

Zoning Board of Appeals
April 14, 2023
11:00 a.m.
Emergency Services Building
One Cedar Street, East Hampton

Those present were:

John L. McGuirk III, Chairman
James H. McMullan, Vice Chairman
Philip O'Connell, Member
Joseph B. Rose, Member
Abigail Lamb FitzSimons, Alternate Member
Lisa Perillo, Village Attorney
Billy Hajek, Village Planner
Thomas Preiato, Village Building Inspector
Steve Long, Executive Director, East Hampton Historical Society
Jonathan Tarbet, Attorney on behalf of Apaquogue 72 LLC
Scott Romanoff, Neighbor of Apaquogue 72 LLC
William de Jonge, Neighbor of Apaquogue 72 LLC
Mary Jane Asato, Attorney on behalf of Joseph and Amy Perella
Lisa Poyer, Twin Forks Permits on behalf of Joseph and Amy Perella
Martha Reichert, Attorney on behalf of Christopher Jaeger and Phoebe Simmer
Laurie Wiltshire, Land Planning Services, Ltd. on behalf of
Orion Properties II, LLC
Jody Gambino, LTV Moderator
Pamela J. Bennett, Village Clerk

MINUTES

Upon motion of Joseph B. Rose, duly seconded by James H. McMullan,
the Board unanimously approved the minutes of **March 10, 2023.**

17061

D E T E R M I N A T I O N

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

Upon motion of Joseph B. Rose, duly seconded by James H. McMullan, the request to construct additions to an existing residence and to construct a hot tub is granted.

Chairman McGuirk – Aye
Member McMullan – Aye
Member O’Connell – Aye
Member Rose – Aye

D E T E R M I N A T I O N

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

Upon motion of James H. McMullan, duly seconded by Joseph B. Rose, the request to construct additions to a preexisting nonconforming residence is granted with conditions.

Chairman McGuirk – Aye
Member McMullan – Aye
Member O’Connell – Aye
Member Rose – Aye

D E T E R M I N A T I O N

Benjamin Louis Zucker Trust – 38 Huntting Lane – SCTM #301-3-7-26.2

Upon motion of John L. McGuirk III, duly seconded by Joseph B. Rose, the request to construct accessory structures is granted with conditions.

Chairman McGuirk – Aye
Member O’Connell – Aye
Member Rose – Aye
Member FitzSimons – Aye

DETERMINATION

Patricia H. Robert 2020 Family Trust – 117 Egypt Lane – SCTM #301-9-1-5

Upon motion of Joseph B. Rose, duly seconded by Philip O'Connell, the request to legalize the construction of five a/c condenser units is approved.

Chairman McGuirk – Aye

Member McMullan – Aye

Member O'Connell – Aye

Member Rose – Aye

Member FitzSimons – Aye

CONTINUED HEARING

East Hampton Historical Society – 8 James Lane – SCTM #301-8-5-7

Chairman McGuirk called the continued hearing to order at 11:03 a.m.

Steve Long, 38 Maple 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.

Chairman McGuirk stated that the Board received the report from the Historic Preservation Committee and asked Mr. Long if he has seen the recommendation. Mr. Long said yes and thought the Committee made a compelling case and that the Historical Society would like to proceed as the Committee has recommended. Chairman McGuirk asked the Board if everyone was in agreement with the request for the height variance with cedar shake shingles for the roof material. The Board agreed.

Upon motion of Joseph B. Rose, duly seconded by Philip O'Connell, the Board unanimously closed the Public Hearing.

ORIGINAL HEARING

Apaquogue 72 LLC – 72 Apaquogue Road – SCTM #301-12-6-9

Chairman McGuirk called the Public Hearing to order at 11:04 a.m., and the Public Notice, as duly published in the East Hampton Star, was read.

Application of Apaquogue 72 LLC, SCTM#301-12-6-9, for Variances from Chapter 278, Zoning, to make alterations to an existing house that exceeds the maximum height limits and number of stories. Variances are requested from Sections 278-2.B.(1) and 278-3.B.(2)(a) to make alterations and add a dormer to the fourth story of an existing residence where two stories is the maximum number of stories and to make alterations and add a dormer to a residence with a height of 43'4" where the maximum height for a residence is 36 feet. The subject property is 171,665 square feet in area and is located at 72 Apaquogue Road in Residence District R-160. This project is classified as a Type II Action in accordance with SEQR.

Jonathan Tarbet Esq. appeared on behalf of the applicant; no additional material was submitted into the record. Mr. Tarbet stated that this house has amazing history, noting that Robert Hefner's report is contained in the file. The house was built in 1840 and was used as a boarding house before the railroad came to East Hampton. It was on over 100 acres of land, burned down in 1880 and was rebuilt in its current configuration. So, there is 150 years of history with the current house. It was owned by LaForest, which became LaForest Lane, at times it housed refugee children from Belgium and finally in 1919 it was purchased by a family who kept it in the same family for 100 years which pretty much has not changed. There was a fire in the 1920's, which did not completely destroy the house, but it was rebuilt. From 1880 to about 1930, there was a dormer on the front of the house and for unknown reasons, the dormers were removed around 1930 otherwise the house pretty much has stayed the same. The existing asphalt shingles will be replaced with wood shingles. The house has no historic protection, although it would be nice if it did, but when the house sold in 2019 to a new family, it could have been torn down and you could build an 18,000 square foot house but the new owner's intent was to save, preserve, and rebuild; it is almost being rebuilt to the inch the way it was before 1930, they are asking to put the dormers back. The house was in a preexisting nonconforming location, too close to Apaquogue Road, and has been moved back to meet the setbacks so the height variance is the only relief that the applicant needs to rebuild the home. In speaking with the builder and homeowner, redoing a house like this is way more expensive than building a new house so they have gone to great expense to try to recreate and preserve what was there for 150 years. The proposed dormer allows the fourth floor, which is preexisting legal, to be more habitable. Chairman

McGuirk asked if the fourth floor of the house will be sprinkled. Building Inspector Preiato stated it is going to be sprinkled. Mr. Tarbet stated anything above the second floor will be sprinkled. Letters submitted into the record indicate that the house is going to get taller, but Mr. Tarbet noted that the house that had been there for 150 years was actually a couple of inches higher; it has been moved and put on a new foundation so it is located in a conforming location, but it is actually an inch or two shorter than what had been there for 150 years.

Member O'Connell stated that the application had a variance request of 4'4" and it was noticed for 43'4" and asked for clarification. Mr. Tarbet stated that in the body of the application it was stated that the height was to be 40 feet, it is actually the 43'4" so it was correctly noticed.

Scott Romanoff, 7 LaForest Lane, duly sworn in by the Village Clerk, swore to tell the truth, the whole truth, and nothing but the truth. Mr. Romanoff stated that his property, along with three other properties, are directly adjacent to the applicant's property and stated that dormers should be viewed in isolation given what is a substantial totality of the project. Mr. Romanoff requested that the record remain open for another month in order to obtain counsel. Chairman McGuirk clarified that the request is for the dormer. Mr. Romanoff stated that the dormer has not been there for 100 years and is significant.

Member O'Connell asked Mr. Romanoff how he feels the proposed dormer in the front of the house is impacting his property. Mr. Romanoff stated that he is directly behind the property, two of the neighbors are along the side, the house has been moved back on the property, there are additions being added to the house, and now effectively it is going to be raised and there will be dormers added that have not been there in almost 100 years. Member O'Connell stated that he understands the objection.

William de Jonge, 18 LaForest Lane, duly sworn in by the Village Clerk, swore to tell the truth, the whole truth, and nothing but the truth. Mr. de Jonge stated that he and his family have lived at 18 LaForest Lane for 30 years and directly across from the back driveway of 72 Apaquogue Road. He stated that this is a substantial increase to an already existing, preexisting

nonconforming situation. The entire portion of the dormer is above the Village Zoning limit for height, not just the top of it, 100 percent of it will be nonconforming. The dormers have not existed in over 100 years and is not just on the side facing Apaquogue Road, it is also on the back of the house facing many of the other neighbors as well. One hundred percent of the dormer is above the 36-foot limit, 20 percent beyond zoning restrictions and makes a mockery of the zoning requirements. The house has been moved closer to the street which means it has been moved closer to the neighbors and is proposed to be made taller, even more massive as the dormers are not small. The zoning requirement is to have the bucolic nature of the community be maintained.

Mr. Tarbet questioned if the record is closing today. Chairman McGuirk said no. Village Attorney Perillo stated that the hearing will be continued next month. Mr. Tarbet asked the Board for consideration that the house is under construction and is costing the applicant twice what it would cost to build a new house; the windows themselves are almost a million dollars. Mr. Tarbet stated that there is no reason to hold the record open other than neighbors who always ask for the record to remain open, there is no missing material or reason to keep the record open and asked that the hearing be closed today. Mr. Tarbet stated that this is a very narrow property, it is a four-acre property, so the neighbors who are complaining, for the most part, are four acres away from the dormer that faces the street. To the extent of the dormer in the back that is being made bigger, the dormer is there now. As far as zoning is concerned, it is important to understand that had the current owner not wished to preserve East Hampton's history, which East Hampton spends an inordinate amount of time and energy through Historic Districts, Timber-frame Landmarking, as well as taxpayer money to preserve East Hampton homes, she is doing this all on her own where she could have developed the property. Right now, she is proposing 14,000 square feet of coverage, this property could have 30,000, we know every month people come here to ask for coverage variances, including himself, this property could have 34,000 square feet of coverage. All of these homes in this area are maximizing coverage, and an 18,000 square foot house could be built here so this owner is doing everything East Hampton would want as far as preserving history. There is a benefit to her because the fourth floor becomes somewhat more comfortable; it is a fourth floor that is legally there at that height, it is not going any higher, and it is a relatively small request and asked one more time that the record be closed.

Chairman McGuirk stated that the record will remain open until next month.

ORIGINAL HEARING

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

Chairman McGuirk called the Public Hearing to order at 11:21 a.m., and the Public Notice, as duly published in the East Hampton Star, was read.

Application of Joseph R. and Amy M. Perella, SCTM#301-13-10-5, for a Wetlands Permit and Variance in accordance with Chapter 278, Zoning, and Chapter 163, Freshwater Wetlands, to construct a driveway gate. A Freshwater Wetlands Permit and a 96.1-foot variance from Section 278-3.A.(8) is required to construct a driveway gate 53.9 feet from wetlands where the required wetland setback is 150 feet. The subject property is 189,660 square feet in size and is located at 43 Terbell Lane with frontage on Hook Pond. The property is located in Residence District R-160 and this project is classified as a Type II Action in accordance with SEQR.

Mary Jane Asato Esq. appeared on behalf of the applicant; no one appeared in opposition. Proposed is the installation of a gate 53.9 feet from the edge of wetlands where a driveway already exists. The property is preexisting nonconforming, the improvements that are there have been longstanding, and has two driveway cuts that were established and are preexisting. The proposed gate will not change the character of the neighborhood; there are 11 properties on Terbell Lane, one of which is vacant but used in conjunction with another improved property, and another is owned by the Peconic Land Trust, however, seven properties contain driveway gates. The applicants' proposed driveway gate will not have a detrimental impact or will change the character of the neighborhood because driveway gates are pretty much established along Terbell Lane. The owners are located at the terminus of Terbell Lane, and people turn their cars around in the applicants' driveway. The proposed location of the gate is a pre-cleared area, it is not an elaborate gate, it is a fairly simple small footprint where the existing driveway is located. During construction of the gate there will not be disturbance that will

flow into the wetlands or further disturb the wetlands. The benefits outweigh any detriment to the Village or to the neighbors.

Member Rose stated that there will be the gate and then there is the stanchion/callbox. Ms. Asato stated that the callbox is on the property. Member Rose stated that there are, going up and down Terbell Lane, numerous gates of varying design.

Lisa Poyer, 288 East Montauk Highway, Hampton Bays, New York, duly sworn in by the Village Clerk, swore to tell the truth, the whole truth, and nothing but the truth. Ms. Poyer stated that the proposed driveway gates were proposed on the actual property line, but it was requested that they be located on the physical property in order to allow emergency vehicles, as well as people entering the property, to fully pull off the roadway. Member Rose suggested that the callbox be located as tight to the gate because it is a very environmentally picturesque and sensitive area to minimize the visibility of the callbox. Chairman McGuirk noted that a hedge also exists. Ms. Asato stated that they will relay that to the owners.

Upon motion of Philip O'Connell, duly seconded by James H. McMullan, the Board unanimously closed the Public Hearing.

ORIGINAL HEARING

Christopher Jaeger and Phoebe Simmer – 9 Sag Harbor Road

Chairman McGuirk called the Public Hearing to order at 11:28 a.m., and the Public Notice, as duly published in the East Hampton Star, was read.

Application of Christopher Jaeger and Phoebe Simmer, SCTM#301-2-3-10, for Area Variances from Chapter 278, Zoning, to convert a garage to a pool house and to legalize a patio. A 6.4-foot variance is required from Section 278-3.(A)(5)(b) to legalize a patio constructed 3.6 feet from the rear yard lot line where the required setback is 10 feet. Variances of 17.3 feet and 16.7 feet are required from Section 278-3.(A)(5)(c) to convert an existing garage into a pool house. The building is located 2.7 feet from the side yard lot line and 3.3 feet from the rear yard lot line where the required side and rear yard setbacks for a pool house are 20 feet. A 50 square foot variance is required from Section 278-

3.(D)(2)(a) to permit a pool house to contain 300 square feet of floor area where the maximum permitted floor area for a pool house is 250 square feet. The subject property is 10,235 square feet in area and is located at 9 Sag Harbor Road in Residence District R-40. This project is classified as a Type II Action in accordance with SEQR.

Martha Reichert Esq. appeared on behalf of the applicant; no additional material was submitted into the record; no one appeared in opposition. Ms. Reichert stated that the request is to convert the existing garage into a pool house. She stated that she spoke to Village Planner Billy Hajek in light of some of his comments in his memorandum and her clients would like to revise the application so that the pool house is limited to 250 square feet, and they would propose that the remaining 50 square feet be allocated for storage. Within the Village's R-40 residential district, Ms. Reichert stated that she found four similarly situated properties, and the one that is on point is the application of 32 Sherrill Road which had a 296 square foot garage that had similar setbacks from the rear and side yards; the Board allowed it to be converted into a 250 square foot pool house with 46 square feet of storage. Also requested is to legalize a slate patio which was constructed by the prior owner which has been in existence for at least seven years without any issue or complaint. Two letters of support have been submitted into the record from Tom and Kathy Piacentine at 10 Buell Lane Extension.

With reference to the applicants' driveway, coming from Toilsome Lane and going to where the driveway used to be, you would have to turn into the southbound lane of 114 to get into the driveway. The prior owner, who had relocated the curb cut, had a very good reason but the current owner will have to legalize the driveway.

With respect to the variance standards, the Board has found that the conversion of preexisting garages and pool houses does not cause a detrimental or adverse impact to the character of the neighborhood. There is no way to achieve this without a variance because as a preexisting nonconforming structure straight off the bat, the applicant has to come before the Board to alter a nonconforming structure. In terms of the substantiality, yes, by the numbers it does appear to be a large variance but, again, this Board has found several times in the decisions cited in her memoranda that by sheer numbers it

may appear substantial but because the building is being re-used in its existing footprint, the Board has found that makes it not substantial.

Chairman McGuirk stated that he would like to see the structure 250 square feet total, without the 50 square feet of storage. It looks like the garage has to be rebuilt totally anyway. Ms. Reichert stated that she has discussed that with her clients who are more than willing to covenant to that. The preference would be to maintain the 300 square feet because the applicants are removing a 96 square foot shed extension that is connected to the garage which effectively means they do not have a storage shed which is why they want to carve out a 50 square foot area that can act as a storage shed. Chairman McGuirk asked for confirmation that there be no door from within the pool house to the storage area. Ms. Reichert stated that the applicants are amenable to only having access from the exterior and are willing to file a covenant. The Board agreed to that stipulation.

Village Planner Hajek suggested that the Board require a set of plans demonstrating how the pool house will be 250 square feet and the storage area will only be accessible from the outside.

Ms. Reichert stated that she will get those plans to the Board prior to the next meeting and requested that with reference to the covenant, she would like to add a provision that if the Village Code were ever to be amended to allow pool houses to be in excess of 250 square feet, that the restriction would obviously be terminated as the covenant will run with the property forever. Member O'Connell stated that the applicant is requesting a substantial variance, so you are trading; Member Rose stated that that sounds like a no. With reference to closing the Public Hearing, Village Attorney Perillo suggested that the Board could close the Public Hearing but leave it open only for the submission of the proposed plans. Ms. Reichert stated that that would be her preference.

Upon motion of Joseph B. Rose, duly seconded by James H. McMullan, the Board unanimously closed the Public Hearing allowing for the submission of revised plans.

ORIGINAL HEARING

Orion Properties II, LLC – 46 Further Lane – SCTM #301-9-6-10.5

Chairman McGuirk called the Public Hearing to order at 11:38 a.m., and the Public Notice, as duly published in the East Hampton Star, was read.

Application of Orion Properties II, LLC, SCTM#301-9-6-10.5, for an Area Variance from Chapter 278, Zoning, to legalize an A/C condenser unit. A 10-foot variance is requested from Section 278-3.A.(5)(b) to legalize one A/C condenser unit located 10 feet from a side yard lot line where the required setback is 20 feet. The subject property is 73,371 square feet in area and is located at 46 Further Lane in Residence District R-160. This project is classified as a Type II Action in accordance with SEQR.

Laurie Wiltshire, 231 Pantigo Road, duly sworn in by the Village Clerk, swore to tell the truth, the whole truth, and nothing but the truth. Ms. Wiltshire appeared on behalf of the applicant; no one appeared in opposition. Ms. Wiltshire stated that this application is almost a repeat appearance from last year for the same request for the adjoining lot owned by the same family for the same thing for an air conditioning unit variance. This is an application for a side yard setback variance for the placement of an a/c condenser unit; the variance is required due to the location of the preexisting nonconforming residence on this oddly shaped lot. The subject a/c unit sits 10 feet from the side yard, where 20 feet is required, and is installed next to another a/c unit which sits 10.2 feet from the side yard, which is deemed preexisting, nonconforming by the Building Department. The granting of the variance will not cause any change in the character of the neighborhood or produce a detriment to the nearby properties; the a/c unit is installed in a location that is screened by fencing and vegetation by a long driveway belonging to a flag lot next door. Chairman McGuirk noted that the a/c unit sits up against another driveway on the other side hedge. Member O'Connell stated that there are two driveways. Ms. Wiltshire stated that this property abuts 40 Further Lane, Orion Properties, LLC, owned by the same family which benefited from variances in 2022 for four a/c units situated 3.7 feet from the side yard line. While the variance is substantial, this is due strictly to the location of the existing a/c unit and should not preclude granting of the variance, and the a/c unit will have little or no impact on nearby properties. There will be no adverse impact to the

environment or physical conditions as the surrounding neighboring parcels will not be affected in any way as this yard is well screened and the installed unit is environmentally benign; it is a low energy efficient unit, so it is quiet. This is a self-created hardship but given the location of the existing a/c unit, the abutting driveway, the existing screening and fencing, relief should be granted.

Member Rose stated that he has no problem with this particular application but the Board sees a lot of applications involving retroactively permitting existing mechanical equipment in the side setback area and wants to be very clear that he is not casual about the variance requests and is concerned about creating a precedent for saying it is not a big deal; the setbacks exist and, while in particular cases such as this application, there is a good reason for granting the variance, it is not an indication of casualness toward mechanical equipment in the setbacks. Member O'Connell stated that he agrees as this application is very distinguishable with 30 plus feet of driveway.

Upon motion of Joseph B. Rose, duly seconded by James H. McMullan, the Board unanimously closed the Public Hearing.

Upon motion of James H. McMullan, duly seconded by Joseph B. Rose, the Board unanimously adjourned the meeting at 11:42 a.m.

**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, April 14, 2023, at 11:00 a.m. on the following applications and to conduct such other business as may come before the Board. The applications can be viewed on the Village's website easthamptonvillage.org by clicking on the "Alerts" tab.

Application of Apaquogue 72 LLC, SCTM#301-12-6-9, for Variances from Chapter 278, Zoning, to make alterations to an existing house that exceeds the maximum height limits and number of stories. Variances are requested from Sections 278-2.B.(1) and 278-3.B.(2)(a) to make alterations and add a dormer to the fourth story of an existing residence where two stories is the maximum number of stories and to make alterations and add a dormer to a residence with a height of 43'4" where the maximum height for a residence is 36 feet. The subject property is 171,665 square feet in area and is located at 72 Apaquogue Road in Residence District R-160. This project is classified as a Type II Action in accordance with SEQOR.

Application of Joseph R. and Amy M. Perella, SCTM#301-13-10-5, for a Wetlands Permit and Variance in accordance with Chapter 278, Zoning, and Chapter 163, Freshwater Wetlands, to construct a driveway gate. A Freshwater Wetlands Permit and a 96.1 foot variance from Section 278-3.A.(8) is required to construct a driveway gate 53.9 feet from wetlands where the required wetland setback

is 150 feet. The subject property is 189,660 square feet in size and is located at 43 Terbell Lane with frontage on Hook Pond. The property is located in Residence District R-160 and this project is classified as a Type II Action in accordance with SEQOR.

Application of Christopher Jaeger and Phoebe Simmer, SCTM#301-2-3-10, for Area Variances from Chapter 278, Zoning, to convert a garage to a pool house and to legalize a patio. A 6.4 foot variance is required from Section 278-3.(A)(5)(b) to legalize a patio constructed 3.6 feet from the rear yard lot line where the required setback is 10 feet. Variances of 17.3 feet and 16.7 feet are required from Section 278-3.(A)(5)(c) to convert an existing garage into a pool house. The building is located 2.7 feet from the side yard lot line and 3.3 feet from the rear yard lot line where the required side and rear yard setbacks for a pool house are 20 feet. A 50 square foot variance is required from Section 278-3.(D)(2)(a) to permit a pool house to contain 300 square feet of floor area where the maximum permitted floor area for a pool house is 250 square feet. The subject property is 10,235 square feet in area and is located at 9 Sag Harbor Road in Residence District R-40. This project is classified as a Type II Action in accordance with SEQOR.

Said Zoning Board of Appeals will at said time and place hear all persons who wish to be heard in connection with the applications. Interested parties may be heard in person, by agent, or by attorney. Dated: March 24, 2023
By Order of John L. McGuirk III, Chairman
Zoning Board of Appeals, Inc. Village of East Hampton
38-2/134

FILED
VILLAGE OF EAST HAMPTON, NY
DATE: 5/12/23
TIME: 12:33 pm

Pamela J. Bennett

17073