

September 19, 2019

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, September 19, 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

Maeghan Mackie, Building Permits Examiner / Board Secretary

MINUTES TO BE APPROVED

Motion was made by Mr. Piering to adopt the minutes of the **July 18, 2019** meeting as written; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

Motion was made by Mr. Piering to adopt the minutes of the **August 15, 2019** meeting as written; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 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.

Mr. Piering said that they are still waiting for a response from Suffolk County Planning Commission.

Mr. Hulme said okay.

2. 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 that there was a determination, and the reading was waived.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

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In the Matter of Application of

Schlüsselberg Family Limited Partnership

**DETERMINATION ON
APPEAL**

Address: 24 E. Division Street
SCTM #: 905-10-7-30

-----X

I. REQUEST FOR RELIEF

The applicant, Schlüsselberg Family Limited Partnership, is the owner of a parcel of real property located at 24 E. Division Street. The property is located in the R-1 Zoning District. The parcel was

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improved by a one-story single-family residence, and the structure was demolished under Demolition Permit P180177. The parcel is presently improved by piles, footing and foundation under Building Permit P190075. The applicants have submitted a Building Permit application proposing to construct a new two-story dwelling with raised enclosed foundation area used for building access and light storage, Swimming pool and deck, which was disapproved by the Architectural Review Board May 21, 2019, and subject to a written findings of fact dated June 4, 2019.

The applicant thereafter filed an appeal to ZBA, pursuant to section 5-19 of the Village Code, from the determination of the Architectural Review Board.

II. SEQRA

The applicant submitted a Short Environmental Assessment Form under the State Environmental Quality Review Act (SEQRA). Since the application involves the reconstruction of a single-family residence, the matter is classified as a Type II action under 6 NYCRR §617.5(c)(11), and no further SEQRA review is required.

III. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on July 18, 2019. The applicants' attorney, James N. Hulme, Esq., appeared and presented the application, together with Rocco J. Lettieri over the course of two meetings. Nancy Ginger Propper, 16 E. Division Street, Westhampton Beach, and Dr. Marvin Lerner, 16 E. Division Street, Westhampton Beach appeared in opposition to the application.

During the course of the proceedings, modified plans were submitted to address certain concerns expressed by members of the public and the Architectural Review Board. The final plans are reflected in the revised elevations prepared by DesignWorks Architectural Group, dated May 8, 2019.

The hearing was closed at the July 18, 2019 meeting subject to the submission of written comment by both Ms. Propper and the applicant regarding the landscape screening proposed at the side of the home facing Ms. Propper's home. Such submissions were received into the record. However, a belated 'reply' submission was also submitted by Ms. Propper on August 9, 2019, after the written comment period had ended. This reply submission was not received into the record because it was submitted after the hearing and comment period had expired.

III. GOVERNING LAW

The ZBA is empowered to entertain appeals from decisions of the Architectural Review Board under Section 5-19 of the Village Code, which provides as follows:

§ 5-19 Appeals.

A. Any person aggrieved by a decision of the Architectural Review Board may request, within 30 days of the filing of the decision by the Architectural Review Board, that the ARB make formal findings of fact. In the event of such a request, the ARB shall make findings of fact within 15 days after the request is filed in the Village Clerk's office, shall thereafter provide the person with an opportunity to answer the findings by a submission of formal proof and shall reconsider the application on the basis of such answer. If a

person is still aggrieved by the decision of the ARB after reconsideration, such person may appeal to the Board of Zoning Appeals, in accordance with its rules, within 30 days after the filing in the office of the Village Clerk of the decision of the ARB after reconsideration.

B. The Board of Zoning Appeals shall fix a reasonable time for the hearing of such appeals and may reverse or affirm, wholly or partly, or may modify the action appealed from insofar as it relates to the provisions of this chapter. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the provisions of this chapter, the Board of Zoning Appeals shall have the power, in passing upon appeals, to vary or modify the application of such provisions in harmony with their general purpose and intent so that the spirit of this chapter shall be observed, public safety and welfare secured and substantial justice done.

In considering such appeals, the Board is required by law to conduct a “de novo” review. *See Bd. of Architectural Review & Historic Pres. v. Zoning Bd. of Appeals*, 279 A.D.2d 523 (2d Dep’t 2001).

While the decision of the Architectural Review Board may be considered, the ZBA is required to give the application a fresh review and may reverse, affirm, or modify the decision in its discretion, applying the applicable provisions of Chapter 5 of the Village Code.

The standards for approval and disapproval of an application are set forth in Sections 5-16 and 5-18, respectively, of the Village Code. Under Section 5-16, approval is warranted if a building “...would be in harmony with the purpose of this chapter, would not be visually offensive or inappropriate by reason of poor quality of exterior design, monotonous similarity or striking visual discord in relation to the sites or surroundings, would not mar the appearance of the area, would not impair the use, enjoyment and desirability and reduce the value of properties in the area, would not be detrimental to the character of the neighborhood, would not prevent the most appropriate utilization of the site or of adjacent land and would not adversely affect the functioning, economic stability, prosperity, health, safety and general welfare of the entire community.” Conversely, under Section 5-18, disapproval is warranted if the Board finds “one or more of the harmful effects” by reason of monotonous similarity (subsection A), striking dissimilarity, visual discord or inappropriateness (subsection B), or visual offensiveness (subsection C). In all cases, the Architectural Review Board (or ZBA, on appeal) is required to confer with the applicant to allow it to make changes (see §5-18), and to impose reasonable conditions to mitigate against harmful impacts (see § 5-17). The ZBA is further empowered, under Section 5-19.B to grant variances to the provisions of Chapter 5 in the event of practical difficulties or unnecessary hardship.

In applying these standards, the Board is also aware of the subjective nature of architectural review. The courts have upheld municipal regulations that are based solely on aesthetic considerations, but have cautioned that the public interest in aesthetics is not as great as that in public safety. *See Modjeska Sign Studios, Inc. v. Berle*, 43 N.Y.2d 468, 478, 402 N.Y.S.2d 359, 365–66 (1977); *Rochester Tel. Corp. v. Vill. of Fairport*, 84 A.D.2d 455, 458, 446 N.Y.S.2d 823, 826 (4th Dep’t 1982). It has been stated that, where a property owner has the right to use his property in a certain manner, “[a] denial of that right solely on aesthetic grounds should be based upon a showing that ‘the offense to the eye . . . [is]

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substantial and . . . [has a] material effect on the community or district pattern.” *Sackson v. Zimmerman*, 103 A.D.2d 843, 844, 478 N.Y.S.2d 354, 356 (2d Dep’t 1984) (quoting *Matter of Cromwell v. Ferrier*, 19 N.Y.2d 263, 272, 279 N.Y.S.2d 22, 30 (1967)); accord, *Vill. of Hempstead v. SRA Realty Corp.*, 160 Misc. 2d 819, 823, 611 N.Y.S.2d 441, 444 (Sup. Ct. Nassau County), *aff’d*, 208 A.D.2d 713, 617 N.Y.S.2d 794 (2d Dep’t 1994).

II. FINDINGS AND CONCLUSIONS

1. Applying the foregoing standards, the ZBA finds that the final plans would be in harmony with the purpose of Chapter 5, would not be visually offensive or inappropriate by reason of poor quality of exterior design, monotonous similarity or striking visual discord in relation to the sites or surroundings, would not mar the appearance of the area, would not impair the use, enjoyment and desirability and reduce the value of properties in the area, would not be detrimental to the character of the neighborhood, would not prevent the most appropriate utilization of the site or of adjacent land and would not adversely affect the functioning, economic stability, prosperity, health, safety and general welfare of the entire community.

2. The Board cannot conclude, on the evidence presented, that there is a basis for denial under any of the criteria of Section 5-18 of the Village Code. The determination by the Architectural Review Board, and echoed by the Ms. Propper, was that the “highly modern architectural style” of the home will be strikingly dissimilar to surrounding homes, which the Architectural Review Board described as having a traditional or European architectural style. Upon review of the surrounding neighborhood, the ZBA cannot agree that there is any uniform traditional style that would render the proposed modern style out of character with the neighborhood. While the ZBA does not agree with the applicant that the *Goldsmith* determination (which involved a zoning variance application governed by a different standard of review) requires the neighborhood to include a radius of 1,000 feet, the ZBA also does not find that an exceptionally narrow view of the term “vicinity” is appropriate within the subject neighborhood. Nevertheless, the ZBA cannot find, on the evidence presented, that the proposed home would be dissimilar to any established aesthetic within the neighborhood, which is composed of a variety of styles, roof pitches, materials, and other design features. In fact, the applicant presented proof that a number of modern and post-modern styled homes already exist within the immediate neighborhood, as do originally traditional styled homes with modern additions, flat roofs, extensive glass, etc. Since the immediate neighborhood does not enjoy a uniform style that excludes modern architecture, the ZBA finds insufficient evidence to support a finding that the addition of a modern styled home would result in any significant dissimilarity to the existing neighborhood.

3. Even if the ZBA accepted the premise that the area could be narrowly construed such that this would be the only modern design in the area or vicinity, the ZBA finds insufficient evidence, in the context of this application and property, to support a finding of “striking” discord and dissimilarity to the

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point where it can be found to be “harmful” to the neighborhood, as would be required by Section 5-18 of the Village Code, or a substantial “offense to the eye” or “material effect on the community or district pattern” as would be required under New York law. Under the Code and New York law, dissimilarity alone is insufficient; rather, the dissimilarity must result in substantial harmful impacts. Here, due to the fact that the existing neighborhood includes a variety of styles, roof pitches, and glassed walls, the ZBA cannot find any substantial, harmful impacts that would result from the alleged dissimilarity of the proposed design of the home.

4. With respect to the opposition asserted by the neighbor, Ms. Propper, the Board notes that, aside from the argument regarding the architectural style of the home, much of the opposition raises issues that appear to be beyond the proper scope of architectural review. Those arguments, which include claims made regarding proper drainage, the setback of the home, and alleged damage to trees from the “shade” effect of the proposed home, have been addressed in prior proceedings and are not part of the architectural review standards to be applied on this application. The Board notes that some design changes were made by the applicant to address earlier concerns raised by Ms. Propper, and her post-hearing written submission did not address the issue she was asked to address, which was whether she preferred the trees in between the proposed house and property line to remain or be removed from the plan.

5. In making this determination, the ZBA emphasizes, as it has in past decisions, that it is making no categorical pronouncements or precedents about the appropriateness of modern and contemporary architecture in all areas, nor is the ZBA criticizing the Architectural Review Board’s decision and findings. The ZBA’s role on this appeal is not to sit in judgment of the Architectural Review Board’s decision but to view the application de novo, and the applicant did make design changes since the prior determination being appealed to the ZBA. The ZBA is mindful that the Village has not seen fit to create a historic district and does not impose strict prohibitions against modern architecture, which is prevalent throughout the Village, particularly on waterfront properties. The characterization of a building as “modern” or “contemporary” versus “traditional” or “historic” thus appears not to be a categorical bar to its construction under Chapter 5. On the other hand, there may very well be circumstances where a modern design is so starkly in discord and harmful within the context of a particular neighborhood that it should be denied. The ZBA cannot pass on such hypothetical scenarios but merely finds, for this property, and in the context of the mitigating factors and the design changes offered by the applicant, that this is not such a case where harmful effects have been shown.

The ZBA therefore grants the appeal of the applicant.

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Village of Westhampton Beach
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Motion was made by Mr. Piering to adopt the determination of **Schlusberg Family Limited Partnership, 24 East Division Street, (905-010-07-030)** as written; seconded by Mr. DelGiudice and unanimously carried 5 ayes, 0 nays, 0 absent.

3. 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. Mr. Piering stated there was a determination, and the reading was waived.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS
-----X
In the Matter of Application of

Donna McDonough **DETERMINATION**
Address: 24 Point Road
SCTM #: 905-17-3-25
-----X

I. REQUEST FOR RELIEF

The applicant, Donna McDonough is the owner of a parcel of real property located at 24 Point Road. The property is located wholly within the R-5 Zoning District. According to the survey of the property the parcel is improved with a one-family, one-story frame dwelling with wood deck.

Section 197-29.D. of the Village Code provides that, in the R-5 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.A of the Village Code provides that, in the R-5 Zoning District, accessory buildings, structures, tennis courts and swimming pools shall be located only in the rear yard.

The applicant proposes to bring in fill 1' from the southerly and easterly lot line where the minimum setback is 10', and to erect an attached deck in the front yard where accessory structures are only permitted in the rear yard.

II. SEQRA

The applicant submitted an Environmental Assessment Form Part I pursuant to the State Environmental Quality Review Act (SEQRA).

Since this is a request for a variance for accessory residential structures, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(11), (12) and (16). Accordingly, the application is not subject to review under SEQRA.

III. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on January 17, 2019. The applicant's husband, John McDonough appeared and presented the application. The application was held over for several months and re-noticed for a public hearing, which was opened on August 15, 2019. The applicant's attorney Heather A. Wright, Esq., and the applicant's husband, John McDonough appeared and presented the application. There were several neighbors who submitted written support of the application, and no opposition was received. The hearing was closed for a determination.

III. 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.

In considering applications for area variances, the Board is required to weigh the benefit to the applicant against the detriment to the health, safety and welfare of the community, while considering the following five factors: (1) whether the variance will cause an undesirable change in the character of the neighborhood or a detriment to nearby properties; (2) whether the benefit can be achieved by a feasible alternative; (3) whether the variance is substantial; (4) whether the variance will have any adverse physical or environmental impacts; and (5) whether the alleged difficulty was self-created (which shall be relevant but shall not necessarily preclude the variance).

The Board is charged to grant only the minimum variance necessary and to preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

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

IV. FINDINGS AND CONCLUSIONS

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

1. *Character of the Neighborhood:* The applicant has demonstrated that the granting of the variances herein will not result in an adverse impact on the character of the neighborhood. The Pond Point neighborhood consists of many small lots improved with relatively small homes. The fill setback variance is an unavoidable consequence of the need to install a modern sanitary system on the property. The applicant is also voluntarily utilizing an “innovative/alternative” sanitary system, which is superior to traditional sanitary systems in terms of both nitrogen loading and the amount of fill that is needed. The front yard setback for the deck is a result of the unique configuration and size of the lot (with two front yards and little room for accessory structures) and the preferable location for an attached deck. There are many nonconforming decks in the Pond Point neighborhood, and the lack of adverse impacts is corroborated by the number of neighbors who support the application. The Board also finds compelling the fact that the deck, if covered, would be allowed “as of right,” a fact that further mitigates against a finding of adverse impacts on the character of the neighborhood.

2. *Alternatives:* The applicant could locate the deck in a rear yard, but that alternative would not achieve the full benefit sought (i.e., the preferable location of the deck) without a variance. There is no alternative that would achieve the benefits from the fill (the new code-compliant sanitary system) without a variance.

3. *Substantiality:* The variances are mathematically substantial.

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

5. *Self-Created Difficulty:* The difficulty is self-created.

6. *Benefit vs. Detriment:* Under the unique circumstances of this property, the benefit to the applicant outweighs the detriment to the community.

7. *Minimum Variance:* The variance is the minimum necessary to achieve the benefit sought. The Board therefore grants the requested variance to allow the applicant to bring in fill 1 foot from the easterly and

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southerly lot lines and to erect an attached deck in the front yard, as shown on the survey drawn by Hands On Surveying, dated May 3, 2018, and updated on July 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, 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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Village of Westhampton Beach
Zoning Board of Appeals

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

HOLDOVERS:

4. 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 withdraw the application of **Flavio Sinchi, 33 Oak St, Westhampton Beach (905-008-03-020)** without prejudice; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

5. 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 received the survey wherein he shifted the garage and asked if he had anything more to add?

Mr. DeMartino said no.

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Mr. Musnicki asked if he can meet the 20'?

Mr. Piering said it's the R4, he is allowed 15' and he shifted it to 10' and 15'.

Mr. Musnicki said to disregard he misunderstood the survey.

Mr. Piering asked if there were any other questions or comments. There was nothing further.

Motion was made by Mr. Piering to close the application of DeMartino, **43 Rogers Avenue (905-6-1-31)** for a determination; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

6. 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 Pamela Spraaayragen. They took the Board's comments and they revised their plan to meet the front yard setback of 75 and reduced the setback from the Dune and the deck and pool to 40.7' and they also tightened the area around the deck and lowered the lot coverage. They reduced the lot coverage to 23.7%.

Mr. Badzik asked if they shrank the deck?

Ms. Wright said yes. They are only left with a total side yard variance of 41' which is similar to what was in existence, and the distance from the Dune for the deck and the pool. They also addressed the neighbors' concerns about the safety issues and the pool has been removed.

Mr. Piering said they saw that. Their concern was the Crest of the Dune.

Ms. Wright said they pulled it all the way forward to meet that setback so the dwelling is 75' again.

Mr. Piering said 75' is the front yard setback.

Ms. Wright said yes, it was 83.1' and we pulled the dwelling to meet the front yard setback thereby increasing the distance from the dune for the accessory structures.

Mr. Piering said the house was pulled forward to reduce the distance from the Crest of the Dune.

Ms. Wright said yes.

Mr. Piering asked how big the house is?

Ms. Wright said it is approximately 3,400 square feet with the house and the decks.

Mr. Piering said okay.

Ms. Wright said the porches are another 1,057 square feet; we believe we've addressed the Board's concerns and we believe we are in keeping with the character of the neighborhood and we spoke a little about the unique nature and the fact they were unable to do any construction after the fire took place, and now we are trying to clean it up and rebuild something that's consistent with what they had and respect the Board's concerns.

Mr. Piering said it's a vacant piece of property.

Ms. Wright said it's no different than someone asking to demolish the house, but saying they are not demolishing it until we get what we want from the Board.

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Mr. Piering said we look at it the same way.

Ms. Wright said there are decisions to revise the plans and ask for less variances, and this Board has granted total side yard variances for other applicants in similar applications.

Mr. DelGiudice said he wants to review the variances; lot coverage, it was 28.6% and you're at 23.7%; total side yard.

Ms. Wright said yes, and we meet the individual side yard of 20' each.

Mr. Piering said the property is 97' wide.

Ms. Wright said it is 97' wide at the street, but Mr. Arm did the lot width at the road it's 92' and the front of the house it's 92' so it's not quite 100'.

Mr. Piering said their concern is the Crest of the Dune and he recognizes that but the Crest of the Dune is what we have to deal with and the last time we had an application similar to this, with the third story they went and moved it out of the Crest of the Dune and got a front yard variance, and readvertised for that.

Mr. Pasca asked if that was Song?

Mr. Piering said it was a few months ago.

Mr. Pasca said the applicants name was Song.

Ms. Mackie said it's 335 Dune Road.

Mr. Piering said that's very close to this parcel, they are in the "X" Zone and wanted a third story and we had them pull it out of the Crest of the Dune and request a front yard variance instead.

Ms. Wright said we have a septic system that has to go in the front yard and to readvertise will be another delay, and I know that's minor but it's a factor and I think we addressed the Crest of the Dune by pulling it closer to the road by 11'.

Mr. Piering asked how much of the variance do you need for the Crest of the Dune.

Ms. Wright said for the deck and pool its 40.7 and 42.8' each.

Mr. Piering said that's a bug variance.

Ms. Wright said there was a pool sitting in the dune that we demolished to pull everything back. It's like having a house before we demolished it, we had a pool to address safety concerns and we're pulling it significantly away from the Dune to address the Board's concerns.

Pamela Spraayragen said we heard you, and we weren't very happy and one of the beauties of the house was being further from the road, and we're changing the scope of what goes on side by side.

Mr. Piering said we see your neighbors, and we saw their illegal volleyball court.

Mr. Wittschen asked how many people would be there, if everyone is there?

Ms. Spraayragen said it would be 10 to 12 people, immediate families without spouses.

Mr. Wittschen said okay.

Ms. Spraayragen said we are sorry there was a fire, the fire happened.

Ms. Wright said the struggle was also not planned.

Mr. Wittschen asked where the pool was in relation to the Crest of the Dune.

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Ms. Wright said it was on it.

Mr. Pasca said it was over it.

Mr. Piering said it was in the Dune.

Ms. Spraayragen asked if the Dune moved during that time period? The house was built in the 1980's.

Mr. Piering asked when the fire was?

Ms. Spraayragen said it was about 10 years ago, and it was owned by my Father and he chose to do nothing with it, and when we passed the reigns to me he was the manager of the L&P Dune Associates, and anytime we were able to do something he would not sign anything to do it and we had legal troubles, and when the house started to deteriorate last year he decided to give up manager of it and it hasn't been a pleasant struggle with him for many years.

Mr. Piering asked the size of the proposed pool?

Ms. Wright said it is 740 square feet.

Ms. Spraayragen said it's smaller than what they had before.

Mr. Musnicki said that's almost a 20' x 40' pool. This is always a struggle; we hear a lot of applications such as this and you have to put forth a strong argument. This is a vacant piece of property now unfortunately and the argument that it's a large family, and there are a lot of people that does not hold a lot of weight, this is still a vacant piece of property. In order to move this along, I think there has to be compromise on your part and you present something to us based on what you're hearing tonight so we can all come to an agreement, otherwise if we close this you are running the risk of a denial. The Crest of the Dune is paramount in this application in my view. sideyards are a concern, but the Crest of the Dune is something we have to look at, you're asking for a 50% variance in that regard; I understand the house is 75' but the accessory structures are less than half of that.

Ms. Wright said she understands what Mr. Musnicki is saying, but its more than just a large family, its one where we made a change to pull the pool out of the dune, and that would not have been beneficial, and I do hear what you're saying.

Ms. Spraayragen said they are 45' from the Crest of the Dune.

Ms. Wright said it's 75' setback.

Mr. Musnicki said if it was a usable pool and you did not take it down, I would refer to the Building Inspector to see if you can move forward using that technique and build a structure.

Mr. Hammond said we were concerned about the pool, and we asked them to do something about it and they tore it down and the neighbor was concerned it was not being maintained or controlled and they were worried about health risks and safety factors.

Mr. Musnicki said could they present an application using that existing pool with a new residence.

Mr. Pasca said if it had been existing? If it had been existing it would not need the setback variance from the Crest of the Dune.

Mr. Hammond said if it was legally existing, I would not notice the existing accessory structures. The problem with the fire and not taking care of the building and it coming down, the accessory cannot persist without the principle use. If they wanted to keep the deck and pool, I don't think they'd need relief but you could ask them to move it as part of the application, if there were other variances needed. It's moving more than 40' from where they were and the pool is getting smaller.

Mr. Piering asked if they'd need a Crest of the Dune setback without the pool and deck?

Ms. Wright said no.

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Mr. Piering said we live on the ocean, what do we need a pool for?

Mr. Pasca said he says that to every application.

Mr. DelGiudice said he is looking at the plan, and it's a really good point there is a uniqueness to the property, but looking at the proposed driveway and the stairs to get in to the house, is there any way to shift it to decrease the variance? I know you have done a lot with the plan, is there anything more you can do.

Ms. Spraayragen said the architect did try it a few different ways.

Ms. Wright said to Mr. DelGiudice's point, the only way is to pull it forward and request a front yard variance.

Mr. DelGiudice said that's what Mr. Piering mentioned earlier, maybe there is a balance they can do. You have the pool and deck, maybe the deck can be pulled back, the house is only 60' long, so it's really the deck and you may have room with that and we have seen more narrow pools.

Mr. Wittschen said the pool is not that big.

Mr. DelGiudice said if it's 20' x 40', 20' is a pretty wide pool we've seen 14' 16' pools that are a nice accessory.

Ms. Spraayragen said the value of the house, property and pool at its proposed size, it is smaller than what was there. The further you pull it back and you deteriorate what we remember and why we're trying to rebuild it.

Ms. Wright said if we were to make it smaller, we aren't gaining all that much so I am not sure if the Board's concerns would be satisfied. We want to move forward and present something to you to do so.

Mr. Piering said your contention is that you took that pool out for health and safety concerns?

Ms. Wright said yes. We just took it out since the last meeting because of the neighbors concerns.

Ms. Spraayragen said if we try to go for less variances, we will add another variance.

Ms. Wright said I think there are unique aspects that are worth considering in light of what we've done.

Mr. Piering asked her to summarize the benefits that you are talking about.

Ms. Wright said the proposal benefits significantly the neighborhood and community; 1) even though there was a time lag we took down the structure that was not FEMA compliant and damaged and pulling the house to meet the 75' setback and we have pulled the pool out of the Dune; we've made the house smaller than what was there and I think all of these reasons support the variances being granted. We are now down to total side yard and that does impact the neighbors or community, we meet the individual side yard; we pulled the pool back, and it's now 42' from the Crest of the Dune and that's a benefit and we're asking for a lot coverage variance, and many on the South side of Dune Road exceed lot coverage and that's how we calculate lot coverage and we're down to 23.7%. And that gives the Board a lot for a decision in favor of the application. And every case is looked at on its own merits, and this is not creating a precedent.

Mr. DelGiudice asked if the Crest of the Dune has moved North.

Ms. Wright said she does not know.

Mr. Piering asked why parking was eluded to by Mr. Musnicki, why we have to the number of parking for the number of bedrooms.

Ms. Wright said by Code you have to, and you can't park on the street.

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Mr. Musnicki asked if there is parking under the house?

Ms. Spraayragen said yes.

Ms. Wright said yes.

Mr. Musnicki said there is substantial parking.

Ms. Wright said it's what we need.

Mr. Badzik asked if there's living space on the first floor.

Mr. Pasca said no, like the other ones with the X Zone, it would be conditioned on the approval no living space and it would be built to the FEMA standards and you suggested it would be built to a specific AE Standard.

Ms. Wright said that's correct.

Mr. Musnicki asked if they would consider the front yard variance to get more room from the Crest of the Dune.

Ms. Wright said she'd have to discuss that with her client, but her problem with that is how much for the front yard? I'm not getting the pool and deck to meet the 75' setback so it seems arbitrary to suggest we apply for a different variance.

Mr. Musnicki said we are charged with trying to keep these numbers, if it were anything else we would say okay, but we are charged with these numbers and if there's a way to reduce it and get a little closer that's what we're here for. I see an avenue in the front yard.

Mr. Wittschen asked for an overhead, and how close is it to the other neighbors from the Crest of the Dune.

Mr. Piering said the other neighbors on either side are in the Crest of the Dune.

Mr. Wittschen said they are much further back than the other neighbors.

Ms. Spraayragen said we have retreated a lot.

Mr. Piering said you have pulled it out significantly, there's no question about that.

Mr. Badzik said we can close this.

Mr. Wittschen said based on this, yes.

Mr. Piering asked Mr. DelGiudice if he had anything else to add.

Mr. DelGiudice said we can close it.

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

There were no further questions or comments.

Motion was made by Mr. Piering to close the application of **L&P Associates, LLC., 345 Dune Road (905-18-2-9)** for a determination; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

NEW APPLICATIONS:

7. **SKL Realty Holdings LLC, 111-115 Main St (905-11-2-22)** Applicant requests variance from §197-27 D to bring in fill 2.4' and 5' from Western and Southern property lines, respectively, where the minimum setback is 10 feet.

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Jason Ormond, Architect appeared on behalf of the application, together with Kevin Leahy. Mr. Ormond said they are demolishing the existing building and the high ground water requires the septic leaching field to be raised and they need a retaining wall at 2.4' on the West property line and 5' on the South.

Mr. Piering asked about the SEQRA.

Mr. Hammond said it's slightly over 4,000 and we're doing an uncoordinated review.

Mr. Pasca said you can close it and the SEQRA will be part of your decision, and if you close it, you should close it subject to the receipt of any review done by Mr. Collins you may find that helpful next month when you make a decision.

Mr. Piering said okay.

Mr. Pasca said that will be ready for the Planning Board on September 26; it's an assessment form to put in the record.

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

There were no questions or comments.

Motion was made by Mr. Piering to close the application of **SKL Realty Holdings, LLC., 111-115 Main Street, (905-11-2-22)** subject to the receipt of any SEQRA assessments from the PB; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

8. Ironman Realty LLC, 175 Dune Rd (905-20-2-20.1) Applicant requests variance from §197-35 B(1) to extend a pool proposed to be partially located within the side yard where accessory structures are specifically prohibited in the side yard.

James N. Hulme, Esq., appeared on behalf of the application. He said as the plan exists there is a pool and deck in the side yard and in 2007 there was a variance granted to explain why that's there. The Board relied on two things, one this development as it is now was the result of the merger of two lots in to one and I also believe relocation of existing structures from the Crest of the Dune and the Coastal Erosion Hazard Line and the front yard setback leaves a narrow window of opportunity. The applicant is proposing an addition of a 20 x 20 to be contained in the existing deck.

Mr. Wittschen sked why.

Mr. Hulme said he wants to swim longer laps, and of the 20' dimension that runs North and South only 6' is in the side yard; the 14' is in the front yard and a permitted location in this zone. There's arguably a variance for the side yard improvements and we sometimes discuss whether it's a matter of degree or not, but the relief was granted and is small relative to everything else.

Mr. DelGiudice asked how long the pool will be?

Mr. Hulme said it will be 60'.

Mr. Pasca asked what the setback requirement is for the pool?

Mr. Hammond said it is 20'. Accessory structures on Dune Road are allowed in the front yard on the South side and 20' from the line.

Mr. Pasca said you only need a 6' x 20' in the side yard variance?

Mr. Hulme said yes.

Mr. Piering said they had the variance for the side yard pool.

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Motion was made by Mr. Piering to close the application of **Ironman Realty, LLC., 175 Dune Road (905-20-2-20.1)** for a determination; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

9. 127 Jessup Lane LLC, 127 Jessup Lane (905-10-5-42) Applicant requests a variance from §197-6 C for a proposed building area of 20.9% of the total lot area where the maximum permitted is 20%, and from §197-35 A to erect a hot tub proposed to be located in the side yard where accessory structures are specifically prohibited in the side yard.

James N. Hulme, Esq., appeared on behalf of the application.

Mr. Piering said he got to see this property only because the landscapers are there, but for point of reference we need to see properties.

Mr. Hulme said yes, he understands and apologized and reminded the Board can always call his office if they ever have trouble.

Mr. Hulme said this was advertised for two variances, but thanks to Mr. Musnicki because there's a tennis court the lot coverage is allowable at 25% and the only variance we are seeking is an 8' x 8' hot tub in the side yard. Today I took pictures, and there is an 8' wide deck on the back of the house, and the hot tub would be behind the existing staircase, and if you look on the second page it's in shadow and will go on that space on the end of the deck. This would be a rear yard but for the bit of house that comes out on the other side, it's a minimal side yard variance and this where a hot tub wants to be off the back door next to the house and the relief is small.

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

Motion was made by Mr. Piering to close the application of **127 Jessup Lane LLC, 127 Jessup Lane (905-10-5-42)** seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

Motion was made by Mr. Piering to adjourn the meeting at **6:00 p.m.**; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.