

Zoning Board of Appeals  
September 9, 2022  
11:00 a.m.  
via Video-Conferencing and  
Published by Local TV Inc.

Those present were:

John L. McGuirk III, Chairman  
Joseph B. Rose, Member  
Philip O'Connell, Member  
Lisa Perillo, Village Attorney  
Thomas Fantini, Property Manager on behalf of Red Trust  
Eric Bregman, Attorney on behalf of Hamptons Residence LLC  
Michael Halpern, Neighbor of Hamptons Residence LLC  
Leonard I. Ackerman, Attorney on behalf of Maxamus LLC  
Linda Margolin, Attorney on behalf of Maxamus LLC  
Jonathan Tarbet, Attorney on behalf of Edward and Margot J. Levy  
Joshua Keay, Architect on behalf of Andrew and Alyssa Klein  
Jody Gambino, LTV Moderator  
Pamela J. Bennett, Village Clerk

Mr. McGuirk: Good morning and welcome to the Village of East Hampton's Zoning Board of Appeals' meeting for Friday, September 9<sup>th</sup>.

MINUTES

Mr. McGuirk: The first order of business we have the minutes from **August 12, 2022**. May I have a motion?

Mr. Rose: So moved.

Mr. McGuirk: Second?

Mr. O'Connell: Second.

16943

Mr. McGuirk: All in favor?

Mr. Rose: Aye.

Mr. O'Connell: Aye.

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

DETERMINATION

72 Lily Pond LLC – 72 Lily Pond Lane – SCTM #301-13-8-9

Mr. McGuirk: In the application of 72 Lily Pond LLC, 72 Lily Pond Lane, Suffolk County Tax Map #301-13-8-9, to relocate and enlarge a preexisting accessory building and convert it to an accessory dwelling unit is approved. May I have a motion?

Mr. Rose: So moved.

Mr. McGuirk: Second?

Mr. O'Connell: Second.

Mr. McGuirk: Pam, please poll the Board.

Ms. Bennett: Mr. McGuirk?

Mr. McGuirk: Yes.

Ms. Bennett: Mr. O'Connell?

Mr. O'Connell: Yes.

Ms. Bennett: Mr. Rose?

Mr. Rose: Yes.

16944

DETERMINATION

Richard Wechsler – 105 Buell Lane – SCTM #301-8-2-5.1

Mr. McGuirk: In the application of Richard Wechsler, 105 Buell Lane, Suffolk County Tax Map #301-8-2-5.1, to construct a chimney is approved. May I have a motion?

Mr. Rose: So moved.

Mr. McGuirk: Second?

Mr. O'Connell: Second.

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

Ms. Bennett: Mr. McGuirk?

Mr. McGuirk: Yes.

Ms. Bennett: Mr. O'Connell?

Mr. O'Connell: Yes.

Ms. Bennett: Mr. Rose?

Mr. Rose: Yes.

DETERMINATION

Sheila and Taylor Smith – 36 Maidstone Avenue – SCTM #301-2-6-13

Mr. McGuirk: And the last determination of the day, in the application of Sheila and Taylor Smith, 36 Maidstone Avenue, Suffolk County Tax Map #301-2-6-13, to maintain a chimney, to maintain a chimney?

Ms. Bennett: Yes, to maintain it because it is already there.

16945

Mr. McGuirk: Got it, is approved. May I have a motion?

Mr. Rose: So moved.

Mr. McGuirk: Second?

Mr. O'Connell: Second.

Mr. McGuirk: Pam, poll the Board?

Ms. Bennett: Mr. McGuirk?

Mr. McGuirk: Yes.

Ms. Bennett: Mr. O'Connell?

Mr. O'Connell: Yes.

Ms. Bennett: Mr. Rose?

Mr. Rose: Yes.

ADJOURNMENT

David Henry and Courteney Fornal – 17 Stratton Square –  
SCTM #301-1-5-15.1

Mr. McGuirk: Moving along on the agenda, we have a request for an adjournment for David Henry and Courteney Fornal, 17 Stratton Square, October 14, 2022, I do not need a motion or anything on that, do I Pam?

Ms. Bennett: Lisa?

Ms. Perillo: You do not but it does not hurt to take one anyway if you want to.

16946

Mr. McGuirk: So can I get a motion to move to October 14, 2022?

Mr. Rose: So moved.

Mr. McGuirk: Second?

Mr. O'Connell: Second.

REQUEST TO RE-OPEN HEARING  
Lisa and Gary Seff – 43 Mill Hill Lane – SCTM #301-8-7-18

Mr. McGuirk: We have a request to re-open a hearing but it is going to be postponed until October 14, 2022 on Lisa and Gary Seff. Do I have a motion?

Mr. Rose: To postpone it?

Mr. McGuirk: Yes.

Mr. O'Connell: I make a motion.

Mr. McGuirk: Second?

Mr. Rose: I just have a question. They have requested, why do we have to vote on their request, on their withdrawal of their request?

Mr. McGuirk: I am going to refer to Lisa.

Ms. Perillo: They are requesting to re-open the hearing.

Mr. McGuirk: But they want to re-open it on October 14<sup>th</sup>.

Mr. Perillo: They want to re-open it and then they want it scheduled for October 14<sup>th</sup>.

Mr. O'Connell: So we are just making a motion on scheduling it for October 14<sup>th</sup>.

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Mr. McGuirk: That is all we are doing.

Mr. O'Connell: So I make a motion.

Mr. McGuirk: Okay, do we have a second? I can second it. All in favor?

Mr. O'Connell: Aye.

Mr. McGuirk: Any opposed? (no)

CONTINUED HEARING  
Red Trust – 99 Main Street – SCTM #301-2-7-36.2

Mr. McGuirk: We have the continued hearing for Red Trust, 99 Main Street, and I see Tom Fantini is here for Red Trust. Good morning, Tom.

Mr. Fantini: Yes, good morning, good morning everyone.

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

Mr. Fantini: Thomas Fantini, address is 111 Montauk Highway, Amagansett.

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

Mr. Fantini: Yes I do.

Ms. Bennett: Thank you.

Mr. McGuirk: Tom, can I just add for the record we did get a letter in from Michael Bebon on August 18<sup>th</sup> in favor, he has no problem with the pickleball court so I just want to add that to the record. Go ahead.

16948

Mr. Fantini: So obviously we did meet with the contractor; the pickleball contractor talked about sinking the pickleball court four feet as was discussed. There is a couple of things, one of which is the owner's concern is that the safety with regard to running into a retaining wall as you go off the playing court dimensions. So he has sort of a concern about that. It obviously adds a pretty significant expense, it almost doubles the cost of the court, and at the end of the day, the thought is did not necessarily know what advantage sinking a court four feet might have being that the strike of the ball is four, four and one-half feet at chest and waist level. So with sort of those things considered, if he did have to sink it then he would extend obviously, we would have to extend the off playing dimensions and then the idea would be to move it out of that position, we think it is nicely nestled where it is. Obviously with the Herrick Playground and the Long Term Parking and then he probably would shift it more I will say toward the other side of the property and that might create other issues with other neighbors so all and all we think it is nestled in a nice spot, we think it meets current playing court dimensions. If there were a primary residence there, then obviously according to the current building code, we would be able to install it.

Mr. McGuirk: Thanks, Tom. Anybody on the line?

Mr. Gambino: There are no callers.

Mr. McGuirk: Board Members, anybody have any issues with this at this point? Philip?

Mr. O'Connell: Well I would just like to say that my concerns were addressed when the neighbor supported it so I have no problem with this one.

Mr. McGuirk: Mr. Rose?

Mr. Rose: No questions, no comments.

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

16949

Mr. Rose: So moved.

Mr. McGuirk: Second please.

Mr. O'Connell: Second.

Mr. McGuirk: Thank you. All in favor? Aye.

Mr. Rose: Aye.

Mr. O'Connell: Aye.

ORIGINAL HEARING and CONTINUED HEARING  
Hamptons Residence LLC – 16 Nichols Road – SCTM #301-13-11-11

Mr. McGuirk: So we have hearings now, the new hearings, and Ms. Bennett would you please read the first one.

Ms. Bennett: Sure. The pending application of Hamptons Residence LLC, SCTM#301-13-11-11, seeks additional Variances from Chapter 101, Coastal Erosion Hazard Areas and Chapter 124, Preservation of Dunes, to legalize an accessory structure and lighting. A Coastal Erosion Hazard Area Permit and Variances are required in accordance with Sections 101-9.(B) and 101-19 to legalize a bin and lighting installed seaward of the Coastal Erosion Hazard Area line. Variances of approximately 56 feet and 97 feet are requested from Sections 124-1.A.(1) and (2) to legalize a bin and lighting fixtures located approximately 44 feet from the 15-foot contour and 53 feet from the edge of beach where the required setbacks are 100 feet and 150 feet, and any other relief necessary. The subject property is 116,464 square feet in area and is located at 16 Nichols Lane in Residence District R-160. The property adjoins the ocean beach and is located in FEMA Flood Zone VE (el. 17) and Zone X. This project is classified as a Type II Action in accordance with SEQR.

Mr. McGuirk: Good morning, Mr. Bregman.

16950



Mr. Bregman: Good morning.

Mr. McGuirk: Go ahead.

Mr. Bregman: Let me try to share my screen which I had trouble with yesterday. Can you guys see this now?

Mr. McGuirk: Yes we can, sir, thank you.

Mr. Bregman: I wanted to go over briefly what this is about. You have heard it and seen it before so I will be very quick. First of all the dune is extremely stable, it has been there for 100 years, you have the Woods Hole report on the dune in front of this house that was done the last time it was done. It is brought up to date by Dr. Bokuniewicz's letter where he particularly states that the gazebo is not destabilizing the dune and will not in any way and that is also established by the fact that it has been there for 16 years. I also wanted to mention that it adds a structure in the coastal erosion area, a total of three quarters of a percent, .74 percent, so it is a very small addition, and you can see those numbers there at the bottom of the Saskas survey which has been submitted. The other point that I wanted to show is that it is very consistent with the neighbors and I have two aerials to show you, my cursor is now on where the gazebo is. You can see it is no further seaward than the house next door and the swimming pool to the east, then the swimming pool further to the east, and there is one more aerial that shows it longer so it is consistent with this swimming pool over here, with this house here, with this house here, and there is another house back there behind, pictures of people, and also going to the west is also consistent with this house, with this swimming pool etc. So it is very typical of the neighborhood. Also there has been no opposition whatsoever to this gazebo from any neighbors or anyone else. There is a letter from the Halperns who are the neighbor to the west and they are concerned about the "sitting area or the perch" on the lawn that I want to get into in a second but they have no problem or at least no comment about the gazebo. This is the area that the Village Planner Billy Hajek recommended that if you grant these easements you will require as remediation or mitigation that it be revegetated from these grasses that you see there in this area and here but

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these are already bayberry and beach plum and they would stay. And this fits into the Halpern's concern. The applicant has agreed completely 100 percent with that recommendation. We developed a plan, a revegetation plan, this is by Verderber Nurseries that these are the folks who have been the Icahn's landscapers for a great many years. So you can see this is the area of concern, it would be as noted on the plan, bayberry, beach plum, and over in this area next to the walkway would be beach grass and bayberry and beach plum. So that would be exact, and this plan by the way was reviewed by the Village Planner and he approved it and he authorized me to say that.

Mr. McGuirk: Just for the record, Mr. Hajek is not here today, just want to put that out, he is on vacation.

Mr. Bregman: Yes but I specifically asked him if it was all right to say that it was approved when I wrote that letter of August 9 which he saw as well or I mentioned that it was approved.

Mr. McGuirk: Thank you.

Mr. Bregman: Okay. The concern that the Halperns had is this area here has been used for basically sitting out and watching the ocean while making telephone calls and communicating with the rest of the world. And this plan I think satisfies or responds to that concern because this is will all be bayberry, beach grass, and beach plum. It will essentially not be usable even if one wanted to sneak in there, it would not be usable for that purpose so if any lawn chairs and chairs in this area, they would be on the existing lawn which is preexisting. So I think that satisfies, I hope it does, I think it does, satisfies their concerns. Now there is one other item there if you look, it says bin. That bin is actually it is raised off the ground, it contains electric and telephone lines and it was used in the past for the telephones that Mr. Icahn would use while he was conducting business and personal business in the inappropriate area. He would be or he intends to or would like to put his lawn chair, which is what you saw in the picture from Mr. Halpern, and lounge in the existing area and leaving the bin there would allow him to continue that telephone connection. I do not see, I respectfully submit there is not any downside to that, and there is not any downside or

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inappropriateness of sitting out in this existing lawn area. As I said, there would not be any deck area or perch there at all. The other item that is open is the fence that you see, the fence that is along here, this is a snow fence, a typical snow fence, I have a picture of it, I hope this comes up the correct picture, there it is, you can see it, it is halfway up the dune, it acts as and it is there for the purpose of being a deer fence, and you can see it is halfway up the dune even though it is only four to five feet high, the deer cannot jump over it because they are jumping uphill anyway and it has been effective. Again, there is no downside, it has been there for a while, it is consistent with snow fences along the area and has not engendered any complaints or concerns by any neighbors including the Halperns. The only neighbor who can see it and can see the gazebo is Mrs. Ford who is up there in this corner and she has written in favor of this application. The last item is security lights. There are three of them hidden in this area in front of the house which has along the top of the dune which has bayberry and beach plum and this is the area that will be revegetated with more of bayberry and beach plum and there is a picture one of them. They are for security purposes only, they are triggered by motion sensors, they have never been used to light up the beach which I know is a concern for the Village. You do not want people doing that but again that has never happened, there has never been a complaint about that because among other things, it has not happened, there is no reason for a complaint, and it is a major benefit to the Icahns who have some security concerns and there is really no downside. As far as they know, they do not know that that actually been tripped for security reasons which I know cuts both ways. If you have not needed it then you do not need it but being there is a substantial security measure and it has been handled very cooperatively and without any, with an understanding that this is only for security and not for lighting of the beach. Any questions?

Mr. McGuirk: Board Members?

Mr. Rose: Why is the question regarding the security lighting, why do they need to be there, why can they not be further back on the property. Understood the purpose is for security notification, why do they have to be in a protected area?

Mr. Bregman: Well, like most of the houses along the strip, everything is in the protected area. The coastal erosion line runs north of the house here, you can see it on the survey so it is all a protected area. They can certainly be moved back into what is going to be revegetation as part of the revegetation but they have, and putting them back in the lawn area back here is still a protected area and it really would not do any good. I mean the idea is if somebody is coming up and sneaking over the dune, if that is what the Board wants to do, the Icahns will coordinate with that but really there has never been an issue, it became an issue in this hearing because one of the investigators said what about these lights, so there they are, they have been there for decades, and you cannot see them actually from the beach. I was out yesterday to look at them. You can see this one from the beach from the bottom of the boardwalk but the other two you cannot even see. So they could be moved but that decreases their usefulness and I am not sure what the upside of moving it is but they can be if you find that appropriate.

Mr. McGuirk: I think Mr. Rose would like to see if they could be moved.

Mr. Rose: Again, as you say, they have been there for decades, they have never been triggered as far as I understood you to say.

Mr. Bregman: That is my understanding from the Icahns, yes.

Mr. Rose: To pull them back out of the naturally vegetated area, at the start of the beginning of the lawn area would seem to be appropriate would be my suggestion.

Mr. Bregman: If I may, I am putting them back, the beginning of the revegetated area is back here. They would have to be substantially tall back there because this is...[inaudible]... and certainly with the bayberry and beach plum that is going to be put in, they would have to be tall enough to be over it so it would be more imposing but, again.

Mr. Rose: I hear what you are saying, the proliferation of extensive and visual security devices in the protected area which happens not just on this

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property but in others, I understand people have a concern for the security that they have to figure out ways to address whatever security concerns they may have within the context of the regulatory environment that we have unless there is a compelling reason to do otherwise, I do not see a compelling reason to do otherwise here, it is just my, expressing my concern.

Mr. Bregman: I understand, and I understand it is concern that is broader than this particular property and that there have been instances where has been lighting up the beach even though that is not here. So your thought is to move them back right here along this line that separate the lawn from the revegetative area, am I correct?

Mr. Rose: Correct or attach them to the, I am not a security expert but it seems to me there is a way to address the issue. I understood that they have been there for a long time but the issue about being able to have people address security concerns in a way that does not yield more structure in the protected area in the natural area I think is something that property owners need to figure out in a way that it is acceptable in a generally applicable way.

Mr. Bregman: May I ask whether attaching them to the two walkways, one is on this end and one is down here at the other end.

Mr. Rose: That would seem to me to be a better, an improvement.

Mr. McGuirk: Again, Mr. Rose is not a security expert so I think he is trying to get to that point.

Mr. Bregman: Nor am I but I think they are willing to figure that out.

Mr. McGuirk: I have one question, Lisa, we did get this email on July 14, 2022 from Michael D. Halpern and Christine Grant Halpern, have you read it?

Ms. Perillo: I have read what is in the file today, there is email and copies I think of a decision from back in the 90's I believe it concerns the patio in the protected wetlands area. Some wires, I believe it is telephone wires and

electrical wires. I do not know if those are still present there today but I do not know that anyone has gone out and done a survey to see whether those particular offensive structures are still there and still posing offense so, yes, my answer is yes, I have looked at that.

Mr. McGuirk: Do you want some time to, do you want to comment on this or we are good with this or...

Ms. Perillo: I think we should just verify and I think that would have to be done in conjunction with the Planner and maybe the Building Inspector to take a look to make sure that whatever needed to be removed was removed or if it is no longer a concern it may not any longer be a concern, it will also give the applicant maybe an opportunity to consider where to move these security lights and fit it in with whatever landscaping proposal he indicates has already been approved...[inaudible]...with moving of the lights.

Mr. McGuirk: Go ahead Mr. Bregman I just wanted to...

Mr. Bregman: Yes, may I speak to that because what I was talking about, and I apologize if it was not clear, but this area right here, I can make that bigger maybe if I can figure out how to do that, right here at this corner is something that is marked bin. It is also on the reveg plan. That has telephone and electric lined in. I do not know whether they go back to 1998 but they very well. My thought is you look at that decision, and Ms. Perillo I would be glad to discuss it with you at your convenience, but if you look at it, it emphasizes that the reason or a major reason for that decision was twofold. The area which had the patio which is now going to be revegetated was further seaward and anything else along that strip. It was more so than where the gazebo is or all other swimming pools etc. that we looked at earlier. And the other was that there were a lot of neighbors who were not happy about it. That is not true now except the Halperns are concerned that it not reappear and that is why we are revegetating here I think would prevent that so we satisfied that. So again the concept here is that Mr. Icahn could enjoy his property and sit on the lawn that is perfectly legal, put out a chair there, and if he could connect to the telephone, etc., it is not enabling him, or anyone else, to misuse the dune which was what the concern was

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before so one of the requests here is that that be allowed to stay there. It could also be moved a little further north but that is outside of the area of concern and you cannot see it. It is already hidden in the vegetation.

Mr. O'Connell: So the patio has already been removed?

Mr. Bregman: Yes.

Mr. O'Connell: Is that correct?

Mr. Bregman: Yes. The patio is long gone. What is there now was some grasses that were just allowed to dry out and there is also some, what is the word, unwanted plantings like golden rod and some other stuff that would all be replaced by, as I said, beach grass, bayberry, and beach plum.

Mr. McGuirk: Okay, is that it Mr. Bregman?

Mr. Bregman: That is it unless there are any more questions?

Mr. McGuirk: I think that, Lisa, you have to guide me on this that we should be looking into what the Halperns had sent?

Ms. Perillo: We will just verify, I cannot do that looking at what is here right now. The patio may have been their major concern that they did not want people hanging out there and the fact that the patio has been moved may address that, but there was also reference to these wires so just to make sure that whatever was required to be complied with is still necessary to be complied with, if it has not already, if it is necessary, that it is.

Mr. McGuirk: Thank you, we want to get this right.

Ms. Bennett: Mr. Chairman, are there any callers?

Mr. McGuirk: I was just going there.

Ms. Bennett: Thank you.

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Mr. McGuirk: Are there any callers on the line?

Mr. Gambino: There is one caller on the line, let me put them through.  
Caller ending with 5290, you are on the air.

Mr. Halpern: Hello.

Mr. McGuirk: Good morning.

Mr. Halpern: Good morning everybody, thank you, can you hear me?

Mr. McGuirk: Yes, please state your name and Pam is going to swear you in.

Mr. Halpern: Yes, my name is Michael Halpern, I am one of the owners of the adjacent property which you have been discussing this issue and we sent a photo after the time of July whatever, it is later, that shows what we are talking about currently. I think you have it in the file.

Mr. McGuirk: Okay.

Mr. Halpern: I want to be clear what we are talking about in that place, and Billy Hajek I think is very well aware of it, unfortunately he is not present and you can see in the photo that it is not a lawn chair, it is an umbrella, several pieces of furniture, a table, there are lights and now obviously there is communication, outlets. It is everything that the Zoning Board of Appeals said to remove in 1997, it is the same thing that the New York Supreme Court said to remove in 1999 or '98 and it is the same thing that Appellate Court of the State of New York said it is without merit, the case. Our lives have gone on and the patio may have been removed but it is clearly used as that type of area, we have not been on the property so I really cannot say but it continues. You can see in the photo what is there and we appreciate the revegetation plan seems to meet most of our objection and we appreciate the Icahns to follow through on that but the lighting and the communication everything is still there. I do not think we have any issue with Mr. Icahn wanting to communicate with the world if you follow me but

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whether that area is recreated like that just simply a few feet away, yes, I say we have a problem with it.

Mr. McGuirk: Thank you, is that it Mr. Halpern?

Mr. Bregman: Can I say just two sentences.

Mr. Halpern: Yes, go ahead.

Mr. McGuirk: Mr. Bregman, go ahead.

Mr. Bregman: I am glad to hear Mr. Halpern's concerns. Again, what I am, that photograph which you have all seen shows the area that is going to be revegetated. It was the area where the patio was, that was removed long ago, it was without, being candid, it was used and chairs were put there. That photo shows because I was there myself yesterday and there were the same pieces of furniture nearby, they show an aluminum lounge chair and that black thing is a chair, again, an aluminum chair with a cover over it. The umbrella is standing on the lawn, it is not in the ground, it has a heavy base that keeps it there but it can be moved so, again, the concept here, and I am happy to have Mr. Halpern particular in the design here, but the concept here is that this would all be beach grass and beach plum and would effectively prevent looking into that area or using that area for anything but natural vegetation supporting the dune and any sitting and looking at the world would be on the lawn where is perfectly appropriate and putting up a lounge chair or a regular chair. So the concept here is not to figure out some way to get around this but to do reveg plan in a way that satisfies or responds to the Halperns' concerns.

Mr. McGuirk: Thank you, Mr. Bregman. Any other callers on the line?

Mr. Gambino: There are no other callers.

Mr. McGuirk: So we are going to keep this open so our Counsel can talk to the Village Planner and the Building Inspector just to discuss the letter that the Halperns have sent in. Any other questions from the Board Members?

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Mr. Rose: I just have a comment, Mr. Chairman.

Mr. McGuirk: Go ahead, Mr. Rose.

Mr. Rose: It is not a question. I think the, I have heard, I have listened, I understand the case being presented. I do not think there is a compelling rationale for the maintenance of the gazebo in its location, I think it is highly, I know it is highly visible from the beach. I do not think the materials that we have been presented show, demonstrate that, but having walked by this numerous times now just to make sure I am not imagining it, I think the presence of the fence is much more egregious than the adjoining properties or most of the adjoining properties, the gazebo is not compliant, I think the original rationale for it, which I heard and understood, I think is no longer the case. I think there are some aspects of this application that are fine, I think there should be a way to figure out how to deal with the security lighting and the like but there are other issues that I think remain deeply problematic.

Mr. McGuirk: Thank you, Mr. Rose. So Mr. Bregman, we are going to keep this hearing open until next month on the 14<sup>th</sup> of October I believe the date is and we will reconvene.

Mr. Bregman: I am going to be out of the Country on the 14<sup>th</sup> but let me communicate with Pam about the scheduling if I may. If it is okay and necessary with the Board if we could put it into November because I do not think I can make it on the 14<sup>th</sup>.

Mr. McGuirk: That is fine, just reach out to Pam and let her know what your schedule is. Pam, can we move onto the next hearing please.

ORIGINAL HEARING

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

Ms. Bennett: Sure. Application of Maxamus LLC, SCTM#301-7-3-7, for Variances from Chapter 278, Zoning and a Wetlands Permit in accordance with Chapter 163, Freshwater Wetlands, to raze the existing residence and construct a new single-family residence. Applicant requests a wetlands

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permit in accordance with Sections 163-3 and 163-7 and a 91 foot variance from Section 278-3.A.(8) to temporarily clear vegetation 34 feet from wetlands where no clearing is permitted within 125 feet of wetlands. Applicant requests a wetlands permit in accordance with Sections 163-3 and 163-7 and variances of 86.3 feet, 79 feet and 79 feet from Section 278-3.A.(8) to construct a residence with roof overhang 63.7 feet and 71 feet from wetlands and to construct patios 71 feet from wetlands where the required wetland setback is 150 feet, and any other relief necessary. The subject property is 97,110 square feet in area and is located at 54 Georgica Close Road in Residence District R-160. The property fronts on the Seabury Creek section of Georgica Pond and is located in FEMA Flood Zone AE. 10. This project is classified as a Type II Action in accordance with SEQR.

Mr. McGuirk: Thank you. Good morning Mr. Ackerman.

Mr. Ackerman: Good morning, John. Am I correct there are only three Members of the Board?

Mr. McGuirk: You are.

Mr. Ackerman: I know you have a heavy schedule behind me, I would just like to give you a very brief overview and I will save my recitation of grounds at the end if it is necessary, if that is okay. This proposed new house is going to be on the existing foundation footprint, we are going to be reducing coverage from 2,183 to 1,935 square feet, we are going to be reducing GFA from 1,700 to 1,200 square feet, we are going to be reducing height from 28 feet to 13 feet because we are eliminating a second story, we are going to make it FEMA compliant by eliminating the basement, filling in the basement. This is a unique construction protocol which we have submitted which is going to minimize disturbance. This construction is not going to take months, it is going to take weeks putting this house together on this property, very unique and creative construction protocol based upon a very unique and creative plan by the architect John Winberry who is on board with us here, and, in addition we are going to be, of course, removing the existing sanitary system that is within the wetlands which should be very positive for Georgica Pond and for those of us who live on the Pond. We will

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be upgrading a new sanitary system which is out of wetlands jurisdiction. So we are going to be requiring a house variance for 63.7 feet because of the roof overhang, special permit for the project fence which is necessary on a temporary basis while we do the construction. We are available for any questions you have concerning this application and if you wish, I can go through the grounds.

Mr. McGuirk: Let us see if the Board Members have any questions?

Mr. O'Connell: I just have a question, Mr. Ackerman. So with the overhang, there is going to be no deck off the back so you are going to step out onto what? It just seems like with the overhang, you are not going to get lawn to grow back there or anything to grow back there.

Ms. Margolin: Can I speak to that?

Mr. Ackerman: Sure, Linda, go on.

Ms. Margolin: The landscaping plan calls for I think Pennsylvania sedge which is a native plant, it is low growing, it is a grass-like plant, and it does allow for some traffic. I do not know if you were able to hear me but the answer is...

Mr. O'Connell: No, no, I was, I was able to hear you. And it can grow in the shade like that?

Ms. Margolin: Yes, it can, yes. It is a sedge, if you look in your woodlands, you will see it growing in situations where, as long as it is not completely dark, it will grow.

Mr. O'Connell: So there is no intent to come back later for a patio or a deck or anything of that nature?

Ms. Margolin: I am sorry, the quality of the audio is not wonderful, could you just say that again.

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Mr. O'Connell: Sure, I am sorry, I said do there is no intent to come back at a later date for a patio or some sort of a deck in that area, is that correct?

Ms. Margolin: No, no, there is not.

Mr. O'Connell: Okay, thank you Linda.

Mr. McGuirk: I do not have any questions on this application. Mr. Rose, do you have any? I think we just want to review the material you gave us on September 8<sup>th</sup>, yesterday, Mr. Ackerman.

Mr. Ackerman: I understand. John, Billy has been very cooperative and we just want to be sure we have all our housekeeping in order. There seemed to be some question on some of it. There are so many documents, there is the survey, there is site plan, there are the architectural plans, there is Drew Bennett's plan. We want to make sure everything was consistent so we met with Billy and we met with Counsel for the Board, I think everything is in order.

Mr. McGuirk: Just give us, like I said, we got it yesterday, let us, we need real plans from Village Hall, we have nothing but printed copies here off our printer so I do not think any Board Members have any issues at this time but we are just going to keep this open and I do not think there are problems here at this point.

Mr. Ackerman: Thank you very much.

Mr. McGuirk: Pam?

Ms. Bennett: Next one?

Mr. McGuirk: Yes, please.

ORIGINAL HEARING

Edward and Margot J. Levy – 321 Georgica Road – SCTM #301-7-5-1.13

16963

Ms. Bennett: Application of Edward and Margot J. Levy, SCTM#301-7-5-1.13, for an Area Variance from Chapter 278, Zoning, to construct additions to an existing residence. A 598 square foot gross floor area variance is requested from Section 278-3.A.(13) to construct additions and permit a residence to contain 5,956 square feet of gross floor area where the maximum permitted gross floor area is 5,358 square feet. The existing residence contains 4,699 square feet of gross floor area, and any other relief necessary. The subject property is 43,584 square feet in area and is located at 321 Georgica Road in Residence District R-80. This project is classified as a Type II Action in accordance with SEQR.

Mr. McGuirk: Is the applicant present? Good morning, Jon.

Mr. Tarbet: Jon Tarbet for the applicant, can you hear me okay?

Mr. McGuirk: We can, thank you.

Mr. Tarbet: So this is an application for the Levys, they have lived on the property for approximately 25 years, actually bought from Robert Rattenni who I guess originally built it for himself. They own the house, and if you have been there, it appears to be a large two acre lot that is because there is actually a vacant buildable parcel between them and the road. So as you come up the driveway on the right hand side, that is all a single and separate parcel and then you get to their existing house. Having raised their kids in it, lived there for 25 years, their needs have changed somewhat and they are just looking for a way to reconfigure the house to better suit their current needs; their current needs being that while frequently it is just them at certain times through the year they have grandkids and the people who visit and the house will be full so this would do two things. One is that it provides them an additional small bedroom upstairs and it provides them a true master bedroom for themselves to have some quiet time. Again, the first floor is, it is all second floor additions. It is a relatively large variance, more than 10 percent of the allowable gross floor area. Two things going for us are that the existing house is only 28 feet high where if they were to build new, they would be 34 feet high and obviously for expense reasons that people want to build new but if they were to build new on this property,

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gross floor area laws are meant to limit bulk and at 28 feet high, the house is definitely not bulky. I did reach out to the neighbor who would mostly closely be affected by this; we exchanged emails, I know him, we actually never, it is probably my fault, we never confirmed whether he is for or against it, but he certainly had not reached out to me with any objections. The house is pretty much not visible from the street and in order to try to differentiate this and make this to be no precedent, I did come up with something which I hope pleases the Board which is that since we are asking to add gross floor area to the existing house, we thought we could restrict the vacant lot, that same amount of gross floor area. So the vacant lot which is the one you would actually see and gross floor area laws are mostly to control bulk and aesthetics, if the current owner were to build on that vacant lot, they would agree to limit a house on that lot by the exact same amount of square footage that we are asking for this house, the truth is, they do not really intend to build on that lot so it is a pretty easy offer on their part. The only concern was if and when they or their family sells both parcels, they would like that restriction to go away, the thought being that this house, unfortunately at some point in the future will be torn down and they would like both properties to go back to whatever permitted gross floor area would be but I do think overall we have crafted a pretty good application in that by agreeing to reduce the gross floor area in the front lot and by the fact that even the proposed additions to the second floor is still keeping to that 20 foot high ridgeline where you could have 34 feet.

Mr. McGuirk: Thank you. Board Members? We would like maybe to hear from the public first, anybody on the line calling?

Mr. Gambino: No callers on the line.

Mr. McGuirk: Board Members?

Mr. Rose: I just had a question in terms of the proposed restriction in the sense that what I think I understand makes sense but that in event that one lot gets sold and the other lot does not get sold, what happens?

16965

Mr. Tarbet: It would still be restricted. We considered that, we thought that the Board would be worried for that that would be an ulterior motive but if either lot gets sold by itself, then the restriction would stay in place.

Mr. Rose: My reaction, Mr. Chairman, is that the solution, given that they are two separate properties, this is a variance being requested in the context of the two separate properties being treated as the whole but if ever they were to go back without restriction in terms of how, I just do not want us to get whipsawed theoretically in the future for precedential purposes but the intent sounds like it is reasonable to me.

Mr. McGuirk: Philip? You have to unmute yourself.

Mr. O'Connell: I have a question and this might be Lisa or Jon. If the variance were to be granted with a covenant, then the people who tear down the Levy's existing house presumably and built a new house, they would be entitled to keep that additional 598 feet above what the Code is or what the Code allows for?

Ms. Perillo: That is not what is being proposed.

Mr. Tarbet: No, I am sorry, I mislead you. I believe the way years ago, decades ago when Zoning Board decisions were written, especially the Village, they often went with the property and people would come back to you, and you have seen people come back to you and say oh no, we have a variance, we are allowed 500, we are going to build a brand new house here and have an extra 500 and something square feet. I think modern Zoning Board decisions are written very specifically to approve a set of plans and that would not be the case and of course you could write your decision that way. So the intent, the intent is if anybody tears this house down, they have to comply with zoning on the property, that is the intent. I think the modern ZBA decisions are written specifically for the proposed structure but I am sure we can work it out to make it more clear.

Mr. Rose: Just following up on Phil, I share the concern that Phil is expressing, that I understand Phil to be expressing, this is one that, Lisa we

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are going to throw it to you to figure out if the intent is achievable without creating a precedent that turns around and then says you have already granted, there is not an issue, there is not a problem.

Ms. Perillo: I know.

Mr. Rose: It goes to looking at, Phil if I am getting it right what you are saying, if it is treated as one large lot and this is total amount of floor area that is permitted that is one thing but create a sort of whipsaw issue is what we do not want to see.

Mr. O'Connell: So Jon, let me paraphrase and see if I can get it right. The vacant lot would be reduced to restrict it by the 598, if the vacant lot sells by itself, it is still restricted by the 598, is that part correct?

Mr. Tarbet: Correct.

Mr. O'Connell: And then, this goes to Lisa and Jon, if somebody tears down the house, we can write the decision, I guess it is more for Lisa, if I understand what Jon is saying. and we write the decision that they do not get the benefit of an additional 598 square feet above what the Code allows.

Ms. Perillo: You know I would have to look into that; variances when they are granted they run with land so if there is a special covenant that you want to impose on this particular grant, I would have to look into that.

Mr. McGuirk: Okay, so why do we not leave this with Lisa, sorry Lisa...

Ms. Perillo: No, it is fine.

Mr. McGuirk: We will leave this with Lisa, and I think I am in total agreement with Joe and Philip and I think I understand what Jon is saying here so why do you two not see if you can work it out and then we will reconvene next meeting.

Mr. Tarbet: That sounds good.

16967

Mr. McGuirk: Is that okay with the Board.

Mr. Rose: Works for me.

Mr. O'Connell: Yes. We will just have to figure out where to file that so everybody is on notice.

Mr. McGuirk: Understand.

Mr. O'Connell: And future purchasers. All right, thank you.

Mr. Tarbet: Thank you.

Mr. McGuirk: Pam, the last application of the day.

ORIGINAL HEARING

Andrew and Alyssa Klein – 177 Main Street – SCTM #301-8-2-23

Ms. Bennett: Application of Andrew and Alyssa Klein, SCTM#301-8-2-23, for Area Variances from Chapter 278, Zoning, to construct a patio and pergola, walkways, and an A/C condenser unit. A 622 square foot variance is requested from Section 278-3.A.(9)(a) to permit 5,479 square feet of coverage where the maximum permitted coverage is 4,857 square feet. A 10 foot variance is requested from Section 278-3.A.(5)(b) to install an A/C condenser unit 5 feet from a side yard lot line where the required side yard setback is 15 feet. Two (2) variances of 7.4 feet each are required from Section 278-3.A.(5)(b) to construct a patio and pergola both to be located 7.6 feet from a rear yard lot line where the required setbacks are 15 feet, and any other relief necessary. The subject property is 21,786 square feet in area and is located at 177 Main Street in Residence District R-80. The property is located within the Main Street Historic District and requires approval of the Design Review Board. This project is classified as a Type II Action in accordance with SEQR.

Mr. McGuirk: Good morning. Is the applicant present?

16968

Mr. Keay: Good morning.

Mr. McGuirk: Can Pam...

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

Mr. Keay: Joshua Keay, 195 Plymouth Street, Brooklyn, New York.

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

Mr. Keay: I do.

Ms. Bennett: Thank you.

Mr. McGuirk: Go ahead, Josh.

Mr. Keay: So the owners have requested or are interested in constructing a terrace and pergola as shown in front of an existing garage structure. This structure is existing and unfortunately is hard up against two of the property lines. They also would like to condition the garage and so the condenser is located as shown in the site plan to the southeast of the garage. It is the one location where it would not be in front of either a garage door or an existing window into the garage and we have provided a screen fence around the condenser so that it is not visible from any other sides or the adjacent property to the west. The terrace would be constructed such that it does not obstruct vehicles from entering or exiting the garage and the terrace would be constructed such that it could accommodate those loads. We are also proposing a path of stones that connect this terrace to some existing terraces that are off the back of the house and sort of the idea behind this application is that the existing garage, the very elegant structure is quite beautiful actually and it will serve as a nice backdrop for this terraced area.

16969

Mr. McGuirk: Just to, I visited the property and there is no driveway to the current, existing building, the survey shows proposed gravel walk and then on your plans, it shows proposed gravel driveway. Is it a walk or...

Mr. Keay: Sorry, it is part of the work. We would include a gravel driveway connecting the current parking area to the garage. There was one at one point, at some point it was removed, but we understand that it would need to be put back.

Mr. McGuirk: Board Members?

Mr. Rose: There are some land use questions here that I think are very real. And there is also a procedural question, sorry Lisa...

Mr. McGuirk: Lisa day.

Ms. Perillo: I will see if I can answer.

Mr. Rose: So this is in the Historic District and I guess this came up in the context of the previous Guild Hall hearing. I think the Board should be in the practice of requesting comment in regard to the historic preservation aspects, I think we should refer the question to the matter to the Village Preservation Committee to see if they have comment regarding not the land use issues, which are the purview of the ZBA, but the historic preservation if there is any comment that they have regarding the preservation matters. So I think it is appropriate, when there is an application in the historically protected property to have at least a comment from the Village Preservation Committee in terms of whether or not there are any historic preservation issues related to the application.

Ms. Bennett: And we do have an application for a Certificate of Appropriateness before the Design Review Board, currently.

Mr. Rose: Right but...

Ms. Bennett: So you want this other committee to look at it?

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Mr. Rose: I think, my understanding, I realize there is a shift in terms of Village procedure vis a vis in terms of how applications are treated because we no longer have the Village Preservation Consultant. Had he issued a report presumably saying, hypothetically either it does or it does not or it would under these conditions, we need somebody to tell us, since we are not opining on the preservation component ourselves and we do when look at things have to take that into account albeit we are not the Certificate of Appropriateness issue which is the DRB. Again, my expectation is that there would not be on this application from their perspective, leaving land issues aside which are ours but we should hear it, we should be in the habit of knowing that in advance of our action.

Mr. McGuirk: So how do we, Lisa or Pam, how do we engage the historical committee?

Ms. Perillo: Is there an application, I am not familiar with their, is there any kind of application that the applicant can submit, to have them review the project and opine on the, I do not know.

Mr. Rose: I think I can jump in on this, I hope but I obviously defer it to the expert authorities but my reading is, if it comes up again, I just want to be in the habitable precedence so it is sometimes we do it, sometimes we do not it based on whether we hold our fingers up in the air and figure out whether there is an issue or not is that the ZBA, the Preservation Committee has the role of responding to requests from either the ZBA or the DRB...

Ms. Perillo: I see, okay.

Mr. Rose: I propose that we request to the Preservation Committee to comment to us whether they have issues regarding historic component. We are not asking them to opine on the land use issues.

Ms. Perillo: No.

Mr. McGuirk: Just the historic issues. I have no issues with that. Phil?

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Mr. O'Connell: I agree with Mr. Rose. I think that is something we should do and I have a question for the architect and maybe can speak on the applicants that you and your clients are aware that the prior determination by the ZBA does not allow for the garage to be used as habitable space in any way, shape, or form. Is that understood?

Mr. Keay: Yes.

Mr. McGuirk: And no plumbing, I believe I sat on that application originally, and the neighbors were, I think, on board to keep it a garage so I think we will keep this hearing open until we the East Hampton Village Historic Committee to review this. So is there anybody on the line who would like to speak about this?

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

Mr. McGuirk: I guess that is all the business for today. A motion to close the meeting.

Mr. Rose: So moved.

Mr. O'Connell: Second.

Mr. McGuirk: Philip, second?

Mr. O'Connell: Yes.

Mr. McGuirk: All in favor?

Mr. Rose: Aye.

Mr. O'Connell: Aye.

Mr. McGuirk: Thank you all. Have a wonderful weekend.

The meeting was adjourned at 12:05 p.m.

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Note: The application of 33 GB LLC – 33 Gingerbread Lane –  
SCTM #301-2-5-4 requires re-noticing.

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, September 9, 2022 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 the hearings are to be conducted via video-conferencing, please contact pbennett@easthamptonvillage.org to find out how to participate. The applications can be viewed on the Village's website easthamptonvillage.org by clicking on the "Alerts" tab.

The pending application of Hamptons Residence LLC, SCTM#301-13-11-11, seeks additional Variances from Chapter 101, Coastal Erosion Hazard Areas and Chapter 124, Preservation of Dunes, to legalize an accessory structure and lighting. A Coastal Erosion Hazard Area Permit and Variances are required in accordance with Sections 101-9.(B) and 101-19 to legalize a bin and lighting installed seaward of the Coastal Erosion Hazard Area line. Variances of approximately 56 feet and 97 feet are requested from Sections 124-1.A.(1) and (2) to legalize a bin and lighting fixtures located approximately 44 feet from the 15-foot contour and 53 feet from the edge of beach where the required setbacks are 100 feet and 150 feet, and any other relief necessary. The subject property is 116,464 square feet in area and is located at 16 Nichols Lane in Residence District R-160.

The property adjoins the ocean beach and is located in FEMA Flood Zone VE (el. 17) and Zone X. This project is classified as a Type II Action in accordance with SEQR.

Application of Maxamus LLC, SCTM#301-7-3-7, for Variances from Chapter 278, Zoning and a Wetlands Permit in accordance with Chapter 163, Freshwater Wetlands, to raze the existing residence and construct a new single-family residence. Applicant requests a wetlands permit in accordance with Sections 163-3 and 163-7 and a 91 foot variance from Section 278-3.A.(8) to temporarily clear vegetation 34 feet from wetlands where no clearing is permitted within 125 feet of wetlands. Applicant requests a wetlands permit in accordance with Sections 163-3 and 163-7 and variances of 86.3 feet, 79 feet and 79 feet from Section 278-3.A.(8) to construct a residence with roof overhang 63.7 feet and 71 feet from wetlands and to construct patios 71 feet from wetlands where the required wetland setback is 150 feet, and any other relief necessary. The subject property is 97,110 square feet in area and is located at 54 Georgica Close Road in Residence District R-160. The property fronts on the Seabury Creek section of Georgica Pond and is located in FEMA Flood Zone AE. 10. This project is classified as a Type II Action in accordance with SEQR.

Application of 33 GB LLC, SCTM#301-2-5-4, for Variances from Chapter 278, Zoning, to construct a detached garage. A 7 foot variance is requested from Section 278-3.A.(5)(a) to construct a garage 48 feet from the front yard lot line where the required

front yard setback is 55 feet. Variances of 1.5 feet and 9 feet are requested from Section 278-3.A.(5)(b) to construct a garage and cellar entrance/bilco door 18.5 feet and 11 feet from the side yard lot line where the required side yard setbacks are 20 feet, and any other relief necessary. The subject property is 43,468 square feet in area and is located at 33 Gingerbread Lane in Residence District R-40. This project is classified as a Type II Action in accordance with SEQR.

Application of Edward and Margot J. Levy, SCTM#301-7-5-1.13, for an Area Variance from Chapter 278, Zoning, to construct additions to an existing residence. A 598 square foot gross floor area variance is requested from Section 278-3.A.(13) to construct additions and permit a residence to contain 5,956 square feet of gross floor area where the maximum permitted gross floor area is 5,358 square feet. The existing residence contains 4,699 square feet of gross floor area, and any other relief necessary. The subject property is 43,584 square feet in area and is located at 321 Georgica Road in Residence District R-80. This project is classified as a Type II Action in accordance with SEQR.

Application of Andrew and Alyssa Klein, SCTM#301-8-2-23, for Area Variances from Chapter 278, Zoning, to construct a patio and pergola, walkways, and an A/C condenser unit. A 622 square foot variance is requested from Section 278-3.A.(9)(a) to permit 5,479 square feet of coverage where the maximum permitted coverage is 4,857 square feet. A 10 foot variance is requested from Section 278-3.A.(5)(b) to install an A/C con-

denser unit 5 feet from a side yard lot line where the required side yard setback is 15 feet. Two (2) variances of 7.4 feet each are required from Section 278-3.A.(5)(b) to construct a patio and pergola both to be located 7.6 feet from a rear yard lot line where the required setbacks are 15 feet, and any other relief necessary. The subject property is 21,786 square feet in area and is located at 177 Main Street in Residence District R-80. The property is located within the Main Street Historic District and requires approval of the Design Review Board. 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: August 19, 2022  
By Order of John L. McGuirk-III, Chairman, Zoning Board of Appeals, Inc.  
Village of East Hampton  
7-2/234

FILED  
VILLAGE OF EAST HAMPTON, NY

DATE: 10/17/22

TIME: 3:45 pm

*Pamela J. Bennett*

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