

Zoning Board of Appeals

Date: February 9, 2024

11:00 a.m.

LTV Studios

75 Industrial Road, Wainscott, NY 11975

Final Copy – March 6, 2024

Those present were:

James H. McMullan, Vice-Chair

Philip O'Connell, Member

Joseph B. Rose, Member

Andrew Baris, Member

Abigail FitzSimons, Alternate

Lisa Perillo, Village Attorney

Bill Hajek, Village Planner

Linda Margolin, Attorney on Behalf of 64 WE Acquisition, LLC

& Irene Tserkovny and Alex Gorbansky

Martha Reichert, Attorney on Behalf of Christopher Jaeger and Phoebe Simmer

Leonard Ackerman, Attorney on Behalf of Irene Tserkovny and Alex Gorbansky

Neil Cummings, Architect on Behalf of Irene Tserkovny and Alex Gorbansky

Martha Ostrow, Property Owner of 38 Dayton Lane, neighbor of 44 Dayton Lane

Erika Broberg, Architect on behalf of neighbor Martha Ostrow, 38 Dayton Lane

Gabrielle McKay, Deputy Village Clerk

Those absent were:

John McGuirk, Chair

Vice Chairman McMullan called the meeting to order at 11:00 a.m., and the following official business was discussed:

MINUTES

Upon motion of Joseph B. Rose, duly seconded by Philip O'Connell, the Board unanimously approved the minutes of **January 12, 2023**.

DECISION ITEM64 WE Acquisition, LLC – 64 West End Road – SCTM# 301-

Member Rose stated that regarding the letter received January 30, 2024 requesting his recusal from the application, he is unaware of any reason he should be recused from sitting on this matter. Member Rose has no personal, financial or any other sort of relationship to the applicant nor any adjoining properties. In this letter, a point was made regarding a question that he had asked to the previous Village Attorney, Vincent Messina, when considering a matter on an adjacent property. This question was about the status of an application. That conversation does not in any way indicate any prejudicial view in regard to the current matter of 64 WE Acquisition, LLC. Member Rose has conferred with both the present Village Attorney, Lisa Perillo, and personal counsel. He has continued to assert and affirm to his colleagues, the applicant, and the public that there is no reason he cannot sit on this application.

Vice Chair McMullan explained that by way of background there was an application made to the Board by 64 WE Acquisition, LLC in 2019. The Board issued a decision on November 8, 2019, that denied the request of relief. That determination was challenged by the applicant in an Article 78 proceeding, resulting in a decision by the New York State Supreme Court, dated April 11, 2023. The Court affirmed this Board's denial of the application and dismissed the Article 78 proceeding. The Court nevertheless noted that the Board's prior decision did not address whether certain improvements made prior to the Village's 1987 adoption of the Freshwater Wetlands regulations, Chapter 163, are grandfathered. Accordingly, the Court demanded the matter back to the Board for the limited purpose of answering that narrow query. The Board received, on November 21, 2023, a memorandum from the Village Planner, Billy Hajek, on this issue. Mr. Hajek concluded that the improvements that are grandfathered are the three car attached garage, the inground masonry pool, but not the pool patio. The memorandum also lists those improvements that are not grandfathered. The Court's directive was only as to the affirmative. Vice Chair McMullan then asked if the Board had any further comments or questions.

Member Rose asked Mr. Hajek to speak to what was grandfathered and what was not grandfathered in regard to the subsequent improvements made. Mr. Hajek explained that during the 64 WE Acquisition, LLC application that the

Board reviewed for that matter, the applicant had submitted a series of surveys and plans to the record. The Village also has a survey that was used for the basis of the issuance of the Certificate of Occupancy, prior to the acquisition of the property by the applicant. That survey depicts the improvements that were legally pre-existing at that time, which included the swimming pool, the house and attached garage, porch, brick patio, retaining walls near the swimming pool, and a swimming pool shed. The patios around the swimming pool and the patios at the front of the house, the staircase, and the retaining walls were all enlarged, in addition to grading and a lot of clearing activities taking place. Member Rose asked for clarification as to the items that were changed, were those changes not considered grandfathered, and were they not originally present. Mr. Hajek confirmed this and explained that they expand beyond the footprint of what was legally pre-existing. Member Rose then questioned if any items were increased in height, in which Mr. Hajek explained that yes, some retaining areas were elevated, fill was imported, and additional retaining walls were built.

Vice-Chair McMullan made a motion to close the decision item, so moved by Philip O'Connell, seconded by Andrew Baris.

Linda Margolin, esq. appeared on behalf of the applicant before the Board explaining that the Board had stated that no hearing nor testimony would take place for this decision item, however the Village Planner was allowed to speak. Vice-Chair McMullan explained that Mr. Hajek spoke to clarify an item in his memorandum for a Board member. Ms. Margolin stated that this is not consistent with what she was told. She then noted that some of Mr. Hajek's conclusions are based on measurements that were disputed by the applicant in the original file and that the Board does not have that information before them presently. Without this information, the Board is now taking the Village Planner's testimony as credible without giving the agent an opportunity and without looking at the transcript in which some of Mr. Hajek's conclusions were disputed. She then explained that she has laid out their position in a letter that was filed yesterday. The record has been augmented by taking Mr. Hajek's memo, posting the hearing, and failing to make the entire file available to the Board. None of the members present were sitting on the Board in 2019 when this matter was heard. Ms. Margolin stated that she does not think this is correct and that the Board does have the advice of counsel, but if the Board is acting on a memorandum of council, she thinks that it should be read into the record also. Village Attorney Lisa

17221

Perillo clarified that there is no memorandum of counsel. There is a letter that she submitted to the applicant in response to a letter that they submitted yesterday. That memorandum has nothing to do with what the Board is finding today.

Mr. Hajek clarified that there was a survey submitted by Saskas Surveying Company, dated April 30, 2019 that was part of the record and submitted by the applicant's prior representative. That survey depicts an overlay of the improvements that existed at the time that the property was issued a certificate of occupancy, comparatively to the improvements that were constructed without the benefit of approval. That overlay is the basis for his comments in his memorandum as to what expanded and what changed.

Ms. Perillo stated that no further comments are to be made as the Board has already voted. Vice-Chair McMullan affirmed that a motion and a second were made. The Board then carried the closing of the decision item unanimously.

DETERMINATION

SEQR – Maidstone Club, Inc. – 95 Dunemere Lane and 50 West Dune Lane –
SCTM# 301-9-4-11 and SCTM# 301-9-4-17

Member Baris stated for the record that he is sitting on this application. He has reviewed the application, record, and minutes thoroughly.

Upon motion of Joseph B. Rose, duly seconded by Andrew Baris, the Negative Declaration is adopted.

Philip O'Connell – Aye
Joseph B. Rose – Aye
Andrew Baris – Aye

DETERMINATION

Maidstone Club, Inc. – 95 Dunemere Lane and 50 West Dune Lane –
SCTM# 301-9-4-11 and SCTM# 301-9-4-17

Upon motion of Joseph B. Rose, duly seconded by Andrew Baris, a Special Permit and Freshwater Wetlands Permit to stabilize the shoreline by placing fill, installing

coir logs, and planting vegetation in two locations directly adjacent to Hook Pond is granted.

Philip O'Connell – Aye
Joseph B. Rose – Aye
Andrew Baris – Aye

DETERMINATION

Skylight East LLC – 94 Apaquogue Road– SCTM # 301-12-5-10

Upon motion of Joseph B. Rose, duly seconded by Abigail FitzSimons, a Freshwater Wetlands Permit and a 135.4 foot variance to locate fencing no closer than 14.6 feet from wetlands is granted, with conditions.

James H. McMullan – Aye
Joseph B. Rose – Aye
Andrew Baris – Aye
Abigail FitzSimons – Aye
Philip O'Connell – Nay

DETERMINATION

Lee and Vaness Eastman – 247 Cove Hollow Road – SCTM # 301-12-2-18.1

Upon motion of Joseph B. Rose, duly seconded by Andrew Baris, a detached garage in the front yard area is granted, with conditions.

James H. McMullan – Aye
Joseph B. Rose – Aye
Andrew Baris – Aye

DETERMINATION

Brenda Wai Ming Chang – 111 Pantigo Road – SCTM # 301-4-4-26

Upon motion of Joseph B. Rose, duly seconded by Andrew Baris, area variances to construct accessory improvements and exceed allowable coverage is granted.

James H. McMullan – Aye
Joseph B. Rose – Aye

Andrew Baris – Aye

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

Huntting Hospitality – 94 Main Street – SCTM #301-3-8-1

Jane Z. Forman and Edward N. Wolff – 122 Georgica Close Road – SCTM #301-7-4-16

Susan P. Furlaud – 79 Hither Lane – SCTM# 301-5-1-2

O R I G I N A L H E A R I N G

Christopher Jaeger and Phoebe Simmer – 9 Route 114 – SCTM# 301-2-3-10

Vice-Chair McMullan called the hearing to order at 11:14 a.m., and the Public Notice, as duly published in the East Hampton Star, was read.

Application of Christopher Jaeger and Phoebe Simmer, SCTM#301-2-3-10, for Area Variances from Chapter 278, Zoning, to reconstruct a garage and convert the building to a pool house with storage. Variances of 17.3 feet, 16.7 feet and 14.6 feet are required from Section 278-3 (A) (5) (c) to reconstruct an existing garage and convert the building to a pool house with storage that is located 2.7 feet from the side yard lot line and 3.3 feet from the rear yard lot line and containing a bilco door located 5.4 feet from a side yard lot line where the required side and rear yard setbacks are 20 feet. A 50 square foot variance is required from Section 278-3 (D) (2) (a) to permit a pool house to contain 300 square feet of floor area where the maximum permitted floor area for a pool house is 250 square feet. The subject property is 10,235 square feet in area and is located at 9 Route 114 in Residence District R-40. This project is classified as a Type II Action in accordance with SEQR.

Martha Reichert, esq. of Twomey, Latham, Shea, Dubin, and Quartararo appeared on behalf of the applicant; no additional material was submitted into record, and no one appeared in opposition. Ms. Reichert explained that the application before the Board today is a similar application to the one that the Board approved June 9, 2023. When the applicants were ready to work on the pool house that was approved by this Board, it was discovered that the structure was in a dilapidated condition that required total reconstruction. The agent and applicant were advised by both the Village Attorney and the Principal Building Inspector that a new application should be submitted to contemplate the

reconstruction as opposed to a conversion of the existing garage into a pool house.

Ms. Reichert stated that since this is a new application and hearing, a cellar has been added to the garage, soon to be pool house, to provide storage in general and for housing pool equipment. Originally, it was proposed to be housed inside the cellar space of the principal structure, but per the advice of the pool company and several other involved contractors it was determined that it would be better to have it in the basement of the pool house. It is believed that this provides the same sound mitigation. The proposal is to use the same footprint, which was also noted in the Board's previous decision.

The memorandum of law submitted November 20, 2023 shows that there is precedent for this type of project in terms of the reconstruction and the addition of the cellar. The most recent cellar approved by the Board was at 38 Hunting Lane. Additionally, the application of 6 Meadow Way was a pre-existing non-conforming garage that was converted into a pool house and then a subsequent application was made to add a cellar, which was approved by the Board. Ms. Reichert added that this application has similar non-conforming rear and side yard setbacks. Additionally, the matter of 65 Toilsome Lane, located about 900 feet from 9 Route 114 is a similar application that proposed rebuilding a pre-existing non-conforming garage to be used as a pool house.

Ms. Reichert explained that in furtherance of the prior approval, the applicant has already filed with the Suffolk County Clerk's Office the covenant that restricts the use of the structure to only 250 feet for the pool house. The remaining space is to be storage that can only be accessed from the outside.

There is another variance needed for bilco doors to be added to the structure. Ms. Reichert then reiterated that this is still substantially the same application in terms of what this Board approved June 9, 2023. Additionally, there is a letter in the record in support of this new project from the adjoining neighbor.

Member O'Connell asked Village Attorney Lisa Perillo that since the applicant did not act on the determination within the 90 days, is that approval now considered null and void. Ms. Perillo explained that this is now a new application before the Board and that the prior application is of no relation. Ms. Reichert stated that to her understanding, the 90 days applies to as-built

structures, and the current application is for a proposed reuse of the structure, which would have a one year expiration. Ms. Perillo asked Ms. Reichert who had told her this. Ms. Reichert explained that she was the agent for the conversion of an ADU on Ocean Avenue within the last two years and that she had asked for a special request for the timeframe to act on the decision. She would have to review that application and any related correspondence to be certain on this matter.

Member O'Connell commented that when the previous application was before the Board for 9 Route 114, Ms. Reichert had told the Board that the project would be reconstructed where is and as is and now the project before the Board today is to tear down the entire building. With that being said, the project could be in a conforming location and the building could be built to a conforming size.

Ms. Reichert explained that when her clients were getting the building permits and examined the structural soundness of the existing garage, which is described in the architect's report in the record, it was discovered that the framing did not actually sit on the slab foundation. The framing was completely rotted, and the timbers were not reusable. Additionally, the framing does not conform with the Building Code, and as pointed out in her memorandum of law, there are several sections in Chapter 278 of Village Code that allows a legally pre-existing non-conforming structure to be reconstructed in whole or in part so long as it is being used for legal accessory use, which this application is. Ms. Reichert further added that there is a section in the code that is highlighted in her memorandum of law that discussed that when there is evidence provided that a structure is unsound, that nothing will prevent it from being reconstructed to meet the building code. The fact was discussed that there was a conforming location on this property in reference to the prior determination for this applicant, and while feasible, that location would render the rest of the yard unusable and would make for a "very tight squeeze." The applicant's intention was to reuse the footprint of the existing garage.

Ms. Reichert then read an excerpt of the Board's decision, dated in June of 2007 for 65 Toilsome Lane: "while there is room on the lot for the project to be built in a conforming location, the Board finds this unnecessary given the location of the pre-existing non-conforming accessory structure that would be converted

and rebuilt in the same footprint." It was the applicant's intent to convert the structure and it was to be taken down to the framing and given a new roof. However, upon the discovery that both the slab foundation and the framing was so rotten and dilapidated, shown through photos that are on the record for that application, it necessitated being rebuilt, all within the same footprint, which complies with Code for a legally pre-existing non-conforming accessory structure. Ms. Reichert then reiterated that the project will bring the structure into conformance with New York State Building Code. Additionally, since a new foundation has to be created, it is an opportunity to also add a basement. Ms. Reichert concluded by stating that there is ample precedent in the Village where pre-existing non-conforming garages have been permitted to add a cellar.

Member O'Connell stated that since the agent is proposing a leveled full basement, additional storage above ground would not be needed. Ms. Reichert explained that this is true and that it has already been covenanted to lose 50 square feet from the pool house use. She then reiterated that the Code permits a pre-existing non-conforming structure to be converted to a pool house, provided that the pool house use is limited to 250 square feet and that the applicant files a covenant, which has been completed. While the 50 square feet of outside storage would be lost, it would necessitate a redesign of the project. At this point, the applicant has relied on the decision, and everything has been approved by the Suffolk County Health Department. Additionally, they have abandoned their septic system and constructed a new one.

Ms. Reichert stated that the previous plans that this Board approved showed that 50 square feet of storage is not accessible and will not be put to the pool house use. Member O'Connell stated that the Board relied on the representation that the structure could be rebuilt where it was as is. Ms. Reichert explained that she understands that, however she thinks that the Board should review the decision which references the reuse of the footprint. There was an intent and there was no misrepresentation to this Board, it was just discovered that everything was rotten. Vice-Chair McMullan stated that a new application is expanding the use by putting a full foundation in that you can use for storage and pool equipment, not just replacing it. Member Baris added that this structure is a few feet from the property line.

17227

Member Rose asked for confirmation that this is an application for a variance for the construction of a new structure in the same location and is not the renovation of a pre-existing non-conforming structure. Village Attorney Lisa Perillo confirmed. Member Rose explained that the agent's previous comments indicated that it was a renovation. Ms. Reichert explained that in the application the project was called a conversion and initially, there was full intent to reuse the framing.

Upon motion of Joseph B. Rose, seconded by Andrew Baris, the Board unanimously closed the Public Hearing.

ORIGINAL HEARING

Irene Tserkovny and Alex Gorbansky – 44 Dayton Laner – SCTM# 301-2-7-17

Pro-Tem Chair O'Connell called the hearing to order at 11:27 a.m., and the Public Notice, as duly published in the East Hampton Star, was read.

Application of Irene Tserkovny and Alex Gorbansky, SCTM#301-2-7-17, for Area Variances from Chapter 278, Zoning, to make alterations and construct additions to an existing residence and to construct a patio. A 1,608 square foot variance is required from Section 278-3 A. (9) (a) to permit 4,631 square feet of coverage where 3,023 square feet is the maximum permitted coverage, and the legally preexisting coverage is 4,781 square feet. A 2.6 foot variance is required from Section 278-3. A. (4) (a) to make alterations and construct additions to a residence located 19.4 feet from a side yard lot line where the side yard setback is 22 feet. A 306 square foot variance is required from Section 278-3. A. (13) (a) to permit a residence to contain 2,543 square feet of gross floor area where the maximum permitted gross floor area is 2,237 square feet. The legally preexisting gross floor area is 2,303 square feet. The subject property is 12,371 square feet in area and is located at 44 Dayton Lane in Residence District R-40. This project is classified as a Type II Action in accordance with SEQR.

Leonard Ackerman, esq. appeared on behalf of the applicant. No additional material was submitted into record. Mr. Ackerman confirmed that a quorum is present for the application and then asked if anyone from the Board was able to view the property in which Pro-Tem Chair O'Connell and Member Rose established that they had visited. Mr. Ackerman stated that he papered this

project extensively and does not think he needs to repeat himself and would like to give the neighbor an opportunity to speak to his letter submitted in response to their opposition, as the neighbor is present at the meeting today.

First, Mr. Ackerman wanted to explain that this application is unique as he usually deals with applications that involve self-created hardship, however the hardship faced in this instance has occurred through no fault of the property owners. As stated in his submissions to the Board, the house was bought in May of 2022 and was occupied over that summer. The individuals who own the house are a couple with four young children, ages five through eleven. At the end of 2022, the homeowners utilized the house for the holiday season and in January 2023, left the house to return to the city. There was a week's period of time from when the homeowner's left to when their housekeeper found extensive flood damage from a break in a second floor bathroom.

The house is known as the "old Conklin house", where Jimmy Conklin resided. Mr. Conklin and his family also owned Home Sweet Home. The plumbing upstairs is considered "jerry-rigged." Since there is only one bathroom upstairs, the entire family had to use it and, as a result, something broke and the house suffered water damage and extensive mold throughout the winter. Once discovered, the water was shut off.

Mr. Ackerman explained that in May of 2023, the homeowners settled with the insurance company and were able to get a permit to renovate and restore the house as is. When detailed plans were created for that renovation, they discovered that because of the pitch in the roof, the upstairs bathroom would not be able to be adequately restored. At this point in time, they went to Leonard Ackerman, and he advised for them to hire an architect and see what would be possible with the minimum number of variances. Neil Cummings of Fleetwood, McMullan and Sanabria Architects is present today and can answer any questions with respect to how they came about with a design that is before you today.

Mr. Ackerman stated that the variances are limited and not extensive and in terms of numerical criteria, the GFA and side-yard are within precedent. When driving down Dayton Lane, there is diversity of architecture with some single-story and some two-story houses, which he knows is noted in the neighbor's letter. He thinks that the proposed addition is not out of character in the

neighborhood, although this is subjective. Without the variance, the family will experience detriment in living comfortably. He then reiterated that their intent has been to live comfortably in this house, and this is not the typical case where someone buys a home in East Hampton and then asks for variances due to self-created hardship, so Mr. Ackerman thinks this concern is satisfied reasonably.

Regarding whether this variance is substantial, Mr. Ackerman explained that most houses on this street and more particularly on the same side of the street, as 44 Dayton Lane, where all backyards are facing the school, are pre-existing non-conforming, meaning they all need a variance. The 240 square foot GFA variance and the 2.6 foot setback variance are not substantial. There is no environmental impact and as Mr. Ackerman had just mentioned, this is not self-created. Mr. Ackerman then stated that he would like to have the neighbor speak, as they have yet to have an opportunity to respond to his papers.

Member Rose asked if the second-floor bathroom was not repairable, in which Mr. Ackerman asked Neil Cummings, architect, to answer. Neil Cummings, Fleetwood, McMullan and Sanabria Architects, 251 Pantigo Road, East Hampton, New York, duly sworn to tell the truth, the whole truth, and nothing but the truth. Mr. Cummings explained that the existing ceiling heights in the second floor bathroom were so low and cramped that if you were in the shower, you may bang your head on the tile ceiling if you were to lean too far to one side. Overall, the second floor is fairly cramped. The idea is to raise some of the plate heights, making it more comfortable with an actual habitable ceiling height in those areas.

Member Rose asked if the ceiling height needs to be increased because of the leak. Mr. Cummings confirmed and added that the increase in ceiling height needs to also be done pursuant to Building Code. The ceiling heights in some areas are considered less than habitable according to the International Building Code. Member Rose then asked what the degree is of difference between the pre-existing ceiling height versus the proposed ceiling height for the bathroom. Mr. Cummings stated that the existing ceiling height is as low as five feet in some areas and seven feet in others and that the proposed ceiling height would make the entire bathroom the standard height of eight feet. Member Rose asked for the specific code that Mr. Cummings referenced. Mr. Cummings explained that typical minimum ceiling height is eight feet. He believes the current ceiling height

is seven feet in the bathroom, but with the sloping ceiling the habitable area is reduced to almost nothing.

Member FitzSimons questioned if the bathroom cannot be recreated as is pursuant to local Village Code. Mr. Cummings explained that it could probably pass Village Code, however the ceiling heights are very low. Member FitzSimons stated that this is a desire, not a code issue. Mr. Ackerman explained that this matter is not something that they asked the Village Building Inspector. Mr. Cummings reiterated that there are some very low ceiling heights in there and he is not sure if that particular bathroom would pass Code inspection.

Member Baris asked how this relates to the change in ceiling height of the first floor and if it affects the third floor. Mr. Cummings explained that it doesn't change much and that raising the ceiling on the first floor was a desire of the property owners, and the increase is from eight feet to nine feet. The third floor ceiling height is to remain at eight feet. Member Baris asked if the current eight foot ceiling height on the first floor part of the issue. Ms. Margolin asked for Member Baris to speak up. Mr. Cummings stated that if the existing roof was kept as is, the second floor bathroom would be tight no matter what. If they were to lift the first floor ceiling in that instance while keeping the existing second floor and roof, it create an even worse hardship. Member Baris then clarified that what he is asking is if their intention is to keep the second floor the same. Mr. Cummings stated that the second floor ceiling height is being raised with the first floor. Member Baris then asked if raising the height on the first floor will affect the height of the third floor, in which Mr. Cummings stated that it will not have an affect.

Member Rose asked for clarification from Mr. Ackerman on his assertion that because the proposed renovation is within the footprint of the pre-existing side-yard, it does not require a variance. Mr. Ackerman explained that his interpretation is that because they are only going up to the second floor and not expanding on the first floor, it does not seem logical that a variance would be needed when expanding into the second floor. Pro-Tem Chair O'Connell stated he would like to make a comment on this. Mr. Ackerman added that they are asking for the variance, and he pointed out that we are talking about bathrooms and if the house is restored as is, an IA System does not have to be installed. An IA System is being installed and there is a reduction of the pre-existing non-

conformity on the coverage in the rear, trying to add as much mitigation. Mr. Ackerman concluded that this is a unique opportunity to bring this house more in line with the bathrooms and with the sanitary while also making it as conforming as possible. Mr. Ackerman added that if the Board were to visit the house, they would see the extensive damage and mildew. It is not a healthy environment, and the house really needs to be renovated properly. The second floor has been taken down to the rafters.

Member Rose asked at what point does a renovation be alternatively considered as a re-build, is there a defined standard or is there a substantial action. Mr. Ackerman stated that the Code does not make a distinction. Pro-Tem Chair O'Connell asked if Member Rose means to say at what point is a new IA System required. Member Rose then clarified that he is asking if this is considered a renovation of an existing structure or rather the creation of a new structure, is there a threshold point. Ms. Perillo answered that this is expressly laid forth in the code. Member Rose then provided an example stating that if a fire were to have destroyed the house leaving charred remains, would the rebuild with a new basement still be considered pre-existing non-conforming, or rather is there a threshold at which it would be considered a new build. Ms. Perillo then asked if Member Rose means to say at what point does the pre-existing non-conforming use get extinguished, in which Member Rose confirmed that is what he is questioning. Mr. Ackerman stated that he would like Ms. Perillo to answer this question, in which she said no, she would like Mr. Ackerman to answer. Mr. Ackerman explained that he believes the use is never extinguished and that if the house were to be demolished down to ground level, with vacant land, and there was no remaining structure, a building permit could be obtained to build as it is.

Linda Margolin, Esq. stated that the Code allows pre-existing non-conforming structures to be modified, altered, and reconstructed, as long as the degree of non-conformity is not increased. Therefore, even if this house was completely destroyed, the owners would have the right to rebuild in exactly the same location without meeting the new setbacks. Ms. Margolin then spoke to Member Rose's earlier question regarding the view that a variance is not needed for the second story for this application. The Code states that one is able to do modify, alter, or reconstruct as long as the degree of non-conformity is not increased. For setbacks under the Village Code, the non-conformity is a horizontal distance from the lot line. Therefore, on this particular lot, it must be within 22

feet from the side-yard, however the existing building is only 19.4 feet. And although they are proposing to build the structure taller, that taller portion is still only 19.4 feet. Ms. Margolin's understating is that when the architect made these plans, they specifically elected to stay within the footprint of the building.

Member Rose affirmed that he understands Ms. Margolin's point, however his question is regarding the segment outside of the existing 19.4 feet. Ms. Margolin stated that there is no segment outside of what is existing. Member Rose asked to be able to finish his point and stated that there is a volume of a degree of intrusion up to a certain height. Ms. Margolin apologized and said that she did not mean to interrupt. Member Rose continued stating that the issue is pursuant to what was called out by the Building Department which is the incremental intrusion above the ground floor. Member Rose then stated that the variance that is being requested is for the portion above the existing intrusion at a certain height. Ms. Margolin stated that she is sure Member Rose knows from other variance applications that the measure of a variance is not volumetric, but rather distance, such as setbacks, and that is the way Ms. Margolin and Mr. Ackerman understand the Code to be read. Ms. Margolin added that she is not in the business of giving legal advice to explain to the Board their position. Member Rose thanked Ms. Margolin.

Pro-Tem Chair O'Connell commented that regarding the footnote in the February 7th letter to the Board discussing Mr. Ackerman's view that a variance is not required, he disagrees. Since the proposed project is adding additional building outside the envelope to the second floor and increasing the GFA, he believes a variance is required. While he respects Mr. Ackerman's comment about mass, he has a different opinion. Member Rose stated that had the matter of what the provision of the Village Code is had been called to the Board's attention on a different matter, he thinks it would be consistent. Mr. Ackerman stated that after the neighbor has an opportunity to speak, he would like to make a comment. Member Rose then asked if the Village Planner or Village Attorney could give an opinion on this matter at some point prior to the determination being made.

Martha Ostrow, 38 Dayton Lane, East Hampton, New York, duly sworn to tell the truth, the whole truth, and nothing but the truth. Ms. Ostrow stated that she and her husband own 38 Dayton Lane, which is directly adjacent to and to the

17234

east of 44 Dayton Lane. They have lived on Dayton Lane for three and a half years. A letter had been submitted to the Board detailing their concerns on Monday, February 5th, so she will keep her comments brief in the interest of everyone's time. First, there is a concern for the side-yard variance sought by the applicants, which further decreases the already non-conforming setback between the shared lot line from 22 feet to 19.4 feet. The applicants have ample room to expand to the north and to the west of their property in a manner that is conforming. Ms. Ostrow and her husband have provided two alternative drawings of similar alterations that could be achieved within the existing footprint of the home that conform to Code. From her understanding, the Board does not typically give setback variances where the proposed improvements to a home can be made in one or more conforming locations.

Ms. Ostrow's second concern is that having an expanded home in the manner being contemplated by applicants' design that is so close to the shared lot line will create a looming structure adjacent to her property that will reduce light, privacy, and air flow and may result in the attic being used as an illegal third floor, given that the plans include a finished stairwell, significant overhead space, and several windows.

Ms. Ostrow stated that her and her husband view the proposed design, which includes the significantly raised roof line and a drastically increased amount of living space on the second floor and attic levels as being out of architectural scale and character within the signature and charm of Dayton Lane. To the extent of homes on Dayton Lane have a second story, most are within the roof line of the house with dormer windows. This results in homes smaller in scale that do not impose on surrounding properties or dominate the street sightlines. Ms. Ostrow notes that the applicants are proposing a six bedroom house on a .28 acre lot. It is concerning that the applicants only included elevations for the updated structure but not the existing structure in their application. This makes the scale of the proposed renovation not immediately known. Upon further review of their drawings, Ms. Ostrow and her husband note that the applicants measure the height of their elevations from the first floor elevation and not from the exterior grade, resulting in a house that is actually 33 feet tall, which is not conforming.

Ms. Ostrow stated that in summary, this is not an objection to the applicants expanding the primary structure at 44 Dayton Lane or any other

aspects of the application, including the expansions to full halves, but instead take issue to the degree in the manner of the proposed expansion. If approved, the current design will lead to further encroachment on an already non-conforming property setback and will affect Ms. Ostrow and her husband's access to light, privacy, and potentially result in an illegal third story and adversely affect the existing character of Dayton Lane.

Ms. Ostrow understands that there are other neighbors on Dayton Lane that were also not consulted on applicant's plans and share similar concerns. It is respectfully requested that the Zoning Board leave the record open on this matter and thanked them for their time. Member Rose thanked Ms. Ostrow for the materials submitted and stated that they were very helpful. Regarding one comment that Ms. Ostrow made, Member Rose said that there was an elevation within the plans of the applicant's submission and that he had to look back a few times to find it.

Erika Broberg, 25 Cedar Street, East Hampton, New York, duly sworn to tell the truth, the whole truth, and nothing but the truth. Ms. Broberg is an architect and is present today to represent the Ostrow family. She commented that in terms of the size of the family, she believes this should be considered irrelevant regarding the application. Upon examining the proposed plans, Ms. Broberg thinks that the hardship is self-created by the actual proposed design and the configuration in terms of where the spaces are placed on the property. The Building Inspector is away this week and cannot weigh in on any of the discussion about ceiling height. Ms. Broberg stated that ceiling heights that are below five feet do not count towards square footage. Mr. Cummings mentioned that less than eight foot ceilings do not meet Code and Ms. Broberg believes it to actually be seven feet. This is something that would need to be verified with the building inspector, regarding what is actually considered a legal second floor. There are many bathrooms on second floors that have a sort of sloped ceiling.

Regarding the third floor, Ms. Broberg wonders what the building inspector's comment would be on having a finished accessible stair to a third floor with a 7 foot 6 inch ceiling height. The changing of the height of the first and second floor ceiling results in increasing the volumetrics on the second floor that are over the side-yard setback. Additionally, utilizing a gable, and she clarified

17236

that we do not have pyramid law, increases the non-conformity if it were a hip-roof, it would decrease the volumetrics of the roof structure, which is looming.

Regarding the argument of it being a two-dimensional variance because of setback line versus being three-dimensional, she respectfully disagrees with Mr. Ackerman. It is a three-dimensional variance because it is tied to the increase in GFA.

In reference to the discussion about the IA System, Ms. Broberg believes that 50% of the financial value of the house, 50 % of the square footage, and a 50 % replacement of the windows all trigger a new IA System, which would need to be verified by the Building Inspector. Based on the damage to the house, the installation of a new IA System would be necessary regardless of the variance when the building permit application was filed.

Ms. Broberg then introduced a question - does the increase in GFA increase the level of non-conformity. She would like the architect for this proposed project to produce a conforming square footage that equals the amount of square footage on the other side of the house. She does believe that there is a potential solution.

Neil Cummings, architect for the proposed project at 44 Dayton Lane, stepped up to the podium and Pro-Tem Chair O'Connell reminded him that he is still under oath. Mr. Cummings stated that the minimum ceiling height of the bathroom is seven feet. The issue is that as you get closer to either side of the bathroom, the ceiling height becomes closer to five feet. As far as alternate locations for expansion, there is room on the north elevation, but the house is already in excess of its allowable lot coverage. With trying to minimize the number of variances needed, it seemed the most sense not to expand the first floor at all and simply add to the second floor so as to provide more room for quite a large family. Pro-Tem Chair O'Connell mentioned that the neighbors had stated that the top of the ridge of the roof was actually 33 feet in which the Code allows up to 30 feet, confirmed by Ms. Broberg. Mr. Cummings stated that to the top of the ridge from the sub-floor or grade it is about 29'6", in which this measurement can be double checked if needed. Ms. Margolin stated that Mr. Cummings is mumbling and needs to speak into the microphone. Pro-Tem Chair

O'Connell asked for clarification on if it is something that has exceeded the height. Mr. Ackerman asked Erika if it exceeds the height or not.

Erika Broberg, architect representing the neighbors, stated that this code is something that needs to be rectified in not only the Village, but also the Town. Ms. Broberg stated that when looking at the elevation on the second to last page, elevation "00" is the top of the finished first floor framing. Additionally, when looking at the height of the actual structure from finished first floor is 29 feet 4 and 3/8 inches. This lot on Dayton Lane slopes from 44 feet on the west side down to 41 feet, therefore there is a three foot contour drop. Because of this, Ms. Broberg does not know the exact height of the grade on that side of the house. However, building height is grade to top of roof line, so if you count the grade drop in this instance, the proposed building height is 33 feet, concluding that this requires a height variance. Member Rose summarized that because of the grading of the site and how the height is calculated, there is a question for the Village Building Inspector to answer regarding what the actual height is. Ms. Perillo stated that this is not an application for a height variance. Ms. Broberg reminded that the actual height is calculated from grade to top of the roof line. Ms. Perillo clarified that the Building Department did not point this out as an issue. Pro-Tem Chair O'Connell explained that the reason he pointed this out is in the event that the project is approved, that the agent and architect work to double check the numbers so that a height variance is not asked for later in time. Mr. Cummings stated that they can work to find an average natural grade. Mr. Ackerman stated that he has a plane to catch, and he would like to get back to Florida.

Member Rose commented that the proposed structure is a very substantial increase and is out of character with the surrounding houses on Dayton Lane. There are variances needed to accommodate some of the bathroom concerns raised. He then asked if something could be presented that is more modest than what has been proposed. Member FitzSimons agreed with Member Rose. She added that this seems like a big remodel.

Mr. Ackerman stated that the Board is putting this application down and they have not even gone to the house to examine its current state and that he is ashamed of the Board. Member Rose stated that he did go to the house. Mr. Ackerman stated that even so, Member Rose is unable to clearly see a way to provide the property owners with a variance. Member Rose stated that he is not

going to argue. Ms. Perillo asked for the Board and Mr. Ackerman to speak one at a time so that the record can be clear. Mr. Ackerman stated that the Board is turning this application down and that there are only four members, not five, which is unfortunate. He then added that this is unnecessary and told the opposing neighbor directly that he hopes she is satisfied and that she does not ever have to go before the Zoning Board. Pro-Tem Chair O'Connell stated that it is inappropriate to go directly after an opposing neighbor. Mr. Ackerman then spoke directly to the neighbor again stating that in 60 years of practicing law, he has not seen neighbors... Pro-Tem Chair O'Connell told Mr. Ackerman that that is enough.

Linda Margolin, esq. pointed out to the Board that a variance would not be needed if the second story were cut short by three feet. Instead of making it co-terminus with the first floor, it was cut back two feet eight inches. Regarding the second story, Ms. Margolin thinks that it could be done in such a way that no GFA Variance is needed. The house would look a little odd, but in terms of its presence on the street as a two story house as opposed to the current one and a half stories, it is not going to look significantly different. Ms. Margolin then stated that she thinks the question for the Board to answer is if they think that it will better blend in with the character of the neighborhood if it looks like a traditional colonial, or if instead it looks a little odd. Mr. Ackerman stated that it is obvious that these people do not care what it is going to look like. He then added he is able to express his feelings regarding this matter. O'Connell commented that Ms. Margolin expressed it very well.

Mr. Ackerman asked for the hearing to be closed. Member Baris suggested that the hearing be left open in which Mr. Ackerman questioned. Member Baris asked if the agent and applicant would like to come back with updated plans portraying a smaller attic space. Mr. Ackerman stated that any alterations will be objected too and that they might as well accomplish this project without a variance. Member Baris proclaimed that Mr. Ackerman does not know if the Board would object to updated plans for the project. Mr. Ackerman stated that it is only two to two here regarding Board members and that he does not have a third member unfortunately. Member Rose stated if this is what the agent and applicant would like, then the hearing might as well be closed. He added that he thinks the points have been made and there may be an opportunity to do something that is conforming to code. The Board is not here for that purpose,

rather the Board is present to evaluate particular actions and applications. Mr. Ackerman stated that Member Rose does not live on this street, and he does not have to look at the house.

Pro-Tem Chair O'Connell commented that while the variances are extensive as designed, he agrees with Linda Margolin on this rare occasion that the project would alter the structure to fit better. Mr. Ackerman asked for the record to be kept open, in which the Board unanimously agreed to.

Upon motion of Joseph B. Rose, duly seconded by Andrew Baris, the Board unanimously closed the meeting at 12:05 p.m.

FILED
VILLAGE OF EAST HAMPTON, NY
DATE: 3/22/24
TIME: 3:16 p.m.

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, February 9, 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 Christopher Jaeger and Phoebe Simmer, SCTM#301-2-3-10, for Area Variances from Chapter 278, Zoning, to reconstruct a garage and convert the building to a pool house with storage. Variances of 17.3 feet, 16.7 feet and 14.6 feet are required from Section 278-3 (A) (5) (c) to reconstruct an existing garage and convert the building to a pool house with storage that is located 2.7 feet from the side yard lot line and 3.3 feet from the rear yard lot line and containing a bilco door located 5.4 feet from a side yard lot line where the required side and rear yard setbacks are 20 feet. A 50 square foot variance is required from Section 278-3 (D) (2) (a) to permit a pool house to contain 300 square feet of floor area where the maximum permitted floor area for a pool house is 250 square feet. The subject property is 10,235 square feet

Continued from B3 in area and is located at 9 Route 114 in Residence District R-40. This project is classified as a Type II Action in accordance with SEQR.

Application of Irene Tserkovny and Alex Gorbansky, SCTM#301-2-7-17, for Area Variances from Chapter 278, Zoning, to make alterations and construct additions to an existing residence and to construct a patio. A 1,608 square foot variance is required from Section 278-3 A. (9) (a) to permit 4,631 square feet of coverage where 3,023 square feet is the maximum permitted coverage, and the legally preexisting coverage is 4,781 square feet. A 2.6 foot variance is required from Section 278-3. A. (4) (a) to make alterations and construct additions to a residence located 19.4 feet from a side yard lot line where the side yard setback is 22 feet. A 306 square foot variance is required from Section 278-3. A. (13) (a) to permit a residence to contain 2,543 square feet of gross floor area where the maximum permitted gross floor area is 2,237 square feet. The legally preexisting gross floor area is 2,303 square feet. The subject property is

12,371 square feet in area and is located at 44 Dayton 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: January 19, 2024
By Order of John L. McGuirk III, Chairman
Zoning Board of Appeals, Inc. Village of East Hampton
29-2/121

