

**ZONING BOARD OF APPEALS
VILLAGE OF SOUTHAMPTON
MARCH 22, 2018
PUBLIC HEARING**

The Board met at 5:30PM in Executive Session with Elbert W. Robinson, Esq. to discuss the recent filing of the Article 78 proceeding In the Matter of the application of DPB Southampton, LLC v. ZBA, Index No. 18-000227, which challenges the ZBA's denial of a 9.5' x 10' pool on the property at 70 South Hill Street.

Due notice having been given, the public hearing of the Zoning Board of Appeals for the Village of Southampton was held in the Board room of the Municipal Building, 23 Main Street, Southampton, NY on Thursday, February 22, 2018 at 6:00 PM.

Board members Chair Kevin Guidera, Rob Devinney, Mark Greenwald, Daniel Guzewicz and James Zuhusky were present.

Counsel for the Board Elbert W. Robinson and Wayne Bruyn were present. Environmental Planning Consultant Chic Voorhis was present.

Chair Guidera opened the meeting.

PENDING DECISIONS

On the application of **SCHAPPELL & ANDERSON**, 465 Hill Street, the written decision was accepted.

Motion by R. Devinney, seconded by D. Guzewicz

To accept the written decision as prepared by Counsel on the application of SCHAPPELL & ANDERSON.

On Vote: Chair Guidera, R. Devinney, M. Greenwald, and D. Guzewicz. J. Zuhusky was not present for this vote.

PENDING CASES

On the application of **BEECHWOOD LATCH LLC**, 101 Hill Street, the applicant submitted a letter to withdraw the application.

Motion by R. Devinney, seconded by G. Guzewicz

To approve the applicant's request to withdraw the application on BEECHWOOD LATCH, LLC.

On Vote: Chair Guidera, R. Devinney, M. Greenwald, D. Guzewicz, and J. Zuhusky

NEW CASES

On the application of **CHRISTOPHER & JEANNE LYNCH**, 58 Rosko Drive, affidavits of mailing and posting were submitted. Present for the applicant was John Bennett. Elbert W. Robinson sat as Counsel for this application; Wayne Bruyn was recused. The request is for front yard relief for a lot that has three front yards. This is a textbook practical difficulty according to J. Bennett. The zoning states that they are not allowed to have accessory structures in the front yard. They are able to have the pool in compliance with setbacks, they meet the 50' setback requirement but it is not behind the house. He noted that the

Board has a history of allowing relief for front yard structures in special circumstances, he noted Meadow Lane as an example. Chair Guidera noted those are ocean parcels.

John Bennett stated that they went before the ARB to show the scheme of the layout of the house. The house conformed in all respects, they were able to tuck the pool behind what would appear as a sunroom, that structure would act as an attached pool house. The ARB stated that they would not approve it because the house was too long. He felt it is beyond their power to do that; but they offered that they would submit a letter to the ZBA stating that they would prefer the pool to be in front than rather than the house being that long. Because of that decision he is here before this Board. He read a pertinent part of the ARB letter showing that they prefer the front yard pool as opposed to the proposed longer house. He noted that two neighbors are in objection to the zoning relief, those neighbors are Mr. Weinfert and Mr. Smith.

A submittal was provided that showed aerial views of the property. J. Bennett stated that a pool will not adversely affect the neighborhood. There are letters of support from neighbors in the file. Mr. Weinfert and Mr. Smith are opposed but he feels they have no basis to their opposition of the application. He contrasted with the impact on his client. He submitted a letter from Mr. Grant, a realtor, there will be a 450,000 to 500,000 impact on the value of the property without a pool.

He submitted decisions that support his application. A variance was granted to 42' on the Braverman application. The Ingolia case in 2011, a pool from 35' from Moses Lane, this property has three front yards. An application was granted for Ioannou who had a 38' relief from Burnett Street. All these variances are similar to the request.

The lot when purchased had a building permit that had a house and pool, the ARB did not approve that and preferred a variance. The Southampton Association submitted a letter regarding generalized grievances, nothing specific. He feels that they have covered any complaints that may arise from visual point of view. He notes that objections need to have substance, it can't just be that they object to the variance because of change to a neighborhood.

Chair Guidera asked about the extension of the house that put the pool behind the house, especially on depth. It was proposed to be 7' or 8' and made it look like an accessory sunroom. Robert Devinney prefers the house longer and the pool behind it. D. Guzewicz asked about the extensive screening, there is no patio shown, only coping. Yes, J. Bennett noted that it will be just coping, it could be a condition if approved. R. Devinney said he can't see the impact of this pool on any neighbor.

Counsel Robinson asked if his owner can agree to a covenant that states that as long as the pool is there they won't extend the house. J. Bennett stated that his client would agree to that.

Fred Weinfert was present, he resides at 45 Rosko Drive, some of the comparable pools in the community are all behind the house. Certain houses needed relief because of the three-front yard configuration but the pools were directly behind the house. The Moses Lane property had three front yards, but the pool was behind the house. He corrected that the building permit that was for this house had expired years ago. He noted that the builder is looking to max out the lot. They added an extension to put the pool behind the house. The ARB did not look favorably on the design or the landscape. The Chairman of that Board inferred that they don't look favorably on screening to cover something that shouldn't be there. In his opinion, the subject lot is a focal point in the community. Four drives all converge around this property. This proposed pool will impact Rosko Drive and South Rosko Drive. He

feels it will create a dangerous driving condition because of landscape. He feels it was known that this property had limitations when purchased, the current owners got a good price because of the pool limitation. He feels that other properties in the subdivision could have been purchased but would not have been the bargain that he received. He noted that Chair Guidera stated last year during a Board meeting that some lots just can't have a pool.

Motion by R. Devinney, seconded by D. Guzewicz

To close for written decision on the application of CHRISTOPHER AND JEANNE LYNCH.

On Vote: Chair Guidera, R. Devinney, M. Greenwald, D. Guzewicz and J. Zuhusky

On the application of **SOUTHAMPTON RE PARTNERS LLC**, 95 Down East Lane, affidavits of mailing and posting were submitted. Present for the applicant was Brant Reiner from InterScience. There is a proposed dock that abuts Heady Creek. This application is for a 4' pathway that will go through a buffer with a 4' wide by 104' length of ramp. It will be a 26" elevation over water and open to a platform for access to the water with kayaks or other non-motorized water craft. This project has received past ZBA variance for the same. It will be constructed with approved materials. He is here tonight to talk about the small portion in the Wetland buffer and the walk for the extension. This is consistent with other structures that are on neighboring properties. Counsel asked about DEC permit, it was noted that they haven't received it yet. It is also an application before the Trustees. The duck blind on the property has proper placard and it is legal. The owner has no intention to remove it. Counsel Bruyn stated that they need copies of the Duck Blind permits for the file. His client will add wood chips in the Wetlands, a minimal approach. C. Voorhis noted that they primarily look at the area landward of the Wetlands, since it has been permitted before. This is just to add a structure. It is dimensionally what is required, and it is open grate decking. There is currently no request for lighting. C. Voorhis would like a notation on how it could be maintained. No audience comments.

Motion by R. Devinney, seconded by D. Guzewicz

To close for written decision on the application of SOUTHAMPTON RE PARTNERS LLC.

On Vote: Chair Guidera, R. Devinney, M. Greenwald, D. Guzewicz and J. Zuhusky

On the application of **784 MEADOW LANE LLC**, 784 Meadow Lane, affidavits of mailing and posting were submitted. Present for the applicant was Gilbert Flanagan. It is a simple application for a front yard accessory structure. Half of the building will be below grade alongside an existing sunken tennis court. The variance was submitted for the tennis court. There was a Google Earth aerial submitted showing the position of the proposed structure. He also notes that he received a call from a neighbor to the West. He explained what was proposed and the neighbor had no opposition to it, this neighbor would potentially be the most affected by the structure. The building would be 4' above grade but the screening will completely cover it. There are no Wetlands or FEMA issues. Counsel Bruyn asked about the regrading of the property, specifically, is the existing vegetation on the aerial was to be kept or will it be rescreened. G. Flanagan was not positive but felt it will be retained or added to. C. Voorhis noted that Wetlands are over 100' from property lines so not an issue with this application.

Motion by R. Devinney, seconded by D. Guzewicz

To close for written decision on the application of 784 MEADOW LANE LLC.

On Vote: Chair Guidera, R. Devinney, M. Greenwald, D. Guzewicz and J. Zuhusky

On the application of **DINAH MAXWELL SMITH**, 59 Meeting House Lane, affidavits of mailing and posting were submitted. Present for the applicant was Jeffrey Gibbons, the architect for the proposed

application. The applicant would like to enclose a porch around the house and add 7' to the front of the house, leaving a setback of 25'. This house previously had a setback of 32'. The house to the West is at 24.8' and to the East is 31.8' and the house on the corner of Pine is 28'. This house does not fit into the neighborhood. The house has standing seam board and batten. The applicant will remove that and replace it with cedar shingles on the front. The hardship that may be a consideration is that there is one closet on the first floor. The rest of the house has no Southern exposure lighting and the owner would like that as well as a closet. They would put asphalt shingles on the roof instead of the current standing seam roof. They want to square off one corner. They want to enclose the existing porch, there are no properties that meet the 50' setback on the streetscape. This resident is a long-term resident. This lot seems smaller than it is because the neighbors have shrubbery encroaching on her property. Chair Guidera asked what the garage on the property is used for, it was noted it is for storage. The siding on the sides will remain board and batten.

Mark Greenwald asked if there was a streetscape, so he can see the house in relation to the other houses on the street. J. Gibbons had some photos of the homes he cited previously; M. Greenwald asked for the streetscape submission. Counsel noted that he thinks that submission should be made part of the file. The prior decision on the house should be part of the file as well. Counsel asked for calculations on the coverage of the additions. It will add 256 square feet of living space. The total GFA is 600 square feet below what is allowed. Counsel noted to submit the plans he has with the calculations to be part of the file. D. Guzewicz noted that the 25' seems in character with the neighborhood. It won't add bedrooms but a much-needed dining space, currently there is none. No public comments.

James McFarland requested by letter to have the application held open. He feels he was not properly noticed.

Motion by R. Devinney, seconded by D. Guzewicz

To adjourn for all purposes on the application of DINAH MAXWELL SMITH.

On Vote: Chair Guidera, R. Devinney, M. Greenwald, D. Guzewicz and J. Zuhusky

On the application of **BEECHWOOD LATCH, LLC**, 101 Hill Street, affidavits of mailing and posting were submitted earlier in the day to Diane. Present for the applicant was David Gilmartin, Jr. He'd like to incorporate the entire file of the prior application into the file for this application. He submitted a packet of information that was requested from previous meetings. When the current owners purchased the property, they had a few options. One, was a change from the motel zone and a future commercial use. This application is only for the Village Latch and not the Terry Cottage. The second, was a zoning change to the 6 units per acre, a limiting factor was lot coverage. Third option, is to change from one non-conforming use to another. They decided to choose the latter option.

They felt for conflict interest reasons they would go with this 128-3C zoning change. The current mayor at the time had a family member that was the previous owner. The SEQRA impact was done and the scoping session then turned into a document and they went before the Planning Board and the changes were made to it. The final environmental impact document was the findings statement, which included an analysis of the current submittal. This does not exclude the Terry Cottage. This Board is subject to the Planning Board findings statement. The Planning Board noted there was protection from a historical and environmental point of view. The density is in line with other projects in the area. The Planning Board noted that it will be beneficial to the neighborhood. The change in the use from a rooming house to a planned community would be beneficial. They also found that approval of this will disallow illegal

use of the property and protect Lake Agawam. It will provide permanent patrons for Village businesses. The findings statement overwhelmingly supports the project. They did an analysis of the MFRD, they chose to go with less than they could be allowed.

The engineer for the project, Kevin P. Walsh from vhb, stated the original plan has 24 units total. A new pool and Club House and a motor court with garages. The Terry Cottage was removed but originally had the Terry Cottage with two units, now it will become single family. Counsel Bruyn, noted the current plan has 23 units. There were 7 units in three buildings. The current reduces to 6 per building. The free-standing garages and motor court have been removed. The pool and Club House have been moved to abut the Village property, so it will not affect neighbors. They will keep everything outside that 35' buffer on the East and West. They have a reduction of GFA from 86,517 to 73,332 square feet. They have relocated the main driveway to the center of the property and wind it into the center of the property. They will both have access off the main drive. Visually from Hill Street you will see the Latch and Terry Cottage and the hedgerow.

The grading and draining plan will be capturing all storm water on site. It will provide important advantage to Lake Agawam. He noted prior studies that recommend intercepting and recharge storm water at upper elevations, that is what this project will accomplish. The storm drainage on the site now is poor, the run off from the site now creates 19,000 cubic feet of run off. They are providing a complete storm water catch and collect for all run off from all parts of the site to the drainage. The utilities plan shows the routing of water, electric, gas and sewage plants. The setbacks are all shown. There are approvals from the Health Department for a conventional system, but they will utilize IA systems to provide for the sewage. The current property has substandard cesspools only, the raw affluent loads nitrogen into the ground. The Innovative and Alternative systems are 19 ml of nitrogen per gallon, that is over 60% reduction from the current. It is important because 49% of nitrogen in the Lake Agawam is from other sources than Main Street wastewater.

The architecture is not developed enough to have a landscape plan that is complete, but they will still provide a substantial supplement to the current vegetation while preserving the existing. The Whitefield side contains heaving screening, most of that is on the Whitefield side but will be supplemented. Spruce, arborvitae and cedar as well as 6' solid side fence will provide screening.

Chair Guidera asked about the Terry Cottage, D. Gilmartin stated that it will be a single-family residence on its own separate from this project. D. Guzewicz asked if they received Fire Marshall approval, K. Walsh responded that this plan will apply those same suggestions provided in the past. It has not been signed off by the Fire Marshall. D. Guzewicz spoke with him and he had concerns and it has not been addressed with the new plan. Chair Guidera asked about how they will enforce no parking along the road. The Fire Marshall noted that because of Bishop's Pond, it appears that people do not park in their garage but use it for storage. D. Guzewicz stated that the current plan looks better that is why he asked the questions regarding the Fire Marshall, but that is still his concern. Chair Guidera noted that during a party people can park on the street and it may be hard to control.

Mr. Eshbacher, from vhb, wanted to touch on the traffic related aspects on the new plan. He wanted to address the comments from the meeting last year. The number of driveways out on Hill Street will be reduced from two to one. There will not be conflict points with the one driveway. They are moving it away from the driveways of neighbors. In October, there were comments regarding traffic generation. They develop a generation based on quantitative data. Traffic engineers compile the information and they use that as a resource reference. This manual contains info on a large variety of land uses. For

purposes of tonight, he compared 23 units to a 67-room hotel. There will be less trips at all times of the day and all days of the week. During the weekday afternoon peak hours, if the site were developed with a hotel, it would be 47 trips by comparison the condo would be 12. That is coming and going trips. Twelve trips during peak hour is equivalent to one car on Hill Street every five minutes. The same applies to other times of the day. The hotel is always more traffic in all scenarios. They are all inclusive data; all traffic would be part of those rates. They collected their analysis in August on the morning peak and afternoon peak on weekdays. Also, Saturday was studied. The busiest scenario was used to analyze the situation. It will not have any impact on traffic on Hill Street, it will only affect the people living there on site.

The shoulder seasons since off peak will have less of an impact. The parking spaces will be 3 spaces per unit, the Village Code is 2. There are 52 common on street parking within the development. Those spaces are for guest, workers, etc.

David Amaleda, land use and planning consultant for this project. He noted a memo dated 12/19/17, he will refer to it. D. Guzewicz asked for a submittal of what is being discussed. The current zoning village map is his first point, his map showed the parcel in red. The transition from Village businesses to the lower densities by multi-family zones is typical to planning. The standard land use theory is that every community has most intense uses in the center and goes out from there. Southampton Village adheres to that in many ways, but Whitefield is surrounded by R-20 which is unique. Counsel asked is it because the MF20 were zoned after. D. Amaleda stated yes. The map showed the densities in the Village.

The Planning Board was concerned by the lack of consistency in zoning in the Village in this area. In 1991 the Planning Board commissioned a study. D. Amaleda conducted the study, the best tool to solve the problem was to recommend this parcel to a hotel. The concern was that these properties were not correctly zoned. He noted a diagram study to show the recommendation of the hotel use for three parcels. The Village again recommended hotel because of the transitional nature of the parcel. The MTL zone was recommended for all three properties. Counsel Bruyn asked if the 1991 study made the same recommendation. D. Amaleda answered yes.

Finally, he spoke regarding the application of this proposed development. In it's SEQRA findings they determined that the use change would be beneficial. That finding agrees to Planning theory. That report goes on to state that the proposed use is compatible with surrounding land uses and is appropriate use between the Village center and the single-family zones. No significant negative impact to land use were noted.

M. Greenwald asked how the density 4.6 to the acre would work for this parcel. He asked why it would be a good idea for the square footage to be as great as Whitefield which has 88,000 on 14 acres. This is roughly 75,000 on 4 acres. It seems like a lot more density according to M. Greenwald. D. Amaleda, noted that you could say that of other MF developments. M. Greenwald is looking at purely square footage, he is speaking from the Village concerns regarding GFA. D. Gilmartin noted that the first chart that was submitted contained that information. The current existing is 25,815 square feet, the proposed is more but the Planning Board noted it was under-utilized in its current state. M. Greenwald noted that it may be a beneficial change but not necessarily tripling the square footage. D. Amaleda stated that to provide sufficient floor area it comes together from a site plan, to make it a more efficient use. There is give and take to make planning work. D. Guzewicz stated that you can take the same comparison from the Southampton Inn, this development is less than that, Whitefield greater but more

spread out. R. Devinney noted that it is hard to compare density with Whitefield, it is an outlier, he noted that this application seems more in line with the current density.

D. Gilmartin, the current ratio of lot coverage is about 13% and the proposed is about 19%. Both properties must be considered on both sides.

Michael Dubb, Beechwood Organization, he is part of the community as the builder. He stated that 98% of virgin land had been developed for housing. He had to look at existing uses and how they can be made better. Bishop's Pond, which he constructed, has turned out to be a positive addition to the community. He noted that people came from existing Southampton homes to go to a condo community. Regarding the concerns of the Fire Marshall, he was a volunteer fireman, he noted that fire access is a priority for him. He knows what needs to be done. Regarding parking, he noted there are ways to address parking. He noted there are things that can be done to create parking spots. He noted that a driveway pad in front of garages can make more spaces. He has never hurt property values with his developments. D. Guzewicz noted that they must raise the concerns. M. Dubb stated he is happy to go above what is required to please the Board. He addressed the landscape. Whitefield has nice shrubbery, however, there is a need for evergreen coverage which he will address. He noted they will use evergreen for screening. Many mature trees can remain with this new site plan. D. Guzewicz asked about the storm water and septic. Do they have a plan that shows that system? The engineer showed the incorporation of the septic and drainage. He said they had 23 dry wells. They will be drywells. R. Devinney stated that getting out of the driveway at peak times making a left will be tough, not a question but an observance.

D. Gilmartin noted that the benefit balance to the Village would alleviate illegal use of the property, manage waste water, maintain character of the Village, and provide patronage to businesses. He showed an aerial of the area and he showed that the character of the Village there is denser, and it will fit in to the existing. He noted there are no alternatives for them, this Board is the only Board that can provide the relief to change the use. He notes that it is not a self-inflicted hardship, it is a non-conforming property to change use.

P. Fife, representing the Whitefield Condo, stated that they appreciate Beechwood's changes. They support those changes. They did make clear that there still were density concerns, particularly square footage. It has not been reduced enough under the Village MF20 zone. The concern is with the area zone changes when paired with the change of use. The revised plan shows more density on the backside of the area. They feel that the intense density is their concern. It affects view, it is a very narrow lot, it is a significant degree of development. He noted that the 3/4 bedrooms per residence are certainly more than the Village Latch. There were only 37 rooms and not 67 rooms allowed in the 1975 decision. He stated that 37 sleeping rooms should be the number that should be used. He noted that the Planning Board realized that the Zoning Board would have to issue variance approval, it is not too late to change the size. The former use did not generate the same amount of use as a condo development would. He stated that Hotel use was originally the suggested use as most beneficial. The level of density is the primary concern, it needs to be a more reasonable proposal. He noted it needs to be viewed in totality. Multi family may not be a bad change but there are multiple variances being requested here. It is not just a land use change. He noted that it could set precedent for future cases. He stated that they are required to meet the R20 zoning, that was the condition. He's not suggesting meeting R20 in entirety, but he feels they are overreaching what is reasonably appropriate. The max GFA under MF20 is roughly 25,000 square foot. The requested variances are substantial; it is a very real concern.

From Whitefield Condo perspective, they will want the Board to require covenant restrictions requiring nothing being built in the backyards. No hot tubs, pools, decks, etc. in those backyard areas. He will like to see an updated landscaping plan. Lastly, he would like to look at Mr. Amalada's report to review that. He'd like the record left open for the consideration of the requested report and plans. Also, individuals from Whitefield would like to speak but could not come because of weather.

Chair Guidera asked does he want a reduction in units or size. P. Fife does not know if it needs to be analyzed in that way, it needs a change. R. Devinney asked what appropriate use for the backyard is. He noted people will want to use their backyard. P. Fife noted patios can be in side yards as shown on the plans. R. Devinney is concerned that people will not be able to use their condos backyards. P. Fife feels it is appropriate to have patios on the side yards. D. Guzewicz asked D. Gilmartin if they can get a floor plan. D. Gilmartin noted that they were not at that part of the planning, but they will be 3-bedroom units and they would have 86 bedrooms and 62 bathrooms. They are 3400 square foot units, basements will not have bedrooms. The basements will have Egress windows, but they will not finish. It was noted if they have Egress they may in the future make bedrooms. R. Dubb noted that he believes that it is code to have an Egress type window in the basement.

The builder, stated the target market is empty nesters. Not to say that they won't have young buyers, but they won't be the target market. The fronts of Whitefield units don't have windows that face their proposed development. The garages are included in the 3400 square feet, that is the largest. There are smaller units. Steven Dubb, Beechwood Organization, noted they think their target market is estate district and they want bigger houses but smaller than what they currently have. Homes are larger now, there is demand for newer condo units from what was built in the past. D. Guzewicz noted that floor plans would be helpful. It was also noted that the master would be downstairs, the other bedrooms upstairs. Most of the living area would be first floor. Chair Guidera noted that what bothers him is number of units. He noted that they thought they were in line with what has been done in the community. S. Dubb noted that only 10 units are 3400 square feet. The Terry Cottage will be larger because it is single family. They noted they can come back with floor plans.

P. Fife noted that the GFA is separate from the unit. Counsel noted it is a valid question. Counsel asked P. Fife about existing covenants about Whitefield. He will check any existing covenants.

L. Riley noted they have an opposition letter representing the Southampton Inn. Her main concern was the landscape plan. D. Gilmartin felt that since they are non-conforming, it seems ungenerous to him that they would criticize.

They are 127' away from Whitefield Condo, that is essentially a buildable lot size between the proposed. D. Gilmartin noted that their charge is to see if its more beneficial to the neighborhood, even though there are lots of variances, it changes the use to a more positive overall. Applying the R20 is unfair to the history and background of this property. D. Gilmartin noted they will bring the floor plans.

Dede Moen, 91 Hill Street, the use at the attempt of landscaping are all well-spoken. The density seems to be the issue, she feels the current zoning should be applied to this parcel. The square footage, lot coverage and number of units.

D. Gilmartin noted that 6 units per acre is a provision that could have been applied. The Trustees could have been a channel that he could have gone through, he chose the Planning Board, ZBA route.

Motion by R. Devinney, seconded by D. Guzewicz

To adjourn for all purposes on the application of BEECHWOOD LATCH, LLC.

On Vote: Chair Guidera, G. Guzewicz, M. Greenwald, J. Zuhusky and R. Devinney.

Motion by D. Guzewicz, seconded by J. Zuhusky

To close the meeting.

On Vote: Chair Guidera, D. Guzewicz, M. Greenwald, J. Zuhusky and R. Devinney

Respectfully Submitted by:

JoLee Sanchez

File Date: _____

Village Clerk