

August 15, 2019

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, August 15, 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

Maeghan Mackie, Building Permits Examiner / Board Secretary

ABSENT: Jim Badzik
Brad Hammond, Building & Zoning Administrator

MINUTES TO BE APPROVED

Motion was made by Mr. Piering to adopt the minutes of the **June 20, 2019**, meeting as written; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 1 absent.

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 contractors offices with workshops and storage. The property is located in the MF-20 Zoning District.

James N. Hulme, Esq., appeared on behalf of the application. There is no determination this month. Mr. Hulme thanked the Board.

2. 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.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

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In the Matter of Application of

Isaac Corre
Diana Newman

DETERMINATION

Address: 307 Dune Road
SCTM #: 905-18-2-29

-----X

I. REQUEST FOR RELIEF

The applicants, Isaac Corre and Diana Newman, is the owner of a parcel of real property located at 307 Dune Road. The property is located wholly within the R-3 Zoning District. According to the survey of the property drawn by Fox Land Surveying, David H. Fox, L.S. P.C., surveyed May 9, 2018, and updated on June 26, 2019 date stamped received by the Village of Westhampton Beach on July 2, 2019 the parcel is improved with a two-story single-family residence, a deck, swimming pool, shed, platform and walkway to the beach.

Section 74-8.C. of the Village Code provides that, in the R-3 Zoning District, unless specifically provided for under this Chapter, all activities and development in the Dune areas, other than certain described activities, shall be prohibited.

Section 197-8.C. of the Village Code provides that, in the R-3 Zoning District, the building area lot coverage shall not exceed 20% of the lot area, exclusive of all areas South of the Crest of the Northerly dune and all areas designated as tidal wetlands by the New York State Department of Environmental Conservation.

Section 197-8.D. of the Village Code provides that, in the R-3 Zoning District, the front yard depth shall not be less than 50 feet; there shall be two side yards totaling not less than 50 feet, neither of which shall be less than 20 feet; and the rear yard shall not be less than 50 feet.

Section 197-27.D. of the Village Code provides that, in the R-3 Zoning District, the placement of fill to raise the existing grade within 10 feet of any property line by more than six inches shall be prohibited.

Section 197-35.B(1) of the Village Code provides that, in the R-3 Zoning District, accessory buildings, structures, tennis courts and swimming pools shall be permitted in both the front yard and rear yard on lots lying on the South side of Dune Road.

Section 197-35.C. of the Village Code provides that, in the R-3 Zoning District, accessory buildings, structures, tennis courts and swimming pools cannot be located closer than 20 feet any lot or boundary line, and on lots lying on the South side of Dune Road, the distance shall be 75 feet from the Crest of the Dune and 20 feet from a side or front boundary line.

The applicant is proposing to demolish the existing structure, and construct a new two-story single-family dwelling on the existing piles, decks, and swimming pool, as depicted on the survey of the property drawn by Fox Land Surveying, David H. Fox, surveyed on May 9, 2018, updated on June 26, 2019, and on the building plans drawn by MR Architecture & Décor, Scott Robert Campbell, Architect dated February 20, 2019, and date stamped received by the Village of Westhampton Beach on April 25, 2019, and the foundation plan: rear yard only, drawn by MR Architecture & Décor, Scott Robert

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Campbell, Architect dated July 30, 2019, and date stamped received by the Village of Westhampton Beach on August 1, 2019. During the course of the hearing, the scope of the application and variances requested was reduced. Under the final proposal, which is depicted on the foregoing plans, the following variances are requested:

- variance from §197-35.B(1) to allow construction of an accessory equipment platform (with associated equipment as depicted on the plans) in the side yard;
- variances from §197-35.C to allow accessory structure (deck) to be located 32.7 feet from the crest of the dune and a pool 51.7 feet from the crest of the dune where 75' is required;
- variances from §197-35.C to allow accessory structures (decks and a cabana) to be located 15 feet from the property lines where 20' is required
- variance from §197-8.C to allow the building lot coverage of 27.3% where the maximum permitted is 20%;
- variance from §197-8.D to allow the dwelling's individual side yards to be 15' where 20' is required;
- variance from §197-8.D to allow the dwelling's total side yard setback of 40.8' where 50' is required;
- variance from §197-27.D to allow fill within 5' of the property line in connection with the sanitary system, where 10' is required; and
- variance from §74-8.C to allow accessory structures to be constructed within the Coastal Erosion Hazard Area, which is otherwise prohibited.

II. SEQRA

The applicant submitted an Environmental Assessment Form Part I pursuant to the State Environmental Quality Review Act (SEQRA). The action is classified as a Type II action under 6 NYCRR § 617.5(c)(11), (12), (16) and (17), and therefore no SEQRA review is required.

III. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on June 20, 2019. The applicant's attorney Karen A. Hoeg, Esq., 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. After making the modifications to the original proposal as described above, the hearing was closed at the July 18, 2019, meeting for a determination.

IV. GOVERNING LAW

The Zoning Board is empowered to grant area variances pursuant to Section 7-712-b of the N.Y. Village Law and Section 197-75 of the Village Code.

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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, and the Board is empowered to impose reasonable conditions to minimize any adverse impacts from the variance.

Finally, the Zoning Board is empowered to grant coastal erosion variances from Chapter 74 where the strict application of the standards of such chapter may cause practical difficulty or unnecessary hardship and the applicant has met the specific requirements of Section 74-13(A)(1) of the Village Code. The more general practical difficulty/unnecessary hardship standards were, in the context of zoning codes, replaced by the more detailed five-factor balancing test described above. While there can be distinctions between the zoning standards and the practical difficulty standards governing coastal erosion variances, in this case, the relevant considerations for a coastal erosion variance overlap and are concurrent with the relevant considerations for a zoning variance. The various variances will therefore be considered together.

IV. FINDINGS AND CONCLUSIONS

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

1. The applicants demonstrated that the final proposal, subject to the mitigating conditions herein, will not cause any material adverse impacts on the character of the neighborhood. The property, like others on Dune Road, is narrow and constrained by front yard setbacks on the north, dune crest (rear yard) setbacks on the south, and side yard setbacks on each side, in addition to the Coastal Erosion Hazard Area requirements and Suffolk County Sanitary Code requirements affecting the southern and northern portions of the lot, respectively. While the applicant's original proposal sought more substantial variances, the applicant considered the comments of the Board and scaled back the proposal to reduce the scope of some of the variances. Among other things, the substantial request for a lot coverage variance was reduced from 28.2% to 27.3%, which is well below the existing lot coverage of 32%, and the accessory structures on the southwest side of the house were relocated to meet a minimum 15-foot setback. While the project still requires some variance relief, the scope of the relief is not dissimilar to the character of the neighborhood or prior relief granted by the Board.

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2. *Alternatives:* The applicants have demonstrated that they cannot achieve the benefits sought without the need for variance relief.

3. *Substantiality:* Some of the requested variances are substantial.

4. *Physical/Environmental Impacts:* No physical or environmental impacts have been identified.

5. *Self-Created Difficulty:* The difficulty is self-created, as the applicants acquired the property on notice of the development restrictions.

6. *Benefit vs. Detriment:* On balance, the Board finds that the benefits to the applicants outweigh the detriment to the neighborhood.

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

The Board therefore grants the requested as shown on the survey of the property drawn by Fox Land Surveying, David H. Fox, surveyed on May 9, 2018, updated on June 26, 2019, and on the building plans drawn by MR Architecture & Décor, Scott Robert Campbell, Architect dated February 20, 2019, and date stamped received by the Village of Westhampton Beach on April 25, 2019, and the foundation plan: rear yard only, drawn by MR Architecture & Décor, Scott Robert Campbell, Architect dated July 30, 2019, and date stamped received by the Village of Westhampton Beach on August 1, 2019, all subject to the following conditions to minimize any adverse impacts from the variance:

V. CONDITIONS

1. 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, without further approval of the Board.

2. No outdoor accessory structures or equipment (including but not limited to air conditioning condensers, HVAC equipment, above-ground utilities, generators, pool equipment, solar panels, outdoor kitchens, garbage/storage bins, etc.) may be located within a required front, side, or rear yard, except as depicted on the approved plans, without further approval of the Board

3. The variances granted herein shall terminate unless a building permit is issued within 180 days 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.

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Motion was made by Mr. Piering to adopt the determination of **Newman/Corre, 307 Dune Road, Westhampton Beach (905-18-2-29)** as written; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.

3. 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., appeared on behalf of the application. Mr. Piering stated there was not a determination, and one would be available at the September 19, 2019 meeting.

Mr. Hulme thanked the Board.

HOLDOVERS:

4. 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.

Heather A. Wright, Esq., appeared on behalf of the application. She said that they have reapplied, and are presenting the new application and would like to incorporate this record in to the new record and withdraw this application without prejudice.

Motion was made by Mr. Piering to withdraw the application #4 of **Donna McDonough, 24 Point Road, Westhampton Beach (905-17-3-25)** without prejudice; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.

5. 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 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)** to September 19, 2019; seconded by Mr. DelGiudice and unanimously carried 4 ayes, 0 nays, 1 absent.

NEW APPLICATION:

6. DeMartino, 43 Rogers Ave, (905-6-1-31) Applicant requests a variance from Section 197-5 A(1) to construct a one- and two-story addition to a single-family dwelling with a combined side yard of 31.6 feet where the minimum required is 40 feet, and from Section 197-35 C to construct a detached garage 10' from side and rear property lines where the minimum setback required is 15 feet.

Marc DeMartino appeared on behalf of the application.

Mr. Piering said they understand the second story addition and the lot is narrow and deep, and they are concerned about the garage. They are seeking a variance for 10' when 15' is required.

Mr. DeMartino said he originally has a one-car garage, and he tried to figure out a two car garage off the existing garage and they would be 5' off of the property line. He is proposing a garage for his lawn equipment, outdoor furniture, kids toys, and snow blower, etc., and he has a classic car that he would be possibly storing that in there.

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Mr. Wittschen asked why he can't put it at 15' to 15'.

Mr. DeMartino said if he moves it, he'd had to drive across his yard to get to it and this location is a straight shot. The lot is narrow and wide.

Mr. Musnicki asked if he has CO's for everything.

Mr. DeMartino said he has CO's for everything.

Mr. Musnicki said he gets his argument, and the 5' helps out, but he doesn't know if that's strong enough to support 10' in a side yard.

Mr. DeMartino said he wanted to go for less, his architect thought 10' would be the max.

Mr. DelGiudice asked if there are other garages on Rogers.

Mr. DeMartino said there are four (4) or five (5) on Rogers Avenue, but he doesn't know if they received variances.

Mr. Piering said you are not increasing your non-conformity, and I understand because we have to measure the benefit to the applicant, but it seems the argument of the positioning of the garage and feasibility would make it so you can move it.

Mr. DeMartino said if we did 15' off of the rear yard and side yard it would be in the middle of the yard.

Mr. Musnicki asked if he could turn the layout of the garage.

Mr. DeMartino said it would still put it in the middle of the yard. He has a letter from the neighbor with no opposition to it.

Mr. Musnicki said if the argument isn't strong enough on your side, and next year or next month someone else can ask for the same thing, the argument has to be very strong especially when you have the ability to put it somewhere where it conforms.

Mr. DeMartino said why does it have to be 15'.

Mr. Pasca said it's the Code.

Mr. DelGiudice said right now you have 10' off of the rear yard and side yard and what Mr. Piering suggested, you could meet the 15' off of the rear yard and we would only look at the 5' variance off the side yard. You are minimizing the variance.

Mr. DeMartino said he's that much closer to his pool.

Mr. DelGiudice said you still have 40' to the pool. You would keep it at 10' off of the side yard and 15' off the rear yard.

Mr. Piering said you'd be reducing the variances and still getting a benefit. We have dealt with garages in the past, and we have people with room to put their garage in a conforming location and we have them do so, and you ring the bell with us, and too close to the pool is not an argument. We had one a few months ago on Michaels Way.

Mr. DelGiudice said this is a really narrow lot.

Mr. Wittschen said its very big difference.

Mr. DeMartino said when we laid the 15' and 15' it was in the middle of my yard.

Mr. Piering asked if he could build a smaller garage. We are bound by the Code, and we don't have the latitude to do a lot, when you take 15' to 10' that's a big variance. It is only 5' and the percentage wise that's big.

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Mr. DeMartino asked if they could add a garage to the existing house, to try and change it around.

Mr. Piering said he didn't look at that.

Mr. DelGiudice said the consultant had the best recommendation for this lot.

Mr. DeMartino said they measured out numerous things, and I'm willing to get rid of my shed to make sure my usage in the back yard would work.

Mr. Piering said it's not a matter of lot coverage, it's a matter of the size of the structure so close to the rear yard and side yard.

Mr. Musnicki suggested turning it a different direction and driving a car in and putting it in the center of the yard and with landscaping you can make it work.

Mr. DelGiudice said I like the idea of maintaining 10' off of the Northerly neighbor's property line, and get rid of the nonconformity. I think it's a good suggestion, it's a narrow lot and you don't want it in the center of the property and the property is deep you can afford the 5' but the side yard you are dealing with 80' and can't really work with that. I think it's a reasonable request to make.

Mr. DeMartino said he has to go back to the drawing board.

Mr. Piering said his house is on Hazelwood Avenue, he knows what he's up against. There was a subdivision on Hazelwood Avenue that they needed to build in a conforming location.

Mr. DeMartino asked if there were any issues with the house part of it.

Mr. Piering said no, there are no issues with that.

Motion was made by Mr. Piering to holdover the application of **Demartino, 43 Rogers Avenue (905-6-1-31)** to September 19, 2019; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.

7. L & P Associates LLC, 345 Dune Rd, (905-18-2-9) Applicant requests variances from Section 74-5 C(2) to construct structures within the Coastal Erosion Hazard Area, from Section 197-8 C for a proposed building lot coverage of 24.7% where the maximum permitted is 20%, from Section 197-8 D to construct a dwelling with a combined side yard of 41 feet where the minimum required is 50 feet and also for a rear setback of 62.2 feet from the crest of the dune where the minimum required is 75 feet, from Section 197-8 E to construct a dwelling with three stories above grade where the maximum permitted is two stories, and from Section 197-35 C to construct an accessory pool and deck 35.2 & 32.1 feet, respectively, from the crest of the dune where the minimum required is 75.

Heather A. Wright, Esq., appeared on behalf of the application, together with Craig Arm, Architect. Ms. Wright said the property was improved with a three-story dwelling, garage, pool and deck, and the dimensions of that had total side yard setbacks of 40.8' and lot coverage of 28.6% and the pool still remains and the deck with it are on top of the dune. In 2008 the dwelling was damaged in a fire, and in reality it was family issue and the principal of the LLC wouldn't allow anything to be done with the property and they tried to take steps with respect to the property and the principal would not allow it, and as soon as her clients became full owners and control they demolished the structures on the property. They have the opportunity to rebuild it and they want to recreate and restore what they had prior to 2008. They are proposing a three story dwelling, deck, pool and new septic system. We are looking for lot coverage of 24.7% and total side yard of 41' and the house will be 76' from the Crest of the Dune and we are proposing to remove the pool and deck and they would be 32.1' and 35.1' from the Crest of the Dune, and a FEMA compliant residence and septic system and we are in the Coastal Erosion Hazard Area.

Mr. Piering asked if this is the X Zone?

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Ms. Wright said yes. The Board applies a 5 part test when evaluating the variance, and the consistent with those with Coastal Erosion. The X Zone and 197-8.E. and other properties that have come before this Board have had similar issues, we don't have to build to FEMA compliance, and we are building to AE 11 and the lower is for storage and parking.

Mr. Piering asked if the surrounding zone is AE 11?

Mr. Arm said we border AE 7 and the VE Zone on the other side of the Dune so this was the average between the two (2) zones. We use that as the basis and once we're in any of the AE Zones were required to comply with the height restrictions of 40 and we're working down from there.

Ms. Wright said this is consistent with other decisions before this Board that were in this pocket of the X Zone. It meets the character of the community element. When designing the new structure we recognized it's important to neighbors to be as far away as possible and a total side yard setback we're looking for is consistent to what was there so we don't think it will cause an undesirable change to the neighborhood. We are proposing to move the pool and deck out the dune, and we wanted to pull everything in to the X Zone. We are planning a buffer on Dune Road, and the septic system in the front yard and parking for 10 cars, and 2 spaces for guest so we're trying to minimize any parking on Dune Road and contain it all to the property. The other thing that's important for the Board to consider, you will see the old homes location compared to the properties on either side and the third shows you where the new house will be. The new will be significantly North of where it was and the homes on either side. We were trying to keep it in the same vicinity along the homes on Dune Road and preserve that distance between the homes. With respect to the lot coverage, the old house was 28.6% and we're proposing 24.7% and we understand we had to reduce the lot coverage; we've reduced the decks from 3,400 square feet to 1,200 square feet and we looked to reduce it but still provide the space needed. There are challenges with lc on the South side of Dune Road because you can only use the area North of the Dune which is 1/3 of the area of all properties. In terms of feasibility, this is what we had and we're trying to minimize the variances we're requesting. Those all have a positive environmental impact and not a negative.

Mr. Piering said we had an application a few months ago, it was very similar to this. We asked that applicant to rearrange it and instead of the rear yard setback to the dune, they went to a front yard setback to Dune Road. We always try to pull everything out of the dune as much as we can. This is a blank piece of property and a clear canvas.

Ms. Wright said this is not a situation where someone bought a vacant parcel and knew what they had to work with and are now seeking variances; this is no different than a person with a home that's existing and non-conforming and they say we want to get rid of these non-conformities and put in a new house and the Board does weigh the benefit to the community and environment in that situation so I do think this is different than a clean slate.

Mr. Musnicki said that's a good argument, and it's still a balance.

Mr. DelGiudice said we've had this argument before and they were taking a good portion of the house out and we said they were starting from scratch.

Ms. Wright said her question to the Board when we're looking at our request, the distance from the Dune seems to be the concern for the Board. On the other variances we are seeking, how do you feel about them.

Mr. Piering said the total side yard as long as you're meeting the minimum side yard we are flexible because the lots are narrow.

Mr. Musnicki said this lot is 100' and meets the lot width and square footage. It's not an undersized lot in that perspective. What was the existing square footage of the old house?

Ms. Wright said it was 6,000 square feet.

Mr. Musnicki asked what they are prosing now.

Ms. Wright said 5,600 square feet.

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Mr. Musnicki said it's a lot of house for ½ an acre.

Ms. Wright said yes, it is. We accommodated a large family previously and now it's a family sharing a house and we need that space.

Mr. Musnicki said you have to address the side yards, if you have 100' why can't you meet the total side yards.

Ms. Wright asked Mr. Arm to explain the design.

Mr. Pasca asked about the first floor, and when you have the pocket X argument, the first floor is a FEMA first floor and are you arguing living space?

Mr. DelGiudice said he believed they addressed that.

Mr. Pasca said he wants to make sure it's clear.

Mr. Arm said we will comply with the 40' rule, and the lower level will be garage and storage space, we're building it to the AE 11 Standards, but in an X Zone. In terms of the overall design and footprint the other house was existing and we started to explore whether we could renovate it, and we decided overall to start over and we looked in to maintaining the pool and deck but knowing we were making it conforming, we looked at it and decided to pull it away from the Dune and get rid of the deck, and maintain space on the Dune Road side in the front yard for parking and the sanitary system and pulling it away from the dune and keeping the distance from the road to get the square footage of what was required it gave us that width for the best use of space. We explored other options and the square footage was getting larger but we looked at this as the balance and full overall comprehensive design.

Mr. Musnicki said you are saying you cannot gain an extra 5' in the width.

Mr. Arm said in order to do so, we'd have to increase the overall lot coverage, we would wind up with more hallways and the shape increased the lot coverage, it was over 25%, so this helped us squeeze things and giving more square space.

Mr. Musnicki said you mentioned the septic system, is that the new IA system.

Mr. Arm said he believes its conventional, and the beauty f the lot they don't need any retaining walls along Dune Road.

Mr. Musnicki said you are trying to maximize the room on the North and you can't move that, with a new IA system that will take up less square footage, could you move the house North and get more parking.

Mr. Arm said most have not taken less space, they are just different in their design.

Mr. Musnicki said it's definitely less space. I suggest you have someone address that, if you feel you can't move the house North because of the CEHL because that's one of the top things we look at, if you're stuck at the 30' from that line that's a big issue. They are saying they cannot move North.

Mr. Piering said right now you are encroaching with your deck and pool in to that, so there's another alternative. There have been cases where you can park on the septic system so there are alternatives. This isn't a renovation to an existing house and it's different, but one other thing about the size of the house with the families involved, the variance goes with the property and there's nothing that says next Summer it can't be sold so we can't entertain the family argument.

Mr. Arm said that was part of our reasoning, but we can look at the sanitary system and explore some of the variances with the covenant with the BOH.

Mr. DelGiudice said there is a lot going on, as Mr. Musnicki mentioned we've had recent applications where we've seen a big condensing of the sanitary system with the new IA system.

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Ms. Wright and Mr. Arm said okay, they will hold it over.

Mr. Piering said one our biggest things is the Crest of the Dune setback.

Mr. Musnicki said one last thing, I saw you checked off that the PB is involved also?

Ms. Wright said it will be for fill.

Mr. DelGiudice asked if parking will be under the house too?

Mr. Arm said yes.

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

Anastasia Kehoe and Ed Kehoe, they are adjacent to the applicant they are 349 Dune Road. She has read the application and can see what they are asking and she understands the side yard variance necessity and no ground or reason for the other variances to granted. For the past 10 years the community had to deal with the dilapidated property and the complete disregard to the neighbors. And they decided to do the renovation because they couldn't repair the property but that's only partially true, and in 2015 there was graffiti on the walls and we contacted the Building Department, but the reason they got rid of the house is because it was collapsing and sliding in to our property and even know with the house demolished there is a swimming pool there in the open with no fence which is still a danger to the community.

Mr. Piering said that is not this Boards purview, they are trying to improve it.

Ms. Kehoe said they are starting with a blank slate, and they had 10 years to remedy that and they did nothing. It would be unfair and a bad precedent to allow people who have not abided by the rules to benefit from a variance. It's not fair to the community or the neighbors to allow something outside of the norm. We went by the letter of the Zoning Law to build our house and we came to this Board years ago and we stayed within the Zoning. And we have a pool in the front yard. I just felt you should know why we are at this point.

Mr. Piering said anything they do is an improvement.

Ms. Kehoe said our concern is the community and the neighbors.

Mr. Piering said we're going to go forward.

Mr. DelGiudice said we're not here to discipline anyone and I appreciate that, we have five standards we go by and they have every right to come for a variance and we have to weigh the benefits for the community if they get this.

Ms. Kehoe said yes, and they can work within the envelope that they can work in.

Mr. DelGiudice said he appreciates her comments.

Mr. Piering asked if there were any other questions or comments. He reminded the applicant they want to minimize their variances and the Crest of the Dune.

8. Donna McDonough, 24 Point Road, (905-17-3-25) Applicant requests variance from Section 197-27 D to bring in fill 1' from the North, East and South lot line where the minimum setback is 10 feet, and from §197-35 C to erect an attached deck in the front yard where accessory structures are only permitted in the rear yard.

Heather A. Wright, Esq., appeared on behalf of the application. We have appeared a few times, and she understands her clients were and they went over the revised septic plan, we are building the new system and reduced our retaining wall and there was a question about installing the deck on the rear yard and you can put the deck in the back of the property but we still think the argument for the proposal for the deck in the front makes the most sense and meets the Character of the Neighborhood. There are 18 properties within the inside of Pond Point that have decks on the

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front of the property and the ones with decks in the rear yard are because of the Waterview. And we have submitted letters in support from the neighbors. It would be a detriment to put the deck on the property, the property at 7 Pond Road is built very close to the property and that deck would literally be on top of the people. I understand the Code states no decks in the front yard and Pond Point is very unique and the lot sizes are very small, and I think this is consistent with the other homes so we'd like to keep the consideration to allow the deck on the front. I submitted copies of the letter.

Mr. McDonough said one of the letters is from the Pond Point Association and she canvased a few people before putting the letter together, and she believes all of the decks should be on the front.

Mr. Musnicki said we don't have the power to say yes, if it can be achieved in the rear yard so the argument really falls down to it being too close to the neighbor. The decks you show, a lot of them may not be permitted, or non-conforming, preexisting and may be not entertaining decks. What you're proposing is a substantial deck for that house 11' high in the front yard for entertaining and cooking and such.

Ms. Wright said it is a modest size deck, and when you weigh the character of the neighborhood against the benefit to the updated septic system and the FEMA compliant home that supports the granting of the variance.

Mr. Musnicki said it's all about the deck, in order to do a renovation or construction you have to be FEMA compliant.

Ms. Wright said we changed our design of the septic system to an IA system to lower the wall and that is a huge benefit to the community and neighborhood.

Mr. Piering said there is a front yard setback for this porch, and if you put a roof on it, it becomes part of the structure and you don't need a variance for it.

Mr. McDonough said the economic value of the home is improved by placing the deck in the front yard and on Point Road have 7 houses, and 5 have decks on the front and that's a huge percentage. The Village has accepted that Pond Point is different than the rest of the Village. A third party couldn't use this as a precedent, and they would have to compare their neighbors which is what we're doing our neighbors have decks in the front yard.

Mr. Musnicki asked if they would be open to a porch in the front where you can get the benefit of the view and gathering area and a deck in the rear for entertaining and gathering. If you had a porch you could enjoy the deck but you would have the gatherings in the rear.

Ms. McDonough said they would be on top of their neighbors if they put that deck in the rear yard.

Ms. Wright said it's not a huge deck in the front yard its 300 square feet.

Mr. Piering said you are arguing that it's not undesirable.

Mr. McDonough said it's the reverse.

Mr. Piering said the only way you can achieve the benefits to have a deck in the undesirable location for you and your neighbors. I think you have to take in to consideration the feasibility. The neighbors do not want a deck in the rear yard. BY putting this in the front yard there are 5 other houses close by with the front yard decks, so it wouldn't create an adverse impact.

Ms. Wright said no, it would not.

Mr. Piering asked how big it is?

Ms. Wright said 300 square feet.

Mr. McDonough said his current deck is 450 square feet so he's making it smaller. And the two neighbors who the deck faces gave letters of support.

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Ms. Wright said the homes in Pond Point are small, and the whole point is to spend time outside.

Mr. Musnicki said its really tough, there are houses in the area that will come in looking for a deck in the front yard and refer to you.

Ms. Wright said most of the homes here similarly situated have decks whether they are pre-existing or otherwise have decks in the front yard.

Mr. McDonough said five of seven have front decks, and there's one guy with a deck in the rear yard because he's retreated enough from the water but there are really no other homeowners who are going to come to this Board to ask for a front yard deck.

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

Pauline Olston, 52 Harbor Road and she said she has no opposition to the deck.

Motion was made by Mr. Piering to close the hearing of **Donna McDonough, 24 Point Road, (905-17-3-25)** for a determination; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 1 absent.

Motion was made by Mr. Piering to adjourn the meeting at **6:05 p.m.**; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.