

Zoning Board of Appeals
February 10, 2023
11:00 a.m.
Emergency Services Building
One Cedar Street, East Hampton

Those present were:

James H. McMullan, Vice Chairman
Joseph B. Rose, Member
Andrew Baris, Member
Abigail Lamb FitzSimons, Alternate Member
Lisa Perillo, Village Attorney
Billy Hajek, Village Planner
Thomas Preiato, Village Building Inspector
Trevor Darrell, Attorney on behalf of Art. Fourth B. Trust c/o Candace Phillips
Kathleen Kirchgaessner, Neighbor of Candace Phillips
Rainer Kirchgaessner, Neighbor of Candace Phillips
Shannen McCaffrey, Agent on behalf of Philip Shuttleworth and
Paula Maria Harvey
Nica Strunk, Attorney on behalf of EH 226 L.L.C.
Sabrina Kelly, Inter-Science Research Associates on behalf of EH 226 L.L.C.
Britton Bistran, Agent on behalf of 53 Lily Pond LLC
Pamela J. Bennett, Village Clerk

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

MINUTES

Upon motion of Joseph B. Rose, duly seconded by Andrew Baris, the Board unanimously approved the minutes of January 3, 2023.

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DETERMINATION
33 GB LLC – 33 Gingerbread Lane – SCTM #301-2-5-4

Upon motion of Joseph B. Rose, duly seconded by Andrew Baris, the request to construct a 755 square foot detached garage is approved and the request to install an A/C condensing unit is denied. The Board voted as follows:

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

DETERMINATION
Gianfranco and Surbhi D’Attis – 16 Gould Street – SCTM #301-1-1-12

Since a quorum of the Board on this application was not present to act upon this determination, it was postponed until the March 10, 2023 meeting.

REQUEST FOR ADJOURNMENT
The Rosery LLC – 146 Main Street – SCTM #301-8-5-1

The Board is in receipt of a request to adjourn the continued hearing of this application until March 10, 2023.

CONTINUED HEARING
Art. Fourth B. Trust c/o Candace Phillips – 12 Egypt Close – SCTM #301-4-7-20

Vice Chairman McMullan called the continued hearing to order at 11:02 a.m. and stated that at the last meeting the Board requested a revised survey, which has been submitted, as well as clarification of the proposed location of the pool equipment. Trevor Darrell Esq. appeared on behalf of the applicant and stated that the proposed pool equipment, if any additional equipment is required, will be installed interior of the existing structure and that the updated survey shows the smaller proposed gross floor area request.

Kathleen Murtha Kirschgaessner, 48 Egypt Lane, East Hampton, New York, duly sworn in by the Village Clerk, swore to tell the truth, the whole truth, and nothing but the truth. Ms. Kirchgaessner stated that she is a neighbor of the applicant and is opposed to the proposed variances as the house is already 30

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percent over the allowable gross floor area; French doors could be installed without increasing the square footage of the house. The proposed hot tub is going to be over the allowable envelope and closer to her property when the swimming pool is already very close. Both the requests will negatively impact her property. A hot tub is primarily used at night, there are lights so those things should be denied based on the current Code. If the applicant wishes a hot tub, it could be put somewhere else within the allowable envelope.

Mr. Darrell stated that he just received a copy of the letter from the neighbor as well as a message from Code Enforcement as to bamboo that had been planted. Mr. Darrell stated that his client was not aware bamboo is prohibited and immediately got in touch with her landscaper to have the bamboo removed. With reference to the addition, the applicant is seeking the smallest relief possible to install the door which will lead into the backyard. Mr. Darrell stated that the proposed hot tub location is nearest the neighbor's trampoline and feels that any noise factor from the hot tub would compete with that component.

Rainer Kirschgaessner, 48 Egypt Lane, East Hampton, New York, duly sworn in by the Village Clerk, swore to tell the truth, the whole truth, and nothing but the truth. Mr. Kirchgaessner stated that the applicant's swimming pool is already closer to the property line than would be allowed under the current Code, and secondly, the applicant purchased the premises fairly recently and was well aware of the conditions and the Zoning; now deviating from that seems to be an unreasonable request even if the representative says it is a minor request. Mr. Kirchgaessner stated that for them it could be a permanent change that could impact their life and their property.

Member Rose stated that he has not had a chance to walk the property pursuant to the concerns as raised by the neighbors and wondered about the procedure of keeping the hearing open. Village Attorney Perillo stated that the hearing can be held open.

Upon motion of Joseph B. Rose, duly seconded by Andrew Baris, the Board unanimously resolved to leave the hearing open.

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CONTINUED HEARING
Philip Shuttleworth and Paula Maria Harvey – 72 Pantigo Road –
SCTM #301-4-7-7.1

Vice Chairman McMullan called the continued hearing to order at 11:09 a.m.

Shannen McCaffrey, 265 Accabonac Road, East Hampton, New York, duly sworn in by the Village Clerk, swore to tell the truth, the whole truth, and nothing but the truth. Ms. McCaffrey stated that the Board has received the comments from the Historic Preservation Committee who found the proposal acceptable. Vice Chairman McMullan suggested that the hearing could be closed. Member Rose thanked the Historic Preservation Committee for their report which is very helpful to have as part of the record.

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

ORIGINAL HEARING
EH 226 L.L.C. – 226 Further Lane – SCTM #301-5-3-11.5 and 11.6

Vice Chairman McMullan called the hearing to order at 11:12 a.m., and the Public Notice, as duly published in the East Hampton Star, was read.

Application of EH 226 L.L.C., SCTM#301-5-3-11.5 and 11.6, for a Wetlands Permit and Variance in accordance with Chapter 278, Zoning, and Chapter 163, Freshwater Wetlands, to install an elevated pedestrian walkway. A Freshwater Wetlands Permit and variances of 84 feet and 61 feet are required to construct an elevated walkway 66 feet from wetlands and to clear vegetation 64 feet from wetlands where structures are required to meet a 150-foot setback and clearing is required to meet a 125-foot setback from wetlands. The subject property is 203,913 square feet in size and is located at 226 Further Lane. The property is located in Residence District R-160 and this project is classified as a Type II Action in accordance with SEQR.

Nica Strunk Esq. appeared on behalf of the applicant; no additional material was submitted into the record; no one appeared in opposition. Ms. Strunk stated

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that the property is a flagpole lot, 4.6 or 4.7 acres in size, upland of the property is developed with a residence and accessory structures being a garage, swimming pool and tennis court; a Certificate of Occupancy was issued in 2021. The southerly portion of the property is undeveloped and is vegetated with a coastal semi-woodland habitat. The property has a freshwater wetlands pocket which is located at the southern portion of the property at the undeveloped dune woodland area. The property directly south of 226 Further Lane is owned by the Nature Conservancy; there is a mutual access easement allowing for 226 Further Lane to access the beach on the east side of the Nature Conservancy property. Currently there is a maintained, at grade path through the dune areas that the owners use to access the beach and that path is located both on the applicant's property and on the Nature Conservancy property.

Proposed is a raised, light-penetrating, non-treated beach access boardwalk extending from the developed portion of the lot to the southeast corner of the parcel to provide better access to the beach. The boardwalk would terminate near the southeast corner of the property and would connect to the existing footpath that extends through the Nature Conservancy property. At its closest point, the walkway will be 66 feet from the wetlands where 150 feet is required. The walkway has been designed in the most effective position to grant the most distance from the wetlands while also following the contours of the property and avoiding as much existing mature vegetation as possible. New York State Department of Environmental Conservation has issued a permit for the proposed boardwalk in February 2022. A construction protocol plan has been submitted which details the construction process and the mitigation efforts made. Prior to construction, a project limiting silt fence will be erected and a fence will immediately surround the proposed walkway location to minimize the site disturbance; this will signify the limit of clearing, grading, and ground disturbance. Since the site is wooded, selective cutting of any trees and vegetation that would be incurred to install the boardwalk, will be done with hand tools only so the site disturbance is kept to an absolute minimum. All material will be disposed of at an upland location, and once the area is cleared, the installation of the raised boardwalk will commence. The boardwalk will be installed by posthole digging and wood pilings by hand and will be light penetrating and made of untreated mahogany wood with the top of the walk being 30 inches to 48 inches above grade. Having the boardwalk raised and light penetrating will improve the opportunity for native plantings to grow below which will protect the wetlands

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and stabilize the dune which is preferable to continuing to use the existing, at grade path in which no vegetation can grow. Once the boardwalk is installed, the areas on either side of the project limiting fence will be revegetated with native plantings and aboveground temporary irrigation installed for two years to promote establishment of plantings.

The proposed action is within the wetlands regulated area and will not produce any significant adverse impacts to the wetlands due to the minimized disturbance to the area and the mitigation efforts put in place. The proposed walkway is consistent with the walkways contained on the adjacent eastern and western parcels, therefore is consistent with the neighborhood. The proposed walkway will not produce an undesirable change to the neighborhood as the adjacent properties on both sides have single-family residences and boardwalks leading to the beach. There is no alternative location for the boardwalk given the location of the wetlands and the 150-foot setback, there is no location on site that would avoid the regulated area. The requested variance is not substantial given the minor nature of the structure and the presence of similar structures in near proximity and there being no conforming location for an elevated walkway to access the beach, the proposed area variance is not substantial. Ms. Strunk also noted that Chapter 124 of the Village Code states that along the southerly boundary of the Incorporated of East Hampton, between the easterly side Old Beach Lane and the easterly boundary of the Incorporated Village of East Hampton, the following restrictions shall apply 124-1.B.(2)(c) no building, constructing, erecting, reconstructing, enlarging, altering, or placing any structure or other improvement whatever in or upon land, except for elevated walkways constructed solely for pedestrian use and built by a property owner for the sole purpose of providing noncommercial pedestrian access to the beach. There are three generations in the family with young children and also elderly parents of the applicant whose mobility is limited and this will help them to be able to access the beach. There will not be an adverse effect or impact on the wetlands or physical character of the site given the proposed mitigation measures and because of the design of the boardwalk, there is no adverse impact to the wetlands.

Ms. Strunk stated that the applicant has met all the criteria for the granting of a wetlands variance and with reference to the memorandum prepared by Mr. Hajek, the applicant is willing to comply with any recommended conditions that the Board feels are appropriate.

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Member Rose asked Village Planner Hajek to go through his recommendations. Planner Hajek stated that his February 7, 2023 memo to the Board describes the proposed project and agrees with the applicant's presentation as the project is fairly benign in terms of its potential impact on the wetlands. Mr. Hajek stated that if the Board is inclined to grant approval, he recommends that the applicant provide written notification prior to commencement of the work to keep tabs on the correct installation of the project limiting fence and to verify their maintaining their site disturbance. The construction protocol was fairly thorough and the Board should reinforce that as a condition of the approval. If vegetation is to be installed, the applicant should submit a plan so the vegetation is compatible with the dune environment. Another condition is that the boardwalk is to be no wider than four feet and no taller than four feet above grade for the decking. Vice Chairman McMullan asked if the revegetation plan can be received once the clearing has been done. Mr. Hajek stated that the proposed clearing is fairly limited, it is only 18 inches on either side of the deck and would probably revegetate naturally, but if the applicant would like to plant some vegetation, he would like to see a plan to verify that the proposed vegetation is appropriate. Vice Chairman McMullan asked if there could be a third inspection to see if there is a need for a revegetation plan if that is acceptable to the applicant. Ms. Strunk said that that is acceptable.

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

ORIGINAL HEARING
53 Lily Pond LLC – 53 Lily Pond Lane – SCTM #301-13-13-2

Vice Chairman McMullan 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 53 Lily Pond LLC, SCTM#301-13-13-2, for Area Variances from Chapter 278, Zoning, to construct a swimming pool and pool house. A 20-foot variance is requested from Section 278-3.A.(5)(c) to construct a swimming pool 20 feet from a side yard lot line where the required setback is 40 feet. Variances of 20.1 feet and 20 feet are required from Section 278-3.A.(5)(c) to construct a pool house 19.9 feet from a side yard lot line and 20 feet from a rear yard lot line

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where the required setbacks are 40 feet. The subject property is 40,400 square feet in area and is located at 53 Lily Pond Lane in Residence District R-160. This project is classified as a Type II Action in accordance with SEQR.

Britton Bistran, 21 Napeague Harbor Road, Amagansett, New York duly sworn in by the Village Clerk, swore to tell the truth, the whole truth, and nothing but the truth. No additional material was submitted into the record; no one appeared in opposition. Ms. Bistran stated that the applicant is requesting permission to install a swimming pool and pool house. The property is located on the south side of Lily Pond Lane, has 150 feet of road frontage, and is just under an acre in area; the lot is oddly shaped and most of it is rectangular until you reach the southern end which almost looks like somebody has taken a bite out of it; the width is reduced by half or by 75 feet. This irregularity, coupled with the existing house setback of 95 feet from Lily Pond Lane, is what serves as the practical difficulty in siting a pool and a pool house conforming to the dimension setbacks of the Village Code. As the Board is aware, a pool and a pool house need to meet double setbacks and, in this case, it is 40 feet. The purpose of the double setback in the Code is for the protection and added separation to neighboring property owners. The adjoining owner on the south, Dr. Wayne and Patricia Isom at 9 Drew Lane, and the western lot line adjoining the parcel of Jim Zirin and Marlene Hess at 59 Lily Pond Lane, both neighbors have reviewed the proposal in front of the Board exactly as it is shown and have submitted letters to the file supporting the application. Ms. Bistran noted that the Isoms are concerned, given the proximity to their property, with the impact on their privacy and potential reverberation of conversations and other sounds but they have been assured by the contractor, John Hummel, and the landscape architect that this will be mitigated. All construction noise will be mitigated with a sound barrier and at the end, the applicant will be planting a pretty heavily vegetated buffer along the property line. Ms. Bistran stated that the property contains a preexisting, nonconforming garage which is approximately five feet off the eastern lot line and six feet off the southern lot line, approximately 590 square feet in size, which is proposed to be removed as part of the mitigation in this project. The applicant feels this mitigation is significant to the variance request.

Vice Chairman McMullan questioned the proposed location of the pool equipment. Ms. Bistran stated that the pool equipment will be located in the basement of the proposed pool house which is noted on the survey. Member

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FitzSimons questioned the location of the proposed sound barrier fencing. Ms. Bistran stated that it will be during construction so it will be along the two impacted property lines; the western property line where it indicates 72.22 and the southernmost property line of the parcel, the L shaped area. Member FitzSimons asked if the sound barrier fencing is temporary. Ms. Bistran stated that the sound fencing is temporary but the landscaping is permanent and if the Board wishes to write that into the decision, that would be acceptable. Member Rose stated for the record after reviewing the application and visiting the site, there are real constraints in meeting the existing Code criteria. The fact that the neighbors supported the application would not be dispositive for the variance in its own right but in this case, there is a real constraint with the property, and the fact that the mitigation of the preexisting nonconforming garage is being removed is a good faith effort to stay within the spirit and context finds it a reasonable request.

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

Upon motion of Joseph B. Rose, duly seconded by Andrew Baris, the Board unanimously adjourned the meeting at 11:33 a.m.

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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, February 10, 2023, 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. The applications can be viewed on the Village's website easthamptonvillage.org by clicking on the "Alerts" tab.

Application of EH 226 L.L.C., SCTM#301-5-3-11.5 and 11.6, for a Wetlands Permit and Variance in accordance with Chapter 278, Zoning, and Chapter 163, Freshwater Wetlands, to install an elevated pedestrian walkway. A Freshwater Wetlands Permit and variances of 84 feet and 61 feet are required to construct an elevated walkway 66 feet from wetlands and to clear vegetation 64 feet from wetlands where structures are required to meet a 150-foot setback and clearing is required to meet a 125-foot setback from wetlands. The subject property is 203,913 square feet in size and is located at 226 Further Lane. The property is located in Residence District R-160 and this project is classified as a Type II Action in accordance with SEQR.

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a swimming pool 20 feet from a side yard lot line where the required setback is 40 feet. Variances of 20.1 feet and 20 feet are required from Section 278-3.A.(5)(c) to construct a pool house 19.9 feet from a side yard lot line and 20 feet from a rear yard lot line where the required setbacks are 40 feet. The subject property is 40,400 square feet in area and is located at 53 Lily Pond Lane in Residence District R-160. This project is classified as a Type II Action in accordance with SEQR. Said Zoning Board of Appeals will at said time and place hear all persons who wish to be heard in connection with the applications. Interested parties may be heard in person, by agent, or by attorney. Dated: January 20, 2023 By Order of John L. McGuirk III, Chairman, Zoning Board of Appeals, Inc. Village of East Hampton 29-2/97

FILED
VILLAGE OF EAST HAMPTON, NY

DATE: 3/14/23

TIME: 3:18 PM

Pamela J Bennett

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