

**VILLAGE OF QUOGUE
ZONING BOARD OF APPEALS
WEDNESDAY OCTOBER 18, 2021
3:00 P.M.**

This meeting was held remotely by videoconference, pursuant to Part E of Chapter 417 of the Laws of 2021 adopted by the New York State Legislature, which modified portions of the Open Meetings Law, allowing the meeting of the Board of Appeals and aforementioned public hearings to be held by teleconference or videoconference (i.e. ZOOM).

Present: Chairperson Pamela Chepiga, Brendan Ryan, Bruce Peiffer, Geoff Judge, Ed Tolley, Village Building Inspector William Nowak, and Village Attorney Wayne Bruyn

1) Ms. Chepiga opened the meeting with a roll call, and then noted that the dates of the next two meetings will be: November 10, 2021 & December 15, 2021. These meetings will all be held by videoconference. Ms. Chepiga then asked for a motion to approve the minutes of the September 22, 2021 meeting.

MR. PEIFFER MADE A MOTION TO APPROVE THE MINUTES OF THE SEPTEMBER 22, 2021 MEETING. MR. JUDGE SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY CARRIED.

2) The first matter to be heard today was the application of: **PENNIMAN’S POINT LIMITED PARTNERSHIP [SCTM# 902-6-2-2.80] for:** variances from the provisions of §196-12A in order to permit a rear yard setback of 80’ for a future dwelling where 100’ is required, said variance having been previously granted by the Board of Appeals by decision dated January 4, 2003, which decision was extended through 2019 but is now expired; and all other necessary relief on a 99,929 sq.ft. parcel of land designated as Lot 3 (formerly shown as proposed Lot 4) on the filed Subdivision Map for Penniman’s Point Limited Partnership Section II, filed in the office of the Suffolk County Clerk on August 9, 2012 as Map No. 11872, and located on the southerly side of Second Neck Lane, opposite Second Neck Court, in the A-8 Residence.

Attorney Jane Kratz was present on the teleconference. Ms. Kratz explained that she has represented the partnership for the duration of the variances, and has submitted the history of what has transpired. The applicant is requesting an extension of a rear yard setback variance that had been previously granted in 2002 or 2003, and had been extended since then. Ms. Chepiga asked if the variance is currently expired. Ms. Kratz explained that it had expired, but that because the Planning Board approved the setback as well, and the setback appears on the filed subdivision map, they are asking for the relief to be either renewed or reissued. Ms. Chepiga asked if there is intent to build the home as listed on the survey. Ms. Kratz explained that the property is under contract of sale, and the new owners will be applying for a building permit and would adhere to the rear yard setback if approved. Ms. Kratz is not sure if the footprint will remain the same, as

she has not seen the plans. Mr. Tolley asked if the contract of sale specifies that the new owners will adhere to the setbacks without specifying the footprint of the house. Ms. Kratz said she believes that the new owners will adhere to the rear yard setbacks if granted, and believes they will also conform with any additional setbacks. Ms. Chepiga expressed concern that the new owners would be asking for additional relief, and would rather have the Board consider everything at once. Ms. Kratz did not believe that the new owners would be asking for any additional relief, but she is not positive. Mr. Peiffer also had concerns about additional requests for relief. Mr. Bruyn noted that the survey from 2003 only showed setback relief for the rear yard, and all other setbacks conforming. Mr. Bruyn recommended that since this variance has expired, and that the property was originally listed as Lot 4, and then changed to Lot 3 on the filed map, a new variance should be granted as opposed to renewing the old variance. Ms. Chepiga asked if Ms. Kratz would like to adjourn and have the new owners confirm what variance relief, if any, will be needed. Ms. Kratz agreed. Ms. Chepiga asked if anyone else would like to be heard on this matter. Since no one did, she then asked for a motion to adjourn.

MR. TOLLEY MADE A MOTION TO ADJOURN THIS APPLICATION TO THE NEXT MEETING. MR. RYAN SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY CARRIED.

3) The next matter to be heard was the application of **NANCY OVERLANDER & CRAIG OVERLANDER at 46 SHINNECOCK ROAD [SCTM# 902-10-3-9.2] for:** variances from the provisions of §196-12A in order to legalize existing improvements and expand an existing first floor bedroom by 151 sq.ft. at the southeasterly corner of an existing dwelling, add a pergola to an existing deck and add a hot tub to an existing swimming pool which will increase the nonconforming lot coverage from 15.9% as previously granted by the Board of Appeals by decision dated December 7, 2017, to 17.9% where 15% is required; and all other necessary relief on a 87,287 sq.ft. parcel of land located on the easterly side of Shinnecock Road, approximately 585' southeasterly of Niamogue Lane in the A-8 Residence District.

Architect Michael McCann was present on the teleconference for the applicants. Mr. McCann reviewed the application. He explained that they are looking for relief from lot coverage to 17.9% from 15% to expand the decking and add an additional bedroom, and also to correct a previous lot coverage error. Mr. McCann did not think this would have any adverse effect on the neighborhood, and was only 2.9% above allowable lot coverage, and therefore is a minimal request. Mr. Ryan noted that the request would actually be a 19% increase over what is allowed for lot coverage. Mr. Peiffer asked what is the current lot coverage of the property. Mr. McCann said the current lot coverage is 17.3%, and that a variance had previously been granted for 15.5% lot coverage. He explained that when the Overlanders filed for a Certificate of Occupancy after the front addition was completed, the lot coverage was different than originally intended. The original survey did not include walkways, paths and a generator pad. The original survey had the lot coverage at 15.5%, and that is was the variance request was based upon. The as built survey showed the lot coverage at 17.3%, which he believes differed from the original because the walkways and generator pad were not included in the original calculation. Mr. Peiffer had concerns that the owners are asking for additional relief, when what was granted was for 15.5%, the current lot coverage is 17.3%, and now they are requesting to expand to 17.9%.

Mr. Peiffer asked why the applicant had not gone before the Board when the lot coverage error was discovered, and explain what happened. As this is a substantial difference, Mr. Peiffer feels

that the person who made the error should explain to the Board how this difference came about. Mr. McCann explained that they built the addition as they were supposed to, and there was some error between the two surveys. Mr. Bruyn asked if the surveyors were the same for both surveys. Mr. McCann said they were the same. Mr. Bruyn thought the surveyor should review the past surveys and report on the errors or omissions or changes that caused the change in lot coverage. Mr. McCann said he will consult with the surveyors and come back to the next meeting. Mr. Tolley and Mr. Peiffer both expressed their concerns about expanding further on lot coverage, and both would like a clear answer on the current lot coverage difference. Mr. Nowak suggested Mr. McCann make an appointment with him, and they could review the property. Ms. Chepiga asked if anyone else would like to be heard regarding this application. Kittric Motz suggested the walkways being cut down to reduce lot coverage. Ms. Chepiga asked for a motion to adjourn to the next meeting.

MR. TOLLEY MADE A MOTION TO ADJOURN THIS APPLICATION TO THE NEXT MEETING. MR. PEIFFER SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY CARRIED.

4) The next matter on the agenda was the application of **EDWARD SOMEKH & ELIZABETH SOMEKH** of **17 BAY ROAD [SCTM# 902-6-1-10]** for: the following relief and variances: (1) declaring the southerly lot line along a 20' private right-of-way as the front lot line where the Building Inspector and previous decisions of the Board of Appeals designated the northerly water front lot line as the front lot line, and the private 20' r-o-w as the rear lot line; (2) in the event the northerly waterfront lot line remains the front lot line, setback variances from the provisions of §196-12A in order to permit the 100% reconstruction with modifications of an existing nonconforming dwelling with a front yard setback of 55.1' where 75' is required and a side yard setback of 15.5' from the westerly property line where 35' is required or in the event the southerly lot line along the 20' r-o-w is designated the front lot line, setback variances from the provisions of §196-12A in order to permit the 100% reconstruction with modifications of an existing nonconforming dwelling, with a rear yard setback of 55.1' where 100' is required and a side yard setback of 15.5' from the easterly property line where 35' is required; (3) if applicable, §196-48A to permit the reconstruction with modifications to an existing dwelling at a height that exceeds 16' in the required front, rear and/or side yards; (4) in the event the northerly waterfront lot line remains the front lot line, setback variances from the provisions of §196-12A in order to permit the construction of a new swimming pool, spa and patio (including pool enclosure fence, and walkway) with accessory front yard setbacks of 88.7', 78.7' and 81.2', respectively, where 100' is required; (5) in the event the northerly waterfront lot line remains the front lot line, setback variances from the provisions of §196-12A in order to permit the reconstruction with expansion of the tennis court with a side yard setback of 25' and a rear yard setback of 30' where 35' is required or in the event the southerly lot line along the 20' r-o-w is designated the front lot line, setback variances from the provisions of §196-12A in order to permit the reconstruction with expansion of the tennis court with a side yard setback of 25' where 35' is required and a front yard setback of 30' where 100' is required; and (6) all other necessary relief on a 80,586 sq.ft. parcel of land located on the northerly side of a 20' private right-of-way extending from the northerly side

of Bay Road, approximately 1,470' east of Montauk Highway, and the southerly side of Stone Creek in the A-8 Residence District.

Attorney Kittric Motz was present on the teleconference for the applicants. Ms. Motz reviewed the application. She explained that this application is a two step process. If the first request is approved, the remainder would not be needed. The primary request is to have the southerly property line be declared the front yard, and if that is approved, the only additional relief needed would be for the tennis court reconstruction and expansion. Ms. Motz then reviewed the alternative request if the first request is not granted. Ms. Motz noted they would be willing to remove the upstairs bathroom of the garage, and just have a powder room on the mail floor to be in compliance. Mr. Bruyn asked what was involved with the house reconstruction. Ms. Motz said there would be interior and exterior reconstruction. Ms. Motz referenced Exhibit 2-1, explaining that the red lines are the existing roof lines and structure, and the proposed roof lines are in blue. She also referenced Exhibit 2-2 to show the proposed height changes. Architect Nicholas Karytinis was also on the teleconference. He explained that the structure is being opened up and then reconstructed, and no additional relief would be needed. Ms. Motz said the front of the house would face the 20 ft. right of way. Mr. Bruyn asked if Ms. Motz knew why the waterfront had been designated the front yard to begin with. Ms. Motz said there was no discussion in the public record as of why, but she thought maybe because flag lots were not allowed at the time the original variance had been granted. Currently the right of way is treated as a road, and she noted that each of the affected neighbors has written a letter in support of this application. Mr. Tolley just wanted to confirm that if they designated the new front yard, the only other relief needed would be for the tennis court, and that other non-conformities would be reduced. Ms. Motz confirmed. Mr. Bruyn confirmed that making the waterfront the rear yard, would make the entire house non-conforming. Ms. Motz said that §196-17A of the Village Code permits reconstruction with modification of the lawfully existing principal structure, that is a conforming use, which it is, but dimensionally non-conforming as long as they don't increase the previous non-conformities, which they are not doing. Mr. Nowak thought as long as they are reducing the non-conformities, he was fine with it, and the Board agreed. Ms. Motz noted that the tennis court is not a principal structure, but an accessory structure, and they would like to increase the size by six ft. towards the house. The tennis court would be completely reconstructed as it needs to be moved over. Ms. Chepiga asked if anyone else would like to be heard. As no one did, she asked for a motion to grant the partial relief.

MR. JUDGE MADE A MOTION TO APPROVE THE FOLLOWING PART OF THE REQUESTED VARIANCE:

Declaring the southerly lot line along a 20' private right-of-way as the front lot line where the Building Inspector and previous decisions of the Board of Appeals designated the northerly water front lot line as the front lot line, and the private 20' r-o-w as the rear lot line; AND in the event the southerly lot line along the 20' r-o-w is designated the front lot line, setback variances from the provisions of §196-12A in order to permit the reconstruction with expansion of the tennis court with a side yard setback of 25' where 35' is required and a front yard setback of 30' where 100' is required.

MR. TOLLEY SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY CARRIED.

5) The next matter on the agenda was the holdover application of **96 DAY LILY LANE LLC at 11 BAY VIEW DRIVE [SCTM# 902-11-3-8.1]** for: variances from the provisions of (1) §196-13B(18) in order to permit the construction of a boat slip as a permitted customary accessory structure on a lot where no principal dwelling exists; (2) §196-20 in order to permit the construction of a boat slip as a permitted customary accessory structure prior to the construction of a principal dwelling; (3) §196-12 (Table of Dimensional Regulations) in order to permit the installation of a boat slip with an approximately 4' wide perimeter walkway 6' from the northerly property line where 25' is required; and all other necessary relief on a 47,505 sq.ft. parcel of land (exclusive of underwater lands) located on the southwesterly side of Bayview Drive, northerly side of the Quogue Canal and easterly side of a Dredged Canal, in the A-3 Residence District.

Attorney Kittric Motz was present on the teleconference. Ms. Motz noted that she has submitted additional information regarding this application. Ms. Motz explained that there are other vacant properties in the Village, at least four, that have boat slips. Ms. Motz said one of these properties, 23 Dune Rd, has variance relief, but none of the other properties have variances relating to the boat slips. Ms. Motz said what these properties have in common is that they have another parcel of common ownership either adjacent or across the street. Three of these properties are ocean front properties. She noted that at 23 Dune Rd, there is a variance for a walkway and one car parking, with the ZBA decision mentioning a pre-existing boat slip. Mr. Judge asked if any structure could be built at 23 Dune Rd. Ms. Motz said no, it was completely in wetlands. Mr. Peiffer asked if any of the other properties would be considered buildable lots. Ms. Motz said another property had been given permission to build a house, but it had not been built as of yet. Another property, 83 Dune Road previously had a house, which has since been demolished, but it has not been determined if the boat slip had been constructed before the original house. Mr. Peiffer noted that on these other properties, the adjacent property does not already have a boat slip. Ms. Motz referenced Mr. Nowak's memo showing the boat slip. She explained that the owner will not be able to fit a second boat in the current slip because the current boat is too wide. Mr. Peiffer didn't understand why they would purchase this size boat if it wasn't going to fit. Ms. Motz noted that there is an indirect benefit to the surrounding neighbors, since the canal has had considerable erosion, and no one would be able to dredge the area without her client's approval. Mr. Peiffer expressed his concerns with this application, and it would cause a change of use for the property. Owner Mr. Burns spoke next and expressed that he thought he was allowed to construct a boat slip on the property when he purchased the lot. Ms. Motz suggested attaching restrictions to the variance, such as no commercial use. She also noted that the current boat slip on 15 Bay View Drive was allowed to be constructed before the house in 1987, but it was noted that they couldn't use the slip until the property was sold. Ms. Motz said since there are very few vacant properties on the canal that she did not feel that a precedent would be set. Mr. Tolley asked if anyone knew if the current boat slip could be expanded to the east. Mr. Bruyn said there is no Zoning reason why it could not be expanded to the east. Ms. Motz thought it would be more beneficial to the neighborhood if they constructed the slip on the side canal. John Burns said the current depth is about a foot and a half, and they would dredge the canal, benefitting all users. Mr. Ryan thought

the dredging is not an issue for the Zoning Board to consider. Mr. Ryan noted that while he didn't think this application should be considered a hardship, he didn't think it would be a detriment to allow the boat slip. Mr. Tolley agreed and thought it was a close call. Ms. Motz said she will check with the DEC about both a new boat slip and expanding the current slip. Ms. Chepiga said that if the properties were joined they still couldn't construct a boat slip because there is already one on the property. Mr. Ryan asked the minimum size structure that would have to be constructed in order to allow for the slip. Ms. Motz said 1,300 sq. ft. in the A3 District, with at least one bedroom would be the minimum. Ms. Motz asked if they could adjourn until the next meeting. Mr. Bruyn and Ms. Motz discussed the definition of riparian water rights. Ms. Chepiga asked if anyone else would like to be heard regarding this matter. As no one did, she asked for a motion to adjourn.

MR. JUDGE MADE A MOTION TO ADJOURN THIS APPLICATION TO THE NEXT MEETING. MR. PEIFFER SECONDED THE MOTION THE MOTION WAS UNANIMOUSLY CARRIED.

6) The last matter on the agenda today was the application of **BAY ROAD INC. (NICK MESSINA) at 37 BAY ROAD [SCTM# 902-6-1-18.11] for:** an interpretation of the Building Inspector's determination and/or variances from the provisions of (1) §196-12A (Table of Dimensional Regulations) in order to permit an elevated catwalk/wetland access walkway extending over a portion of designated wetlands in the center of the property to access the property's frontage on Shinnecock Bay with a 70' setback from an unopened portion of a private road where 100' is required and a rear yard setback of 10' where 35' is required; (2) §196-13B(10) in order to permit an elevated catwalk/wetland access walkway extending over a portion of designated wetlands in the center of the property where said elevated catawalk/walkway does not directly connect to the bay; and all other necessary relief on premises located on the southerly side of Bay Road, approximately 2,623' easterly of Montauk Highway (SR 27) in the A-8 Residence District.

This matter has been adjourned as requested by the applicant's attorney.

As there was no more business, Ms. Chepiga adjourned the meeting.