

Planning Board
July 14, 2022
11:00 a.m.
via Video-Conferencing and
Published by Local TV, Inc.

Those present were:

Robert D. Caruso, Chairman
D. Walker Wainwright, Member
David Driscoll, Member
Lisa Perillo, Village Attorney
Vincent Messina, Village Attorney
Billy Hajek, Village Planner
Tom Preiato, Village Building Inspector
Elizabeth L. Baldwin, Attorney on behalf of ML 2017, LLC
Melissa Dedovich, Peconic Environmental on behalf of ML 2017, LLC
Jody Gambino, LTV Moderator
Pamela J. Bennett, Village Clerk

Mr. Caruso: Good morning. I call to order the Planning Board for Thursday, July 14, 2022.

1. **Minutes**

Mr. Caruso: The first item on our agenda are the minutes of June 9, 2022. Are there any questions or corrections? If not then I would entertain a motion to approve. Can I have that motion?

Mr. Wainwright: So moved.

Mr. Caruso: Thank you. Do I have a second?

Mr. Driscoll: Second.

Mr. Caruso: Thank you. All in favor?

Mr. Wainwright: Aye.

Mr. Driscoll: Aye.

2. The Little Plain Subdivision Modification Request – ML 2017, LLC –
89 Apaquogue Road

Mr. Caruso: The next item is The Little Plain Subdivision at 89 Apaquogue Road, is the applicant present?

Ms. Baldwin: Yes, we are here.

Mr. Caruso: Thank you, Elizabeth. Can you just explain your application to us and bring us up-to-day, I know there has been changes since the beginning of this, 2009, I believe.

Ms. Baldwin: Yes. So we represent Lot numbered 3 in the subdivision. The owner is at 89 Apaquogue Road. Our client has been looking to develop the property and during our research, we looked into the prior C and R's of this subdivision, and in the Board's prior approval, the Board restricted all buildings within the building envelope that is depicted on the map. Since that subdivision, the Village has changed at how it looks at accessory structures whereas prior to I believe 2017, there were not setback requirements for these structures. In 2017, however, the Board adopted setbacks for accessory structures and buildings, and so we are currently requesting that the subdivision approval from 2010 be modified to allow us to use the current Code requirements rather than be restricted by the accessory structure, by the building envelopes that are depicted on the map. It is our understanding that the Village has actually been applying the setbacks that are in the Code rather than the building envelope that was from a prior application and development on a lot, I believe it is Lot 1 in that subdivision, so our hope is to actually modify the subdivision, go by the Code, and make it a more uniform application and then therefore avoid any issues down the line for any future property owners and for the Village and so that is what our request is basically.

Mr. Caruso: Okay, thank you. Melissa, do you have any comments on this application?

2799

Ms. Dedovich: I think Elizabeth clearly explained it. We just want to have the subdivision adhere to current Zoning Code requirements for accessory and principal as opposed to the building envelopes that were adopted as part of the subdivision in 2010.

Mr. Caruso: Okay thank you Melissa. Tom Preiato, your input on this application?

Mr. Preiato: Thanks Robert. Beth put it quite nicely and I think it is more of a bookkeeping or the straightening out of the record. I think it would be acceptable to use what we have as far as the setbacks and that it did not need to be any more restrictive than what we have.

Mr. Caruso: Thank you, Tom. And Billy Hajek, your analysis, input?

Mr. Hajek: Good morning Robert, Members of the Board. Historically when the Planning Board has always had a hard time modifying prior Planning Board approvals. It has just been kind of a policy to not go back and revisit old Planning Board approvals. In this case though, I think I would encourage the Board to consider, there is I think a change of circumstances, and, as Beth indicated, the Code now allows for accessory structure setbacks, which did not apply at the time the subdivision was created. In addition to which, when the subdivision was completed, the Village had a very unusual way for calculating the relief provisions, the setback relief provisions, and these building envelopes were drawn in a way to utilize those setback relief provisions which no longer apply. So it makes it a little bit complicated for somebody to develop the lot when there is a building envelope which no longer really pertains to current zoning requirements. So I personally do not have an objection if the Board were to just require, or eliminate the covenant regarding the building envelope and just allow lots to be developed pursuant to current zoning. So the Board understands the average setback I would say for a principal building shown on the map is 44, 45 feet. Applying current zoning would actually increase the setback for principal buildings so it would move them more internally into the lots, which I do not think is such a bad thing, the setback would be 55 feet and it would relax setbacks for swimming pools, patios, and the like. So accessory setbacks can be moved closer to the property line but the principal buildings, the bigger buildings, would be moved inward so I think that is more consistent with the pattern of development in the

neighborhood anyway. So that is really my opinion on the request. The one item I would just like to point out to the Board's attention and the applicant's attention is that there were conditions of the subdivision which required clearing of some vegetation to create a view shed across the field. A part of the field is a view shed easement and the idea was to try to maximize the view from people passing by on Apaquogue Road and that area has not been cleared yet so that needs to be cleared and then also on Lily Pond Lane, as you come around the hard bend, there was an area where that was to be cleared to sort of improve the view over the pond and toward the reserved area and that area has not been cleared to so I just think for housekeeping, I think the applicant has to get started on that, or the applicants, I guess the homeowners' association, I think need to get that in order and clear those areas.

Mr. Caruso: Thank you, Billy. Yes, I do agree with that analysis because the area down there is just so beautiful that we do not want that you cannot see anything and all the views would be obstructed so I agree with that analysis. Walker, your opinion about this application?

Mr. Wainwright: It seems fine to me now that it has been explained.

Mr. Caruso: Thank you, and, David, do you have any questions or concerns?

Mr. Driscoll: I have questions, I do not fully understand a couple of things. As like Billy, I am always a little resistant to changing a previous Board's determination. At the time, apparently, there was no regulation and the Planning Board obviously decided there was a need for regulation so the regulation is expressed in the covenant restriction and it was agreed upon, and the ten years later, apparently it is less restrictive now so we look to change it. So just on the face of it without the additional information, I am a little hesitant. I would just like to understand, I think this was about accessory buildings, not principal buildings more than anything else, was it not? Because the principal buildings always would have to be within the building envelope, correct?

Mr. Caruso: Billy?

Mr. Hajek: Yes, but by applying the current zoning setbacks you are actually creating, the setback is becoming greater for principal buildings.

Mr. Driscoll: I could not read the survey.

Mr. Hajek: I know, it is hard to see.

Mr. Driscoll: I kind of tried to really look at it but I could not. Billy, if you could just explain to me the difference between the restrictions as expressed in the covenant and restrictions as opposed to the current Village Code for accessory buildings. What are the setbacks?

Mr. Hajek: So the required setbacks for principal building, the front yard does not change, it is 80 feet, the building envelopes were 80 feet back from the road, the current principal building setback is 80 feet, it is even greater for an accessory structure so it becomes more restrictive eliminating the building envelope. The side yard setbacks for a principal building are 55 feet and on average these building envelopes have side yards of 45 feet. So the principal building setback becomes I guess more restrictive you could say. The accessory structures, the setback is, it will be 20 feet for most accessory structures, 40 feet for like a swimming pool, pool house, and the like. So that is not much of a change between the swimming pool setback and what the building envelope shows.

Mr. Driscoll: For accessory it is 20 feet, the building envelope is how far off that same line?

Mr. Hajek: Forty-five feet on average. Some are 44, some are like 43, so they all differ where this makes it more uniform, everybody is on an even playing field so to speak.

Mr. Driscoll: And from the property owner's perspective, it is much less restrictive for accessory buildings and that is why it is preferable to them, that is why the application is coming forward.

Mr. Hajek: Possibly, yes. I can tell you I have experience with this subdivision. The building envelopes, I do not want to say it was inadvertent, but I do not think there was intent, it is complicated but when this subdivision was approved, I was involved with it, and the building envelopes were added to the map because at one point the then Village Planning Consultant had suggested the potential for

creating view sheds through each lot so that if you were driving down Apaquogue Road, you would almost have a view shed through each lot. So we plotted the building envelopes through the course of many, many reviews, this was an ongoing subdivision for quite a long time. It was resolved that it was not possible to do and nor did the Village Planning Board think it was reasonable and for whatever reason, we left the building envelopes on the map and they got incorporated into the Covenants and Restrictions. I do not if there was a direct intent for that to happen.

Mr. Driscoll: And is there a possibility that this change to the current Village Code will somehow inhibit the view shed going forward if buildings are put into places that want...

Mr. Hajek: No, the view sheds that have to be maintained are in the easements. The lots are pretty burdened with scenic easements and view shed easements and no structures are permitted in either. In fact, it even limits the height of vegetation within the view-shed easement.

Mr. Driscoll: I seem to remember reading something in the paperwork that there were pretty strict timelines on when the land, the non-native vegetation must be removed, there was a time restriction for the DEC permit application and notification to do with that and then within one year it was supposed to have been cleared. Was that done originally?

Mr. Hajek: I know that they received their permit because I secured it for them, and then the family had never opted to do the actual work because they were not going to build on the lots. The plan was they were not going to develop the property for quite time some so they just left it alone. They have removed all the Phragmites on the north side of the pond and they have done a really good job at controlling the Phragmites and that has dramatically changed the vista. Just that alone, which was not necessarily required, but it has dramatically changed and it looks nice.

Mr. Caruso: It is quite beautiful that area.

Mr. Hajek: Along Apaquogue Road it is a pretty small, it is a narrow window, it is only about 40 or 50 feet wide and it is just going to give people a glimpse as they

drive by. I think the area on Lily Pond Lane is going to have more impact but it is a little bit more complicated because it is a wetland, they have to obtain wetland permits so there is more involved in it.

Mr. Driscoll: Thank you.

Mr. Caruso: Vincent Messina, are you here with us?

Mr. Messina: I am.

Mr. Caruso: Hi Vincent, how are you?

Mr. Messina: Ms. Perillo did the hand off. It is great to see Beth again, it has been a long time.

Ms. Baldwin: How are you? It is good to see you.

Mr. Messina: I am awesome, thank you, how are you?

Ms. Baldwin: Good.

Mr. Caruso: Vincent, what is your opinion about this application and how do you see it?

Mr. Messina: I cannot add anything that Bill did not, I know I came in a little late, but, no, I do not see any issue with this.

Mr. Caruso: So then we can take a vote on it. Now Vincent should we, about the clearing of the vegetation, do we have to put a statement about that if we approve this application? What should we state?

Mr. Messina: Bill, did you make a recommendation on this with respect to that?

Mr. Hajek: Not specifically, I just noted that it has not been done yet and should be done so I do not know whatever...

Mr. Messina: So then we could make it subject to the recommendations of the Planner with respect to that issue.

Mr. Caruso: Okay, so let us put that in writing then. Do I have motion to approve the application?

Ms. Baldwin: Sorry, I just want to clarify. We would respectfully request, we totally understand that the clearing issue has to be dealt with with this subdivision and we are more than happy to help shepherd it through all, not only the homeowners' association and everybody else, but we just respectfully request that it be not prior to a building permit if that is what the Board is looking at but rather tie it to prior to any C.O.s being issued just to allow us to start.

Mr. Messina: That is tough, that is tough because then you get your improvement and even if you do not get a C.O., it is up and you have what you have requested, right? If you want, we can adjourn and work out some specific requirement that you might be happy with and then we can give you a vote with no contingencies except...

Mr. Hajek: I would think, procedurally here, I think if the Board agrees, is generally in agreement with eliminating the building envelopes, I think the applicant, you are representing one property owner so you have some work to do because you have to amend the covenant and then you have to have the homeowners' association and all the lot owners agree, so perhaps in that time we can look at the clearing matter a little bit closer and try to figure out a strategy on how that could be completed while you are working this out with the homeowners. Even if the Board, they are not really approving anything, in the end, they are going to accept a revised covenant.

Mr. Messina: Right, we are approving the application.

Ms. Baldwin: You would have to amend the Board's approval and also then we would then in turn be going to all the different property owners to get which we have already spoken to and they know what is expected so we would be modifying the pertinent documents, I think it is the C and R's, and then having each property owner sign off on that. We are trying to coordinate this for everybody and there has already been development where we are obviously, we

understand what needs to be done but the, as you had said before, the reserve area there is a lot going on there. We want to start our process and not be held up by that. The Village has issued permits already, we are trying to coordinate everybody and we want to make sure that we are not getting held up for that. We are ready to go and so we really want to not only address the Board's concerns and the Village's concerns but also get all the property owners involved again and get the homeowners' association involved and it is going to be a process to do and we just want to kind of run our building permit application and everything simultaneously with that.

Mr. Messina: Beth you can apply, and Tom you can correct me, you can make the application and we can have it all teed up for approval as soon as this is buttoned up, they can all run on a parallel path.

Mr. Preiato: Yes, that certainly could happen but I am just going forward, what am, what are we to expect as far as the actual plan that we have, the subdivision plan and how much of that gets changed...

Mr. Hajek: Or the map.

Mr. Preiato: The map itself or is it going to be on individual surveys I would not think for each, I just do not know how it is, it sounds good but I think there is a little more involvement to it.

Mr. Hajek: That is a good question, the map does have metes and bounds on the building envelopes.

Ms. Baldwin: Right, but I think the C and R's can just say, they are not referencing it or we could say if not required, if you want to put it in the affirmative, but the C and R's specifically reference the building envelopes that they have to be, if that language is no longer there, even if there is still description.

Mr. Preiato: Right but it is just difficult to, and I am for this as you know, but in my position, it is difficult to issue a building permit for property that would be on this map. I am not sure. Procedurally that would be probably more something that you, Vincent, and perhaps Billy could make happen. I just want to be sure it that it goes smoothly as well.

Ms. Dedovich: Can I also say something with regard to the removal and the clearing work. When I got involved in this project, the client had already purchased the property and Tom you know we met with you and we found Lot 1 had benefited from use of the current zoning. So really I feel I am here as a housekeeping and also to help everybody and clear this up with the Village. For the clearing right now, we have to stake out the area on Apaquogue so that as you know, Billy knows this, getting surveyors and everything out there is very difficult right now. Phragmites removal is better to be undertaken...[inaudible]...we are going to need not just a Village permit, we need a DEC permit. The DEC right now is understaffed, they have lost most of the technical review people over the last six months, I foresee this is going to take us six months to a year to get the permits and to do the work so that is why we thought if we can at least go, have the building permit issued, and we have this contingent on a certificate of occupancy. Of course our clients we always do not our people to move in before a C, of O, but this house, on these properties, this is going to take a view years of construction anyway. This is not going to be a house that is going to be thrown up in six months and C, of O,'ed. So that is why we thought having it conditioned on, getting the subdivision cleaned up before the issuance of a certificate of occupancy was reasonable because it is going to take us at least two years of construction and it is going to take us a while to get everybody signed on and get the DEC to issue the permit to do this work.

Mr. Preiato: Understood but I just need to feel okay with getting, I did not give the last permit, and I do understand that they were relaxed. If there is a mechanism to which I can do it and be assured that we have the proper outcome legally, I am totally for this.

Mr. Caruso: Vincent, what is your recommendation about moving forward with this. I realize that the clearing I think is important that we have that all in place, sort of for me I think it is important to have the clearing in place before we grant a building permit.

Mr. Messina: I think you are right, Mr. Chairman, and that has been our practice recently in any number of contexts as Bill and Tom can both attest in front of other bodies. The best thing, everyone here I am sure acts in good faith, we can work, like I said, on parallel paths with the applicant where we can take in the

building permit application, we can start to take a look at anything that they may need from the building department and at the same time work on what we need to do with respect to the clearing and the covenants or agreements with respect to the clearing. So that would be my recommendation but it is, again, entirely up to the Board.

Mr. Caruso: Thank you. My main concern is that people do exactly what the proper thing is, these things all do take time, we understand where the applicant is coming from, but I really think that we have to be very careful about the clearing, I think that is an important aspect. Billy, what is your opinion about this in general?

Mr. Hajek: Listen, I think the work has to be done at some point, I will defer to Vinnie and Tom as to what they think the appropriate timing of this is.

Mr. Preiato: Also, Billy, sorry, ironically I am meeting with an architect regarding another one of these properties on Monday so timing-wise it just happens to be so we want to have it down and we want to have it obviously consistent.

Mr. Hajek: I think the clearing that is required on Lot 5, it is a small little area, it will not take, it is not going to amount to a lot of work. I do not even know if you need a surveyor to stake it out quite frankly you could probably just figure it out and do it.

Ms. Dedovich: It is within the DEC jurisdiction though.

Mr. Hajek: It is a farm field, you are removing a privet hedge along the farm field.

Ms. Dedovich: We have had somebody come over after us about demolishing a house; they say anything within their jurisdiction they want to...

Mr. Hajek: That is within 100 feet of the wetland?

Ms. Dedovich: I believe so, I do not have it in front of me, I thought it was, I could double check it.

Mr. Hajek: I am eyeballing it, it does not look like 100 feet to me, I do not know.

2808

Ms. Dedovich: The other thing is too, the reason I want to have it staked out is right now we have to contact the property owner, it is not our property so we would have to have it, I would recommend to anybody, any property owner, stake out before you start clearing.

Mr. Hajek: Anyway, I do not know, I am just trying to come up with a compromised solution but that is fine.

Ms. Dedovich: Billy, the DEC permit, if you handled the permit before do you know how long that permit was good for, can we transfer what the Williams family had before?

Mr. Hajek: I have not looked at it since then so I am getting it was a five year permit but I do not know. I know it is in the file but I have not looked at it.

Mr. Caruso: Vincent, I sort of feel, and Billy and Tom, I sort of feel like we should have the vegetation thing all settled before we go ahead and issue a building permit. Do you guys concur?

Mr. Preiato: Yes.

Mr. Messina: Yes.

Mr. Caruso: So does not the applicant, why do you not go ahead, and why do you not proceed to do a clearing and come back and then apply for a building permit or a certification of this at that time. Why do we not go ahead and follow the guidelines.

Mr. Hajek: Let me just clarify, the Board is not, you are authorizing building permits being issued...

Mr. Caruso: No, no.

Mr. Hajek: But I think if the Board is, procedurally here, if the Board is okay with modifying the covenant, the applicant can go ahead and work on getting together

whatever documentation needs to be completed and then submitting that to the Board for review and take it from there.

Ms. Baldwin: And we understand that Tom is saying that he is not going to be issuing this permit because the clearing is not in conformance with the covenant.

Mr. Messina: So then again I think we are back to what I originally suggested is that we can approve it subject to the clearing permit, no building permits are going to be issued, the clearing language rather, with respect to any covenant modifications subject to Billy and I. Does that work for you Beth?

Ms. Baldwin: Yes.

Mr. Messina: It still preserves that there will be no building permits issued until such time...

Ms. Baldwin: Or you could be silent on the building permit issue and just leave it up to Tom.

Mr. Messina: We do not mind giving Tom a little back up. I know he likes that. Mr. Chairman, the motion that would be to approve the application here subject to the approval of the Village Planner and the Village Attorney and that no building permits will be issued until such time as the clearing agreement or modification is made.

Mr. Caruso: Thank you so much, Vincent. That is perfectly put. So why do we not take a vote on this then. Do I have a motion to approve subject to these conditions?

Mr. Driscoll: One last question.

Mr. Caruso: Oh, okay, David.

Mr. Driscoll: Just a point that I am a little confused on and I do not have, unfortunately, I do not have the paragraph in front of me that addresses the view shed removal of the grasses but my understanding of it was that the homeowners' association would be required, as an association, to do the clearing

across the land development, and I think we are approaching it as a property by property requirement by each individual property owner. So is it property by property or is it across the development that the homeowners' association handling that internal?

Ms. Baldwin: It is the homeowners' association that is responsible for the clearing.

Mr. Driscoll: Right, so it is not like you can do your property and then you are good to go and the rest of the property is no removal.

Ms. Baldwin: It is going to be the applications for the various jurisdictions will be made by the homeowners' association and the work will be performed by the homeowners' association which we do not represent. We are just one property owner right now. That would all have to be coordinated to get everybody involved.

Mr. Driscoll: Okay, thank you.

Mr. Hajek: Beth, who represents the HOA? Is Trevor involved in this?

Ms. Baldwin: I know the HOA is Eugene Williams is for process severance is care of Eugene Williams in St. Louis, I believe that is one of the family members for the Williams family who did the original subdivision.

Mr. Wainwright: I do not believe he is living.

Ms. Baldwin: So then, I do not know.

Ms. Dedovich: That was the only reason I was mentioning about the C. of O. was I think it is going to take some time and we have new property owners, the guy next door that Tom is going to meet, was just purchased too so there is going to be a lot of people we have to sign up and everything and frankly our client is ready to submit for a building permit in the next two months. They have been working on this for about almost a year now so that is why I kind of feel like we are being held to hold it through no fault in a way.

Mr. Messina: That is not true. The flip side is that you do your improvement and then nobody follows up on anything and then the Village is the one holding the bag and that is just not...

Ms. Dedovich: Well...

Mr. Messina: You have nothing to guarantee performance on your side except we make it contingent on something. So I sympathize with you but our job is to protect the Village and to make sure this gets done and your clients can fire you all tomorrow and the Village is still going to be here and then we are left holding the bag. That is why it has to be this way.

Mr. Caruso: That is right. And I believe Vincent Messina has a perfect point. People will promise you anything and then what is going to happen is they are going to do what they please and then you have five lots of people doing whatever they want to do and it could take the Village a long, long time to get this under control. I do not think that is a good idea. I think we should start out on a level playing field and I think that we should all take into consideration the importance of the Village that we all live in and we all love and not go ahead to a single person or of five lots. We have to all be on the same playing field and the same playing field says to me that the vegetation should all be cleared and we should have it all properly documented in that regard and then a building permit could be issued for that particular property.

Mr. Messina: Do you want to adopt the motion that I previously placed on the record.

Mr. Caruso: Let us adopt if you would like, Board Members, let us vote on that. Do we approve the motion set forth?

Mr. Wainwright: Can we repeat the motion.

Mr. Caruso: A motion to approve, Board Members?

Mr. Driscoll: So moved.

Mr. Caruso: Do I have a second?

2812

Mr. Wainwright: I am sorry, I am a little confused as to exactly what we are approving at this point. Forgive me.

Mr. Messina: The motion is to give relief from the covenant subject to the approval of the Village Planner and the Village Attorney that no building permits be issued until such time as that agreement is in place.

Mr. Wainwright: Okay, that is fine.

Mr. Caruso: So Walker, you second?

Mr. Wainwright: I second, yes.

Mr. Caruso: All in favor?

Mr. Driscoll: Aye.

Mr. Wainwright: Aye.

Mr. Caruso: Okay so let that, Vincent, that will go into the record.

Mr. Messina: Absolutely. We will draft a resolution.

Mr. Caruso: Thank you so much. Are there any other questions or concerns? If there are not, then I would entertain a motion to adjourn. Do I have a motion?

Mr. Wainwright: So moved.

Mr. Caruso: Thank you, Walker. Do I have a second?

Mr. Driscoll: Second.

Mr. Caruso: David, thank you. All in favor?

Mr. Wainwright: Aye.

Mr. Caruso: Okay, see you at the next meeting.

The meeting was adjourned at 11:35 a.m.

FILED
VILLAGE OF EAST HAMPTON, NY
DATE: 9/8/22
TIME: 3:30 pm

Pamela J. Bennett