

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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In the Matter of

NATHAN HALE NATURE PRESERVE, INC.,
PAUL C. THOMSON III, and KIM E. THOMSON,

Petitioners-Plaintiffs,

For a judgment pursuant to Article 78 of the CPLR,

-against-

TOWN OF HUNTINGTON PLANNING BOARD and
VINEYARD BAY LLC a/k/a VINEYARD BAY
ESTATES LLC,

Respondents-Defendants.

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Proceeding No. 1

Index No.:
630332/2024

Proceeding No. 2

Index No.:
610622/2025
(Tinari, J.S.C.)

MICHAEL L. MCCARTHY, being an attorney duly admitted to practice law before the
Courts of the State of New York, affirms the following under the penalties of perjury:

1. I am an Attorney admitted to practice law before all Courts of the State of New York, and am the principal of Michael L. McCarthy, P.C., the Attorney of record for Respondent, Vineyard Bay LLC a/k/a Vineyard Bay Estates LLC (hereinafter referred to as “Vineyard Bay”).
2. This affirmation is offered in opposition to the relief requested by the Petitioners, and in support of the arguments advanced by the Town of Huntington Planning Board, as set forth in the Memorandum of Law In Opposition to Petitioners Article 78 Petitions.
3. These consolidated Proceedings (Proceeding No. 1 and Proceeding No. 2) seek judicial review and reversal of determinations made by the Planning Board of the Town of Huntington as it pertains to Vineyard Bay’s application seeking subdivision approval of the property it owns in Huntington, New York. More specifically, Vineyard Bay owns 7.93 acres of property in Huntington, which it seeks to subdivide into eight (8) building lots, so that it may construct eight (8) new single-family homes (Exhibits “79” and “80”) (References are to the Exhibit Numbers of the Record of Proceedings filed by the Respondent, the Planning Board of the Town of Huntington).
4. By Petition filed under Suffolk County Index Number 630332/2024 (Proceeding No. 1), the Petitioners challenge the determination of significance that the Planning Board made pursuant to its review under the New York State Environmental Quality Review Act (“SEQRA”). This determination was made by Resolution of the Planning Board adopted on October 23, 2024 (Exhibit “122”).
5. By Petition filed under Suffolk County Index Number 610622/2025, (Proceeding No. 2) the Petitioners challenge the determination of the Planning Board granting Preliminary Subdivision approval to the map of Vineyard Bay Estates. This determination was made by Resolution of the Planning Board adopted on March 19, 2025 (Exhibit “158”).

6. Because of the commonality of the issues to be reviewed by this Court, and for purposes of judicial economy, these Proceedings have been consolidated.
7. As set forth above, the property that is the subject of these consolidated Proceedings is a contiguous 7.93-acre parcel of property having frontage on both Bay Avenue and Vineyard Road, Huntington New York. Vineyard Bay is requesting subdivision of the property, which will result in four (4) residential building lots having frontage on Bay Avenue and four (4) residential building lots having frontage on Vineyard Road (Exhibits “79” and “80”).
8. That portion of the property which has frontage on Bay Avenue is zoned R-10 Residence District, as defined by the Huntington Town Code. In the R-10 zone, residential building lots shall have minimum land area of 10,000 ft.². Each of the proposed lots fronting on Bay Avenue exceed the minimum area requirements, the smallest lot being 20,118 ft.² with the largest being 65,310 ft.².
9. That portion of the property which has frontage on Vineyard Road is zoned R-7 Residence District as defined by the Huntington Town Code. In the R-7 zone, residential building lots shall have minimum land area of 7,500 ft.². Each of the proposed lots on Vineyard Road exceed the minimum area requirements for the zoning district, the smallest lot having 37,574 ft.² of land area and the largest lot having 90,941 ft.².
10. As designed and proposed, the map of Vineyard Bay Estates will dedicate 4.6 acres of the 7.93-acre site to preservation.
11. Importantly, 1.84 acres of additional land that is part of the overall land holdings of Vineyard Bay is located in the Inc. Village of Huntington Bay. This portion of the property is not the subject of review by the Planning Board of the Town of Huntington, as

the Village of Huntington Bay enjoys jurisdiction over the development of same.

Vineyard Bay intends to preserve this additional land area for preservation.

12. Of the total 9.77-acre parcel (7.93 acres of which is the subject of review in these consolidated Proceedings), 6.4 acres will be dedicated to open space conservation in perpetuity. This equates to approximately 66% of the subject property.
13. The property that is the subject of Vineyard Bay's application has undergone extensive review by the Planning Board of the Town of Huntington over a period of years. This review has entailed coordination of the proposed development with all involved agencies, including, but not limited to all agencies in the Town of Huntington, County of Suffolk and State of New York, which may enjoy jurisdiction over same. This includes and is not limited to the Suffolk County Department of Health Services and the office of the New York State Parks, Recreation, and Historic Preservation.
14. The statement of facts, Record of Proceedings and case law interpreting same is set forth more fully and completely in the Memorandum of Law prepared by Donna A. Napolitano, Esq. and Nicholas Tuffarelli, Esq., dated September 12, 2025. I concur with the findings and conclusions set forth therein.
15. Notwithstanding the comprehensive nature of the Memorandum that Attorneys Napolitano and Tuffarelli have provided, I offer the following for historical context.
16. As required by the process and procedure of the Planning Board of the Town of Huntington, Vineyard Bay prepared and submitted a conceptual plan for pre-application review in May, 2021. Pre-application review is intended to identify early on land use, zoning, and design issues. As a consequence of the pre-application review, Vineyard Bay Estates made application to the Planning Board of the Town of Huntington for preliminary subdivision approval for less lots than they could have; lot yield was reduced,

to take into consideration steep slopes. A public hearing was held in August, 2023. As a consequence of comments received at the August 2023 public hearing, a revised plan was filed with the Planning Board in about September, 2023, reducing the number of Bay Avenue lots to four (4), and increasing the number of Vineyard Road lots to four (4).

17. Pursuant to New York State Town Law Section 276, the Planning Board has the jurisdiction to approve, *modify and approve*, or deny an application for preliminary subdivision approval. The Planning Board opted to modify and approve the preliminary map of Vineyard Bay Estates and issued a Resolution dated February, 2024, making both a determination pursuant to SEQRA and issuing preliminary subdivision approval.
18. The February, 2024 action of the Planning Board was the subject of a CPLR Article 78 Proceeding, filed under Suffolk County Index Number 607902/2024, appropriately challenging the procedural sequence that the Planning Board engaged in; i.e., scheduling a preliminary subdivision application public hearing before a SEQRA determination was made. That proceeding was discontinued when the Planning Board agreed to rescind the preliminary approval and the SEQRA determination, effectively creating a “do over” situation (Exhibit “87”).
19. In support of the renewed application, an Expanded Environmental Assessment Form (EEAF) was prepared and submitted to the Planning Board. Comprehensive in nature, the EEAF provided an in-depth analysis of almost every conceivable *significant* impact that could occur as a consequence of the proposed development. At one hundred forty-four (144) pages in length, the EEAF concluded that the proposed plan for development is consistent with the Town of Huntington’s comprehensive plan for development, preserves sixty-six (66%) percent of the site in a natural vegetative state, includes various methods to address stormwater and waste water, confirmed that the property is not within any designated State, County, Town or Village critical environmental area, and that based

upon a thorough review of the property, there is no existence of any prehistoric archaeological sites in, on or around the property (Exhibits “102” through “111”).

20. This information was received and reviewed by the Planning Department staff, on behalf of the Planning Board, and culminated in a nine (9) page analysis affixed to the EEAF as Parts two (2) and three (3). Importantly, the Planning Board once again determined that potential impacts of the proposed development were fully evaluated and issued a Negative Declaration pursuant to SEQRA, finding that no *significant* impacts were identified, and that the plan was designed to effectively reduce or mediate all other potential impacts (See Exhibit “122” EAF, Parts 2 and 3, pages 16 through 24).
21. Predicated upon this thorough and comprehensive analysis, the Planning Board issued a Negative Declaration pursuant to SEQRA, at its meeting held on October 23, 2024 (Exhibit “122”).
22. On December 18, 2024, the Planning Board of the Town of Huntington held a public hearing regarding the preliminary map of Vineyard Bay Estates (Exhibit “136”). At the public hearing, your Affiant reviewed with the Board the history of the subdivision, the status of the proposed lots, addressed the issue of steep slopes, and confirmed that the manner in which the applicant was proceeding was in fact a modified cluster, as provided by New York State Town Law Section 276 and Huntington Town Code Section 198-114 (Exhibit “136”).
23. The Respondents herein appeared both with counsel and individually, and were given a full and fair opportunity to address their concerns, it being the second public hearing regarding this proposed subdivision (Exhibit “136”, transcript of hearing).
24. At no time did the Respondents introduce the testimony of any expert witness or provide any evidence that controverted the findings and conclusions made by the applicant and its

professional representatives. As important, there was no expert witness or empirical data that was offered by the Respondents that controverted any of the findings and conclusions made by the Planning Board.

25. Comments made by the Respondents and other members of the community were more emotional in nature and amount to an impassioned plea for the preservation of the entire property, notwithstanding that the applicant has no legal obligation to do so; and notwithstanding that the applicant has agreed to set aside sixty-six (66%) percent of the entire property as natural open space, in perpetuity.
26. As the administrative agency charged with the review and approval of subdivision applications, and with the support of seasoned and experienced staff to assist it with the review of maps and plans, the Planning Board of the Town of Huntington enjoys considerable discretion in making determinations. Here, the Planning Board arrived at the same conclusion on two (2) separate occasions, with information that was supplied and received, at least two (2) public hearings and one (1) information meeting (June 26, 2024).
27. It is simply not credible for the Respondents to suggest that the Planning Board of the Town of Huntington failed to take a “hard look”. In fact, to the contrary, the Planning Board went above and beyond what is reasonable and customary for the subdivision of property and made reasoned and elaborate determinations.
28. Simply put, the Respondents do not like the conclusion that was arrived at by the Planning Board.
29. This Court knows that is not the standard. The Planning Board of the Town of Huntington exercised its jurisdiction within the guidelines of established parameters that provide for the reasonable development and use of property.

30. For the reasons more fully set forth herein, and as recited more comprehensively and completely in Attorneys Napolitano and Tuffarelli's Memorandum of Law, your Affiant respectfully requests that the consolidated Petitions be denied in their entirety, and that in Order of this Court be issued affirming the decisions of the Planning Board of the Town of Huntington, dated October 23, 2024 and March 19, 2025.

By:

Michael L. McCarthy, Esq.

Michael L. McCarthy, P.C.

Attorneys for Respondent-Defendant

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Pursuant to Uniform Rule §202.8-b, I hereby certify that this Affirmation complies with the word count limit of 7,000/4,200 words set forth therein. The total number of words in this Affidavit, exclusive of any captions, tables of contents, tables of authorities and signature blocks, is 2356 according to the word count function in Microsoft Word, the word processing system used to prepare this document.

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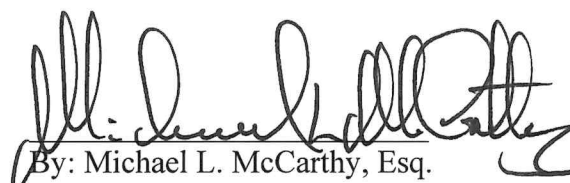
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Point Size: 12

Line Spacing: Double

Dated: Huntington, New York
September 16, 2025

A handwritten signature in black ink, appearing to read "Michael L. McCarthy, Esq.", with a stylized flourish at the end.

By: Michael L. McCarthy, Esq.

Michael L. McCarthy, P.C.

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