

November 19, 2020

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, November 19, 2020, at 5:00 p.m. in the Municipal Building, located at 165 Mill Road, Westhampton Beach, New York.

PRESENT: Gerard Piering, Chairman
Jim Badzik
Joe Musnicki
John Wittschen
Ellen Cea

Anthony C. Pasca, Esq., Village Attorney
Brad Hammond, Building & Zoning Administrator

Maeghan Mackie, Building Permits Examiner / Board Secretary

MINUTES TO BE APPROVED

Motion was made by Mr. Piering to adopt the minutes of the **October 15, 2020** meeting as written; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

DECISION:

1. Mathew & Deborah Vivek, 206 Main Street (905-013-02-020.06) Applicant requests variances from §197-43 A(1) to erect a driveway gate (fence) in the front yard that is 7 feet in height, where the maximum permitted is 4 feet, from §197-43 A(3) for proposed driveway posts/pillars that are 7 feet in height where the maximum permitted is 6 feet, from §197-43 A(7) for proposed driveway posts/pillars that are 1 feet from the lot line where the minimum required setback is 3 feet, and from §197-43 A(8) for proposed driveway gates 1 feet from the street line where the minimum required setback is 20 feet.

James N. Hulme, Esq., 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 the Application of

DETERMINATION

Mathew Vivek
Deborah Vivek

Address 206 Main Street
Tax Map # 905-13-2-20.6

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The applicant is the owner of a parcel of real property located on the North side of Main Street in the R-1 Zoning District. The property is improved by a two-story frame house, inground swimming pool and spa, slate patio, and tennis court.

Section 197-43 (A) (1) of the Village Code provides that, in the R-1 Zoning District, fences, posts, and pillars no fence located within a required front yard shall have a height greater than four feet.

Section 197-43 (A) (8) of the Village Code provides that, in the R-1 Zoning District no driveway gates or posts or pillars with an attached driveway gate shall be located within 20 feet of the street lines of the lot.

The applicant originally proposes to construct two sets of driveway gates in the front yard that would have been 7 feet in height (where the maximum permitted is 4 feet) and would have been located 1 foot from the street line (where the minimum setback is 20 feet), in addition to driveway posts/pillars that

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would have been 7 feet in height (where the maximum permitted is 6 feet) and would have been located 1 feet from the lot line (where the maximum required setback is 3 feet).

During the proceedings, the applicant modified its proposal to (a) eliminate the requested variances for the driveway posts/pillars, (b) reduce the height of the proposed driveway gate to 6 feet, and (c) increase the setback for the driveway gate to 10 feet, all as depicted on the survey prepared by Raynor Marcks & Carrington, surveyors, surveyed August 7, 2003, last dated 9/18/20. The final application thus sought two variances, namely, a driveway gate height variance to allow the 6-foot height and a driveway gate setback variance to allow a setback of 10 feet.

I. 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 area variances for accessory residential structures, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(12) and (16). Accordingly, the application is not subject to review under SEQRA.

II. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on June 18, 2020. The applicant's attorney, James N. Hulme appeared and presented the application. No other persons appeared in support or opposition to the application, and the Board did not receive any written submissions from any neighbors in support or opposition to the application.

As stated above, the original application requested additional variances, but the application was modified to eliminate the variances for the post/pillars and reduce the height of the gates to 6 feet and increase the gate setback to 10 feet.

The hearing was closed at the October 15, 2020, meeting for a determination at the November 19, 2020 meeting.

III. GOVERNING LAW

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.

IV. FINDINGS AND CONCLUSIONS

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

1. *Character of the Neighborhood:*

- a. **Setback variance:** With respect to the setback variance of 10 feet, where 20 feet is required, the Board finds that the proposal will not cause a material adverse impact on the character of the neighborhood, subject to the condition that the gates will not be allowed to open toward the street but only swing open toward the house or slide to the sides of the pillars. Under such circumstances, sufficient room would exist to allow vehicles entering the property to move off of the public road while waiting for the gates to open.
- b. **Height variance:** The Board finds that the granting of the height variances would have a material adverse impact on the character of the community by setting a precedent that would lead to the proliferation of tall gates and fences in the R-1 district along the public right of way, creating the “walled” appearance that the height limitation seeks to avoid. The applicant cited other examples of gates above the 4-foot height limit, but no proof that such fences were lawfully erected or lawfully pre-exist zoning. The applicant asked the Board for consideration in light of the fact that the applicant actually asked for permission, whereas others may have erected gates unlawfully. The Board is not an “enforcement” agency with the power to cite other properties for violations, but rather only hears those matters that come before it via appeal. Nor can the Board justify favorable treatment of this applicant for not being a scofflaw. The fact that other, possibly unlawful gates exist in the vicinity of the applicant’s property only emphasizes the need to avoid creation of an adverse precedent, since doing so would justify the owners of any unlawful gates to ask for the same relief.

2. *Alternatives:*

- a. **Setback variance:** With respect to the setback variance of 10 feet, the applicant has demonstrated that there is insufficient room to achieve the benefit sought – a front yard driveway gate – while still meeting the full setback of 20 feet. Thus, no conforming alternative locations exist for the gates.
- b. **Height variance:** On the other hand, the applicant has not demonstrated the absence of alternatives to achieve the benefit sought, which the applicant described as the need

for privacy. For example, the applicant did not offer sight-line analysis to show that privacy cannot be achieved through lower gates, or a combination of vegetative screening, reconfiguration of the driveway to avoid gates being parallel to the street, and gates conforming to the height limits of the code.

3. *Substantiality*: Both requested variances are substantial, particularly since the applicant is proposing two sets of gates, each requiring variances.

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*:

i. **Setback variance**: With respect to the setback variance of 10 feet, the Board finds that, on balance, the benefit to the applicant outweighs the detriment, if any, to the community.

ii. **Height variance**: With respect to the proposed height variance, the Board finds that the detriment to the community outweighs the benefit to the applicant.

7. *Minimum Variance*: The setback variance is the minimum necessary to achieve the benefit sought.

The Board therefore **denies** the request for a variance from Section 197-43 (A) (1) of the Village Code to allow the erection of gates in excess of the 4-foot height limit but **grants** the request for a variance from Section 197-43 (A) (8) of the Village Code, to allow a gate setback of 10 feet where 20 feet is required, as depicted on the survey prepared by Raynor Marcks & Carrington, surveyors, surveyed August 7, 2003, last dated 9/18/20, subject to the following conditions to minimize any adverse impacts from the variance:

V. CONDITIONS

1. Each set of driveway gates shall be designed such that the gates do not swing open toward the street. The applicant may design the gates to swing inward toward the house or to slide to the sides of the posts/pillars.

2. The variances granted herein are limited to the relief set forth in this decision, and pertain only to the 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 dimensions.

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3. The variances granted herein shall terminate unless a building permit is issued within 9 months from the date hereof and construction completed according to said building permit.

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

Dated: November 19, 2020

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Mathew & Deborah Vivek, 206 Main Street (905-13-2-20.6)** as written; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

2. **Christopher Cordella, 25 Maple Street (905-005-01-024)** Applicant requests variance from §197-5 A(1) to construct a second-story addition on a dwelling with a nonconforming side yard setback of 10.3 feet where the minimum required is 15 feet and where conformity is required for additions on nonconforming structures.

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

HOLDOVERS:

3. **Michael & Karoline Kelsen, 72 Beach Lane (905-015-03-004.06)** Applicant seeks an interpretation that the Building Inspector erred in his determination that the subject detached building with preexisting apartment is a nonconforming building and that the proposed game room over garage should be deemed an accessory use to the single-family dwelling principal use. In lieu of a favorable determination from the Board, applicant requests a variance from §197-6 A(2) for proposed habitable space (game room over garage) in detached structures deemed not to be normal and accessory to principal single-family dwelling use, and from §197-29 C(1) for proposed reconstruction and additions to a detached building with preexisting nonconforming apartment where a permit from the Zoning Board of Appeals is required for reconstruction of building with nonconforming use, and irrespective of interpretation, the applicant also seeks a variance from §197-1 for a proposed half-bathroom within accessory building (game room over garage) where plumbing facilities are not permitted in detached buildings other than cabanas/accessory apartments.

James N. Hulme, Esq., appeared on behalf of the application. They have had several meetings and to recap they are seeking to reconstruct a new building on this which is two buildings with a common wall and it is a pre-existing non-conforming apartment. The apartment will be the same size and same number of bedrooms and the other side enters separately from the apartment, consists of a garage and a second-floor accessory use labeled as a game room. Prior to the last meeting we had I submitted a letter where I addressed the legal issues and you will have reviewed them and decide when you make the decide whether it is correct or incorrect. I either seek a variance from 197-29 or 197-14 doesn't make it non-conforming and it will be evaluated as a new structure and we provided information that suggests the Board grants variances of any restriction in the Code and to the extent 197-29 is exceeded we can seek a variance for that, but I wanted to touch on is that 197-35F talks about detached garages and a different height limitation and different heights for garages than any other accessory building and it says it may have a second story that can be for a permitted accessory use so when the Village adopted that Code in 2005 they envisioned the 2nd floor of the garage to be used for something other than storage because if they meant just storage I presume they would have said just storage. We have proposed an accessory use and I don't know if there are any game rooms that are accessory; there are pool houses, offices, studios and things of that nature so we are seeking you have that language.

Mr. Piering said the whole gist is whether it's allowed because it's non-conforming, is it all non-conforming as a whole because there is a non-conforming use. The way I'm reading it is that this property you can build a separate garage, is that correct?

Mr. Hulme said yes.

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Mr. Piering said that's not desirable and you could build a third building.

Mr. Hulme said the easy way would have been to add a fourth building

Mr. Musnicki asked if its listed as an apartment, a garage apartment or a garage?

Mr. Hulme believes it is a garage

Mr. Piering asked if Mr. Musnicki had any other questions.

No other members had any questions.

Mr. Pasca said to go back to that this is a non-conforming use under the Code and we took the position that it could not be, and I'm not sure you can reconcile this with that precedent.

Mr. Hulme said there is nothing in 197-14 that non conforms the building because the use is non-conforming and if that's the legal conclusion I'm suggesting that a variance is an appropriate avenue as opposed to forcing us to build two buildings instead of one so to compel us to take that direction would seem to provide sufficient basis for a variance if that's necessary.

Mr. Pasca said I do not follow how you get a variance when 197-29 says you can't expand and your request is to get a variance to expand it, but you can't expand a non-conforming use you are erasing the prohibitions of 197-29.

Mr. Hulme said we are not expanding the non-conforming use. I can't find anything in 197-14 that says that is the case.

Mr. Pasca said it says anything used in whole or part is a non-conforming use.

Mr. Hulme said there's an ordinance that would force us to do something that's undesirable and something they can vary for the right case.

Mr. Pasca said the precedent is about two months old,

Mr. Hulme said the difference is that particular space communicated with the apartment and essentially part of the apartment. We've gone to great lengths to separate the functions without building two buildings. If the decision is in the negative, we will return with a plan that's two buildings and it seems unfortunate to force that and it's a much easier application.

Mr. Pasca said you may be right; it is easier and you're arguing that it exists that doesn't require a variance.

Mr. Hammond said I read 197-14 as a capture mechanic. I understand Mr. Pasca's position, you can't enlarge expand and right below that it says a non-conforming use shall not be reconstructed so as to, increase extend or enlarge the non-conforming use so I feel like that context almost addresses that. The apartment is a non-conforming use and the game room is a variance and I read it as you can reconstruct it as long as you don't expand the non-conforming use, I don't feel the attached garage shall be prohibited because of the way the Code was worded. It seems like there was context in the Code about not expanding the use specifically. I feel that section is a capture to get it before this board, not to prohibit action being taken on such buildings.

Mr. Piering thanked Mr. Hammond.

Mr. Musnicki said he agrees with Mr. Hammond and 197-29 C covers a lot and the game room is separate and has been addressed by this Board on one or two occasions.

Mr. Piering asked the size of the game room. Is it 20' x 20'?

Mr. Hulme said it is 369.08 square feet. So yes, 400 square feet.

Mr. Piering said okay, he asked if there were any other comments or questions.

There were no other comments or questions.

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Motion was made by Mr. Piering to close the application of **Michael & Karoline Kelsen, 72 Beach Lane (905-15-3-4.6)** for a determination; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

4. Song Living Trust, 335 Dune Road (905-018-02-013) Applicant requests variances from §197-35 C to construct an accessory pool and deck with rear setbacks of 33 feet and 31 feet respectively, where the minimum required setback from the rear yard/crest of dune is 75 feet.

No one appeared on behalf of the application. Mr. Piering instructed Ms. Mackie to reach out to the applicant and let them know that if they do not make a submission the Board will be removing the application at the December 17, 2020 meeting without prejudice.

Motion was made by Mr. Piering to holdover the application of **Song Living Trust, 335 Dune Road (905-018-02-013)** to December 17, 2020; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

NEW APPLICATIONS:

5. LIDL Westhampton, 70 Sunset Avenue (905-012-04-020.05) Applicant requests variances from §197-30 C(1)(a) to erect two walls signs totaling 123.5 square feet in area where the maximum permitted total sign area is 20 square feet, and from §197-30 C(20)(b) for proposed wall sign letters of 23.5 inches in height where the maximum permitted is 10”.

David Gilmartin, Esq., appeared on behalf of the application. Joseph Musnicki recused himself. Mr. Gilmartin said they are proposing to replace the existing “Best Market” sign with a sign for the new operation “Lidl” this Board in 2006 granted the original relief to “Waldbaums” in this size and they are replacing the sign and in that decision the distance of the store from the street was relied on and the sign is not intrusive and a replacement of what currently exists and was approved in 2006. He does not know why Best Market did not come to the Board, but we are requesting that relief.

Mr. Piering said it is very straight forward.

There were no other questions or comments.

Motion was made by Mr. Piering to close the hearing of **LIDL Westhampton 70 Sunset Avenue (905-12-4-20.5)** for a determination; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 0 absent, 1 recused.

6. Brian Tymann, 107 Potunk Lane (905-012-01-007) Applicant requests variances from §197-5 A(1) to construct a second-story addition on a dwelling with nonconforming side yard setbacks of 13.8 & 17.2 feet and a combined side yard of 31 feet where the minimum required is 20 feet and 50 feet, respectively, and where conformity is required for additions on nonconforming structures.

Brian Tymann appeared on behalf of the application. He is the current resident at this property as a tenant, he owned it for 16 years and sold it to Frank Mulvey and they put this idea together to get more space it’s a small house and small property and unique for the zoning. In researching the history of the property I noticed to prior to me purchasing the property, Dr. Pescott did renovations on this house he needed a small front yard variance for a few feet to do some of the renovations, but also had almost exactly what we are looking to do on the back and seeking the same relief and he did not go forward with that portion of the renovation. In my research I saw that similar was proposed so this is essentially extending the kitchen and getting a small living room area on the first floor and we are making the rear bedroom bigger with another bathroom. I see Bill Heine on this and I think he did the initial renovation for Dr. Pescott and that’s really all there is to the plan. Frank Mulvey is the current owner and also on the Zoom call, and I am interested party as a tenant but having experience with this I am jumping in to help with the project as well.

Frank Mulvey said he is trying to get mechanical space because there’s a tiny boot cellar and maybe we can add some storage. There is virtually no storage so that small level would have a full basement would be added. We would like to move the mechanicals in to that area and make them more serviceable and safer and add living space to the house.

Mr. Tymann said to add in we are looking for relief that’s consistent with the current non conformity. It is side yard in distance and combined which is the same as they are now, they are just going a little further in to the rear yard, btu no additional encroachments.

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Mr. Piering said okay, it is very straight forward.

Mr. Tymann agreed.

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

There were no questions or comments.

Motion was made by Mr. Piering to close the application of Bryan Tymann, 107 Potunk Lane (905-12-1-7) for a determination; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

7. Galway Holdings LLC, 53 Exchange Place (905-015-05-032.01) Applicant requests relief from a denial from the Architectural Review Board pursuant to §5-19 B to construct a single-family dwelling with associated site improvements as designed.

James N. Hulme, Esq., appeared on behalf of the application, together with William F. Heine, Architect and Michael Owen, Owen Construction, and Michael Murphy property owner.

Ms. Mackie said before the Hearing gets started, she would like to tell the neighbors in attendance to please keep their microphone on mute and everyone will get a chance to speak one person at a time after the Chairman opens the hearing to the public. At which time each person must raise their hand and I will unmute you all and give everyone a chance to speak. Everyone will get a chance to speak one person at a time.

Mr. Hulme said they are here to appear a denial by the Architectural Review Board relative to this project. I have a few things to display tonight and I have provided digital photographs to Ms. Mackie and we will describe them as we go forward. The digital submissions relate to photographs of the area. The issue has to do with a modern style architecture home in this neighborhood and we believe that we will be able to show that modern construction in this Village has become quite common although there are a number of homes not modern in this vicinity each is unique and individual and not similar to one another as well as my client's property. We will talk about striking dissimilarity and visual offensiveness. Mr. Hulme shared the screen and showed examples of modern homes in the Village of Westhampton Beach and almost all are modern homes and there are a cluster of modern homes around the corner from this applicant. He provided a rendering of the proposed home and they have all of the permits and permissions with the exception of the ARB.

William F. Heine said that they have wetlands on two sides of the property and we were limited to the existing footprint of house, pool, deck and pool house so we could not go outside of that footprint so that's why we kept the shape of the house and took the roof off and went up two floors. If this had a pitched roof on it, it would be 50% larger visually than it is right now. Everything on the exterior is natural materials, wood for the siding in two colors to create dissimilarity on the massing, the windows will be bronze, the siding will be natural to weather too; the foundation is in some portions to be covered in stone and the retaining walls too, the mound in front of the house is required for the sanitary system to hide that so we can't get rid of it, but the grade coming up like that diminishes the height of the house. There's another drawing that is a landscape plan for the front of the property.

Mr. Hulme said it's a large house and a large lot of 81,000 square feet and the house as proposed it occupies the same space as the original house that was on the property and if you look at the aerial photos and maps it is set off and large and there's a significant distance from the road. The next thing we need to discuss is by what standard it should have been reviewed by the ARB and this is a DiNovo review and not just an appeal and there are three criteria in the Code; there is similarity, strikingly dissimilarity and visual offensiveness and if this project rings any of those bells that's the basis for the denial. These criteria are not determined in a vacuum and determined in the context of which the area of which the proposed project is to be located and the standard that has been applied is that if you look at the architecture in the vicinity although it's not well characterized in the Code or as a definition so what does it mean? We will argue it is large than what the ARB might have determined. There are not a lot of codified divisions in the Village other than the Village as whole, and its Village limits. A smaller area than that might be the zoning district to which this house and property sits and that's a residential zone in the Village and there are a number of streets. And it could be the neighborhood and that's a difficult definition to pin down, and it could be a series of blocks or just the one that this property sits on and arguably it could be the vicinity and view. I think the vicinity is not as broad as the zoning district and certainly broader than a single block. A more narrow view of the vicinity we should move on to talk about Exchange Place, and I believe each have a series of photographs of the houses on Exchange Place from one end to the other and that was labeled packet number one and I ask Mr. Heine to discuss the same.

Mr. Heine said the subject property is a soft contemporary home with low pitched roofs, and no gables and all hip roof and large brick chimneys and sort of 1970's and 1980's covered porch and a half circle tunnel cut in to it. As we go around the block; 25 Exchange Place is a high ranch with traditional details added to it over time; the left side lacks windows and lacks an overhang; 26 Exchange Place is a ranch house with low pitched roofs and the right looks like it was a garage now converted to living space; 30 Exchange is a modern Dutch gambrel with stylized octagonal towers and again to get height that have done low pitched roofs with a flat roof on the left hand side of it and if it's a deck I do not know; 31 Exchange Place is a modern cape cod with three dormers on the second floor and covered porch and there's a second structure on the property that I can only define as a box with a low pitched roof and no real name; 36 Exchange Place is a modern Victorian and a two higher pitch roof reverses, it's a very traditional design. 37 Exchange Place large multiple gabled house with high pitched roof and a modern farmhouse look. 42 Exchange Place is older home and half circle windows, multiple roof pitches on the front and some steep and middle of the road there is a gable end with a circular cut out trying to recall the circular windows and it has an appearance it has been added on to multiple times which makes me feel like it's an older home; 52 Exchange Place is an asymmetrical one- and one-half story house with second floor dormers off center of the porch and the left side of the house has a flat roof with a railing; there is a second building on the property with a steep pitched room on the ends and almost completely a dormer and for all practical purposes it's a flat roof. 56 Exchange Place is an eclectic Modern design with oddly fashioned masses and low pitch flat roof and octagonal area with pointed arched windows and a modern looking house, not at all traditional with multiple sidings on it. 66 Exchange Place is a cottage that has been added on to with a second floor addition that overhangs on three sides and constructed in multiple parts and different roof pitches, I was the architect on some of the additions there. 60 Exchange Place is a neo Victorian with a massive hipped roof and reverse roofs coming forward on the front of the house and flat roof area on the second floor with a porch and railing and that is the loop of Exchange Place. When you examine the houses, they are traditional but there are a few that fall out of that and there is one that is hard to name in its modern style.

Mr. Hulme said that's a narrow view of the vicinity and it's very much an architecturally eclectic community and there are a lot of peaks in some cases and it doesn't corelease to a theme or pattern in any offending way to the addition of this subject premises. If we widen our scope and go around the corner to Seafield Point down the street and to the left you will see more eclectic collection of homes and there are a number of modern houses; 120 Seafield Point is a modern home; 123 Seafield is contemporary; 124 Seafield is a flat roof with a pyramid on top of it; and 129 Seafield Point at the end has a less classical view. If you widen the scope of our analysis by a little bit and give a little broad reading to the word vicinity you find a plethora of modern houses mixed in with houses with peaked roofs of various designs and various architectural history. The only other thing I want to talk about, if you are on Exchange Place going West if you look ahead of you at the stop sign you will see three modern flat roof houses that are visible to the Exchange Place neighborhood and they are on Beach Lane but they are visible to this community and whatever you decide the vicinity is. With that context when we look at the criteria, similarity if it was similar we wouldn't have the neighbors waiting to discuss this; dissimilar yes, it is likely dissimilar but the standard is not that it is dissimilar, the standard is that it is strikingly dissimilar and in order for it to be striking dissimilarity it must be substantial and have a harmful impact. And there's no evidence before the ARB or this Board that this proposed building has a substantially harmful impact on the neighborhood and it's hard to argue in a Village where Modern Architect throughout the Village and in the direct vicinity can be found it is hard to make a case that its substantially harmful or harmful in this neighborhood. The fact that the neighbors may not like the style of the architecture is not the standard. The third criteria which is visually offensive, the ARB didn't discuss that so they obviously didn't believe that it was visually offensive. Again, it requires a material negative impact on the community and there's no evidence especially in the Village and community and vicinity where modern houses are becoming more common and are common so I don't think that this rings any of those bells but that's the ultimate determination of this Board. Another aspect that the ARB considered has to do with the mitigation to the extent that there is some benefit to mitigate or some way to which however the structure impacts the community to mitigate that impact and there is a landscaping plan which I will share with you now and I will ask the Architect, Mr. Heine to discuss it as well.

Mr. Hulme shared the landscape design on the screen.

Mr. Heine said the landscape architect was given the task to soften the road from the street but leave open the avenues to the water views for the neighbors. Along the road will be a low hedge, some large trees, another row of smaller trees, foundation plantings, retaining wall plantings and things to shield the ground near the house.

Mr. Hulme asked if the landscape plan took into consideration the neighborhood views?

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Mr. Heine said yes, we tried not to block the views as you come down Exchange Place and there is a parking lot for access to the water which is an area that floods during a high tide and as we get over toward that area we kept everything low to maintain the view across there to not impede the views people could and have and enjoy.

Mr. Hulme said you indicated earlier that the proposed occupies the same footprint?

Mr. Heine said yes, the DEC was adamant the existing pool, the existing pool house and existing deck could not be increased or get closer to the wetlands and on the opposite side of the house because of the sanitary system we could not go out in that direction and they did not want us to increase our footprint. We were stuck with the same footprint. We are in a flood zone and the land is fairly low and has to be elevated quite a bit, and we are getting very close to the maximum height that was allowed which eliminated the possibility of any traditional pitched roof on the house.

Mr. Hulme said as far as the extent that the neighbors are entitled to the view for the neighbors of the water, do they have the same side to side views as before?

Mr. Heine said yes.

Mr. Hulme asked if the house is taller and could they see through it before?

Mr. Heine said the house is a hair taller than the top of the roof than the current house but it's not much taller, but as far as massing it is the same amount of mass.

Mr. Hulme thanked Mr. Heine. He went on to say that he received the neighbors correspondence in opposition to this project and I didn't want to leave that unaddressed and it's clear to him that for the most part it was the same letter replicated multiple times so there is one or two people that are really concerned about this project and they were able to get others to cut and paste and forward the information to the Village, so I don't think the opposition is necessarily as strong or as heartfelt as the number of things that were received or intended to communicate. The other feature, and I may have missed some of them, but I am aware of approximately ten (10) separate bits of correspondence to the Board on this issue and I think it may be interesting to identify where those folks who provided written commentary are relative to this project and that's the map I am sharing on the screen. The property is located and there are ten communications I am aware of, and four of them came from Coxes Curve which I drove up that street and I don't believe any of those houses have a view of this applicants house or would be impacted by this. And in the middle of Coxes Curve there is a modern house and there are various houses with pitched roofs. There was another from 128 Seafield Point and as I indicated before there are a number of Modern houses in that neighborhood and they could have a view of this across the water, but it does not interfere with the waterview. There was one on Seafield Lane and its impossible to be impacted by this view. 231 Exchange Place would have a tough time seeing through 37 Exchange Place to this; and I question the impact on 30 Exchange Place as well so there are really only two or three that are arguably directly impacted by this. And the contents of the commentary itself, there was a bit of it had to do with issues that have nothing to do with this application. There were comments about wetland setbacks, building heights and flooding all of which were examined by other Boards and departments and have nothing to do with the analysis that this Board needs to do to determine whether this can be built as proposed. The balance of the comments I would concede that the people who wrote these don't like modern architecture but that too is not determinative of the issues in this matter. There are three criteria this Board needs to analyze. Similarity not an issue; striking dissimilarity not an issue. Each of the houses on this block are dissimilar and they are not strikingly dissimilar. And there's no way to find it offensive when it's constructed routinely throughout the Village.

Mr. Piering asked the difference in square footage from this house to the proposed?

Mr. Heine said they are permitted to construct a 12,000 square foot house; the existing house is 4,000 square feet and the proposed is 8,000 square feet.

Mr. Piering said you have limitations by reusing the foundation and pilings and wetlands keeping the first floor and it was this type of house and yet you went with the flat roof and I think knowing the ARB doesn't like it, but why would you not try from scratch to make it more soft and if need be come to the ZBA and ask for a height variance to pitch the roof.

Mr. Heine said this is the house that they wanted to build. This was the design and style that they were looking to build on their home.

Mr. Piering said okay, thank you.

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Mr. Heine said it was not something he created and suggested they build.

Mr. Piering asked if anyone discussed with the client that the ARB does not look favorable on flat roofs?

Mr. Heine said no, we didn't think it would go this far. We did discuss whether we could put a pitch on the roof and we couldn't with the height restrictions, and it was not something they wanted to see regardless of whether they could do it or not.

Mr. Musnicki asked if the materials for the siding are cedar and mahogany? And asked for detail.

Mr. Heine said yes. The majority is 1 x 6 horizontal clear red cedar and ship lapped with half inch reveal at the joints left natural to weather; the portions we saw in a rendering that looks darker is a 2 x 2 horizontal mahogany with a 1/2" joint between it to create a textural effect on the bays that project out and that will be left natural with the mahogany which will be slightly darker than the cedar.

Mr. Musnicki said the latest color rendering that I saw, the cedar will weather to a gray and the mahogany will retain a brown color?

Mr. Heine said the mahogany never lightens as much as the cedar it is a darker wood, so it will get a slightly darker tone and it won't have as much contrast as the rendering and the difference will be textural and color. The smaller boards will have a 1/2" reveal with a texture and color difference.

Mr. Musnicki said at certain points the ARB asked what could be done to soften it and with less visual impact, and I think you have to admit the elevation is clearly dissimilar whether its striking or not is up for argument, but could this be softened in any way?

Mr. Heine said when the ARB originally mentioned softening it, it was a problem with our rendering the texture didn't show up and original they thought it was stucco and they were looking for something completely different and as we discussed the materials the cedar weathering and mahogany weathering felt it would visually soften the house and we clarified that going forward to make them happier, but there biggest difficulty was the fact that it did not have pitched roofs.

Mr. Hulme said to reshare the landscape plan.

Mr. Musnicki said he will get to that in a minute. He asked how you achieve the new height of the new structure close to the existing height or the former structure?

Mr. Heine said as you look at the existing the roof is hipped and pitched a little more than a single story in its height, so if you take all of that and add a second floor with a flat roof we end up at the same height.

Mr. Musnicki said to discuss the landscape plan, he asked if the trees are 25' in height?

Mr. Heine said the taller ones closer to the street, yes. As the property rises due to the sanitary system the trees closer to the house are shorter.

Mr. Musnicki asked the caliper of the trees?

Mr. Heine thought it was on the landscape architects' drawings.

Mr. Musnicki said it would be important to him to have trees in place, not to have to wait 5 years to 10 years.

Mr. Heine agreed, he said they were not going to plant saplings and waiting on them to develop.

Mr. Hulme said if the Board chose to approve this, they would be amendable to that being a condition of its approval.

Mr. Musnicki thanked Mr. Heine.

Mr. Piering said he was curious about the planting size as well. He said he thinks that the applicant and the Board have had their questions and comments, and they are ready to open it to the audience. Before we do so, I want to touch on a few things. The Board has reviewed the ARB minutes and the letters submitted to the Board to the point where I see there are five people living at 42 Exchange Place and the water view. As we go through this tonight, I ask you to focus on the application tonight; the water on the

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road, the landscaping, the setback from the wetlands for the pool house is not applicable for them tonight so we don't want to discuss something we have no input or control over. With that Ms. Mackie can you please open this to the public.

Ms. Mackie said yes, she found the landscape design by LaGuardia Landscape but there are no calipers.

Mr. Hulme said they would be happy to provide it.

Ms. Mackie instructed each member of the public to raise their hand to speak.

Ronit Palley, 42 Exchange Place and said she's spoken to 30 neighbors and many neighbors did not receive notice and she reached out to them who did not know and I reached out to the larger block and you can call it vicinity if you'd like because a lot were not available and I did speak to 30 distinct families some of whom are represented here and on my letter. What I'd like the Board to focus on is that they are not thinking about eclectic, the standard is strikingly dissimilar; the houses are shingled largely pitched roofs and I took my bike out a few times to look at modern houses in the broader neighborhood and those houses had were contextual within their space and within their block and this house is massive and bulky and it's not contextual; it's raised significantly above where it needs to be which makes it even higher and the houses I went to see are not of this size and landscaping that works with the house, site and neighborhood and frankly not only are we looking at a giant rectangle, but 53 Exchange Place is almost a promontory, the land is built up high and the foundation is higher than it needed to have been and this is a block where everyone rides their bike and jogs by and I see many people come by this block and part of their path and Exchange Place is a unique place within the community that has the Bay. My argument is that something of this size and shape without air to breathe is strikingly dissimilar and some may argue visually offensive, I'll leave that for the Board. But in addition, there was mention of a previous pergola and we've lived here two years, there was no pergola the deck was rebuilt a year ago and my understanding of a pergola is a structure that's open versus this pool house that adds another square mass to a rectangular mass and to finish for now, I did not speak to one person who said this is a great design. Aside from its location, the comments I received were comments I refrain from mentioning tonight, but they were all in the league of strikingly dissimilar and visually offensive and that's what I want the Board to focus on. Six landscaping trees and no amount of landscaping will cover a house that stands up on the point like this. With that, I would urge them to decline the application and have the Galway Holdings to go back and in other cases where you did approve a petition from the ARB; the petitioner has made significant changes to the plan and there have not been any changes made where addressed what the ARB has said so I think for those reasons, and that it is strikingly dissimilar there is no choice but to deny it.

Robert Willard, 36 Exchange Place. We were not sent a package and when I first saw a copy of the house it was shockingly unattractive but visually offensive. I thought it would reduce the value of the properties on Exchange Place, and it's got an effect on our valuation. In my personal view it looks like they are building a prison or a bunker on the point and I like modern houses and there are a lot in the community and we can see them across the bay on Dune Road and this is offensive and there's nothing that reduces the impact that we will have to look at. That's my reaction and I object to the comment that there are only a few people who have a strong reaction because conversations in our community everyone had a strong negative reaction. I confirm that we never saw a pergola, there was a trampoline but no pergola so I think that's an excuse to build another structure on the deck.

Mr. Piering thanked Mr. Willard.

Ms. Mackie said to clarify about not receiving the mailing; the way the mailing works is that I give the applicant a 200 foot radius so the following addresses were properly noticed by certified mail return receipt; the families were: McCooley, Schmidt, Common Land Owners, Southampton Town, Galway Holdings, Pally, Bernstein, Kelly and Common Land Owners. Those are the only people they are required to notice and they did so on November 2, 2020.

Mr. Willard said they live across from the Bernstein's. We look right at it from a diagonal on our property,

Ms. Mackie said she is letting everyone know who did not get noticed, why. Mr. Boe you are up next.

Jeremy Boe, 30 Exchange Place. My comment is in a different direction in terms to where he saw some of the objections from and I will put aside that these might be people who walk down here which a lot do, it may be something that the Board has within its purview and it may not this is my first time attending. This road is subject to flooding and high tide and Hurricane water and I would be interested in comments or thoughts that the architect and the planning people what impact this may have on the water flow; with the recent experience with the two modern structures that have been built having added at the end of our block is our principal concern.

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Mr. Piering said we can back in to the issue as I said earlier before we opened this to the public, that's not in the purview of this Board. If its tidal flooding that's nature; there is nothing that this Board will have control over. I understand the frustration with flooding, my house when we get a heavy rain I can't access my own property.

Mr. Boe said he would like to know what the incremental contribution might be from that flooding and other projects have added to flooding so I repeat my question.

Mr. Piering said you can repeat your question, but the water is not an issue for this Board, and I'm not sure I can answer that.

Ms. Boe asked who that's an issue for.

Mr. Hammond said he'd like to interject.

Ms. Mackie said the applicant appeared before the PB in July and they were noticed and they did receive an approval for fill and drainage reviewed by Mr. Hammond and Mr. Hill and it hasn't started yet, but once they do the construction they will add drainage to the property which was fully vetted by the Village Engineer and Mr. Hammond can speak to it more.

Mr. Hammond said we looked at the stie with respect to the proposed development for the sanitary and there is a grading and drainage plan that adds a lot of drainage and surface drainage to help alleviate the natural flooding issue, but as Mr. Piering said this application is only an appeal of the ARB and they have no jurisdiction over that and it would be with the PB and that's been approved and there is a record should any one wish to review it.

Mr. Boe said thank you.

Mr. Piering said he hopes that answers Mr. Boe's question.

Mr. Boe said yes, and you answered it too and I guess my remaining question that I deal with for the next project, when the notices go out how do I insure if I am an effected person and I assure you I am, I am on the mailing list.

Ms. Mackie said they are only required to mail within 200 feet and I out the address in to the computer but you can check the Village website, they are also published int eh Southampton Press and if you see construction you can call, btu they are only required to notice within 200 feet.

Mr. Boe said that sounds like it would have happened in July.

Adam Palley, 42 Exchange Place. He said he wanted to add a few things and address a few points made by Mr. Hulme. The house is very large, very bulky and I think clearly strikingly dissimilar to everything in the vicinity and a few things I want to address in terms of vicinity; Section 5 of the Code talks about the immediate area so I don't think it points to a very broad look and here there's an area of the Village that's special and really a destination for many in the Town who get out and use the outdoor area and walk and jog so it's very special for us who live across the street and many of the people in the Village. I think also, it's important to take into account when evaluating the design as has been discussed, the house is raised 14 feet and by the way, I would point out our house is raised a similar amount so given the size, the 8,000 square foot block structure it stands out on a an island to itself and any level of landscaping is unlikely to mitigate the actual look of the house itself so I think that's relating to the actual location and the height of the house and I would also want to say, from our house we can see the house both with the existing landscaping of hedging and we can see it from the yard, the front porch, from the interior rooms on the first floor and directly from the second floor and I don't think 25 foot trees will change that. I think the design should stand on its own and as its designed is strikingly dissimilar and a negative for the neighborhood and goes against the grain of the Code.

Mr. Piering thanked Mr. Pally.

Ms. Mackie said Allison Akant is next.

Mr. Akant has lived for 33 years on Beach Lane with his wife, and they generally take a lot of walks in this direction of Exchange Place so they are not directly affected by the building and I do agree with what I hear about Exchange Place being special and this house certainly very prominent on Exchange Place and we constantly walk around it on our daily walks and bike rides and so on, so I want to say and actually I do believe Bill Heine is a good Architect because he has helped to renovate our Dutch Colonial

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and has done a great job so I am surprised when I saw pictures of what will go there and the height and all of the comments about the visual offensiveness and I'm sure there could be ways to fix that, and I would really hope that would actually happen so I am here to support people who say this would be a good thing to modify in some fashion to make it more similar and not look like a prison as someone before me put it. Some aspect of the house has been found to be not attractive to not just this group of people but also the ARB.

Mr. Piering thanked Mr. Akant.

Michael Murphy said as the owner he's happy to respond, if he may.

Mr. Piering said sure.

Mr. Murphy said Bill Heine has been a prominent architect for quite some time and there's a woman on the call, Ronnit who he will say is a neighbor who has gone around to neighbors saying how this property is going to block her view because of our pool house and create flooding in the area and she references a large retaining wall, which is just another lie that we've heard tonight. I'm raising six children in this area, and to have a neighbor do this is just appalling to me. We didn't buy this house to lose value, we are not raising a family there to have a prison we are building a house to live in for the next 50 years, we've done everything according to Code and everything we've been instructed to do by our attorney, architect and builder so the fact that one woman is walking around asking people to sign things and texting me on the side asking to help is preposterous. I would suggest to the Board, we are here to raise a family for the next 50 years, and we are looking to increase the value of our home and the area. If you look at the homes Owen Construction has built and Heine Architecture and lastly, by right when we bought the house I went to Ms. Mackie and it was four years ago and there was a standing pergola regardless of the lies heard. I asked how big of a home I could build.

Mr. Piering said just because they are saying they don't remember the pergola we shouldn't refer to them as liars.

Mr. Hammond said there was a pergola and when the pool and deck was rebuilt they did not reconstruct it, but there was a CO for a pergola.

Mr. Murphy thanked MR. Hammond. He said he listens to people saying what a horrible project this will be when it comes down to one woman who doesn't want a pool house blocking her view. We've done everything according to the Code and I believe in building this for the next 50 years and if there are any questions you have you can talk to me, but with all due respect there are a lot of lies and people are soliciting lies and it's frustrating.

Mr. Piering said he is sure it is and it sounds like there is a lot of emotion and we're trying to sort through that and stay within our jurisdiction, and there's more than one woman on this call so there is a lot of interest and we are getting a lot of feedback from your architect and we thank you for your input.

Ms. Mackie said there are two people raising their hand, one has already spoken so I will let the first person who has not spoken go first.

Michelle Carvin, 31 Exchange Place and we did write a letter about issue. I will say my husband and I are of agreement with the neighbors that we do believe the plans are strikingly dissimilar and our main issue is on drainage, and I won't make too much of an issue. I want the neighborhood to be aware that there's a large construction project that we didn't receive notice for and it created significant flooding issues for us and it never happened prior to the construction. And we raised concern that proper drainage is taken into consideration and construction can cause more issue and given the elevation we want to make sure the concerns are taken seriously and it's not all natural from the Bay, but I want it known we have experienced issues that should be taken seriously.

Mr. Piering thanked Mrs. Carvin.

Ms. Mackie said the application Ms. Carvin is referring to is the Bernstein which was four or five meetings, and as far as the notices go again they are required to send within 200 feet and we do not allow an application to proceed without jurisdiction and sometimes people think they aren't noticed because of where their mail is sent, but we need to move off of the notice topic. The next speaker is Adam Palley.

Mr. Piering said we have already heard from him.

Ms. Mackie said yes, but there are no other people raising their hand to speak.

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Mr. Piering said okay.

Mr. Palley said to respond to his neighbor Mr. Murphy, and first of all this is just about the house and we are also looking to be here for the next thirty years and to be good neighbors and we want you to build a home you love and enjoy, but I do want to take really issue with a few points. In terms of following the process it was said earlier by Mr. Hammond that the earlier meetings over the Summer we never received prior notices so I don't know the process of that. A week and a half ago was the first time we've seen any topic and if this is the wrong forum I apologize.

Mr. Piering said you received notice for the ZBA meeting.

Ms. Mackie said they did receive notice for the Drainage and Fill from LandUse Ecological Services and I have the receipts and it was sent out.

Mr. Piering said the notice issue must be put to rest.

Mr. Murphy said it's safe to say they got the notices they wanted to but not the ones they didn't.

Mr. Palley said there are no lies being spread and that has no place here and this is a concern of a large number of people from the direct area who care about what the area looks like and I would hope Mr. Murphy cares as well and I think the personal attacks don't have a place.

Mr. Murphy said he couldn't agree more.

Ms. Mackie said he's going to Mute the participants.

Karen Schwitzer, 128 Seafield Point and I want to object that more than one neighbor has an opinion we all agree it's visually offensive, we have lived here for 50 years and we are full time residents and we all agree and we've talked to others and we agree its not within the character of the neighborhood. It looks like a military bunker or prison and we hope something can be built that's more in tune with the neighborhood.

Mr. Piering thanked Ms. Schweitzer.

Ms. Mackie said Mr. and Mrs. Greenwood wish to speak.

Ms. Greenwood said she and her husband built a house in 2013 on Coxes Curve and they were cognizant of the style and area and even though it was larger we tried to do everything we could to minimize the feeling of mass and we did so with architecture and landscaping, and this is a very monolithic looking structure that will dwarf the other houses on Exchange Place and look out of place and there are so many people on this meeting because most of us agree with that notion because it is too monolithic for the neighborhood and it's ugly and that's all I have to say.

Mr. Piering thanked Ms. Greenwood.

Ms. Mackie asked if there were any other questions or comments. Mrs. Willard raised her hand.

Mrs. Willard said she wanted to say at the start of this process, Mr. Hulme pointed out the modern homes in the area and as we know there are many and I want to point out that the ARB was obviously aware of them and yet they still did not approve the house and we should be mindful of that. I think the Murphy's home has pride of place on Exchange Place because of the cul-de-sac most of us can see that house and we should keep that in mind.

Mr. Piering thanks Ms. Willard.

Ms. Mackie asked if there were any other questions. Mr. Hulme do you wish to add anything?

Mr. Hulme said this is a private parcel and not a public parcel, and he's happy people like to walk to it but it's a private piece of property being developed by the owner, and the standard is not that I don't like it, it's striking dissimilarity or visually offensive both of which have specific legal meanings and you don't reach either by repeating the same thing over and over, it doesn't mean its strikingly dissimilar it means the speaker doesn't like the house. There was no basis for the ARB to deny it, and there's no basis for the ZBA to deny it, it's not strikingly dissimilar and the proof is the plethora of modern houses in the Village and the general vicinity of this property.

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

Mr. Musnicki said you heard from a lot of the community and there seems to be a common theme of the dissimilarity and some would say it's strikingly even though you do not think that; a question from Mr. Heine earlier in the meeting I asked you about the fact that the ARB asked you to soften the look of the structure and you said you described the materials to them and you gave them a better visual and they were okay with that is that correct?

Mr. Heine said yes. The drawings were more simple than what we saw, they felt the siding was stucco and too harsh so I did list all of the finishes for them to understand and once we discussed that they were happier with the finishes, and also that the sanitary system in the front the mound from that reduces the visual height of the house. There has been talk of the retaining wall which can't be seen from the street only the water, and that will not be seen from the street. Another question about drainage, the existing house just drains into the yard, the proposed has roof drains and all of the water will be captured in dry wells and French drains preventing the rain water to end up in the wetlands.

Mr. Musnicki said some comments were that this its monolithic, blocky, monotonous and not open. What is your response to that?

Mr. Heine said the clients don't want to live in a glass box with a lot of windows on the street side. The water side is much more open and the view is taken in from that side, the street side is generally more private. As far as a block the house is an "L" shape with one portion coming forward to the street and the original house had a diagonal that went through the "L" and we created 12" projections in multiple locations to break up the flatness of the façade.

Mr. Musnicki asked if there's any way that it can be softened further? It's very massive, and I don't think anyone can disagree with that. It makes a striking impression when you come down the street.

Mr. Heine said the mound will become higher for the sanitary, we plan on doing a hedge, a row of street trees and a second set on top of the mound and typical foundation plantings which prevents a direct view of the house from the street. The landscaping plan was requested by the AR Band they were happy with it, but they did deny the application.

Mr. Musnicki asked for a more elaborate landscaping plan.

Mr. Heine said yes. The one we shared tonight, all of the smaller renderings on that are available in a larger format and the landscape architect did do a written description and we can give that to the Board as well.

Mr. Musnicki thanked Mr. Heine.

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

Mr. Badzik said in Mr. Heine's letter he was referring to the height of the house as roughly the same as the existing, there is a letter that the ARB has from September 8, 2020 and the summary page has the proposed design being 18" taller than the existing roofline. Is it higher?

Mr. Heine said I said both earlier, so yes, it is 18" taller because of the addition of the second floor.

Mr. Badzik thanked Mr. Heine.

Mr. Piering said if there's nothing further, Mr. Hulme what would you like to do?

Mr. Hulme said I would ask to close the hearing for a decision in December subject to the receipt of the landscaping plan as requested.

Mr. Piering said we would like it before November 30, 2020.

Mr. Heine said it's not a problem to get that, it already exists.

Mr. Piering said okay.

Motion was made by Mr. Piering to close the hearing of **Galway Holdings, LLC., 53 Exchange Place, (905-15-5-32.1)** for a determination, subject to the receipt of the landscaping plan; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

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8. Mark & Palmira Cataliotti, 37 Beach Road (905-012-02-039) Applicant requests variance from §197-35 C to construct an accessory garage with attached roofed-over patio with setback of 10 feet where a minimum of 20 feet is required.

Mark and Palmira Cataliotti appeared on behalf of the application, together with Maurico Duarte, Architect. Mr. Duarte said they are presenting a detached two car garage with a roofed over patio in the back. We are an undersized lot and we are trying to use the setback reduction to get us to 17' as a requirement.

Mr. Hammond said he does not think it's a small lot, the lot width at the street is 88' but it can be taken at the front of the building. When it was designed it was not deemed small or non-conforming, you have over 100' in the rear of the property where the variances are being sought.

Mr. Duarte said at the front right corner there is only 23' of width so we could not do an attached garage, which is why we proposed a detached garage. He shared the screen and showed the property, and we are seeking 10' and it's only at the front right corner of the garage and in the rear its 14.9' and at the end it goes to 19'7" and there is an encroaching fence line. 39 Beach Road has a two-car garage with 1.1' on the sideyard; 16 Beach Road has the house at 14.4; and at 20 Beach Road

There is a satellite view to show the property, and we have all of the surveys to the property and the applicant's property has a garage that is 20 x 20 proposed with the additional roof over, and we're asking for 10' and the neighbor has 1.1'

Mr. Piering said you're showing the character of the neighborhood, right?

Mr. Duarte said yes.

Mr. Piering said there's not much you can do with the garage but the neighbors have raised concern about the patio.

Mr. Duarte said yes, he received the letters today. One letter was from the neighbor at 39 Beach Road, and to paraphrase they are concerned about congregation areas and there is a pool there so I don't see what adding the roof over will change anything that occurs already.

Mr. Piering said you make a good argument about the garage, but having that roof over could be a problem for them. What can you do to get it into a more conforming area or reduce the size, if you reduce it you won't need the variance for it? Have you explored that option?

Mr. Duarte said when you look at the elevations, and architecturally speaking and the design of the garage and its layout and when you look from the back you can see it and do you make it a reverse gable tighter, and then the space, it defeats the space to have a big picnic table and a space to hang out.

Mr. Piering said you can always ask, that's correct. But we have to weigh out the different things. You have neighbors pointing it out and the firepit can be moved over and reconfigured to a point where the roofed over patio won't need a variance, you can put it in a conforming location.

Ms. Catalitotti said it's no different than the pool and patio, the firepit is not the problem. We are trying to follow the line of the garage and we'd lose all of that and lose a lot of space in the backyard to be conforming.

Mr. Piering said we go there and look at it, and it's very private but we have to look to minimize the variances.

Ms. Cataliotti said the roof over was something we decided to do after the fact and we didn't think to mention it to her, but I do miss them as neighbors. They aren't there, they rent the home out.

Mr. Duarte said they would not be disrespectful to the neighbors, and its wooded there are a lot of trees buffering it.

Mr. Musnicki asked if the roofed over patio is open wall?

Mr. Duarte said yes.

Mr. Musnicki said okay.

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Ms. Cataliotti said the fireplace will be smaller, and we are thinking of pulling back on the pavers and plant more grass for a green effect.

Mr. Musnicki asked if they would close the wall to the right-hand side where the fire pit is.

Ms. Cataliotti asked Mr. Duarte to comment.

Mr. Musnicki said we try to minimize the situations, and certainly the side yard with activity outdoors and a garage just has vehicles coming and going and now you have a space where people congregate with an open wall except for the fireplace in that side yard it's a little bit of an issue.

Ms. Cataliotti said we use the space now, it's not covered. We play bocce ball, there are chairs, we don't know that making it covered we want to add a pizza oven and enjoy the outdoor living space it becomes dead space when you put the garage out there. We are using the space today so I am flabbergasted about congregation being a problem, and I have been there for 6 years and any time we've done anything we've obtained permits and I'm disappointed that letter was written. I have not seen Ms. Schermeyer.

Mr. Musnicki said whether they are renting or not is here nor there.

Ms. Cataliotti said we're not creating any living space, it's just a covered area for us to be able to take reprieve from the sun and the rain.

Mr. Musnicki asked what your answer would be with the outdoor kitchen. Would you be open to enclosing that area to right to the neighbor?

Mr. Duarte said that right side would be the fireplace.

Mr. Piering said now it's a structure if you close it in. It changes things again. When we're looking at this again, we have to look at it as precedent setting it's not personal because the neighbor wrote something it's something we have to look at with the 5 factors.

Ms. Cataliotti said its similar to a cabana, I don't know that its precedent setting.

Mr. Piering said for us to give a 10' side yard variance in this residential area it is definitely precedent setting and with neighbors who are concerned about the enjoyment of their property we have to consider that.

Ms. Cataliotti said the neighbor has 1' to the side yard for her garage.

Mr. Piering said we're not talking about the garage, we're talking about the potential outdoor entertainment area.

Mr. Duarte said we are at 14.8' at the roofed over area.

Mr. Musnicki said in looking at the right elevation of the structure, not the patio with the firepit and shower, I'm talking about the right elevation of this building consists of a garage and the outdoor entertainment area and the fireplace; the question is would you close the right elevation off to the neighbor to the right.

Mr. Duarte said the homeowners have to answer that.

Ms. Cataliotti said Mr. Piering said that would present other issues and that would be more undesirable.

Mr. Musnicki said it's already a structure, it's not creating another it's putting a wall there; there's a two car garage and roofed over patio with entertainment center the outdoor kitchen.

Ms. Cataliotti asked what he meant by entertainment center.

Mr. Musnicki said it's an outdoor kitchen.

Ms. Cataliotti said it's a pizza oven and a bbq. Would a half wall be sufficient to let the area through?

Mr. Duarte said maybe raise it above eye level?

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Mr. Musnicki said you're in a side yard and I'm trying to mitigate it.

Mr. Duarte said when it starts to go back to the garage, we are 14' 9" away so we need a 5' variance and the back corner is 5" away from the 20'.

Mr. Cataliotti said if we have the 20' for the structure behind the garage, what permission do we need?

Mr. Musnicki said you'd need nothing, but the building requirement.

Mr. Cataliotti said it's a matter of a few feet.

Mr. Piering said if you have the 20' you don't need a variance.

Ms. Cataliotti said we're asking for 5' at the widest part and inches at the other part.

Mr. Musnicki said he has one vote and the rest of the Board can weigh in.

Ms. Cataliotti said she understands and you can't see anything. There are huge railings that block them from the neighbor.

Mr. Piering said we get back to the initial question, can this be done without a variance?

Mr. Duarte said if we keep moving away, we are encroaching on the back view and dead space is being created on the right of the garage which gets larger as you go to the back.

Mr. Piering said no one is questioning the placement of the garage. You are familiar with the five factors, and whether it can be achieved by another method feasible to the application is one of them. The issue is where you need the sideyard setback.

Mr. Hammond said the line is to the 17'.

Ms. Cataliotti asked the definition of a small lot?

Mr. Hammond said this is not a small lot, and he can provide that definition after the meeting.

Mr. Piering said that was presented to us.

Ms. Cataliotti asked what it does to cost to have separate structures?

Mr. Piering said he suggests that they hold it over to the December 17, 2020 meeting to digest it and have a conversation with Mr. Hammond and see if there are other alternatives and if not we can weigh the factors and make a decision based on the application.

Ms. Cataliotti said this will delay it yet again.

Mr. Duarte said if it wasn't for the roofed over patio, as far as the garage location how will the Board see that right now?

Mr. Wittschen said we would approve the garage.

Mr. Duarte said if they can shift the patio or narrow it down that seems like the direction, you'd like us to head in.

Mr. Piering said we like to minimize the variances at all costs, you have a well screened beautiful back yard. We have certain factors we have to go through, but the fact that your neighbor has voiced opposition, this would have been addressed regardless of that because it would be precedent setting on this block. Don't be so hard on your neighbor or shocked they wrote this letter, it's their right and in this situation many of us would have done the same thing and this would have been addressed regardless of whether we received that letter or not. You heard my suggestion, please let me know how you wish to proceed. We will see if there are any members of the audience with comments.

Mr. Duarte said where Mr. Hammond said the minimum lot width, can you explain that?

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Mr. Hammond said it's parallel at the street but you can't do that because the lot width is 100' where the house is, and you meet the minimum size and you won't get that relief because you don't have that issue. The house is 50' from the street line the lot is 100' wide.

Mr. Duarte said I don't see that in 197 definition.

Mr. Hammond said it's not done at the street; it's done at the house.

Mr. Piering suggested they discuss that amongst themselves outside of the meeting. You've heard my suggestion, now we will see if there's anyone from the public who wishes to comment.

John Mathena, 35 Beach Road. He is the neighbor and he has owned the house for 18 years and they have renovated it and it's a great asset to the neighborhood. I am impressed by the plans but I want to understand what the elevation above grade is for the outside area. There is a beautiful deck that's above grade and while I think that this won't affect my property but I want to understand how noise will travel. Is it at grade or above grade?

Mr. Duarte said it's basically at grade.

Mr. Mathena said thank you.

Mr. Piering asked if there were other questions or comments. There were no other comments or questions.

Ms. Cataliotti asked when they could get an approval?

Mr. Piering said the earliest would be January.

Ms. Cataliotti asked what happens if they don't hold it over/

Mr. Piering said you can hold it over to resubmit plans, or we can close the hearing for a determination on December 17, 2020.

Mr. Duarte said if they don't hold it over, you make a decision based on what you heard tonight?

Mr. Piering said yes. You can ask for a determination for the garage and remove the roofed over area or you can close it for a determination, but based on what you heard tonight I don't advise that.

Ms. Cataliotti asked if they can revise the plans for December?

Mr. Piering said yes. I know this is a lot, but we have other applications.

Ms. Cataliotti said its very disappointing.

Mr. Piering said he understands, often when you don't get what you want you are disappointed, but we have to follow the Village Code, and we have to do what is best for the Village as a whole and we've been very straightforward. You have a beautiful yard and a garage is one thing but when you look at the setbacks and they are there for the protection and enjoyment of everyone in the Village. And quite frankly, you can put this in a conforming location, you just don't want to and I understand that also and that's part of what we have to weigh tonight.

Ms. Cataliotti said okay.

Mr. Piering suggested we hold it over. You can decide what you want to do, its up to you but it sounds like you want some time to think about it.

Ms. Cataliotti said okay. I am disappointed.

Motion was made by Mr. Piering to holdover the application of **Mark and Palmira Cataliotti, 37 Beach Road (905-12-2-39)** to December 17, 2020; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

Motion was made by Mr. Piering to adjourn the meeting at **7:45 p.m.**; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.