

March 21, 2024

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, March 21, 2024, at 5:00 p.m. in the Municipal Building, located at 165 Mill Road, Westhampton Beach, New York.

PRESENT: Gerard Piering, Chairman
Joe Musnicki
Jim Badzik
John Wittschen
Daniel Martinsen

Anthony C. Pasca, Esq., Village Attorney

Brad Hammond, Building and Zoning Administrator

Maeghan Mackie, Building Permits Examiner / Board Secretary

DECISIONS:

1. Chris & Janet Andolina, 519 Dune Road (905-016-02-005) Applicant requests variances from §197-8 D for a proposed trellis (easterly) over a existing front balcony with a front yard setback (principal) of 53.9 feet where the minimum required is 75 feet, and from §197-29.1 for proposed trellis (westerly) representing a prohibited increase in degree of nonconformity of a dwelling with preexisting substandard front (62.6’ proposed, 75’ required) and side yard setbacks (17.7’ proposed, 20’ required).

No one appeared on behalf of the application. Mr. Piering stated that there was a determination, and the reading was waived.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

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In the Matter of Application of

Chris and Janet Andolina

DETERMINATION

Address: 519 Dune Road
SCTM #: 905-16-2-5

-----X

I. REQUEST FOR RELIEF

The applicants, Chris and Janet Andolina, are the owners of a parcel of real property located at 519 Dune Road. The property is located wholly within the R-3 Zoning District. According to the existing conditions survey of the property drawn by Drucker Land Surveying, PLLC, dated October 17, 2023, the parcel is improved by a two-story frame residence with a garage under house on piles, wood decks, and a composite walkway with steps to the beach.

The applicants wish to perform some in-place renovations to the existing residence, which is a pre-existing nonconforming structure due to its nonconforming side- and front-yard setbacks. The renovations are depicted on the plans prepared by Leonard Kurkowski Architect, dated 8-22-22 and last revised on 2-10-23, as well as the Drucker survey.

Section 197-8.D. of the Village Code provides that, in the R-3 Zoning District, The front yard depth shall not be less than 75 feet on the south side on Dune Road; there shall be two side yards totaling

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not less than 50 feet, neither of which shall be less than 20 feet; and the rear yard shall not be less than 75 feet.

Section 197-29.1 of the Village Code provides that a nonconforming building or structure lawfully existing on any lot, or a building or structure which lawfully exists on a nonconforming lot, may be enlarged, reconstructed, altered, restored, or repaired, in whole or part, provided that the "degree of nonconformity" is not thereby increased. For the purposes of this subsection, an increase in the "degree of nonconformity" shall include an increase in the amount of a nonconforming building's or structure's gross floor area which is located within a required setback area, an increase in excess of the allowable building area lot coverage, or an increase in any portion of a building or structure located above the maximum height or stories permitted.

According to the Village's Building and Zoning Administrator, the proposed renovations would require the following variances:

- from §197-8 D for a proposed trellis (easterly) over an existing front balcony with a front yard setback (principal) of 53.9 feet where the minimum required is 75 feet, and
- from §197-29.1 for proposed trellis (westerly) representing a prohibited increase in degree of nonconformity of a dwelling with preexisting substandard front (62.6' proposed, 75' required) and side yard setbacks (17.7' proposed, 20' required).

The applicant therefore applied to this Board for variances from the above sections.

II. SEQRA

The applicant submitted an Environmental Assessment Form Part I pursuant to the State Environmental Quality Review Act (SEQRA). Since this is a request for variances for single family residences and accessory residential structures, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(11), (12), (16) and (17). Accordingly, the application is not subject to further review under SEQRA.

II. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on February 15, 2024. The applicant's attorney, Jacqueline Morley, Esq., and architect, Leonard Kurkowski, appeared on behalf of the application. The hearing was closed for a determination.

III. GOVERNING LAW

The Zoning Board is empowered to grant area variances pursuant to Section 7-712-b of the N.Y. Village Law and Section 197-75 of the Village Code.

In considering applications for area variances, the Board is required to weigh the benefit to the applicant against the detriment to the health, safety and welfare of the community, while considering the following five factors: (1) whether the variance will cause an undesirable change in the character of the

neighborhood or a detriment to nearby properties; (2) whether the benefit can be achieved by a feasible alternative; (3) whether the variance is substantial; (4) whether the variance will have any adverse physical or environmental impacts; and (5) whether the alleged difficulty was self-created (which shall be relevant but shall not necessarily preclude the variance).

The Board is charged to grant only the minimum variance necessary and to preserve and protect the character of the neighborhood and the health, safety and welfare of the community. The Board is also empowered to impose reasonable conditions to minimize any adverse impacts from the variance.

III. FINDINGS AND CONCLUSIONS

With respect to the statutory requirements for a variance, the Board finds as follows:

1. *Character of the Neighborhood:* The applicant has demonstrated that the granting of the variances will not adversely impact the character of the neighborhood. The proposed modifications to the house, while requiring a variance due to the pre-existing nonconformities, are in effect aesthetic changes to the house's shell. The small mass/volume increase resulting from the addition of the open pergolas/trellises above the second floor decks is mitigated by the corresponding change from a solid deck wall system to an open-style deck railing system.

2. *Alternatives:* The benefits sought (architectural changes) cannot be accomplished without the granting of a variance.

3. *Substantiality:* While the nonconformities are mathematically substantial in the abstract, in the context of the application, the addition of the open trellises above the existing second floor decks on the northern side of the house (the only changes requiring variances) will result in a de minimis change to the existing conditions.

4. *Physical/Environmental Impacts:* No physical or environmental impacts have been identified.

5. *Self-Created Difficulty:* The difficulty is self created.

6. *Benefit vs. Detriment:* On balance, the benefits from the granting of the requested variances outweigh the detriments, if any, caused by the new nonconformities.

7. *Minimum Variance:* The variances are the minimum necessary to achieve the benefits sought.

The Zoning Board therefore grants the requested area variances from Sections 197-29.1. and 197-8.D. of the Village Code to construct a trellis over an existing front balcony as shown on the plans drawn by Leonard Kurkowski Architect, dated August 22, 2022 and updated on February 10, 2023, and the survey of the property drawn by Drucker Land Surveying, PLLC, dated October 17, 2023 (collectively, "Final Plans"), subject to the following Conditions:

IV. CONDITIONS

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1. The variances granted herein are limited to the relief set forth in this decision, and pertain only to the structures as they are depicted on the Final Plans, and shall not be construed as creating conforming dimensions. There shall be no further extension (horizontally or vertically), increase, alteration or modification to the structures located on the property that has non-conforming dimensions, without further approval of the Board.

2. No outdoor accessory structures or equipment (including but not limited to air conditioning condensers, HVAC equipment, above-ground utilities, generators, pool equipment, solar panels, garbage/storage bins, etc.) may be located within a required front, side, or rear yard, except as depicted on the approved plans, without further approval of the Board.

3. There can be no exterior work performed on weekends from May 1 to September 30 and on weekdays from July 1 to September 10.

4. The variances granted herein shall terminate unless a building permit is issued within one year from the date hereof and construction completed according to said building permit.

Dated: March 21, 2024

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Chris & Janet Andolina, 519 Dune Road (905-16-2-5)** as written; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

2. Marko Issever, 18 Stillwaters Lane (905-010-04-020) Applicant requests variances from §197-6 D to construct an addition with a side yard setback of 20 feet where the minimum required is 30 feet, and with a resultant combined side yard setback of 51.9 feet where the minimum required is 70 feet.

No one appeared on behalf of the application. Mr. Piering stated that there was a determination and the reading was waived.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

-----X

In the Matter of Application of

Marko Issever

DETERMINATION

Address: 18 Stillwaters Lane

SCTM #: 905-10-4-20

-----X

V. REQUEST FOR RELIEF

The applicant, Brian Morrell, is the owner of a parcel of real property located at 18 Stillwaters Lane. The property is located wholly within the R-1 Zoning District. According to the survey of the property drawn by Metes and Bounds Surveying, dated November 7, 2023, the parcel is improved with a one-story frame house with an inground swimming pool and wood decks and slate patio.

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The applicant is proposing to construct an addition to the existing one story frame dwelling with a side yard setback of 20 feet and a resultant combined side yard setback of 51.9 feet, as depicted on the proposed construction survey drawn by Metes and Bounds Surveying, dated November 7, 2023 and the plans prepared by Josh Jakob Architecture, dated January 2, 2024.

Section 197-6.D. of the Village Codes provides that, in the R-1 Zoning District, the front yard depth shall not be less than 50 feet; there shall be two side yards totaling not less than 70 feet, neither of which shall be less than 30 feet; and the rear yard shall not be less than 50 feet.

The applicant has therefore applied for relief from Section 197-6.D to allow a proposed addition side yard setback of 20 feet where 30 feet is required and a proposed combined side yard setback of 51.9 feet where 70 is required.

VI. SEQRA

The applicant submitted an Environmental Assessment Form Part I pursuant to the State Environmental Quality Review Act (SEQRA). Since this is a request for an area variance for a principle residence and accessory structures, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(11), (12), (16) and (17) and is not subject to review under SEQRA.

VII. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on February 15, 2024. The applicant's agent, architect Edward Molter, appeared on behalf of the application. No other persons appeared in support or in opposition of the application. The hearing was closed for a determination.

VIII. GOVERNING LAW

The Zoning Board is empowered to grant area variances pursuant to Section 7-712-b of the N.Y. Village Law and Section 197-75 of the Village Code. In considering applications for area variances, the Board is required to weigh the benefit to the applicant against the detriment to the health, safety and welfare of the community, while considering the following five factors: (1) whether the variance will cause an undesirable change in the character of the neighborhood or a detriment to nearby properties; (2) whether the benefit can be achieved by a feasible alternative; (3) whether the variance is substantial; (4) whether the variance will have any adverse physical or environmental impacts; and (5) whether the alleged difficulty was self-created (which shall be relevant but shall not necessarily preclude the variance).

The Board is charged to grant only the minimum variance necessary and to preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Finally, the Board is empowered to impose reasonable conditions to minimize any adverse impacts from the variance.

IX. FINDINGS AND CONCLUSIONS

With respect to the statutory requirements for a variance, the Board finds as follows:

8. *Character of the Neighborhood:* The applicant has demonstrated that the granting of the variances will not adversely impact the character of the neighborhood. The proposed addition is designed to be tastefully integrated and added to the southern side of the existing house. While one corner point of the addition is as close as 20' from the side lot line, the side yard gradually increases further to the rear of the house, where the addition is 29.16' from the side lot line (nearly in conformance with the 30' minimum required).

9. *Alternatives:* The benefits sought (proposed addition) cannot be accomplished without the granting of a variance. The parcel is narrower at its front line line (with only 75.71' of frontage on Stillwaters Lane) than its rear lot line (which is over 250'). This configuration does not allow for a similar addition to be located without the need for side yard relief.

10. *Substantiality:* The resulting nonconformities are mathematically substantial, but the impact thereof is less substantial in the context of the existing lot improvements and neighborhood.

11. *Physical/Environmental Impacts:* No physical or environmental impacts have been identified.

12. *Self-Created Difficulty:* The difficulty is self created.

13. *Benefit vs. Detriment:* On balance, the benefits from the granting of the requested variances outweigh the detriments caused by the nonconformities.

14. *Minimum Variance:* The variances are the minimum necessary to achieve the benefits sought.

The Zoning Board therefore grants the requested variance to allow the applicants to construct an addition to the existing one story frame dwelling as shown on the proposed construction survey drawn by Metes and Bounds Surveying, dated November 7, 2023 and the plans prepared by Josh Jakob Architecture, dated January 2, 2024 (collectively, "Final Plans"), subject to the following conditions to minimize any adverse impacts from the variance:

X. CONDITIONS

3. The variances granted herein are limited to the relief set forth in this decision, and pertain only to the structures as they are depicted on the Final Plans, and shall not be construed as creating conforming dimensions. There shall be no further extension (horizontally or vertically), increase, alteration or modification to the structures located on the property that has non-conforming dimensions, without further approval of the Board.

4. No outdoor accessory structures or equipment (including but not limited to air conditioning condensers, HVAC equipment, above-ground utilities, generators, pool equipment, solar panels,

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garbage/storage bins, etc.) may be located within a required front, side, or rear yard, except as depicted on the approved plans, without further approval of the Board.

3. There can be no exterior work performed on weekends from May 1 to September 30 and on weekdays from July 1 to September 10.

4. The variances granted herein shall terminate unless a building permit is issued within one year from the date hereof and construction completed according to said building permit.

Dated: March 21, 2024

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Marko Issever, 18 Stillwaters Lane (905-10-4-20)** as written; seconded by Mr. Martinsen and unanimously carried 5 ayes, 0 nays, 0 absent.

HOLDOVERS:

3. Jim Badzik, 27 Sunswyck Lane (905-015-04-003) Applicant requests variances from §197-1 to construct an accessory building with plumbing facilities of 1,399 square feet where the maximum permitted is 200 square feet, and from §197-35 A to construct the accessory building within the front yard (corner lot) where not permitted.

Heather A. Wright, Esq., appeared on behalf of the application. Mr. Badzik recused himself from the application. Mr. Piering said that this will incorporate the past hearings into the record. Ms. Wright said since the last meeting and they reengaged with the surveyor to locate the existing trees near the existing accessory structure. As you can see on the survey, whether they can expand in its current location, and doing so would damage the existing trees and roots and that would happen if it's shifted and rotated North – South and we relooked at the plans and we increased the setback from 22' to 32' and this change should rectify the concerns by this Board and neighbors. I want to put on the record, the granting of the variance requires a balancing test and we have to consider the five factors that were discussed at the last few meetings and we believe the setback increase the benefit outweighs the detriment to the community and this will have no negative impact on the character of the neighborhood. We are moving it back and it will be full screened from the road with the existing hedging and installing new trees and closing an existing gate so it will not be visible. In terms of an alternative solution, this we believe is our best option. We submitted a letter from an arborist and that's supported and to comply with FEMA we have to bring in fill which also damages the root system and the proposed location makes the most sense. It's 32' from the property line and far from Seafield to have no impact on the neighbors but it's not in the center of the applicants yard which is not appropriate for an accessory structure. It's not substantial and we have 228' of frontage subject to the 50' setback and there is no negative environmental impact.

Mr. Piering said I brought up last time expanding in its current location. So the arborist said the two Norway Spruce trees have to be taken down, but it could be put in a conforming location. What is the difference, and we had a neighbor against it being in a conforming location and expanding it because it's too close to his property.

Ms. Wright said we could, but it would damage two Norway Spruces, a dogwood tree, a Japanese Maple tree and that's a negative to the environment and we're proposing get 32' from the property and we can expand it and it will be on top of that neighbor and it can be done as of right.

Mr. Musnicki said you are saying you cannot construct in its location, in any fashion in a conforming location. If you turn it North – South you have issues with the roots?

Ms. Wright said yes. If you look at the survey, you can see this studio rotated would clip the dogwood and the Norway Spruce radius roots.

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Mr. Musnicki said the dimensions are arbitrary and you can construct an art studio in its location.

Ms. Wright said not in this size in this location. We have reduced the size and the proposed location is ideal for the structure, not considering the trees and fill for the elevation.

Mr. Musnicki said it can be solved by a well around the trees so the soil is not up to the bark on the tree. We are talking about 12" to 18" of fill in that area. This is tough, when these come before this Board there is no other location involved and there are two front yards and maybe there isn't another choice but in this case there is. The trees can be replanted they are not large trees so there are things that can be done. As far as the substantiality, it's a 36% variance, and as far as the detriment to the community and neighbors; the westerly neighbor will see it from the upper floor and others who will object as well.

Ms. Wright said I take issue and I want to point out with respect to the neighbors, when you look from the street it's not visible. From a second floor you will see it regardless of the location. These factors are not supposed to be answered yes to each, you have to look at them in their totality and balance them. Could you move trees, possibly. Would they die possibly/. We made real effort to satisfy the Board and the neighbors; we have 228' of frontage on Seafield Lane.

Mr. Musnicki said it's a very sensitive case I want to draw out the arguments as much as we can.

Mr. Piering asked if the Board had any other questions or comments.

Michael Nissen said I apologize for dragging this out and I have to do it. This is fundamentally wrong and against the rules. He provided the Board another copy of his January 18, 2024 letter. He is speaking for Peter O'Rourke and Joy Devries and the hardship doesn't exist and he doesn't need a work studio in this residential property. I would love for him to have it and become friends, I don't think his art studio fits here. I won't summarize the Codes and it breaks three of them.

Mr. Piering said for the record tell us the three codes.

Mr. Nissen said 197-31 is the first one; 197-35.A. is the second; and 197-.6.D. is the last. Mr. Badzik proposes a much larger art studio on Seafield Lane 32' from the road. The factors that Ms. Wright went through are whether or not the undesirable change will be produced; the benefit can be achieved by some method other than a variance; whether it is substantial or not; whether it will have an adverse affect or impact; whether it is self created or not. In terms of a change the applicant claims that the relocation is in keeping with he character of the neighbor specifically my house and that's misleading, other than my house there isn't one nearly so close. My house predates the Zoning Code and the road was built around my house and to grant the variance is an exception and not the norm and it will create a detriment and the windows of my second floor will look at it and it's easy to see from the street walking by and the precedent will be forever. The future trees that might screen it we don't know how they'll be maintained. The applicant only thinks of himself and what he wants and he wants to increase the art studio and out of his view and most convenient for him it's a not small house in his second front yard. Seafield Lane is the estate section and that includes the applicants house and to grant this variance would change it and there is a large house on the North side of my house and the South both of which follow the Code setbacks the trees do not mitigate the inappropriateness. It is self-created no one is forcing them to do this except they want to.

Mr. Piering said you are getting a little personal, please stick to the facts.

Mr. Nissen said it's out of conformity. In August we talked about the trees limiting the placement and that's not a justification of a variance it's their discretion to move them or not and not a reason for a variance. I request the Board deny this application in its entirety.

Mr. Piering said I don't have anything to add. He asked if there were other questions or comments.

Don Steinert, 96 Seafield Lane said for the record, he spoke with Mr. Badzik and he made a commitment that he would landscaping on the South side to buffer my house and I want to mention that I appreciate that. However, I do think we're making progress with 32' and the

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neighbors I talked to wanted to see 36' to 40' back and there are a few neighbors that wanted to attend and couldn't.

Mr. Piering said they can submit a letter or email.

Mr. Steinert in doing so it was made so some neighbors couldn't attend and it seems like it was done deliberate.

Mr. Piering said I disagree with that; this is an ongoing hearing so everyone knew it was going to hold it over and they were asked to provide this and the applicants attorney did. We have the information, that's why we have holdovers and you are implying that it was inappropriate and that's not the case.

Mr. Steinert did not think it was fair and it was done by the residents.

Mr. Musnicki asked if they were promised the material before this meeting?

Mr. Steinert said no. We called about it.

Mr. Musnicki said but you knew about it?

Mr. Steinert said it didn't indicate that it was on the calendar, it's a holdover.

Mr. Wittschen said it's always the following month.

Mr. Musnicki said we meet month to month.

Mr. Pasca said there is a mix up between the concepts. One is that a hearing continues monthly, but there is an issue that the recent submission was very recent and that's your issue and they didn't do anything wrong but what you're raising is to keep it open to allow more time to review it. It's not dishonest but its up to the Board to decide whether there is a need to give more time.

Mr. Steinert said yes. It's an appearance problem with the client and the applicant.

Ms. Wright said there is a mention of the character of the neighborhood and I want it clear on the record that 97 Seafield Lane is in the 50' setback on that street so that does go to the character of the neighborhood whether it's pre existing or not. And the trees and their potential removal and it does matter and does impact the environmental conditions and that's a factor for this Board to consider and can have an impact and finally, I want to put on the record the last appearance we were asked to locate the trees on the survey. We received it last Friday, I submitted the survey to the Village on Monday and I also spoke to the owner of 97 Seafield Lane and I sent him a copy of that to him and I was lead to believe he was the spokesperson for th neighborhood so there was no intention to withhold the information and I gave the Board what they asked and at this point, the applicant is ready to close the public hearing for a decision.

Mr. Musnicki said you mentioned 97 Seafield Lane if that was at 50' it would not be the ame visual impact?

Ms. Wright said yes.

Mr. Musnicki said on the placement of the art studio you mentioned the canopy outlines the roots and they don't exceed the canopy.

Ms. Wright said yes.

Mr. Musnicki said repositioning it North South bypasses that.

Ms. Wright said I don't believe it does.

Mr. Musnicki said not the canopy. If that is the same, the building fits in there and maybe a dogwood tree has to be moved and not the spruces.

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Ms. Wright said I'm not saying that, I'm not an arborist. It looks like the dogwood, Norway spruce and Japanese maple would be clipped.

Mr. Musnicki said he does not see that. Is there any movement and reconfiguring it in the same location.

Ms. Wright said I think we have come along way from our original application, and I think we have met the five part test and I am getting a feeling that the community thinks we're designing by committee and that's not what the Code allows. You have to look at the elements and if you want me to ask if it's feasible to rotate it North South I can. I keep hearing that there is a possibility for compromise; we've moved it to where the concerns are addressed and it takes away a negative impact and I'm not sure we're inclined to do anything else.

Mr. Musnicki said if that was the fashion, design by committee it would have been closed at the first meeting. We're trying to balance this.

Ms. Wright said I know the Board is yes, absolutely.

Mr. Musnicki said he thinks the community is also.

Mr. Nissen said yes he was provided the information. And yes, I did represent that he is the spokesman and there were parameters but my offer was rejected. The very fact that my house is on the street is part of the problem, there are problems. If you put them facing one another it's bad and in terms of the overall issue the variance procedure a determination will result in a hardship to the applicant. I don't think that's the case.

Mr. Musnicki said you understand that if your house was 50' back today we would not have this discussion, but it's a valid argument on her side.

Mr. Nissen said putting them opposed to each other is a problem. This could have been chosen as the front yard when it was built and he could choose your front yard.

Mr. Musnicki said it's not a choice; you have two front yards automatically.

Peter O'Rourke said he thought it would be modified, but it hasn't been in any reasonable compromise. I took photos of the homes in the community and the first three are the corners. They were kept in the 50' buffer and the houses are more than 50' back from the road and sits on the corner with nothing in the back yard. There are other homes on Seafield and the setbacks have been respected over the years and I disagree its consistent with the character of the neighborhood and I'm not the kind of guy who likes to tell my neighbors what to do I would prefer an equal compromise and I prefer they live within their means and a corner lot should be realized there are imperfections in how you're able to put new construction up and if a neighbor is asking for a pool or pool house or a tennis court; they are at grade and I wouldn't be concerned. This is a large permanent structure and a bad precedent. Buying a house on a corner is something you went into and now you want the neighbors to accommodate a large structure and I think its' difficult to say no to anyone to the extent you are approving this structure and I can't imagine that's an improvement for the town and its worse he's on the Board.

Mr. Piering said if he moves it back 50' he wouldn't need to be here, how do you feel about it then? If he withdraws it, moves it back 50' how will you feel?

Mr. O'Rourke said if it's 50' back and as of right. It's irrational and I wouldn't be happy.

Mr. Piering said you are of the opinion that this is irrational. You are deciding he's irrational and that's not before us. Would you have a problem as someone who lives on Seafield Lane with this 50' back.

Mr. O'Rourke said that's a risk I took when I bought my home; if it's within his rights he can do it.

Mr. Piering said we don't do this for feelings; irrational, views; I was here first and we have to stick to facts and I've seen a lot of emotion and I don't think we need that.

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Mr. O'Rourke said I'm trying to be fair. We're not talking about a house.

Mr. Piering said you are deciding this is irrational and we don't need to go there.

Mr. Musnicki asked if your concern is visual?

Mr. O'Rourke said I'm concerned that if it sells they'll rent it.

Mr. Piering said that will never happen; there's a covenant that will not allow that.

Mr. Musnicki said when it's sold and transferred there is a process for an Updated CO; there are safeguards. As the Chairman stated he has the right to build an accessory structure 50' off of Seafield Lane, up to 3,000 square feet so if it's just the visual part you're concerned with that's not an argument that we can hear. This is because there are two front yards.

Mr. O'Rourke said he's across from the Nissen's and they will be close.

Mr. Musnicki said we talked about that.

Mr. O'Rourke said it's not consistent with the character of the neighborhood.

Mr. Piering said that is one of our five factors. He said he is not going to close this, he's going to hold it over and anyone who cannot attend should submit their objection or opinion in writing. It has to be made part of the official record.

Mr. Nissen said there was no hearing for two months.

Mr. Pasca said any submission should be done 10 days in advance and it allows everyone to be prepared and attend the meeting.

Motion was made by Mr. Piering to holdover the application of **Jim Badzik, 27 Sunswyck Lane (905-15-4-3)** to April 18, 2024; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 0 absent, 1 recused.

4. 16 Fanning Holding LLC, Westerly Terminus of Fanning Drive Applicant requests variances from Village Law of NYS §7-734 for proposed walkway/dock catwalk within an existing officially mapped/planned village highway where prohibited and inconsistent with the approval of the subdivision map by the Planning Board and filed with the Suffolk County Clerk's Office on July 13, 1967, as Map #4894.

James N. Hulme, Esq., submitted a written request to holdover the application to April 18, 2024.

Motion was made by Mr. Piering to holdover the application of **16 Fanning Holding, LLC., Westerly Terminus of Fanning Drive** to April 18, 2024; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

5. Michael Jesselson, 49 Bayfield Lane (905-010-04-033) Applicant requests variances from §197-6 A(2) for proposed habitable space (studio) in detached building, which is deemed not to be normal and accessory to principal single-family dwelling use, from §197-35 A for proposed studio building which is located partially in the front yard where prohibited, also from §197-35 A for proposed pool & cabana which are located in the front yard where prohibited, and lastly from §197-35 A for existing tennis court proposed to be maintained in the front yard where prohibited.

Karen Hoeg, Esq., submitted a written request to holdover the application to April 18, 2024.

Motion was made by Mr. Piering to holdover the application of **Michael Jesselson, 49 Bayfield Lane (905-010-04-033)** to April 18, 2024; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

NEW APPLICATIONS:

6. Arthur & Jill Green, 193 Dune Road (905-020-02-012) Applicant requests variances from §197-8 C for proposed building area lot coverage of 23% where the maximum permitted is 20%, and from §197-29.1 A for a proposed addition which represents a prohibited increase in gross floor area of a preexisting building with nonconforming side yard setback (18.5' existing/proposed; 20' required).

Heather A. Wright, Esq., appeared on behalf of the application, together with Craig Arm, Architect. There is area North of the Crest of the Dune. Our proposal is to construct an addition and its 400 square feet and on the North side of the dwelling and expanding the garage and enlarging the two bedrooms and recreational room and outside of the CEHA and we'd maintain the existing setbacks and we are moving closer to Dune Road but we are still meeting the front yard setback and maintaining the setback to the East. She received a letter from the Goldstein's and they offered to meet with them and provided documents to them and we have not heard from them. But I want to talk about the neighbors and their impact. If we look at the Goldstein's at 195 Dune Road and that won't be impacted by this and it's 32' to the property and their easterly side has no windows at all and they can't look out at anything. 191 Dune Road is 75' wide and has non-conforming side yard setbacks and the lot coverage is pre existing non conforming and it plagues many homes on the South side of Dune Road and if we could use 20,000 square feet of the lot area we would not need the variance and we were careful to maintain the side yard setback which is 18.5' which is proportional to the lot width and the renovation is modest and to enlarge the two bedrooms and increase the recreational room and the garage size. There are other constrained lots with similar coverage. In terms of substantially they can't construct the addition without variances and we're at 20.6% lot coverage ad we are not expanding to the setbacks and we maintain the total side yard setback. The sides are not changing we are only looking for relief from the easterly setback. Tere is not any adverse impact on the environment and I think it's fairly straightforward and consistent with the hardship on Dune Road.

Mr. Musnicki asked the increase in the total gross floor area. It started at 400 square feet and now it's 800 and now there is a garage.

Ms. Wright said the footprint is only 408 square feet increase and in terms of square footage is 408 for the bedroom and rec room and then the garage. We're going out 17' towards Dune Road and then going up.

Mr. Musnicki said I am speaking about 197.29.1 and that calls for the gross floor area.

Mr. Arm said we are under the 6,000 between the two floors.

Mr. Musnicki said the argument can't be for one floor if its two floors and a garage. You are saying its 408 square feet but it's not.

Ms. Wright said I'm not; the 408 square feet is in the increase bringing us from the existing to the proposed.

Mr. Musncki said there is another variance.

Mr. Wittschen said I don't think so.

Mr. Hammond said instead of 20' you're 18.5' and that's over two stories and the garage and to answer for that it's not just one floor but it's two with a garage underneath.

Mr. Musnicki said 197.29.1 for the increase in gross floor area. That is not 408 square feet increase.

Ms. Wright said I agree, and I can get that number for the gross floor area.

Mr. Arm said to make mention, the 408 square feet is the ground floor which is the garage and the first floor the bedroom and the second floor where the recreational room is pulled in 3' is conforming it's at the 20' setback. That conforms with the setback. The second floor conforms with the setback.

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Mr. Musnicki said okay. So they both, the spaces are combined 408 square feet?

Mr. Arm said no, it's the lot coverage increase. We can give a break out of the encroachment and it's all lot coverage and we can break out the square footage.

Mr. Musnicki asked if the garage is part of the 408 square feet?

Mr. Arm said he will do a breakdown of what is encroaching.

Mr. Musnicki said he's okay with it.

Mr. Hammond said what was not clear to him, is the height. Can you keep that under the rule? Have you looked at the height, and there's no variance sought so I am assuming it can be achieved.

Mr. Arm said I will check, but I don't think we require a variance for the height.

Mr. Piering asked if there were any other questions or comments.

Lynch and Bak and he represents Mark and Adriana Wiener at 191 Dune Road and the other is Dubeck, 192 Dune Road and he represents them who object the granting of the variance. And 191 Dune Road lives next door and I didn't know the height and it's going to be 17' further and its non conforming on the lot line and it should be 20' and its increasing the amount of non conformity and it hasn't been demonstrated that its not feasible and not on the lot line. It was misleading and as far as the square footage it looks like it is 408 square feet but it is more than that. I have an aerial picture in my submission and 191 Dune Road where the addition is where their decks are and their living space. This addition is going to block their view. It indicates that there are 6 bedrooms and 5.5 bathrooms. They indicated they need the expansion for their family and they need more space. It's a second home and when tis balanced to the detriment of the neighborhood it will be a large structure and very close to the property. They knew it is on Dune Road and compromised and there's only 75' of frontage ad it's much higher

7. Build Coastal LLC, 26 Old Riverhead Rd (905-004-02-009) Applicant requests variances from §197-17.1 for a proposed front yard setback (roof-over) of 20.5 feet where the minimum required is 50 feet, and from §197-29.1 A for a proposed second-story addition which represents a prohibited increase in gross floor area of a preexisting building with a nonconforming front yard setback (24.5' existing/proposed, 50' required) and nonconforming side yard setback (18.8' existing/proposed, 20' required).

Thomas Downing and Chris Mensch appeared on behalf of the application. Mr. Downing said they are requesting relief on our building to construct a second story addition; it has been there since the 1940's and we purchased it 8 years ago and there have been site plan reviews and the parking was in the front and we moved that to the rear and we have a contractors use that we went to the planning board for and we are growing and we want to add on to the existing building and there is a barn in the rear so we're looking for relief for the front yard setback which is 50' but the existing building is 24.5' and we're non conforming and the zoning started in 1956 so this pre dates zoning. We ae also looking for a .2' on the North setback and the main issue is the front yard setback. We are seeking 25.5' to bring the first floor vertically and add a second story to the existing structure. We're doubling the square footage and the maximum building coverage is 20% and that is 6,022 square feet and we're below the allowable square footage. Our hardship is that its preexisting building and its structurally sound and we have it looked at and we feel that it would be the most cost effective is to add a second story addition and we looked into he idea of pushing it back but there is a barn in the back and if we were to meeting the front yard setback it would take away our parking that's been approved int eh rear, there is existing drainage and lighting and landscaping installed.

Mr. Piering asked about the barn.

Mr. Downing said it's warehouse. There is a tenant that's a propane company, and we received planning approval for it and we did site plan review and we added lighting that's dark sky

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compliant, screening along the North and half of the property line and the South property line until the building and it's well screened and the trees are 8' to 10' high.

Mr. Piering asked if this is the B2?

Mr. Downing said yes. We tried to minimize the impact, the existing is one story with an attic and the proposal has a flat roof so it's only 9' higher than what exists to minimize the impact along the road and the general change of appearance will be an improvement to the streetscape and to the entrance of the Village. We also have an existing ADA ramp on the front that's 4.5' into the setback and we'll remove it and relocate it to the rear of the property where the parking is to make the front look nicer with landscaping. I included a few things in the packets; the survey, the plans, and I included a picture of the roadway showing the 50' setback and I was trying to draw attention to the slew of buildings in the setback so it's not out character for the area. I have a picture of the existing building and I wanted to draw attention to HCMC which was granted a variance for the front yard and rear yard setback and there are three letters of support from neighbors and the most important is the owner of the property to the North property line to us. He is most drastically effected by the request.

Mr. Musnicki said you are doubling the size, and the building on the SE corner has a 2 story addition, it's a little more than double?

Mr. Downing said there is a covered storage building that's in the rear and we're removing that and we're squaring off the SE corner to make it more rectangular.

Mr. Musnicki asked if its new construction or existing on the first floor.

Mr. Downing said we are only adding a second story addition.

Mr. Pasca asked if they have filed with planning yet?

Mr. Downing said no, if it changes that will change the planning requirements.

Mr. Pasca said there is a cross over in terms of impacts and part of planning is the visual impact and because you are closer to the street you might want feedback.

Mr. Downing said I figured if we applied to them they'd refer to this Board.

Mr. Pasca said a lot of time they run in tandem and it does need Planning and there is benefit to get feedback from them to help this Board evaluate the impacts.

Mr. Downing said if this Board was to deny us, we'd have to redesign it and change the parking, the curbs, the sanitary and if we went to planning we'd have to redesign it a second time based on the comments of this Board. We also went to planning for this site so it's not a site that needs to be formalized.

Mr. Pasca said this Board would act first on the variance, and the only suggestion I'm making is getting feedback to help this Board. There is benefit and it could be to you to get feedback to help this Board make the determination. I won't tell you that you have to, but it could be beneficial, and you won't lose time but to have them run concurrently doesn't hurt.

Mr. Piering asked if we should hold this over?

Mr. Downing said during our meetings with Planning we did discuss the potential of adding a second story, and we were not in the stage to do so but it was part of the discussion with the landscaping and parking and locations of things. We were hopeful that we would not have to move the things we installed already. We can apply to planning.

Mr. Hammond said what you submitted to this Board is fine to submit to Planning. The Northerly setback is 1.8' and they only give variances absolutely needed and it's a point well taken that if two agencies are going to approve it, it behooves you to make sure there are no issues with another agency.

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Mr. Musnicki said if you have to meet the front yard setback, that would hurt you as far as septic and parking?

Mr. Downing said the drainage and utilities and it would substantially change our parking and the lighting that's been installed.

Motion was made by Mr. Piering to holdover the application of **Build Coastal, LLC., 26 Old Riverhead Road (905-4-2-9)** to April 18, 2024; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

8. J Douglas & Julia O'Neill, 25 Aspatuck Road (905-013-02-013) Applicant requests variances §197-6 D for proposed northerly connecting addition which subjects the garage to principal setbacks resulting is a proposed rear yard setback of 5.3 feet where the minimum required is 50 feet, and from §197-29.1 A for proposed easterly second-story additions which represent prohibited increases in gross floor area of a preexisting dwelling with a nonconforming second front yard setback (37.2' existing/proposed; 50' required).

William F. Heine, Architect appeared on behalf of the application, together with Doug and Julia O'Neill. Mr. Heine said the owners live at this property full time and they are raising the second floor to a full second story and fill in the attic spaces and increase the bedroom sizes and a bathroom and closets. There is 142 square feet addition, 82 is conforming and 60 square feet requires a variance; the total number of bedrooms will not change, and its within the existing footprint and covered porch and a corner is 37.2' where 50' is required and the porch is exists and we're adding above it. The addition represents the prohibited increase in the floor area and there is a second portion and we're adding between the house and garage and there's a breezeway and we plan to fill the space for stairs from the first floor to the second floor.

Mr. Piering said you are connecting the garage that's not conforming; so now the house will be non conforming. What will you do with the garage?

Mr. Heine said it will remain but as far as the roof line and pitch and floor plan of the garage will not change and will remain a two car garage.

Mr. Piering said the house is now 5' off of the property line and that's substantial. I can understand why you want to connect the garage to the house, but we have to be careful.

Mr. Heine said the addition is 114 square feet and 42 on the second floor. The east and west doors have been pushed in so the addition appears smaller than the garage and we're trying to consider the Northerly neighbor. I did present a single and separate search which shows the ownership prior to 1953 and the Town of Southampton shows the house porch and garage in 1931 and pre date zoning. They considered the garage attached, but there is a roofed over breezeway and not enclosed and Mr. Hammond said the garage was accessory.

Mr. Hammond said our Code said if its connected it is part of the principle structure.

Mr. Heine said they are non conforming structures and pre-existing non conforming structures and they do have CO's and CC's for everything that exists. It's a non conforming lot and we provided the single and separate. It does not conform in area and lot width and it does not fit into lots with small dimensions and does not mee the lot area and in R1 you should have 40,000 square feet and they have 15,000 square feet. So the lot is 37% of the required size. The 150' lot width they have 114.9' on Church and they do not meet the lot width and it is a corner lot. The maximum allowed lot coverage is 20% and at the end it will only be 13.2% so we're under lot coverage. The current house is being proposed at 30'1" and the maximum is 32' and the proposed additions are under lot coverage and were not over building. In the submission I included the site plan and the house is sticking out in three directions and doesn't conform to the setbacks. Nothing is conforming on this property. The tennis club is to the East of this property and I pulled up a series of the local lots and it's a moderately size lot for the area and I looked at the size of the house and its moderate for the area. We're not changing the character of the neighborhood at all. The reduction of the front yard is not minor but it is not substantial. That's also an existing location of the house in that footprint. The garage setback the garage exists and we're not going to touch that, and we're doing

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our best to maintain that and there is a small roof cricket. I don't see the neighbor to the West having any problems.

Mr. Wittschen said we have not heard from the neighbors.

Mr. Heine said the existing house shields the neighbors on Church Lane.

Motion was made by Mr. Piering to close the application of **J Douglas & Julia O'Neill, 25 Aspatuck Road (905-13-2-13)** for a decision; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

9. Mark & Christine Tobin, 185 Dune Road (905-020-02-015) Applicant requests variance from §197-8 F for attached rear second-story deck constructed approximately 6 feet above the second floor where exterior decks are not permitted to exceed the top of the finished floor of the second story.

Nicholas A. Vero, Architect appeared on behalf of the application. This project was started in 2017 we received a denial letter and that required us to come before this Board for variances and one thing we failed to do was advertise the roof deck and I gave the drawings reviewed by this Board in 2017 and it was granted in 2018 and one thing we failed to do was advertise for the roof deck and during the construction it was ignored and we step up to the roof deck, it's not a balcony and its up and our first floor plate is at 15.5' and we're at 16' to the top of the roof deck and it was not brought to my attention that we failed until inspection. We came to this Board in 2022 for 317 Dune Road and we were granted a roof deck which was 14.5' above the first floor and it's nestled into the roof line and I do not believe there is any opposition from the neighbors.

Mr. Piering said we have never allowed a roof deck.

Mr. Vero said it's not on the main roof of the house, it's nestled into the deck. And we did get one at 317 Dune Road.

Mr. Piering asked what that variance was. It was not for a deck.

Mr. Vero said it was advertised for that and we put it on our application and presented that to this Board and I can provide copies to this Board. We can look at it at the next meeting and we can hold it over. If you look at the drawings that this Board looked at in December 2018 it did show a roof deck and we missed it.

Mr. Musnicki asked if there are building plans from 2018.

Mr. Vero said yes, I do and I do have the stamped plans that were approved.

Mr. Musnicki asked how Mr. Hammond got involved for a framing inspection.

Mr. Vero said I don't know what inspection it was.

Mr. Hammond said it started in 2019, so this was underway when I started.

Mr. Vero said you issued the building permit.

Mr. Piering said the variance doesn't say anything about the deck. We granted the variance but not for the deck.

Mr. Vero said it was not advertised or on our application and those are the drawings I presented but it wasn't discussed and I have a denial letter that tells me what we needed to do and the deck was not on there.

Mr. Piering said it was not for the deck.

Mr. Vero said my denial letter has five things; and it was not advertised or picked up on and was constructed as part of the plans.

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Mr. Hammond said it was not; you submitted to this Board that the second level deck was taller than the second floor and I don't dispute that, and that was the original plan proposed. Upon inspection this deck went to 6' higher and that got taller but there's an elevation that shows the deck elevated and should have been subject to the variance. What my issue is, it's much taller to where you are on the deck you are on a roof and that's the point of the Code it's not 28" or 32" it's 6' up.

Mr. Piering said it is a roof deck.

Mr. Musnicki said the original plans show a deck on that side at the second floor level.

Mr. Vero said it was 3' higher and that was presented to this board. We missed it.

Mr. Musnicki asked if this is built, or is it something that slipped through the cracks?

Mr. Vero said it is built, it is there. It is built and obviously it was built without approval and I'm not denying my mistake and representation and advertisement.

Mr. Wittschen asked why its coming to them now?

Mr. Vero said we're trying to get a CO and they still need Health Department too. It's been since 2017 and this is just one issue.

Mr. Hammond said the denial was January 30, 2020 and I have not approved anything since then and they have to appear before this Board.

Mr. Musnicki said you could have changed it 4 years ago?

Mr. Vero said maybe not in 2020.

Mr. Musnicki said that doesn't answer the question; they were aware in 2020 and they chose to do whatever they did to move forward because it's built.

Mr. Vero said it was pretty much done at that point.

Mr. Musnicki said I thought it was during a framing inspection.

Mr. Vero said he'll look for that information and provide that to the Board.

Mr. Wittschen asked if he wants to close it?

Mr. Vero said no, I want to keep it open and I will provide this Board with the information they are seeking.

Mr. Musnicki asked him to provide the original approved plans.

Mr. Vero said he will.

Motion was made by Mr. Piering to holdover the application of **Mark & Christine Tobin, 185 Dune Road (905-20-2-15)** to April 18, 2024; seconded by Mr. Martinsen and unanimously carried 5 ayes, 0 nays, 0 absent.

10. John & Joyce Fitzsimons, 10 Stillwaters Lane (905-010-04-024) Applicant requests variance from §197-63 P(1) to legalize and expanded deck resulting in a building area lot coverage of 28.2% where the maximum permitted is 25% (with existing tennis court).

Jacqueline Morley, Esq., appeared on behalf of the application. This is to legalize an existing deck and they have owned it since 1978 and it looks the same since 1992 and they added an addition. They have a tennis court and pool house. They extended back a little bit but they are within the footprint and the deck is built out around there were stairs and they evened it out and it hasn't gone closer to either side and the rear boundary line is far from the house. It's not substantial and there is no additional disturbance.

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No one had any questions or comments and Mr. Piering said that they could close the application for a determination.

Motion was made by Mr. Piering to close the hearing of **John & Joyce Fitzsimons, 10 Stillwaters Lane (905-10-4-24)** for a determination; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

Motion was made by Mr. Piering to adjourn the meeting at **7:22 p.m.**; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.