

Zoning Board of Appeals
January 10, 2020
11:00 a.m.
Emergency Services Building
One Cedar Street, East Hampton

Those present were:

Lysbeth A. Marigold, Chair
Raymond J. Harden, Vice Chair
John L. McGuirk III, Member
Lawrence A. Hillel, Member
Craig R. Humphrey, Member
Christopher A. Minardi, Alternate Member
Elizabeth Baldwin, Village Attorney
Kenneth E. Collum, Code Enforcement Officer
J. Kent Howie, Ordinance Inspector
Robert Jahoda, Ordinance Inspector
Billy Hajek, Village Planner
Mr. and Mrs. Robert Woolcott, Applicants
George E. Doty Jr., Applicant
Mary Jane Asato, Attorney on behalf of Joseph and Amy Perella
Andrew E. Goldstein, Attorney on behalf of James Danella
Christopher Walsh, East Hampton Star
Pamela J. Bennett, Deputy Clerk

The Chair called the meeting to order at 11:00 a.m., and the following official business was discussed:

MINUTES

Upon motion of Lawrence A. Hillel, duly seconded by Craig R. Humphrey, the Board unanimously approved the minutes of **December 13, 2019.**

Chair Marigold – Aye
Vice Chair Harden – Aye
Member McGuirk – Aye
Member Hillel – Aye
Member Humphrey – Aye

DETERMINATION

Lewis Family 2002 Trust – 165 Lily Pond Lane – SCTM #301-13-11-5.2

Chair Marigold stated that this determination will be rendered at the Board's February 14, 2020 meeting.

DETERMINATION

Zee I LLC – 19 Chauncey Close – SCTM #301-15-1-6

Disposition of Application: Approved – Determination on file

Chair Marigold – Aye
Vice Chair Harden – Aye
Member McGuirk – Aye
Member Hillel – Aye
Member Humphrey – Aye

DETERMINATION

Zon II LLC – 23 Chauncey Close – SCTM #301-15-1-5

Disposition of Application: Approved – Determination on file

Chair Marigold – Aye
Vice Chair Harden – Aye
Member McGuirk – Aye
Member Hillel – Aye
Member Humphrey – Aye

ADJOURNMENTS

Zee I LLC – 19 Chauncey Close – SCTM #301- 15-1-6

Zon II LLC – 23 Chauncey Close – SCTM #301-15-1-5

Upon motion of Lawrence A. Hillel, duly seconded by Raymond J. Harden, the Board unanimously adjourned the hearings until February 14, 2020.

Chair Marigold – Aye
Vice Chair Harden – Aye
Member McGuirk – Aye
Member Hillel – Aye
Member Humphrey – Aye

APPLICATION WITHDRAWN
Adam P. Bartos – 26 La Forest Lane – SCTM #301-12-5-3

Pursuant to an email from Eric Bregman Esq. dated January 6, 2020, this application has been withdrawn.

ADJOURNMENT
Nicole and Allen Salmasi - 73 Davids Lane – SCTM #301-3-9-15

Upon motion of Raymond J. Harden, duly seconded by John L. McGuirk III, the Board unanimously adjourned the hearing until February 14, 2020.

Chair Marigold – Aye
Vice Chair Harden – Aye
Member McGuirk – Aye
Member Hillel – Aye
Member Humphrey – Aye

CONTINUED HEARING
Robert W. and Rosalind M. Woolcott – 55 Toilsome Lane –
SCTM #301-8-1-6

Chair Marigold called the hearing to order at 11:04 a.m.

Mr. and Mrs. Woolcott appeared before the Board; Mr. Woolcott stated that he wanted to respond to comments made by the Board Members at the last hearing. The original house was built in 1965 and located 50 feet from the road and that the garage was nonconforming to the side yard setback. The lot is approximately 460 feet long and only 80 feet wide. The best design is to have the house located farther back from the road and a detached garage in front of the house located approximately where the old garage was located but nonconforming to Village setbacks. The garage plans have been revised, the square footage was 704 square feet and is now 598 square feet which can accommodate today's large vehicles; the space for seasonal storage of outdoor furniture has been removed.

With reference to the side elevation which showed sliding glass doors, there was no intention for the space to be used for anything other than for cars and storage. The doors had been salvaged from a previous project, recycling them into the garage is a better idea than throwing them out.

Moving the house closer to the street would make it subject to extra road noise. Another suggestion was to rotate the swimming pool to accommodate the garage which would make the existing swimming pool, 18 x 36 in size, over the pool setbacks and the garage would also be over the setbacks. With reference to the comment about living on the property and having a reputation of building and selling houses, Mr. Woolcott stated that that is true but they live in the houses before selling; the first house they lived in for six years, the second for three years, and the third house for four years.

Mr. Woolcott stated that 49 Toilsome has a detached garage in the front yard, 61 Toilsome has a detached three-car garage, 54 Toilsome has a detached garage in front, and 59 Toilsome Lane has a cottage and a detached garage in front of the house. Chair Marigold asked Mr. Woolcott if he has seen Village Planner Hajek's memorandum which indicates that the garage at 52 Toilsome sits on the front plane of the house and is compliant with the law, 54 Toilsome is attached to the house and is compliant with the law, and 59 Toilsome with the cottage is legally preexisting. Mr. McGuirk stated that every time they grant a variance for a garage in front of the house, he regrets it; a garage belongs at the back of the house or attached to the house. Mr. Humphrey stated that Mr. Hajek's analysis shows that only one of the garages that exists in front of the house was granted a variance but the others were historically there. Mr. Hillel pointed out that the applicant is starting from new.

Mrs. Woolcott stated that the garage was originally in the location that is proposed; the house has moved and they tried to keep the garage where it was, so it is not like they are adding a new garage. The garage will be landscaped as much as possible from the street so it will not be a visible structure.

Mr. Humphrey stated that the regulation is that garages are supposed to be at the back of the house and this is a bad precedent. Mr. Harden stated that the garage of the original house was attached to the house. Ms. Marigold stated that the Board is not going to design the project for the applicant but it sounds like the Board is reluctant to grant the variance. Ms. Baldwin asked if there is anyone from the public that would like to speak. Ms. Marigold noted that the Board is not closing the hearing yet. Mr. Woolcott reminded the Board that their lot is only 80 feet in width. Ms.

Marigold stated that there are a lot of narrow lots on the street, 71 Toilsome is 85 feet wide, 59 Toilsome is only 60 feet wide, and 55 Toilsome is 80 feet so the lot is in the norm.

Upon motion of Craig R. Humphrey, duly seconded by Raymond J. Harden, the Board unanimously closed the Public Hearing and asked Village Attorney Elizabeth Baldwin to prepare a determination for the February 14, 2020 meeting.

Chair Marigold – Aye
Vice Chair Harden – Aye
Member McGuirk – Aye
Member Hillel – Aye
Member Humphrey – Aye

CONTINUED HEARING

**George E. Doty Jr. and Le-Ellen Spelman – 25 Fithian Lane – SCTM
#301-3-5-7.4**

Chair Marigold called the hearing to order at 11:12 a.m.

George E. Doty Jr. appeared on his own behalf and stated that the feedback from the Board was that his request was too much and that he has reduced his request by two-thirds. Ms. Marigold suggested that the applicant could have grass under his feet. Mr. McGuirk stated that he has no issues with the revised plan. Mr. Harden stated that the applicant has taken out quite a bit. Ms. Marigold stated that walkways are fairly benign. Mr. Hillel found the proposal acceptable. Mr. Humphrey found no objection.

Upon motion of John L. McGuirk III, duly seconded by Raymond J. Harden, the Board unanimously closed the Public Hearing and asked Village Attorney Elizabeth Baldwin to prepare a determination for the February 14, 2020 meeting.

Chair Marigold – Aye
Vice Chair Harden – Aye
Member McGuirk – Aye
Member Hillel – Aye
Member Humphrey – Aye

ORIGINAL HEARING

Joseph R. and Amy M. Perella – 43 Terbell Lane – SCTM #301-13-10-5

Chair Marigold called the hearing to order at 11:15 a.m., and the Public Notice, as duly published in the East Hampton Star, was read.

Application of Joseph R. Perella and Amy M. Perella, SCTM#301-13-10-5, for a Variance from Chapter 278, Zoning, to construct a detached garage. A variance is requested from Section 278-3.A.(5)(f) to construct a detached garage within the front yard where detached garages are prohibited within a front yard. The subject property is 189,660 square feet in area and is located at 43 Terbell Lane in Residence District R-160. This property fronts on Hook Pond and is located in FEMA Flood Zone AE elevation 11. This project is classified as a Type II Action in accordance with SEQR.

Mary Jane Asato Esq. appeared on behalf of the applicant; no additional material was submitted into the record; no one appeared in opposition. Ms. Asato stated that the application is for a detached garage in a definitional front yard; the property is in the R-160 Zone, is oversized at 190,000 square feet, and a house has existed on the property since 1901. The rear yard of the property is affected by the wetlands setback. The house is set back 152 feet from the street and the proposed garage meets the minimum setback that would be required if the house were forward; in other words, the garage would have to be at least 80 feet noting that the proposed garage is located 97.7 feet from the street. The lot is at the terminus of Terbell Lane and across the street is a tennis court. The practical difficulty is Hook Pond and the location of the house. Is there a way to alleviate other than a variance? Ms. Asato stated that it is impractical but the applicant could lift the house and bring it closer to the street obviously that would be one way but under the circumstances, the size of the property, the practical difficulty is the siting of the existing house and the wetlands. It will not be a detriment to the neighborhood, it is at the terminus of the street, the short side faces the street, and it is opposite a tennis court. The proposed location minimizes the environmental impact to keep the garage away from the wetlands. The applicant has taken care to preserve the character of the property; attaching the garage to the side of the house is dimensionally feasible but it would take away from the integrity of the house.

Ms. Marigold stated that while the Board expressed dismay at a garage in the front yard on a previous application, she noted that this is a different situation. Mr. McGuirk stated that this application has a different set of circumstances. Ms. Marigold stated that the Board reviewed a

Freshwater Wetlands Permit application a couple of years ago and there is a second building on the property that was labeled as a garage. Ms. Asato stated that there is a two-bay garage and it is used for storing cars off season and to cut a driveway across here, there would be substantial impact on wetlands. For day to day use as a garage, it is not practical and moreover a regular driveway would have to be installed and that would have a substantial runoff effect on Hook Pond; they do drive over the lawn to store their cars in the winter but that is only a twice a year event versus in and out. Ms. Marigold stated that when the applicant has a real garage in the front, why would they not store their cars there. Ms. Asato stated that it is basically storage space. Mr. Humphrey stated that there is also a port cochere and questioned whether that is used as a garage. Ms. Asato stated that that is not really a garage as it is not enclosed. Mr. Hillel stated that the survey indicates that there is no square footage indicated for accessory buildings. Mr. Hajek stated that the existing building/garage that sits next to the Pond has living quarters on the second floor and is counted toward principal gross floor area. Mr. Hillel stated that it is not then considered accessory. Mr. Hajek stated that that is correct. Ms. Asato stated that that is preexisting nonconforming and does not exceed the gross floor area for principal structures. Mr. Harden asked if it can be included in the determination that the existing garage stays unfinished on the first floor and not a living space. Ms. Asato stated that that is not going to be an issue. Ms. Baldwin stated that that would be an expansion and would require approval.

Upon motion of John L. McGuirk III, duly seconded by Raymond J. Harden, the Board unanimously closed the Public Hearing and asked Village Attorney Elizabeth Baldwin to prepare a determination for the February 14, 2020 meeting.

Chair Marigold – Aye
Vice Chair Harden – Aye
Member McGuirk – Aye
Member Hillel – Aye
Member Humphrey – Aye

**Jacqueline R. Williams New York QPRT and Eugene F.
Williams III New York QPRT – 29 Jones Road – SCTM #301-12-7-1**

Pursuant to an email from Billy Hajek, Village Planner, dated December 31, 2019, and confirmed by Building Inspectors Kenneth Collum and Robert Jahoda, it was determined that no variance is necessary.

ORIGINAL HEARING

James D. Danella – 49 La Forest Lane – SCTM #301-12-6-7

Chair Marigold 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 James D. Danella, SCTM#301-12-6-7, for Variances from Chapter 278, Zoning, to make alterations and construct additions to an existing residence. A 654 square foot variance is requested from Section 278-3.A.(13)(a) to construct additions and permit a residence containing 7,071 square feet of gross floor area. The maximum gross floor area permitted by zoning is 5,679 square feet and the existing residence contains 6,417 square feet. A 2.1 foot variance is requested from Section 278-3.A.(3)(a) to make alterations to a residence located 47.9 feet from the front yard lot line where the required setback is 50 feet. An 8.7 foot variance is requested from Section 278-3.A.(4)(a) to make alterations to a residence located 25.3 feet from the side yard lot line where the required setback is 34 feet, and any other relief necessary. The subject property is 49,712 square feet in area and is located at 49 La Forest Lane in Residence District R-160. This project is classified as a Type II Action in accordance with SEQR.

Andrew E. Goldstein Esq. appeared on behalf of the applicant; no one appeared in opposition. Mr. Goldstein stated that this is an application for gross floor area and side yard setback variances and that the house is preexisting nonconforming as to each. The requested gross floor area additions are located to the rear of the house. With reference to the five standards that the Board has to consider, the additional mass of the house is not visible from the street; the Board has on many occasions said under those conditions the variance for the gross floor area will not cause an undesirable change in the character of the neighborhood or to any nearby property which is exactly what is proposed. The side yard variance will not further encroach into the side yard setback. The house has been in this location in this excessive size, has exceeded the gross floor area for many years without causing any adverse comment.

Proposed are three additions, one will increase the size of a closet in the master bedroom and add a bay window, the second will add a stair landing and a small space for a home office, and the third will add a laundry room and a shower. The property is thickly vegetated on all sides and one cannot see in; the property is underdeveloped because it is well under the applicable coverage and there are no accessory buildings on this property.

Mr. McGuirk stated that the applicant has the right to add an accessory building like a pool house. Mr. Goldstein agreed but they would prefer to have the bathroom and the laundry room. Ms. Marigold suggested that the applicant could install a pool house without a variance. Mr. Goldstein stated that this is a case where this particular laundry room cannot be seen from the street.

Ms. Marigold stated that she does not agree with that logic that if you cannot see it, it is okay and the Code does not follow that either. If you take what is allowed and what is proposed, it is a 25 percent increase of what is allowed and that is called, under our criteria, substantial. Mr. Goldstein stated that it is not a question of logic, it is question of precedent and in order to depart from that precedent, he asked how this application is different from the many other applications the Board has said if you cannot see it, it does not affect. Ms. Marigold stated that the application Mr. Goldstein relies upon the most is McManus on Fithian Lane where there was a flat piece of roof in between two higher roofs that the Board allowed them to fill in and every one of Mr. Goldstein's narratives hearkens back to McManus. Mr. Goldstein stated that when he cites something as precedent, the purpose of the statute does not necessarily relate to the facts of an individual case, the purpose of the statute is if the additional mass does not overwhelm the street, does not affect the street, it does not affect the neighborhood character. Mr. Goldstein stated that in order for the Board to depart from that precedent, you need to have facts particular to this application which would permit you to do that. Ms. Marigold stated that the fact is it is almost 25 percent over what is allowed for the GFA and that is a substantial increase. Ms. Marigold stated that in the narrative, Mr. Goldstein talked about Mr. Danella spending more time there, it is a beautiful house, why would he not, and that he would like a home office. Ms. Marigold noted that Mr. Danella has two living rooms on the first floor and is sure some clever architect could carve out an office space for him. Mr. Goldstein stated that part of the 25 percent that is being eluded to is space that is legally preexisting nonconforming, he is not asking for a variance for that,

and, in fact, pursuant to the Code 278-1.B.(1)(a), that space is not subject to the Code, he is not asking for a variance for that. This is not the first circumstance in which the Board has had this situation. Mr. McGuirk stated that if the Board granted the laundry room and the bathroom, could the Board then say that they cannot have another structure for the pool house. Mr. Goldstein stated that that is not related to this application and asked if he could finish his presentation and then the Board could ask all the questions they want. The Board has previously handled gross floor area applications where there is preexisting nonconforming gross floor area and the applicant is asking for additional gross floor area. The question the Board is talking about is substantiality; in the Georgica Close Road application there was a 971 square foot additional gross floor area request on a preexisting nonconforming property and the determination adopted July 2016, 971 square feet was an 11.7 percent variance and the total excess, including that preexisting nonconforming gross floor area, was 29.7 percent. The Board said specifically the variance of 971 square feet might be large but the other circumstances mitigate against that. Mr. Hillel asked what were the other circumstances. Mr. Goldstein stated that you could not see it from the street. Mr. Hillel stated that that is only part of it, there are many factors in making a decision. Ms. Marigold stated that that is what is so dangerous, each application has its own set of circumstances like the applications for garages in a front yard. Mr. Goldstein stated that there was the Zirin application where there was a 10.21 percent variance and the total excess was 21.2 percent. Ms. Marigold stated that there is a shift in the feeling of the Village that houses are getting bigger and bigger and bigger. Mr. Goldstein asked Ms. Marigold if she is deciding this application based on a feeling in the Village. Ms. Marigold said no but you can quote determinations from five years ago, ten years ago, things have definitely changed. Mr. Goldstein stated that the Zirin application was in 2017, not so long ago, and he is asking as a resident of the Village, a taxpayer of the Village, the Code provides for variances so in order to depart from these precedents what fact is different in this case. Mr. Harden stated that in Zirin, that was based upon the need for an elevator. Mr. Goldstein stated that he is talking about substantiality, talking about the effect on the neighborhood. Ms. Marigold asked about the bedrooms and the sanitary system as indicated in Mr. Hajek's memorandum. Mr. Goldstein stated that that is a Building Permit issue, nothing for the Zoning Board. Mr. Hillel asked about the factor if there are any other alternatives; it is a big house and maybe another part of the house can absorb the proposal. Mr. Goldstein stated that he wants a bigger closet in his master bedroom. Mr. Hillel stated that he understands

but this is a big house and there is another factor which is what are the other alternatives that can achieve this. Mr. Goldstein asked if the applicant should convert a bedroom to a closet, is that a feasible alternative. Mr. Hillel stated that he is not telling the applicant what to do. Mr. Humphrey stated that eight bedrooms is a big house. Mr. Goldstein stated that there are eight bedrooms according to the Health Department, that does not mean he has eight bedrooms. Mr. Hajek stated that the building plans show eight bedrooms. Mr. Goldstein stated that the bedrooms are irrelevant. Ms. Marigold stated that the applicant does have the space and there is a way of doing it without granting a variance. Mr. Goldstein stated that the Board has to weigh that, it is a balancing test, against the detriment to the neighborhood. Mr. Hillel stated that that is one factor. Mr. Goldstein stated that the Board is saying there is no effect on the neighborhood but the applicant has the ability to turn a bedroom into a closet. Mr. Hillel stated that the applicant has a lot of alternatives, there is a lot of space. Ms. Marigold stated that this should not be so argumentative, it is embarrassing. Mr. McGuirk added that it is horrible. Mr. Goldstein stated that he wants to understand how this affects the character of the neighborhood or any neighbor. Ms. Baldwin stated that the point is is that it is a public hearing, not an inquisition of the Zoning Board; the Board is supposed to be listening to Mr. Goldstein give his presentation. Mr. Goldstein continued to speak over the Village Attorney and the Members of the Board. Mr. Harden stated that it is best to go back to the homeowner.

Upon motion of Lysbeth A. Marigold, duly seconded by Craig R. Humphrey, the Board unanimously adjourned the hearing until February 14, 2020.

Chair Marigold – Aye
Vice Chair Harden – Aye
Member McGuirk – Aye
Member Hillel – Aye
Member Humphrey – Aye

DISMISSED WITHOUT PREJUDICE
Anthony G. Ingrao – 56 Huntting Lane – SCTM #301-3-7-14.5

Upon motion of Raymond J. Harden, duly seconded by Lawrence A. Hillel, the Board unanimously resolved to dismiss this application without prejudice.

Chair Marigold – Aye

Vice Chair Harden – Aye
Member McGuirk – Aye
Member Hillel – Aye
Member Humphrey – Aye

Upon motion of Craig R. Humphrey, duly seconded by Raymond J. Harden, the Board unanimously adjourned the meeting at 11:44 a.m.

Chair Marigold – Aye
Vice Chair Harden – Aye
Member McGuirk – Aye
Member Hillel – Aye
Member Humphrey – Aye

continued on next page

as may come before the Board:

Application of Joseph R. Perella and Amy M. Perella, SCTM#301-13-10-5, for a Variance from Chapter 278, Zoning, to construct a detached garage. A variance is requested from Section 278-3.A.(5)(f) to construct a detached garage within the front yard where detached garages are prohibited within a front yard. The subject property is 189,660 square feet in area and is located at 43 Terbell Lane in Residence District R-160. This property fronts on Hook Pond and is located in FEMA Flood Zone AE elevation 11. This project is classified as a Type II Action in accordance with SEQOR.

Application of Jacqueline R. Williams New York QPRT and Eugene F. Williams III New York QPRT, SCTM#301-12-7-1, for a Variance from Chapter 278, Zoning, to construct a detached garage. A variance is requested from Section 278-7.C.(2)(d)[1] to permit the construction of a detached garage on a parcel of land containing multiple residential uses, classified as non-conforming uses, where a single lot is permitted one residential use and where the addition or alteration of buildings and structures on lots containing nonconforming uses is prohibited, and any other relief necessary. The subject property is 79,637 square feet in area and is located at 29 Jones Road in Residence District R-160. This property contains a Timber Frame Landmark and the project requires approval of the Village Design Review Board. The project is classified as a Type II Action in accordance with SEQOR.

Application of James D. Danella, SCTM#301-12-

6-7, for Variances from Chapter 278, Zoning, to make alterations and construct additions to an existing residence. A 654 square foot variance is requested from Section 278-3.A.(13)(a) to construct additions and permit a residence containing 7,071 square feet of gross floor area. The maximum gross floor area permitted by zoning is 5,679 square feet and the existing residence contains 6,417 square feet. A 2.1 foot variance is requested from Section 278-3.A.(3)(a) to make alterations to a residence located 47.9 feet from the front yard lot line where the required setback is 50 feet. An 8.7 foot variance is requested from Section 278-3.A.(4)(a) to make alterations to a residence located 25.3 feet from the side yard lot line where the required setback is 34 feet, and any other relief necessary. The subject property is 49,712 square feet in area and is located at 49 La Forest Lane in Residence District R-160. This project is classified as a Type II Action in accordance with SEQOR.

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: December 20, 2019

By Order of Lysbeth A. Marigold, Chair, Zoning Board of Appeals, Inc. Village of East Hampton 25-1

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 Emergency Services Building, One Cedar Street, East Hampton, New York, on Friday, January 10, 2020 at 11:00 a.m. on the following applications and to conduct such other business

VILLAGE OF EAST HAMPTON, NY
DATE **February 14, 2020**
TIME **1:30 p.m.**



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