

Zoning Board of Appeals
October 13, 2023
11:00 a.m.
LTV Studios
75 Industrial Road
Wainscott, NY

Those present were:

John L. McGuirk III, Chair
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
Christopher Kelley, Attorney on behalf of Jack and Ruth Ann McSpadden
Jack McSpadden, Applicant
Joan Osborne, Neighbor
Robert Osborne, Neighbor
Jonathan Tarbet, Attorney on behalf of KOOH, L.L.C.
Trevor Darrell, Attorney on behalf of Lisa and David Walker
Drew Bennett, Engineer on behalf of Maidstone Club, Inc.
Kelly Risotto, Principal of Land Use Ecological Services, Inc. on behalf of
Skylight East LLC
Gabrielle McKay, Deputy Village Clerk
Pamela Bennett, Village Clerk

Chair McGuirk called the meeting to order at 11:00 a.m., and thanked LTV Studios for hosting the Zoning Board meeting.

MINUTES

Upon motion of Joseph B. Rose, duly seconded by Abigail FitzSimons, the minutes of **August 11, 2023**, and **September 8, 2023**, were unanimously approved.

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DETERMINATIONS

SEQR – Jewish Center of the Hamptons – 44 Woods Lane – SCTM #301-8-7-46
Jewish Center of the Hamptons – 44 Woods Lane – SCTM #301-8-7-46
Lee and Vanessa Eastman – 247 Cove Hollow Road – SCTM #301-12-2-18.1

The determinations for the above applications will be acted upon by the Board at their next meeting.

SEQR DETERMINATION

The East Hampton Tennis Club, Inc. – 178 Montauk Highway –
SCTM #301-7-2-4.1

Upon motion of Philip O’Connell, duly seconded by Abigail FitzSimons, the Board unanimously adopted the Negative Declaration pursuant to SEQR.

John L. McGuirk III – Aye
Philip O’Connell – Aye
Abigail FitzSimons – Aye

DETERMINATION

The East Hampton Tennis Club, Inc. – 178 Montauk Highway –
SCTM #301-7-2-4.1

Upon motion of Philip O’Connell, duly seconded to Abigail FitzSimons, the application of The East Hampton Tennis Club, Inc., 178 Montauk Highway, SCTM# 301-7-2-4.1, for a Special Permit and Variance to construct four pickleball courts is approved, with conditions.

John L. McGuirk III – Aye
Philip O’Connell – Aye
Abigail FitzSimons – Aye

APPLICATION TO BE RE-NOTICED

55 La Forest LLC – 55 La Forest Lane – SCTM #301-12-6-8

The application of 55 La Forest LLC is to be amended and will be re-noticed for a Public Hearing.

ADJOURNMENTS

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

Timothy J. Tynan – 34 Sherrill Road – SCTM #301-1-4-30

The Board has received requests for adjournments for Huntting Hospitality LLC and Timothy J. Tynan until the December 8, 2023, meeting.

ORIGINAL HEARING

Jack and Ruth Ann McSpadden – 138 Main Street SCTM #301-9-1-19.3

and 3 Pondview Lane SCTM #301-9-1-9.27

Chair Pro-Tem O’Connell called the hearing to order at 11:02 a.m., and the Public Notice, as duly published in the East Hampton Star, was read. John L. McGuirk III recused.

Application of Jack and Ruth Ann Wood McSpadden, SCTM#301-9-1-19.3 and 301-9-1-9.27, for an Area Variance from Chapter 278, Zoning, to construct an Accessory Dwelling Unit. A variance is requested from Section 278-2 B. (7) (e) to permit the construction of an Accessory Dwelling Unit on a parcel of land containing 50,220 square feet of lot area when the minimum lot area required to construct an Accessory Dwelling Unit is 60,000 square feet. The subject property is shown to contain 50,220 square feet in area, is located at 138 Main Street and 3 Pondview Lane and is situated in Residence District R-80. This project is classified as a Type II Action in accordance with SEQR.

Christopher Kelley Esq. appeared on behalf of the applicant; no additional material was submitted into the record. Mr. Kelley stated that he previously submitted a Memorandum of Law which outlines how the application meets the five criteria for the granting of the area variance. The parcel at 138 Main Street, which fronts on Pondview Lane although takes access from Main Street, has the existing residence and has an area of 4,176 square feet, has a swimming pool, and has a one-story accessory building which is a combination of a pool house with a full bathroom and a garage; the accessory structure is 714 square feet. Mr. Kelley stated that the lot consists of 50,220 square feet which is relevant because the lot was originally smaller but was increased for purposes of this application from 40,659 square feet to 50,220 square feet by merging an adjacent piece of property. The proposal is

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to expand the accessory structure by 444 square feet and convert it to an ADU, accessory dwelling unit, pursuant to Section 278-2.B.7(e). The applicants hope to use this for their children that come to visit them during the summertime from out of town and eventually in the aging process, to house healthcare assistance that may be necessary. The Building Inspector originally recognized two variances were necessary, one because the total GFA of the residence and accessory structure combined would be over the limit and also because to have an ADU you need to have at least 60,000 square feet. The total GFA variance request was eliminated because of the merger of the two parcels; the only variance necessary is to allow an accessory dwelling unit on a lot of less than 60,000 square feet.

Mr. Kelley stated that by the creation of the ADU, numerous existing nonconformities are being eliminated. The existing building is 17 feet in height where only 14 feet is permitted for an accessory structure which will be reduced to a conforming height. The pool house is insulated and has air conditioning which is not permitted in a pool house but as an ADU, it would become conforming. The pool house has a full bathroom which is not permitted and by converting this to an ADU, that nonconformity is removed. A pool house can only be 250 square feet in size and by converting the structure to an ADU, that nonconformity is eliminated. The structure currently has two rooms but only one room is permitted in a pool house, and by converting this to an ADU, that nonconformity will be removed. Numerous nonconformities are eliminated by converting the structure and changing its use and requesting one variance. The other benefit, because of the way the Code is written, an I/A septic system is required which will mitigate any sort of environmental impact because the I/A system will service both the accessory structure and the main structure. Also as required by law, Covenants and Restrictions will be filed if the approval is granted, which has been drafted and submitted in the Memorandum of Law as an exhibit, which prohibits the rental of the structure. This structure is not for rent, the use, as required by the statute, will be used by the family. Also attached to the Memorandum of Law is previous precedent; this Board in the application of 72 Lily Pond LLC granted area variances, several of them, to allow an existing accessory structure to be enlarged and moved and converted to an ADU; this Board allowed an ADU to exist on that property with 2,294 square feet when only 1,760 square feet would be allowed by the zoning restrictions, with side and rear yard variances as well. Lastly, as an exhibit to

the Memorandum, there are three letters of support from the neighbors. Mr. Kelley stated that the applicant has met the criteria for the granting of an area variance in this situation and urged the Board to grant the variance.

Chair Pro-Tem O'Connell asked if the pool house that is existing is nonconforming legally. Mr. Kelley said yes. Member Rose questioned the year in which the pool house was built. Mr. Kelley stated that the building was moved from another property and then in 1985, the applicant came in and asked for a variance to build a garage addition, and the then Chairman, Irving Markowitz, stated that no variance was necessary, so they added the one-car garage onto the accessory structure. Chair Pro-Tem O'Connell stated that Mr. Kelley mentioned 72 Lily Pond Lane as a precedent, but that property had adequate square footage. Mr. Kelley stated that it was a different type of variance, but they were area variances. Chair Pro-Tem O'Connell stated that while the existing structure was enlarged, they were allowed to use the second floor that already existed on the premises.

Joan Osborne, 136 Main Street, East Hampton, New York 11937, duly sworn in by the Village Clerk, swore to tell the truth, the whole truth, and nothing but the truth. Mrs. Osborne stated that she and her husband owned the property at 138 Main Street until 1980 and sold to Mr. Fogarty who had lived in the accessory structure. She is opposing the proposal because it does not get the number of square feet that it should have for that building. The driveway is very narrow and she is concerned with the number of cars and the number of people that would be in that building. Mrs. Osborne reiterated that she is opposed.

Robert Osborne, 136 Main Street, East Hampton, New York 11937, duly sworn in by the Village Clerk, swore to tell the truth, the whole truth, and nothing but the truth. Mr. Osborne stated that the map that is before the Board is somewhat misleading because the surveyor has not seen fit to label what would be irregularly square, at the southwestern portion of the property, which if you look at the Map of Pondview, you will see that that is designated on that map that as a Reserved Area. That was not the developer's idea to make a Reserved Area, that was the Planning Board's idea, as well as the triangular piece across the street, therefore, there is a preliminary legal issue to be determined of does that count as square footage for this application. Mr. Osborne stated that he submits that it does not because it has expended its developable potential in the service to the map of Pondview. It has been counted for purposes in figuring out how many lots to put in Pondview and

should not get to be counted again. That is a legal issue that has to be determined before you know what size of a lot you are dealing with. The development of the existing accessory structure, the initial structure was an old garage from Charlie Talmage's property which was located just below the bridge, which he did not want. Mr. Osborne said he paid him a small amount of money and moved it to the property; it was an old garage and not suited for the size of automobiles today. The addition to the garage was put on by a subsequent owner. Mr. Osborne stated that the other point has to do with the easement that services the property which is a 20 foot wide easement but there is a concept known as the overburdening of an easement and he would submit that turning that accessory structure into a dwelling, another dwelling, with another one or two cars, those cars have to be accommodated somewhere, not in the garage because they are giving up the garage, so they are going to be out in the open. Mr. Osborne stated that when he laid out the existing right-of-way, he thought it would be adequate and it has been; there are times it gets crowded with contractor vehicles and he may have to wait a little bit to get out but he would not like to see it any more crowded than it is. He also pointed out that that driveway, easement area, is counted in the lot area but the area is not usable which should weigh on the scale a little bit when you are deciding to grant an area variance.

Mr. Kelley, addressing Mr. Osborne's points, does not believe the overburdening is an issue because you can add bedrooms to the house which would increase the burden on the driveway. With reference to the question of the area merged into the lot, the Village Code is very clear on that; you do not have that exclusion by having a burdened reserved area or burden of an easement. The Town specifically excludes that land, but it is not excluded in the Village Code so the area of the lot is what it is and is counted toward determining GFA and a variety of other things under the Zoning Code. If the Board is inclined, because there is frontage on Pondview, there is a possibility that an access driveway could be cut into the property from Pondview eliminating the need for the use of the right-of-way onto Main Street.

Jack McSpadden, 138 Main Street, East Hampton, New York 11937, duly sworn in by the Village Clerk, swore to tell the truth, the whole truth, and nothing but the truth. Mr. McSpadden, addressing Mr. Osborne's question about parking and having the use of the driveway, he has three cars there during the summer, he spends winters in Charlston and takes two cars with him. When going down the driveway, you completely turn to the right, the cars do not stick out in the right-of-way. Mr. McSpadden stated that he has two children, one

who lives in California and he arrives via the Jitney or the train and uses the preexisting cars so there is no additional cars; his daughter and son-in-law have a house on Dayton Lane and when they rent that, they come down for the summer and then spend two to three months or whatever period of time they rent their house. So in the summertime, there will be four cars there regardless and the only question is where they want to sleep; if they want to sleep in the pool house, they can get the extension of the bedroom or are they going to sleep in our house. Mr. McSpadden stated that he agrees with Mr. and Mrs. Osborne that during his renovations for the last two summers, it has been very troublesome for them, they have been very gracious about that, and that he has tried to minimize it to get this addition done now and that is the last construction to be done. The main house does not need to be expanded and it has been covenanted in the Memorandum of Law that they are not going to ask for another pool house.

Mr. Osborne stated that the McSpaddens have been wonderful neighbors and he is sorry to be in a position of being in opposition, but they did not come to him to ask about the application but came to say what they were doing. Mr. Osborne stated that the McSpadden's contractors have parked on his property and he could not get out. Any argument that has to do with personal family situations, etc., is totally irrelevant because the McSpaddens are not going to be there forever, it is going to be somebody else in there, and they are probably not going to be nearly as nice.

Mr. Kelley stated that normally he would agree with Mr. Osborne's analysis on personal characteristics having to do with variances but the way the Code is written, it is about the use of the accessory dwelling unit by family members or employees so it is relevant the personal characteristics of the applicant. In this situation it is not relevant because the applicant is not allowed to rent it, it can only be used by family or staff of the family.

Mr. Osborne submitted that that does not make any difference and also the applicant is going to be at odds with what the Planning Board has done if the Board decides that the Pondview Reserved Area counts toward coverage again.

Member Rose stated that leaving aside the arguments regarding the degree of nonconformity and what would be made compliant or not compliant as a result of granting the variance, there is a more profound issue involved in this application which is the waiving of the minimum lot size area requirement to permit an accessory dwelling unit. The change of zoning that the Village Board

did to permit accessory dwelling units on 60,000 square feet is relatively recent. This Board has not seen and has not acted on any variances waiving that, there is not a level of experience in terms of the impact of the existing regulation that was recently adopted; the regulation was adopted pursuant to an analysis of every lot in the Village and the impact on the population of the Village and the environmental impact. It would be a profound action and a big precedent on the part of this Board to allow for that area requirement to be waived and he would not be comfortable acting upon it without the level of environmental review and analysis. Without being unsympathetic to the individual property owner's arguments, one can anticipate there will be numerous, every property in the Village would be willing to consider making this kind of application if the Board were to grant the variance. Member Rose stated that he has a very substantial problem with this Board at this point considering a variance of this kind; it is different from the 72 Lily Pond Lane case. The Board has and will presumably consider applications involving some of the setback requirement issues in terms of siting but this is more than a site specific issue, this is a profound action and the Board should be very clear.

Chair Pro-Tem O'Connell stated that he agrees with Member Rose. With the law being so recent, had the Village Board, who legislated the law, wanted to go farther and make it applicable to acre lots and half-acre lots, they would have done so because they had the opportunity. When you look at this application, the area variance requested is substantial, it is self-created, and it has the potential to change the characteristics of the neighborhood and the area based on the size and people requesting similar variances. Member FitzSimons stated that she agrees with the comments already made and shares the same sentiment.

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

ORIGINAL HEARING
KOOH, L.L.C. - 17 Terbell Lane – SCTM #301-13-10-3

Chair Pro-Tem O'Connell called the hearing to order at 11:32 a.m., and the Public Notice, as duly published in the East Hampton Star, was read. John L. McGuirk III recused.

Application of KOOH, L.L.C., SCTM#301-13-10-3, for an Area Variance from Chapter 278, Zoning, to convert an accessory building containing a garage and pool house into an Accessory Dwelling Unit. A 1.5-foot variance is requested from Section 278-2 B. (7) (e) to permit the conversion of an existing accessory building into an Accessory Dwelling Unit located 32.5 feet from a side yard lot line where the required side yard setback for an Accessory Dwelling Unit is 34 feet. The subject property is 67,763 square feet in area, is located at 17 Terbell Lane and situated in Residence District R-160 with frontage on Hook Pond. 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; no one appeared in opposition. Mr. Tarbet stated that this is a similar application to the previous hearing except the applicant has the required lot area for an accessory dwelling unit. There is an existing structure on the property which has a Certificate of Occupancy for its air conditioning and it has a bathroom and it has been used for a caregiver and the request is to turn it into a legal ADU. The proposed ADU complies with all zoning except for a little tiny corner which is 1.5 feet too close to the property line which is less than 10 square feet of the building. The one benefit to the application is that the structure does have a legal septic system but it will have to be upgraded to the I/A system.

Chair Pro-Tem O'Connell asked Mr. Tarbet for the square footage of the lot. Mr. Tarbet stated that it is 67,000. Member Rose stated that in contrast to the previous application, this is the kind of action that is appropriate for the Board to consider and is a de minimis impact that meets the criteria and the system upgrade is a benefit environmentally.

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

ORIGINAL HEARING

Lisa and David Walker – 63 Hither Lane – SCTM #301-4-9-6

Chair McGuirk called the hearing to order at 11:35 a.m., and the Public Notice, as duly published in the East Hampton Star, was read.

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Application of Lisa and David Walker, SCTM#301-4-9-6, for Area Variances from Chapter 278, Zoning, to legalize pool equipment and a patio. Variances of 36.7 feet and 13 feet are required from Section 278-3 A. (5) (a) to legalize pool equipment and a patio located 18.3 feet and 42 feet, respectively, from a front yard lot line where the required front yard setback is 55 feet. A 21.6-foot variance is required from Section 278-3 A. (5) (c) to legalize pool equipment located 18.4 feet from a side yard lot line where the required side yard setback is 40 feet. The subject property is 40,646 square feet in area and is located at 63 Hither Lane in Residence District R-80. This project is classified as a Type II Action in accordance with SEQR.

Trevor Darrell Esq. appeared on behalf of the applicant; no one appeared in opposition. The applicant is seeking variance relief from the Code for two separate items; the pool equipment is situated 18.3 and 18.4 from the front yard and side yard respectively. In the initial application, the applicant was proposing to locate the pool equipment 15 feet from the side and front yards and while the application was pending, the contractor went ahead of the schedule. When Mr. Hajek visited the site, the dirt was still fresh. This is as an built application, not a requested permission location. The application was amended to reflect the installation. It was also discovered that because the property is a flag lot, the Village or the applicant designated the front yard to be the line nearest the street, but you can pick any line to be your front yard and this is what was designated. The pool patio was built within what they thought was the appropriate setbacks but due to further review by the surveyor, it does not meet that front yard setback. Mr. Darrell stated that the silver lining in the error of the installation of the pool equipment was that the applicant was able to have her neighbor come to the property while it was in use during the summer and believed the neighbor submitted to the Board that they did see the equipment, did not have an objection to its location, and in fact was unable to hear it. Mr. Darrell submitted photographs for the record and stated that there is double fencing; the neighbor and his clients used the same fence posts, two sets of stockade fence, double the thickness of fencing which keeps the noise levels down. Along the side yard and the front yard property lines there are full grown giant evergreens of different varieties, shapes, and sizes so the entire rear yard is screened. The realistic location for the patio is due to the way the property is set up, the space is to the southern

side toward the front yard; the other side is more narrow and backs up to the commercial property of the East Hampton House.

Member Rose stated that it sounds as described that the contractor got out ahead of the application process. Mr. Darrell stated that that is a fair assessment. Member Rose stated that assuming that that is accurate and that this was not an attempt to present this Board with yet another fait accompli in a retroactive approval, he does not have a problem with the particulars of the front yard designation.

Upon motion of Philip O'Connell, duly seconded by Abigail FitzSimons, the Board unanimously closed the Public Hearing.

ORIGINAL HEARING

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

Chair McGuirk called the hearing to order at 11:41 a.m., and the Public Notice, as duly published in the East Hampton Star, was read.

Application of Maidstone Club, Inc., SCTM#301-9-4-11 and 301-9-4-17, for a Wetlands Permit in accordance with Chapter 163, Freshwater Wetlands, and a Special Permit in accordance with Chapter 278, Zoning. A Special Permit is requested pursuant to Section 278-7 D. (1) (b) and a wetlands permit in accordance with Section 163-3 to stabilize the shoreline by placing fill, installing coir logs, and planting vegetation in two locations directly adjacent to Hook Pond. The properties are located in Residence District R-160 and contain a special permit use identified as The Maidstone Club. This project requires approval of the Design Review Board, the New York State Department of Environmental Conservation and the Town of East Hampton Trustees. The properties front on Hook Pond and this project is classified as an Unlisted Action in accordance with SEQR.

Chair McGuirk questioned whether the hearing is required to be left open because the Design Review Board must first review the application. Village Attorney Perillo stated that that is correct.

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Drew Bennett, 74 Montauk Highway, Suite 21, East Hampton, New York 11937, duly sworn in by the Village Clerk, swore to tell the truth, the whole truth, and nothing but the truth. Mr. Bennett stated that he is appearing before the Board as the applicant's consulting engineer and asking for approval to grant a Wetlands variance for a shoreline restoration. Mr. Bennett submitted for the record a map indicating the locations of the shoreline restorations; it is essentially a total of 65 linear feet of soft shoreline restoration in two locations. The first area is 15 linear feet on what the Club refers to as the tee island, the 4th tee island, and the second location is along the 7th fairway of 50 linear feet. It is referred to as a soft restoration because it is a minor erosion that occurs during the winter from winter winds and windblown ice and is intended to be corrected with coir logs, compost, and native plantings. Other examples of this type of work that has occurred at Hook Pond is at the parcel that the Town purchased via CPF, next to the Main Beach Parking Lot, and restored the shoreline there, same type of process, and the same process was also used in the Nature Trail. The work is done by hand and the Maidstone Club will be doing the work themselves.

Member Rose questioned whether the Town Trustees have commented. Mr. Bennett stated that he has applied to all the agencies and he has a Town Trustee permit in hand and has applied to the New York State Department of Environmental Conservation but does not have their permit but they have indicated that they have no comments. Application has been made to the Design Review Board and he looks forward to meeting with the Board shortly. Member Rose stated that he knows this shoreline intimately from use of the landward side and also having spent a half century fishing off a kayak and as long as it is done in a way that is environmentally sensitive and does not have an adverse impact on the Pond, it is clearly called for in terms of stabilizing and a benefit for the Pond.

Chair McGuirk stated that the Public Hearing will be kept open so the Design Review Board may review the application.

CONTINUED HEARING

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

Chair Pro-Tem O'Connell called the continued hearing to order at 11:47 a.m. John L. McGuirk III recused.

Kelly Risotto, 570 Expressway Drive South, Medford, New York 11937, duly sworn in by the Village Clerk, swore to tell the truth, the whole truth, and nothing but the truth. Ms. Risotto stated that this is a continued hearing from May and it is a request for the permanent placement of deer fencing at 94 Apaquogue Road. Photos and a Deer Fence Plan were submitted into the record. The fence application came about as a result of a phragmites management and habitat improvement project taken on voluntarily by the owner in 2019; the owner spent considerable time, effort and money to remove the invasive phragmites and install native plantings and a buffer which he had to do on multiple occasions to achieve the required survivorship contained in the permits issued for that project. The buffer has nearly 100 percent survivorship with native plantings as well as coverage with the vegetation exceeding the five year permit requirement contained in the permits. This is the last year monitoring and replanting of that vegetation. The big part of the reason that the vegetation is so robust is that the property had a deer fence at the seaward edge of the vegetation since the phragmites management program started; originally the fence was out in the water and was then pulled back in 2020 at the request of the Trustees to the current location that is depicted on the survey.

Ms. Risotto stated that this application and the plans that have been submitted propose the fence to be moved back farther, landward of the wetland boundary by at least five feet and, in some areas, more landward of the highest water level that has been observed when conducting the permitting and monitoring for the site. The reason for the fence in the buffer is to protect the plantings as much as possible understanding that the applicant has to get it out of the wetlands. Annual phragmite management monitoring reports have been submitted to the Village and the last two were submitted with this application. What has been observed since the project has been implemented was that the deer browse pressure is strong enough in this area that none of the vegetation seaward of the fence survived, the fence got moved back, and the deer had a feast. The deer fence needs to be maintained at this location to protect as much of the buffer as possible as well as the upland landscaping and plantings that the owner installed. In addition to the drone image on the sheet of photos, there was a photo in the upper right corner, which is a view from the pool terrace area that the owner currently has, it is a very beautiful vista of the Pond, the buffer, and the waterway. The fence proposed in its current location will not only protect the buffer vegetation but it will also maintain that view; moving the fence landward will put the fence higher on the property and instead of having that beautiful natural vista, you will see a fence and nobody wants to look at that on their property.

Ms. Risotto stated that the fence will be an 8 foot tall black welded wire fence with two inch by four inch mesh which is a standard deer fence size; one of the photos that was submitted was a depiction of how the fence will be installed at an angle. The deer, even though the fence is angled and shorter, do not jump over it so it does keep the deer out. The fence height will be just under six feet, at a 45 degree angle. The fence will be removed before the growing season next year and one of the questions at the last meeting was regarding a temporary irrigation which will be removed at the same time the fence is relocated just to minimize the disturbance in the buffer.

Chair Pro-Tem O'Connell questioned whether the proposed fence is permanent. Ms. Risotto stated yes as the owner wants to keep the buffer lush and thick the way it is shown in the photos. The other submission is the Deer Fence Plan showing the location that is proposed. One other question that arose was with regard to the passage of reptile and amphibians; the two inch by four inch mesh, from all the research that could be found, will certainly pass amphibians that are found here. The area landward of where the fence is proposed is not a big enough patch for a box turtle so it is not necessary to make sure that there is passage for a box turtle and anything that would be big enough to pass a snapping turtle would also pass a deer. Deer can get through gaps as small as six inches according to the Oregon Fish and Wildlife in a deer study and passage project. Ms. Risotto stated that another question was whether a NYSDEC permit had been obtained; an application has been submitted and it is pending.

Member Rose asked if the Town Trustees have to act on the application. Ms. Risotto stated that they do not, it is landward of high water and landward of the wetlands. Member Rose questioned the proposed location of the fence on the plan. Ms. Risotto stated that it is the black and white line and then the red line with the flags is the wetland boundary. Ms. Risotto noted that from the Deer Fence Plan you can see a difference in the thickness and character of the vegetation; the line of the deer fence is within that darker, thicker area, and seaward is where the water reached very high in 2019 so the applicant wanted to make sure not only was the fence landward of the wetland boundary but it was landward of the highest water elevation.

Chair Pro-Tem O'Connell stated that he fully understands the homeowner's desire to have a view of the Pond but because of the application for a permanent fence structure, he feels like the Board should never have granted the phragmites removal permit; it is not so much the removal of the

phragmites, it is what is following the removal. The fence is supposed to be 150 feet from the edge of wetlands and the survey that was received when everything was proposed, the Saskas survey received by the Village on January 23, 2017, looking at the Village's parcel information, shows the proposed fence 125 feet from the wetlands flagging. Chair Pro-Tem O'Connell stated that the requested variance is substantial, this is self-created, it changes the character of the neighborhood because now other people who are fronting the Pond will make similar requests, and it has a substantial environmental impact on the Pond as a whole. Ms. Risotto noted that it protects the Pond because it protects the habitat that was created. If you move the fence back to be up by the pool and therefore landward of all this buffer, the buffer will likely be gone in a couple of years and there is no requirement for him to maintain it anyway because he has met that five-year survivorship contained in the permits for the phragmites management. Chair Pro-Tem O'Connell stated that he understands that. Ms. Risotto stated that the fence is not visible to anyone, it is designed to keep the deer out, keep the plants robust; there is no negative impact to having the fence; the lawn area will be down to the water.

Member FitzSimons questioned what Ms. Risotto anticipates happening seaward of the fence in the future. Ms. Risotto stated that she anticipates browse damage but also recognizes that having a fence along the shoreline the way it is visible and being that it is in the wetland area and the water at times does reach the fence or even a little bit landward when the Pond gets really full, it does trap dead plants in the fence. Member FitzSimons said that Ms. Risotto stated that no one is going to see the fence but questioned if no one is going to see it from the landward side or the Pond side. Ms. Risotto stated that it will be concealed from both sides having it at the angle that is proposed as it will lower the overall height; right now the fence that is there is an 8 foot tall vertical fence so at an angle it will help to conceal it.

Member Rose stated that the rationale for the proposed location of the fence is to protect it from being seen both from the Pond side and from the landward side. Ms. Risotto stated that the rationale is really to protect as much of the buffer as they can and to protect the plantings as much as they can and the bonus is no one will be able to see it.

Member FitzSimons questioned whether the phragmites will come back seaward of the fence. Ms. Risotto stated that she did not know but it is possible; with the phragmites management project they did install rhizome barriers on each side of the property to minimize encroachment from the phragmites and so

far that has worked very well. Member FitzSimons asked if the property owner wanted to prevent the phragmites from coming back going forward. Ms. Risotto said absolutely; ideally this buffer in this condition would remain forever and would be protected and would serve all the functions that wetland buffers serve with runoff filtration and storm protection and habitat protection. Member FitzSimons questioned if it is something that the property owner would agree to manage, the phragmites issue. Ms. Risotto stated that she would have to talk to the owner about that but he has been doing buffer maintenance for the five years during the program.

Village Planner Hajek stated that he appreciates the property owner's efforts to remove phragmites to create a buffer, generally speaking it is a good thing, but noted that in the nine years he has worked for the Village, the Board has reviewed and approved multiple buffer projects and phragmite removal, whether it be cutting, full excavation, or hand selecting or hand digging, and in all instances the Board has required some revegetation in association with that, there has been temporary fencing installed that has been removed, and while the buffers get nibbled by deer, they generally remain intact. A good example is the neighbor immediately north which was a full excavation, they brought in clean sand, regraded the shoreline, revegetated, and the buffer exists. Mr. Hajek added that he is sure it is not exactly the same as when they did the project 10 years ago but there is no shoreline fencing that protects the buffer and it is still intact. Mr. Hajek cautioned the Board about camouflaging a buffer protection by putting in a deer fence; if the purpose is habitat improvement, you are blocking wildlife from their habitat which part of the purpose here is to create habitat for all species not just birds or salamander and or a worm that can weasel its way through a two-inch gap in the fence. There could be a compromise here if the Board were looking at a very robust buffer, something similar that was done at 19 and 23 Chauncey Close where they revegetated 125 feet of the land area, but this is a buffer that is 7 to 10 feet wide in certain areas and 30 to 40 feet in other areas. In terms of the viewshed, Mr. Hajek noted that the Certificate of Occupancy requires a pool enclosure fence on the property; the pool enclosure fence has been removed and believes the deer fence is acting as the pool enclosure fence but legally they are supposed to have a pool enclosure fence no fence is affording them a great view which everyone wants but offers that as a comment. Mr. Hajek cautioned the Board as a precedent setting value of something like this.

Chair Pro-Tem O'Connell stated that the Board will leave the record open until the end of November for written comment to address Member FitzSimons'

question if the applicant would agree to manage the phragmites in perpetuity. Member Rose stated that he would like to visit the property noting that he has viewed the property from the Pond side but not the land side. Ms. Risotto stated that that can be arranged.

Upon motion of Joseph B. Rose, duly seconded by Abigail FitzSimons, the Board unanimously adjourned the meeting at 12:07 p.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 LTV Studios, 75 Industrial Road, Wainscott, New York, on Friday, October 13, 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 "Public Board Meetings" tab.

Application of Jack and Ruth Ann Wood McSpadden, SCTM#301-9-1-19.3 and 301-9-1-9.27, for an Area Variance from Chapter 278, Zoning, to construct an Accessory Dwelling Unit. A variance is requested from Section 278-2 B. (7) (e) to permit the construction of an Accessory Dwelling Unit on a parcel of land containing 50,220 square feet of lot area when the minimum lot area required to construct an Accessory Dwelling Unit is 60,000 square feet. The subject property is shown to contain 50,220 square feet in area, is located at 138 Main Street and 3 Pondview Lane and is situated in Residence District R-80. This project is classified as a Type II Action in accordance with SEQR.

Application of KOOH, L.L.C., SCTM#301-13-10-3, for an Area Variance from Chapter 278, Zoning, to convert an accessory building containing a garage and pool house into an Accessory Dwelling Unit. A 1.5-foot variance is requested from Section 278-2 B. (7) (e) to permit the conversion of an existing accessory building into an Accessory Dwelling Unit located 32.5 feet

from a side yard lot line where the required side yard setback for an Accessory Dwelling Unit is 34 feet. The subject property is 67,763 square feet in area, is located at 17 Terbell Lane and situated in Residence District R-160 with frontage on Hook Pond. This project is classified as a Type II Action in accordance with SEQR. Application of Lisa and David Walker, SCTM#301-4-9-6, for Area Variances from Chapter 278, Zoning, to legalize pool equipment and a patio. Variances of 36.7 feet and 13 feet are required from Section 278-3 A. (5) (a) to legalize pool equipment and a patio located 18.3 feet and 42 feet, respectively, from a front yard lot line where the required front yard setback is 55 feet. A 21.6-foot variance is required from Section 278-3 A. (5) (c) to legalize pool equipment located 18.4 feet from a side yard lot line where the required side yard setback is 40 feet. The subject property is 40,646 square feet in area and is located at 63 Hither Lane in Residence District R-80. This project is classified as a Type II Action in accordance with SEQR. Application of Maidstone Club, Inc., SCTM#301-9-4-11 and 301-9-4-17, for a Wetlands Permit in accordance with Chapter 163, Freshwater Wetlands, and a Special Permit in accordance with Chapter 278, Zoning. A Special Permit is requested pursuant to Section 278-7 D. (1) (b) and a wetlands permit in accordance with Section 163-3 to stabilize the shoreline by placing fill, installing coir logs, and planting vegetation in two locations directly adjacent to Hook Pond. The properties are located in Residence District R-160 and contain a special per-

mit use identified as The Maidstone Club. This project requires approval of the Design Review Board, the New York State Department of Environmental Conservation and the Town of East Hampton Trustees. The properties front on Hook Pond and this project is classified as an Unlisted 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: September 22, 2023

By Order of John L. McGuirk III, Chairman, Zoning Board of Appeals, Inc. Village of East Hampton 12-2/156

FILED
VILLAGE OF EAST HAMPTON, NY
DATE: 12/11/23
TIME: 12:00 noon

Danah J. Bennett