

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, July 18, 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
John Wittschen

Stephen Angel, Esq., Village Attorney

Brad Hammond, Building and Zoning Administrator

Maeghan Mackie, Building Permits Examiner / Board Secretary

DECISIONS:

1. 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. Piering said that the Board has a decision to deny the application. Mr. Vero waived the reading.

Motion was made by Mr. Piering to adopt the determination of Mark & Christine Tobin, 185 Dune Road, (905-20-2-15) as written; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 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.

3. 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. Mr. Piering said the last meeting we talked about this property and this being a model application for future development on Dune Road and we talked about the buffer in the front which is 25' and there's a covenant and we talked about maybe modifying that.

Ms. Wright said we looked at the decision and the covenant and we spent a bit of time speaking with the neighbors who appeared and that live on the East and West and we presented them with the packet that we just gave to the Board and it's a modified proposal, and the design if we were to meet the 75' setback and not ask for a Dune Crest setback and we presented the neighbors with the site line and the buffer and the impact and the design that complies with the 75' setback and our proposed design. On the original design the lower floor ran to the 75' setback and that's an improvement to the dwelling as it exists, it is 42' from the dune to the deck and the second floor we moved back 1' and we removed the porch and its simply a deck and as a reminder the upper level is supported by two pilings and under that we are proposing to revegetate the dune and its beneficial because we need less pilings. The decision really means any opportunity you have to pull the house and lessen the non conformity you should take that opportunity and that's what this Board has done many times. A lot of the homes were built in the dune or 42' from the dune or the deck 17' from the dune and you won't reconstruct in that configuration. When I read that, I think that's how I interpret what the Board was saying at the time and I think the buffer with the neighbors, we could try to modify the covenant and reduce it but I think it's important to this property when it was combined because it's a large lot and the rest are very narrow 100' or 75' wide lots. It's important because it provides cover and reduces the lot mass. We presented this to the neighbor, and you saw the neighbor to the West after discussion would prefer our design versus one that complies with the 75' setback given the mass of the structure and his view to the ocean. Mr. Arm talked to the East neighbor but they did not have

an objection to the revised plan removing the covered porch. If we go back to the balancing test and talk about the factors and weigh the benefit against the detriment and in order to do that you have to consider the 5 part test and not every factor has to be looked at equally and sometimes a feasible alternative may be what the Board uses to make their decision. The benefit to the neighbor is the most important consideration and that could have an impact on the use and enjoyment of the neighboring property owner and we hope that's acceptable to the Board.

Mr. Piering said I would like you to walk us through the final proposal that we're looking at.

Mr. Arm and Ms. Wright said okay. Mr. Arm said the first page of the site plan is their proposal and you can see the area in blue is the second floor house and living space and the red is the second floor open deck space and no longer a covered porch. The lower levels all comply with the first floor and FEMA and the 75' setback.

Mr. Piering asked if it's 55' from the dune crest?

Mr. Arm said it's roughly 10' of house and 15' of deck. And you can see the parts that are a single red line which are an existing structure proposed to be removed. We explored the buffer and the possibility of the sanitary reduction as we discussed and moving the house forward and part of the decision of keeping the house in its position; we have the buffer and then there is a driveway for parking and for travel area and modest steps to the front door but we were comfortable pushing the house forward and it aesthetically seems wrong. The second page of the site plan is if we were to conform with the 75' setback line and then go through a series of photos that illustrate the line of site and even though there is living space and deck space that goes beyond the 75' what that does for the neighbors is lesser impact to the neighbors in terms of the massing and overall depth of the house. Instead of a block, it is squeezed in and pushes out in the middle to lessen the impact ultimately on the neighbors. With that said, it then because it's not a full two story house it does enable us to have different lines of sites and makes it easier with screening for the neighbors.

Mr. Musnicki said the second page is the setbacks?

Mr. Arm said yes, that's what we presented to the neighbors as what we can do and then we showed them what we wanted to do and explained to them why. The first call is that we see the house is large and you go through the conversations with them, and we're not over lot coverage or seeking side yard variances but yes the house is large.

Mr. Piering asked the square footage of the house.

Mr. Arm said I do not know but I can look it up. It is the maximum we are allowed to do. And we are at the 20% lot coverage. He thinks it's around 6,800 square feet.

Mr. Musnicki asked if Mr. Piering wants the total square footage.

Mr. Arm said it is 7,429 square feet which is 20% and the GFA is just under 7,000 square feet. The lot coverage is the house, porches, decks, pools and things like that which is the aerial view of the footprint whereas the GFA is the internal living space divided between two floors. It is split 3,500 per floor give or take.

Mr. Piering asked them to explain the modifications.

Mr. Arm said taking the covering off of the back porch which was the main objection to the neighbor.

Mr. Piering said that wasn't our consideration. As far as what we wanted you have not made any changes?

Mr. Arm said essentially other than the living space of the house being pulled back 1' it was not moving the whole house forward because of the buffers and the driveway but it was an opportunity to explore it and see if it's feasible and then once again to talk to the neighbors. They are not the Board, but it is something to consider.

Mr. Piering if that is decking shown by the proposed pool?

Mr. Arm said yes, it's second story deck. The pools are on the second floor.

Mr. Wittschen asked what is underneath the pool?

Mr. Arm said structure for support of the pool and there is more living space under the main body of the house, under the decks.

Mr. Piering said you have that under the deck? Is the "T" the house?

Mr. Arm said yes, the "T" is the house and there is open deck and its not underneath, its above and underneath is the swimming pools and mechanicals and part of the house under the deck. Under the decks is the base of the swimming pool and that's below it and behind the decks are the mechanicals for the pool and space.

Mr. Piering asked if there is anything on the ground floor within the 75'.

Mr. Arm said no. The only space encroaching the 75' is on the upper second floor and that enables us to have minimal support so we can revegetate the dune.

Mr. Badzik said you cantilever to that line?

Mr. Arm said yes.

Mr. Hammond said you removed the roof over section of the porch, and if I knew that it would have been the rear setback to the house not accessory so it should have been 50' to the house not 64' to the house and I think that's part of the confusion. You say you removed a roof over porch that should have helped your setback and if it was roofed over it is part of the principle dwelling you want to say you came in with 50' from the crest and you now have reduced it to 65' by removing the roof structure.

Mr. Piering said that is also elevated?

Mr. Hammond said if it's a deck and not roofed over its accessory but once it's roofed over its part of the principle dwelling per our Code.

Mr. Arm said he understands.

Mr. Musnicki said the proposed porch was originally listed as that, but now it's not roofed over?

Ms. Wright said yes.

Mr. Hammond said the habitable area Code limit was included in the initial site plan and it has to be 6,800 square feet.

Ms. Wright said we know that and we will get a survey and updated plans depending on this Boards decision.

Mr. Musnicki said there is an acre of upland property that you are going to develop and you can build a substantial house on what you have, so in order to meet one of the factors can you achieve this without a variance, the answer is yes you can build a substantial house without a variance.

Ms. Wright said I understand that; it comes down to this Boards decision and it is unique in a sense that there is no other property like this on Dune Road and we can build a substantial house and we can meet the 75' setback but in our thought process and discussions with the neighbors is that they support this setback. I understand this is not easy, but I think our argument is that the factor and character of the neighbor and the benefit versus the other factors is the most important here. And if the Boards telling us they want to reduce the buffer and it was put in place to protect the character of the neighborhood and taking down trees seems not such a good idea. I think its important to consider.

Mr. Piering said the letter from the neighbor doesn't talk about that.

Ms. Wright said we presented him a proposed plan and an alternative plan.

Mr. Piering said this is a tough application. And the accessory structure won't be in the dune but above the dune and that sheds light on it.

Mr. Hammond said he understands now the 50' to the 65' and that was the confusion; the house was at 50' and now it's at 65' and the deck went to the 50' and is deck. The deck has not changed, and the CEHA has not changed the house went from 50' to the crest of the dune to 65'.

Mr. Musnicki said you need a strong argument with the benefit or be done by other means without a variance. Otherwise why would we grant this when you have so much open land to work with, that's a struggle. Neighbors come and go, and if you look back a lot has changed on Dune Road and I wouldn't rely on that argument of the neighbors so much. It's more about this Board and the future Boards.

Ms. Wright agrees; she said it's the character of the neighborhood and it's more broad and the people will be impacted and again the feasible alternative is one factor and that may be your focusing factor but we thought the character of the neighborhood here given the size of the lot outweighs the detriment.

Mr. Piering said when you look at the plan what is under the 75'.

Mr. Arm said it's open and there is a set of stairs that come down and lead to the porch.

Mr. Piering said there is no living space in the 75'.?

Mr. Arm said yes. There are pilings or structural support of the stairs and house. We have two point posts to bring down to lessen it. I am fine without pilings, it costs more but I think its something we were not touching and we could agree to removing them.

Motion was made by Mr. Piering to close the hearing of Tranquillo Associates, 85 Dune Road (905-21-4-5.6) for a determination; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

4. 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 & 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.

No one appeared on behalf of the application. Mr. Hulme requested to hold the application over to August 15, 2024.

Motion was made by Mr. Piering to holdover the application of **Even & Jennifer Contrucci, 7 Coxs Curve (905-15-4-14)** to August 15, 2024; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

5. 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 Sigsimondi appeared on behalf of the application. I provided an updated survey, photographs that I submitted to the ARB so you see the existing conditions and a set of the plans.

Mr. Piering asked him to tell the Board what he's doing.

Mr. Sigsimondi said to demolish the wood frame part of the structure of the garage and leave the slab that exists. To reconstruct the first floor of the garage and that's the garage portion to use block and make it water resistant so the flooding does not damage anything; and then proceed with the second floor storage which was part of the original design.

Mr. Musnicki asked if the elevations are the same?

Mr. Sigsimondi said yes it is the same. The only change is the location of the staircase.

Mr. Piering said okay. He asked if there were any questions.

Mr. Hammond said the second story storage should be unfinished and unconditioned.

Mr. Sigsimondi said yes, that's correct.

Mr. Piering said it cannot be an apartment or habitable space; it's just storage and that will be part of the decision.

Motion was made by Mr. Piering to close the hearing of **Lawrence Francis Trust, 77 Library Avenue (905-15-2-28)** for a determination; seconded by Mr. Martinsen and unanimously carried 5 ayes, 0 nays, 0 absent.

Motion was made by Mr. Piering to adjourn the public hearing at 5:39 p.m.; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.