

Zoning Board of Appeals
December 8, 2023
11:00 a.m.
LTV Studios
75 Industrial Road
Wainscott, NY

Those present were:

John L. McGuirk III, Chair
James H. McMullan, Vice Chair
Philip O'Connell, Member
Joseph B. Rose, Member
Andrew Baris, Member
Abigail Lamb FitzSimons, Alternate Member
Timothy Hill, Village Attorney
Billy Hajek, Village Planner
Thomas Preiato, Village Building Inspector
Robert Strada, Agent on behalf of Eric Ellenbogen
Britton Bistran, Land Planner on behalf of 55 La Forest LLC
Jeffrey Bragman, Attorney on behalf of Neighbor Andrew Cohen,
82 Apaquogue Road
Alexander Balsam, Attorney on behalf of Timothy Tynan
Christopher DiSunno, Architect on behalf of Timothy Tynan
Kelly Risotto, Principal of Land Use Ecological Services, Inc. on behalf of
Skylight East LLC
Mr. and Mrs. David Gallo, Applicants, Skylight East LLC
Christopher Gangemi, Star Reporter
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. Chair McGuirk announced that Village Clerk Pamela Bennett is retiring after 44 years, who will be missed by the Board along with all the professionals and Village Residents she has worked with over the years and wished Pam well in her retirement.

MINUTES

Upon motion of Joseph B. Rose, duly seconded by Abigail FitzSimons, the minutes of **October 13, 2023**, were unanimously approved.

SUPPLEMENTAL DETERMINATION PURSUANT
TO COURT ORDER

64 WE Acquisition LLC – 64 West End Road – SCTM #301-15-5-3

A Public Hearing will be scheduled pursuant to the Court Order. Member Rose addressed the letter received by the Board and its unusual request seeking his recusal from participation when the application comes before the Board. Member Rose stated publicly and for the record that he has no financial connection to the property nor to any of the surrounding properties and that he has no financial relationship to the applicant or their representatives and that he is unaware of any conflict of interest of any kind on his part with regard to the property or to the applicant. Member Rose continued that he is unaware of any reason why he should not be able to review and deliberate with his colleagues, strictly on the merits and according to the rules and expectations governing the Zoning Board of Appeals. Member Rose stated that he has been clear both in public and in private that he believes in general the land use laws of the Village of East Hampton should be taken seriously and should be enforced especially when violations are egregious, deliberate and have a noticeable adverse effect on neighboring properties or on public spaces or threaten the character of the Village or degrade the quality of the natural environment. Member Rose continued that there is nothing in that view that precludes his impartial consideration of particular matters based solely on the facts before the Board and according to the laws governing each subject. If there is any legitimate reason why he thought it appropriate to recuse from sitting on an item, he would be the first to bring it to the attention of the Chairman and Village Counsel, and if there is some reason about which he is unaware, he welcomes being informed about it. Member Rose stated that he will not be discouraged from fulfilling his responsibility to participate impartially in this Board's deliberations. Chair McGuirk thanked Member Rose.

SEQ R DETERMINATIONJewish Center of the Hamptons - 44 Woods Lane – SCTM #301-8-7-46

Upon motion of Andrew Baris, duly seconded by Philip O’Connell, a Negative Declaration is adopted.

James H. McMullan – Aye

Philip O’Connell – Aye

Andrew Baris – Aye

Abigail FitzSimons – Aye

D E T E R M I N A T I O NJewish Center of the Hamptons - 44 Woods Lane – SCTM #301-8-7-46

Upon motion of Andrew Baris, duly seconded by Abigail FitzSimons, the Special Permit and Variances to construct accessory structures is granted, with conditions.

James H. McMullan – Aye

Philip O’Connell – Aye

Andrew Baris – Aye

Abigail FitzSimons – Aye

D E T E R M I N A T I O NJack and Ruth Ann McSpadden – 138 Main Street - SCTM #301-9-1-19.3
and 3 Pondview Lane SCTM #301-9-1-9.27

Upon motion of Joseph B. Rose, duly seconded by Abigail FitzSimons, the Variance to construct an accessory dwelling unit is denied.

Philip O’Connell – Aye

Joseph B. Rose – Aye

Abigail FitzSimons – Aye

D E T E R M I N A T I O NKOOH, L.L.C. - 17 Terbell Lane – SCTM #301-13-10-3

Upon motion of Joseph B. Rose, duly seconded by Abigail FitzSimons, the Variance to convert an accessory building containing a garage and pool house into an accessory dwelling unit is granted.

Philip O'Connell – Aye
Joseph B. Rose – Aye
Abigail FitzSimons – Aye

DETERMINATION

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

Upon motion of Philip O'Connell, duly seconded by Joseph B. Rose, the Variance to legalize pool equipment and a patio is granted.

John L. McGuirk III – Aye
Philip O'Connell – Aye
Joseph B. Rose – Aye
Abigail FitzSimons – Aye

ADJOURNMENT

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

The Board is in receipt of a letter from Martha F. Reichert Esq. dated November 28, 2023, requesting an adjournment of this application until the Board's January 12, 2024, meeting.

EXTENSION OF TIME REQUESTS

Maxamus LLC – 54 Georgica Close Road – SCTM #301-7-3-7

Eric and Lori Blatstein – 211 Lily Pond Lane – SCTM #301-15-4-12

The Board is in receipt of a letter from Leonard I. Ackerman Esq. dated November 14, 2023 requesting a 12 month extension of time in which to obtain a Building Permit for the variances granted pursuant to determination filed December 12, 2022 (Maxamus LLC), and a letter from Trevor Darrell Esq. dated November 29, 2023 requesting a 12 month extension of time in which to obtain a Building Permit for variances granted pursuant to determination filed January 17, 2023 (Eric and Lori Blatstein).

Upon motion of Philip O'Connell, duly seconded by Joseph B. Rose, the Board unanimously approved both requests.

ORIGINAL HEARINGEric Ellenbogen - 13 Egypt Lane – SCTM #301-4-6-18

Chair McGuirk called the hearing to order at 11:08 a.m., and the Public Notice, as duly published in the East Hampton Star, was read.

Application of Eric Ellenbogen, SCTM#301-4-6-18, for Area Variances from Chapter 278, Zoning, to legalize coverage and principal and accessory structures constructed within the required yard setbacks. A 246 square foot variance is required from Section 278-3 A. (9) to legalize 4,485 square feet of coverage where 4,239 square feet is the maximum permitted. Variances of 1.6 feet and 1.4 feet are required from Section 278-3 A. (5) (b) to legalize an A/C condenser unit located 8.4 feet from a side yard lot line and a patio located 8.6 feet from a side yard lot line where the required side yard setbacks are 10 feet. A 0.8 foot variance is required from Sections 278-3 A. (4) (a) and 278-3 A. (6) to legalize a residence located 19.5 feet from a side yard lot line where the required side yard setback is 20.3 feet utilizing the side yard setback relief provisions. The subject property is 18,699 square feet in area and is located at 13 Egypt Lane in Residence District R-20. This project is classified as a Type II Action in accordance with SEQR.

Robert Strada, 30 Fresh Pond Road, Amagansett, New York, duly sworn in by the Village Clerk, swore to tell the truth, the whole truth, and nothing but the truth. No additional material was submitted into the record and no one appeared in opposition. Mr. Strada stated that this property is one of approximately 28 parcels in the Village that conform to the timber-frame legislation. In 2017 the restoration of the Hiram Sanford House, an 1822 historic house, was started. An application was submitted to the Design Review Board in 2018 for a container house which was approved, and in the course of placing the second house on the property, he endeavored to make everything conform and was quite surprised when looking at the final survey that it was not conforming. Twenty-five piles were sunk into the earth to support the foundation and in connection with the installation of the prefabricated structures, they found themselves inches over the side yard setback. The air conditioning condenser variance and the excessive patio steps variance can be fixed.

Chair McGuirk asked if those items will be made to conform. Mr. Strada said yes. Vice Chair McMullan stated that his initial concern was the condenser unit but is glad to hear that the applicant is requesting just one variance for the

structure. Member Baris stated that he feels the same way. Member FitzSimons questioned whether the application will be amended. Mr. Strada said yes.

Upon motion of Joseph B. Rose, duly seconded by James H. McMullan, the Board unanimously closed the Public Hearing. Chair McGuirk asked Village Attorney Hill if the hearing should be closed since the application will be amended. Village Attorney Hill stated that Mr. Strada can make a representation on the record that the application is so amended so that the scope of the request is solely for the side yard setback. Mr. Strada stated that the application is amended for the side yard setback of the structure. Village Attorney Hill stated that the change has been made orally and asked Mr. Strada if he has the authority to do so. Mr. Strada stated that he does.

Upon motion to James H. McMullan, duly seconded by Andrew Baris, the Board unanimously closed the Public Hearing as amended.

ORIGINAL HEARING

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

Chair McGuirk called the hearing to order at 11:16 a.m., and the Public Notice, as duly published in the East Hampton Star, was read.

Application of 55 La Forest LLC, SCTM#301-12-6-8, for a Variance from Chapter 278, Zoning, to make alterations and expand a preexisting third story. A variance is requested from Section 278-2. B. (1) to make alterations and enlarge a preexisting third story by 205 square feet where two stories are the maximum number of stories permitted. The subject property is 39,951 square feet in area and is located at 55 La Forest Lane in Residence District R-160. This project is classified as a Type II Action in accordance with SEQR.

Britton Bistran, 21 Napeague Harbor Road, Amagansett, New York, duly sworn in by the Village Clerk, swore to tell the truth, the whole truth, and nothing but the truth. Ms. Bistran stated that the property is improved with a single-family residence which predates the adoption of Zoning in East Hampton Village and has three stories since its original construction. The house was constructed in approximately 1890 and has been in front of the Board once relating to the accessory building; there are no variances or nonconformities on the residence other than the legal third story. The residence recently undertook a large renovation and addition to modernize the home but maintain its historical

character; the owners felt strongly that the street façade should continue to address the public in the same manner it has for over 100 years and that the addition should be focused at the rear of the property. The owners felt strongly that the house should not be torn down and invested significant money to preserve and restore the residence in its original grandeur. The nonconformities on the property, predating zoning, have been removed or moved to conforming locations. The request is for 205 square feet of the third floor, currently an attic space, to be used for living space; the house, including the third floor, is up to date to current life safety codes including a full sprinkler system and egress windows from every bedroom which did not previously exist prior to the recent renovation. The 205 square feet would not increase the number of rooms in the residence, it would only extend an existing bedroom. The benefit to the applicant would be significant as it would allow the bedroom to have three additional windows for light and air and would have no impact to the neighborhood as the building envelope and the shell of the structure already exist and will not change the current conditions. The Village Planner or Building Inspector had requested that the area of work be shown, which is key, because whether the Board grants the variance or not, the exterior of the structure will not change.

Chair McGuirk asked Building Inspector Preiato for his comments. Building Inspector Preiato stated that in 2022 a Building Permit was issued to reconstruct a third-floor volume that already existed which is nonconforming; an area of attic became habitable space.

Jeffrey Bragman Esq. appeared on behalf of the Cohen family located at 82 Apaquogue Road. Mr. Bragman submitted his presentation to the Board. Mr. Bragman stated that he wants to go through the chronology of events because everything that happened has a direct bearing on the standards for the issuance of variances and a bearing on the overall balancing test that the Board is required to employ.

Exhibit 1 is a letter from Tom Preiato that the Building Department's belief was clear prior to the start of the job that there would be nothing added to the preexisting bedroom on the third floor.

Exhibit 2 shows architectural plans that were submitted on January 10, 2022, and you can see in the red circle the shaded area of the preexisting bedroom that eventually was demolished. The Building Permit was 10958 and it was a \$ 4.1 million job plus a \$150,000 swimming pool and the main work was described in a March 6 (sic) permit was replacement in kind and there was no description of third

story work, and it was also characterized as rehabilitation of an existing structure on page 3.

Exhibit 3 is a Kent Howie email that was forwarded to the architect on May 25, 2022, and in it Mr. Howie noted that the addition is expanding a preexisting nonconforming third floor bedroom which is against the Village Code. This was several months into the construction which started January 24th.

Exhibit 4 is a response from the architect that was handling the job, he said it is a replacement for the third floor that existed in this same portion that was taken down. So as of May, the applicant and the applicant's agent knew that there was a problem, long before the construction continued and eventually completed. The architect added that he was told it was good as long as the area was sprinkled.

On May 25th, Exhibit 5, is another letter from Kent Howie, said they remember the conversation, but it appears to be a larger volume than what was existing. In other words, it was not the sprinklers that were at issue it was adding a bedroom that you were told was nonconforming. And then he asked if the existing and proposed dimensions could be sketched and then he also asked, has that original bedroom been removed. There was no response to that email, the email chain stopped at that point.

Exhibit 6 is the permit that was sent in 15 days after that email exchange that was really not going to lead to any kind of resolution, and if you look at page C 1.01, that is the cover sheet, if you look carefully you can see an orange color area that you can tell it is the extended bedroom because it has the two dormers on it. The previous bedroom did not have any dormers and that is how you know that that is the extended bedroom. It does not show the existing bedroom that it was replacing, which is smaller, and drawing A1.02 shows the extended bedroom and then we also attached, which was a part of this package, drawing S1.05 which shows the framing. Mr. Bragman stated that when you submit a framing plan it suggests that you have not finished the framing; the submission suggests that the building was not framed.

Exhibit 7 shows two different aerial photos; the first one is blurry, it is from April 4, 2021 and it shows the building before the extension of the third floor bedroom; you can see it is smaller and does not have any dormers on it, it is easy to tell where it is. The second photo was taken on May 17, 2023, after construction and you can see the difference because it has three dormers; two dormers on one side and a third dormer on the other side.

The next communication from the Village in which Kent Howie sent to the architect, this is now 20 days after requesting existing and proposed drawings, and he says, refresh my memory, where are we on the third floor. Did you provide drawings showing the existing and proposed dimensions? Subsequent to this, there is another addition to the project for a pool for \$150,000.

Exhibit 9 is dated much later, it is December 7 of 2022, so this started in January, and now it is December, almost at the end of the year, and this is a drawing submitted by Mill Brook Fire Protection, it is the sprinkler diagram, and, again, it suggests that this structure, the extended bedroom, was not fully constructed because they were going to put in the sprinklers. This was not an error or an omission, this was something else, and the applicant's agents knew what was going on very early in the application. In fact, on January 10th, before they even started building, the Building Inspector repeated in the letter that I started with, made it very clear that that bedroom is not to be extended, but it was extended. After some time went by, the applicant's agent put in an application for a variance and that was done in May of 2023, but the application did not have much explanation. What it said was this is a minor addition to allow an expansion to the exterior windows; everything except for 53 square feet right at the end of this new extension that they put on, this extended bedroom, everything was legal, they just needed a small variance because there were a couple of windows on the far wall, they wanted 53 square feet, and it was described as a minor addition allowing an expansion to the exterior windows; it is on the application, page 2, item 11 and the comments also indicated that there be no visual impacts, not a substantial variance, and that the difficulty was caused by the original construction. That variance application was rescheduled for October of 2023 and in September of 2023, the applicant's agent wrote to Chairman McGuirk and said that there was no change in the elevation of the building, and, again, a second letter was sent, this is Exhibit 10 by the applicant's agent to Mr. McGuirk and it reiterated that there was no change to the exterior elevation but by this time we had contacted the Building Department and began to dig through the documents and the Building Department confirmed that there was a change to the exterior elevation and it was an extended bedroom that they were talking about. The applicants were told that they had to change their application so that now brings us up to the date of this application, which is not just for 53 square feet, it is for the entire extension which created a bedroom, which they were on notice from the beginning of the project. The applicant described the space as attic space that they wanted to convert to finished space. Mr. Bragman stated that in reality, he believes it is habitable space that they made that the bedroom, it is demonstrated by the fact that in the first zoning application the applicant only wanted 53 square feet to have the windows for the bedroom, so it is

obvious from the record this is not an unfinished attic, it does not meet the definition for an attic because an attic has to be an unfinished space between the ceiling joists of the top story and the roof rafters and this is a habitable room. It is a finished space between a floor and a ceiling, it is the seventh bedroom in the house.

Mr. Bragman stated that he believes the variance application is incomplete in that it did not include the additional square footage of the dormers. If there is not more than five feet, it is not gross floor area but looking at the dormers and judging from the height of the stories which are ten feet, he stated that he believes that you can stand in the dormers and you can see that they are cut out, they actually create additional space on that third floor, it is not a huge amount, it is probably 25 square feet per dormer so it is 75 square feet, but it should be included as extra square footage. Also, the applicant has received some benefit from the work that has been done because the bedroom underneath the third story extension, they were able to rearrange it and put in a fireplace against the wall and that wall extends upward to where they extended the third story out. So to some extent by extending this improperly, they have gotten some benefit because they have a nicer arrangement for the master bedroom.

Does this produce an undesirable change in the character of the neighborhood or a detriment to nearby properties; Mr. Bragman contradicted the statement that there is no change in the elevation because there is a significant change in the elevation and what was a small bedroom now runs across the entire view from his client's second story master bathroom. Mr. Bragman stated that there was no mention of the dormers which are significantly intrusive to his clients because that is what creates the view from across the road to their house.

From the Cohen's perspective, it does create an obvious detriment and the dormers do open an elevated view up into their master bath, and if you look at photo 11, you can see a towel hanging, that is the master bedroom window, and they are looking out onto the dormers. The existing bedroom, had it been built lawfully, would not have had any dormers and it would have been substantially smaller. If the applicant had come in and asked for permission, it would be a different position in front of the Board because it could be argued that an extension would indeed affect us but that would be if permission had been requested instead of forgiveness afterwards and I am not sure if forgiveness has been requested.

Whether the benefit is achievable by a feasible method other than the variance. Mr. Bragman stated that the fact of the matter is the neighbor never had

a chance, the applicant never took the opportunity to present any evidence about why they needed to expand their bedroom, was it inadequate, what did they not like about it, and the neighbor did not get a chance to defend against it saying it would have affected us. How readily would have the ZBA have been to grant a significant variance, maybe doubling the size of the bedroom on a third story when it is absolutely prohibited under the Zoning Code.

Whether the variances are substantial; obviously they are, they are not just 53 square feet, this is not just converting attic space to habitable space. It is legalizing something that was not an omission and not an error, plus the effect of the dormers is significant upon the neighbor, they are significantly intrusive.

Another standard is the hardship self-created, and it is not dispositive, it does not mean you have to deny it, but it is a factor, and in this case the answer to that is emphatically yes, it is a self-created difficulty because they knew about it.

And one of the standards is that you are supposed to grant the minimum variance necessary. Mr. Bragman submitted two illustrations of viewsheds from each of the dormers in two different diagrams showing lines of sight from each of the dormers. One of the lines of sight hits the master bathroom and the other line of sight hits the backyard pool area where obviously privacy is a significant concern.

Chair McGuirk questioned whether the Zoning Board had granted a variance for the location of the neighbor's pool. Mr. Bragman stated that he did not know but the dormer looks out over the neighbor's pool and recreation area as well as the master bathroom. The Board has the power to have the extension torn down, the extension could be walled off to get it back to the size that it once was, it could allow a smaller expansion of the bedroom but suggested that, having spoken to his clients about it, if the dormers were torn down and reconstructed on the other side of the building, they will not intrude on the neighbor's privacy. Mr. Bragman stated that if that were to be done, the neighbor would not have any problem with the fact that the bedroom was extended.

Member Rose asked that the Building Inspector and the applicant speak to the matters raised by Mr. Bragman.

Ms. Bistran stated that she did not get into the narrative of the project's history but feels that since it has been brought up and that she had no idea of Mr. Bragman's issues or his clients' issues because she would have been happy to meet

with him and not waste the Board's time. Ms. Bistran stated that she was not involved in the project from its inception, but her training is from a large developing family and her training is not as an architect, but her career is land use and sits as the Village Planner for Westhampton Beach and that she is pretty well versed in architecture. This was a rocky start to the project because David Tosher, who is the design professional, fell ill while the project was under construction; he obtained the Building Permit, started the project, and then reached out and asked for help. Ms. Bistran stated that Mr. Tosher had indicated that he had a project under construction, it is framed, and wanted to go for a variance for the third-floor attic space to become habitable space so the applicant can have access to the windows that are already there. Ms. Bistran stated that she prepared the variance application, which was originally scheduled for August, postponed a few times because of Mr. Tosher's illness, who obviously cannot appear before the Board because of his illness, and a lot of the delays were because of that factor. Ms. Bistran stated that the 53 square feet is completely on her as she came into the project late, submitted the variance application for the 53 square feet, Tom Preiato looked at it and said you should come in and look at the original building permit package because it is closer to 200 square feet; that explains the revision. Ms. Bistran clarified that the space is attic space today, it is not finished, it is not a bedroom. Ms. Bistran stated that Mr. Bragman is an attorney and is not educated in architecture; the dormers are three by five and not all of that is head height appropriate, so three by five is definitely not 75 square feet. If you look at the original Building Permit plans, Mr. Bragman's testimony sort of stated that something has changed and something has been expanded, the house and its volume, the envelope we will call it, the roof and the side walls in the area of this building are the same from the Building Permits so whether the Board grants the variance or not or this was built without a variance, without coming to the Board, the dormers are there, they were permitted by a Building Permit, the roof is there, the side walls are there. There is no change to this application so the idea that changed, the entire volume of the rear of the house, it is sort of two volumes, the entire volume of the house A.2 drawing, this was the back of the house, this was demolished, fencepost to fencepost, roof to foundation, this is gone, we are not talking about an existing situation that was all rebuilt in the current volume that you see. The hardship Mr. Bragman is claiming for his clients is visual, although the visual impact of a Building Permit versus the variance in this situation is the same, the variance application could be withdrawn, keep it as attic, and there is no change to the dormers; the applicant is not removing dormers that were permitted under a Building Permit. Ms. Bistran stated that she does not want to be an obstructionist and never wants to be a bad neighbor. If the neighbor would like the

applicant to put in some mature trees to obstruct the dormers that will be there anyway, they are happy to do that, but they are not being taken off the building.

Member O'Connell asked for confirmation that it is currently unfinished attic space. Ms. Bistran stated that that is correct. Member O'Connell asked if it was left as unfinished attic space, there would be no need for the variance. Ms. Bistran stated that that is correct.

Member Rose questioned the height of the structure. Ms. Bistran stated that she did not know off the top of her head but would say it is in the 30-foot range, but it is in the Board's file, and it is conforming to Village Zoning. Member Rose stated that it is a third floor but it is not outside the envelope of what is permitted. Ms. Bistran stated that that is correct. Chair McGuirk stated that the dormers were on the original Building Permit. Ms. Bistran stated that that is correct; the only change is there were dormers to an attic space in the Building Permit and then dormers to a finished space in this application. Ms. Bistran added that the 53 square foot discrepancy was her playing Monday morning quarterback but when she sat down with Mr. Preiato who scaled out the plans and said he thought the variance was more like 205 and that was the reason for re-noticing because 53 square feet was incorrect.

Building Inspector Preiato stated that he misspoke moments ago when he mentioned that the space was converted to habitable space; it is indeed still unfinished as he just got in touch with his office because he had not been in the building recently. As of right, you are permitted to install dormers for an attic space. Member Rose stated that the applicant just represented that the Building Permit granted the actual structure that is there. Building Inspector Preiato said that that is correct. Member Rose questioned whether the Building Permit was granted correctly. Building Inspector Preiato stated that he believes it was granted correctly. Member Rose stated that he wants to be sure it is understood that the conversion of the attic space to occupied bedroom space and the dimensions of the bedroom before and after. Chair McGuirk suggested that the hearing be left open until next month to review the submission of Mr. Bragman. Member O'Connell stated that he is not in favor of expanding the third floor.

Mr. Bragman stated that he does not want to belabor this but the dormers are new and they represent an expansion of a nonconforming third story bedroom so it is not fair to say that it is okay to have the dormers there because he presumes the bedroom has been expanded, and if it is attic space, it should be walled off and the Village would find it useful to have some kind of covenant to inspect because it is

17198

adjacent to a preexisting smaller bedroom which could very easily be converted to habitable bedroom space which is the application today.

Ms. Bistran repeated that the Building Permit that was issued for the property reflects the dormers and the exterior envelope as they exist today and there is no change to that, you can have dormers in an attic. The only benefit to the applicant here is to have access to light and air from the windows and the impact is very slight. There have been a dozen inspections so the Village has been in the space many times and the Building Permit did have a wall, there is a wall there currently that separates the attic space from the finished space so the idea that somebody would disregard the laws of the Village and finish that, especially after a variance hearing, is insulting.

Chair McGuirk stated that the hearing will be continued on January 12, 2024.

CONTINUED 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 continued hearing to order at 11:56 a.m.

Village Planner Hajek reported that this is the shoreline stabilization project which was heard by the Board for a wetland variance and wetland permit; the application had not received preliminary review by the Design Review Board because this is a Special Permit property. The Design Review Board concluded their preliminary review so the application is being referred back to the Zoning Board.

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

CONTINUED HEARING

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

Chair McGuirk called the continued hearing to order at 11:57 a.m.

Alexander Balsam Esq. appeared on behalf of the applicant; no additional material was submitted into the record; no one appeared in opposition. Mr. Balsam stated that revised plans have been submitted which is a more modest request for a covered deck off the back of the house. The deck has a small barbeque area and a fully enclosed outdoor shower; the pool equipment will be in a conforming location in a hatch underneath the proposed deck; and proposed is an overhang over the side door entrance. The initial application had a covered terrace to the south of the swimming pool which has been removed from the request. The current request is 2,639 square feet of lot coverage where 2,225 square feet is permitted so the current request is 414 square feet of coverage relief instead of 747 square feet of relief. The request went from a 33.6 percent request to 18.6 percent. The porch is roofed but it is open walled, it is completely behind the house, shielded from the street, and the Tynan's house is completely screened from the adjoining neighbors. Mr. Balsam stated that he cannot conceive of a detriment to the neighbors or an impact to the character of the community. Obviously the benefit to the Tynans cannot be achieved any other way. The request is a fairly basic amenity to a house that they bought as is, they have not touched a thing on it and it sits on a modestly sized parcel.

Vice Chair McMullan thanked Messrs. Balsam and DiSunno and the applicant for listening to the Board and making adjustments because the proposal is much more in line with what the Board looks for in an application. Vice Chair McMullan stated that he does not have a problem with the application.

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

CONTINUED HEARING

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

Vice Chair McMullan called the continued hearing to order at 12 noon. John L. McGuirk III recused.

Kelly Risotto, 570 Expressway Drive South, Medford, duly sworn in by the Village Clerk, swore to tell the truth, the whole truth, and nothing but the truth. Ms. Risotto stated that since she appeared before the Board in October, she has submitted a monitoring report for the phragmites management buffer project, discussed the standards for permit issuance under Chapter 163, discussed the five

points for ZBA approval, and submitted a letter with accompanying photos and exhibits from the property owner. Ms. Risotto stated that the standards for a permit issuance under Chapter 163, will the project have an effect on public health and welfare, no, the fence is located on private property, it is within a buffer, and will not be visible to anyone. The owner had prepared some fence mockups to show exactly what is being proposed and several alternatives. Two of the alternatives are considered here, in the buffer, either two rows of six-foot-high fence at an angle or one single row of eight-foot-high fence, also at an angle. The applicant also mocked up fence at 150 feet from the wetlands just to get a visual of the various alternatives that were discussed. The two fences that are in the location proposed on the plan, the two alternatives are all but invisible and will not have an effect on public health and welfare, will not have an effect on the character of the neighborhood. It will not have an effect on fishing or in-water habitats, the fence is landward of the wetland boundary, and it is landward of the highest observed water line at this property since 2018. It does provide protection for wetlands by protecting the buffer plants that the owner has spent five years installing, maintaining, replanting, and protecting with the fence. The buffer vegetation protects wetlands by filtering runoff and does provide some habitat value. The fence is sited in the location that is shown on the plans to maximize protection for the buffer plantings. It is landward of wetlands, it is landward of the water line, it is within the buffer so that it is concealed, and no one will know it is there once it is installed. That is the Chapter 163 standards.

Ms. Risotto stated that the ZBA has five standards for approval, one of which being character of the neighborhood. The way the fence is proposed will not be visible, it will not have an effect on the character of the neighborhood; no one will know it is there once it is installed but it will serve its purpose in protecting the wetland buffer.

No other method is feasible to accomplish what is proposed. The fence was installed in 2019 originally as a best management practice with the phragmites management and buffer project because the buffer was getting decimated by deer. There is significant browse pressure at this site so when it was installed in 2019, the vegetation landward of the fence was able to grow and thrive, the vegetation seaward of the fence decimated. In 2020, the fence was relocated landward of the initial position at the request of the Trustees, to be landward of the water line of the Pond, so it is in the current location that it is today. The same thing happened, vegetation landward of the fence, fine, growing, healthy, robust; vegetation seaward of the fence, gone. If there is another method to protect the buffer

vegetation, the applicant would be welcome to it but in reality, the applicant does not know of one to protect those plantings.

Ms. Risotto stated that what she had submitted referenced some of the DEC deer management reports which indicate that deer find the most abundant food sources to be edges or transition zones between forests and open habitats where there is an abundance of low woody and herbaceous vegetation which is exactly what is in the property's buffer.

Ms. Risotto stated that there was some discussion and questions at the last meeting about whether we need the fence, is the deer browse pressure really that much, yes, at this site it seems to be. Every time a fence has been moved, the vegetation seaward of the fence has been decimated and the vegetation landward has not. There are photos in the owner's packet that show the conditions on the beach with heavy deer traffic.

Whether the variance is substantial; Ms. Risotto stated that she just heard a variance granted for 400 square feet of coverage on a property beyond what the Code allows but this application is for a fence that could, if needed, be removed in a couple of hours. Member Rose noted that the Board did not approve but closed a Hearing. Member O'Connell added that that application was significantly different. Ms. Risotto stated that this is a woven wire fence, something that can be removed in a matter of hours. The next standard is whether it would have an impact on the physical or environmental conditions. Ms. Risotto said yes, it would protect the buffer plantings so it would help maintain the native vegetation that the owner worked for five years to establish. The owner has spent several hundred thousand dollars to remove invasive phragmites which the Village of East Hampton, the Town of East Hampton, and the State DEC encourages to improve habitat conditions, to restore what was there before development, and to protect the vegetation. Ms. Risotto stated that in her submittal there is a reference to the New York Saltmarsh Restoration and Monitoring guidelines and it specifically talks about phragmites management being a priority, it is a highly invasive species; what has been installed is a buffer that has numerous native herbaceous and shrub species that provides various habitat for things like monarch butterflies, seaside goldenrod, yellow armed warblers, or bayberries in the winter. Physical and environmental conditions are impacted and there is no negative impact of having the fence.

The last standard is whether the need for the variance is self-created and this one is both yes and no. The owner did undertake the phragmites management

project to improve conditions along Georgica Pond, improve habitat, all good things; the applicant did not create the deer overabundance. The applicant undertook a phragmites management project, removed a highly invasive species, put native species in all along the shoreline of the property, and is now looking to protect those species as well as all the landscaping throughout the property. The project meets the criteria of both Chapter 163 and the ZBA and to answer some of the questions from the last meeting, the owner has hand pulled phragmite shoots that have come up on occasion and will continue to do so. Also referenced at the last meeting was a precedent whether if the deer fence is approved that will lead to an explosion of applications. There was a 2019 application that granted deer fencing within 150 feet of wetlands that was approved which did not lead to an explosion of other fence applications. There are several conditions that do not exist on other sites or that make this property susceptible to the browse pressure that the applicant needs to protect.

Vice Chair McMullan asked for Mr. Hajek's comments. Village Planner Hajek stated that he provided the Board with his comments at the last hearing and that his position has not changed on the application. Member Rose asked Mr. Hajek to refresh the Board's memory. Village Planner Hajek stated that the phragmites removal project that was undertaken is appreciated and it would be nice if more homeowners around Georgica Pond conducted phragmites removal. Phragmites in and of themselves act as a buffer so the removal of phragmites and replacement with a lawn or non-native landscape is actually doing more harm than removing phragmites and putting in a buffer which is why the Village has encouraged the replacement with buffers. The Village has also allowed and permitted temporary fencing to protect the plants until they are established, and once the plants are established after a period of growing season, it is typically two or three growing seasons, the fencing is removed, and you let nature take its course. In this case it has been a fairly long process of monitoring the buffer, ensuring that the dead plants were replaced, and ensuring that the weeds were weeded out. Village Planner stated that he has been back to the property multiple times until prohibited from entering the property so there has been a lot of give and take with the applicant which is appreciated but with that said, he believes there is some precedent value. A six-foot-high deer fence, five feet from a wetland in response to somebody installing a buffer or removing phragmites, you can certainly expect that this is going to be used as an example for similar projects to be undertaken. Mr. Hajek stated that he does not make the connection that if the deer browse is so heavy right up to the edge of the fence, he is not sure how it is not visible to anybody. If all the vegetation is going to be gone up to the fence, you might not see the fence from the applicant's property but you will see it from

across the Pond, you will see it from on the Pond, and he would caution the Board from lining Georgica Pond with six or eight foot high deer fences, five feet from the shoreline. Village Planner Hajek stated that he is not aware of the case that was referenced where the Board had granted a variance for a similar deer fence, he missed that in the submission. Member Rose stated that that was his next question. Mr. Hajek stated that he knows of fences that have been approved within the wetland setbacks, it is a case-by-case basis, but this one in particular, it is not the same. There have been other phragmites projects that have been undertaken where temporary fencing was installed and then removed, and the buffers are still intact. The neighbor immediately north is one example; it was the same technique, excavation, revegetation, and the buffer still exists. Walter Weil on the other side of the Pond, same thing, they only used a wildlife fence enclosure which was to keep the ducks out, that buffer has been fairly successful. Village Planner Hajek stated that there is room for compromise and is not suggesting that the applicant install a fence at the 150-foot setback although technically that is the fence that is supposed to legally exist for the swimming pool enclosure but putting the fence five feet from the boundary of the Pond, he cautions the Board that it will be precedent setting.

Member Rose asked for confirmation about the regulations concerning irrigation, that there is no inground irrigation. Village Planner Hajek stated that within 125 feet of a wetland, fertilization is prohibited but typically in the buffer area the Village allows temporary aboveground irrigation which is removed after a period of two or three growing seasons with the concept of letting nature take its course. Member Rose asked the applicant if that is being abided by within the context of the property. Ms. Risotto said yes and noted that the fence is not five feet from the edge of the Pond, it is about 30 feet from the edge of the water, it is five feet from the wetland boundary which is within the vegetated area and that is at its closest, and in other areas it is 10 feet or even more than that.

Member O'Connell stated that the phragmites removal is great, it is great for the Pond, but it also substantially improves the applicant's viewshed of the water which is one of the reasons why you buy a house on the Pond. With regard to what the Board considers the factors, whether there will be an undesirable change produced in the character of the neighborhood or detriment to nearby properties, allowing the fence would push the deer onto neighboring properties. Neighboring properties did not have deer fencing on them; across the Pond there is no deer fencing. Member O'Connell stated that he believes that it would lead to other properties, as a precedent, requesting deer fences. Would the benefit sought by the applicant be achieved by some method feasible for the applicant to pursue; the

fence should be where it was originally approved in a conforming location which is feasible, there is an alternative location. Whether the variance is substantial; Member O'Connell stated that it is over an 80 percent ask. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Member O'Connell stated that it will have an adverse impact on the environment; the deer, whether we like it or not, are part of our environment, whether it has exploded or not, they are wildlife. The fence by design has been meant to impact the deer. If everyone around the Pond puts up these fences, you are pushing the deer into the Pond and starving them or you are eliminating the deer from the source of water. Member O'Connell added that he did not see deer fences to the left or right, when standing facing the water, on the neighbors' properties nor did he see deer fence across the street on Cove Hollow Farm, and he does agree with the yes and no with the self-created hardship. Member O'Connell stated that he does not think there should be a deer fence on the Pond side of the property, however, he would be willing to support a deer fence that is landward of the no mow zone, not landward of the buffer, otherwise he would not support the application in its current state.

Member Rose asked about the precedent that was raised for the record. Ms. Risotto stated that it was 30 West End Road, and it was in October 2019, it was in the owner's submission packet and there was a link in the ZBA's hearing or decision.

Vice Chair McMullan stated that he visited the property and saw the existing fence down near the water, there was not a lot of space for the deer to walk through without being either in the water or on the bank and that bank has seen quite a bit of travel. Taking into account that Village Planner Hajek suggested looking for some type of compromise, Vice Chair McMullan stated that there were two different types of fencing in the buffer zone, one was an eight foot on a 45-degree angle, and one was two sections of six foot on a 45-degree angle. Vice Chair McMullan stated that he prefers the two sections of six-foot fence and asked the Board to consider keeping the fence just inside the buffer, following the buffer line on the property side. No one would be able to see it from the water or from Cove Hollow Farm and the other is the property owner themselves would not see that fence. It appears that the entire buffer area has grown in extremely well and obviously it is a credit to the applicant who has been replanting and monitoring which is commendable. Vice Chair McMullan stated that that would be his recommendation and asked if anyone on the Board shares his recommendation; it gives the buffer zone back to the Pond area and wildlife and then on the other side makes it so that the owner does not see the fence because of the buffer zone.

Ms. Risotto asked for clarification that the fence would be located seaward of the shrubs. Vice Chair McMullan said yes, running right along the edge of the shrubs. Ms. Risotto stated that that would be acceptable as a compromise. Member Baris stated that he would support that compromise. Members Rose and FitzSimons also agreed with that compromise.

Vice Chair McMullan called for a motion to close the Public Hearing, but Member O'Connell suggested that the hearing be left open for written submission. Ms. Risotto asked if the hearing has to stay open. Vice Chair McMullan suggested that the hearing be closed but left open only for the written submission.

Village Attorney Hill stated that if the Board is comfortable with the level of specificity, the Hearing can be closed but if the Board wanted to see what comes in as the amended plan, leave the Public Hearing open. The Board agreed to leave the Hearing open pending the submission of the amended plan of two six-foot rows of fencing at 45-degree angles right inside the shrubs. Member FitzSimons clarified that this remains a no mow zone.

Upon motion of Joseph B. Rose, duly seconded by Abigail FitzSimons, the Board unanimously adjourned the meeting at 12:30 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, December 8, 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 Eric Ellenbogen, SCTM#301-4-6-18, for Area Variances from Chapter 278, Zoning, to legalize coverage and principal and accessory structures constructed within the required yard setbacks. A 246 square foot variance is required from Section 278-3 A. (9) to legalize 4,485 square feet of coverage where 4,239 square feet is the maximum permitted. Variances of 1.6 feet and 1.4 feet are required from Section 278-3 A. (5) (b) to legalize an A/C condenser unit located 8.4 feet from a side yard lot line and a patio located 8.6 feet from a side yard lot line where the required side yard setbacks are 10 feet. A 0.8 foot variance is required from Sections 278-3 A. (4) (a) and 278-3 A. (6) to legalize a residence located 19.5 feet from a side yard lot line where the required side yard setback is 20.3 feet utilizing the side yard setback relief provisions. The subject property is 18,699 square feet in area and is located at 13 Egypt Lane in Residence District R-20. This project is classified as a Type II Action in accordance with SEQOR.

Application of 55 La Forest LLC, SCTM#301-12-6-8, for a Variance from Chapter 278, Zoning, to make alterations and expand a preexisting third story. A variance is requested from Section 278-2. B. (1) to make alterations and enlarge a preexisting third story by 205 square feet where two stories are the maximum number of stories permitted. The subject property is 39,951 square feet in area and is located at 55 La Forest Lane in Residence District R-160. 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: November 17, 2023

By Order of John L. McGuirk III, Chairman, Zoning Board of Appeals, Inc. Village of East Hampton

FILED
VILLAGE OF EAST HAMPTON, NY
DATE: 1/30/2024
TIME: 11:27 AM

Sabrina McKay