

Zoning Board of Appeals
December 10, 2021
11:00 a.m.
via Video-Conferencing and
Published by Local TV Inc.

Those present were:

John L. McGuirk III, Chairman
James H. McMullan, Vice Chairman
Philip O'Connell, Member
Joseph B. Rose, Member
Carrie Doyle, Member
Andrew Baris, Alternate Member
Vincent Messina, Village Attorney
Thomas Preiato, Building Inspector
Billy Hajek, Village Planner
Thomas J. Osborne, Attorney on behalf of 23 East Dune Lane LLC and
East Dune Lane Corp.
John Huber, Attorney on behalf of Mr. and Mrs. Sautter
Mr. and Mrs. Justin Sautter, Applicants
Christopher Eng, Architect on behalf of Mr. and Mrs. Sautter
Jeffery Santonastasi, Designer for David Seeherman
Brigid Shanley Lamb, Neighbor of David Seeherman
Andrew E. Goldstein, Attorney on behalf of 97 LPL LLC
Jody Gambino, LTV Moderator
Pamela J. Bennett, Village Clerk

Mr. McGuirk: Good morning, welcome to the Village of East Hampton
Zoning Board of Appeals meeting for December 10, 2021.

Minutes

Mr. McGuirk: The first order of business, we have the minutes from
November 12, 2021. Can I get a motion?

Mr. McMullan: I make a motion to adopt them.

Mr. O'Connell: I will second that.

16641

Mr. McGuirk: All in favor?

Mr. O'Connell: Aye.

Mr. Rose: Aye.

Mr. McGuirk: We have three determinations today and the files are available at Village Hall for reviewing.

DETERMINATION

34 Darby LLC – 34 Darby Lane – SCTM #301-8-12-17

Mr. McGuirk: In the application of 34 Darby LLC, 34 Darby Lane, Suffolk County Tax Map number 8-12-17, to make alterations and construct an addition to a preexisting nonconforming residence is approved. May I have a motion?

Mr. McMullan: I make a motion.

Mr. McGuirk: Second.

Ms. Doyle: I will second.

Mr. McGuirk: Pam, will you please poll the Board.

Ms. Bennett: Sure. Mr. McGuirk?

Mr. McGuirk: Yes.

Ms. Bennett: Mr. McMullan?

Mr. McMullan: Yes.

Ms. Bennett: Mr. O'Connell?

Mr. O'Connell: Yes.

Ms. Bennett: Mr. Rose?

Mr. Rose: No.

16642

Ms. Bennett: Ms. Doyle?

Ms. Doyle: Yes.

DETERMINATION

Howard and Nancy L. Kurz – 5 Jones Road – SCTM #301-12-7-4

Mr. McGuirk: The second determination in the application of Howard and Nancy Kurz, 5 Jones Road, Suffolk County Tax Map number 12-7-4, to legalize swimming pool equipment and an outdoor shower is approved. And I think we have, Philip, would you like to say something?

Mr. O'Connell: Yes, I would just like to add a condition on this that the aforementioned drywells must be installed within nine months of the date of the decision or the approval herein shall be deemed a nullity. It gives them plenty of time to install them and this way it doesn't drag on.

Mr. McGuirk: And I believe Vinnie did do that amendment.

Mr. O'Connell: Correct.

Mr. McGuirk: So may I have a motion?

Mr. McMullan: I make a motion.

Mr. McGuirk: Second?

Mr. Rose: Second.

Mr. McGuirk: Pam, can you please poll the Board.

Ms. Bennett: Mr. McGuirk?

Mr. McGuirk: Yes.

Ms. Bennett: Mr. McMullan?

Mr. McMullan: Yes.

Ms. Bennett: Mr. O'Connell?

16643

Mr. O'Connell: Yes.

Ms. Bennett: Mr. Rose?

Mr. Rose: Yes.

Ms. Bennett: Ms. Doyle?

Ms. Doyle: Yes.

DETERMINATION

Cove Hollow Holdings, LLC – 3 Chauncey Close – SCTM #301-15-6-3

Cove Hollow Holdings, LLC – 63 Cove Hollow Farm Road –
SCTM #301-15-6-4

Peconic Land Trust, Inc. – 53 Cove Hollow Farm Road –
SCTM #301-12-10-1

Peconic Land Trust, Inc. – 59 Cove Hollow Farm Road –
SCTM #301-15-6-5

Mr. McGuirk: And the last determination, in the applications of Cove Hollow Holdings LLC, 3 Chauncey Close and 63 Cove Hollow Farm Road, Suffolk County Tax Map numbers 15-6-3 and 4, and Peconic Land Trust Inc. 53 and 59 Cove Hollow Farm Road, Suffolk County Tax Map numbers 12-10-1 and 15-6-5, to remove Phragmites is approved. May I have a motion?

Mr. Rose: So moved.

Mr. McGuirk: Can I get a second?

Mr. McMullan: Second.

Mr. McGuirk: Pam, can you poll the Board, please.

Ms. Bennett: Mr. McGuirk?

Mr. McGuirk: Yes.

Ms. Bennett: Mr. McMullan?

Mr. McMullan: Yes.

Ms. Bennett: Mr. O'Connell?

Mr. O'Connell: Yes.

Ms. Bennett: Mr. Rose?

Mr. Rose: Yes.

Ms. Bennett: Ms. Doyle?

Ms. Doyle: Yes.

ADJOURNMENT

Michael Kretchmar and Chuck Thomas – 35 McGuirk Street – SCTM #301-1-1-29

Mr. McGuirk: Moving along here, we have an adjournment to January 14, 2022, wow that sounds like a big number, 35 McGuirk Street is the adjournment, Michael Kretchmar and Chuck Thomas. Pam, can we have the hearings for today.

ORIGINAL HEARINGS

23 East Dune Lane LLC – 23 East Dune Lane – SCTM #301-9-5-21.4 East Dune Lane Corp. – 27 East Dune Lane – SCTM #301-9-5-21.3

Ms. Bennett: Yes. Applications of 23 East Dune Lane LLC and East Dune Lane Corp., SCTM#'s 301-9-5-21.4 and 301-9-5-21.3, for Area Variances from Chapter 278, Zoning, to construct a swimming pool. Two (2) variances of 20 feet are required from Section 278-3.A.(5)(c) to construct a swimming pool that will overlap the common lot line between the two properties and will have a zero setback to the side yard lot lines where the required side yard setbacks for a swimming pool are 20 feet, and any other relief necessary. The subject properties are 66,473 square feet and 59,073 square feet and are located at 23 and 27 East Dune Lane in Residence District R-160. This project is classified as a Type II Action in accordance with SEQR.

Mr. McGuirk: And just for the record, Mr. McMullan is recusing himself on this application so, Andy, you will be stepping in.

16645

Ms. Doyle: And I recused myself on this already, John.

Mr. McGuirk: And Carrie is recusing herself on this one.

Ms. Bennett: Okay, thank you.

Mr. McGuirk: Is the applicant here?

Mr. Osborne: Good morning, can you hear me?

Mr. McGuirk: Yes, good morning, hi Tom.

Mr. Osborne: Tom Osborne on behalf of the applicant. I know there is a significant problem with this application. Any time you ask for a 100 percent variance, it is going to be a problem, however, the reason for asking for it are the reasons are pretty obvious. It solves every problem or concern that anybody in the neighborhood would have with putting a pool in. It keeps the pool farthest from the dune crest line, it is between the houses so it won't bother anybody on either side, the Club, the neighbor on the other side to the west, anybody walking along the beach. It is really an ideal situation. The problem is, that is where the property line is. Of course, that is just a line on a piece of paper but that is what we have to deal with. If there was no line there, we could get a permit as a matter of right, not have a variance or any other concerns but there it is. In talking about this situation, the question arose, given the fact that these properties are in common control and financially my clients have set this up to be in their family for generations. What if, if the pool is allowed, one of the properties is sold to a third party, what would happen? Would the pool have to be removed, would that be a problem for the Village? As extremely unlikely as that would be to happen given the plan, it might happen. As a matter of practicality, let us say, if I was going to buy one of these lots, I wish, I would say keep the pool, if I wanted to share it, undoubtedly, I would say no I don't want to, get rid of the pool so it is not a Village problem or if I did agree to it, it still isn't a Village problem. If in the extremely unlikely chance happened that it would be a Village problem, my client is willing to post security that is acceptable to the Village to ensure that it is not a financial burden to the Village to take care of this if the pool has to go. I would ask at this point, Pam, did any correspondence come in regarding this application from anybody?

16646

Ms. Bennett: No, nothing.

Mr. McGuirk: Somebody has some background noise there; can you please mute yourself if you are not talking. Thank you. Go ahead, Tom.

Mr. Osborne: Are there any questions from anybody?

Mr. Messina: Mr. Chairman, if I may?

Mr. McGuirk: Go ahead.

Mr. Messina: So, Mr. Osborne, let me ask you this. Would not the problem just be solved if you clients merged the parcels?

Mr. Osborne: Yes. They used to be merged, by the way.

Mr. Messina: So why wouldn't they do that and then this isn't even...

Mr. Osborne: I haven't talked to them about it but that would require a variance from the Village, again, to have two houses on one lot which I believe was the way it was up until 1984 when the Donnelly family...

Mr. Messina: That may be a precedent for that as well. That might be an easier lift for you, frankly, and I will defer to the Building Inspector who is on here but my understanding is you also have some Department of State problems that may be insurmountable by doing this this way. Tom, do you want to chip in on that?

Mr. Preiato: Thank you, Vinnie, thank you Mr. Chair, Members of the Board. So, with zoning aside, any Village issues etc. out of the way, I am charged obviously with upholding the Department of State's Residential Building Code and as part of that, the swimming pool requires a barrier and that barrier need be on that property. I see an issue there; obviously we are not putting a fence down the middle. I don't know where that leaves us but I am thinking that the State needs to be involved. Just an easement or something like that wouldn't suffice when it comes to health and safety so there are State variances available, I don't know if this would be a great candidate, so therein lies my concern.

Mr. McGuirk: Thanks Tom.

16647

Mr. Osborne: Okay, thank you.

Mr. McGuirk: Do we have any callers on the line?

Mr. Gambino: There are no callers on the line right now.

Mr. McGuirk: Any Board Members want to make any comments on this?

Mr. Rose: Not a comment, a follow up on the question that Counsel asked in terms of why the problem is not addressed by merging the two properties if that is the stated intent. If the problem is not the location of the pool, the problem is the location of the property line, it is an easily remedied situation. There are all sort of horrendous scenarios that one can see down the road if we were to permit this. This should be explored in terms of merging the properties.

Mr. McGuirk: Thank you, Mr. Rose. Any other Board Members like to make any comment? Philip?

Mr. O'Connell: I think I would just like to echo what Vinnie said that this is a substantial variance, they should just merge the properties, I think that is a better option and it is self-created. Those are the only comments I have.

Mr. McGuirk: Andy, any comments?

Mr. Baris: I would agree.

Mr. O'Connell: I make a motion to close the public hearing.

Mr. McGuirk: I will second that.

Mr. Osborne: Thank you all.

Mr. McGuirk: Do we have a motion to close the hearing.

Mr. O'Connell: Yes, I made the motion, you seconded it.

Ms. Bennett: All in favor?

Mr. McGuirk: Aye.

Mr. O'Connell: Aye.

Mr. Rose: Aye.

Mr. Baris: Aye.

Mr. Osborne: Happy Holidays.

Mr. McGuirk: Thank you, Tom.

Mr. Messina: Thank you, Mr. Osborne.

Mr. Osborne: Thank you.

ORIGINAL HEARING
Justin G. and Elizabeth P. Sautter – 3 Georgica Road –
SCTM #301-8-12-5.10

Mr. McGuirk: So we have the next hearing, Pam.

Ms. Bennett: Application of Justin G. and Elizabeth P. Sautter, SCTM#301-8-12-5.10, for Area Variances from Chapter 278, Zoning, to legalize pool equipment and 8-foot high fencing. A 6.5-foot variance is requested from Section 278-3.A.(5)(c) to legalize swimming pool equipment located 33.5 feet from a side yard lot line where the required setback is 40 feet. A 2-foot variance is requested from Section 278-3.A.(10)(a) to legalize 8-foot high fencing when the maximum height for a fence is 6 feet, and any other relief necessary. The subject property is 43,806 square feet in size and is located at 3 Georgica Road in Residence District R-80. This project is classified as a Type II Action in accordance with SEQR.

Mr. McGuirk: Pam, can you indicate who is sitting on this application.

Ms. Bennett: Who is recusing?

Ms. Doyle: I am recusing myself on this.

Ms. Bennett: Okay, so Andy is jumping in and then the rest of the Board Members.

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Mr. McGuirk: Thank you. Is the applicant present?

Mr. Huber: Good morning, Chairman McGuirk, Board Members, and Village representatives, my name is John Huber, I am a partner with the law firm of Dayton, Voorhees and Balsam here in East Hampton, attorney for the applicant Justin and Libby Sautter. The applicants are also on the call. Thank you for the time and resources you have devoted to this application. I expect I will need about 20 minutes or so and will do my best to move things along quickly. If I may, I would like to share my screen. The first item I would like to share is an aerial image, please bear with me one moment, the subject parcel is located on the west side of Georgica Road approximately 213 feet south of Woods Lane. It is situated on the north side of a secluded 360-foot-long common driveway shared by the properties at 1, 3, 5, 7, 9, and 11 Georgica Road. These six properties, along with the common driveway they share, were approved on January 5, 1978 by the Village Planning Board in connection with what was identified at the time as the Weinberger Douglas subdivision. The applicants seek two variances, one regarding the existing pool equipment and one regarding the existing deer fence. I will address each of these requested variances in turn as we proceed. Please allow the record to reflect that I have submitted two letters of support. The first is from Daniel and Michelle Grant, owners of the property at 1 Georgica Road, which abuts the subject premises to the north and west. The second support letter is from Marie and Peter Minnick, owners of the premises that lie directly south of the subject premises, on the south side of the common driveway. The relevant area variance criteria applicable to both variances are set forth at New York Village Law Section 7-712b paragraph 3 and Village Code Section 278-7.C.(2). As far as variance one for the pool equipment, according to the October 4, 2021 Gary Benz survey that has been submitted to the Board, the existing pool equipment is set back 33.5 feet from the property's southern boundary, which is the side boundary, side line. Although Code Section 278-3.A.(5)(c) requires 40 feet which is double the 20-foot side yard setback that is otherwise required for accessory structures on properties of this side in residential zoning districts, we request a 6.5-foot side yard variance to maintain the pool equipment in its current location. The area variance criteria as applied to applicant's pool equipment is as follows: the benefit to the applicant, if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by the grant. The benefits the applicant seek is to mitigate to the fullest extent possible the pool equipment's practical and visual impacts on their use and enjoyment of the property. The most recent Certificate of

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Occupancy for this property was issued on September 4, 2019 at the time the premises was conveyed to the applicants. The survey that accompanied that C.O. was dated July 17, 2019, I would like to share that survey on the screen if I may. If you would be patient with me please, I am trying to get the technology going here so I can get these things...

Mr. Eng: John, are you looking for the survey?

Mr. Huber: Yes, I have it on my screen.

Mr. Eng: I can share my screen.

Mr. Huber: Oh excellent, thank you, that would be the July 17, 2019 survey that accompanied the C.O. This is not the one that I wanted to show.

Mr. Eng: You want the 2017?

Mr. Huber: Yes, please. July '17, the surveyor would have been Gary Benz.

Mr. McGuirk: We have the July 17, 2019.

Mr. Eng: Let me see if I can pull that up.

Mr. McGuirk: We all have copies of it also in our packets, just for the record.

Mr. Huber: Okay, so the significance of this survey, there are some benefits to it. The pool equipment was previously positioned in an unsightly location almost directly in the center of the premises in close proximity to a catch basin. Yup, that is it, if we could just rotate it to the left. Thank you so much. So, this survey shows the pool equipment just in this vicinity right here where my, I don't know if everyone can see my arrow pointer, so it was located right here in just about the middle of the property, a little bit east of this storm drain catch basin that remains in the yard. The survey also confirms that there had previously been a shed near the southeast corner of the pool and that was an 8 ½ by 12, roughly 12 ¼ foot shed located 25 feet from the southern boundary or 8 ½ feet closer to the southern boundary than where applicants 6 ¼ by 11 ¼ foot equipment is now located. So, one could argue that the former larger shed had a more imposing visual impact than that of the existing pool equipment enclosure. After the purchase of the

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subject premises in late 2019, Justin and Libby applied to the Village to construct a combined, detached garage and pool cabana that would have required a 2.4-foot-height variance for the garage and a 20-foot rear yard setback variance for the cabana. On October 9, 2020, the ZBA denied those variance requests and the applicants revised their proposed design to comply with Village Code requirements. During construction of the new garage and pool cabana, the applicants relocated the existing pool equipment and installed a deer fence both of which are the subject of this public hearing. I am going to try to screen share again because I have some site photos that I would like to show.

Mr. Gambino: The other applicant has to stop screen sharing first before you can start. All right, you can go ahead and screen share.

Mr. Huber: Okay, can everyone see that?

Mr. McGuirk: No.

Mr. Huber: It is an image of the backyard.

Mr. McGuirk: No. Mr. Huber, I think we have all been to the location.

Mr. Huber: If I may, I apologize, technology is not being cooperative. At any rate, I had a series of photographs that were taken just on December 2nd and I will start with my first photograph. Although you can't see it, it depicts the backyard, it shows the view looking toward the pool house and the pool and the pool equipment. The pool equipment is tucked away inconspicuously at the southeast corner of the patio surrounding the pool. As I mentioned previously, there is a drain or catch basin located in the yard, it is now concealed beneath a nautilus shell birdbath. There are other various perspectives that I wanted to show but all of them really emphasized that the pool equipment was located to where it is now so that it would free up the backyard for, it is not only practical for purposes of maintaining the property, but also it optimizes the aesthetic benefit of this lovely yard. It turns out, much of it is the front yard and so the applicant seeks to optimize the aesthetic quality of the backyard with the pool equipment situated where it is. Against this backdrop, we have been unable to identify any detriment to the health, safety, or welfare of the neighborhood or community if the variance is granted. Likewise, with respect to the next criteria, we are unaware of any undesirable change that would be produced in the character

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of the neighborhood or a detriment to nearby properties if the variance was granted. The benefits sought by the applicants, that is to locate the pool equipment in the least practically and visually obtrusive location on the property, cannot be achieved by some other feasible method, aside from the requested variance. In short, the pool equipment is located in the ideal place for it on the property but from a practical perspective, the equipment is in close proximity to the pool that it is intended to service and it is no longer an obstacle to maintain the expansive lawn or using the lawn for purposes of entertainment or recreational activities. From an aesthetic perspective, the equipment is ideally located for purposes of mitigating its visual impact. Stated otherwise relocating the equipment to a code compliant yet aesthetically inferior location merely 6.5 feet to the north would not be feasible to help the applicant secure the full benefit they seek through the variance. The 6-foot variance is not substantial. Quantitatively this is only 16 percent deviation from 40 feet that is otherwise required. Qualitatively within the totality of underlying circumstances, the requested 6.5-foot variance is inconsequential. In other words, relocating the equipment 6.5 feet to the north would do little if anything to materially mitigate its visibility from off-premises. The requested variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or the district. As mentioned previously, this is a Type II Action under SEQR and is not subject to further environmental review.

Mr. McGuirk: Thank you, Mr. Huber. Do we have anybody on the phone, anybody calling in?

Mr. Gambino: Nobody is calling in right now.

Mr. McGuirk: Shall we take this, we will take the pool equipment first with the Board?

Mr. Huber: I am sorry, Mr. Chairman, may I just continue briefly?

Mr. McGuirk: Yes, go ahead.

Mr. Huber: Thank you so much. Admittedly the applicant's need for the variance is self-created but it is well settled and self-created hardship is not in and of itself fatal to the granting of the variance. Moreover, within the totality of underlying circumstances, I suggest that the applicant self-created hardship should carry little weight if any particularly since there is no

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adverse impact on the community. Based on the foregoing, I request that the Board grant the pool equipment variance. Unless the Board has any questions, I will move onto the deer fencing. The deer fencing...

Mr. Rose: I have a question.

Mr. Huber: Yes sir?

Mr. Rose: When was the pool equipment, when was the shed taken down and the pool equipment placed in that location?

Mr. Huber: It would have been sometime I believe after October of 2020. Mr. Eng, supervising architect, might be able to answer that specifically. It was during the course of the construction on the pool house and pool cabana as they currently exist.

Mr. Eng: That is absolutely correct. As far as the timeline goes...

Ms. Bennett: Mr. Eng, let me swear you in.

Mr. Eng: Sure.

Ms. Bennett: Please raise your right hand and state your name and address for the record.

Mr. Eng: Christopher Eng, 93 Main Street, West Sayville, New York.

Ms. Bennett: Do you swear to tell the truth, the whole truth, and nothing but the truth?

Mr. Eng: I do.

Ms. Bennett: Thank you.

Mr. Eng: So, the shed and the pool equipment, the shed was taken down, and the pool equipment was installed during the build of the pool house and the garage so at the time that we pulled that permit, the pool equipment was moved over to the location of the previous shed.

Mr. Rose: Was the pool equipment part of the permitted approval?

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Mr. Eng: It was not.

Mr. Rose: So, was someone unaware of what the setback rules were at the time?

Mr. Eng: Correct. The gentleman that did the work was unaware that he was placing the pool equipment in a nonconforming location.

Mr. O'Connell: It feels like the Code was just ignored.

Mr. Eng: I don't think it was ignored, I think it just wasn't, he didn't know that he was doing something that was not against the Code.

Mr. O'Connell: And this is a question for you as the architect, where did they install the drywell that goes with the pool equipment?

Mr. Eng: I am sorry?

Mr. O'Connell: Where did they install the drywell that goes with the pool equipment so when they backflush it, it is not going into everybody's yard? Is it right there?

Mr. Eng: It is by the pool equipment.

Mr. McGuirk: Any other Members have any questions regarding the pool equipment?

Ms. Sautter: May I say something about it?

Mr. McGuirk: You may.

Ms. Sautter: Hi, I am Elizabeth Sautter.

Mr. McGuirk: Pam, you have to swear her in.

Ms. Bennett: Yes. Please raise your right hand and state your name and address for the record.

Ms. Sautter: Elizabeth Sautter, 3 Georgica Road.

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Ms. Bennett: Do you swear to tell the truth, the whole truth, and nothing but the truth?

Ms. Sautter: Yes, I do.

Ms. Bennett: Thank you.

Ms. Sautter: We actually, when we took the shed down, we did not understand that we needed a 40-foot variance when we put the pool equipment where it was, and the location of it, if you look at the property which unfortunately we don't have the pictures, it does make sense. Also, we were unaware and then when we had our Certificate of Occupancy meeting with our Building Inspector, he pointed out that it was 6 feet too close to the border, the perimeter. The perimeter where the pool equipment is located, is along the line of a shared driveway and it has been enclosed and if you include the shared driveway with the perimeter, the border, it is actually another 15 feet between it abuts out next door neighbor, Marie Minnick, who has already written a letter and said that she is perfectly fine with the pool equipment where it is, it is not bothering her. You can barely see it from the road, if at all, and because of the shared driveway, I understand why that rule, law, or code is in place it is so that you don't have pool equipment disturbing your neighbor and, in this case, it is not disturbing her, it is more than 40 feet away from her perimeter, and she has already agreed that she is comfortable with that. That is kind of what I have to say on the matter.

Mr. McGuirk: Thank you. Any other Board Members have any issues with the pool equipment?

Mr. McMullan: Along those lines I don't have any problems with the pool equipment where it is, again, seeing that there is a driveway separating the two properties. It does kind of give that extra buffer so I don't have a problem with it.

Mr. Rose: I would just like to make a comment, Mr. Chairman, that I agree that in this particular instance, a, because there was a shed there before, b, it is the support of the neighbors, the shared driveway, there are a bunch of issues that mitigate the impact of this particular pool equipment in this particular location and the history here, but I do want to say both for this application and for all other applications that we have seen and going

forward that ignorance of the Code, the contractors moving, architects, attorneys moving forward, doing construction then coming back and seeking approval retroactively seeking, claiming, look, it is better for the site. There is a Code, I am just not going to be sympathetic going forward to retroactively approving actions that were taken. If people want to do things and they think there is a compelling case for them, come before this Board in advance; contractors, architects, attorneys should know that and I am fed up with these kinds of applications, not in this particular location where I think it does seem to be plausible if there is an honest mistake, but in light of what was there prior but going forward, I am fed up with that.

Mr. McGuirk: Thank you, Mr. Rose. Let us move on to the deer fencing.

Mr. Huber: Yes, sir, I will move quickly, thank you. So, the deer fencing again is approximate to the common driveway that is shared by the six other parcels along that were part subdivision. The top 2 feet of the existing deer fencing is virtually invisible and would likely be indistinguishable from a single horizontal wire at 8 feet as required by Code Section 278-3.A.(b)(10). The benefit the applicant seeks is to maintain the top 2 feet of visually benign deer fencing as is for the following reasons. The deer fencing is necessary insofar as to its installation, deer did frequent the property. On one occasion a dead deer unfortunately was found decaying adjacent to the house and had to be removed by the applicant's landscaping crew. The fencing was erected in its configuration due to installer oversight although at 8 feet or slightly less in certain places, the posts are, in fact, compliant with the Code. Removing the top 2 feet of fencing and replacing it with a single horizontal wire at 8 feet, would have little or no practical visual effect and this modification would only be discernable if at all upon close scrutiny from very few off-premises vantage points along the common driveway. This is so because the property's southern boundary along the common driveway is densely vegetated. Please recall that we have submitted the two letters of support and those neighbors have no objection. Eight-foot deer fencing such as this is consistent with such fencing that is present in other properties along the 360-foot common driveway. With respect to the gates, I would just like to explain those. There is a gate that is on the north side of the pool cabana just where the outdoor shower is enclosed. The posts measure 7 foot 7 inches, less than the permitted 8 feet, the gate itself is 6 feet tall although at its top it is 6 foot 5 so there is a 5-foot gap at the bottom of the gate and insofar as the gate swings out, the 5-foot gap at the bottom was necessary to ground clearance because this area of the property was graded

slightly to facilitate drainage. Prior to that grading adjustment, there was a lot of water flowing down the property toward where that drain is located in the center of the property. The next gate, I will refer to it as gate 2, is situated at the northeast corner of the residence, it is not visible from the common driveway. Those posts measure 7 foot 7 inches, again, less than the permitted 8 feet, and the gate itself measures 6 feet, although the top is at 6 foot 4 with a 4-inch gap at the bottom, and, again, that was to facilitate the opening of the gate so that it did not drag on the way the grading is located in that location. The third gate is situated at the southeast property corner, again, those posts measure 7 foot 7 and are code compliant. In that case because the ground is level, the top of the gate is at 6 feet and is also code compliant. Against this backdrop and based on the totality of circumstances, we have been unable to identify any detriment to the health, safety, or welfare of the neighborhood or the community if the Board granted the variance. Likewise, with respect to the next criteria, we are unaware of any undesirable change that would be produced in the character of the neighborhood if the variance is granted particular in light of the two support letters and existing conditions along the 360-foot common driveway. The benefit sought by the applicants, that is to maintain the deer fencing gates as is, cannot be achieved by some other feasible method aside from the requested variance. Now I don't mean to be cheeky when I discuss the concept of feasibility, in this sense I am applying the term feasible as easily convenient. This is so, particularly for gates 1 and 2, which are slightly higher than the 6 feet because of the grading that is required to properly manage drainage. With respect to the balance of deer fencing, although the applicants could theoretically remove the top 2 feet and replace it with a horizontal wire, this would be a substantial additional cost and would result in little or no practical difference. Such a modification would also be unnecessary because of the two consenting neighbors and it is in keeping with the other similar conditions on the roadway. The 2-foot variance is not substantial quantitatively to 33 percent deviation from the 6 feet is otherwise required. Qualitatively within the totality of underlying circumstances, for example, benign disability, neighbor support, neighborhood character, the requested 2-foot variance would be inconsequential. The requested variance would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. And finally, although the applicant's need for the variance has been self-created, this in and of itself is not fatal. Within the totality of underlying circumstances, I suggest that self-created hardship should carry little weight if any. Based on the foregoing, I

respectfully request that the Board grant the applicant's deer fence variance request. Thank you for your patience and the opportunity to be heard.

Mr. McGuirk: Thank you, Mr. Huber. Board Members...

Ms. Bennett: Mr. Chairman, there might be one caller.

Mr. McGuirk: Is there a caller on the line?

Mr. Gambino: There is one caller on the line. Caller ending with 6743, you are on the line.

Ms. Lamb: I am not interested in this application, sorry.

Mr. McGuirk: Thank you. Board Members?

Mr. McMullan: Regarding the fence, I understand that it is there and the neighbors don't have a problem with it. I think the Code is pretty clear that it should be 6 foot and if you want to add the one or two wires to make the 8 feet, you can so I don't see why this couldn't be achieved. That is my feeling.

Mr. O'Connell: I have a couple of comments. As Jimmy said, it could be achieved by other numbers. I think 30 percent is a substantial variance, it is self-created although not determinative and it does have the potential to change the character of the neighborhood. This could be the leading edge of the sword with everybody putting up 8-foot deer fences throughout the neighborhood so those are my concerns.

Mr. McGuirk: Andy?

Mr. Baris: No, I agree. I think that it doesn't, I walked the property, it does seem a little bit much.

Mr. McGuirk: Thank you. Mr. Rose, any comments?

Mr. Rose: No additional comments to those made.

Mr. McGuirk: So make a motion to close the hearing?

16659

Mr. O'Connell: Make a motion.

Mr. Rose: Second.

Mr. McGuirk: All in favor?

Mr. McGuirk: Aye.

Mr. O'Connell: Aye.

Mr. Rose: Aye.

Mr. Baris: Aye.

Mr. McGuirk: Thank you, Mr. Huber. Moving on, Pam, to the next hearing.

ORIGINAL HEARING

David Seeherman – 38 Egypt Lane – SCTM #301-4-7-14

Ms. Bennett: Application of David Seeherman, SCTM#301-4-7-14, for Area Variances from Chapter 278, Zoning, and a Freshwater Wetlands Permit in accordance with Chapter 163 of the Village Code, to construct a pervious driveway with a gate and drainage structures, walkways, retaining walls, and landscaping. Variances of approximately 88 feet and 66 feet are required from Section 278-3.A.(8) and a wetlands permit in accordance with Section 163-3 to construct a pervious driveway, gate and drainage structures, the nearest being approximately 62 feet from wetlands and to construct retaining walls and walkways, the nearest being approximately 84 feet from wetlands where the required setbacks are 150 feet. A variance of approximately 63 feet is required from Section 278-3.A.(8) and a wetlands permit in accordance with Section 163-3 to perform landscaping approximately 62 feet from wetlands where the required setback is 125 feet, and any other relief necessary. The subject property is 35,160 square feet, is in the R-40 zoning district and is located at 38 Egypt Lane. The project is classified as a Type II Action in accordance with SEQR.

Mr. McGuirk: And is the applicant present?

Mr. Santonastasi: I am, Jeffery Santonastasi for David Seeherman.

16660

Ms. Bennett: Let me swear you in. Please raise your right hand and re-state your name and address for the record.

Mr. Santonastasi: Jeffrey Santonastasi for David Seeherman, 12 Cedar Court, East Hampton.

Ms. Bennett: Do you swear to tell the truth, the whole truth, and nothing but the truth?

Mr. Santonastasi: I do.

Ms. Bennett: Thank you.

Mr. McGuirk: And Jeffrey, I think we might be able to go right to Billy Hajek here, I mean this is a pretty cut and dry application if we can go to Billy and get his report on this. Are you okay with that?

Mr. Santonastasi: Yes.

Mr. McGuirk: Okay. Billy?

Mr. Hajek: Good morning Chairman, Members of the Board, Billy Hajek for the Village of East Hampton. This is a property, you are all aware, it has been recently, the house was demolished that existed. There were a series of retaining walls in the front yard area that lead up to a garage that was below the first floor, I guess it would have been like the first floor of the house, there were walkways and there was an existing driveway, a driveway with two curb cuts, it was like a double curb cut that surrounded the tree, it was a little bit of an odd layout. I did meet with the applicant's representative, they incorporated a series of suggestions that I made, the driveway is being reduced to a single curb cut and they have incorporated native landscaping or native plantings within the 125-foot setback zone of the wetland. I don't think the project would have any impact on the wetlands which are located on the opposite side of Egypt Lane. Prior to the house removal, the entire front yard area was landscaped with non-native vegetation. So overall, I think this is an improvement compared to what existed on the property. If there are any questions for me, I would be happy to try to answer them.

Mr. McGuirk: Is there anybody on the line?

16661

Mr. Gambino: Yes, there are two callers. Caller ending with 6743, you are on the line.

Ms. Lamb: Hi, I am the neighbor directly to the south of this property.

Ms. Bennett: Let me swear you in.

Ms. Lamb: I am sorry?

Ms. Bennett: Let me swear you in. Raise your right hand and state your name and address for the record.

Ms. Lamb: My name is Brigid Shanley Lamb, I am at 44 Egypt Lane in East Hampton.

Ms. Bennett: Do you swear to tell the truth, the whole truth, and nothing but the truth?

Ms. Lamb: Yes.

Ms. Bennett: Thank you.

Mr. McGuirk: Go ahead.

Ms. Lamb: My question is regarding a silt fence. We live very close to this property and there are huge mounds of dirt right next to our house and then there are areas that are not fenced in and completely free of any blockage. We have a three-year-old living in the house and a puppy, and we are concerned, number one, with mud, and number two, with kind of the attractiveness of, and I do not know whether this is the appropriate place to ask about it.

Mr. McGuirk: I think this might be directed more toward the Building Inspector. I don't think this is really in our, Billy?

Mr. Hajek: So, the application that is before you is for a wetlands permit for the area that is within 125 feet of wetlands which is the front probably quarter of the lot along the street. The construction activity that is occurring at the rear of the property is outside of the Zoning Board's jurisdiction, but I am sure that the applicant wants to be neighborly and will do whatever is

16662

necessary to maintain all the debris and construction activity on their subject property.

Mr. McGuirk: Thanks Billy. Jeffrey, would be please reach out to the neighbor.

Mr. Santonastasi: Yes, definitely.

Mr. McGuirk: Thank you. We have another caller on the line.

Mr. Gambino: Yes, let me unmute them.

Unknown: I have no questions, thank you.

Mr. McGuirk: Okay, thank you. Do the Board Members have any questions on this?

Mr. McMullan: I would just like to thank Billy for his report on that, and I agree with everything that he says it was getting we are getting into a place where it is making it better than what it was before so I have no problem with this.

Mr. McGuirk: Thank you, Jeffrey, for being patient. A motion to close the hearing.

Mr. McMullan: I will make the motion.

Mr. O'Connell: I will second it.

Mr. McGuirk: Okay, thank you.

ORIGINAL HEARING
97 LPL LLC – 97 Lily Pond Lane – SCTM #301-13-12-6.1

Mr. McGuirk: So, we are on the last hearing of the day which I will recuse myself from and Jim McMullan will lead you guys at this point. Thank you.

Mr. McMullan: Thank you, Mr. Chair. Pam, would you like to read the application.

16663

Ms. Bennett: Sure. Application of 97 LPL LLC, SCTM#301-13-12-6.1, for an Area Variance from Chapter 278, Zoning, to permit an accessory structure on a parcel of land without a principal residential use and to construct an accessory structure within the required front yard setbacks. A variance is requested from Section 278-1.A. to permit the construction of an accessory structure/sculpture on a residential lot that is not improved with a principal single-family residence. A 38.1-foot variance is requested from Section 278-3.A.(5)(a) to permit the installation of an accessory structure/sculpture 16.9 feet from the front yard lot line where the required setback is 55 feet, and any other relief necessary. The subject property is 60,375 square feet in area and is located at 97 Lily Pond Lane in Residence District R-160. This project is classified as a Type II Action in accordance with SEQR.

Mr. McMullan: Also, I believe that we received a new survey as well that shows the proposed sculpture location with new accessory setback shown on the survey which then now this appears to abide by the accessory setback, and then I would also like to see if maybe Mr. Ackerman's office would like to make a quick statement as I don't think I really have a problem with this new location and the new setback lines. Is Mr. Ackerman or Mr. Goldstein on the line?

Mr. Goldstein: Andrew Goldstein for the applicant. We amended the application to eliminate the request for a setback variance because we were able to, through the advice of Billy Hajek and Tom Preiato, we designated the front yard of the property along the driveway so that the location that we propose is in accordance with the code's requirement for a side yard setback for the accessory structure so the only variance we are seeking is the variance from the definition of accessory structure to allow it to be on the property without a house. We have submitted a memo which I believe sets forth the compliance of this application with the requirements of the Code and the State Law. There is no detriment to the community from allowing this. While statutes of this size, sculptures of this size are not typical, they are not unknown, indeed there is one next door, which I think required some relief from the Board. There is no, it is the purpose of this requirement is I believe to prevent an accessory structure on a property which would somehow morph the use of the property into something nonresidential. I don't think this is possible in the case of this sculpture. The only way that the applicant can achieve the benefit which is to be able to look at the sculpture without a variance is to build a house on the property which I think

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the Board has, in cases involving tennis courts and swimming pools, are not required. The property is not environmentally sensitive, there is no environment impact. I am not sure how you would, I suppose it is a 100 percent variance in this case so I don't think it is susceptible to a numerical computation but I don't think it should be dispositive here in this case. And finally, while it is a self-created difficulty, I don't believe that is dispositive at all either.

Mr. McMullan: Thank you, Andy. As I said before, I don't think I really have any issue with this, I would rather approve this and have the sculpture on there then make the people build a house in order to have it.

Ms. Bennett: Mr. Vice Chair, any callers?

Mr. Gambino: There are no callers on the line.

Ms. Bennett: Thank you, Jody.

Mr. McMullan: Any other Board Member like to comment?

Mr. Rose: I have a question, I am not sure if it is to Billy or Vinnie, but in terms of the designation of the front yard and the side yard, can you refer how that is calculated and done where someone has the right to self-designate?

Mr. Goldstein: The reason why you are able to do it is because the property is vacant. In the case of a vacant piece of property, you can designate...

Mr. Rose: Thank you Mr. Goldstein, I am asking Billy Hajek.

Mr. Hajek: Good afternoon Mr. Vice Chair, Mr. Rose, on a vacant piece of property the applicant has the pleasure of selecting their front yard and in this case, they have selected the common driveway yard which would be the westerly most property line as their front yard which would seem to make the most sense, logical sense, regardless because that is where your access would be taken. So, one would assume you would want to protect your house the greatest practical distance from either, from the common driveway that straddles the westerly property line.

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Mr. Rose: Thank you, we can do this I guess, off line, I just would appreciate seeing the Code reference in terms of how that is determined. So, any vacant property can determine in any situation where its front yard and side yard is.

Mr. McMullan: Because this is a property that does not front on a designated street, where the street side would be the front yard, they get to choose where their front yard is.

Mr. Hajek: And once it is selected, that is their front yard. So, this now is their front yard setback, they have selected their front yard and when they go to develop a house, if they ever do, they have to abide by the front yard setback from what has been designated.

Mr. Rose: Second question is, and I have no problem with the sculpture being located in the location, in the event that subsequently a house were to be developed on the property, what, if anything, and since the variance runs with the land, this is for the particular sculpture or this is for a use in that location?

Mr. Messina: Mr. Rose, you know, the application here is for this particular sculpture. I would submit to you that it is not unreasonable for the Board to limit it to this particular sculpture under those circumstances.

Mr. Rose: Thank you. With that context, I have no problem with this, it makes sense.

Mr. McMullan: Thank you, Joe. Any other Board Member?

Ms. Duffey: I have no problem with this application.

Mr. McMullan: Can I get a motion to close the hearing then?

Mr. Rose: So moved.

Mr. McMullan: Second?

Mr. O'Connell: I second.

Mr. McMullan: Thank you, Phil. And I believe that is the last application or hearing that we have today, so I would ask that we have a motion to close the hearing or close the meeting.

Mr. Rose: So moved.

Mr. O'Connell: Second.

Mr. McMullan: Thank you.

Mr. Messina: Everyone have a great holiday.

Mr. O'Connell: Thank you all.

The meeting was adjourned at 11:58 a.m.

continued on next page

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NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the Zoning Board of Appeals of the Incorporated Village of East Hampton will hold a public meeting at the Emergency Services Building, One Cedar Street, East Hampton, New York, on Friday, December 10, 2021 at 11:00 a.m., or via video-conferencing if necessary, on the following applications and to conduct such other business as may come before the Board. If you would like to participate in the Zoom meeting, contact pbennett@easthamptonvillage.org. The applications can be viewed on the Village's website easthamptonvillage.org by clicking on the "Alerts" tab.

Application of Justin G. and Elizabeth P. Sautter, SCTM#301-8-12-5.10, for Area Variances from Chapter 278, Zoning, to legalize pool equipment and 8-foot high fencing. A 6.5-foot variance is requested from Section 278-3.A.(5)(c) to legalize swimming pool equipment located 33.5 feet from a side yard lot line where the required setback is 40 feet. A 2-foot variance is requested from Section 278-3.A.(10)(a) to legalize 8-foot high fencing when the maximum height for a fence is 6 feet, and any other relief necessary. The subject property is 43,806 square feet in size and is located at 3 Georgica Road in Residence District R-80. This project is classified as a Type II Action in accordance with SEQR.

Application of David Seeherman, SCTM#301-4-7-14, for Area Variances

from Chapter 278, Zoning, and a Freshwater Wetlands Permit in accordance with Chapter 163 of the Village Code, to construct a pervious driveway with a gate and drainage structures, walkways, retaining walls, and landscaping. Variances of approximately 88 feet and 66 feet are required from Section 278-3.A.(8) and a wetlands permit in accordance with Section 163-3 to construct a pervious driveway, gate and drainage structures, the nearest being approximately 62 feet from wetlands and to construct retaining walls and walkways, the nearest being approximately 84 feet from wetlands where the required setbacks are 150 feet. A variance of approximately 63 feet is required from Section 278-3.A.(8) and a wetlands permit in accordance with Section 163-3 to perform landscaping approximately 62 feet from wetlands where the required setback is 125 feet, and any other relief necessary. The subject property is 35,160 square feet, is in the R-40 zoning district and is located at 38 Egypt Lane. The project is classified as a Type II Action in accordance with SEQR.

Application of 97 LPL LLC, SCTM#301-13-12-6.1, for an Area Variance from Chapter 278, Zoning, to permit an accessory structure on a parcel of land without a principal residential use and to construct an accessory structure within the required front yard setbacks. A variance is requested from Section 278-1.A. to permit the construction of an accessory structure/sculpture on a residen-

tial lot that is not improved with a principal single-family residence. A 38.1-foot variance is requested from Section 278-3.A.(5)(a) to permit the installation of an accessory structure/sculpture 16.9 feet from the front yard lot line where the required setback is 55 feet, and any other relief necessary. The subject property is 60,375 square feet in area and is located at 97 Lily Pond Lane in Residence District R-160. This project is classified as a Type II Action in accordance with SEQR.

Said Zoning Board of Appeals will at said time and place hear all persons who wish to be heard in connection with the applications. Interested parties may be heard in person, by agent, or by attorney.

Dated: November 19, 2021

By Order of John L. McGuirk III, Chairman
Zoning Board of Appeals
Inc. Village of East Hampton
20-2

FILED
VILLAGE OF EAST HAMPTON, NY
DATE: 11/24/22
TIME: 2:41 pm

Pamela J. Bennett

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