue here? The issue here is whether we've satisfied the standards for the grant of a Variance. Is it going to adversely affect the character of the neighborhood? If the...if the Board accepts that the neighborhood here is this triangle, it clearly is completely consistent with the character of the neighborhood. It's not changing the character. And even if the Board were to take a wider view of what the neighborhood is, there are already many neighboring properties to the neighbor who's objecting that have the same character, that is to say, with improvements in the front yard. So, it's not going to...on an objective basis, it will not change the character of the neighborhood. Has the owner of the vacant property submitted anything to this Board to suggest that the property value is going to be adversely affected by this Variance? They have not. But you will note on this diagram that we've plotted the distance from the brick terrace location to the front yard setback on 23 Apaquogue it's approximately 170 feet. So, the objecting neighbor is asking you essentially to determine that the noise of people sitting down and dining on this brick terrace is going to be unreasonably disturbing to them when their front door is 170 feet away, separated by a street, a hedge, large trees, and of course, there's no house that's been built on that lot yet. So, um, otherwise, I think we have established that there is no other location that we can place this patio, leaving aside the issue of the fact that the property owner wants to

have it in conjunction with the entry way that's closest to the kitchen. They cannot put it in the backyard without giving up the valuable Variance that this Board granted in 2004, which this Board should not force them to do. It's a property, right, that they've acquired. Um, if any mitigation is required, you could certainly require the property owner to continue to maintain the hedge so that the view continued to be obscured from street level, um, you could set a height for the hedge, and if you thought that winter use was a problem, you could specify an evergreen hedge. Um, but other than that, um, I believe I've covered all of the issues. None of the other neighbors have objected, and they are all quite a bit closer. I'm open to questions from this Board.

John L. McGuirk: Thank you. Board members, any questions?

James H. McMullan: I don't have any questions at this time, no.

Philip O'Connell: No questions.

John L. McGuirk: Alright, anybody in the...Mr. Whalen? Morning

Richard Whalen: Good morning, Mr. Chairman, members of the Board. Richard Whalen, attorney with Whalen Filer, PLLC in Amagansett. And I represent Bonacker Property, which is the owner of the vacant lot that Ms. Margolin referred to on the other side of Apaquogue Road. Um, first of all, it is a vacant property, but it will be built someday without doubt. And as you're well aware, any Variance that you grant, if you were to grant the Variance on this application, it will run with the land and presumably, that patio would then be there for many years to come. So, uh, that's why my clients are concerned about the application. I was before you three years ago on the same property, on the same application, basically for the same patio. The difference was at that time, the patio had not yet been built. Um, today, the patio has been built. What had happened in the interim was the Zoning Board denied the application made in 2021. You made a... your Determination was filed, I think, on July 14th, 2021. The Applicant, still the current owner of the property, challenged that in an Article 78 Proceeding, they lost. The Zoning Board's denial of the application was upheld. Apparently, though, in... last summer the Applicant went ahead and built the patio anyway, basically the same dimensions in the same location as was proposed in 2021. Uh, obviously that's a self-imposed difficulty. Uh, to begin with, the Applicant only acquired the property in August of 2019. They submitted their application, the 2021 application for Variances, only 18 months after they bought the property. Clearly, they're chargeable with knowledge at the time of what the Zoning Setback Requirements were, as well as the constraints that are created by the fact that it's a triangular property with two rows. So, they have self-imposed difficulty in the first instance in terms of knowing what the requirements of the Zoning Code were before they applied for the patio, and then secondly, to build the patio after being denied and after that denial was sustained by a court, is, uh, I will just say extraordinary in my mind. There are more reasons to deny this application, though, than simply the fact that it's a self-imposed hardship on the Applicant's part. Um, as Ms. Margolin indicated, the entire area with the patio would go... is within the 35-foot setback. Nothing really should be built in that front yard area. From the objector's point of

17276

view, we don't have to justify that it's a particularly noisy use. The Village Code has a 35-foot setback for structures. Uh, it may be that the structure is a patio or an insubstantial structure, as the Applicant's attorney has stated. The issue, though, is not necessarily the size of the structure, but what it's to be used for. And in that respect, the Applicant has pretty much made, uh, the case in opposition, I think, for us. Uh, they say that the patio is intended to be integrated into the life and flow of the house, that it will give them an extra outdoor room. If they want to have an outdoor room, then for their own privacy, and that of the neighbors, the best place to put that is behind the house. So, the argument is made that, well, in 2004, this Board granted a Variance for a house addition to a prior owner of the property and 20 years that has never been acted on. To me, it seems poor policy from the Zoning Board's point of view to predicate the grant of additional front yard setback relief on the fact that you already granted prior relief 20 years ago for building that's never been built. So, the Applicant may have a choice to make whether they want to sacrifice a potential future house edition, which they didn't apply for and for which they didn't get approvals for, and I'm accepting that it's probably still a live approval. But they have a choice to make whether they want to do that or whether they want to use that area for an outdoor patio. So, in 2021, the ZBA found in its Determination that the patio, which is just basically the same size, same location as you have today, except that the Applicant is putting a curb boundary along that southern side, still requires substantial front yard setback variances. The dining area, the place where you would put tables, where people would sit, is still essentially the same place that it would be and would have been in 2021. At that time, the Zoning Board found that the patio would, quote, produce an undesirable change to the nature and character of the neighborhood, and there will be detriment to nearby properties. There is no reason today, no change of circumstances since that time, that would warrant a different Determination. So, we ask that you deny the Variances.

John L. McGuirk: Thank you. Does anybody else like to speak regarding this matter? Ms. Margolin?

Linda Margolin: I think it's important to note that... I believe my uh... I believe Mr. Whalen is, uh, suggesting that this Board is bound by principles of res judicata from granting this application. I don't think that's true, because I think the application is different enough, um, that the Board is not so bound. But I also say that the principles of res judicata do not prevent this Board from correcting a mistake. And respectfully, I think that the prior decision was born out of consideration for a neighbor who was a member of this Board, and that a careful examination of the objections shows that the principle objection is that people congregating and dining in the front yard of the property, which they are absolutely allowed to do at the present time, will be annoying to someone, but it is a permitted use and not a noisy use. I'm sure all of us have sat outside and dined at some point, and the level of conversation that will take place is something that people are allowed to do on their properties. So, saying the fact that granting this Variance will allow someone to do what they are allowed to do, in any case, is not a legitimate reason for finding that it will disturb the character of the neighborhood. And as I've pointed out, and as I don't think is disputed, for this triangular parcel, this is completely consistent with the character of the neighborhood, and all of us understand, particularly if we

come out of New York City, which I did, and I believe that the owner of Bonacker did, too, is that every neighborhood adjoins some other neighborhood. There's always some issue at the boundary. And the Bonacker Property is essentially sitting at the northerly most boundary of the Historic Summer Colony Neighborhood. And basically, it is adjusting...It is abutting a neighborhood, the neighborhood that this triangular parcel represents that was developed more intensely at a different time, with different standards and continues to be developed in a way that is more intense with typical structures in their front yard. And the fact that you are abutting that neighborhood and don't care for that development pattern is not a legitimate reason for this Board to disregard the appropriate neighborhood and considering the character of the neighborhood. So, I would urge that you grant this Variance. And I will also say that while I understand it's not a good look for applicants to come in and say, "Oh, I already built it, please give me a Variance for it." We know that that is, in some ways, the meat and potatoes of this Board. It happens very often. The Village Code has enacted provisions that, um, essentially punish people for doing that by doubling the fees for Variances and doubling the fees for Building Permits, but it does not change the standards for granting a Variance. The standards do not become more onerous because someone built first and asks later, and I urge this Board to not consider that factor. It is a self-created hardship, whether it was already built or not. We don't dispute that. But that's not a reason for denying the Variance. Thank you very much.

John L. McGuirk: Thanks Ms. Margolin. Anybody else have any comments?

Philip O'Connell: I just have one comment.

John L. McGuirk: Go ahead.

Philip O'Connell: It is a significant Variance that is being asked for the relief from the side yard setbacks. That's my only comment.

John L. McGuirk: Okay. Motion to close the Hearing?

James H. McMullan: So moved.

John L. McGuirk: Second?

Andrew Baris: Second.

John L. McGuirk: All in favor.

Board in Unison: Aye.

John L. McGuirk: Okay. Thank you. Next up please.

ORIGINAL HEARINGCaitlyn Ann MacDonald – 62 Dayton Road – SCTM# 301-2-7-20

Gabrielle McKay: Application of Caitlyn Ann MacDonald, SCTM#301-2-7-20, for Area Variances from Chapter 278, Zoning, to make alterations and construct additions to an existing residence and construct accessory structures. A 300 square foot variance is requested from Section 278-3 A. (13) (a) to construct additions resulting in a residence containing 2,556 square feet of gross floor area where the maximum permitted gross floor area is 2,256 square feet. A 6.4 foot variance is requested from Section 278-3 A. (3) (a) to construct a stoop 23.6 feet from the front yard lot line where the required front yard setback is 30 feet. A 10-foot variance is requested from Section 278-3 A. (5) (c) to construct a pool house 10 feet from the rear yard lot line where the required setback is 20 feet. A 289 square foot variance is required from Section 278-3 D. (7) to permit 740 square feet of accessory building gross floor area where the maximum permitted accessory building gross floor area is 451 square feet. The subject property is 12,555 square feet in area and is located at 62 Dayton Lane in Residence District R-40. This project is classified as a Type II Action in accordance with SEQR.

John L. McGuirk: And who's sitting on this application, please?

Gabrielle McKay: Sitting on this application is Mr. McGuirk, Mr. McMullan, Mr. O'Connell, Mr. Rose and Mr. Barris.

John L. McGuirk: Good morning, Trevor.

Trevor Darrell : Good morning, Mr. Chairman, members of the Board. Trevor Darrell, Fleming and Darrell PLLC, on behalf of the Applicant, Caitlyn MacDonald, who is here as well. Per the memo that was just read to the Board, we're here seeking a four Variance request on this property at 62 Dayton Lane. Um, which the Board is well aware of this street. It's been, you know, before this Board on other properties recently. It's um, this house sits backed up to the John Marshall Elementary School playground, um, and hasn't been developed in, you know, since it was probably originally built. The four requests are the principal residence GFA relief, the accessory structure GFA relief, a front yard setback relief and rear setback. And starting in reverse, um, the Applicant purchased this home in March of 2019, and after using it with her family for several years now, she and the architects and the planners have come up with what's before you, which we think is the smallest amount of requested relief possible to obtain the benefits to her and her family. Starting with the front yard relief, the house is situated in its exact location at 28.6 feet from the front yard and has a pre-existing, non-conforming front stoop. The proposed installation of a new front stoop is slightly retreating from the street, but it would still require the relief to be situated at 23.6 feet from the front from the street. Second, the rear yard setback relief, the Applicant's proposing, which we'll get to in a minute, but to install a full house, uh, towards the rear lot line, which is, you know, as far away from the street as we could put it in a what we thought to be a reasonable location in that what the Board's not aware of is that during the planning process, we did have it originally proposed to be near the property line to the east of the or...the west of the property, rather. And, um, we don't want to

encroach upon the neighbors of that residential house there. So, we went to a conforming location to the side yard relief but pushed it back to ten feet proposed in the rear yard as it backs up against the school playground. Again, it's not interfering with any residential property owners on that rear lot, which I showed in pictures, which I submitted to the board this morning, the look over the backyard fence, it's, you know, pictures one and two, you can see the distance, you know, from where we're proposing to where the nearest structure for the school would be. It should have no impact on the school district at all. And the goal of the pool house is one to have a water closet and changing area, but also to install the pool equipment in the basement of that pool house so that it would be given the small size of the lot and the nature of the equipment. We're trying to keep the noise retardant and the existing pre-existing garage on the property already exceeds the allowable accessory GFA for the property, so any additional accessory structure would require relief from this Board. So, the Applicant and the architects thought it would be best to propose it as a pool house, so we have the, you know, the combined benefit to the Applicant, because even a shed to enclose the pool equipment is going to require relief from this Board, it's an accessory structure. The pool house is the accessory structure we just mentioned, which is proposed at 198 square feet, which if in it by itself would qualify under the code, except for the pre-existing nonconforming garage, which is 542 square feet, which puts us at 740 square feet, which is 289 square feet over the allowable on the property. So only 451 square feet of accessory GFA is permissible. Given the location of the garage on the property which you've seen on the Saskas survey (dated January 31, 2024), it's not really conducive to using it or carving out a piece of it to make it into the pool house component if that makes sense. So, there's no...it's not near the side yard of the pool, it's in the driveway portion of the property. So, putting the accessory pool house structure on the side of the yard where the pool is going to be and the patio is going to be, uh, seems to be the best way to resolve that. And then the last Variance, which, you know, certainly, you know, is the principal structure GFA. The existing structure sits at 62 Dayton Lane and has 2,254 square feet of existing GFA, which is the permissible amount under the...on the lot. The proposed design seeks to have a final new GFA of 2,556 square feet. The allowable on the property is 2,256. So, we'd be seeking 300 square feet of GFA relief from this Board. When reviewing the plans here versus other plans that I've seen come before this Board, I think we clearly fit within this Board's prior precedence when seeking principal structure GFA relief. Mathematically, the Applicant sits at approximately 13% increase over what's permissible under the Code. But as shown on the plans, and the plan proposes to frame in an existing, and you can see the photo I attached to...as number four, is the existing patio area that's attached to the house right off of the dining room, or right off the kitchen, rather, there is no dining room. So, the Applicant is seeking to enclose that existing patio with structure and per the plans, you see that that would then turn the small kitchen...it would expand the kitchen into a little dining area. She's not seeking to expand the home past the existing exterior wall. It would just be enclosing that existing area that's somewhat unusable space currently because what happened when my clients purchased the house, obviously the world shut down with Covid and since Covid, um, the school district, and rightfully so I think, has begun to run their HV/AC systems almost on a 24-hour basis. And as you see in the picture that I attached, and one as well, you can see on the roof of the pool, is that a pool...sorry. The roof of the school is the giant HV/AC system that runs almost 24/7.

17280

John L. McGuirk: Trevor, can I ask you a question? Are you gonna lift this house or are you going to rebuild it?

Trevor Darrell : So, they're going to lift it and put it back down and per the plans, which I was going to get to in a minute, but I'll jump ahead, the roof height on this house is 21x10. It's going to remain 21X10. Visually from the street, there should be no impact. And I know the...sort of the root of the Code for GFA is this idea of massing and we don't want to see giant houses on little lots. And the architect and the Applicant worked very hard to make sure that that is not what happens here. The roof line is to remain the same. The proposed addition is on the rear side of the house and visibly from the street, there should be no impact, but for there is a small dormer coming up the front of the house for a window that's going to be going in, but...

Philip O'Connell: It's another shed roof dormer between the other two, correct?

Trevor Darrell : Correct.

Philip O'Connell: Okay.

Trevor Darrell : That's the...so the roof height, which is quite low compared to other houses on the street, and I've attached a couple of photos as well for the Board to see that the neighboring houses directly across the street, and you can see that those roof heights are substantially higher than the Applicant's proposed height here. But it is sought to benefit, you know, the benefit to the Applicant, I think, outweighs any detriment to the neighborhood for keeping it secluded and only the encroachment is upon the John Marshall School, but even that we're not encroaching on the rear yard setback when it comes to the principal structure, only on the pool house portion of it. And the thing... and the last thing I would note is on that, um, the proposed addition, the Applicant, understanding the ask for the GFA relief, she's not seeking to enclose the second-floor portion of this addition for the whole new bottom addition. She's only going to be going above the existing condition, putting a small bedroom up there, but seeking, you know, the minimal relief that would benefit her without any detriment to the neighborhood.

John L. McGuirk: Any Board members? Joe.

Joseph B. Rose: Just a question about the stoop. So, the existing stoop goes, is this exact replacement in kind or is there an additional dimension being sought?

Trevor Darrell : So it's actually a slight reduction. The existing stoop is closer to the street. If you can see on the Saskas survey (dated January 31, 2024).

Joseph B. Rose: I'm looking at the survey, I don't understand. I don't see a drawing that shows the stoop.

Trevor Darrell : It's about a foot.

Joseph B. Rose: Yeah, I see that, but the proposed...the existing stoop goes...?

Trevor Darrell : Near the house. It's slightly less than what's existing.

Joseph B. Rose: Gotcha.

Trevor Darrell : Yes. Not by much, but just a tad.

John L. McGuirk: I don't want to design your property here, but I think we have a lot going on over here around the pool area with the proposed fireplace and the proposed outside shower. I just think it's kind of aggressive. Um, I'll let you guys figure it out, but I just think it's a lot. So, anybody from the audience like to speak? Any Board members?

James H. McMullan: Um, I kind of agree that it is a lot. Looking at these numbers, obviously the pool house is the setback to the school is a 50% Variance. The additional GFA for the accessory structures is a 68% Variance. And obviously the GFA for the house is a 12% Variance. So, if you have anything to add.

Joseph B. Rose: As a comment, I think the... it's a very small lot, very constrained. I don't see...there is an existing already oversized accessory structure. I don't...I understand the desire to put a pool house, but I can't see a rationale in the context of the Zoning and the existing, uh, the already intensive use to provide additional GFA for the accessory structure and the pool equipment, if you had it, you could put the pool equipment inside and there could be some tweaks, but to create an additional third structure on this very tiny property doesn't seem to me that there's a compelling case for it. I'm sort of open...I'm grappling with the issue of the additional GFA on the primary residence because it's how to accommodate it, there's a desire to do it, but the problem, or the challenge, let me put it that way, is a precedent. Every small house on every very small piece of property is going to want to have additional floor area. The Zoning lays out what's permitted. And I'm just grappling, I don't know, I don't have an answer today, but I got...this is one I just want to think about.

John L. McGuirk: I think we're not going to have an answer today, but should I suggest this? Why don't you come back to us, we'll leave the Hearing open. Come back to us with...I heard some of the comments here. Philip?

Philip O'Connell: Yeah. I do have to say I'm pleased with, uh, how the architect worked with the applicant in terms of keeping the roof height. You know, and as you said, keeping the mass, the appearance of the mass down. So that's my only comment.

Joseph B. Rose: I agree with Phil's point on that, which is the problem is one of gigantism on very small lots, so that's a... the ability to keep the roof line and keep the feel is important. It's why I find it a challenge as opposed to a nice try.

Trevor Darrell : I get it I get it. Yeah.

17282

Philip O'Connell: It seems to keep the character.

John L. McGuirk: Which is the goal. Let's keep this open until May 10th. I think May 10th is the next Hearing.

Gabrielle McKay: Yes.

Philip O'Connell: I think your big issue is the pool house.

John L. McGuirk: So, we're moving to the last Hearing of the day, please.

ORIGINAL HEARING

Mark K. Webb – 11 McGuirk Street – SCTM# 301-1-1-21

Gabrielle McKay: Application of Mark K. Webb, SCTM#301-1-1-21, for an Area Variance from Chapter 278, Zoning, to legalize coverage. A 242 square foot variance is required from Section 278-3 A. (9) (a) to legalize 1,965 square feet of coverage where the maximum permitted coverage is 1,723 square feet. The legally preexisting coverage appears to be 1,830 square feet. The subject property is 6,115 square feet in area and is located at 11 McGuirk Street Lane in Residence District R-40. This project is classified as a Type II Action in accordance with SEQR.

James H. McMullan: Thank you. Hi. How are you?

Mark Webb: Hi, I'm Mark Webb. I'm the owner of 11 McGuirk Street.

James H. McMullan: Um, I'd like to correct a typo in the letter that I submitted to the Board, which I just discovered this morning. It's, um, toward the back of your package, my cover letter and in it there's a mistake, which I apologize for. Um, I did purchase the property in April of last year. Um, the property had a valid C of O, and it wasn't dated 11/13/07, it was dated 11/24/08, and that is attached as part of the packet, that was just a typo. Um, I purchased this property and there was an existing violation. Some additions had been made to the property which were unpermitted and as I note in my current situation on page two, my application for a retrospective building permit was denied because of a coverage issue. There are no setback issues, as far as I understand, simply it exceeds the allowable coverage. Um, the most recent, valid C of O, as I just mentioned from 2008, was based on a survey of the same year that showed coverage of 1,830. Um, and so it seems to me that that level of coverage was acceptable and approved, even though it was 107 feet over the allowable. That, C of O was attached in the packet as well. So, my request to the Board in my letter is to grant me the existing level of coverage, which would be 1,965. Since I submitted this application in January, I have thought of a possible compromise to my request, they say you shouldn't lead with a concession, but I don't want to waste anybody's time. So, I did come up with an idea to reduce the coverage. I have extra copies of the Saskas survey. Does everyone have this or?

James H. McMullan: Yes, we all have it.

17283

Mark Webb: So, if you look at that survey, you can see where the deck was added, unpermitted, etc... Um, behind the garage, there's a brick area that goes all the way back to about 4.8 feet from the property line in the upper left corner. There's a square in that area where it says "Brick 1.9 S" everyone see that square? Um, that is an area that's, if you look at the survey (dated February 23, 2023), it's in the upper left corner, which I guess would be the north, northwest corner, that area, which is uncovered and that rectangle is noted as "Brick, 1.9 S" is 12 feet wide and 6.75 feet long, for which is about 80 square feet. And I would be more than happy to remove all of that coverage, which would bring the coverage down to 1,885 square feet, which is, I think, pretty darn close to the 1,830 that was approved in the prior C of O. The reason I would rather not go beyond that is because there's a roof over that second rectangle right next to it and if I were to remove that, grass won't grow there because it's covered by a roof.

James H. McMullan: Okay. Um, I appreciate the concession and we'll get the Board's feeling on that in a second. My one question is in the past, when we do grant these types of Variances, we do ask for some type of screening typically. Would that be something that you are amenable to on this southerly lot line?

Mark Webb: So, the, the long line uh, below the house.

James H. McMullan: The one it says now were formerly Arthur Miller (referring to location on Saskas Survey last dated February 23, 2023).

Mark Webb: Sure, yeah.

James H. McMullan: On that side, would you be able to plant something that maybe isn't 12 feet tall, but enough to kind of block the view of your patio just for privacy from the neighbor?

Mark Webb: Um, sure. I... there is an existing hedge in that area. Um, and also existing on the property here is some very large vegetation right here. So, in fact, if you're standing here, you can't really see that because of the significant ancient plantings that are here. But...

James H. McMullan: I'm talking more this deck here.

Mark Webb: Oh, I'm sorry. Yes, that I do understand now. Certainly. Yeah. Very open to that. Um, I can't tell you offhand the height of the existing vegetation, but if it needs to be taller, I would be certainly amenable to doing that.

Andrew Baris: There's a hedgerow down there?

James H. McMullan: There is. Um, I would probably say it's maybe 4 or 5ft tall, I believe.

Mark Webb: I think it's about five feet tall. Yeah.

17284

Philip O'Connell: So you just let it come in?

James H. McMullan: Possibly. I'm not sure what vegetation that is and how tall it will grow, but, uh, if something could be done just to... We typically, like we did on Sherrill Road, we asked that....

Philip O'Connell: Yeah. So like, just the not the whole. Not the full length, just the...

James H. McMullan: Yeah.

Andrew Baris: That makes sense.

James H. McMullan: Just so we're not sitting...because this does kind of come up a little bit, so, you are looking kind of right into this.

Philip O'Connell: Into your neighbor's yard.

James H. McMullan: Yeah.

Andrew Baris: Screening the neighbor towards...

Mark Webb: Yes. For the deck area, not the entire property?

James H. McMullan: Just the deck area.

Mark Webb: Yeah. No problem.

Philip O'Connell: Yeah, you go a couple feet on either side.

Mark Webb: Certainly. Yeah. It exists. It certainly could be taller. Um, I, I'm not sure if it's privet or another privet like hedge that's there now, I don't remember offhand, but whatever it is, it could be added to, it could be grown taller. I'm 100% amenable to that. Okay.

Joseph B. Rose: This is a question. I know you didn't do it. You acquired the property after the non-conforming, non-conforming situation. But what's the... Since I'm always concerned, as you know, about camel's nose precedential issues in terms of when was the non-conformance created and what was the addition? And this may Tom maybe you...

Andrew Baris: Think it goes back two owners.

Tom Preiato: Thank you. Um. Excuse me. Thank you. Tom, the Village Building Inspector. So, we noticed when Mr. Webb was obtaining his required C of O. I'm not exactly sure we...could look on the, uh, aerials and determine exactly when, but it's clear based on a, you know, previous survey that.

Joseph B. Rose: Did the expansion...the creation was the decking in the back on this.

Tom Preiato: No. The patio was there, the brick was there. So, it's the wood deck.

Joseph B. Rose: It's the wood deck in the back of the house, that's the one. Okay. And that was added on to, I understand. So, the deck and that's there's not building above that but it's coverage?

Tom Preiato: Correct.

Joseph B. Rose: Gotcha. So, so the proposal, and Mr. Webb's proposing to eliminate some of the brick in the back corner there and do some screening to create...To supplement the whatever existing vegetation or screening there is on the southern portion to address that. Okay. I understand that.

James H. McMullan: Sounds reasonable. You have anything, Andy?

Andrew Baris: No, I think that sounds reasonable. I'm not so sure you even need to pull up the back patio, brick, but, um, it seems like it's an existing problem that goes all the way back, so.

Mark Webb: Yeah, I couldn't tell you how many years ago, but, um.

Joseph B. Rose: Just for the... Thank you. I'm not arguing, I just think the offer, I think is important and it goes to the issue that we're, we have and will continue to see new purchasers come in and say, "oh, you know, this is not my this is just here, I don't know how it happened." And then we find ourselves in the position continually of being asked to retroactively approve actions that were taken knowing. So, I think the action here is important in the context of recognizing that there's a desire within the existing condition to do that which can be done without creating a major disruption to the property. So, I appreciate... I know the point about the tactical coming in with a compromise first. Not necessarily. It's...it shows a good faith effort to do what you can to address the non-compliance that existed.

Andrew Baris: Especially relevant to our first case.

Mark Webb: My pleasure, anytime.

James H. McMullan: Um, so I would recommend it. Can we keep this open until next meeting? And can you just kind of come back with a solution for that southerly property line to...

Mark Webb: Certainly.

Joseph B. Rose: And the proposal...and the adjustment to the brick.

17286

Mark Webb: Certainly. Um, would it be useful, excuse me, if I also came back with photographs of what's there now and then what I plan to put in to enhance it?

James H. McMullan: That would be great.

Mark Webb: Okay. I'll see you on May 10th.

James H. McMullan: Thank you so much. And if you get those beforehand, you can always give them to Gabby.

Mark Webb: I'll do that. I'll make sure I do it at least a week before. Thank you.

James H. McMullan: Excellent. Thank you.

James H. McMullan: Next on the agenda we are going into an Executive Session.

Gabrielle McKay: I can go get John. I was just... I'll get him from the hall.

John L. McGuirk: So we're going to keep the meeting open right now. Uh, we're now going into Executive Session.

John L. McGuirk: We have to leave it open to discuss pending legal matters. Once the Executive Session is concluded, the Board will close the meeting, so we'll come back.

Joseph B. Rose: So, motion to go into Executive Session.

Philip O'Connell: And I second that.

John L. McGuirk: Thank you.

John L. McGuirk: So, we have no more business of the day. So, can I have a motion to adjourn?

Joseph B. Rose: So moved.

John L. McGuirk: Okay. Second, please?

James H. McMullan: Second.

John L. McGuirk: All in favor?

17287

Richard Whalen: Can I just say we have to note that there was no...

John L. McGuirk: I don't think I have to note anything.

John L. McGuirk: No business was conducted in Executive Session.

John L. McGuirk: Okay. Thank you.

FILED
VILLAGE OF EAST HAMPTON, NY
DATE: 01/11/24
TIME: 10:28AM

Gabrielle McKay

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the Zoning Board of Appeals of the Incorporated Village of East Hampton will hold a public meeting at the LTV Studios, 75 Industrial Road, Wainscott, New York, on Friday, April 12, 2024, at 11:00 a.m. on the following applications and to conduct such other business as may come before the Board. The applications can be viewed on the Village's website easthamptonvillage.org by clicking on the "Public Board Meetings" tab.

Application of Lily Lane LP, SCTM#301-13-13-12, for Area Variances from Chapter 278, Zoning and Chapter 124, Preservation of Dunes and a Variance and Permit from Chapter 101, Coastal Erosion Hazard Areas, to construct additions onto an existing residence and make alterations to an existing residential cottage building. A Coastal Erosion Hazard Area Permit and Variance is required in accordance with Section 101-9 to clear vegetation and make alterations to a residential cottage building located seaward of the Coastal Erosion Hazard

Area line. A 66-foot variance is required from Section 124-1 A. (2) to make alterations to a residential cottage building that is located 84 feet from the southerly edge of beach grass where the required setback from the southerly edge of beach grass is 150 feet. A Coastal Erosion Hazard Area Permit and Variance is required in accordance with Section 101-9 to clear vegetation, construct decks and walkways, construct a three-story addition, and construct a veranda all located seaward of the Coastal Erosion Hazard Area line. Variances of 19 feet, 25 feet and 26.2 feet are required to construct a three-story addition to the existing residence, a veranda and decks/walkways located 131 feet, 125 feet and 123.8 feet, respectively, from the southerly edge of beach grass where the required setbacks from the southerly edge of beach grass are 150 feet. A 54-foot variance is required to clear land 96 feet from the southerly edge of beach grass where no disturbance or clearing is permitted within 150 feet from the southerly edge of beach grass. A variance is required from Section 278-2 B. (1) to permit an addition to a legally pre-existing third story where the maximum number of stories are two. The subject property is 140,295 square feet in area and is located at 29 Lily Pond Lane in Residence District R-180, FEMA Flood Zones VE (el.17) and AE (el. 10) and has frontage on the Atlantic Ocean Beach. This project is classified as a Type II Action in accordance with SEQR.

Application of Caitlyn Ann MacDonald, SCTM#301-2-7-20, for Area Variances from Chapter 278, Zoning, to make alterations and construct additions to an existing residence and construct accessory structures. A 300 square foot variance is requested from Section 278-3 A. (13) (a) to construct additions resulting in a res-

17288
idence containing 2,556 square feet of gross floor area where the maximum permitted gross floor area is 2,256 square feet. A 6.4 foot variance is requested from Section 278-3 A. (3) (a) to construct a stoop 23.6 feet from the front yard lot line where the required front yard setback is 30 feet. A 10-foot variance is requested from Section 278-3 A. (5) (c) to construct a pool house 10 feet from the rear yard lot line where the required setback is 20 feet. A 289 square foot variance is required from Section 278-3 D. (7) to permit 740 square feet of accessory building gross floor area where the maximum permitted accessory building gross floor area is 451 square feet. The subject property is 12,555 square feet in area and is located at 62 Dayton Lane in Residence District R-40. This project is classified as a Type II Action in accordance with SEQR.

Application of Mark K. Webb, SCTM#301-1-1-21, for an Area Variance from Chapter 278, Zoning, to legalize coverage. A 242 square foot variance is required from Section 278-3 A. (9) (a) to legalize 1,965 square feet of coverage where the maximum permitted coverage is 1,723 square feet. The legally preexisting coverage appears to be 1,830 square feet. The subject property is 6,115 square feet in area and is located at 11 McGuirk Street Lane in Residence District R-40. This project is classified as a Type II Action in accordance with SEQR.

Said Zoning Board of Appeals will at said time and place hear all persons who wish to be heard in connection with the applications. Interested parties may be heard in person, by agent, or by attorney.

Dated: March 15, 2024
By Order of John L. McGuirk III, Chairman, Zoning Board of Appeals, Inc.
Village of East Hampton
37-2/188

