

**ZONING BOARD OF APPEALS
VILLAGE OF SOUTHAMPTON
JUNE 25, 2020
ZOOM WEBINAR PUBLIC HEARING**

Pursuant to Executive Order 202.1 adopted by the Governor of the State of New York on March 12, 2020, Article 7 of the Public Officers Law (Open Meetings Law), is suspended “to the extent necessary to permit any public body to meet and take such actions authorized by the law without permitting in public in person access to meetings and authorizing such meetings to be held remotely by conference call or similar service, provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed.”

The Board met via Zoom on Thursday, June 25, 2020 at 6:00 p.m.

Board members Kevin Guidera, Mark Greenwald, Dan Guzewicz and Julia McCormack were present.

Counsel for the Board David Kirst and Environmental Planning Consultant Chic Voorhis were present.

MOTION by D. Guzewicz, second by M. Greenwald
To appoint Kevin Guidera to act as Chair for this meeting.
On Vote: M. Greenwald, D. Guzewicz, K. Guidera and J. McCormack

PENDING DECISIONS

On the application of **MEREDITH JOYCE TRUST**, 765 Hill Street, the applicant has the right to have a full board vote to vote on this written decision. M. Greenwald mentioned that the new member of the Board would be given to the opportunity to hear everything firsthand. Counsel noted that it will then be reopened and renoticed for the new Board member. D. Guzewicz wonders if should adjourn on this application. Counsel Kirst stated that they can adjourn to next meeting and they may have a new Board member by that time.

MOTION by D. Guzewicz, second M. Greenwald
To adjourn the application of **MEREDITH JOYCE TRUST** to next public hearing.
On Vote: Chair Guidera, M. Greenwald, D. Guzewicz and J. McCormack

John Bennett spoke that he agrees with holding it over and that he definitely wants a full Board for the decision.

PENDING CASES

On the application of **ANDREW & DANA STONE**, 527 Meadow Lane, there was letter submitted requesting adjournment.

MOTION by D. Guzewicz, second by M. Greenwald
To approve the applicants request to adjourn on the application of **ANDREW & DANA STONE**.
On Vote: Chair Guidera, M. Greenwald, D. Guzewicz and J. McCormack

On the application of **COMMUNITY BAPTIST CHURCH**, 16 Rev Raymond Lee Court, there was a letter requesting adjournment.

MOTION by D. Guzewicz, second by M. Greenwald

To approve the applicants request to adjourn on the application of **COMMUNITY BAPTIST CHURCH**.

On Vote: Chair Guidera, M. Greenwald, D. Guzewicz and J. McCormack

On the application of **DPB SOUTHAMPTON LLC**, 70 South Hill Street, Counsel Kirst says that Tiffany Scarlato is now representing the applicant but will be submitting a withdrawal. This can be adjourned.

MOTION by D. Guzewicz, second by J. McCormack

To adjourn for all purposes on the application of **DPB SOUTHAMPTON LLC**.

On Vote: Chair Guidera, M. Greenwald, D. Guzewicz and J. McCormack

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On the application of **SOUTH LANE PROPERTIES LLC – RE: 72 GIN LANE**, present for the applicant was Thomas Gibbons, also Chris Shumway the owner was present. Counsel Kirst advised the Board that they needed to decide whether or not he has standing or not, that means does he have special injury or damage. Chair feels that this opens up can of worms, D. Guzewicz feels that people are allowed to build houses and some views get blocked when that happens. M. Greenwald feels that there is some type of injury to lose a view, coastal properties are a little different. Chair noted that he has a view.

Chris Shumway is the owner and injured person and he is here. Thomas Gibbons said that once they show injury it shows standing and they have the right to bring third party appeal. He disagrees with J. Bennett; we are not in front of Town Board and Village Law applies. There is no member of the public that has this house next to them, you can see this house clearly from this property. He urges all members to do a site visit. He has the ability to come before the Board and ask for relief.

Chris Shumway, owner, feels he is reasonable, if he looks over his shower it is a large structure right on the beach dune and vastly different than what was there before. This property which has been put up has damaged the value of his property. He urged the Board to look at it and they can judge for themselves. The real question he has is why with the covenant from the Planning Board, why has the Planning board not been in on this. This is a vastly different situation than what was there before. He feels he has a right to be protected by the Law. He notes from the Beach you see the difference between it and the other surrounding homes.

Thomas Gibbons stated that this is really quite simple. He contends that there is a covenant that prohibits construction within 100' of the top of the dune. They were permitted to put a second story and when you knock it over you lose right to what you had. He contends they do not have the right to override the Planning Board's decision and even though his client's property is not in subdivision does not matter. He states that if he goes into Building Department tomorrow to ask to build this house by the inspector, he would never be allowed to proceed that way, this should have gone in front of the Planning Board to begin with. His argument is that they should never have granted the permits given for this property. They want covenant by Planning Board enforced.

D. Guzewicz asked Counsel if they only have to decide financial harm to give standing. Counsel stated that if they consider the view to be protected, they will have to decide whether the claimed impact on the view would have detrimental effect. D. Guzewicz feels that building a house next to yours improves property value. M. Greenwald said the applicant did submit an appraisal that showed an impact. Chair

feels that you cannot believe the appraisal and he feels it is inconsequential. Improved property increases value. M. Greenwald feels that it may not apply to shoreline property.

J. Bennett feels that it is so full of misstatements, he feels there is absolutely nothing that should be done under any principle of Law. J. Bennett feels that Counsel has a conflict of interest. Counsel Kirst stated that the counsel for this case is for the Village of Southampton and it has been discussed with Village Counsel. J. Bennett stated there is an ethical problem. He stated there is black and white case law, they are exactly the same and are creatures of State Legislation. This covenant does not apply according to him because he is not a part of the subdivision. He stated case law showing that if a person is not part of the covenant that they are not an injured party. This covenant came out of litigation, the ZBA denied request for second story and the ZBA was required to allow to be built. This is the third house on this footprint. Mr. Shumway had his opportunity and he has no standing, when he did not go to the appellate division and to try to get the stay overturned, his case became toast. He had litigated a case in which the court stated Ann Pine, an adjacent owner was denied being an aggrieved party. He states it is mute. This was litigated years ago, he stated that his case law states it all. J. Bennett stated that an owner in the Town of Huntington, it is similar a similar situation and a guy went in and put a house right in the view shed of the owner. The judge stated in dismissal that there was no provision for a code for a view or privacy. He feels that Counsel Kirst should not have given the Board the advice he has given. He also questions the appraisal; he feels it is too high. He feels this should be closed; he feels that Counsel Kirst needs to be recused. He would ask them to ask Mr. Gibbons where an order to have standing you have to be in the subdivision. They built in good faith and relied on the building permit. He feels it enables people to continue to allow people to do things that they do not like that they are allowed by code.

Chris Shumway stated that his property contains structures that once knocked down could be built completely new, he could by that theory put up new structures are not allowed once they are grandfathered. They have to go to file for permit, they cannot go straight to building inspector and get variance. He would not have any problem if they would have kept the existing house. It does not look like a cabana; they have damages and they are legitimate. He feels that if they can just do that outside of law, it could become a precedent. He does not understand why Planning Board was not involved and he feels it was an inside deal. The building inspector should not have put it, Chair states that the issue is that has he been harmed. Chair stated why had not he gone when the permit was pulled, but C. Shumway feels it should go to Planning Board. If they are going to build a new non-conforming structure and he would want them to see. He would like screening; Chair feels that screening will impair his view more. The screening will provide him less view of the structure. He feels it is not there by right.

J. Bennett stated there was a screening plan that was approved by ARB and it is on file and there is new screening to the East, it is there. They augmented the existed screening by Arnie Maynard.

D. Guzewicz stated that the house was built in the exact footprint and was just built to new FEMA regulations.

T. Gibbons noted there is a covenant on the property, they never did that, they side stepped the Planning Board. Variances do not lift the covenant by the PB. He is asking for enforcement of covenant. D. Guzewicz asked Chair and Counsel, originally there was a house which they wanted to tear down and build new. He sees ancient history here; he feels that it should have been done. Counsel Kirst stated the timeline was correct, but they need to figure that they have to decide whether the Building Inspector deemed correctly. Counsel Kirst stated that he does not have to recuse. They can decide

whether he is an injured party, their code is different from other townships. J. Bennett noted it is the determination of the Board if view shed is part of the issue.

Counsel requested the lower court determination in Bleyer to see if it supports the claims from J. Bennett and T. Gibbons. The County shut down has prohibited him receiving that to date. J. McCormack feels that she needs to read the underlying cases, she is confused about where they are, she shares M. Greenwald views because there is an impact but she is not an attorney and she needs more information, but she is aware that the house is fully built almost. D. Guzewicz noted that they tried to block, but the court allowed them to go on. No TRO was given, but still litigating an injunction according to T. Gibbons. The Supreme Court and what is before the Board are two different things.

J. Bennett stated that the law created strong requirement for aggrievement and did not issue motion for a TRO. They should have asked for a stay at the appellate court earlier. He stated that his counsel should have gone to the appellate and now they have a muteness to the case. He is asking this to be closed. Chair asked for opinion of Board, he would like to close it. D. Guzewicz would to, but they can talk over at next work session. J. McCormack would like to ask that they have the opportunity to discuss the matter amongst themselves. Counsel for the applicant wants a fifth member for the vote as well.

MOTION by D. Guzewicz, second J. McCormack

To adjourn for all purposes on the application of **SOUTHLANDE PRPERTIES LLC – RE: 72 GIN LANE.**

On Vote: Chair Guidera, M. Greenwald, D. Guzewicz and J. McCormack

On the application of **AESO REALTY LLC**, 145 Coopers Farm Road, present for the applicant was Counsel Alex Kriegsmann and Morgan Rolontz, the architect for the project. They are seeking relief of the maximum allowable GFA. His client has been living in the residence for more than 10 years, she would like to add on to the existing house on the second floor while not expanding the footprint. This will have just negligible impact; she is looking for extras space for her family. It was their impression from the last work session, that the Board feel that there is not a good reason provided for the variance. A. Kriegsmann noted that it is a beautiful design and consistent with neighborhood. They ask for this variance to be granted. Chair noted it is more space that they desire.

M. Greenwald asked if just it is just a GFA variance with no pyramid relief? They confirmed no pyramid issue, but it is a 10% increase over the maximum allowed GFA. D. Guzewicz added that the Village changed this code because there were too many large homes on small lots, the reduction was in order to minimize that. Chair stated that this is quite a sensitive request for relief since zoning has changed and they feel they cannot open it up broadly. A. Kriegsmann contended that by necessity everyone here is trying to go outside the code. He feels the impact on the neighborhood isn't too big, this is a modest house and they are a growing family, that is a set of facts that distinguish this as different. M. Greenwald asked if there are floorplans and elevations, D. Guzewicz noted he does not see them. J. McCormack said they were given in March. The Board would like to see and have plans.

M. Rolontz, architect, shared the drawings via his screen. They are not increasing the footprint they are just adding to the existing second story. The extra space will be for a study and extra bedroom space. There are two outside deck off the garage, one deck faces Coopers Farm Road. It does not extend over the footprint of the garage; the second floor is not larger than the first floor and there is no roof over deck area. M. Greenwald feels the drawings should show the Pyramid lines. They noted that they have been submitted, D. Kirst has a copy of that in his file and he will circulate that to the Board. Counsel will be held up the Pyramid drawings for the Board, they showed no violation of law. Chair said it is close

but not violating. D. Guzewicz wonders how the Board feels about the increase in massing, asked if they have done that before. It was done on Halsey but not for this large of a request. M. Greenwald noted they need to look at that, they provided a variance to the GFA recently. Counsel Kirst said that decision was 299 square feet, this is a 474 square foot request. The percentage of increase on Halsey application was pretty close to 10 percent, that was over GFA by new code change. A. Kriegsman stated there are relevant factors here for the Board to consider. The deck on the study is facing neighbors, M. Greenwald is not in favor of the deck overlooking the street. Counsel Kirst stated that consideration of the decks is in their purview in this application because that will be part of the decision. The Board feels both decks may be a problem, it increases the usage outside on the exterior. One of the decks did not increase the footprint of the interior space. There is no opposition from neighbors. On Coopers Farm there are no decks on the front, the architect noted they can look into removing the deck. They are trying to minimize the interior space and that is why they are there for an attractive alternative. M. Greenwald asked about removing deck and not increasing interior space, that is something they will look at, if advisable. There will be six bedrooms not including the study, there are five currently. D. Guzewicz asked if there are finished bedrooms in the basement. The first floor has one bedroom, but there are no bedrooms in the basement. So, it is seven bedrooms total if this request is granted.

Chair asked how is the parking for seven bedrooms, they have to supply the parking plan. They have to provide six parking spaces total. Counsel Kirst noted that is not before the Board now, the architect noted they can fit four cars, they have to check with the Village about stacked parking. Counsel will speak with Chris Talbot about the parking situation. M. Greenwald is wrestling with this a bit, they have six bedrooms on second floor plus a study. M. Rolontz stated that they have split a bedroom in half to create the sixth bedroom, they are trying to equalize bedrooms. They have four children, a nanny and a housekeeper besides guests. M. Greenwald noted that it is not a matter of just this case, it comes up a lot and they have to balance things out.

MOTION by Guzewicz, second J. McCormack

To adjourn for all purposes on the application of **AESO REALTY LLC**.

On Vote: Chair Guidera, M. Greenwald, D. Guzewicz and J. McCormack

NEW CASES

On the application of **CHICKAMAPAUGEE LLC**, 500 Captains Neck Lane, present for the applicant was Melissa Dedovich. She is joined with Matt Jarrett, Ethan Dropkin and Andrew Korzon. This is a revegetation plan and she will hand over the presentation to A. Korzon. The plans are uploaded to screenshare with the Board. C. Voorhis wants the graphic to show the color rendered plan for the revegetation plan. C. Voorhis screen shared. They have existing shrubland that is primarily native shrub. There is also existing marsh grassland and 90% native with some phragmites. Above the marsh area, not shown by resolution, is a meadow mix they intend to install. The existing conditions are turf grass currently mowed. There are common turf weeds including a broad leaf weed, they would like to install all native species that can handle site conditions, they will be live native plants in various container sizes. The intention of live drifts is for aesthetic and usher a meadow establishment and hurry it along. There will be pathways to an existing dock. D. Guzewicz asked if it is going from mowed to non-mowed. Yes, but it is a three-year process and they will mow this area every 4-6 weeks to keep weed growth down. They generally try to get to one mow in a year. It will be maintained at least once a year to get weeds and non-native outs. The seed mix will not require irrigation, they will be able to limit the amount of irrigation required. They would take advantage of back to back seasons.

D. Guzewicz asked C. Voorhis if he has reviewed the list and agrees with the plantings. They had a couple of minor comments, he will provide the prepared memo to M. Dedovich. They feel a couple are not native and they are minor, but they will go over and see if comments can be addressed. They flagged wetlands in 2017, the setbacks of the Village are shown on the plan. They encourage this type of plan but on average the 25' setback is receiving more native planting for revegetation; it is overall a great plan. The trails reduce the vegetation but overall they like the plan. The memo identifies materials and there are comments regarding seed mix and non-natives in accent areas. D. Guzewicz asked how managing the phragmites would be done. M. Dedovich acknowledged that there is a plan and it needs to be updated a little bit because of the timing issue with COVID, but it is easy to adapt. The management plan performs mowing or cutting in June, then waiting 6-8 weeks and go back wick apply herbicide and then following year repeat process again in July and Fall and then repeat in third year and wicking the phragmites once in 2022 and then once a year wick application annually. M. Dedovich said had wicking and cutting are all by hand.

The existing conditions map was shown, each of these areas specifically address where everything is located in the D-portion of the map. The majority of the wetlands look beautiful but the phragmites will choke everything. D. Guzewicz asked will native plantings habitat and out compete it. C. Voorhis said it is a legitimate approach. D. Guzewicz likes the plan. C. Voorhis asked if both pathways are needed. M. Jarrett noted that the owner asked for paths throughout the property to walk and enjoy entirety of his property, C. Voorhis asked about the ground cover in those areas, same plants but mowed. They feel turf does not work well, it creates sod, mowing the plants is best. C. Voorhis feels some look quite wide but can they be 4'. They can be 4' according to M. Jarrett and he can make a note of the that on plans. They need to update the timeframe for management, they will submit that and make adjustments to the plant mix. C. Voorhis does not have a decision prepared for tonight, but in cases like this that are beneficial they like to move along. He can prepare a decision for next meeting. Sadly, they will have to wait until Fall to plant. M. Dedovich asked they put as a condition or make change on plan.

MOTION by D. Guzewicz, second J. McCormack

To close for written decision on the application of **CHICKAMAPAUCEE LLC**.

On Vote: Chair Guidera, M. Greenwald, D. Guzewicz and J. McCormack

On the application of **MORSE AND CONNORS**, 24 Osborne Avenue, present for the applicant was Victor Prusinowski. This is a minor variance for an already built pool and the survey was accurate, however the pool company did not install correctly, two sides are off by 1.3' on both corners. This was not picked up until the as built survey was completed, in total it is a 6% request for relief. The pool company was in error, and this was not created by the applicant and they want to close out their permit and obtain the Certificate of Occupancy. The angle of the pool is off a bit, the flagging was not incorrect. This property is not square to the street and it is easy to see how it could happen. D. Guzewicz has sympathy for the applicant, he does not see why not to grant it, it was sited in a conforming location and size. This is a nominal variance and it was picked up on survey after the fact. The pool is not larger than permitted, it was purely an error. M. Greenwald asked if he was the owner, V. Prusinowski noted that he is helping them out from his past experience as a Board member in Riverhead Town. Counsel Kirst will write decision for work session.

MOTION by D. Guzewicz, second M. Greenwald

To close for written decision on the application of **MORSE AND CONNORS**.

On Vote: Chair Guidera, M. Greenwald, D. Guzewicz and J. McCormack

On the application of **SEBONAC REALTY LLC**, 50 County Road 39, present for the applicant was Shawn Leonard. This request is for relief of a transition yard, the property on County Road 39, it is the laundry business and abuts an R-12 district. Originally, the east property was privately owned but now it is owned by Town of Southampton and Village of Southampton to be preserved as open space. Since it will be open space they are wondering if they can have the transition yard removed, they are not transitioning from a business to a residence since they have this buffer. They are doing quite well and they have the need for additional parking, and if they have no transition yard it will gain 40' of parking to the east and possibly 9-13 spots, which is what they need for the use of the business. There are currently 16-17 spots, but it is overflowed when they are busy. It is a laundromat, there are 50 washer and 50 dryers and on weekends the place is packed. D. Guzewicz noted the parking lot is filled. It was noted that it opens early. There is a letter of opposition in the file from a neighbor. It is zoned highway business but borders up against residential. They will plant screening along the property line. Chair does not see why the neighbor has a problem; it only adds a few extra spaces. Counsel asked if there is a screening plan, they can provide one. D. Guzewicz asked if existing screening exists already. There is a 6' stockade fence with arborvitae. The additional spaces are about 7 and they are not going against any neighbor at all. They will add an additional handicap space as well. Counsel asked about the dumpster that appears on the survey. The survey is incorrect according to S. Leonard, it needs to be made 10' off.

MOTION by D. Guzewicz, second J. McCormack

To close for written decision on the application of **SEBONAC REALTY LLC**.

On Vote: Chair Guidera, M. Greenwald, D. Guzewicz and J. McCormack

On the application of **BLC HILLSIDE INVESTMENTS LLC**, 132 S Main Street, present for the applicant was Tiffany Scarlato. They received prior approval to reorient the barn and they received a variance. The ARB denied and urged to come back with an orientation that was more historic. The barn is not historic, the argument with the ARB was that although not historic in its timber, it was completely historic restoration and it is in the flag lot because of the property line modification, so must be relocated. It has to be moved either way it just a question of where. There is no change in the character of the neighborhood, they are trying to maintain the existing historic presentation of the building. They can reorient but then they would have to go to the ARB and their request is that they bring as close as possible to its original presentation. There is no adjoining neighbor, it is a flag lot. The variance will not have adverse impact on the existing neighborhood character, just moving to another location. The change of the location is noted on a plan they submitted; they would move to the new location. The Board does not have a problem with the location. It can be knocked down completely and then it would have to be in a conforming location. The ARB perspective is historic location is important. M. Greenwald noted they had already approved a certain location, Counsel stated there is conflict between two Boards. It is historic in size and construction and they would have to go to ARB and propose something smaller and they desire to keep and relocate the structure. M. Greenwald noted that was their purview, they decided that retaining size was acceptable as long as relocated. If they knocked it down, they would have to maintain the size. Chair asked if proposed location was conforming, can it be moved to a conforming location. M. Greenwald stated that the ARB wants it maintained in a historic location and situate. It is an attempt to try to make it as historically accurate as possible. They are not harming anyone with the proposed location. They are asking for 5' setback relief, and 562 cubic feet of Pyramid Relief.

Bill Freeman, son of neighbor to the east, he feels that his concerns have been clarified that it will not impact his mother's property. It is northern per T. Scarlato. His mother's property is right behind the church, it is not moving all that far from its original location. T. Scarlato showed Mr. Freeman the

location on the screen. It is closer to her property and he asked will it be in the view plane; it was noted that it probably already is in her view, but the change is approximately the length of a car at 16'. T. Scarlato also informed him that there is a buildable lot in front of his mother's property. D. Guzewicz does not have a problem amending current decision.

MOTION by D. Guzewicz, second M. Greenwald

To close for written decision on the application of **BLC HILLSIDE INVESTMENTS LLC**.

On Vote: Chair Guidera, M. Greenwald, D. Guzewicz and J. McCormack

On the application of **NARROW LANE LLC**, 315 Narrow Lane, this application has been withdrawn.

MOTION by Chair Guidera, second D. Guzewicz

To close the meeting.

On Vote: Chair Guidera, M. Greenwald, D. Guzewicz and J. McCormack

Respectfully Submitted by:

JoLee Sanchez

File Date: _____

Village Clerk