

**VILLAGE OF QUOGUE  
ZONING BOARD OF APPEALS  
WEDNESDAY FEBRUARY 17, 2021  
3:00 P.M.**

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

In accordance with the Governor's Executive Order 202.1 this meeting was held via zoom videoconference.

1) Ms. Chepiga opened the meeting with a roll call, and then asked for a motion to approve the minutes of the January 20, 2021 meeting.

**MR. PEIFFER MADE A MOTION TO APPROVE THE MINUTES OF THE JANUARY 21, 2021 MEETING. MR. RYAN SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY CARRIED.**

2) The first item on the agenda is an application from **Helena Litman at 51 Midhampton Avenue SCTM# 902-4-3-7** for: variances from the provisions of §196-12 A (Table of Dimensional Regulations) in order to permit (1) an addition to the northeasterly corner of an existing single family dwelling with a total side yard setback of 56.5' where 60' is required; (2) maintenance of a portion of an existing wood deck solid on the westerly side of the dwelling with a side yard setback of 16.7' where 25' is required; (3) maintenance of a portion of an existing brick patio on the easterly side of the existing swimming pool with a setback of 13.5' where 25' is required; (4) if necessary, maintenance of the existing swimming pool with a setback of 18.5' where 25' is required; and all other necessary relief on premises located on the southerly side of Midhampton Avenue, approximately 189' northwesterly of Montauk Highway (SR 27) in the A-3 Residence District.

Architect Michael Sudano was present on the teleconference for the applicant. Mr. Sudano reviewed the application. He explained that the setback variances requested are from existing structures that were built before the house was purchased in 1982. Mr. Sudano said that a prior variance had been granted for the pool for 19.1 feet in 1982, but the current survey shows 18.5 feet. Mr. Sudano believes this discrepancy is due to the coping around the pool, and confirmed that the pool has not changed location. A part of the existing brick patio around the pool is at 13.5 feet and will also need a variance. The existing deck along the west side of the property had also been granted a variance in 1982 to allow for 18 foot side yard setback. Another variance was applied for in 1986 to extend the deck and a 21 foot setback was granted. In 1987, a building permit was issued for the encroaching deck, and was built according to the approved plans. Neighbors Stuart Feiner and Katherine Whitbeck have both submitted letters in favor of this

application. Mr. Sudano noted Mrs. Litman is looking to put an extension on the house to accommodate her growing family. Because of the angle of the house on the property, a small part of this addition will require a variance of 3.5 feet. Mr. Sudano explained that the requested variances are minor in character. Mr. Tolley spoke next. He noted that the pool, patio and deck variances were minor, but he had a problem with the applicant designing in a need for a variance on the addition. Mr. Sudano explained that they have explored other options in the design of the addition, and have kept this variance request to the minimum possible. The part of the addition that needs a variance is a small pie shaped area. Mr. Peiffer spoke next. He asked for clarification as to why they can't move the addition to the back of the house. Mr. Sudano said that moving the addition to the back of the house would then block the view of the pool area, which Mrs. Litman does not want for safety reasons. Mr. Peiffer said he would not consider that reason a true hardship. Mr. Peiffer asked if Mr. Sudano had a copy of the affidavit regarding the pool, which was noted in the ZBA minutes of 1986. Mr. Sudano said he did not have a copy, but that he would try to obtain one. Mr. Ryan asked why the area could not just be eliminated since it is very small. Mr. Bruyn said it might be helpful to show the requested area on the floor plan, and noted that the area in question is a new bathroom. Mr. Bruyn said there was another bathroom being added as well, and if they eliminated one of them, they would not need a variance. Mr. Sudano said he would speak with Mrs. Litman. Mr. Bruyn also noted that if a brick patio is less than 4 feet wide, it would not have to meet setbacks. If the patio is more than 4 feet, maybe it could be modified in the NW corner. Mr. Sudano asked if back in 1982 would walkways even have needed to be included in the CO. Mr. Tolley asked about the issue that Mr. Feiner brought up in his letter about the height of the addition. Mr. Sudano said the height difference on the side of Mr. Feiner's house is approximately 4.5 feet higher, which is within the code. Ms. Chepiga asked for a motion to adjourn this matter until the next meeting.

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

**3) The next item on the agenda is the application of 37 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.

Attorney Heather Wright and Applicant Nick Messina were present on the teleconference call. Ms. Wright reviewed the application. She explained that Mr. Messina purchased the property in March of 2020 from Mr. Picheny. 37 Bay Road is Lot #6 on the Picheny subdivision, and the Picheneys retained ownership of the other 5 lots. Mr. Messina applied to the DEC in April 2020

for a gravel pathway at grade, a 130 foot elevated catwalk over the wetlands, and a 68 foot catwalk and stairs for access to the bay. At the request of the DEC, the request was withdrawn for the 68 foot catwalk and stairs. On November 23, 2020, the DEC issued a permit for a 130 foot catwalk over the wetlands, and two 4 foot wide gravel paths. The Army Corp of Engineers issued a “no permit required” letter. In December of 2020 a general permit was applied for to the Village of Quogue Trustees for the catwalk. That application was rejected by the Trustees because the catwalk did not lead to a dock, and a dock was not being built, and therefore, a building permit would be needed instead. Since the catwalk does not meet the setback required in the A8 Zoning District, a variance is needed. Ms. Wright reviewed the necessary 5 part balancing variance test. She explained that the catwalk would not have an undesirable impact on the character of the neighborhood, and many homes in the area have these structures, including 31 Bay Rd. Ms. Wright also noted that many of the catwalks in the neighborhood do not meet the setback requirements, and reviewed some of these properties. Even though the catwalk would be located 10 feet from Lot #5, there is a 75 foot buffer where nothing can be built, so the catwalk would be at least 85 feet away from any future structure. Ms. Wright also noted that with the front yard setback to Bay Rd, the catwalk would be quite a distance from 32 Bay Road. Will Bowman, Environmental Consultant spoke next. Mr. Bowman reviewed photographs of the property. He noted that the wetlands are densely vegetated and the catwalk is necessary to access the shoreline without disturbing sensitive wetland areas. The location of the catwalk was chosen to minimize the length of the structure needed to access the shoreline. If the catwalk was located in a more compliant area, it would increase the length of the catwalk from 130 feet to about 170 feet. Mr. Bowman noted that the four inch posts needed for the catwalk would be constructed manually so no heavy equipment would disturb the wetlands. Ms. Wright explained that there is no feasible alternative location for the catwalk, and noted that the DEC has approved this location. Next to speak was Jeff Bragman, Attorney for the neighbors to the North (Mr. & Mrs. Picheny) and the South (Alston Beinhorn). Mr. Bragman spoke of the 5 factor balancing test. Mr. Bragman noted that these requested variances are substantial – 30% variances from both front and rear yard setbacks. Mr. Bragman noted that while the walkway is elevated 4 feet, the railing is another 3 feet on top of that, so the structure would be 7 foot above grade, and with someone walking across it, could be deemed obtrusive. Mr. Bragman said that none of the lots in the neighborhood are using an elevated walkway, except for one, which accesses a dock, which this one would not be. Mr. Bragman said that the applicant has repeatedly cleared in the buffer zone. Mr. Bragman also noted that when Mr. Messina applied to the DEC, he used an outdated map, and received permission to build the house based on that map. According to a new updated map, the wetland area has moved more than 20 feet and the current house intrudes into the buffer area. Mr. Bragman explained that while the walkway is 4 feet, another foot on each side would have to be cleared. Mr. Bragman feels this is a self-created situation as Mr. Messina was aware of the property limitations when he purchased the property, and that the DEC cannot override the requirements of the Village of Quogue. Mr. Bragman explained that the walkway is not necessary and would be an undesirable change to the property. Mr. Bragman said that Mr. Messina was permitted to clear some trees, but cleared out all the undergrowth as well, within the DEC non-disturbance area. He also said that Mr. Messina had cleared a 3 foot wide temporary path, which violated the Covenant and Restrictions, and was issued a warning letter from the DEC to revegetate. Mr. Bragman said that another 2,300 square feet have been cleared and mowed, some within the wetland and put fill in the non-disturbance area. Mr. Bragman also noted that he felt that this elevated walkway would be considered a prohibited use according to Village Code. Environmental Consultant Chuck

Hamilton spoke next. Mr. Hamilton spoke of the Covenants and Restrictions that had been set by the Planning Board to protect the wetlands. Mr. Hamilton said that Mr. Messina has mowed and cleared within the tidal wetland and the high marsh area. Mr. Hamilton spoke of the matter of the DEC granting the permit based on the outdated wetland map. Mr. Hamilton said 9 trees were permitted to be removed in the no-disturbance zone, which he feels was a mistake. Mr. Hamilton feels that the catwalk is not necessary since this area only gets inundated about once a month, during the moon tide, and the rest of the time can be accessed as a dry marsh. Mr. Hamilton then reviewed some photographs of the area. Mr. Hamilton noted that debris could get trapped in the pilings of the catwalk which could be damaging to the area. Ms. Chepiga said that the Board has received a great deal of information in the past few days. She requested that any new information be submitted within the next two weeks as to give the Board time to review. Ms. Wright spoke next. She noted that the DEC has approved the catwalk and deemed it the appropriate way to traverse the wetlands. Ms. Wright said that there is nothing in the Village Code saying you can't have a walkway without a dock, and that the DEC supports the use of walkways over the wetlands. Ms. Wright referenced §196(B)-18 of the Quogue Village Code in support of this statement. Ms. Wright noted that Mr. Beinhorn had also applied for a similar catwalk, and was denied due to a very specific Covenant on his property saying that there will be no docks or elevated walkways through a Preserve Area. Ms. Wright noted that the client removed trees that he was permitted to remove. She said that there is evidence of significant clearing on Lot #5, and she will include all of this in her next submittal. Nick Messina spoke next. He stated that he only cleared about 40 feet, and the rest had been cleared by the neighbors before he purchased the property. Mr. Messina said he had to put a fence up and that is the only area he cleared. Mr. Messina noted that there is a buffer on all of the lots, and that on the other five lots, the buffer is regularly mowed. Mr. Messina noted that the application to the DEC was originally submitted with the information from the Pichensys. Mr. Bowman noted that the height of the catwalk is set by the DEC and the Army Corp of Engineers. Ms. Chepiga asked that all new materials be submitted within two weeks, and then asked for a motion to adjourn this application until the next meeting.

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

**4)** The next item on the agenda is the holdover application of **David Perkins and Leigh M. Harlan at 44 Boxtree Road SCTM# 902-4-2-52** for: a variance from the provisions of §196-22 A & B in order to permit the maintenance of solid wood fences exceeding 4' in height and less than 40% visibility in the northerly and southerly side yards; and all other necessary relief on premises located on the easterly side of Boxtree Road, approximately 1,041; northeasterly of Quogue-Riverhead Road (CR 104) in the A-3 Residence District.

Attorney Robert Kelly and Applicant Leigh Harlan were present on the teleconference call. Mr. Kelly said he met with the Building Inspector about the age of the fence. The aerials taken around that time are too blurry to confirm the fence, but the neighbors at 46 Boxtree have confirmed that the prior stockade fence was there at least 30 years. Mr. Kelly reviewed some photographs. He showed a 2006 image from the Town GIS system which clearly shows the fence. The fence is shown on a photo from Google Earth in 2007, and again on the Town GIS photo in 2008, and

straight through years in between. Mr. Kelly said that he met with Mr. Nowak and they agree that the fence has been there since at least 2006. The 2014 survey used to get the updated Certificate of Occupancy shows the stockade fence. Mr. Kelly noted that the pool is listed on that updated Certificate of Occupancy, but not the fence, but pools are always required to have an enclosure, so this is not unusual. Mr. Kelly noted that his clients waited to close on the property because initially the gate failed inspection. The gate on the fence was repaired, was re-inspected and passed, and the C of O was issued, so obviously the fence was there. Mr. Kelly referred to the Village Code regarding Updated Certificates of Occupancy and how they are based on the visual inspection of the exterior of the property. Mr. Kelly referenced a picture showing the fence as being 6 feet approximately in height. Mr. Kelly next presented nine letters from the closest neighbors, all in favor of this application, none had any objections. Mr. Kelly noted that the fence is made of wood, not PVC and showed pictures of the limited visibility of the fence from the street. Mr. Kelly said that his clients spent over \$50,000 on this fence, and that it would be a hardship to remove it. The applicant Ms. Harlan spoke next. She reviewed the letter that she had submitted to the board regarding the property. Mr. Tolley spoke next. He asked if the applicant would be open to agreeing to the condition that when the property sells, or the fence has to be rebuilt, it would have to conform to the four foot height. Ms. Harlan agreed to this condition. Ms. Chepiga asked for a motion to approve the variance conditionally as follows:

**The subject fences, whether treated separately or together, shall not be replaced unless said replacement fence(s) conforms to the requirements of the Code. This condition shall be stated in the CO/CC and with any transfer of the property.**

**MR. PEIFFER MADE A MOTION TO GRANT THE CONDITIONAL VARIANCE. MR. TOLLEY SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY CARRIED.**

5) The next matter on the agenda is the holdover application of **Baycrest Properties, LLC at 23 Dune Road**. Attorney Kittric Motz was present on the teleconference call for the applicants. She explained that they are still waiting for the letter from the DEC, and requested that this application be adjourned until the March meeting. Ms. Chepiga asked for a motion.

**MR. JUDGE MADE A MOTION TO ADJOURN THIS APPLICATION UNTIL THE MARCH MEETING. MR. RYAN SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY CARRIED.**

6) The last matter on the agenda is the application of **David Marr at 61 Dune Road**. Attorney Kittric Motz was present on the teleconference call. Ms. Motz asked if there was a rule that information had to be submitted to the Board three business days in advance of the meeting. Ms. Chepiga confirmed that this was the rule – materials must be received by Friday for a Wednesday meeting. Mr. Bruyn spoke of the importance of the Board receiving submissions with enough time

to review before the meeting. Ms. Motz asked that this application be adjourned until the next meeting. Ms. Chepiga asked for a motion.

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

7) Ms. Chepiga set the date of the next meeting to **Wednesday March 24, 2021 at 3pm**. As there was no more business, Ms. Chepiga asked for a motion to adjourn the meeting.

**MR. JUDGE MADE A MOTION TO ADJOURN THE MEETING. MR. TOLLEY SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY CARRIED.**

**The meeting was adjourned.**