

June 20, 2024

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, June 20, 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  
Daniel Martinsen

Anthony C. Pasca, Esq., Village Attorney

Brad Hammond, Building and Zoning Administrator

Maeghan Mackie, Building Permits Examiner / Board Secretary

ABSENT: John Wittschen

**DECISIONS:**

**1. 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).

No one appeared on behalf of the application. Mr. Piering stated 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

Build Coastal, LLC.

**DETERMINATION**

Address: 25 Old Riverhead Road

SCTM #: 905-4-2-9

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**I. REQUEST FOR RELIEF**

The applicant, Build Coastal, LLC., is the owner of a parcel of real property located at 26 Old Riverhead Road. The property is located wholly within the B-3 Zoning District. According to the survey of the property dated April 12, 2023, prepared by Fox Land Surveying, the parcel is improved with a one story frame building a wood deck and a detached one story frame garage.

The applicant seeks to construct a second story addition to the existing one-story building, as depicted on the site plan drawn by Gaby Tchilinguirian, dated 12-19-23, and the accompanying building plans. The proposed addition would largely be within the existing first floor footprint, but with an awning that would have a front yard setback of 20.5 feet, while the main building would retain the existing (nonconforming) setbacks of 24.5’ to the front lot line (where 50’ is required) and 18.8’ to the side lot line (where 20’ is required).

June 20, 2024

Section 197-17.1 of the Village Code provides that, in the B-3 Zoning District, the minimum required front yard setback is 50 feet

Section 197-29.1.A. of the Village Code provides that, with respect to nonconforming structures, a nonconforming building 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.

Applicant therefore 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).

## **II. SEQRA**

The applicant submitted an Environmental Assessment Form Part I pursuant to the State Environmental Quality Review Act (SEQRA). Because the project involves less than 4,000 sf of non-residential space, the action is classified as a Type II action under 6 NYCRR § 617.5(c)(9). No further SEQRA review is required.

## **III. ZBA PROCEEDINGS**

This application was duly noticed for a public hearing, which was opened on March 21, 2024. The applicant, Thomas Downing appeared and presented the application, together with his architect Gaby Tchilinguirian.

No other persons appeared in support or opposition to the application, but the Board received written submissions from Westhampton Glass & Metal, Inc. (44 Old Riverhead Road), 30 River LLC (30 Old Riverhead Road), and Paul M. Pawlowski (10 Old Riverhead Road), in support of the application. The hearing was closed at the May 23, 2024, meeting for a determination.

## **IV. 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

June 20, 2024

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.

## **V. 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 proposed addition will not have a material adverse impact on the character of the neighborhood. Except for the small awning, the proposal would not result in any expansion of the footprint of the existing building, or any further intrusions into the front and side yards. While a question was raised as to the design of the building, the final say over the aesthetics will lie with the Planning Board.

2. *Alternatives:* The applicant has no alternative to achieve the benefits sought (a second floor addition) without the need for variance relief.

3. *Substantiality:* The additional awning represents a de minimis structural variance. The second floor, while substantially nonconforming as to front yard setbacks, falls within the existing building's footprint, thus mitigating the substantiality of the variance.

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 benefit to the applicant outweighs the detriment to the community.

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

The Board therefore grants the requested variances to allow the construction of a second story addition to an existing one story frame building, all subject to the following conditions to minimize any adverse impacts from the variance:

## **VI. CONDITIONS**

1. The variances granted herein are limited to the relief set forth in this decision, and pertain only to the Final Plans approved in this decision, and shall not be construed as creating conforming dimensions. There shall be no further extension (horizontally or vertically), increase, alteration or modification to the structure or any other structure located on the property that has non-conforming

June 20, 2024

dimensions, without further approval of this Board. However, because the site plan process has not been completed, the Board notes that mere changes in the design of the building, not resulting in any increase in degree of nonconformity compared to those in the existing plans, shall not require additional review by this 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. The variances granted herein shall terminate unless a building permit is issued within one year from the date hereof.

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

Dated: June 20, 2024

Village of Westhampton Beach  
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Build Coastal, LLC., 26 Old Riverhead Road, (905-4-2-9)** as written; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

### **HOLDOVERS:**

**2. 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.

Jackie Morley, Esq., appeared on behalf of the application. Mr. Piering stated this was on the agenda for awhile and would like an updated. Ms. Morley said they appeared in December and at that time the client has chosen to reassess the location of the accessory structure as proposed and the redesign is taking time. The goal is to take away a variance.

Mr. Piering said you want to decrease the number of variances requested?

Ms. Morley said yes. They are working through it. There had been a series of architects on this project and has been going on for quite some time and we are requesting an additional adjournment to August 2024. I know our schedules for next month are difficult.

Mr. Piering said this has been on the agenda for a long time and I hope your office gives them input.

Ms. Morley said yes, and I believe our office has spoken to the Building Inspector.

Mr. Piering said okay.

Ms. Morley said they are trying to reorganize the application and the accessory structure was very close to the existing tennis court and we are trying to push it behind the dwelling and hopefully it will take away a variance.

June 20, 2024

Mr. Musnicki asked if she's speaking to the accessory studio?

Ms. Morley said yes, and to remove the plumbing and have it behind the front line of the house.

Mr. Piering said okay.

Ms. Morley asked if it's okay to adjourn to August?

Mr. Piering said yes, that is fine and hopefully you are able to proceed in August.

Motion was made by Mr. Piering to holdover the application of **Michael Jesselson, 49 Bayfield Lane (905-10-4-33)** to August 15, 2024; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.

**3. 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. Mr. Vero said he had two adjournments on this and made a submission on May 15, 2024 to this Board and he's trying to show the various roof decks in the area that exist and some were permitted and I included the application, approval and drawings for 317 Dune Road which was approved and has a very similar roof deck on the structure on the South side and that was from 2022 and that was a discussion I had at the last time I appeared before this Board. I want to reiterate that there was a mistake made during the application process and not picked up in 2018 and I submitted that letter and subsequent letters and correspondence and I believe you asked me why there was a wait from January 2020 to now; when I looked at it and ready to take care of it and in March 2020 everything closed with COVID 19 and it took me awhile to start this process again. I think the drawings submitted looked at by the ZBA showed the roof deck on the drawings, and part of the application at that time and not realizing it was not written in the application. I would like to move it forward and reiterate that variances were not approved for this type of structure, but 317 Dune Road did receive one.

Mr. Piering asked if that was for a roof deck?

Mr. Vero said yes. Moving forward, if this Board is looking to grant this approval the one thing I can offer to make it a little better on the West side is the glass railing on the roof deck and I can offer and make it a privacy wall and look like the siding of the house so there is no impact to the neighbors. I have not heard from them and do not think there's anything on the record in opposition. I don't want a situation where we have the Friedman – Pollack situation, which is why this Code was written and we can make that and offer the one side a glass rail and the other is a solid wall. Short of removing it all that's my consideration.

Mr. Piering asked him to tell him how he'd mitigate it.

Mr. Vero said I would remove the glass rail on the Westerly side and from the beach you cannot see this.

Mr. Piering said there's no disputing it is beautiful.

Mr. Badzik asked what he'd replace the glass with?

Mr. Vero said I would replace it with siding. The glass rail is 4' high and you're not looking over on the Westerly side will not be able to see the activities on the deck. And that's what I would offer instead of ripping it down. I did give you photographs of roof decks that do exist in the Village. In the Village and trying to keep with the peace and not be too obtrusive is probably the only municipality that does not allow them.

Mr. Pasca said there are other Villages that do not allow roof decks; the Village of North Haven does not.

June 20, 2024

Mr. Vero said yes. That is all he has to submit and looks to close the hearing.

Mr. Musnicki said the original drawings that he saw, that floor was an elevation 2' higher.

Mr. Vero said I think we were at 12' with the original ceiling and we're at 16' now.

Mr. Musnicki said the drawings I have show a 2' step up from the true second floor up to the elevated deck. And as constructed its about 6' and it somehow morphed from 2' to 6'.

Mr. Vero said he thinks they were trying to get higher windows into the living room and that's to the top of the roof deck at 13' and I think that's what the building department records show, and yes I made it higher.

Mr. Musnicki said in 2020 what was the response from the owners to the rejection on the inspection during the framing. This was pointed out during the framing.

Mr. Vero said at the time, I sent the letter to them and I don't think the building department cc'd the clients and I think he may have wanted to take care of it, but then March of 2020 and then Mr. Hammond reminded me in June or July of 2020 to move it forward.

Mr. Musnicki said it was during framing and that was the time to make the changes.

Mr. Vero agreed with Mr. Musnicki.

Mr. Musnicki said the only way around it is to eliminate or modify it to some degree.

Mr. Vero said he did offer a modification, to modify the roof line is out of the question, and eliminating the roof deck is the only option and to eliminate the unsightliness of it would be adding a privacy wall.

Mr. Piering said part of this is the neighbors, its not just the view of the ocean.

Mr. Vero said that's why I made that suggestion, the neighbors won't see it if we add siding.

Mr. Piering said the roof deck is not as high as it is in person compared to the drawings.

Mr. Vero said it was raised 30".

Mr. Musnicki asked what was the raising of 30" based on?

Mr. Vero said it was out of sight and a slip up and the way it was advertised it was not on the denial letter.

Mr. Piering asked when this first came before the Board? When did they get the roof deck denial.

Mr. Vero said our first hearing was March, 2024. This is our second hearing.

Mr. Piering said yes, I know.

Mr. Badzik said you received a denial January 25, 2024.

Mr. Musnicki asked the cost of eliminating the deck?

Mr. Vero said elimination of the railings and the decking materials and the door. I would assume the stairs would have to be removed.

Mr. Musnicki said you have the habitable space under it correct?

Mr. Vero said yes.

Mr. Piering said there is another deck below it out of the bedroom.

June 20, 2024

Mr. Vero said yes, it's the second floor rear deck that's permitted. It's only 4' wide and if you look at the first floor plan and look at the deck granted by this Board it's very tiny. The outside living area is not that large. We have limited deck on the South side of the house and this was an extension of the deck.

Mr. Piering said you have the lower deck and the roof deck. What screening are you talking about?

Mr. Vero said I would screen the West wall and do that in siding.

Mr. Piering asked how deep it is? I don't have the dimensions.

Mr. Vero said it is about 16' and I would do the entire wall. So about 24' of privacy wall with no glass railing on the West wall. And that deck is flush with the rear wall of the house and there's no cantilever over it. It's 17' x 13'.

Mr. Piering said you are saying for 317 Dune Road, you are saying we approved a roof deck. I don't see the plans, I only see the approval.

Mr. Vero said it is Exhibit "N" in the packet.

Mr. Piering said he has an Exhibit "N", and Mr. Musnicki said he has it as well.

Mr. Vero asked if there is a second floor plan on there? It is 15' wide and 28' deep.

Mr. Piering asked where it is in relation to the house?

Mr. Vero said the South East corner of the house, it's 11.5' from the first finished floor, and 9' plate heights so it's 2' difference.

Mr. Piering said that's below the roof, we have a different description of a roof deck.

Mr. Vero said a deck on the second floor has to be at the second floor; that's not at the second floor it can only match the second floor according to the Code.

Mr. Hammond said on Anderson, 317 Dune Road we called out that variance, and the building plans matched the variance plans and they got that relief of 2' higher than the second floor.

Mr. Piering said it's significantly different.

Mr. Musnicki said someone has to take responsibility for these changes. Going from 2' to 6' and no response on the framing inspection failure those are the problems.

Mr. Vero said I made my offer, moving forward you allow me to side the deck or we eliminate it. I can't lower the roof or remove the windows. I would probably put it at 11.5' and we do think about the sun, wind and the rain and the fact that we were seeking additional decking because we were so limited on the first floor and I gave it up knowing we can't go further South because of the Dune and it was part of the ZBA application, it was just not advertised. I don't see anyone here nor is there any record from any neighbor especially the Westerly neighbor and in fairness to this Board if we remove the glass wall so the deck is not in the face of the neighbor, and they are sitting there you won't see anyone on the deck.

Mr. Piering said he understands what he's saying. How high is the wall that you are going to seal off?

Mr. Vero said maybe 48". It's the same height as the dais.

Mr. Pasca said the 48" doesn't really do anything, you are looking down at the neighbor next door.

Mr. Vero said they don't want to see the neighbor, they want to see the ocean view. People come and complain about the view you tell them the view is the ocean not the neighbor or the road. I am trying to make it more private. We can't raise the height of the wall that would require a variance.

June 20, 2024

Mr. Pasca said no matter what you ask for it sets a precedent. If I put a 40" wall on one side I can get a variance, and the character of the community isn't about the neighbors objection its about creating a pattern and there's a recipe for a variance to get a second floor deck.

Mr. Vero said it's not in your face with stairs to it and white wooden railings and people can tell it's a roof deck, and I understand those were preexisting non conforming but they were extensive and I only took a snapshot of houses around my clients house.

Mr. Pierings aid we have seen a lot of preexisting non conforming things, one thing is driveway gates they are not allowed today but a lot of people use those examples and that's not a winning argument.

Mr. Vero said I'm looking to try to correct it as best we can and not start all over again. In the spirit of the way the Code was written and the reason for why it was written was to keep people private and not obtrusive.

Mr. Piering said it's a big deck that can hold a lot of people.

Mr. Vero said it's half the size of this room. I can show you what is up there and provide photographs of what is on the deck they don't have parties on the deck

Mr. Piering said he had no other questions. He asked if any of the Board Members had comments or questions or if there was any public comment.

Motion was made by Mr. Piering to close the hearing of **Christine Tobin, 185 Dune Road, (905-20-2-15)** for a determination; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.

#### **NEW APPLICATIONS:**

**4. Tranquillo Associated LLC, 85 Dune Road (905-021-04-005.06)** Applicant requests variances from §74-5 C(2) for a proposed nonmovable structure (dwelling) within the Coastal Erosion Hazard Area (CEHA) where prohibited, from §197-8 D for proposed rear yard setback (to crest of dune) of 64 feet where the minimum required is 75 feet, and from §197-35 C for proposed accessory deck with rear yard setback (to the crest of dune) of 50.5 feet where the minimum required is 75 feet.

Heather A. Wright, Esq., appeared on behalf of the application, together with Craig Arm, Architect. Ms. Wright said to break the presentation up into what exists and what we're proposing and then I will go to the five part test. Currently the property has a pre existing one story dwelling over a finished lower level and a rear deck; there is no CO on the property on file and it's 48.1' from the crest of the dune and in 2009 the prior owner came to this Board and merged two lots to create this lot and in order to demolish that dwelling and construct a new dwelling and that did not happen, but the lot was merged that has expired and the Board imposed a 25' non disturbance buffer in the front and that's there. They would like to demolish this home and construct a new two story residence with a pool and a deck on the rear and as designed 234 square feet would be 64' from the crest of the dune and the deck and porch would be 50' from the dune crest and the construction would allow for 2 piers and cantilevers to allow for dune restoration under the structure. 50% of the dwelling will be outside of the CEHA and we're not asking for total or front yard relief and we meet the lot coverage, and we're complying with FEMA and installing a new sanitary system. When we look at the five factors; the character of the neighborhood we know this is a large dwelling but we think it's important to remember that it is two lots merged and in 2009 the Board imposed that buffer so that the impact was minimized of a large structure built on the property. The buffer is 25' and it is 4100 square feet at the front of the property and we believe our design minimizes the impact on the character of the neighborhood and we're meeting the dimensional regulations. Our proposed setbacks would be 23.4' from the West and 22' from the East and moving from the CEHA. The dune encroachment serves two purposes and one allows the applicant to maintain the feel and proximity of the house and the way its constructed now. It's a large lot that can accommodate a large house and they were mindful of the mass and the front will be shielded and designed in a tiered fashion. You have the second floor that drops into the pool and the viewshed is protected and reduces the mass that exists. It also affords the opportunity to revegetate the dune underneath. If we have the encroachment into the dune we'd extend our walk



June 20, 2024

and that would require more pilings than what we're proposing. In terms of alternatives, we're constrained by the buffer on the front and obviously the location of the CEHA and the crest of the dune, often times this Board prefers front yard variances to move the home outside of the dune crest and the house itself here is 89' to the property line we're 64' to the buffer and when you factor in the retaining wall and septic system we can't move this home further North. Any lot on the South side of dune road you're constrained by the dune crest and the 75' setback and we believe this is the best location for the design and proposed construction. Any substantiality has to be looked at, at the same time we're moving all the non conformities of the existing home. We will have the dune restored and it's a benefit to the environment. That's how we came up with the design and we thought about what would be best for this lot size and its unique I don't know of any lot on the South side of Dune Road that's this large and we're mindful that we're constructing a larger home and that may concern the adjacent owners and the lot next to them is vacant and we were careful to design the house in way to protect the project for the neighbors.

Mr. Piering said the 2009 ZBA decision said one thing about this, Mr. Bean the Chairman emphasized that this is a model for any reconstruction on Dune Road and it was only a CEHA variance and the house was able to be constructed with a 75' setback even with the 25' buffer so why can't you do what was approved and ask to have the variance reinstated?

Ms. Wright said that's not the design they are looking for. There are many applications before this board on the South side of Dune Road, this Board weighs the benefit to the applicant versus the detriment to the community and it's a non conforming structure and they believe it would be a benefit.

Mr. Piering said we went through this in 2009 when we merged it. What's different?

Ms. Wright said it's a different set of plans. It is a large lot and can support a big house, just because it's a big house shouldn't matter.

Mr. Piering said why can't you conform with the established parameters in 2009?

Ms. Wright said we're meeting GFA and lot coverage and we relocate the square footage if we add living space we're creating more of a mass that will impact the property owners. In terms of the view, they will look out and to look on to a lower plane as opposed to a second floor that extends further South.

Mr. Arm said as part of the packet if you look at the aerial view, that shows the house in Brown and there is one after that and there is green shown when you look at the house and its design you can see the existing house and we're proposing to extend the living room and dining room out and taking that square footage it enables us to keep it back and in doing that the line of sight is increased and if we take the space in the middle and redistribute it we would create more of a "U Shape" it pushes the second floor out further to the edges and the massing gets increased.

Mr. Piering asked if you are compliant?

Mr. Arm said yes, we would be but as opposed to this design, we felt it gave more privacy and less mass of a structure and appearance to the neighbors so that lead the design.

Mr. Musnicki said I am concerned about the extended porch area and the East and West neighbors are not impacted by a view shed as you say, they are a little far forward anyway and the view is to the South I don't see an interruption to the East or West neighbors. Would you consider taking the porch and dropping it back into the decking?

Ms. Wright said we can speak to the client.

Mr. Arm said in terms of making the porch area back and making it deck?

Mr. Musnicki said to eliminate the section that's there.

Mr. Arm asked if he means the enclosed house?

Mr. Pasca said the highlighted pink or purple part.

June 20, 2024

Mr. Musnicki said the purple part. I would be more comfortable if you can work that space and the house is big as it is.

Mr. Arm said I understand. And we have square footage, and we can do that but it was part of the reason to minimize the size of the width, and it won't affect their Southern view but it's the cross views of the property that they've become accustomed to. The house is small and on the Dune and it's a vacant lot so make a large house feel more small but creating a "T" shape design to pull the living space away from the neighbors.

Ms. Wright said we did it to restore the dune under it as well. Here we were conscious of lifting it and having it float over the dune and be better for the environment.

Mr. Musnicki asked if they can speak to their client about that reduction?

Mr. Arm and Ms. Wright said yes.

Mr. Piering asked if they can move it forward? You have to go into the dune crest because of the 25' buffer?

Mr. Arm said we have the 75' compliance for the main body of the house and we're not encroaching in to the 75' for the front, but with the buffer we have our sanitary system and we have spoken to the neighbors and I'm going to see if we can move it 1' or 2' but we will look into that.

Mr. Pasca said I can point out, the covenant is not a type of covenant that cannot be changed there is ability to amend it with good cause shown and if there is a difficulty due to sanitary system requirements and there is an argument to make to move the house you have to show that through a calculation. The front yard does look like it has the space and keep in mind there is some possibility to amend the covenant.

Ms. Wright said I thought of that and I agree with you, and there is a benefit to the covenant as well and if this Board wants to amend it but I think given the size of the lot and the home we're proposing the covenant does add benefit to the neighborhood character.

Mr. Pasca said it is possible, and if your argument is that there is no alternative to moving the house closer to the street you have to figure that out. It's not apparent in the plans and if the covenant is impeding it that's something on the table.

Ms. Wright said the buffer exists.

Mr. Pasca said to me looking at the site plan it's not evident there is no way to move the house forward. You can make a case but you have to show the calculations for the parking area and why its impossible to adjust in the North to pick up the 200 square feet.

Ms. Wright said we have started that discussion with the Engineer.

Mr. Musnicki said I think it's important to keep the house back but since this Board has raised those comments, I think you need to make an argument.

Mr. Piering said it is a big house.

Dan Minc, 81 Dune Road said he has lived here for 23 years and I'm the Easterly neighbor. Im the adjacent owner we had a similar situation as the applicant and it's odd because I know the property well and the dune well and the area and I have lived here 23 years and I urge the Board to consider part of the application, the deck part because what you have to consider and what you don't understand if you don't live on Dune Road we don't have a backyard, we don't have 1" of a back yard with grass trees and a patio or decks, and Dune Road we pay for 200' in taxes to the high water line but we can't touch it. I have a 4' walkway but there's no where to sit and we're constrained. I understand there is a Code and a reason for the Code and there is the CEHA line and you don't want houses on the street and our dune has grown 40' in the last 10 years and I have a staircase that goes to the end of the dune and there are 8 steps buried under the sand and there is

June 20, 2024

200' from my walkway to the steps start and there is a huge buffer and it's heavily vegetated and there are a lot of trees and bushes.

Mr. Piering said that's part of the purpose of the Code restriction.

Mr. Minc said their proposal doesn't approach the first dune but what I'm saying, I'm not advocating for a structure, but a deck is living space to enjoy the summer and compensate for not having a back yard. When they talk about extending a deck, there is 30' trees that would not affect the deck and I support their request and I have no impact and 80% houses are 50' to 60' further. I am objecting to a structure with a roof because that's my position.

Mr. Piering asked what he's opposed to?

Mr. Minc said part of what they are asking for a variance is a covered area with a roof, an extension of the house and part is a living area and part is a covered roof for a porch. I would prefer granting it without the roof and it's a deck only. It will not impact me and cannot be seen. You cannot see the deck they are proposing and they have a large piece of property and they are entitled to build a larger house. I support the deck, but not the covered part.

Ken Eckstein, 87 Dune Road appeared and said he is the Westerly neighbor. I want to thank Ms. Wright and Mr. Arm for taking time to talk to me and I only saw this last week and I got in touch with them and this is a new development to me. As Ms. Wright said we have been living next to a vacant lot and this is a significant new development and I recognize the property is large and they have the right to build a home and I expect it to be large and I don't have a final view on what makes sense and I've spoken to Mr. Arm about moving the house closer to the street and the reality is that the buffer is 25' and that will make the house invisible to the street. It appeared to me there is capacity to move the house up and I have windows on the East side of my house and I will be affected no matter where the house is and on balance it would be preferable to move it up some not a lot, but I think that would be a useful development. The second item I have concerns about is the "T" out to the Dune and I appreciate on balance it may be better than loading up more space in the interior, I don't know if that's the case, but my concern is the enclosed structure being so large and jutting out and ideally if the house can move up and if the covered structure is eliminated I would prefer less rather than more mass because it's large and those were the two items that struck me as requiring further thought. I would interested in seeing revised suggestions from the owner and be happy to react to those and maybe we can get comfortable with their proposal.

Mr. Musnicki asked why you are concerned about its location and it being moved to the North?

Mr. Eckstein said the closer it is to the Dune the more it will block the views and I have a large window in my bedroom that looks to the East and I would prefer it not be blocked.

Mr. Musnicki asked if his house was constructed or purchased how it is?

Mr. Eckstein I renovated it about 6 years ago when I bought it. I am trying to balance the pros and cons of the different alternatives and you can appreciate the views to the ocean are priority.

Mr. Musnicki said you certainly have them; this won't impact your ocean views in the proposed location,

Mr. Eckstein said there is one portion that will be affected.

Mr. Piering said our job is to minimize the variances requested.

Mr. Eckstein thanked the Board.

Mr. Piering asked if there was anything additional?

Ms. Wright said no, they'd like to hold it over.

**5. Even & Jennifer Contrucci, 7 Coxs Curve (905-015-04-014)** Applicant requests variances from §197-6 D to construct a dwelling with proposed front yard setbacks of 4.4 feet &

June 20, 2024

34.8 feet (corner lot) where the minimum required is 50 feet, and also from 197-6 D for a proposed side yard setback of 13 feet where the minimum required is 30 feet, and with a combined side yard setback of 47.8 feet where the minimum required is 70 feet.

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

**6. Lawrence Francis Trust, 77 Library Ave (905-015-02-028)** Applicant requests variance from §197-29.1 A to reconstruct and expand a detached accessory garage in the front yard, where prohibited.

Paul Sigismondi Architect appeared on behalf of the application. We are before this Board again, this was previously approved and around two months ago we had a rain storm that came up about 1' past the slab of the structure. We thought about redoing the first floor walls and everything below it is materials that are not weather related to provide extra protection against flooding.

Mr. Piering asked what that has to do with the second story?

Mr. Sigismondi said nothing. Everything will remain, we were just adding a second story but now we'd like to replace the first floor walls.

Mr. Piering asked if they are taking the garage down to rebuild it?

Mr. Sigismondi said yes, you have to.

Mr. Piering said you're talking about tearing the garage down and starting over and adding a second story?

Mr. Sigismondi said yes. The existing slab would stay.

Mr. Badzik asked where the second story addition fits into it.

Mr. Sigismondi said the slab will stay.

Mr. Piering said it says to add a second story of storage about the existing garage and replacing the 40" of the existing walls. I don't read that as taking it down to the slab.

Mr. Sigismondi said you can't replace it without taking the wall out.

Mr. Badzik said the application is to add a second story?

Mr. Sigismondi said yes, that was approved. But then we discovered a flooding issue and we were told we had to return to the ZBA.

Mr. Piering said the application is not clear. Taking the structure to the slab is what it should say and rebuild the garage with a second story. It says you're adding second story storage to an existing garage.

Mr. Sigismondi said it is to be able to add that space.

Mr. Piering said we are not architects. We have people who want to add second stories and we had one tonight; this says adding a second story storage above an existing detached garage. Once you take it down to the slab the garage is no longer existing.

Mr. Sigismondi when its demolished yes there will be no existing garage; right now the garage exists.

Mr. Piering asked if its advertised correctly?

Mr. Hammond said yes, it is to reconstruct and expand the garage. It was originally advertised and the denial was from last year, but we advertised when it came to my attention that it was a reconstruction and we said in previous discussions it was the addition of a second story but this is a reconstruction and an addition of a second story.

June 20, 2024

Mr. Musnicki said it is a reconstruction and as a second story addition.

Mr. Hammond said they testified they did not want to rebuild the garage, they wanted to add a second story, but they do want to. And we talked about the marsh land and the grade dropping off on the South end. I don't want the situation where you drive down and the garage is gone.

Mr. Badzik asked if the previous determination was attached?

Mr. Piering said the application says there was not.

Mr. Badzik said the survey is from 2019. So there was never a second story in the original variance?

Mr. Sigsimondi in the most recent variance, was to approve the second story it was never constructed because it flooded. It was granted because the only other spot was further South which was a lower elevation and would exacerbate the flooding.

Mr. Badzik said I'd like to see the previous approval.

Mr. Piering said with a variance, you can't work in the Summer. Nothing will happen until September but I'd like you to go back and reword it and I would like the variance submitted to this Board and the application clarified. We can hold this over to July.

Mr. Musnicki said he adds some landscaping to it, since it's only 20' from the street and the elevation will be much higher.

Mr. Sigsimondi said there are tall bushes on the street and right now you can only see the tip of the roof, I don't know how to add taller landscaping.

Mr. Musnicki asked him to bring pictures.

Mr. Sigsimondi said yes I will.

Mr. Piering asked him to revise the survey as well, the one we have is from 2019.

Mr. Sigsimondi said okay.

Mr. Hammond said the only thing this Board gets is what you submit and neighbor correspondence but we don't assemble extra materials for this Board from other Boards.

Mr. Martinsen asked if the dimensions of the structure are changing?

Mr. Sigsimondi said no. the building is thin, once I add the 11" I won't be able to put a compliant staircase inside and it would need a turn and a landing, it would be hard to fit a car in the garage so we're moving the staircase along the back of the building.

Mr. Piering and Mr. Musnicki asked him to submit that to the Board because it's another change.

Mr. Musnicki said the back of the building faces what?

Mr. Sigsimondi said it faces the marsh land.

Mr. Musnicki said it's the side and you see it from Library Avenue?

Mr. Sigsimondi said you see the landing, yes. But they have no neighbor to that side.

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

Motion was made by Mr. Piering to holdover the application of **Lawrence Francis Trust, 77 Library Avenue (905-15-2-28)** to July 18, 2024; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

June 20, 2024

Motion was made by Mr. Piering to adjourn the meeting at 6:29 p.m.; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.