

**ARCHITECTURAL REVIEW BOARD  
VILLAGE OF WESTHAMPTON BEACH  
Tuesday, May 21, 2019 at 7:00 pm  
MUNICIPAL BUILDING, 165 MILL ROAD**

**Present:** Gregory Minasian, Chairman  
Laurette Lizak  
Allegra Dioguardi  
Michael Stoehr

Kevin A. McGowan, Esq., Village Attorney  
Kerry Rogozinski, Building Permits Coordinator

**Absent:** Andrea Kaloustian

The meeting was called to order at 7:00 p.m.

Mr. Minasian said we have four Board members present tonight and that three votes would be needed to approve or disapprove any application on the agenda. Mr. Minasian asked whether any applicants wished to hold their applications over for a full Board, if so, must say before the Board hears your application, but nobody did.

**HOLDOVER**

- 1. Schlusselberg Family Limited Partnership, 24 East Division Street, (905-10-7-30)** Two story dwelling with raised enclosed foundation area used for building access and light storage. Dwelling is fully sprinklered. Swimming pool and deck. \*\*Prior to framing inspection, the applicant shall submit and obtain approval by the Fire Marshal for the sprinkler installation.\*\*

Jim Hulme appeared for the applicant and informed the Board that they had submitted some new modifications. He wanted to go back to the discussions at the previous meeting, specifically as to the definition of the word vicinity. He handed out information on a supreme court case which Mr. Haefeli was involved in. He said it was a Zoning Board case that talks in depth about the court's decisions on the matter. In this particular case the courts decided that "vicinity" is anything between 1000 and 2000 ft. from the project. He said this rendering is significant because the Village Code does not have the definition in Chapter 5 or Chapter 197 so you have to go with the courts finding. One of the primary definitions of the word vicinity is neighborhood so he thinks the courts finding in the case Zoning Board case is that a neighborhood is not limited to the six houses on a dead-end street.

Mr. Stoehr interrupted and said the Zoning Board ruling had to do with tennis courts.

Mr. Hulme agreed but explained that the rendering also had to do with what a neighborhood is and what tennis courts should and shouldn't be included in the definition of a neighborhood.

(Schlusselberg-con't)

Mr. Hulme said he would like to give an example in their context as to what the 1000 to 2000 neighborhood area would be. He showed the Board a map indicating 1000 and then 2000 sq. ft from subject property. He went on to say that 1000 to 2000 ft. encompasses much of the Village and the modern houses count goes way up if you use these statistics.

Mr. Hulme then spoke of a case that was reviewed by the Zoning Board in which the ARB previously denied which was a modern house on 20 Seafeld Lane. In this case the Zoning Board used the analysis of the Supreme court case and decided that the definition that was applied in that particular case was too narrow. They decided that the neighborhood was much more than the houses that surrounded this particular house. This case relates specifically to a modern house that was erected on 20 Seafeld Lane. The other thing he said that he wants to emphasize in this case is the idea of dissimilarity. The standard in the code is not dissimilarity, it is striking dissimilarity and that is a pretty high standard. He read the following portion of the ZBA May 16, 2019 minutes:

*The ZBA is mindful that the Village has not seen fit to create a historic district and does not impose strict prohibitions against modern architecture which is prevalent throughout the Village, particularly on waterfront properties.*

Mr. Stoehr stated that they did make some changes and asked Mr. Hulme what the changes were.

Mr. Hulme responded that they made changes to the landscaping and roof and windows. He then went on to read more of the decision:

*The characterization of a building as modern or contemporary versus traditional or historic thus appears not to be categorical bar to its construction under Chapter 5.*

He said that the conclusion of the ZBA decision is that even if it was strikingly dissimilar there are mitigating factors and one factor was that the narrow portion of the building faced the main road and the other mitigating factor was the landscaping. The concept was hiding the house, but they found that even if you found the structure strikingly dissimilar, the mitigating factors would have led them to the same conclusion, which is that this house should not have been turned down.

Mr. Hulme opined that they should consider a much larger area than looking from the left to the right. He would like to listen, discuss and talk about the changes made. They submitted a modified proposal and they tried to address the comments that were made.

Mr. Lettieri spoke. He told the Board that they took some suggestions and made some changes. He went on to say that they added trees along the street and north side which he pointed out.

(Schlusserberg-con't)

Mr. Hulme showed the Board photos that are a representation of the same trees from a perspective of the neighbor's house showing what portion of their house she would see with their trees superimposed.

Mr. Lettieri said there would also be another buffer from the street. They reevaluated and reduced the size of the chimney by almost ten feet. They reduced the overall height by 3'6". They opened the dormer to allow more transparency on the back of the building. They also added more windows. They added more architectural details along the side of the building. On the front the surface was blank so they added additional windows to open it up.

Mr. Minasian asked Mr. Lettieri if Ms. Propper got the revisions. She stated that she did receive. Mr. Minasian invited her to speak.

Ms. Propper said the picture is very deceiving. There is only a 20ft. setback and they have a five ft. high wall that goes up 9 ft. from the street.

Mr. Hulme interrupted and said she can't misrepresent the facts.

Ms. Propper showed the Board her interpretation of the revisions. She feels that the picture is deceiving. She said she spent two months with Floyd Carrington (she dropped off a letter from Floyd and the arborist Jackson Dodd) reworking the drainage which has been totally ignored by the landscape plan. She then introduced Jackson Dodd who is a certified arborist and familiar with how this project will impact her property. In her opinion Mr. Lettieri tried to change the design but he didn't. She said he had tiny little windows, and now it looks like a car dealership on Sunrise Highway. She believed if they should have pitched the roof it would be a lot better, her trees wouldn't die This is not the neighborhood.

Ms. Propper then handed to the board documents from Jackson Dodd, arborist and then spoke. Mr. Dodd said after reviewing the information given by the owner and the neighbor, he believes that there is going to be a conflict with the trees and even though they want to change the trees to try to reduce the conflict, the trees grow to be 80 ft. He believes there will be a conflict with the trees on the north side of the property, above ground and below. He said there will be root damage and the building will block the southern exposure. Being blocked by a building that these trees are healthy now but he cannot say that will continue. Mr. Dobb said as soon as you change a tree that is in full sun to different photo field, you'll see it decline. Trees are grown in nurseries in full sun and in this case, they would be shaded quit quickly this is why we don't see evergreens trees in an oak forest. They just can't survive together.

Mr. Lerner said while he understands the lawyer's presentation the problem in his opinion is that the plans should be reviewed by someone educated in that area. He thinks they should have time to review with their lawyer. Mr. Minasian said review what. Mr. Lerner said the handout on the court case "definition of neighborhood" Mr. Lerner said that this Board is very fair.

(Schlusselberg-con't)

Mr. replied that they wanted to review the aesthetics and the definition of neighborhood. If that is an issue with what the Board is thinking and what they are thinking then he thinks they should go to someone who has a good view of the law. Right now, it is simply someone's opinion.

Mr. Lettieri said the ZBA has already reviewed this.

Mr. Minasian said the ZBA reviewed the setbacks.

Mr. Lettieri continued and said they have made a lot of concessions to try to mitigate the concerns of the Board and the neighbor. Just changing the pitch on the house doesn't change it. This house could be 42 ft. high as a traditional house. It is 36 ft. high as a modern house. There are no trees in the Village 80 ft. high because they would be burned out from the wind and sun. He opined that the trees will in fact protect the house and the neighbor's house. They did a sun analysis on that whole thing. They were asked to add shrubbery and they did. He offered to add different or more shrubbery if that is what the Board wants.

Mr. Hulme mentioned the rendering of the ZBA regarding the neighborhood and wants to Board to follow suit.

Mr. Stoehr said that he is not saying the case presented was not relevant, he is saying that the vicinity is a case by case review. It is in the Board's discretion. He doesn't believe that what was provided makes a blanket fixed rendering. the ZBA rendering has to do with tennis courts, not houses.

Mr. Minasian said he wants to close this matter and asked Mr. Lettieiri if there was anything he wanted to add.

Mr. Lettieer replied that he is willing to add information or needs any information he is willing to make those changes.

Ms. Propper said she has to relook the landscaping plan and I have to defer to Jackson that because of the twenty foot set back this is a complicated landscaping plan She again said this is She said she wants the roof pitched more to allow more sun and let my trees not get disturbed, then there is also a drainage issue.

Ms. Propper said she has to address the roots going into the drains. Mr. McGowan asked if she was referring to the French drains on her property. She told him no, on his property. She reiterated that she spent 2 months with Floyd Carrington redoing the drainage plans. She said Mr. Carrington was shocked that there are proposing trees literally on the drains, that is why Mr. Carrington wrote that letters to

Mr. McGowan said he doesn't believe drainage issues and the underground roots are not an aesthetic issue under the Architectural Review Board.

(Schlusselberg-con't)

Ms. Propper asked how can she deal with it? The trees will die.

Mr. Stoehr they can't get into roots; they are supposed to stick to the mandate and be consistent.

Mr. Minasian said the Board thanks you for making the changes that you did do but to go back regarding the bra decision that was submitted on 20 Seafield. The ARB made a decision to denied this application. They went to the ZBA with changes above and beyond, the changes that were submitted to the ARB, and the ZBA looked at changes and overruled the ARB and approved the application.

Mr. Minasian said that he would like to make a decision with this Board, that the applicant has the right to go to the ZBA and do the same thing.

Mr. Stoehr said they have an appeal process based upon consistently apply what this Board is supposed to do and I would say that we should pass on this.

Motion was made by Mr. Stoehr to **Deny** the application of **Schlusselberg Family Limited Partnership**; seconded by Ms. Lizak and unanimously carried

**4** ayes **0** nays **1** absent

Mr. Hulme said procedurally we need to request a written determination. Within 30 days Mr. McGowan said they need to request a written "Findings of Facts" we will produce that and you will take that to the Zoning Board of Appeals.

Mr. McGowan explained to Ms. Propper that the Appeal process is outline in Chapter 5-19 of the Village Code.

## **NEW APPLICATIONS**

- 2. Song Living Trust, 335 Dune Road, (905-18-2-13)** Two-Story Single-Family Dwelling (4 Bed, 4.5 Bath) Elevated Over Story for Entry/Mechanical Room, Two Garage Bays & Storage on Pile & Gradebeam Foundation, With Two Side Covered Decks, Rear Deck, & Front & Rear Roof Decks, 4' Wall Fence and Gates, per ZBA D18041 - 12/20/18 (13D Sprinkler)

Karen Hoeg from Twomey Latham & Shea, Chris Harrigan, Pagliaro, Bartels Sajda Architects LLC, Ryan Fletcher & Lisa Oakes, Fletcher Construction, Tara Vicenta Artemis Landscape Architects and Brian and Amy Song appeared for the applicant. Also present were Georgia Malone, neighbor at 333 Dune Road and her Architect Joseph Deppe.

(Song-con't)

Ms. Hoeg said that the Architect spoke with the building inspector Brad Hammond this morning regarding a question on the clarification of the Board of Zoning Appeals decision about the height and to make the Board aware that Mr. Hammond submitted a memo to the Zoning Board regarding height clarification. She is aware that it is not under this Boards jurisdiction but she wanted to make them aware of it because it is a recent event.

The first speaker was Christopher Harrington. He said that owners came to his office about a year ago to design contemporary eclectic home to match what is going on at Dune Road. He thinks they have accomplished that. They went to the ZBA previously for variances.

Mr. Minasian asked what type variances.

Mr. Harrington confirmed that it was for, front, side yard setbacks number of stories and construction in the beyond the Coastal Erosion Hazard line. It was all granted. He went on to say that since because of the proximity to the VE16 Zone he took the approach of designing the house as if it were in the VE Zone and tried to get as close as they could to abide by those regulations; that's how we got to an elevated 2 story structure.

Mr. Harrigan discussed the drawings. Mr. Harrigan said they will be doing a 1 x 4 tongue and groove zinc panel let to Bettina soft grey, Stainless steel railing, Ipe decking weathered gray, composite wide board trim painted white, ledger stone underneath, patterns colors vary in beige, ,brown and gray, zinc cladding to Bettina, window jamb natural finish gray , wrap columns with 5/4 composite wide board trim painted white, second floor 2' x 3' zinc panel wall cladding natural finish Gray, window jamb natural finish gray , clear glass, all windows white board trim. Lower level, front and back will be Large windows first floor is dining room which transitions into master. Ms. Lizak asked about the orange color. The architect explained the zinc and the other materials and how it ties into the house. The glass will be clear.

Mr. Minasian asked if anyone had any questions.

Georgia Malone and Joe Deppe came up to the podium.

Ms. Malone said yesterday they went to the Village Hall to look at the plans and there is a ZBA decision from December 2018. It is clearly stated in the decision that there would be a 40ft. height restriction on the building. When they looked at the revised plans based on the decision, there were no revised plans, they were the same height as they had been prior to the hearing they had in November. They are the same plans as was submitted previously. Part of the problem is that I showed the Building Inspector the decision and minutes and there is a critical issue as to the building height.

(Song-con't)

Mr. McGowan said he was briefed on it a bit before tonight, and the building inspector is reviewing it and you may be right there may be an issue, however, that is not something that is part of the ARB to consider.

Ms. Malone said that she agreed with him, but because of the height issue they may have to redesign the house. They may have to come up with a different design based on the decision.

She didn't have any time to prepare any opposition to this.

Mr. Minasian asked if her concerns were about the height or something else.

Ms. Malone said maybe they can put a determination over until they hear from the Building Dept. about the height issue. She has not had time to go through the plans because she has been so caught up in the height issue.

Mr. McGowan said the Board is responsible for reviewing the application in front of them. If they have to come back to the Zoning Board and redesign it's going to be up to the building inspector whether such redesigns warrant coming back to the ARB if we render a decision ahead of time. It's up to the applicant whether they want the Board to hear the application as being presented. We can't not hear it at all.

Ms. Malone said she understands that the Board has to hear the application, she just wants no decisions to be made.

Mr. Minasian asked Mr. Deppe to speak.

Mr. Deppe said the ZBA made a decision and the building inspector probably made an error in sending the design drawings to the ARB for review and Ms. Malone has other issues, such as the landscaping and location of AC units might be in the side yard. The primary thing is that the application being presented isn't what was approved by the ZBA so this Board should not be hearing it.

Mr. Minasian reminded him that the ZBA approved the setbacks and two stories. Mr. Deppe says the ZBA approved the setbacks they approved the stories, Mr. Deppe said a story can be 2-foot-high, so the problem is that the drawings clearly show that the house is over 46' above sea level and the ZBA limited them to 40' above sea level so that is the issue.

Ms. Lizak asked about the landscaping. Tara Artemis Vicenta Landscape Architect then spoke about the landscaping. Ms. Vicenta said that everything that we can save that is existing on the sides of the house will be saved and everything in the Dune area will be replenish with American Beachgrass. Ms. Lizak asked about the East and West property lines have vegetation on it already and you are going to further enhance it.

(Song-con't)

Ms. Vicenta said the whole concept for the landscape plan is to use Native plantings; dune restoration where the original building was. Ms. Vicenta said they will be providing screening along the property line with some scrubby cedars, invasive Russian olives, by the driveway, Ms. Vincenta we are using black eyed Susan and Pennisetum Fountain grass along the road, then a grouping of bayberry.

Ms. Vicenta said again these plants provide a screening for both properties with Austrian Pines.

Ms. Malone took a look the Landscape plan. Ms. Malone said the e screening will completely block the sun from her house. solid evergreen from the ground up. Ms. Vi said these trees are planted in from the property line and will not disturb anything on your property.

Mr. McGowan asked when you went to the ZBA where there any variance for the driveway. Mr. Harrigan said no.

Mr. Stoehr asked Ms. Malone if she has any objections to the way the house is designed (not the height). Ms. Malone looked at the plan presented to the Board.

Mr. Minasian asked Chris Harrigan if the height should change is your basic material and scheme going to look the same? Mr. Harrigan said yes.

Ms. Malone again said she didn't get a chance to digest the whole project because she just focused on the height. She wanted to have time to make comments.

Mr. Minasian asked Ms. Malone too take a look at the materials. Mr. Minasian asked the Village attorney if they could make a decision tonight. Mr. McGowan said it could be possible to reduce the height without changing the any of the exterior design features over the look of the house. Mr. McGowan said it will under the Building Inspector discretion whether it needs to come back to the ARB.

Mr. Deppe said if you reduce the house 7' the house is going to look different. Portions will look different.

Mr. Minasian asked the Board if they were comfortable with the design of the house. the board said yes. Mr. Minasian said he thinks they should make a decision.

(Song-con't)

Motion was made by Mr. Stoehr to approve the application of Song **Living Trust** as noted on plans drawn by Pagliaro Bartels Sajda dated December 13, 2019 and Landscape Plan drawn by Artemis Landscape Architects, Inc. date stamped May 21, 2019; seconded by Ms. Dioguardi and unanimously carried **4** ayes **0** nays **1** absent

Motion was made by Ms. Lizak to adjourn the meeting at 8:15 pm; seconded by Mr. Stoehr and unanimously carried **4** ayes **0** nays **1** absent

Respectfully submitted,

Kerry Rogozinski  
Building Permits Coordinator

APPROVED:

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Gregory Minasian, Chairman of the Board  
Dated: \_\_\_\_\_