

Planning Board
November 10, 2022
11:00 a.m.
Emergency Services Building
1 Cedar Street

Those present were:

Robert D. Caruso, Chairman
D. Walker Wainwright, Member
David Driscoll, Member
Jeffrey Williams, Member
Billy Hajek, Village Planner
Thomas Preiato, Village Building Inspector
Elizabeth Baldwin, Attorney on behalf of ML 2017, LLC
Pamela J. Bennett, Village Clerk

Chairman Caruso called the meeting to order at 11:00 a.m. and welcomed Jeffrey Williams to the Board.

1. **Minutes**

Upon motion of D. Walker Wainwright, duly seconded by David Driscoll, the Board unanimously approved the minutes of September 8, 2022.

2. **Stone Free Trust – 33 Hither Lane**

The Board has received a drafted resolution of approval for the division of property into two parcels. Village Planner Hajek stated that this is a subdivision application that the Board has reviewed multiple times. The applicant secured variances to permit certain improvements to remain in nonconforming locations as a result of the proposed subdivision. The Planning Board previously granted a Negative Declaration, and the application is ready for approval.

Mr. Driscoll questioned the timing of the work to be done to the garage; the garage contains habitable living space which is required to be removed and used as a garage and storage space. Mr. Hajek stated that the work must be completed prior to the map being recorded. Mr. Driscoll asked if the Building Inspector will

ensure that. Mr. Hajek stated that the applicant will have to obtain a demolition permit for that work, noting that the required conversion is also called out on the map. Mr. Preiato stated that an updated Certificate of Occupancy was applied for just recently and that he will be sure that that condition is met.

Upon motion of D. Walker Wainwright, duly seconded by David Driscoll, the Board unanimously adopted the resolution of approval.

3. **ML 2017, LLC and The Little Plain Subdivision – 127 Apaquogue Road, 103 Apaquogue Road, 89 Apaquogue Road, 85 Apaquogue Road, 81 Apaquogue Road and 186 Lily Pond Lane**

The Board has received a drafted resolution of approval. Mr. Hajek stated that this application was discussed at a prior Planning Board meeting; this is a modification request to amend the subdivision map and to remove the requirement that all structures be placed within the building envelopes that were shown on the recorded subdivision map. A number of zoning changes have occurred since the subdivision map was filed. The changes made to the Village Code that differ are changes to the principal building structure setback requirements; the lots are no longer eligible for reduced setbacks as they were previously calculated; the building envelopes were established pursuant to the reduced setback requirements; and there are accessory structure setback requirements now which are less than the building envelopes shown on the map. To avoid confusion as to what setbacks prevail and to eliminate that confusion, it is recommended to eliminate the building envelopes as shown on the subdivision map and have the lots comply with the current zoning setbacks.

The drafted resolution requires the amended Declaration of Covenants and Restrictions be recorded. The drafted resolution also recommends that the map be amended to eliminate the building envelopes which must be completed prior to the issuance of a Certificate of Occupancy for any house on any of the lots. The other issue that came up was the vegetation that should have been removed as a requirement of the subdivision approval. That removal had not been done until this modification request was submitted. The applicant has since filed applications to all required agencies to pursue that work and has offered to submit a bond to cover the cost. The recommendation would be a recorded bond and the work to be completed prior to the issuance of a Certificate of Occupancy for any building on the subdivision map.

Mr. Preiato stated that the proposed resolution makes good sense to bring it into the current setback requirements. The Building Department has received an application for a lot within the subdivision and there has been discussion about a second application.

Mr. Driscoll stated that he has some questions and concerns. The original subdivision's stipulations were that clearing had to be done and it was never done which was addressed at the last meeting. Mr. Driscoll asked if the reserved area goes across all five properties. Mr. Hajek stated no, those are scenic easements and viewshed easements; the reserved area is pie shaped which was to get cleared. Mr. Driscoll stated that the contiguous Village right-of-way had to be maintained as well as along the roadway. Mr. Hajek said yes that the area of the right-of-way is narrow; there is not a substantial amount of vegetation in the right-of-way, it is phragmites and the adjacent vegetation. Mr. Driscoll stated that it should be included in the new or the updated modified stipulation since it was in the original stipulation. Also in the original stipulation were timelines, which were negotiated in good faith by both the then Planning Board and the applicant. Mr. Driscoll asked that the Board include a timeline for when the work must be completed as that was done in the original covenant. Mr. Hajek said yes, that can be included. Mr. Driscoll stated that it is important that that timeline is in there. Mr. Hajek stated that it is tied to the receipt of a Certificate of Occupancy. Mr. Driscoll stated that since the original Board felt it a necessary contingency, it should be added to the new one, paragraph five in the Covenants and Restrictions. Mr. Driscoll questioned how the cost basis was arrived for the performance bond of \$25,000. Mr. Hajek stated that that was an estimate that was provided by the applicant for the actual cost of the work and was prepared by MGD Horticultural Services. MGD Horticultural Services is currently doing a phragmites removal project on Peconic Land Trust property adjacent to Georgica Pond; they are knowledgeable and are used to doing this type of work.

Elizabeth Baldwin Esq. appeared on behalf of the applicant and thanked the Board for addressing the issue, but her one concern is the condition of approval that the map be updated. Ms. Baldwin requested that they not remove the actual building envelopes from the map, as it is a large undertaking, but felt the issue could be remedied through the language within the covenants that the building envelopes on the map no longer apply or whatever language is acceptable to the Village Attorney. Ms. Baldwin stated that some of the lots have been transferred out and that she does not represent the HOA; she represents one individual lot owner. It will be difficult to abandon the underlying map and then resurvey the whole area. If the Board does require the redrawing of the map, Ms. Baldwin

asked for the ability to work out a different method such as filing a miscellaneous map. Mr. Wainwright asked if there are multiple owners of the lots. Ms. Baldwin said yes; the original family does own some of the lots but three lots have been transferred out; the HOA would have to amend the map. She noted that a revised covenant would come up in any title search, any surveyor would then be aware of it, and whatever procedures or requirements that the Village would want could be worked out. Ms. Baldwin continued that they could put affirmative language in the covenants that say these building envelopes depicted on the subdivision map no longer apply. Those details can be worked out with the Village Attorney's office so everybody is on the same page. Mr. Wainwright asked if Ms. Baldwin's client is the party responsible for the removal of the shrubbery. Ms. Baldwin stated that technically the HOA is responsible for all of that; she represents just one property owner and does not represent the HOA. The HOA has their own attorney, but she is helping to move this along.

Mr. Caruso asked Mr. Hajek if he feels the Board should add to the drafted resolution before it can be approved. Mr. Hajek stated that it depends upon what the Board wants to do; the whole point is to reduce confusion in the future. The idea is if somebody is doing research to buy a piece of property or if it is being sold or if it surveyed by somebody not from East Hampton, the Village does not want to have a situation where people are shown building envelopes and then there is confusion as to whether or not structures have to be within the building envelope or you can build outside the building envelope. Regarding the lot that has already been developed, the house conforms to the setbacks, all the accessory structures conform to setbacks, but a patio was built about a foot outside of the building envelope which the then Building Inspector allowed as an error. Mr. Hajek continued that he does not know the implications of a miscellaneous map and how that differs from filing a new subdivision map; his understanding from the surveyor who drew the map is that you file a correction map. It is up to the Board and the Village Attorney. Mr. Caruso asked the Board for their opinion. Mr. Driscoll thought that the Village Attorney should weigh in on this but being that there is a lot of confusion to start with, he agrees with Mr. Hajek. Mr. Hajek stated that the original recommendation and the Village Attorney's recommendation was to file an amended map.

Ms. Baldwin respectfully requested that the Board adopt the resolution today rather than postpone until another meeting; it is her understanding that a building permit cannot be issued until a resolution is adopted. Mr. Preiato agreed. Mr. Driscoll added, contingent upon conditions added to paragraph three. Mr. Hajek said yes, condition three, clearing will be completed within one year of the date of

issuance of building permits. Mr. Driscoll suggested that Mr. Hajek add in the reserved area in addition to the contiguous Village right-of-way. Mr. Hajek agreed. Mr. Caruso stated that the drafted resolution will be amended and voted upon.

Upon motion of D. Walker Wainwright, duly seconded by David Driscoll, the Board unanimously adopted the resolution of approval.

Upon motion of D. Walker Wainwright, duly seconded by David Driscoll, the Board unanimously adjourned the meeting at 11:23 a.m.

FILED
VILLAGE OF EAST HAMPTON, NY
DATE: 1/24/23
TIME: 11:55 AM

Pamela J. Bennett

2824