

July 18, 2019

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, July 18, 2019, 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  
Frank DelGiudice

Anthony C. Pasca, Esq., Village Attorney

Brad Hammond, Building & Zoning Administrator

Kerry Rogozinski, Building Permits Coordinator

ABSENT: Maeghan Mackie, Board Secretary / Building Permits Examiner

### **MINUTES TO BE APPROVED**

June 20, 2019

### **DECISIONS:**

**1. Andersen-Kuntz 97 Hazelwood, Westhampton Beach (905-2-2-20.2 )** Applicant requests an interpretation of the village code that the Building Inspector erred when he determined that the nonconforming use on the property had been “discontinued” as provided for in chapter 197-29.E. of the Village Code. In lieu of a favorable determination by the Board the applicant requests a use variance from Chapter 197-5.A.(1) to allow multiple contractor offices with workshops and storage. The property is located in the MF-20 Zoning District.

**2. Daniel Napoli, 17 Griffing Ave, Westhampton Beach (905-013-03-010)** Applicant requests variances from §197-6 D to construct a covered front entry 22.5 feet from the front property line where the minimum setback required is 50 feet, and to construct a second-floor addition 25.71 feet from the front property line and 17.75 feet from the side property line where the minimum required setbacks are 50 and 30 feet, respectively.

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

Motion was made by Mr. Piering to adopt the determination of **Daniel Napoli, 17 Griffing Avenue, Westhampton Beach (905-13-3-10)** as written; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

**3. Metro Storage, Westhampton, LLC., 105 Old Riverhead Road, Westhampton Beach (905-2-1-19.5)** Applicant requests variance from §197-30 C(9)(c) to erect signs with a total area of 48 square feet where the maximum permitted is 25 square feet, from §197-30 C(9)(e) to erect two ground mounted signs on a lot where only one is permitted, from §197-30 D(11) to erect a sign on a different lot than the advertised business where signs must be installed on the same lot, and from §197-30 D(14) to erect an internally illuminated sign where internally illuminated signage is prohibited.

Bob Heilman, Metro Storage appeared on behalf of the application. Mr. Piering stated there was a determination, and the reading was waived.

Motion was made by Mr. Piering to adopt the determination of **Metro Storage, Westhampton, LLC., 105 Old Riverhead Road, Westhampton Beach (905-2-1-19.5)** as written; seconded by Mr. DelGiudice, and unanimously carried 5 ayes, 0 nays, 0 absent.

July 18, 2019

**4. 123 Dune Road, LLC., 123 Dune Road, Westhampton Beach (905-21-3-7)** Applicant request variances to demolish an existing swimming pool, patio, and dwelling entrance stairs. The proposed lot coverage will be 31.24% when Chapter 197-8.C. and 197-63.P (1) prohibits more than 25% lot coverage on a lot developed with a tennis court. The property is located in the Flood Zone and the R-3 Zoning District.

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

Motion was made by Mr. Piering to adopt the determination of **123 Dune Road, LLC., 123 Dune Road, (905-21-3-7)** as written; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

**HOLDOVERS:**

**5. Donna McDonough, 24 Point Road, Westhampton Beach (905-17-3-25)** Applicant requests variances to bring in fill 5' from the North, East and South lot line when Chapter 197-27.D. of the Village Code requires a minimum of 10' setback. The applicant also proposes a deck in the required front yard in violation of Chapter 197-35.C. of the Village Code which requires accessory structures in the rear yard only. The property is located in the R-5 Zoning District and the Flood Plain.

John McDonough appeared on behalf of the application, together with his Architect Kyle Ruhs. They have changed out their septic system, and they got a smaller system; he reviewed two systems and they chose the one with the smaller footprint. It is the new IA system, and the wall that used to be 6.9'.

Mr. Ruhs said the original system was a standard system, so they changed it to the IA system and reduced the wall by 40% from 6.9' down to 3.9'.

Mr. Piering said the wall has been reduced drastically.

Mr. Ruhs said yes, they have reduced it quite a bit. They have also pushed the wall, it was 5' from the road to about 10' now; they are now within compliance. To fit the system, they had to push it closer to the property line of the adjacent neighbors but the wall is much lower now. They tried to put in the new nitrogen reduction system which is good for the environment all around; and then they also tried to push it away from the road so that it would be less visible for all of the neighbors, and they fit it in as best they could.

Mr. Piering asked them to talk about the deck.

Mr. McDonough said the new septic system would cause the deck in the back to be much smaller, and they live on the deck and they thought two (2) things would happen, they would have a deck that looked esthetically better, but the deck right now with the other homes behind their property will be looking at the decks. The front of the house there is 20' off of the line like the Code allows, and there is no one in front of the house, and the people across from him are on the bay so everything they did is on the other side of their house, so there will be no deck between his house and the next looking West.

Mr. Piering asked how big the deck is?

Mr. Ruhs said it is 275 square feet. It is within the front setbacks; and they are within the lot coverage, they are trying to comply in every manner except for the one Code that prohibits decks in the front yard, which quite a few in the Pond Point area do have.

Mr. McDonough said the additional thing on the deck; he spoke with his neighbors who have agreed this layout is nicer for the area.

Mr. Musnicki said since they are able to reduce the coverage of the new IA system, wouldn't that give you more room to build the deck in the back now. He believes the application for the front deck was driven by the original septic system.

July 18, 2019

Mr. Ruhs said they had no additional room in back. The systems have three different components plus you also have the expansion tank, with all of that we cannot expand the deck any more than they are proposing.

Mr. Musnicki said in other words, with the new system you cannot expand the rear deck in any way?

Mr. Ruhs said that was correct.

Mr. Musnicki asked what the reason for that was; because of the expansion of the system?

Mr. Ruhs said because of the number of components that the system has, and also Suffolk County does not want decks to be over the components.

Mr. Musnicki said there are other components that are not shown on the survey? And what components are those.

Mr. Ruhs said there is a distance that you need, and you have the drainage for the house.

Mr. Musnicki asked if that precludes you from building a bigger deck in the rear?

Mr. Ruhs said that is what they have been told by Suffolk County.

Mr. Musnicki said part of this Board's job is to give the least amount of variances as possible, and if the original application was driven by a traditional septic system that takes up a large footprint, but now you are reducing that system and footprint by 20% to 40%, I would think that you have that additional room to expand the deck in the rear, but you are telling me you cannot because of the components of the new system.

Mr. Ruhs said the way that they have designed the system, they kept this as close as they could to the house and they ended up having to push the retaining wall out further because of the fact that the components needed that much space.

Mr. Musnicki said okay.

Mr. Ruhs said that is how they understand it, they cannot push the deck out any further.

Mr. Musnicki asked if they can provide anything for the record to that, other than you just stating that you cannot.

Mr. Ruhs asked if he's seeking something from the engineer who did it?

Mr. Musnicki said yes, he understands what they are trying to do but he would like to see something to back up that statement. He does not know if the other homes with decks in the front yard are pre-existing non-conforming, if they are legal or how they achieved decks in the front yards. There are some with decks in the front, that is true.

Mr. Piering said we usually like to see if they received variances for the decks in the front yard.

Mr. Ruhs said okay.

Mr. McDonough said there are a lot of houses with front decks, if you drive in on Harbor and you come back out, the homes on the inside of the street where he has decks in the front yard, there is a predominance of decks in the front.

Mr. Musnicki said he agrees with Mr. McDonough, but this area is very sensitive and it started off as cottages, and as these are slowly being remodeled and renovated and brought up to the FEMA regulations, and in 10 years this community will have a very different look. You can see the changes already.

July 18, 2019

Mr. McDonough agreed, he said he is one of the last homes in the area that's a cottage. The deck they are taking down is much larger than what they are proposing. He asked what more they'd like to see on the deck?

Mr. Musnicki said he would like to see some supporting documentation from the engineer regarding the deck, and so they have something for the record.

Mr. Piering said they are reducing the size of the one and you are saying you need a deck and you can't have it where you want it, we just need documentation for that.

Mr. McDonough said okay, he will get that.

Mr. Musnicki asked if they still require a fence, or is it 4' and over that requires a fence on top of the retaining wall.

Mr. Ruhs said it has to have a fence on top. The grade is 2.8' and the wall height is 3.7' so the top of the wall is 6.7 elevation, and there is a drop that requires a fence.

Mr. Musnicki said okay, he did not see one on the plans. On the first floor he sees the height was reduced.

Mr. McDonough said yes, they brought it down.

Mr. Ruhs said they brought it down because the original septic system, the height of that was much higher and we have pushed the height of the house up in order for the whole system to work and we brought the house back down when we reduced the height.

Mr. Musnicki asked what the flood zone is, is it AE7?

Mr. Ruhs said it is AE8.

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

Mr. Ruhs said when the application was originally noticed, the retaining wall was 5' off of the property line and now it's going to be 1' off of the property line. He thinks it has to be renoticed.

Mr. Pasca said yes they have to renotece it.

Mr. Ruhs said if they are going to put the fence on top of the retaining wall that will require a new notice as well.

Mr. Hammond said towards Pond Road it should only be 4' in height and if the wall is 3.9' you will exceed that.

Mr. Pasca said they have to submit a plan to reflect all of this for the Building Inspector to review to determine whether it needs an additional variance.

Mr. Ruhs said it's a fence on top.

Mr. Pasca said the specifics have to be shown on a plan, the top of the fence on the plan so that it can be determined whether a variance is needed or not.

Mr. Ruhs said okay, they will put the elevations on top of the fence.

Motion was made by Mr. Piering to holdover the application of **Donna McDonough, 24 Point Road, Westhampton Beach (905-17-3-25)** to August 15, 2019; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

**6. Flavio Sinchi, 33 Oak St, Westhampton Beach (905-008-03-020)** Applicant requests a variance from §197-5 A(1) to construct a dormer addition within the required front and rear yards on a dwelling with preexisting nonconforming front and rear setbacks where conformity is

July 18, 2019

required for additions, and a variance from §197-9 D to construct a front porch with a front yard setback of 18 feet where the minimum required is 40 feet.

No one appeared on behalf of the application.

Motion was made by Mr. Piering to holdover the application of **Flavio Sinchi, 33 Oak Street, Westhampton Beach, (905-8-3-20)**; seconded by Mr. DeGiudice and unanimously carried 5 ayes, 0 nays, 0 absent.

**7. Newman/Corre, 307 Dune Rd, Westhampton Beach (905-018-02-029)** Applicant requests variances from §74-8 C to construct accessory structures within the Coastal Erosion Hazard Area, from §197-8 C for a building lot coverage of 28.2% where the maximum permitted is 20%, from §197-8 D to construct a dwelling with a side yard of 15 feet and a combined side yard of 40.8 feet where the minimum required is 20 & 50 feet respectively, from §197-27 D to place fill for a sanitary system 5 feet from the property line where the minimum setback required is 10 feet, from §197-35 B(1) to construct an accessory equipment platform in the side yard where accessory structures must be constructed in the front or rear yard, and variances from §197-35 C to construct a deck 32.7 feet from the crest of the dune and a pool 51.7 feet from the crest of the dune where accessory structures must be setback 75 feet from the crest of the dune, and to construct accessory decks 10.9 & 15 feet from property lines and a cabana and equipment platform 10.9 feet from property lines where the minimum setback required for accessory structures is 20 feet.

Karen Hoeg, Esq., appeared on behalf of the application, together with Scott Campbell, Architect. At their last appearance the Board asked them to look at the Easterly side setback and they revised their plan to move the platform and decking further off of the Easterly side yard where they initially proposed it at 5' and now they are proposing at 15'.

Mr. Piering said that's what they discussed at the last meeting.

Mr. Campbell said they shifted the cabana and the deck, and it's 15' now and its changed on the survey as well.

Mr. Piering asked the applicant to go through the variances that they need; the side yard setbacks are now 15' on each side; the accessory structures in the side yard are still there, correct?

Mr. Campbell said the cabana is in the rear yard.

Ms. Hoeg said and that was moved 15' off of the Easterly property line, as well as the platform and the decking and they removed a portion of the decking, and in shrinking everything they were able to reduce the lot coverage as well.

Mr. Musnicki said a couple of the changes that he sees with the site plans are that the proposed platform shown, is that for the equipment?

Mr. Campbell said yes.

Mr. Musnicki asked if that got larger?

Mr. Campbell said the area is the same, we elongated it to keep it within the 15'.

Mr. Musnicki asked what will be housed on that platform?

Mr. Campbell said the condensers will be on the platform, and they are not sure about a generator or not, but for now it will hold the condensers.

Mr. Musnicki asked what the possibility of relocating it to the rear yard is.

Mr. Campbell said they considered that, and the reality is with the width of the lot at 75' it is very tight; the pool is staying where it is now so if they were to push it to the rear yard it would be within the 15' side yard setback so they thought it was a better location to keep it on the side and further from the side yard property.

July 18, 2019

Mr. Musnicki asked if the condensers and the generator have to maintain a certain elevation?

Mr. Campbell said they are above the flood plain elevation; they are at the same elevation as the deck.

Mr. Musnicki asked if that's where they are required to be?

Mr. Campbell said yes. They are above the flood plain.

Mr. Musnicki asked if they can be moved under?

Mr. Campbell said if they go further North on the lot the grade slopes down and they'd need a taller platform which is something they do not want to do. The front yard setback of 75' is at the front corner of the house, and once they get North they are in the front yard setback.

Mr. Musnicki said it looks like the deck increased by 2.5 square feet.

Mr. Campbell said it didn't; on the original survey had a pergola to the East of the pool so the survey had square footage for the pergola which was 279 square feet so we have eliminated the pergola, so that was deck square footage so there is a reduction in the net total deck square footage.

Mr. Musnicki asked if the pergola was on the deck?

Mr. Campbell said yes, it was. That was essentially the same as the deck square footage.

Ms. Hoeg said the square footage was noted separately on the older survey.

Mr. Musnicki said okay, he understands now. He said his only concern is the platform with the equipment on it with the neighbor to the East especially if there's going to be a generator involved.

Ms. Hoeg said they are not sure if they are going to put a generator on there.

Mr. Campbell said they know that there will be condensers for sure. The existing platform is on that side of the house now, and it's not raised up to this elevation it is a little lower so that is a reason we thought about it keeping it in this location.

Mr. Pasca asked if the condensers are shown, one of the standard conditions that the Board imposes is if equipment is not shown on a plan and it's in a side yard it's not deemed approved, if you want it to be approved the Board is asking to show the equipment so it can be approved; so whatever is on the plan is deemed approved, and if in the future you add new equipment in a required side yard you have to come back to this Board. We encourage you to put it on the plan now, if it's within the required side yard it's a standard condition that this Board has been imposing.

Mr. Campbell said they do have the condensers specified on the drawings, but they are not dashed on the site plan.

Mr. Piering asked where they are on the plan.

Mr. Campbell said he could resubmit the drawings by early next week, it's just architectural drawings and if it's a requirement he will resubmit them.

Mr. Pasca said if they want that, the Board could close the application subject to the receipt of the revised plans with the updated information within 15 days.

Mr. Campbell said that is pretty straight forward to do.

Ms. Hoeg asked if they want it shown on the survey as well?

July 18, 2019

Mr. Pasca said it would be better because its easier to follow on a survey because its precisely located. You just need to specify whatever equipment you are proposing to put on the platform.

Mr. DelGiudice said the it says 56 square feet, and he wants to make sure it doesn't grow, they should specify the platform size and height and location and dimensions.

Mr. Pasca said the architect could do a spec sheet for the platform, a separate drawing and that can be incorporated into the final plan and it's more clear what the Board is being asked to approve.

Mr. Piering said a lot of the time we go back and review old files so it's important for it to be as clear as possible.

Ms. Hoeg said okay, they will modify the survey as well.

Mr. Pasca said if the spec sheet and details match the platform you don't have to modify the survey.

Ms. Hoeg said okay.

Motion was made by Mr. Piering to close the hearing of **Newman/Corre, 307 Dune Road (905-18-2-29)** for a determination subject to the submission of the revised spec sheet and plans; seconded by Mr. DelGiudice and unanimously carried 5 ayes, 0 nays, 0 absent.

#### **NEW APPLICATION:**

**8. Schlüsselberg Family Limited Partnership, 24 East Division Street, (905-010-07-030)**  
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., and Rocco J. Lettieri appeared on behalf of the application, and Mrs. Schlüsselberg and their son. As you know because this application has been before this Board for other purposes in the past, and the process of obtaining the necessary approvals and permits to construct a new two-story single-family residence at 24 East Division Street. I submitted, as part of the package, a series of photographs which gives you a perspective view of what we're proposing.

Mr. DelGiudice asked what the difference between the two packets is.

Mr. Hulme said one has the site plan in it and the floor plan and the other packet is the renderings. We went to this Board and received approval for variance relief, we went to the Planning Board and received approval for fill and we went to the ARB and as indicated in the meeting we received a denial from them which we are appealing before you guys. And as I understand what's involved here is not any of those issues; the aesthetics of this project and its impact on the neighborhood and that's all we are here to talk about. It is beyond the scope of this discussion and this appeal to talk about drainage, to talk about height, to try to relitigate the Planning Board approval, to try to relitigate the Zoning Board setbacks, the drainage issues and any of that. This is about the aesthetics of this project and whether it meets the requirements of Chapter 5 or not. Also, it is my understanding that this is not, you are sitting in the view of the ARB's decision, although it certainly a decision for you to review; but this is a DiNovo review, and you are reviewing this as if its being presented for the first time, and you are applying the standards of the Code in determining whether or not we meet those requirements. I wrote extensively about a lot of this, but I would like to speak to what those standards are; what it boils down to is the one section of the Code which talks about the three (3) basis in which this project can be turned down under Chapter 5. There are three (3) different ways that can happen, one of them is that its not in the similarity, the other one is striking dissimilarity, and the third is offensive. The terms with that are not in a vacuum and those terms have to be analyzed relative to the vicinity of the project. One of the questions that was raised with the ARB and a question this Board will need to address is what does that mean, the word vicinity is now defined in the Code in any way shape or form, there is no geographic units in this section, but it still comes to compare to this project with those three (3) conditions what is the terms to be the vicinity. There

July 18, 2019

are a few possibilities, the aerial, the neighborhood, and the ARB tried to suggest that we walk out in front and look to the right and left and that's the vicinity. That intellectually is way too narrow and I don't think that's supported by prior decisions of this Board and CaseLaw. We submitted as part of our package the Goldsmith case which was a variance that this Board decided a number of years ago and the Court in that decision determined that the vicinity or the area or neighborhood was 1,000 – 2,000 feet and I submit in my packet what 1,000 to 2,000 is. Again, that's a Zoning Variance Court case and not an ARB case but the ultimate source of a Village to regulate these kinds of things is the qualities and they come from the same place. If you look at the 1,000 square foot radius, we incorporate a lot more than just East Division Street.

Mr. DelGiudice asked what the second 1,000 square foot radius shown is?

Mr. Hulme said it's the 1,000 feet around the Goldsmith house. What occurred there, they wanted a front yard tennis court, and they decided with tennis courts in the front yard on Stacy Drive were part of that vicinity and they determined that Stacy Drive had to be included. The other point I bring up is that a few months ago you decided the Dellaert case which was an ARB review case that you took and they touched a little bit upon the vicinity and you concluded that the vicinity does not mean the immediate vicinity; the language of that decision suggests that Main Street was in the vicinity of this home on Seafield Lane. The comparison that has to be done is more than just looking at a few houses on the end of the street, its much broader and we would suggest that it includes houses that front on other streets, and it includes the Harbor House Co-Op and some of those other areas. There is a case to be made that the vicinity is even broader than that. There is no Historic District in this Village at all; there is nothing in the Code under Chapter 5 that divides this Village in any way shape or form, so arguably the entire Village is the vicinity in which you should be comparing this, but it is much more broad than a few houses on the end of the street. In that context, let's go through the three (3) factors; two (2) of them is relatively quick; monotonously similar, I don't think anyone thinks that this house is momentarily similar to any of the other houses in the area so that's not a basis for turning this down. Offensive, I am not sure what that means, but its hard to say that something is modern architecture its offensive. And as talked about in the Dellaert decision that you rendered, modern houses are everywhere in this Village now, in fact one of the submissions we made, which did not include the modern houses on Dune Road but each of the circles represents some form of modern architecture around the Village of Westhampton Beach and it as a general rule has been approved over and over again in this Village so it's hard to understand how this could be offensive so I think we can set the offensive nature aside as well.

Mr. DelGiudice asked if they were all approved by the ARB?

Mr. Hulme said yes. That leaves us with the striking dissimilarity, and it's not just dissimilar because we both can see that yes, it's dissimilar to the houses on the street, but it has the word in front of it strikingly dissimilar. The word strikingly means a jarring difference, a huge difference, a major difference, but the Code goes on to say a strikingly dissimilar difference when it's harmful to the neighborhood and that's a pretty high burden and we need to look at the context to what exists in the Village, and what has been approved in the Village. Attached to this document is a series of neighborhoods and one has a modern house, and the pictures of the houses in the vicinity.

Mr. Lettieri said we have to verify terminology, there are international modern style homes from the late 20's and post-modern homes, and transitional homes, and traditional homes which is a gauntlet of traditional style classic homes; Mediterranean, colonial all of that.

Mr. DelGiudice asked to start with a baseline; he held up a home and asked what that is considered.

Mr. Lettieri said it's an international modern style home. On Division Street itself, it's a dead end street on the water, across the street from this is a traditional home, and off of that is a post modern home, a 1970's 1980's style home; just North of the applicants property is a transitional home, it has a roof structure and also has flat roofs and curtain walls. Then around there is another modern home that is on 3 Meadow Bend that you can see from the property; then on Watersedge Court there is a modern flat roof home, you also have the Condos on Library Avenue, which are modern structures and along that street you have colonial homes, and a traditional home at the very end. At 105 Beach Lane there is a modern home, in an area of



July 18, 2019

traditional homes, and then there is also a few new homes approved by the ARB that are post modern homes, and on Oneck you have a modern flat roof home, 7 Reynolds there is a modern home on the water as well. There is a home on Jessup Lane that is a modern home next to a traditional home, 86 Jessup Lane is a modern barn that was just built on the curve; and on Stacy Drive and Jessup there are multiple modern homes, some are on the water and some are not. The Board is eclectic and so is this Village. Seafield Lane has modern homes at the end of the street with traditional homes amongst them; and they are throughout the Village.

Mr. Wittschen we just had a house on Seafield Lane.

Mr. Hulme said that's the one they are talking about. The point is throughout the Village modern architecture has lived with all kinds of various architecture and not offensive or strikingly dissimilar and not in a way that is harmful to the neighborhood. There is an example of a modern home in amongst classical traditional houses; our neighborhood is not even that. This neighborhood is eclectic architecture and the point is, around the Village none of the homes meet the standards that are required to be met for them to be turned down and for the same reason all of those were granted we believe our project should have been, and should be approved.

Mr. Lettieri said in the process with the ARB, the house started out, and this Board approved certain size decks and the chimney, and other things so during that process some of the concerns from the community we made concessions and reduced the chimney size from 20' long to 10' and I reduced some of the upper decks and we made more transparency on the North side of the building; we added additional trees on the North side because that's the neighboring property that's concerned and we added additional trees on the West so the house is buffered from the street and you will not see the house; and the house is only 22' wide so the fronting is really narrow covered with hedges and trees.

Mr. Wittschen asked how far it's setback?

Mr. Lettieri said it's setback 55' from the road.

Mr. DelGiudice asked if the concessions were made for the Planning Board or the ARB?

Mr. Lettieri said the ARB.

Mr. Hulme said what Mr. Lettieri was talking about, one of the things that was spoken of in the Seafield Lane decision was the idea of mitigating the impacts of this house from the neighborhood and he has touched on some of it but this house is on the very end of a dead end street, it has water on two (2) sides so there are two (2) sides not impacted by this at all, and the small dimension of the house is what faces the street so it's not facing the long way it's facing the shorter one. We did, in response to some of the comments from the ARB and to the Northerly neighborhood, the house was perhaps too monolithic we reduced the width of it, and installed windows that were not previously there so it is much less transparent and monolithic if it were monolithic to begin with. In addition, the property is very well screened already; we have a rendering of what the house would look like to the neighbor to the North.

Mr. Lettieri said they are adding additional trees as well.

Mr. Hulme said looking at it from our perspective this is where the house begins. From a mitigation perspective, not a lot of people can see the house.

Mr. Lettieri said they are using Cedar, and in the renderings some of the Cedar looks dark because it's just the way it is rendered with the shadows, but its slated and plank.

Mr. Wittschen asked what the fence that's there now is for.

Mr. Lettieri said yes, they were asked to put one up and they put it up to shield the site.

Mr. Musnicki asked him to go through the other materials, is it Azek?

July 18, 2019

Mr. Lettieri said yes, that's how he does some of the houses on Dune Road, they fuse Azek panels together instead of using a stucco with stains they fuse the sheets of Azek together so it's a white single panel that resembles stucco. The longest side of the building faces the open Bay. They made concessions where they reduced the size of the chimney, they also pulled it off of the side of the property line, and they took 10' out of the overall length and in by doing that a portion of the structure was reduced on the upper portion.

Mr. Piering said you have already made concessions?

Mr. Lettieri said yes. It adds more transparency on that corner, originally the fire place went all of the way to the corner and the building stuck out 3' past that so I brought the chimney back and shortened it because it was sticking out too far.

Mr. Piering asked if they were presented to the ARB?

Mr. Lettieri and Mr. Hulme said yes.

Mr. Lettieri said there was no real dialogue or articulating what they wanted from me to do.

Mr. DelGiudice asked if it's based on the style?

Mr. Lettieri said they never gave him direction, he asked what they would like him to do, and there was no dialogue or way for them to articulate what they were trying to get across or what their objections were; those concessions were made on them telling me that I know what to do, so I made these concessions.

Mr. Hulme said the changes we made were in the context of what this house is and its style, we are not in a position to make changes to the project that change the style of the house. The client has contracted Mr. Lettieri to build this style house.

Mr. Piering said he modified this style.

Mr. Hulme said yes. To the extent that we could have possibly modified it, but if its outside the scope of the style of the home it's not something they could do.

Mr. Lettieri said their concern was the transparency of the one side, obviously you can see the building floats above it and there's transparency under the building with additional glass to soften the side and added architecture on the North elevation as well.

Mr. Musnicki asked if this is part of the presentation to the ARB.

Mr. Lettieri said yes. They went through that and there are homes on Beach Lane that was approved with no issues, and even one of Jessup Lane there is a very modern one that I attended and it was approved.

Mr. Piering said they added architectural detail and he'd like them to explain what was added.

Mr. Lettieri said yes, on the North elevation. If you look at the original drawings there were transient windows, and the view was on the trees to the northerly neighbor and the windows were higher and basically cedar siding. We added louver systems and we added windows and banding and details to break up the elevations.

Mr. Piering asked if they reduced the height.

Mr. Lettieri said we are 5' lower than we would be.

Mr. Hulme said we are 5' lower than what we could have built, and we are at 12.5% lot coverage and we could go to 20%.

Mr. Lettieri said it's a modest house for the property. A traditional roof house would go up to 44' high; the regular modern house would be 40' and we are at 36' or 37' high so there is no point going any higher and we're above the flood plain and we have our views. We are trying to scale

July 18, 2019

it down, the materials also will Gray out and we will revegetate the wetlands and the cedar will silver out and be soft with a very beach look.

Mr. Hulme said the term is really strikingly dissimilar such that it is harmful to the neighborhood and one thing we submitted was a Licensed Real Estate Broker that from an economic perspective this would be positive.

Mr. Piering said okay.

Mr. Lettieri said we design for a property that adds value at the end of the day.

Mr. Hulme said Ms. Mackie forwarded to him that the neighbors filed and they were filed on July 18, 2019 and one of them is from Floyd Carrington and he spent a lot of time talking about the trees and drainage and rainfalls, but this is aesthetics and what may or may not happen in the future with the trees is not a decision we're asking you to make.

Mr. Piering asked how the trees will be affected.

Mr. Lettieri said they are not.

Mr. Hulme said in order to further mitigate the situation, we have offered to plant another row of trees on our side of the property and Mr. Carrington's letter is complaining about the negative impact that our offer is going to have. We don't need to do that, but it's another part of the mitigation we are offering.

Mr. Musnicki asked if that's on the table to be discussed?

Mr. Hulme said yes. Another neighbor submitted a letter talking about the existing architecture and we don't agree that it's harmful, and he talks about the project trying to be shoehorned, and this is a very appropriately sized house on a very small lot; we did not have to use a shoe horn on it at all. The third letter was from another real estate broker who made conclusions about property values but it talks about towers and shading and mass and monolithic structures, none of which, especially in the modified plan exist.

Mr. Wittschen asked if that real estate broker is concluding it will devalue the neighbors?

Mr. Hulme said yes, which is contrary to every real estate agent I know. You may hear more about the applicant's house shading their trees and the impacts, and in anticipation of that we received a letter from Marcus Stinchi, Stinchi Landscaping indicating that is not something that would possibly occur. But again you're looking at the static picture of the esthetics of this project as it's built but not the future of the trees.

Mr. Piering said in reviewing this, he can't see how that will do that. Whether the house is taller or not will have the same effect?

Mr. Lettieri said yes. The sun is in the front of the house all day, and when it travels around it goes down the property and most of the trees are in the sun all day long. We did a shade analysis and the house will not shade out the trees. The trees we will put in will survive.

Mr. Hulme said that they disagree with the conclusions that were submitted in the three (3) letters; and they talk about the impact on a single piece of property. We can debate or discussion about vicinity but it means more than one single home next door.

Mr. DelGiudice asked them to address Mr. Stinchi's credentials.

Mr. Lettieri said he's a local landscaper who has been in the Village a very long time.

Mr. Piering said it's Stinchi Landscaping, owned by Marcus Stinchi. He asked if anyone on the Board had any questions.

Mr. Pasca asked what the issue being raised in the last letter is.

July 18, 2019

Mr. Hulme said some of the information that has been and will be provided by the neighbor is about harming one neighbors trees and I suggest it has nothing to do with this application.

Mr. Pasca said he does not see how that fits in the criteria of the Code which is visual discord, visual offensiveness.

Ms. Propper said its part of the design.

Mr. Pasca said he does not know how shade impacts on a tree would be part of an ARB process at all.

Mr. Hulme said he agrees with counsel but in anticipation of hearing an argument about it, we thought it was best to provide a counter argument.

Nancy Ginger Propper, 16 East Division Street appeared in opposition to the application. She said she thinks Mr. Hulme left out a letter also, but provided it to the Board Secretary. She has two (2) letters to go back to the point on the trees; Floyd Carrington's letter has been a surveyor for 35 years wrote in his letter about the roots in the trees, and the issue and she has to address the drainage issue because this property has flooded for 16 years. The trees are an issue if that's going to create the roots getting to the drains.

Mr. Piering said the new construction will be a benefit.

Ms. Propper said it's a 2.7' water table.

Mr. Piering said it will benefit the flooding that's there now.

Ms. Propper said the trees grow to 60' to 80' and these are tremendous roots that are proposed and they will be huge.

Mr. Piering said lets back track, these are trees that are being proposed?

Ms. Propper said yes.

Mr. Piering said that doesn't mean that it's going to happen, it's my understanding in reviewing this, they were going to offer to do additional screening with these trees, I don't think they want them.

Ms. Propper said that's what he chose and that's what is on the plan.

Mr. Wittschen said that's not what he's getting out of it; what he's getting out of it is that they are willing to put up additional trees and that's a negotiation with you.

Ms. Propper said no one has said that to her.

Mr. Wittschen said they just said that.

Ms. Propper said they didn't tell me, you are; I have never heard that. I have tried to sit down with them.

Mr. Hulme said during the ARB process, that she was present at each and every meeting, there was an issue that came up about whether there was adequate screening on the property using just her trees, so we offered to and proposed a series of trees on our property; we have no desire to put these trees in if she doesn't want them, this is something we are trying to do for her benefit.

Mr. Piering said that is how he understood it as well.

Ms. Propper said for her understanding, that was not hers.

Mr. Piering said now it's clear.

Mr. Pasca asked Ms. Propper if she wants the trees or no?

July 18, 2019

Ms. Propper said she can't answer right now, if it has a negative effect she has to talk to someone.

Mr. Wittschen said they have 30 days.

Ms. Propper said okay.

Mr. Wittschen said we're not going to sit on this forever.

Ms. Propper said I'm not asking you to. I am just here now. Let me go on to discuss the visual effects and the discord with the design of the neighborhood. I went around and took pictures.

Mr. Pasca asked Ms. Propper as she goes through the pictures to indicate, picture 1, 2, 3, instead of referring to them as "this".

Ms. Propper said okay. Picture 4 is her house which is a little 2,000 square foot house; you can't see it from the street. The neighbor directly across the street has a pitched roof, picture 5. There is one more, I went around and took pictures of the newer houses that were built within the last 3 years and this house was just built on our street and it's on the corner and it's lovely it's a beautiful house, and that's picture 6. All of the houses have pitched roofs.

Mr. Wittschen asked about her house.

Ms. Propper said her house has a pitched roof in the center, and two (2) little roofs.

Mr. Wittschen said but they are flat.

Ms. Propper said they are two (2) tiny wings.

Mr. Wittschen asked if they are flat?

Ms. Propper said yes, but the center is pitched.

Mr. Wittschen said yes, he understands that but it's pitched too.

Ms. Propper said it's pitched and flat and most of the houses are more pitched. There is a new house being finished up and it's across from the marsh on Library Avenue Extension, and there is another house across from the marina, and she referenced Mr. Musnicki's house. Because this house is so narrow and so tall and below what is allowed it is flat, when it rains it will have a lot of drainage and coming in to a 2.7'.

Mr. DelGiudice asked if the rain falls differently on a flat roof compared to a pitched roof?

Ms. Propper said yes, it holds it more.

Mr. DelGiudice asked if it's a different area?

Ms. Propper said it's a bigger area.

Mr. DelGiudice said it won't be a flat roof with a standing water, it will be pitched; the same amount of water will be let off whether it's a pitched roof or flat roof.

Ms. Propper said it falls different.

Mr. DelGiudice said it's the same amount of water.

Mr. Pasca said there is a requirement that all Storm Waters get gutters and liters put in to drywells, whether it's a pitched roof or a flat roof the same net effect happens which is gutters and liters in to drywells.

Ms. Propper said this is different than a drywell because it's raised.

July 18, 2019

Mr. DelGiudice said there has been testimony by Ms. Propper's experts who said that it was a storm issue, it's not a storm issue; if you have problems down there it's a tide issue, it's a surge issue and this was discussed in the prior hearings that whatever storm comes off from that house the property owner is responsible for it.

Ms. Propper said she does not know what it means, responsible.

Mr. DelGiudice said they are responsible for collecting their water on their yard.

Mr. Pasca said this is not in the purview of this Board.

Mr. DelGiudice said he just wants it on the record that Ms. Propper is making statements that are not true.

Ms. Propper said Mr. Carrington is not here, and she's had many discussions with him and he talked about flood issues.

Mr. Pasca said we are not here to talk about flood issues.

Ms. Propper said for three (3) months this has been sitting on the drains that I asked to be removed and nothing's happened.

Mr. DelGiudice said there's a stop work order.

Ms. Propper said no, you have a Code.

Mr. DelGiudice said we are getting off track.

Ms. Propper said she wants to speak a minute; she is explaining why she wants to bring this up. This is an issue of how the builder works, and I went to the Board of Trustees and talked to them, and called the Mayor and Mr. Ralph Urban to get this builder to almost clean up.

Mr. Piering said he did so.

Ms. Propper said it took three (3) Months.

Mr. Piering said that's not the issue before the ZBA.

Ms. Propper said its part of a building issue.

Mr. Piering and Mr. Pasca said those are not issues before the ZBA tonight. This is the Zoning Board and we need to focus on our application.

Ms. Propper said you talk about decisions that have been made, they talk about danger, this is sloppy.

Mr. Musnicki said he respects her as a neighbor to the property and he understands this is a big deal to her, but you have to stay on point. We can only do certain things, we are not Code Enforcement or the Building Department, if you speak to what you may think about the visual discord or the harmony or lack there of to the neighborhood that's what we are here to discuss.

Ms. Propper said the Architectural plans, this is a .51 property, that looks like a 5-acre property. Did you see my side of the property to the North? There is no green grass like that.

Mr. Musnicki said the coverage is probably around 15% of the property.

Ms. Propper said there is no green grass, there is 20' which is a driveway, there is not much.

Mr. Musnicki said they are 50' from your house.

Ms. Propper said no, it's 20'.

July 18, 2019

Mr. Piering said it's 20' from your property line.

Mr. Musnicki said they are 50' from your house.

Ms. Propper said no. She is talking about the property line, it's 20'.

Mr. Musnicki said it's 30' from your house, 50' in total.

Mr. Wittschen said the property line is 30' from your house.

Ms. Propper asked where the property line is, that's what she is saying the rendering shows a much larger expanse than it is.

Mr. Piering said it could be much smaller.

Ms. Propper said when he chose to add more windows and reduce the chimney and bring out the terrace, that was worse for me because now the terraces are up high and loom over my property with these large windows.

Mr. Wittschen said but you have screening.

Ms. Propper said the property goes way back.

Mr. Wittschen said he does not understand what she wants.

Mr. Musnicki said he understands the visual, but you are looking more toward the canal and the Yacht basin, is that correct?

Ms. Propper said her house is horizontal, but when I'm sitting at my pool, my pool is way back and their property looms over my backyard and pool area.

Mr. Lettieri said the only variance they received was a sideyard variance, we meet the front yard and rear yard setbacks.

Ms. Propper said it looms over her property in to her side yard.

Mr. Piering said her house is 72' long.

Mr. Musnicki said we can't reargue the ZBA decision.

Ms. Propper said her house stops and with the proposed terrace and deck is raised the deck is two stories and it will loom over her property.

Mr. Wittschen asked if she's provided any screening?

Ms. Propper said not there, I have some trees but I have not screened there.

Mr. Wittschen said to ask the applicant to provide it.

Ms. Propper said they mentioned it. She wants to talk about the design.

Mr. Piering said we have to talk about why we are here with the design of the house.

Mr. Hammond said the landscaping plan is in the purview of the ARB, so that may be discussed tonight.

Ms. Propper said the ARB did not give an approval, they agreed with her.

Mr. Piering said we can talk about the landscaping and that can be part of the determination, we have in the past insisted on screening.

July 18, 2019

Ms. Propper said she'd like to discuss that and get a recommendation if that happens from her landscaper who is a certified arborist because I don't want anything to hurt my trees.

Mr. Wittschen said she should sit with the applicant and discuss this.

Mr. Piering said we have to go back to why this application is before the ZBA.

Ms. Propper said okay. The design does not fit in the area, whether they hide it it's still there it does not fit the area. They have changed it and made it worse for me, those large windows I object to them no one would want large windows looking in to her property.

Mr. Piering said he got the impression that the initial design had smaller windows, and they were added with the input from the ARB.

Ms. Propper said the ARB did not do that.

Mr. Piering said we are here; this is a brand-new hearing and we can discuss that again.

Mr. Lettieri said we can go back to the original design, extend the chimney back to the way it was which doesn't allow the deck to be seen from her property. The question was, the side was too harsh and flat, so the chimney was out that way so it wouldn't look North and we receded it to give it more transparency, that's the only way you can give it more transparency. We added additional windows because she felt it was too heavy and we added more detail with the windows. These were all done and I will gladly go back to my original design if that's what the neighbor wants me to do, but this was done to accommodate the neighbor.

Ms. Propper said she never had that discussion.

Mr. Piering said you were at the meeting with the ARB and heard this; I reviewed the minutes and that's how I know about it.

Ms. Propper said he did change it, but he changed it on his own.

Mr. Musnicki said he changed it with input from that meeting.

Ms. Propper said they did not tell him what to do, he did ask and they said they are not the architect and said he should change it.

Mr. Wittschen asked them to sit down to talk about it.

Ms. Propper said she will, she asked where the architect is.

Mr. DelGiudice asked what does she mean?

Ms. Propper said who is the architect on this project?

Mr. Lettieri said Design Works is the Architectural company, it's our company we have a licensed architectural firm. I am a partner in the architectural company, Design Works.

Ms. Propper asked if he's an architect?

Mr. Piering said okay, and actual architect is not here but we need to keep moving forward.

Mr. Pasca said we often have people who are not registered architects who are designers and present applications all of the time; at the end of the day a registered architect has to stamp the plans but we often have presentations who are not licensed architects.

Ms. Propper said okay. My input is that the design does not fit when you look in front of the house, to the side of the house, to the back of the house, there's nothing like this on our street.

Mr. Wittschen said you want a traditional house?



July 18, 2019

Ms. Propper said I didn't say that.

Mr. Wittschen said you don't have that option here.

Ms. Propper said I have an opinion.

Mr. Wittschen said yes.

Ms. Propper said she is expressing her opinion.

Mr. Piering said she is saying that they are basing this on what's on their street?

Ms. Propper said no, I went around the other streets, Watersedge and there's nothing like this.

Mr. Wittschen said that's not true.

Ms. Propper said I have not found anything.

Mr. Wittschen said you have to look at what they proposed, and you will see it.

Ms. Propper said then I will show you what I did.

Mr. Wittschen said he doesn't want to see it.

Ms. Propper said he has an attitude towards her.

Mr. Wittschen said I don't have an attitude towards you, I have an attitude towards this whole project.

Ms. Propper said this is your job.

Mr. Wittschen said no, it's the ARB's job.

Ms. Propper said and they did it.

Mr. Wittschen said they did not do their job. They told him to go back and soften it, and I read the minutes.

Ms. Propper said they declined the design. One of the ARB Members said out loud, if I had the minutes, I wouldn't want to live next to that either.

Mr. Wittschen said that's not the point.

Ms. Propper said you said they didn't do their job.

Mr. Wittschen said they didn't do their job.

Ms. Propper asked why they didn't do their job if they didn't like it?

Mr. Wittschen said because he's going to be able to build a house there.

Ms. Propper said no one is saying that he can't build a house.

Mr. Wittschen said then you should have tried to have negotiations when he was before the ARB and this would have been done.

Ms. Propper said they tried, you weren't there, I was there.

Mr. Wittschen said I read the minutes.

July 18, 2019

Ms. Propper said I read the minutes, and they tried. If you drive around the area all these houses that he has shown and I have done my homework, the shapes all have much more pitched roofs and fit the area. This house is in converse to the area.

Mr. Piering asked her to tell him what she defines as the area?

Ms. Propper said the area, a few streets over, I went down to Jessup Lane, I went to Watersedge, I went on Library Avenue and Library Avenue Extension; even Beach Lane is considered my area. I drove around myself, my immediate area. If this was on Dune Road, yes it fits. It's 22' wide and perpendicular to the road. Every house on the street is horizontal.

Mr. DelGiudice said from his point of view, she has presented six pictures of houses on your street, and 50% of them are different types of architecture; the one across the street is post modern, so from my point of view and I am only one member on this Board is that there is varying architecture and you drive around the Village you find varying architecture and on your own street there is varying architecture, there are different types of architecture. If they had five different neighbors on your street and every one of them may have a different opinion. My point being, we can't let you and your neighbors dictate the architecture. He came and presented a house based on the client's needs and that's what he has applied for, for you to come in and say you want a traditional home is your own opinion, but there are different neighbors who may or may not want different things. Mr. Hulme has outlined the Code and what it says from a design point of view, is it striking dissimilar and harmful? From my point of view, I don't see it as harmful. To touch on Mr. Wittschen's point, there should have been a dialogue and a better dialogue because you did not get anywhere with the ARB, so if the client is still saying this is what they want, this is the ZBA and they brought this to this Board so the applicant can move on with the property and you are asking us for our opinion and my opinion is, it's not harmful.

Ms. Propper said okay, and their own real estate expert just downgraded the property. They paid almost two million for it.

Mr. DelGiudice said its common sense, a dilapidated house that's not lived in and put new construction on it.

Ms. Propper said the value that this real estate agent put on the property, the applicant's real estate agent devalued the property. They are going to pay more than \$3 million or \$4 million, but he just said its worth more.

Mr. Wittschen said it's not the issue.

Ms. Propper said its part of the issue.

Mr. Wittschen said it is not.

Ms. Propper said if they overpaid, and it's only worth \$3 million to \$4 million it downgraded my property.

Mr. Piering said no.

Mr. Wittschen said no, it does not it's a matter of opinion.

Ms. Propper said she does not think so.

Mr. Piering asked how can someone overpay for something and how does that affect her?

Ms. Propper said she doesn't care if they overpaid, but the agent downgraded the property.

Mr. Piering said because you are saying because of the cost to build.

Ms. Propper said he said it's worth a million less, at least.

Mr. Piering said a million less than what?

July 18, 2019

Ms. Propper said than what they are going to pay to build the house; it's up to them.

Mr. Piering said it's totally up to them.

Ms. Propper said but if that house brand new is worth \$3 million to \$4 million, it should be worth \$5 million to \$6 million or \$7 million if you're spending all of that money.

Mr. Musnicki said we are getting off track again.

Ms. Propper said that lowered the price.

Mr. Musnicki asked Ms. Propper to try to wrap her argument up. Mr. Hulme presented his clients side with the designer and you're representing your point of view and some of the neighbors, you may want to use the same strategy and go through the same standards Mr. Hulme went through in Chapter 5 of the Village Code. The first one being, is the style in the house a monotonous style? My question is, do you find it monotonous?

Ms. Propper said it's like a monolithic wall, is that monotonous to you?

Mr. Musnicki said you tell me.

Mr. DelGiudice said the spirt of the Code is monotonous is the neighbor to the adjacent property.

Ms. Propper said our Village is different, for me it does not fit my neighborhood or within the vicinity of my neighborhood. That's my opinion.

Mr. Musnicki said he understands, but there is a Code we have to go by and we all would like to have everything the way we want, but there is a Code we have to go by and it's Chapter 5 and if it's monotonous style meaning it is cookie cutter, where one house it he same, one by one, that is monotonous. Do you find that this home proposed is monotonous?

Ms. Propper said not in that sense.

Mr. Musnicki said okay, we will move on to the next one.

Mr. Hulme said the third one is offensive.

Mr. Musnicki asked if it is visually offensive?

Ms. Propper said to me, yes.

Mr. Musnicki said okay. What is the next one? Strikingly dissimilar.

Ms. Propper said that property is harmful to me. The windows look in to me, it's 20' from my property line.

Mr. Wittschen said it's not 20' from your property line.

Ms. Propper said everyone else on the street has at least 30' from the property line.

Mr. Piering said let's just back track, your property has a 31' from your house to your property line on the South, plus the 20' so that's the 50' that the homes would be separated by, but on the North you have a less than 21' for a total side yard of 52.6' when you need 70' so you just made a statement that all of the other houses have something that you don't even have. When you make a point like that, that everyone has something but you don't and keep that in mind.

Ms. Propper said my house is one story.

Mr. Piering said yes, she is correct her house is one-story and we recognize that. But your house is totally non-conforming when it comes to individual side yards and total side yards, plus you have an air conditioning unit that sits too close to their property, and a pool filter and you have a heater that's on the side yard that may be encroaching in to that.

July 18, 2019

Ms. Propper said it's been there since the day she bought the house.

Mr. Wittschen said we are not questioning that.

Mr. Piering asked about the air conditioning unit. I'm stating a fact.

Mr. Wittschen said we're stating a fact because you say that everyone else is conforming, but you're not conforming.

Mr. Piering asked what will happen someday you decide to put a second story on, or if you sell your home now you have a home that's totally non-conforming and will need variances to do anything to it.

Ms. Propper said she will come to this Board. She is not planning to add a second story, but I would be more respectful of my neighbor.

Mr. Piering said you're making a statement that everybody else is conforming, and I am just pointing out that your own home isn't and this can happen, and we've seen this happen time and time again. Let's keep that in mind.

Ms. Propper said I have to keep in mind that my house does not encroach on every neighbor, it's a small house.

Mr. Piering said your house is 74.4' wide, the applicants house is only 72' wide it's just positioned differently.

Ms. Propper said I am talking about the extension of that house, when you add the swimming pool it becomes 90'.

Mr. Piering said that's an accessory structure.

Ms. Propper said you have to include that.

Mr. Piering said I'm not, I'm talking about the house.

Ms. Propper said that house goes way back on my property line, and I disagree with you.

Mr. Piering said your property line goes back on their property and they conform to the Code, whether they build this house or they build another house that you love they conform to the Code.

Mr. Wittschen it still means they can be looking in to your backyard.

Ms. Propper said right, but not one other house on my side of the street goes that far back to the canal.

Mr. Badzik said to summarize what he's heard; as Mr. Musnicki said this Board is bound by the Code, we use the Code to make an informed decision and based on what we went through with the Code you basically have said that you find this house harmful.

Ms. Propper said yes.

Mr. Badzik said and that is your opinion.

Ms. Propper said right, it's offensive to me and my neighbors say the same thing.

Mr. Badzik said that's all they need to hear.

Ms. Propper said the ARB obviously did too. They made their own decision.

Mr. Badzik said okay.

July 18, 2019

Ms. Propper thanks the Board during this difficult time and process.

Mr. Piering said thank you. He has a question about what plans are before this Board for approval?

Mr. Lettieri said it is up to this Board; they had the original set of plans that the Board approved the variances for, and they were the original set of plans that went to the ARB, and the plans that are in front of the Board tonight are the ones that they made the concessions on. They have reduced the chimney and some of the upper decks. We are fine with either design, so it is up to this Board, if the neighbor wants or does not want the trees, if you want to put the chimney back he can do so, he likes the original design and the second, it does not adversely affect the style of the house either direction. If the neighbor is offended by the windows or the trees we will move them or add the chimney back, we will do whatever makes her happy in that situation and the reason we made the changes was for her originally. You tell us which set of plans we are deciding on.

Ms. Propper asked if she has 30 days to make a decision about the trees?

Mr. DelGiudice said no.

Mr. Hulme said yes, the ARB did make a decision but that is not precedent for you at all. You are looking at this as a brand new case and I want you to take that in to consideration. If you take the vicinity as what she has described, if you drive up and down all of those streets, you find a completely eclectic neighborhood; modern, traditional, mixed, up down; there is nothing there that allows you to find, because of that, that this particular house is substantially dissimilar that would cause harm to the neighborhood, and I'm glad she adopted that as the vicinity. Lastly, I want to remind this Board of what Ms. Propper will see which is a little bit of the top of the applicant's structure. She is talking about all of this harm that will transpire if we build this house.

Mr. Piering said she did say, if it's hidden or not it will be there.

Mr. Hulme said that was true. If she can't see it, how can it impact her?

Ms. Propper said the drawings he is showing are not accurate, go to the site and look.

Mr. DelGiudice said we have a photo, the trees don't stop in the beginning.

Ms. Propper asked how far they are from the canal?

Mr. Lettieri said the house meets the rear yard setback.

Mr. Pasca instructed Ms. Propper to address the Board, not the applicant's attorney or his agent.

Mr. Hulme said they meet the rear yard setback for this Zone.

Mr. Piering said he'd like to find out which plans they are seeking approval for.

Mr. Pasca suggests to come up with a procedure, he understands that the applicant would like to close the hearing, and they have to indicate a preference to a plan first. The plan that was presented is the proposed plan and they have indicated flexibility and willingness to go back to the other plan. The next question would be for the Board, is the majority of the Board that wants the applicants to consider modifications to the plans that are there, if you can decide that now you can tell them if you need time and there is not a majority you can close the hearing; if you want to think about it you can keep it open. They started with a set of plans and then the question for the Board is whether you are ready to tell them whether you want or don't require any modifications to be made or want them to consider other changes.

Mr. DelGiudice said we are here for a design decision like the ARB did? I don't think the overall design, moving a window or increasing the size of a chimney will affect my decision on the overall design.

July 18, 2019

Mr. Piering said he is ready to go forward with it.

Mr. Badzik and Mr. Wittschen said they are ready to go forward with it.

Mr. Musnicki said he is ready except for the landscaping plan, because that's in the swing of it.

Mr. Pasca asked if he's referring to the type of trees, or whether there are any?

Mr. Musnicki said whether there are any trees or not, because I think that's a big point.

Mr. Pasca said we can do something like this, Ms. Propper's asked for some time to talk to her Arborist and you can give her 10 days to put a written response to the question of whether the screening that's proposed between the two (2) properties is appropriate or desired, and you can give the applicant 10 days to respond to that and then you'll make a decision at the next meeting and that would be a way to narrow the open questions rather than keeping this entire thing open for another month and returning in September, a month later. I think it's a narrow enough issue that can be addressed in writing.

Mr. Musnicki said that's fair, we are now moving from the structure to the trees and she doesn't really know what her decision is.

Mr. Pasca said she has asked for time to talk to her Arborist.

Mr. Musnicki said it is fair.

Mr. Pasca said one way to do it is to give Ms. Propper 10 days to talk to her Arborist and put something in writing is my suggestion, and then give the applicant 10 days to respond. They may say fine and we are okay with her suggestions and that makes it easy, and if they don't you have to make a decision as between the two (2) counter proposals.

Ms. Propper asked about the windows.

Mr. Pasca said if you want to open it to that topic as well, that's up to the Board.

Mr. DelGiudice said he does not.

Mr. Musnicki said he thinks the windows is something she has to decide now, do you want them to have windows or not.

Ms. Propper said that is dependent on the trees, they go hand in hand.

Mr. Piering said he thought the trees had to do with balls of the trees and the life of the other trees.

Ms. Propper said now they are proposing these huge windows.

Mr. Piering said they can have the windows no matter what they build.

Mr. Musnicki said we are trying to move forward.

Mr. Piering asked if the Article 78 Litigation affects this?

Mr. Pasca said no.

Mr. Piering asked if they can close the hearing?

Mr. Pasca said yes, subject to my suggestion which was a 10 day period for Ms. Propper to submit something on the landscape screening; coupled with a 10 day response period for the applicant to respond. That would be the alternative B.

Mr. Piering said okay.

July 18, 2019

Mr. Pasca said it would be okay to make a decision at the next meeting based on that period, 10 days for the neighbor to submit, 10 days for the applicant to respond and 10 days for the Board to consider the two submissions. But it is in writing only, not to reappear and reargue. Or you can keep it open, those are your three options.

Mr. Piering said okay. He makes a motion that we take the 10 day submission, 10 day response option and we close this application.

Motion was made by Mr. Piering to close the hearing of **Schlusberg Family Limited Partnership, 24 East Division Street, (905-010-07-030)** seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

**DISCUSSION:**

**9. Song, 335 Dune Road (905-18-2-13)** Discussion regarding conditions and height limitations issued in the applicants request for variance.

Mr. Piering said this matter has been resolved, he understands the applicant's attorney submitted a letter requesting to withdraw the discussion without prejudice.

**REQUEST FOR EXTENSION:**

**10. Siskin, 505 Dune Road (905-16-2-12)** Applicant requests an extension of their December 20, 2018 determination, for an additional 180 days (6 months) up to an including December 20, 2019.

James N. Hulme, Esq., appeared on behalf of the application. He said they are before the Board of Health and they are putting the driveway over the septic system and we are required to file covenants and because there is a mortgage we have to get the consent from the Bank.

Mr. Piering said okay, they are requesting an extension to December 20, 2019.

Motion was made by Mr. Piering to grant the extension of **Siskin, 505 Dune Road (905-16-2-12) to December 20, 2019;** seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

Motion was made by Mr. Piering to adjourn the meeting at **6:57 p.m.;** seconded by Mr. DelGiudice and unanimously carried 5 ayes, 0 nays, 0 absent.