

Resolution of the Planning Board of the Village of Mamaroneck
Re: application for a single-family residence with swimming pool at 921 Soundview Drive
in the Village of Mamaroneck, (Section 4, Block 78, Lot 6A or 6B)

2023 JUL 27 10:57 Moved by Richard Litman; Seconded by Seamus O'Rourke

VILLAGE OF MAMARONECK
Date: June 14, 2023

WHEREAS, an application was submitted by James D'Arcangelo, as Executor of the Estate of Marjorie E. D'Arcangelo, the "Applicant," (all references to which shall include and be binding upon the Applicant's successors and/or assigns) for site plan approval pursuant to § 342-75 of the Village Code and a wetland permit pursuant to § 192 of the Village Code, to construct a single-family dwelling with an inground saltwater swimming pool, deck and stormwater management infrastructure at 921 Soundview Drive, (the "Project"); and

WHEREAS, 921 Soundview Drive is a .52-acre lot (Section 4, Block 78, Lot 6A or 6B) located in the R-10 Zoning District and adjacent to Otter Creek, a designated Critical Environmental Area; and

WHEREAS, the majority of the unimproved lot is within the Village's 100-foot wetland controlled area, and a portion of the rear property is located in the "AE" flood hazard zone; and

WHEREAS, the proposed improvements include a dwelling with a 2,430 square foot building footprint (10.5% of the lot), a total coverage of 3,665 square feet (16% of the lot) and an inground pool (4' deep, 11.4' wide, and 25.5' in length) which would encroach upon the 100-foot regulated wetland controlled area, however, no improvements are proposed within the flood zone; and

WHEREAS, the application for the proposed work is on file at the Village Offices and consists of the following documents:

- Building Permit Application sworn to May 21, 2021
- Village of Mamaroneck Building Determination Letter
- Engineering plans prepared by ALP Engineering & Landscape Architecture, PLLC, revised through May 31, 2023
- Architectural plans prepared by Nexus Architecture Planning Design, revised through May 31, 2023
- Landscaping and tree plans prepared by Nexus Architecture Planning Design, revised through May 30, 2023
- Letter from Mr. James R. D'Arcangelo to Village of Mamaroneck dated May 10, 2021
- Planning Board Application signed January 1, 2022
- Short Environmental Assessment Form signed May 14, 2021
- Stormwater Pollution Prevention Plan / Stormwater Management Report prepared by ALP Engineering & Landscape Architecture, PLLC, as revised December 12, 2022
- Wetlands Permit Application dated January 5, 2022
- Survey prepared by Richard A. Spinelli, last updated September 7, 2021
- Memoranda from Evans Associates dated July 19, 2022 and November 3, 2022

- Memoranda from Nexus Architecture Planning Design dated December 21, 2022, January 25, 2023, March 8, 2023, April 12, 2023, May 10, 2023, May 23, 2023 and May 31, 2023
 - Resolution from the Harbor and Coastal Zone Management Commission
 - Letter from ALP Engineering & Landscape Architecture, PLLC, dated January 17, 2023
 - Letter from Group Works Water Concepts dated June 17, 2022
 - NYSDEC Jurisdictional Guidance and tidal wetlands overlay
 - Email correspondence with the NYSDEC on April 17, 2023 re: jurisdictional determination
 - Stormwater Maintenance Agreement
 - 921 Soundview Drive earthwork calculation
 - 921 Soundview neighboring properties spreadsheet
 - Assessor compiled documents dated April 12, 2023
 - Berkshire Hathaway letter of April 26, 2023
 - Drive Group Works letter of May 10, 2023
 - Letter from Hocherman, Tortorella & Wekstein LLC dated May 10, 2023
 - 921 Soundview Lighting Plan
 - 921 Soundview Drive listings with a pool and without a pool
 - Application summary sheets
 - Public Comments
 - Memoranda from Village Consultants
- (collectively the “Application Materials”)

WHEREAS, the Building Inspector of the Village of Mamaroneck determined that the Applicant required site plan approval pursuant to § 342-75 of the Village Code, a wetlands permit pursuant to § 192 of the Village Code, storm water pollution prevention plan (“SWPPP”) approval pursuant to § 294 of the Village Code, compliance with the Tree Law pursuant to § 318 of the Village Code, a consistency determination by the Harbor and Coastal Zone Management Commission (“HCZMC”) pursuant to § 240 of the Village Code, and approval of the Board of Architectural Review; and

WHEREAS, on January 26, 2022, the Applicant first appeared for a preliminary site plan review before the Planning Board (the “Board”) where the Board’s consultants provided their initial comments on the application, the application was typed as a Type II action pursuant SEQRA regulations found at 6 NYCRR § 617.5(c)(11), and the Applicant was referred to the HCZMC for a consistency determination; and

WHEREAS, the Applicant appeared before the HCZMC on February 16, 2022, October 19, 2022, November 16, 2022 and December 21, 2022, and having addressed the HCZMC’s concerns through design modifications that moved the proposed elevated pool to grade level, rotated the pool 90 degrees, and addressed stormwater drainage issues, the HCZMC thereafter adopted a resolution dated December 23, 2022, concluding that the project is consistent to the maximum extent practicable with the Local Waterfront Redevelopment Policy;¹ and

¹ The December 21, 2022 HCZMC resolution is attached hereto as Exhibit A.

WHEREAS, following the HCZMC's consistency determination, the Board's engineering consultant, Kellard Sessions, reviewed the revised application materials (*see* Kellard Sessions memorandum updated January 6, 2023) and at the January 11, 2023 Board meeting, noted that it was satisfied with the changes to the stormwater mitigation system which is designed for the 100 year storm and suggested that (1) the portion of the stormwater piping system that is above grade be covered, and (2) the pre-treatment system be moved closer to the stormwater mitigation system so that runoff would be pretreated prior to entering the stormwater system; and

WHEREAS, the Board's planning consultant, AKRF, reviewed the application materials and provided comments in a memorandum dated January 6, 2023, and during the January 11, 2023 meeting, noted that a wetlands delineation was performed, but the NYSDEC jurisdictional determination was outstanding; and

WHEREAS, at the January 11, 2023 Board meeting, the Board's landscaping consultant, Terra Bella Land Design (TBLD) pointed out that the Applicant needs to submit landscaping and tree preservation plans, that tree protection should be noted on all plan documents, and stressed the preference for native plant materials; and

WHEREAS, during the January 11, 2023 meeting, the Applicant explained how it had addressed HCZMC's concerns regarding the stormwater management system and pool, confirmed that screening would be addressed in the landscaping plan, noted that the footprint of the dwelling had not changed, stated that the project was located as far away from wetlands as possible, explained that no work would be performed below the 10 foot elevation level and therefore the jurisdiction for wetlands is within the Village's sole authority, and confirmed that it would submit material in response to the memoranda of the Board's consultants for the February 8, 2023 meeting; and

WHEREAS, at the close of the January 11, 2023 meeting, the Board heard comments from one member of the public who wished to speak, encouraged the Applicant to review and consider the public comments already submitted, and instructed the Applicant to provide a jurisdictional determination from the NYSDEC and Army Corps of Engineers because the project is located in a Critical Environmental Area; and

WHEREAS, the Applicant returned to the Board on February 8, 2023, and at the Applicant's request, TBLD provided guidance on tree protection, planting locations, landscape plan requirements and suggested best practices; and

WHEREAS, AKRF reviewed the Applicant's wetland delineation, and during the February 8, 2023 meeting, stated that it concurred with the jurisdictional delineations submitted by the Applicant including the 10-foot contour line, and advised that the Board could set a public hearing for the wetlands permit while administrative items on the site plan documents (such as updating zoning tables so that they are consistent) are resolved; and

WHEREAS, Kellard Sessions confirmed during the February 8, 2023 meeting that it was satisfied with the Applicant's storm water management plan, confirmed that the Applicant had addressed the two outstanding issues regarding pipe coverage, and relocating the hydrodynamic

separators to a location so that all stormwater from the site would be pretreated before discharged into the infiltration system, and clarified that its comments regarding erosion and sediment control, water quality and water quality mitigation were addressed by the Applicant; and

WHEREAS, during the February 8, 2023 meeting, the Applicant further discussed design mitigation factors, such as locating the dwelling right at the set-back line, ensuring most of the development is outside the wetlands controlled area, and locating the grade level of the pool approximately 8.5 feet above the flood plain level to minimize potential for discharge from the pool during flood events; and

WHEREAS, during the February 8, 2023 meeting, the Board requested a submission detailing the proposed project's cut and fill, encouraged the Applicant to address the specific requirements for a wetlands permit under § 192 of the Village Code in a memorandum to the Board, and asked for further information to address the Board's concerns regarding impact of outdoor lighting, potential for erosion, and visibility from Otter Creek; and

WHEREAS, at the conclusion of the February 8, 2023 meeting the Board requested that an environmental consultant from AKRF review the project, scheduled a public hearing on the wetlands permit, and noted that the public may also submit written comments; and

WHEREAS, the Applicant again appeared before the Board on March 22, 2023, presented an overview of the project and mitigation factors in the design plan, and the Applicant's counsel discussed the considerations for granting a wetlands permit under the Village Code and Board members; and

WHEREAS, during the March 22, 2023 meeting, the Board's planning consultant and engineer confirmed that the Applicant had addressed their concerns and comments, and Kellard Sessions further explained that due to the sensitivity of the Project site it had spent months working with the Applicant's engineer to develop the best possible stormwater system location with erosion and sediment controls that address water quality concerns and water quantity mitigation; and

WHEREAS, the AKRF environmental consultant noted that Cape Cod curbs and appropriate lighting, which had been suggested in comments by the Westchester Land Trust, would alleviate some environmental concerns, and the Board requested that AKRF provide additional information regarding best development practices for sensitive environmental areas such as this site; and

WHEREAS, the Board opened the public hearing on the application on March 22, 2023,² and the public's concerns were heard and considered by the Board, including comments regarding whether the wetlands were properly delineated, jurisdictional determinations, the size of the house, the potential for pool discharge into Otter Creek, whether the project (including lighting) could adversely affect area wildlife, the adequacy of the proposed tree protection, whether the site would remain stable during construction in light of the unique topography, consistency with the Village Comprehensive Plan, whether the rear yard would remain wild, incomplete architectural plans, the

² The March 8, 2023 hearing was rescheduled to March 23, 2023 due to a scheduling conflict with applicant's consultants, and the public was duly noticed.

potential for silt and stormwater runoff during construction, and concerns regarding enforcement of Planning Board conditions on future owners; and

WHEREAS, the public hearing continued to the April 26, 2023 Board meeting, where the Applicant presented its revised landscaping plan that left more trees intact and provided additional screening between the pool and Otter Creek, informed the Board that it had obtained a jurisdictional determination from the NYSDEC, confirmed that the project is entirely outside the NYSDEC wetland buffer, and again explained ACE has no jurisdiction outside of the wetlands; and

WHEREAS, at the April 26, 2023 meeting, Kellard Sessions and the AKRF planning consultant reconfirmed that all planning and engineering concerns were addressed by the Applicant; and

WHEREAS, the AKRF environmental consultant presented its comments regarding best development practices for sensitive environmental areas, explaining that the proposed retaining wall and compliance with the required SWPPP alleviates erosion and sedimentation concerns, and provided suggestions for outdoor lighting to protect avian populations in the area; and

WHEREAS, also during the April 26, 2023 meeting, additional public comments were heard, which included concerns about whether the size of the proposed dwelling was appropriate, wetland delineation and jurisdiction, enforcement of the proposed mitigation factors, whether allowing the proposed pool to be developed would set a precedent for building more of the same adjacent to Otter Creek, and wildlife protection; and

WHEREAS, at April 26, 2023 meeting, the Board engaged in a discussion regarding the criteria for wetlands permitting under Village Code § 194, ensured the public that it is taking a hard look at the each required element of the Village Code and that each item must be met to the Board's satisfaction, noted that zoning is outside the scope of what the Board's review, confirmed that the Village Building Department has the authority to enforce Planning Board resolutions and conditions, and concluded that Board members would compile a list of resolution conditions to be discussed at the next meeting; and

WHEREAS, at the close of the April 26, 2023 meeting, the Board directed the Applicant to provide clarification on the chemical process used in salt water pools, noted that but for a limited number of administrative items the Application was complete, confirmed that there were no other members of the public in the audience who would like to be heard on this application, and accordingly, unanimously voted to close the public hearing; and

WHEREAS, the Applicant returned to the Board on May 24, 2023, and presented drone footage to address concerns about the pool, viewshed, and topography of the land, discussed the May 9, 2023 letter submitted by its pool consultant regarding the chemical process for saltwater pools and confirmed that chemicals would not be stored on site, stated its position that the Project would not negatively impact the natural benefits of the wetlands, public health and welfare, and again clarified that the entire project is located outside the jurisdiction of ACE and NYSDEC; and

WHEREAS, during the May 24, 2023 meeting, the Board continued to discuss the criteria for site plan approval, wetlands permit issuance, stormwater management, erosion and sediment control, and tree protection under the Village Code, and considered conditions that would satisfy the Board's outstanding concerns and ensure that the Project satisfies the applicable standards set forth in §§ 342, 294, 192, and 318 of the Village Code; and

WHEREAS, following the Board's May 24, 2023 deliberations, the Board determined that it needed additional information from the Applicant, including a cut and fill calculation for the wetland controlled area, updated plans stating that no trees three to six inches in diameter are being removed in the wetland adjacent areas, data regarding specific chlorine level in saltwater pools and whether that water could impact Otter Creek, updated site plans that identify the location of construction fencing, and an updated landscaping plan to move the location of the proposed viburnum shrub; and

WHEREAS, at the Board's direction, TBLD conducted a closer review of the landscaping plan to review the layer of screening between the pool and Otter Creek, and in its memorandum dated June 8, 2023, concluded that the proposed native plantings provide a substantial layer of screening, offers three seasons of interest, attracts pollinators, provides nesting habitat and food for birds, and is beneficial to other wildlife; and

WHEREAS, during the June 14, 2023 meeting, and the Board's consultants re-confirmed that their prior concerns regarding the proposed Project were fully addressed, the Board heard additional public comments, and the Applicant presented responses to the open information requests from the May 24, 2023 Board meeting; and

WHEREAS, during the June 14, 2023, the Board completed its review of the application materials and the memoranda and advice provided by the Board's consultants, determined that the application was complete, and in consideration of the standards for site plan approval set forth on Article IX of the Village Code, Chapter 342-76, including specific provisions relating to swimming pools found at 342-49 and in Chapter 300, the requirements for stormwater management, erosion and sediment control set forth in Chapter 294, and the Village Tree Protection Law set forth in Chapter 318, determined that the applicable standards and criteria have been satisfied with the conditions of review stated below; and

WHEREAS, the Board having thoroughly reviewed and considered public comments on the Applicant's wetland permit, both written and presented during the public hearing, the advice of the Board's consultants, documents submitted by the Applicant, and the conditions of approval recited below, pursuant to Chapter 192 of the Village Code, finds the project to be consistent with Village policy to preserve, protect and conserve wetlands, that the proposal is consistent with Village land use regulations, is compatible with the public health and welfare, is reasonable and necessary, and that there is no reasonable alternative for Applicant's proposal on the site which is not a wetland or adjacent area, taking into account in particular the reduction to impervious coverage; and

NOW, THEREFORE, BE IT RESOLVED, the Application is a Type II action pursuant SEQRA regulations found at 6 NYCRR § 617.5(c)(11) which provides that the "construction or expansion of a single-family, a two-family or a three-family residence on an approved lot including

provision of necessary utility connections...” are Type II actions under the New York State Department of Environmental Conservation regulations; and

BE IT FURTHER RESOLVED BE IT FURTHER RESOLVED that the Board hereby grants site plan approval and wetlands permit, to develop the proposed single-family residence with inground pool and landscaping, within or adjacent to the Village’s 100-foot wetland-controlled area, in accordance with the site plan and additional materials submitted with the application, on the conditions below.

Conditions

1. All conditions are binding upon the Applicant, the Applicant’s successors and/or assigns.
2. If the Building Inspector determines that, as a result of concerns related to public health, safety, and welfare, minor changes are necessary to complete the work authorized by the approved plans, the Building Inspector may, allow such changes and amend the building permit(s) accordingly. The applicant must submit amended plans reflecting the approved changes. If the Building Inspector determines that concerns related to the public health, safety and welfare require a change in the approved plans but that change is not minor, any deviation from or change in the approved Plans must be approved by the Planning Board by amendment to this approval.
3. Prior to the issuance of a building permit, the applicant must pay all outstanding professional and consultant review fees in connection with Planning Board review of this application.
4. The applicant shall furnish copies of the approvals for the proposed water service and sewer connection prior to obtaining a Building Permit.
4. Any demolition materials shall be removed from the project site and disposed of in accordance with Federal, State and Local Regulations.
5. Prior to the issuance of a Certificate of Occupancy, applicant shall submit a fully executed maintenance agreement approved by the Village for the proposed stormwater management facilities which is binding on all subsequent landowners and recorded in the office of the County Clerk as a deed restriction on the property.
6. Where construction is proposed to take place within the dripline of a tree, ANSI Tree Care Industry Standards will be followed, as provided in the landscaping plan.
7. Exterior lighting in the rear of the house will be downward facing and shielded and shall remain consistent with the Applicant’s lighting plan.
8. Cape Cod style curbs will be installed for the full length of the frontage on Soundview Drive and at any other location curbing is installed on the site.

9. Hydro-Dynamic separators should include safeguards against entrapment of amphibians.
10. Swimming pool water must be properly disposed of off-site. It may not be discharged into the ground or infiltration system when pool is winterized or for any other purpose. Pool must remain a salt-water pool.
11. Self-contained pool-filtration system shall be maintained.
12. Pool screening parameters and preservation in the future.
 - a. The intent of this condition is to preserve the area between the pool and Otter Creek in its natural state for screening purposes and habitat protection.
 - b. No trees and shrubs may be removed below elevation 15, with the exception of the removal of invasive species or the removal of a tree that poses a safety threat to persons or property.
 - c. Landscaping chemicals, including fertilizers, pesticides, fungicides and herbicides, will not be applied below the retaining wall.
13. Approved landscaping plans shall be maintained in perpetuity.
14. Construction scheduling will follow New York State and federal guidelines as it pertains to Bald Eagle breeding.
15. Prior to the issuance of a certificate of occupancy, the conditions of this resolution must be verified by the Building Department.
16. Conditions of the HCZMC consistency determination, as written in the Commission's December 21, 2022 resolution, must be adhered to.

Vote

Ayes: R. Litman, C. Goldstein, S. O'Rourke

Nays:

Abstained: W. Bintzer

Absent: M. Call-Chin

S O'Rourke

Seamus O'Rourke, Chair

2023 JUN 27 10 57
HONORARY
CLERK