

Zoning Board of Appeals
August 14, 2020
11:00 a.m.
via Video-Conferencing and
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Those present were:

Lysbeth A. Marigold, Chair
Philip O'Connell, Vice Chair
John L. McGuirk III, Member
Lawrence A. Hillel, Member
Craig R. Humphrey, Member
Christopher A. Minardi, Alternate Member
Elizabeth Baldwin, Village Attorney
Billy Hajek, Village Planner
Vanessa Champion, Attorney on behalf of Pond Acquisition Corp.
Leonard I. Ackerman, Attorney on behalf of Donald R. Mullen Jr., James D.
Danella, Summerhouse30 LLC, and Calvin and Marcy Klein
Andrew E. Goldstein, Attorney on behalf of Donald R. Mullen Jr.
Linda Margolin, Attorney on behalf of Donald R. Mullen Jr.
Oliver Cope, Architect on behalf of Donald R. Mullen Jr.
James H. McMullan, Architect on behalf of James D. Danella
Nicholas Spadola, Ackerman, Pachman, Brown & Goldstein LLP
Jonathan Tarbet, Attorney on behalf of Westend Trust
Trevor Darrell, Attorney on behalf of 84 Egypt Lane LLC
Farhad Karim, Applicant, 84 Egypt Lane LLC
Edward Conard, Applicant, Summerhouse30 LLC
John Whelan, Architect on behalf of Calvin and Mary Klein
Jody Gambino, LTV Moderator
Pamela J. Bennett, Deputy Clerk

Ms. Marigold: Good morning ladies and gentlemen. Let us start by calling the August 14, 2020 it could be our final zoom meeting of the East Hampton Village Zoning Board to order.

Minutes

Ms. Marigold: First, we have to approve the minutes of July 10, 2020, if there are no additions or corrections, I would like a motion to accept the minutes as submitted.

Mr. Hillel: Motion.

Mr. Minardi: Second.

Ms. Marigold: All in favor?

Mr. O'Connell: Aye.

DISMISSED WITHOUT PREJUDICE
Buck Properties, LLC – 29 Dunemere Lane – SCTM #301-9-4-3

Ms. Marigold: Now we have a few incidentals, the application dismissed without prejudice of Buck Properties, LLC, 29 Dunemere Lane. Do I have a motion to accept that?

Mr. Minardi: Motion.

Mr. Hillel: Motion.

Ms. Marigold: Second?

Mr. O'Connell: Second.

Ms. Marigold: All in favor?

Mr. Hillel: Aye.

Mr. McGuirk: Aye.

APPLICATION TO BE RE-NOTICED
Justin G. and Elizabeth P. Sautter – 3 Georgica Road –
SCTM #301-8-12-5.10

Ms. Marigold: We have an application that requires re-noticing, it is Justin G. and Elizabeth P. Sautter, 3 Georgica Road. A motion for that?

Mr. Hillel: Motion.

Ms. Marigold: Second?

Mr. Minardi: Second.

Ms. Marigold: All in favor?

Mr. O'Connell: Aye.

Mr. Humphrey: Aye.

ADJOURNMENTS
Eric and Lori Blatstein – 211 Lily Pond Lane – SCTM #301-15-4-12
Booke Georgica LLC – 82 Apaquogue Road – SCTM #301-12-5-8

Ms. Marigold: We have two requested adjournments to the September 11, 2020 meeting Eric and Laurie Blatstein at 211 Lily Pond Lane and Booke Georgica LLC of 82 Apaquogue Road. Do I have a motion to adjourn these?

Mr. Hillel: Motion.

Mr. Minardi: Second.

Ms. Marigold: All in favor?

Mr. O'Connell: Aye.

Mr. McGuirk: Aye.

DETERMINATION

Alexandra Kate Skellet – 33 Church Street – SCTM #301-2-6-26

Ms. Marigold: We have four determinations this month written by our Village Attorney, I will read the names and the addresses and whether they were granted or not and then afterward Ms. Bennett will poll the Board. And for more information, all the folder is in on file at Village Hall. Now, Pam, can they go to Village Hall now?

Ms. Bennett: Yes, and all the information is on our Village website as well, the entire file.

Ms. Marigold: Good. All right we have Alexandra Kate Skellet at 33 Church Street, it was for a patio, a chimney, and heat pump and that was granted.

Ms. Bennett: Ms. Marigold?

Ms. Marigold: Yes.

Ms. Bennett: Mr. O'Connell?

Mr. O'Connell: I approved in part and dissented in part.

Ms. Bennett: Yes, so the way it is written, you approve it.

Mr. O'Connell: Okay, approved.

Ms. Bennett: Okay. Mr. Hillel?

Mr. Hillel: Yes.

Ms. Bennett: Mr. Humphrey?

Mr. Humphrey: Yes, I approve.

Ms. Bennett: Mr. Minardi?

Mr. Minardi: Yes.

DETERMINATION
The John and Mary Clarke Family Limited Partnership –
52 Ocean Avenue – SCTM #301-8-13-20

Ms. Marigold: Then we have the John and Mary Clarke Family Limited Partnership, 52 Ocean Avenue, it was to legalize alterations to a legally preexisting, nonconforming second residence and to remove the kitchen, that was granted, and, again, Phil O'Connell dissented which is in there. Ms. Bennett?

Ms. Bennett: Ms. Marigold?

Ms. Marigold: Yes.

Ms. Bennett: Mr. O'Connell?

Mr. O'Connell: Approved.

Ms. Bennett: Mr. Hillel?

Mr. Hillel: Yes.

Ms. Bennett: Mr. Humphrey?

Mr. Humphrey: I approve.

Ms. Bennett: Mr. Minardi?

Mr. Minardi: Yes.

DETERMINATION
23 Hedges Lane LLC – 23 Hedges Lane – SCTM #301-13-7-7

Ms. Marigold: We have 23 Hedges Lane LLC, 23 Hedges Lane, it is an alteration to a preexisting, nonconforming accessory residence and to install an outside bathroom, that has been granted.

Ms. Bennett: Ms. Marigold?

Ms. Marigold: Yes.

16079

Ms. Bennett: Mr. O'Connell?

Mr. O'Connell: Approved.

Ms. Bennett: Mr. Hillel?

Mr. Hillel: Yes.

Ms. Bennett: Mr. Humphrey?

Mr. Humphrey: Yes.

Ms. Bennett: Mr. Minardi?

Mr. Minardi: Yes.

DETERMINATION

128 LPL LLC – 128 Lily Pond Lane – SCTM #301-13-7-8.1

Ms. Marigold: The final one is 128 Lily Pond Lane LLC at 128 Lily Pond Lane, it was an alteration to a principle building and a height variance and improvements to a second residence. That too has been granted.

Ms. Bennett: Ms. Marigold?

Ms. Marigold: Yes.

Ms. Bennett: Mr. O'Connell?

Mr. O'Connell: Approved.

Ms. Bennett: Mr. Hillel?

Mr. Hillel: Yes.

Ms. Bennett: Mr. Humphrey?

Mr. Humphrey: Yes.

Ms. Bennett: Mr. Minardi?

Mr. Minardi: Yes.

REQUEST TO AMEND DETERMINATION
Pond Acquisition Corp. – 291 Montauk Highway – SCTM #301-6-1-9.1

Ms. Marigold: Now we go to request to amend determination. The first one is the Pond Acquisition Corporation at 291 Montauk Highway which is basically they are asking for more time due to the pandemic, they cannot get everything accomplished by the date that was preset. Is the applicant present?

Mr. McGuirk: What is their date, how long do they want us to extend it for?

Mr. O'Connell: September 25th I believe.

Ms. Champion: September 25th. This is Vanessa Champion.

Mr. McGuirk: Okay.

Ms. Marigold: So, we will just vote whether to approve this or not?

Mr. O'Connell: I make a motion to approve.

Ms. Marigold: Second?

Mr. Hillel: Aye.

Ms. Marigold: All in favor?

Mr. Hillel: Aye.

Mr. Humphrey: Aye.

Mr. O'Connell: Aye.

REQUEST TO AMEND DETERMINATION
c/o The Maidstone – Premises of Lexington Lounge LLC –
207 Main Street – SCTM #301-8-7-30.4

Ms. Marigold: The next one is not as easy, it is c/o The Maidstone, premises of Lexington Lounge LLC, 207 Main Street. Is there an applicant present?

Mr. Ackerman: Good morning Ms. Chairwoman, can you hear me all right?

Ms. Marigold: Yes.

Mr. Ackerman: First before I start, I just would like to make an across the counter comment, I want to compliment the Mayor, I want to compliment Becky Molinari (sic) and of course Pam for organizing these meetings. I know they are very stressful, I know it is a lot of work, I know it is not part of the job description but you have all done a terrific job and from those of us on the other side of the counter, we appreciate the work of the Board, the Village, and particularly Pam in organizing this and making it almost seamless. Now with respect to The Maidstone, we were prepared to go forward with an argument and our position, however, we have just received within the last 45 minutes a number of opposition letters so that under those circumstances, we need to review these opposition letters so that we are in a position to reflect on them, discern them, and discuss them with the client so I respectfully request a continuation of the hearing for at least another month.

Ms. Marigold: This is complicated, there were 33 letters I think from the neighbors, I can imagine that you need to discuss that with your clients. Do I have a motion to accept a continuation?

Mr. McGuirk: So moved.

Mr. Hillel: Yes.

Ms. Marigold: Second?

Mr. Hillel: Second.

Ms. Marigold: All in favor?

16082

Mr. Humphrey: Aye.

ORIGINAL HEARING

Donald R. Mullen Jr. – 67 Cross Highway – SCTM #301-5-2-12

Ms. Marigold: We will now move onto the new hearings, Donald R. Mullen Jr., 67 Cross Highway, Ms. Bennett, would you please read the notice.

Ms. Bennett: Sure, this was originally in January, the original hearing and then they requested the hearing be opened again, so I am going to read from the original Notice of Hearing. Application of Donald, no that is the wrong one, application of James D. Danella...

Mr. O'Connell: No, Mullen.

Ms. Bennett: You want Mullen first?

Ms. Marigold: Yes.

Ms. Bennett: Okay. Sorry. Application of Donald R. Mullen Jr., SCTM#301-5-2-12, for Variances from Chapter 278, Zoning, to make alterations and construct additions to an existing residence. A 1,060 square foot variance is requested from Section 278-3.A.(13)(a) to construct additions and permit a residence containing 10,560 square feet of gross floor area. The maximum gross floor area permitted by zoning is 8,726 square feet and the existing residence contains 9,500 square feet. A 7.9 foot variance is requested from Section 278-3.A.(4)(a) to make alterations to a residence located 42.1 feet from the side yard lot line where the required setback is 50 feet. A 10.6 foot variance is requested from Section 278-3.B(2)(c) to permit a low pitch roof 45.4 feet from the side yard property line where the required setback for a low pitch roof is 56 feet, and any other relief necessary. The subject property is 110,853 square feet in area and is located at 67 Cross Highway in Residence District R-80. This project is classified as a Type II Action in accordance with SEQR.

Ms. Marigold: Is the applicant present?

Mr. Ackerman: Are you ready, is the Chair ready for me to present?

Ms. Marigold: Absolutely. Ready and waiting.

16083

Mr. Ackerman: We are ready and waiting and I ready and waiting too. You should have a July 21, 2020 letter from the neighbor Peter Flaherty, he is the neighbor to the north, in the file, Pam, is that in the file? I assume it is?

Ms. Bennett: I shall look.

Mr. Ackerman: Okay, while Pam is looking for that, let me just sort of briefly outline our presentation, Oliver Cope, the architect on this project is with me in my office and he will make the presentation as well. Again, I want to thank the Board for their cooperation in reviewing of our filings particularly the models and under these circumstances viewing our presentation at Village Hall. This is an application for an expansion of 1,060 square feet. This is an unusual circumstance where prior to 2015 these premises were eligible for a substantial GFA increase but due to change of circumstances with respect to the owner's family, the enlargement of his family and the needs of his family, he is seeking this 1,000 square foot plus addition. The architect has, as he will explain to you, tried to work within the existing footprint as much as possible and made the impact of these proposed improvements and this 1,060-foot expansion, in our view, de minimis. The house as Billy outlined in his excellent memo, existing GFA is 9,500 square feet. In 2015 this house lost almost 28 percent of its GFA. I know that does not minimize self-created hardship but I think it reflects the upon where this applicant stands in terms of his request. We are looking for variances here for a lot line...

Mr. Goldstein: It is preexisting nonconforming as to lot line.

Mr. Ackerman: Right, let me just run through this. So, the house is preexisting, nonconforming as to the northerly lot line at 43.9 feet, therefore, we need a variance for that even though it is preexisting. We need the GFA variance and let me just see...

Ms. Margolin: Small bump out for the...

Mr. Ackerman: And a small bump out for what?

Ms. Margolin: For a bay window.

16084

Mr. Ackerman: For a bay window. So, I am going to ask Oliver Cope, just take us briefly through the application in terms of the expansion. Oliver, can you do that?

Mr. Cope: Sure, all right. Can everybody hear me all right?

Mr. Humphrey: Yes.

Mr. Cope: I am sorry, I am going to try to, I will start at the beginning and move briefly through...

Mr. Ackerman: Make it short.

Mr. Cope: So first of all, I want to set context. This is the entrance at 67 Cross Highway and if you have been to the site, the house is not visible from the road, actually it is not visible from any of the abutters either. It is located with a setback of 211 feet which is...

Mr. Goldstein: More.

Mr. Cope: It is close to 300 percent of the required front yard setback. This will give you a little bit of immediate context and you can see it is a neighborhood of good-sized houses and lots. I am going to move quickly from these plans to the model because I think the model shows everything best but the plans on the left show the existing conditions and it is important to note that all of our proposed increases in GFA occur within the existing footprint with the exception of this small 20 square foot bay window they are putting on the side of the house. We are also reducing the actual footprint of the house in this area here which is done in crisscross through it and I believe that is 170 square foot reduction in footprint there so the net reduction in footprint in the house is 150 square feet. We are proposing on the ground floor to enclose an existing porch which we are reducing in size, we would like to enclose this corner of this L shaped porch in the area of the dining room so we can expand the dining room and we want to add a little bit at the front entry so we can expand the powder room and make it a little more functional. And that again is within the boundaries of an existing porch. And on the second floor, we want to make a change to the roofline to get a little more headroom in one of the bedrooms and that increases the square footage up there by 50 square feet. We will get to the issue in height and the nonconforming low sloped roof in a second, and then we are

16085

expanding over another porch here where we have to get a study in for the master bedroom. So, I am just going to move to the model because I think the model, which I hope most of you got a chance to see, illustrates this best. This is the rear of the house where the bulk of the changes are and on the left is the existing house and, on the right, is the right-hand side of the screen occupied by, does that help, can you see both sides?

Mr. Humphrey: Yes.

Mr. Cope: Okay. On the far left you will see that this is the area where we are extending the gable end to capture some space over this existing porch and replacing an existing terrace. On the right, you will see the model view where that is infilled, that is at the center of the rear of the house. Then back here in the middle, the sort of center porch, that is where we have cut the existing porch and roof terrace back and we are proposing to infill it over here on the right. And again, do you see all that on the right-hand side? Those changes, 280 square feet over the existing porch, and 530 square feet of GFA for the lower porch. I would like to point out that of the GFA increase that we are asking for, 70 percent of the GFA, the 1,060 that we are asking for, 70 percent of that occurs on the first floor and within the boundaries of existing porches. The next view down shows the corner of the existing porch near the dining room where we are expanding and infilling, again, it is 100 square feet but it is not visible from anywhere. And then to go to the roof, on the left you will see this shed roof which is made non-compliant by the 2019 low slope roofing, that is a 240 square foot area that is not in compliance. With this new configuration in the roof, we have reduced the noncompliance to 170 square feet. And then I am essentially done, this just shows the side view where there is a bay window being added. Questions?

Ms. Marigold: Is there anybody on zoom that would like to speak on this? Pam, was there anybody who was going to call in or come on?

Ms. Bennett: No, I do not believe so. But there may be callers...

Mr. Gambino: Currently there are no callers.

Ms. Bennett: Okay, thanks Jody.

Ms. Marigold: Phil, do you have some questions?

Mr. O'Connell: Yes, I was looking at your memo dated August 5, 2020, you seem to indicate that the lack of visibility is an important criteria of evaluating these area variances, I disagree, again, if this was the case you could plant a 30-foot hedge and build five feet from the property line. You also refer to Code Section 278-1.B.(1)(a) that zoning does not apply to the preexisting nonconforming structure. I believe it is interpreted that the preexisting nonconforming structure does not need to be brought into compliance with the current setbacks but zoning does still apply, he is expanding from 8,726 square feet to, from the allowed 8,726 square feet to 10,560 square feet is a 20 percent plus area variance. You know we must take into account the Code and legislative intent of the changes in 2015 when the idea was to prevent an undesirable change in the character of the neighborhood. Side yard setback, I do not have an issue with putting a basement under the garage, the two beds and bath as long as it is accompanied by the requisite septic system that is low nitrogen as this does not increase the GFA. And the height variance is 20 percent, you know going from 25.4 to from the allowed 56 feet to 45.4 so this creates more mass and as you know the Village Code was changed to try to reduce some of that mass. I think overall the nonconforming being proposed is too great compared to the lawful dimensions as they would exist. Those are my comments.

Ms. Marigold: Oliver or Lenny would you like to answer.

Mr. Ackerman: Linda Margolin is going to respond.

Ms. Margolin: Good morning Ms. Marigold and Members of the Board, I am Linda Margolin, I would like to respond to Phil's comments. This Board has the long history of precedence in terms of the effect of the character on the neighborhood, holding essentially that if variances that permit a departure from the Code cannot be seen that they do not and cannot have an effect on the character of the neighborhood. In fact, we are not talking about a change to this residence which puts it so close to the street that a change in landscaping that would make it readily visible, the perceptible changes to this house for which we are seeking a variance are in fact on the rear of the house and the landscaping or absence of it if someone decides to take down the mature landscaping that surrounds this property, it would still not be visible to anyone in the neighborhood. So not only do I believe that this Board has long-standing precedence about how to evaluate the effect of the

character of the neighborhood, not to mention a variety of Court cases that talk about the same thing, but this particular residence and what is being proposed here in particular the changes in the variances being sought could not affect the character of the neighborhood. I also think with respect that Phil's take on what the Zoning Code says with respect to regulating nonconforming buildings is not accurate. As we pointed out in our letter to the Board of August 5th, the Village's Code provision is unusual, it represented a receptable, intentional legalization of what the Code previously provided and as the Village has enacted greater controls over GFA and other aspects of what can be built on residential property, it has steadfast and failed to modify this provision which says that the Zoning Code does not regulate, not legally nonconforming buildings which is what this is. So we believe that because of the way the Village Code reads, remembering that Zoning Codes being restriction of common law property rights, must be construed in a way that is least restrictive to the property owner that it would be erroneous for this Board, as a matter of law, to look at the percentage of the variance being sought without being the preexisting nonconforming GFA for this building and that what you should be looking at, if you want to consider percentages although I think here it is misleading, you should be looking at the percentage that the additional square feet represents not the totality of the house but I will say that this is an unusual application compared to many of them that I have seen before this Board because virtually all of the expansion with the exception of the bay window is being done within the existing footprint of the house, and I think Mr. Cope worked hard to make sure that from a massing standpoint, the house would not be any bigger while providing greater utility and room for the homeowner. So, we are urging the Board to grant this variance and we believe that it is in fact a very modest request considering these factors.

Mr. Ackerman: I would also point out to Phil that at 73 Cross Highway, a similar lot, 2.5 acres, GFA is 9,750, at 70 Cross Highway, 2 plus acres, similar lot, is 8,091. I do not think the additional square footage here and the way Oliver has reconfigured this house is substantial in terms of, you know, addressing changing of the character of the neighborhood. Again, there is a Code provision, I think numbers can be manipulated any way we want them to be. I think we have to be reasonable as the safety valve, the Zoning Board being the safety valve, you have to be reasonable. This is a family that built a house, did not buy the house preexisting nonconforming, built the house, lived in the house, the zoning changed and now change of circumstances, family circumstances, require a slight expansion and they

have worked very diligently to accomplish that. I think it would be unreasonable for this Board, and frankly unfair, to penalize this owner for living in a house since 2002 and to be penalized because the law changed 2015 and he did not rush to the drawing board and file a building permit to be preexisting nonconforming with this expansion. Can I answer any other question?

Ms. Baldwin: Lys, do you mind if I just respond to...

Ms. Marigold: Yes, I have a letter from Beth, so we have Beth right here.

Ms. Baldwin: So, I will just, I just want to say that I agree with Phil's interpretation, I respectfully disagree with Linda and Lenny's interpretation. It is my opinion that the variance to be calculated as the difference between what is permitted and what is requested. While the degree to which a valid preexisting nonconformity is to be increased by the proposed addition is something that the ZBA may consider, as part of its review, the full measure of the nonconformity informs the Board and the public the degree to which the final structure will exceed the carefully developed dimensional regulations for the zoning district. I do not believe that the Village's change to its Code or the case cited in the letter provided by the applicant affects this interpretation. I think the Code Section states that the Village must allow the nonconformity that exists to remain, which is how Phil phrased it as well, and that is it. Once the property owner wants to expand upon a nonconformity, the full extent of the nonconformity is to be considered. That was our position on Danella, I believe this issue came up prior and it continues to be the position right now at least of the Village Attorney.

Mr. Ackerman: Beth, can I just comment.

Ms. Baldwin: Of course.

Ms. Margolin: I just want to say something which is if that was all the Village's law was intended to accomplish, it was pointless because that is a position of the Court of Appeals that by changing the zoning you could not make illegal an existing dwelling or an existing building. In other words, in order for a zoning code to be legal, it could not turn existing structures into illegal structures. So, the Village's law is a...[inaudible]...in a way that it did not need to be if that was the only purpose and, therefore, I think, with respect, that that is a misreading of the Village's law, that the Village's law

was intended to be more liberal than was required by the constitutional rulings of the Court of Appeals in the U.S. Supreme Court. There is an enormous amount of jurisprudence over what zoning codes can do with respect to legally preexisting, nonconforming buildings and structures and uses and, in general, you are not permitted to outlaw them by adopting a change to the zoning code because it recognizes the vested nature of property rights and what has already been developed. So, with respect I think that that would be a mistaken interpretation of the Village's Code.

Mr. Ackerman: But we are not here, Beth, we are not here to argue the law, no, no, what I would like to do is ask this Board to dig down deep and say to themselves this is a family that bought and built this home in 2002 when the zoning would have permitted far in excess of what they are asking for now. In fact, they would have been able to build a 12,000 plus square foot house. They did not buy this house after 2015, they did not buy a house that is preexisting, nonconforming, they built a home that was conforming and then subsequent to the change in the law, they found it necessary to renovate this house to provide some additional space for their new expanded family. And I think under those special circumstances, this is a reasonable request and I ask you to, deep down, think it through and give us what I believe should be a reasonable and a fair result.

Mr. O'Connell: Lenny, by that reasoning, anybody who built or bought prior to 2015, we are talking about what was allowed prior to 2015 and we are trying to compare it to that, I respectfully disagree.

Mr. Ackerman: Well, no, but Phil, I am not setting a precedent here. What we are asking is we are looking at a particular case, this one case. We are looking at the neighborhood supports it, the neighbor supports it, we are not being piggish, we are mitigating, we are reducing some nonconforming aspects to it. I do not see the unreasonableness of it. You know, 1,060 square feet is not going to change the neighborhood and it is going to be, as I said, the safety valve of the Zoning Board is to give people an opportunity, in the course of their occupancy, to add to their home. I do not think this is unreasonable. I am not saying it should apply to everyone who has a preexisting, nonconforming home, I am only suggesting for the Mullens they should be able to get relief. I am not asking it for anyone else right now. I am asking it for the Mullens under their circumstances.

Mr. O'Connell: Right now.

Mr. Humphrey: A question for Beth, Beth, have we had any chance to look at what you said in writing?

Ms. Baldwin: Say that again?

Mr. Humphrey: Have we had a chance to see in writing what you have just said in reputation in part to what...

Ms. Baldwin: Have I submitted anything to the file? No.

Mr. Humphrey: All right, that is what I want to see. I was to be able to see some of this in writing. This is the first time I have heard some of this.

Ms. Baldwin: So, you want me to submit an opinion from the Village Attorney to the Zoning Board?

Mr. Humphrey: That is correct. Is that too much to ask?

Ms. Baldwin: No, no problem.

Ms. Marigold: I think to answer the difference between Linda and Beth is that Beth is not calling it illegal but she is asking us to consider the existing nonconformity, not making it illegal but we should just be looking at it because it is making the property more nonconforming. Is that right, Beth?

Ms. Baldwin: Yes.

Mr. O'Connell: Beth is of the opinion that the baseline is the existing allowed zoning not where they are currently to where they are going...

Mr. Ackerman: We will litigate...

Ms. Baldwin: But also, that the Board can consider the fact that the building is nonconforming and they are entitled to maintain the size that they have so that should be something that the Board considers. You cannot ignore that. While I think the variance itself is the difference between what is permitted and what is requested, that what currently exists should be a factor in whether or not the Board thinks it is a substantial variance.

Mr. Ackerman: If I may, as Beth just said is very important. It is a factor, Craig, it is not the determination, it is not the rubber stamp oh because you are going over what is preexisting, nonconforming, you are automatically not entitled to relief. You have to look at all the factors, all the considerations, the character of the neighborhood, environmental impact, is there an alternative. That is all we are talking about here, it is a factor.

Ms. Baldwin: ...[inaudible]...

Mr. Ackerman: Right, that is right, Beth, we all agree on that, have we demonstrated character, Phil does not think the view should be an issue, it is not one of the five factors, no one disputes that, but historically in precedent the Board has always considers that as a factor. I think you just have to say to yourself, well has Oliver done as good a job as he can do, has he tried to satisfy the client's needs within this footprint which is what he has done. There is no expansion of the footprint. There is no impact on the neighbor. It is 1,090 square feet. Sure, the circumstances leading up to this are interesting and bear, I think, reflection, since 2002 this family owned it, this family now has a need for expansion of their home to accommodate the family, the expanded family. That is all we are asking for is to give it consideration, let us now prejudge it just because it is preexisting, nonconforming.

Mr. Hillel: From my point of view, again, there is no argument the preexisting, nonconforming but we are talking about another 12 percent and that would bring it up to 21 percent, from my point of view, I would accept some of this 12 percent but not the full 12 percent and maybe if you come back and reduce it to some extent, I think it would be more feasible in my point of view.

Mr. Ackerman: He does not want to do that. All right, with that in mind, the Chair, I would like to have a continuation and so we can discuss with Oliver and the client can discuss that, okay? Lys, could I hear from the other Board Members with respect to their views? Thank you, Larry, can I hear from the other Board Members?

Mr. Humphrey: Can I say something else first? I have already had my say, I know, but there is a diagram here where you show the models themselves with numbers. My models have pictures, I have the pictures but...

Mr. Cope: This is Oliver and what I did in preparation for the zoom...

Ms. Margolin: Would you like, Mr. Humphrey, would you like to see that come in as, would you like Oliver's markup submitted to you?

Mr. Humphrey: Yes.

Ms. Margolin: A better picture of exactly where the expansion is with relation to the models?

Mr. Humphrey: The same pictures with the numbers.

Mr. Ackerman: Yes, okay.

Ms. Margolin: We can do that.

Mr. Ackerman: We will get you that. Anyone else on the Board have any requests? John?

Ms. Bennett: Can I just clarify, I think Mr. McGuirk has recused himself on this application and Mr. Minardi is sitting in. Is that correct gentlemen?

Mr. Ackerman: Oh, I am sorry.

Mr. McGuirk: That is correct.

Mr. Ackerman: I did not know that, I am sorry, John.

Mr. McGuirk: Yes, that is okay.

Mr. Ackerman: Chris, do you have any comments or any requests for us that we need to provide? I guess we lost Chris.

Ms. Baldwin: No, he is muted.

Mr. Minardi: Sorry, I mute myself. I do not have any comments, there were no neighbor responses, correct, other than the one letter of support, were there any other comments from the neighbors?

Mr. Ackerman: Not that I know of, no.

16093

Ms. Marigold: All right well that is a very small part of it. All right, well...

Mr. Ackerman: So, we will continue this...

Ms. Marigold: Can I have a motion to have a continuation until the next meeting. Would someone make a motion?

Mr. Hillel: Motion.

Ms. Marigold: Second?

Mr. Hillel: Second.

Ms. Marigold: All in favor?

Mr. Hillel: Aye.

Ms. Marigold: Okay that is adjourned.

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

Ms. Marigold: Okay, moving right along to Danella, 49 La Forest Lane. Is there a new notice on this one?

Ms. Bennett: I will read the notice if you would like.

Ms. Marigold: Is it the same notice as the last time?

Ms. Bennett: Yes, same notice.

Ms. Marigold: Okay, ready.

Ms. Bennett: Shall I read it?

Ms. Marigold: Yes.

Mr. McGuirk: Yes, I think you should.

16094

Ms. Bennett: Okay. 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 23 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 R160. This project is classified as a Type II Action in accordance with SEQR.

Ms. Marigold: Is the applicant present?

Mr. Ackerman: Good morning, before we get into the discussion with respect to the variance, first I want to thank Beth for working with us on this C. of O. Beth, are we set now that we can put the issue of the C. of O. for the eighth bedroom to bed with the amended building permit application for the eighth bedroom with an upgraded sanitary system?

Ms. Baldwin: Yes, I believe that is what we had discussed with Ken that if the applicant was willing to upgrade the sanitary system, they could include that eighth bedroom.

Mr. Ackerman: Yes, and so, what I was addressing here was I felt that, and this is addressed to the Board and to the Chair and to the Board, I felt that any question concerning that eighth bedroom may have tainted the application thinking that perhaps our client had done something amiss here, and, in fact, our client bought this house with an eighth bedroom. It was only after a comment made at the Board meeting previously and my inquiry of the Building Department that we discovered that there was some issue raised concerning the legitimacy of the eighth bedroom in that it was constructed without the benefit of a building permit, and once we were able to understand the issue, we could fashion a response so I did not want there to be a question of the legitimacy of the client's C. of O., notwithstanding the fact that this application at the last hearing seemed to imply that perhaps

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he had done something improper, and I think we are all satisfied, Beth, and you can support me in this, that our client had nothing to do with this. A C. of O. was issued, the bedroom was existing and we are proceeding. So, in this application we reduced the GFA request down to 470 square feet, 248 square feet on the first floor for the powder room and laundry room and 220 square feet for the office and the stair landing. Again...

Mr. McGuirk: Can you put a copy of the plans up? Do you have a copy of it because I no longer have it?

Mr. Ackerman: Nick?

Mr. Spadola: Yes?

Mr. Ackerman: Give me one second. Nick, can you put the plan up?

Mr. Spadola: Yes, one moment.

Mr. Humphrey: I am hearing about 50 percent of the voice in this...

Ms. Margolin: Is this any better?

Mr. Humphrey: I can hear you now and I heard the part about some of the things about the bathroom and sewage system but not much of it.

Mr. Ackerman: Craig, what I was addressing was that I wanted it to be clear to the Board that our clients had nothing to do with the issue over the C. of O. with respect to the eighth bedroom and I did not want that issue or ambiguity to taint our application. We bought a house with an eighth bedroom and a current C. of O. and a set of plans that showed an eighth bedroom. Unfortunately, what happened was there was a requirement that a sanitary upgrade be done. We obtained Health Department approval post-closing to upgrade the sanitary and Beth and the Building Department in resolving the ambiguity has agreed that we install an upgraded sanitary system which is more than required by Health Department, we will be able to get a properly amended C. of O. for the eighth bedroom. I just want to be clear with the Board that our client did nothing wrong here. Our client is just complying with what needs to be done to clarify. Sometimes C. of O.'s are issued with a number of bedrooms listed, sometimes they are not, in this case, there was no indication on the C. of O. as to the bedroom, and Ken

Collum, rightfully, questioned whether we had, as Billy did in his memo, whether we needed to upgrade the sanitary and we are doing that although that was really the obligation of the seller and the seller has agreed to be responsible for that. So, with respect to this application, we are adding to the rear of the property, over an existing patio, 248 feet and above that 222 square feet, that is to the rear of the property. I do not know if you can see it, John. Can you see it?

Mr. McGuirk: I can see it. We are no longer adding the, you originally had...

Mr. Ackerman: No, we have reduced it, we have really pushed it down and of course we are putting in the IA system as I indicated although we had approval from the Health Department but under the interpretation of the Village Code, we are required, because of this eighth bedroom, to install the IA system so we would, of course, install that. That is not really mitigation necessarily. There is no neighbor objection here. I think we have demonstrated that there is not going to be a substantial change in the character of the neighborhood or create any detriment to any nearby properties. We looked at using the availability of accessory density, putting a number of accessory structures to accommodate a powder room and a laundry room on the lawn. Because of the pie shaped nature of this property, from a design perspective, and Jim McMullan is here to answer any questions concerning the design, we felt that by doing this modest addition to the rear of the property it would leave the rear yard available for the enjoyment of the family. I think that the benefit here sought by the applicant cannot be achieved by some other method as I indicated using accessory structures in the rear. I think it is a small percentage-wise, a very small increase in GFA and I think that under all the circumstances here and all the criteria, this is a reasonable application and should be granted.

Mr. Hillel: What is the GFA with the eighth bedroom but not with all the other additions?

Mr. Ackerman: The GFA is 6,617.

Mr. Hillel: That is with the eighth bedroom, right?

Mr. Ackerman: It was 6,417 and then there is 200 feet with the double-heights calculation so the total is now officially 6,617.

16097

Mr. Hillel: And you want to go from 6,617 to 7,071, right?

Mr. Ackerman: 7,087.

Mr. Hillel: It is 7,087?

Mr. Ackerman: It is 470 square feet.

Ms. Marigold: And so, permitted is 5,679, is that right? Originally?

Mr. Ackerman: That is correct.

Mr. Hillel: So that is a total of 25 percent.

Mr. McMullan: No, 11 and one-half.

Ms. Margolin: No, it is 11 and one-half percent.

Mr. Hillel: No, I am saying 7,071 versus the max plus 25 percent, is that correct?

Mr. O'Connell: If you are going from what is allowed under current zoning at 5,679 that is approximately correct.

Ms. Marigold: I had actually more problem with this because of the small, it is just a little over an acre and it is an odd-shaped lot and I think there are probably wetlands behind La Forest with that pond there and you need a side yard variance. I had more problem...

Mr. McGuirk: Where, I am just curious, where are the wetlands?

Mr. Ackerman: Across the street.

Mr. McGuirk: Yes, they are across the street.

Ms. Marigold: They are across the street but that whole area has those ponds and everything and it is very wet.

Mr. Ackerman: She is totally against it.

Ms. Marigold: The size of the lot and...

Ms. Margolin: Could we have the Chair speak a little louder, it is very difficult to hear you, Ms. Marigold.

Mr. Ackerman: Yes, I am sorry, we cannot hear you, Lys.

Ms. Marigold: Oh, I am sorry. I said I had more of a problem than not to compare it with Mullen but we just talked about Mullen which has over two and one-half acres and this has even, you are asking for, from what is allowed to what you want is even a greater amount of GFA on this small lot which is very front-loaded which goes basically from one side of the lot to the other, and I know it is behind a high hedge but we do not, we are not influenced by that so I have more of a problem with this to put in a new bathroom and laundry room and you have a fairly large house. In the old days, you would carve out a room somewhere else, I mean, I do not know, that is my feeling on it.

Mr. Ackerman: She does not support it.

Ms. Marigold: Phil, do you have some comments?

Mr. O'Connell: I have a couple of comments. With regard to the eighth bedroom, I agree, I support what Lenny was saying because that house was marketed for years as an eight-bedroom house so I appreciate the applicant taking care of that. Again, it is the same thing with the exemption on 278-1.B.(1)(a) that we talked about on the prior application. I agree with Lys that they cannot see it argument is not, I do not go for that. With regard to the wetlands, the house is 826 feet from the pond across the street on the other side of La Forest and then it is 1,060 feet to whatever that little pond is called that is right by Georgica so I am not as concerned about the wetlands especially since they are putting in a new sanitary system. I do feel the situation was self-created. This was bought in 2018, they knew what the rules were, they knew the zoning code and as you said one of the factors is not only what exists versus what is being asked for but also what the actual code currently permits so I think it is a substantial variance request, and, again, the Board was very specific in changing the square footage allowed in 2015 to try to reduce the massing, overdevelopment. This is not something I support. You have the side yard setback variance is about 20 percent going from 34 feet, the required 34 feet, to the 27 feet. I think the variance is

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substantial and self-created overall, a nonconformity being proposed, too great compared to the lawful dimensions allowed by zoning.

Mr. Ackerman: Okay. Could I just comment to the Chair and to the Members of the Board?

Ms. Marigold: Yes.

Mr. Ackerman: The alternative for this client is to build more GFA, albeit accessory GFA, they could put four 250 square foot structures in the rear yard. So how can you justify denying 470 square feet over an existing, disturbed area against 1,000 square feet and four buildings in the rear of this property? Is that a balance? Is that appropriate? I mean you are pushing a client to do, a landowner to build four accessory structures, legally permitted in an area, again, albeit, 800 square feet from the pond when he is only asking for a footprint of 248 square feet on the ground floor. I just do not...

Mr. McGuirk: I agree with Lenny on this, personally, I do not see any harm of building this 240 square feet.

Mr. O'Connell: What prevents the applicant from coming back in after getting this, I am taking what is left in coverage for accessory structures? Nothing.

Mr. McGuirk: I think we had that discussion at the last meeting too.

Ms. Marigold: Yes, when we turned this down. Where would there be room for four structures in the building envelope?

Mr. Ackerman: I am sorry, Lys?

Ms. Marigold: I do not see where there could be four accessory structures.

Mr. Ackerman: Do you want to explain that? We have it all scaled out, we can show you, but let Jim tell you.

Mr. McMullan: When we did a site study for this property and took the amount of square feet we were allowed in accessory structures and using the accessory structure setbacks which are more liberal than the principle structure, we can put two exterior structures up on the top of the page near

the, there is a big oak tree there, and also we were talking about doing a pool house at the end of the pool as well as an exercise studio kind of storage area as well back by the back property line. I just find that flooding this backyard with four structures...

Mr. Ackerman: And losing the tree, and losing a beautiful tree in the backyard.

Mr. McMullan: To gain what the client wants, I just felt that this was a much less intrusive addition to this property than if we just add the four structures.

Mr. O'Connell: The difference being the structures are allowed.

Mr. McMullan: The structures would be allowed and would be legal and in legal or conforming locations. Again, I do not want to start putting structures next to or closer to property lines than what this addition would bring and I do not know if it is something that we can do where we take the 470 square feet from somewhere else.

Mr. Ackerman: No. Larry, you are muted, we cannot hear you.

Ms. Marigold: Larry, unmute.

Mr. Ackerman: Unfortunately, he cannot hear us. Larry, we could not hear you before, you were muted.

Mr. Hillel: Would the client commit not to do any accessory structures if we approve this?

Mr. Ackerman: I have to go back and ask that question.

Mr. Hillel: Well I would consider it if you would commit not to do any accessory structures in the future to approve this.

Mr. Ackerman: So, would that be the only condition? Would that be the only condition?

Mr. Hillel: Well I am saying with all the other considerations...

Mr. Ackerman: Is there a majority vote, are there three votes for that subject to?

Mr. McGuirk: I would rather see the addition than putting buildings in the backyard.

Mr. Ackerman: No, no, Larry, I will go back to the client but I just want to know, can we have a determination on that basis?

Ms. Marigold: We would need, Craig, could you weigh in?

Mr. Humphrey: I am still here, I am listening.

Ms. Marigold: Okay, would you agree to the addition if they said that they would not put any accessory structures on in the future?

Mr. Humphrey: Yes, I think I would.

Ms. Marigold: Craig?

Mr. Humphrey: Yes.

Mr. Ackerman: All right, okay, so under those circumstances I will discuss this with the client and if we could have a continuation and if I am able to, I will get an answer in the next 72 hours, if that is the case, Beth, is there some way we could actually close the hearing...

Ms. Baldwin: I think we can leave the record open to allow you to submit...

Mr. Ackerman: A letter.

Ms. Baldwin: Something so if you can answer that one question, then if that...

Mr. Ackerman: I might be able to do it this afternoon.

Ms. Baldwin: We can close the record.

Mr. Ackerman: I might be able to do it this afternoon. Okay, thank you very much.

16102

Mr. O'Connell: I have a comment, Lenny, I do not think you are going to get support if your client does not acquiesce on the overall application is my feeling.

Mr. Ackerman: No, no, Phil, Phil, I got that.

Mr. O'Connell: Okay.

Mr. Ackerman: Phil, loud, Phil, loud and clear, Phil, loud and clear. Okay, all right, so now I can take a rest, I am going to take a breather and wait. Okay, thank you.

Ms. Marigold: Motion to adjourn this until we get a letter?

Ms. Bennett: Adjourned or closed, Beth?

Ms. Baldwin: It is adjourned because we cannot accept the letter if the hearing is closed.

Ms. Bennett: Okay, thank you.

Ms. Marigold: We are adjourned until September. Motion?

Mr. Hillel: Motion.

Ms. Marigold: Second? All in favor?

Mr. Hillel: Aye.

Ms. Marigold: Okay.

ORIGINAL HEARING

Westend Trust – 200 Georgica Road – SCTM #301-12-6-16

Ms. Marigold: The next is Westend Trust at 200 Georgica Road. Ms. Bennett?

Ms. Bennett: Application of Westend Trust, SCTM#301-12-6-16, for Area Variances from Chapter 278, Zoning, to construct a generator and in-ground liquid propane tank. Two (2) variances of 10.6 feet are requested from

16103

Section 278-3.A.(5)(b) to install a generator and an in-ground liquid propane tank 9.4 feet from the side yard lot line where the required setbacks are 20 feet, and any other relief necessary. The subject property is 43,561 square feet in area, is located at 200 Georgica Road, and is in Residence District R-160. This project is classified as a Type II Action in accordance with SEQR.

Ms. Marigold: Is the applicant present?

Mr. Tarbet: Hi, it is Jon Tarbet for the applicant. So just a brief presentation. We would like to see that the propane tank is underground, not likely to cause any detriment to anybody. The generator is a Kohler Model 48RCLB generator which turns on once a week for 20 minutes, it will not cause any detriment or noise here. If there was an emergency and the power went out, it is 57 decibels at that point which is similar to talking, that is from the brochure that the Kohler company put out. The first thing we do before any application is reach out to the neighbor. This particular neighbor is actually a flag, super important part of the application is the fact that it is a flag so we reached out to the neighbor and had no objection whatsoever to the generator and the other important part of this is just that, I have handled quite a few of these generator applications, they typically want to be on the same side as your electric panel and we did that. It is really hard to position a generator in any other spot on the property than where we put it. If we moved it any further over, it would be near the garage and the noise would just bounce off that garage so I do not think there will be detriment whatsoever. Certainly, the neighbor does not feel there is any detriment, the one who will be mostly impacted and I guess, I do not want to take too much of the Board's time unless there are any objections from the Board.

Ms. Marigold: Is there anybody calling in or on zoom that would like to be heard on this?

Mr. Gambino: Currently no callers on the line.

Ms. Marigold: Okay. My first thought had been why not tuck it next to the garage but if you say that the sound will bounce off, I can understand that and it should be near the electrical panel, makes perfect sense. Phil? Phil, do you have anything?

Mr. O'Connell: Yes, I have a couple of comments. I just went onto Suffolk County GIS and I saw the approximate distance from 8 Jericho which is

16104

probably your closest to that is 175 feet and across the street at 195 Georgia is about the same. And the fact that it is abutting a 60-foot-wide driveway I think plays a large part. The one question I just had is, the survey showed a gas panel down by the street, why they were not using gas and using propane instead? I do not know if you have an answer to that?

Mr. Tarbet: My silence is just me thinking for a second. I would have to get you an answer to that question, I do not think I know the answer to it. Does anybody know what a gas panel is?

Mr. O'Connell: Yes, it is street gas.

Mr. McGuirk: They probably have street gas. Lys, I have no objections on this application.

Mr. O'Connell: Nor do I.

Mr. Hillel: I have no problem but that is a decent point that if there is street gas, you would not have to put a propane tank and I think that would be a good point to bring up.

Ms. Marigold: Your client, maybe you saved them a lot of problems. Okay, so I think we can close this and you can go back to your client and ask them and maybe they will change their mind.

Mr. Tarbet: I do not want to make a mistake, I do not have street gas in my house, but I think that maybe street gas can turn off if there is a hurricane so the idea is to bury a propane tank because that would be your source of fuel in the event that street gas got turned off.

Mr. Hillel: I do not think street gas is almost ever turned off. It is not like electric, it is like there, so I mean academically that would be a good question, I mean I have no problem otherwise but you have this natural street gas alternative, I think that should be a consideration.

Ms. Marigold: Craig, do you have a problem?

Mr. Humphrey: No, I do not. I never thought of it but it would be a fine idea, it would eliminate one source of interference to the development in the setback. It would be a great idea.

Mr. O'Connell: I make a motion to approve.

Ms. Marigold: Okay, second?

Mr. McGuirk: Second.

Mr. Hillel: Wait a minute. Are we approving the propane or the street gas?

Mr. O'Connell: We are approving the propane because if that is the applicant's concern, like what happened in the Rockaways when we had the hurricane and all the gas had to get turned off when we had superstorm Sandy, I understand the applicant wanting to have propane but with Jon just bringing that to his attention and if he chooses to do street gas, so be it, if not, he can bury the propane tank.

Mr. Hillel: I am in agreement.

Ms. Marigold: All right, so, we had a motion and we seconded it, and all in favor?

Mr. O'Connell: Aye.

Mr. Hillel: Aye.

Mr. McGuirk: Aye.

ORIGINAL HEARING

84 Egypt Lane LLC – 84 Egypt Lane – SCTM #301-4-11-3.4

Ms. Marigold: 84 Egypt Lane LLC at 84 Egypt Lane. Ms. Bennett will you read the notice.

Ms. Bennett: Yes. Application of 84 Egypt Lane LLC, SCTM#301-4-11-3.4, for Area Variances from Chapter 278, Zoning, to construct a pool house. A 17.7 foot variance is requested from Section 278-3.A.(5)(c) to construct a pool house 22.3 feet from the rear yard lot line where the required setback is 40 feet. A variance is requested from Section 278-3.D.(1) to permit a pool house to contain more than one room where accessory buildings are limited to one room, and any other relief necessary. The subject property is 50,520 square feet in area and is located at 84 Egypt Lane in Residence Districts R-

40 and R-160. This project is classified as a Type II Action in accordance with SEQR.

Ms. Marigold: Is the applicant present?

Mr. Darrell: Good morning, Trevor Darrell for the applicant, can you hear me?

Ms. Marigold: Yes.

Mr. Darrell: And the applicant is also present here on zoom.

Mr. Karim: I am here as well.

Mr. Darrell: So, I just wanted to start by saying that back in 2011 this Board actually heard variance applications for the prior owner. Part of that variance approval granted construction of a pool house. Anybody who went to do a site visit would have noticed that there actually was never a pool house built. That pool house was a single pool house structure for the pool. What the applicant is proposing here is sort of re-locating what would amount to the same square footage as the one pool house that was previously approved in the rear of the pool, rear property line which actually is further away from the neighbor who would be most impacted by the original location of the pool house that was approved. The proposed locations do sit within the accessory structure setbacks but not within the more restrictive pool setbacks. That is why they meet the 17.7-foot variance where 40 feet would be required. The two structures, we are calling it one pool house but of them is open aired with a roof so it is deemed a structure. The other is the pool house at 122 square feet. So while I recognize that the zoning code does not want many rooms in a pool house, these rooms would not set up or accommodate any sort of living quarters or anything that would be a concern traditionally for the Board because when you do the math, the whole structure by itself is 122 square feet, the bathroom and the water closet is approximately 30 feet, the linen closet, changing room is another 24 square feet, and the pass-through area which ultimately, based on my conversation with the applicant and his builder sort of where the pool chairs and pool items are going to go in the event of storms and storage and that kind of stuff in that area is the additional 68 plus or minus square feet. It is not a large structure and the other side is open air like I said with a roof but it does have sort of that outdoor cabinetry and things for storage, it is not rooms by walls,

16107

there is a rear wall but not side walls that you can see on the plans. And in between the two is the proposed pergola open air with lawn underneath or pea gravel on both sets of plans but neither of them are hardscape.

Mr. Humphrey: Trevor, can I ask you a question?

Mr. Darrell: Sure.

Mr. Humphrey: There is also a proposed one-story addition attached to the main structure and I have no notes on this.

Mr. Darrell: It does not require any variances.

Mr. Humphrey: Oh, okay, it is there but we do not need to talk about it.

Mr. Darrell: Correct.

Ms. Marigold: Billy, do you have anything that you want to say on this?

Mr. Hajek: No, I do not have any comments to offer. It is a rear yard setback variance for a pool house that does not meet the required double setback. As Trevor said, there was a prior variance that did grant relief for a somewhat similar style. The open aired structure, although it is labeled a pool house, my understanding is that that does not require any relief. It is only the one fully enclosed pool house that does require the relief if that adds any clarity to the issue.

Ms. Marigold: Yes, good.

Mr. McGuirk: One hundred twenty-two square feet, right, Trevor?

Mr. Darrell: One hundred twenty-two, yes, so we tried to keep them combined to equal the 250, we will keep it a square, we could not keep that extra three feet fit.

Ms. Marigold: I think there might be a trend to double pool houses anyway. We had another one on Spaeth Lane...

Mr. Darrell: Okay, I did not see that one.

Ms. Marigold: ...[inaudible]...code about splitting up pool houses. Phil?

Mr. O'Connell: Yes, I just have a couple of comments. I do not have an issue with there being two of them. The applicant can put the pergola and the proposed pool houses in a conforming location by just putting it on the other side of the pool. It is basically a 45 percent setback variance when you look at where it is supposed to be within the pool, from the pool setbacks, and you know, it is self-created so they knew this when they had property and then if they move it over to the inside of the pool, you do not need a variance. So that is my comment.

Ms. Marigold: John?

Mr. McGuirk: I have no issues with it. I do not want to disagree with Phil but I do not think you would put it on the other side because I think it is in a proper place where it should go.

Mr. Hillel: I had asked that same question and the client happened to be there and he said if they were near the house looking at the pool, it would cut their vision so I would approve it as it is.

Ms. Marigold: Craig?

Mr. Darrell: Frozen.

Mr. Hillel: Maybe he has to unmute, sometimes you get muted.

Ms. Marigold: Can he be unmuted, please.

Mr. Hajek: I think his computer may have locked up, I think it is his service.

Ms. Marigold: He has not moved in five minutes and now he is gone. All right then I will be the third to say that I have no problem with it as submitted. I will actually close this hearing.

Mr. Darrell: Thank you.

Ms. Marigold: Second?

Mr. Karim: Thank you very much.

16109

Ms. Marigold: All in favor?

Mr. Hillel: Aye.

Mr. McGuirk: Aye.

Mr. Darrell: Thank you.

Mr. O'Connell: I am not dissenting from that one, I just wanted to point out those items.

Mr. Darrell: Thank you, have a nice weekend everybody.

ORIGINAL HEARING
Summerhouse30 LLC – 30 West End Road – SCTM #301-15-3-8

Ms. Marigold: Summerhouse30 LLC at 30 West End Road. Ms. Bennett please read it.

Ms. Bennett: Application of Summerhouse30 LLC, SCTM#301-15-3-8, for Variances from Chapter 278, Zoning, and a Wetlands Permit in accordance with Chapter 163, Freshwater Wetlands, to construct a sculpture on a concrete foundation and to conduct landscaping. A wetlands permit in accordance with Section 163-3 and a variance of 24.2 feet is requested from Section 278-3.A.(8) to construct an art sculpture on a concrete foundation 125.8 feet from wetlands where a 150 foot setback is required. A wetlands permit in accordance with Section 163-3 and a variance of approximately 105 feet is requested from Section 278-3.A(8) to alter existing vegetation and to landscape 20 feet from wetlands where landscaping is prohibited within 125 feet of wetlands, and any other relief necessary. The subject property is 47,720 square feet in area and is located at 30 West End Road in Residence District R-160. The property fronts on Georgica Pond and is located in FEMA Flood Zone AE. (el. 11), Zone X. This project is classified as a Type II Action in accordance with SEQR.

Ms. Marigold: Is the applicant present?

Mr. Conard: Yes, I am here.

Ms. Marigold: Would you like to speak?

Mr. Conard: Is Lenny there?

Mr. Spadola: Hi everybody, this is Nick Spadola, the internet just went down in the office so Lenny is going to call in using the phone right now.

Mr. Conard: Okay does that mean we are not going to be able to put up the photos?

Mr. Spadola: I can put them up for you Ed.

Mr. Conard: So, I might start with the picture of the fern width which will just show the problem I am trying to solve. Fern width 30 WER that I sent you Nick.

Mr. Spadola: Yes.

Mr. Conard: So, while he is waiting to do that, I will keep talking just to use up the time. I originally planted trees along the property line. These are red cedar, native red cedar trees per agreement by the town, variance by the town to plant native trees. This is the wrong picture, I want the one that is called fern width 30 WER, yes, so in this picture you can see the problem with the native trees which is they do not really stand up to the tough winds that come off the pond and the ocean and so the trees have thinned out after several years. I was hoping to replace them with a much hardier set of trees that are specified in the survey, Nick, maybe pop up the survey, I will show you what we tried to do of the original proposal, so here is the row of trees that are right now are the red native cedar trees that would be replaced by what is proposed here. I discussed this plan with Billy Hajek, I do not mean to speak for him, I will speak for him but he fortunately can speak for himself here in a moment but what he asked what was that he offset the affected area with an increase in the buffer along the Pond. Our original proposal, the proposal that we submitted, is shown in the green which we would expand some swamp roses along the Pond, I think that Billy felt that this was not sufficient relative to what he was looking for so we have proposed the following revision to the plan. Nick, if you could put the fern picture back up. FYI, this is about 15 feet wide.

Ms. Marigold: Lenny, mute.

Mr. Conard: Lenny, can you mute.

Mr. Ackerman: Oh sure, sure.

Mr. Conard: Okay so this strip of land here is 15 feet wide by 125 feet long because it goes the length of the setback, that is about 1,875 feet. One of the changes we would propose making to try to satisfy concerns would be we would leave this strip of Ostridge ferns which is here which is about six feet wide times 125 feet is 750 feet so this would be to try to mitigate the amount of affected area on the backside of the trees, Nick, there is something called eastside planting width 30 WER, we would similarly plant, this would be after we replace the trees, we would similarly plant another six feet times 125 feet would be another 750 feet of ferns so in effect what we would do is in addition to replacing the trees, we would make sure that all the land, the affected area has ferns planted in it as well underneath the trees. That would reduce the total amount of the affected area to about 375 square feet and so we would propose two additional changes in addition to the changes we already have submitted. If you could put up the added swamp roses picture, Nick, added swamp rose pictures, no it is the last, it is the survey, yes, that, right there. So, in the red areas around the existing cottage we would add additional swamp roses that is about 100 square feet and then we would increase the size of the buffer which is shown here and we also can show it on another picture but on average add another two and one-half feet of swamp roses which would give us another 275 square feet. So, what we are trying to do is fully offset in two different ways the affected area. One is by planting ferns in the entire area underneath the tree and the second is by adding additional swamp roses to the plan that we originally submitted. Now, lastly Nick, maybe you can put up the picture 30 West End Road tupelo trees, the problem I am trying to work around here is that there are these very large and ancient tupelo trees that basically span over the whole backyard. It is very difficult, we tried to grow native grasses, we were not successful because grasses need a lot of sun, that is why we are proposing swamp roses. We are reluctant, you know if you just said this area is about 1,800 square feet, 1,900 square feet, if we just were to increase the buffer by that much, we would be planting an additional 18, 17 or 18 feet which would move right into the entire root system of these ancient trees and I am just very reluctant to just dig up the whole backyard around these trees particularly for two reasons, one, I do not want to dig up around the root system, and, two, every time we have dug up the grass and replanted, we have gotten a lot of erosion. So, we are trying to minimize the amount of disruption that we are doing along the Pond. We are doubling the size of the buffer that is there, I am proposing to add an additional two and one-half

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feet, put more swamp roses to absorb the water by planting around the cottage and then fill the entire area where we are trying to replace these nine trees with ferns to further reduce the amount of disruption in the area. That is the proposal.

Ms. Marigold: Billy? I think you have to comment on this.

Mr. Hajek: Yes, I can comment on the proposed re-submission, I do not know if this has been formally submitted to the Board yet, I guess Nick is doing this remotely but a copy would have to be submitted to the Board's file. So, I prepared a written report for the Board, I have been communicating with Mr. Conard, he has been very receptive to try to ease my concerns with the project and my comments are limited purely to the landscaping and the re-vegetation, not with the proposed art sculpture. My first recommendation in the report was that the area of landscaping be offset by increasing the buffer to the Pond, by buffer, I meant the buffer that was previously required and approved by the Board and the original submission I think sort of replaced what was previously already required so I was looking for something a little bit more than what was already required which had been encroached upon. And I think Mr. Conard's latest iteration of the plan where he proposes to widen the buffer even further and then also plant around the cottage there, the playhouse, I am fine with that. I really do not have any issues with it. I think it is a good offset to what is being proposed and in terms of the landscaping, the trees are, I think, mostly all evergreen, none of them are invasive in any way so I think placing them in close proximity to the wetlands I would not offer any concern with that. If you have any questions for me, I would be happy to answer them but I do think a copy of this plan has to be submitted to the Zoning Board formally in order for you to consider it. And I would still maintain my recommendations that are outlined in my report to the Board.

Mr. Ackerman: All right, this is Lenny on, unfortunately we lost our internet at the office so I am working from my iPhone but, Billy, first, as to your recommendation, I ask that the record be closed for Billy to sign off the former plan on the survey and the like, would that be acceptable Billy?

Mr. Hajek: Well I think you could submit it as a condition, I mean the concept has been agreed to, if it is okay with Beth and the Board, I think if they were going to move to close the record, it could be made a condition of approval that you submit.

Ms. Baldwin: If this is the plan that the Board is, if it is going to be the same plan that they are showing us right now, it is already in the record, so they can just submit it.

Mr. Hajek: Okay

Ms. Marigold: Because we are all seeing it.

Ms. Baldwin: Okay.

Mr. Hajek: Okay.

Mr. Ackerman: All right, terrific.

Mr. McGuirk: Lenny, nobody has a problem with the...

Mr. O'Connell: It is separate from the sculpture and the large foundation, right?

Ms. Marigold: It is separate, we are just doing the landscaping right now.

Mr. O'Connell: All right, I do not have any problem with that.

Ms. Marigold: And now we will turn our attention to the sculpture. Mr. Ackerman?

Mr. Ackerman: This sculpture, I would hope that you would support that application, that portion of the application, it is a nice...

Ms. Marigold: We have lost the audio.

Mr. O'Connell: Lenny, move to the window so we can hear you so you can get reception.

Mr. Conard: I can say one thing while Lenny is speaking, two things. Can you hear me?

Mr. O'Connell: Yes.

Mr. Conard: I tried to show the Board Members who came out to the property to look, that you cannot see this sculpture really from any direction, it is blocked by the trees, the houses, the vegetation, there is a lot of plantings and trees, large trees on the property so it is probably a case that in the winter from across the Pond you could get a glimpse of this but I would say, I hope that the people, the Board Members who came out to see, it is virtually impossible to see this through six months, eight months of the year when the vegetation is green. The second is the reason why I am trying to push this from 150 feet to 125 feet is that I am trying to be able to see it out the window of the house and if it is so close to the house, it cannot really be seen, and I was trying to get it at a size that would make it tree-like because it is surrounded by, you do not see all the trees actually on the plan, you only see the ones that are relevant here but it is actually surrounded by some very big trees so I was trying to make it more logical, relative to the trees. I had wanted to plant a tree there at once point but I was afraid I was not be able to get a tree to survive. I think we have been very careful, if there was a neighbor who did not like it, they are not going to be able to see it.

Ms. Marigold: What is the height of it?

Mr. Conard: Lenny, do you have the height?

Mr. Ackerman: All right...

Mr. Conard: Is it 20 or 25 feet?

Mr. Hajek: Billy Hajek here, it is 24 feet 4 inches above grade, that is what the plans show.

Mr. Conard: Lenny, do you have a three dimensional.

Mr. Spadola: I can pull up the plan and show you.

Mr. Ackerman: Are they looking for me to provide them with information?

Mr. Goldstein: Here it is, that is it.

Mr. Spadola: Twenty-four point four right here on the plan if you can see.

Mr. Conard: It is designed to look like a tree, somewhat like a tree.

Ms. Marigold: It is very much like the sculpture of Bernard Bernai.

Mr. Conard: Yes, it is, that is where it comes from.

Mr. McGuirk: I have, I mean it is a sculpture, I have no issue with it. Are you going to light it though? Is it going to be lit at night?

Mr. Conard: There was no plan to light it but we could up-light it I suppose.

Mr. McGuirk: I do not think we want you to up-light it, right?

Ms. Marigold: We do not want it up-lit.

Mr. O'Connell: I just have an issue with putting it in the setback when you have a conforming location to place it and I also have an issue with the height. We have been through this limiting heights for garages and other things so...[inaudible]...you have a place to put it and you can make it conforming.

Ms. Marigold: Larry?

Mr. Hillel: I have no problem with it.

Ms. Marigold: John, you have no problem?

Mr. McGuirk: I have no issues with it.

Ms. Marigold: I cannot say no to an art sculpture so I will agree to it even though Phil is right, it could be conforming but your argument that you want to see it in a distance from the house and you have those beautiful trees closer to the Pond so I can actually follow your argument and I have no problem with it either. So, we could actually close this hearing.

Mr. Ackerman: Right.

Ms. Marigold: I make a motion.

Mr. Ackerman: I request that you close the hearing and let us move on to the next one.

Ms. Marigold: Do I have a second?

Mr. McGuirk: Second.

Mr. Hillel: Second, aye.

Ms. Marigold: All in favor?

Mr. McGuirk: Aye.

Mr. Hillel: Aye.

Mr. Ackerman: Thank you.

ORIGINAL HEARING
Calvin Klein and Marcy Klein – 69 West End Road –
SCTM #301-15-5-10

Ms. Marigold: And then last but certainly not least, is Calvin Klein and Marcy Klein, 69 West End Road. Ms. Bennett please read the notice.

Ms. Bennett: Sure. Application of Calvin Klein and Marcy Klein, SCTM#301-15-5-10 for Area Variances from Chapter 278, Zoning, Chapter 163, Freshwater Wetlands, and Chapter 101, Coastal Erosion Hazard Area. A variance has been requested from Section 278-3.A.(2) to permit the construction of a residence on a parcel of land containing 145 feet of building line width where the required building line width is 160 feet. A wetlands permit and a variance of approximately 90 feet is required from Sections 163-2 and 278-3.A.(8) to clear land approximately 35 feet from wetlands where a 125 foot setback is required. A wetlands permit and variances of approximately 45 feet are required from Sections 163-2 and 278-3.A.(8) to construct a parking area and install drywells approximately 105 feet from wetlands where 150 foot setbacks are required. A wetlands permit and variance of approximately 49 feet is required from Sections 163-2 and 278-3.A.(8) to construct a sanitary system approximately 151 feet from wetlands where a 200 foot setback is required. A Coastal Erosion Hazard Area permit and variance is required from Section 101-12.A.(1) to excavate and grade land where excavating or grading land in primary dunes is prohibited, and any other relief necessary. The subject property is

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identified as 69 West End Road, is approximately 82,355 square feet in area, and is in Residence District R-160. The property is located within FEMA Flood Zones VE. el. 19, 17 and 10 and adjoins the Ocean Beach. This project is classified as a Type II Action in accordance with SEQ. R.

Mr. Ackerman: Is the applicant present?

Mr. Ackerman: Yes, thank you. First, John Whelan is on line to assist, he is the architect with Stelle Lomont and Nick is on board to help with the presentation. First, at the outset I want to thank Beth and the Building Department for working with us to overcome the issue concerning the eligibility for a building permit. In designing a house for this lot, we worked to eliminate any variance request for yard setbacks, for coastal erosion other than the sanitary, and for wetlands. We moved it far away from wetlands as possible. There is a variance for the building line width that we believe occurred because there was in the calculations at the lot, the lot width is in excess of the requirement, the 160-foot requirement but at the building width, we are 15 feet short and we think that is a de minimis request with respect to this application. The sanitary system is what drives this application because we wanted to be outside coastal erosion and we had across the road on West End the setbacks from the Pond. There is in addition a driveway variance request with respect to the parking area and the edge of the house of course during construction may have minimal impact on coastal erosion. With respect to Billy's recommendations, we are in agreement with what he proposes. Again, I want to emphasize compliance with FEMA, no sanitary impact on coastal erosion, setbacks are being met, and if you study the floor plans, this floor plan is stacked vertically, it is a 26-foot deck with house, very modest, three small bedrooms and bath, the aesthetics are saltbox, weathered shingles, we are conforming to height and pitch, and landscaping per Billy's recommendations going to be all-natural vegetation. Any questions?

Ms. Marigold: The history was very fascinating that it was created in 1968...

Mr. Ackerman: I cannot hear her. I am sorry, I cannot hear you.

Ms. Marigold: Oh, I said I think the history was very interesting that it was created in '68 and that you have done an amazing job with a project that mostly complies with the Village Code and since you are between the ocean

and the pond and have all those restrictions and you have basically designed a very modest residence. I do not really have a question. Phil, do you have a question?

Mr. O'Connell: I do not have an issue with the application. One thing I noted in Billy's recommendation, since your client controls both lots on both sides of the street, removing those boulders that are...

Ms. Marigold: And when you pull out...

Mr. O'Connell: When you try to get a fire truck down there, it is a problem.

Mr. Ackerman: Phil, that is a good point and I am very concerned about that and we are going to deal with that.

Mr. O'Connell: If you could widen the private road right there to the maximum width allowed so that people can pass and move in emergency situations so that would be best.

Ms. Marigold: Even pulling in to look at the property, I had to avoid those huge boulders, it was tricky.

Mr. Ackerman: They want us to remove the boulders.

Ms. Marigold: John McGuirk?

Mr. McGuirk: I have no issues.

Ms. Marigold: Larry?

Mr. Hillel: I have no problem with it.

Ms. Marigold: No, I think it is going to be a very good addition to the Village, thank you.

Mr. Ackerman: I ask that the record be closed.

Ms. Marigold: Yes, I make a motion. Billy?

Mr. Hajek: Can I just ask, I am not clear exactly what the result is in terms of the obstructions in the road right-of-way. Was that a condition of the approval?

Mr. O'Connell: Yes.

Mr. Hajek: Okay.

Ms. Marigold: And you submitted a building protocol I assume?

Mr. Ackerman: No, I do not think we have it at this point, if you like, we certainly could, however, I would like to close the hearing and get a determination and just make it subject to, we will supply it, we do not have a contractor at this point.

Ms. Marigold: Beth, is that all right to close the hearing and have them submit the protocol?

Ms. Baldwin: You can make a building protocol a condition of an approval.

Ms. Marigold: Okay.

Mr. Ackerman: John, let me just ask, John, are you okay with that?

Mr. McGuirk: I am fine, I am good with it.

Ms. Marigold: It is a very sensitive area and I would like to make sure that there is a project limiting fence...

Mr. McGuirk: The same as Peter Morton did, when Peter Morton re-built the house that burnt down, something similar to that.

Ms. Marigold: Yes, similar, okay. I make a motion to close the hearing.

Mr. Ackerman: Thank you.

Ms. Marigold: Second?

Mr. McGuirk: Second.

Mr. Hillel: Second.

Ms. Marigold: All in favor?

Mr. Hillel: Aye.

Mr. McGuirk: Aye.

Ms. Marigold: And is there is a motion to close this meeting?

Mr. Hillel: Motion.

Mr. O'Connell: Motion

Mr. Ackerman: Thank you very much.

Ms. Marigold: Thank you everybody.

continued on next page

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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, August 14, 2020 at 11:00 a.m., or via video-conferencing if necessary, on the following applications and to conduct such other business as may come before the Board. If you would like to participate in the Zoom meeting, contact pbennett@easthamptonvillage.org. The applications can be viewed on the Village's website easthamptonvillage.org by clicking on the "Alerts" tab.

Application of Westend Trust, SCTM#301-12-6-16, for Area Variances from Chapter 278, Zoning, to construct a generator and in-ground liquid propane tank. Two (2) variances of 10.6 feet are requested from Section 278-3.A.(5)(b) to install a generator and an in-ground liquid propane tank 9.4 feet from the side yard lot line where the required setbacks are 20 feet, and any other relief necessary. The subject property is 43,561 square feet in area, is located at 200 Georgica Road, and is in Residence District R-160. This project is classified as a Type II Action in accordance with SEQR.

Application of 84 Egypt Lane LLC, SCTM#301-4-11-3.4, for Area Variances from Chapter 278, Zoning, to construct a pool house. A 17.7 foot variance is requested from Section 278-3.A.(5)(c) to construct a pool house 22.3 feet from the rear yard lot line where the required setback is 40 feet. A variance is requested from Section 278-3.D.(1) to permit a pool house to contain more than one room where accessory buildings

are limited to one room, and any other relief necessary. The subject property is 50,520 square feet in area and is located at 84 Egypt Lane in Residence Districts R-40 and R-160. This project is classified as a Type II Action in accordance with SEQR. Application of Summerhouse30 LLC, SCTM#301-15-3-8, for Variances from Chapter 278, Zoning, and a Wetlands Permit in accordance with Chapter 163, Freshwater Wetlands, to construct a sculpture on a concrete foundation and to conduct landscaping. A wetlands permit in accordance with Section 163-3 and a variance of 24.2 feet is requested from Section 278-3.A.(8) to construct an art sculpture on a concrete foundation 125.8 feet from wetlands where a 150 foot setback is required. A wetlands permit in accordance with Section 163-3 and a variance of approximately 105 feet is requested from Section 278-3.A.(8) to alter existing vegetation and to landscape 20 feet from wetlands where landscaping is prohibited within 125 feet of wetlands, and any other relief necessary. The subject property is 47,720 square feet in area and is located at 30 West End Road in Residence District R-160. The property fronts on Georgica Pond and is located in FEMA Flood Zone AE. (el. 11), Zone X. This project is classified as a Type II Action in accordance with SEQR.

Application of Calvin Klein and Marcy Klein, SCTM#301-15-5-10 for Area Variances from Chapter 278, Zoning, Chapter 163, Freshwater Wetlands, and Chapter 101, Coastal Erosion Hazard Area. A variance has been requested from Section 278-3.A.(2) to permit the construction of a residence on a parcel of land containing 145 feet of building line width where the required build-

ing line width is 160 feet. A wetlands permit and a variance of approximately 90 feet is required from Sections 163-2 and 278-3.A.(8) to clear land approximately 35 feet from wetlands where a 125 foot setback is required. A wetlands permit and variances of approximately 45 feet are required from Sections 163-2 and 278-3.A.(8) to construct a parking area and install drywells approximately 105 feet from wetlands where 150 foot setbacks are required. A wetlands permit and variance of approximately 49 feet is required from Sections 163-2 and 278-3.A.(8) to construct a sanitary system approximately 151 feet from wetlands where a 200 foot setback is required. A Coastal Erosion Hazard Area permit and variance is required from Section 101-12.A.(1) to excavate and grade land where excavating or grading land in primary dunes is prohibited, and any other relief necessary. The subject property is identified as 69 West End Road, is approximately 82,355 square feet in area, and is in Residence District R-160. The property is located within FEMA Flood Zones VE. el. 19, 17 and 10 and adjoins the Ocean Beach. 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: July 24, 2020

By Order of Lysbeth A. Marigold, Chair, Zoning Board of Appeals, Inc. Village of East Hampton 3-2

FILED
VILLAGE OF EAST HAMPTON, NY
DATE: October 13, 2020
TIME: 9:00 a.m.

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