

June 17, 2021

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, June 17, 2021, at 5:00 p.m. in the Municipal Building, located at 165 Mill Road, Westhampton Beach, New York.

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

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

Maeghan Mackie, Building Permits Examiner / Board Secretary

### **MINUTES TO BE APPROVED**

Motion was made by Mr. Piering to adopt the minutes of the **May 20, 2021** meeting; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

### **DECISIONS:**

- 1. Peter Price, 24 Library Ave (905-011-03-013)** Applicant requests variances from §197-5 A(1) for a proposed second-story addition on a dwelling with preexisting nonconforming side yard setback of 10.4 feet and a combined side yard of 29.5 feet where a minimum of 15 & 40 feet are required, respectively, and conformity with dimensional regulations are required for additions on nonconforming structures, and from §197-11 D(1) for a proposed covered porch with a front yard setback of 23.5 feet where the minimum required is 40 feet.
- 2. Paul Bekman & Janice Silvers, 16 Seafield Lane (905-014-02-002)** Applicant requests variance from §197-6 D for a proposed screened porch with a side yard setback of 20 feet where the minimum required is 30 feet.
- 3. Amy August, 9 Griffing Ave (905-013-03-009)** Applicant requests variance from §197-6 A(2) for proposed habitable space (exercise room over garage) in a detached building which is deemed not to be normal and accessory to principal single-family dwelling use.

### **HOLDOVERS:**

- 4. WHBH Real Estate LLC, 7 Beach Lane (905-011-03-010)** Applicant requests variances from §197-16.4 A to construct a proposed parking area partially located in the front yard where specifically prohibited, from §197-16.4 D to construct additions resulting in a proposed building of 9,330 square feet in gross floor area where the maximum permitted is 6,000 square feet with special exception criteria per §197-80.2, from §197-17.1 to construct a cabana building with a rear yard setback of 8.3 feet where a minimum of 30 feet is required, from §197-29 C(2)(c) to construct proposed additions representing an increase and/or extension of area devoted to a nonconforming use of a hotel/inn where specifically prohibited, and from §197-63 for a proposed vegetated buffer to the south 5 feet in width where a minimum of 10 feet is required.

James N. Hulme, Esq., appeared on behalf of the application. He submitted a site plan to the Planning Board today and that has to be reviewed for completeness to go to the Planning Board.

Motion was made to hold the application over of **WHBH Real Estate, LLC., 7 Beach Lane, (905-11-3-10)** to July 15, 2021; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

- 5. Egret Dune Corporation, 95 Dune Road (905-021-04-002)** Applicant requests variances from §197-8 D for proposed side yard setbacks of 10 feet where the minimum required is 20 feet with a proposed combined side yard setback of 20 feet where the minimum required is

June 17, 2021

50 feet, and from §197-35 C for proposed accessory pool & deck with setbacks of 10 feet where the minimum required is 20 feet.

No one appeared on behalf of the application. Ms. Mackie stated that the applicant submitted deeds to be reviewed.

Motion was made by Mr. Piering to holdover the application of **Egret Dune Corporation, 95 Dune Road (905-21-4-2)** to July 15, 2021; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

**6. Jodi Scherl, 452 Dune Rd (905-017-01-002.02)** Applicant requests variances from §197-8 D to construct a second-story addition with a side yard setback of 18.4 feet where the minimum required setback is 20 feet, and with a resultant combined side yard setback of 38.4 feet where the minimum required is 50 feet.

The matter listed as number 6, **Jodi Scherl, 452 Dune Rd (905-017-01-002.02)** on the Agenda was re-advertised and joined and discussed below with application number 12.

**7. Nancy Burner, 168 Beach Lane (905-015-05-005)** Applicant requests variances from §197-43 A(1) to erect driveway gates (fence) of 6 feet in height in the front yard where the maximum permitted height is 4 feet, and from §197-43 A(8) to erect driveway gates 4 feet from the street line where the minimum required setback is 20 feet.

**8. All Sunset Lawn LLC, 25 Sunset Lane (005-04-018.02)** Applicant requests variances from §197-1 for a proposed tennis court which represents an accessory structure/use on a lot without a principal single-family use where an accessory use must be located on the same lot as the principal use, and from §197-35 C for proposed tennis court setback of 11.6 feet where the minimum setback required is 15 feet.

James N. Hulme, Esq., appeared on behalf of the application. Mr. Piering asked if he worked on the C&Rs?

Mr. Hulme said he was working on them, but he was going to ask for an adjournment. He looked through records to see if there were any similar situations, and he found George Vickers office and the adjacent lot with a sign on it and that's accessory to a property with no principal use and I have some more research to do.

Motion was made by Mr. Piering to holdover the application of **All Sunset Lawn, LLC., 25 Sunset Lane (905-5-4-18.2)** to July 15, 2021; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

#### **NEW APPLICATIONS:**

**9. Brian & Blair Lichter, 371 Dune Road (905-018-02-001.03)** Applicant requests variances from §74-5 C(2) to construct of a nonmovable structure (dwelling) within the Coastal Erosion Hazard Area where specifically prohibited, from §197-8 D for a proposed side yard setback of 15.1 feet where the minimum required is 20 feet, also from §197-8 D for a proposed combined side yard setback of 42.3 feet where the minimum required is 50 feet, also from §197-8 D for a proposed rear yard setback to the crest of the dune of 40.7 feet where the minimum required is 75 feet, from §197-35 A for a proposed accessory attached deck/catwalk located in the side yard where specifically prohibited, from §197-35 C for a proposed rear deck setback to side property line of 15.2 feet where the minimum required is 20 feet, also from §197-35 C for a proposed deck setback to the crest of the dune of 13.1 feet where the minimum required is 75 feet, also from §197-35 C for a proposed pool setback to the crest of the dune of 19.6 feet where the minimum required is 75 feet, and from §197-63 P(1) for a proposed building area lot coverage of 48.7% where the maximum permitted is 25%.

James N. Hulme, Esq., appeared on behalf of the application, together with Mr. and Mrs. Lichter, and Rocco Lettieri. Mr. Hulme said their intent is to keep the pool, pool deck and the tennis court. They are not going to be removed and they are proposing the necessary relief to take the existing house down and construct a new house between the existing tennis court and existing swimming pool and deck and it was incorrectly described in my submission but correctly

June 17, 2021

identified on the drawings. The property to the Mean HighWater mark and top of the dune is 22,160.9 square feet and they purchased this in August 2020 and at that time an updated CO was applied for and received and everything on the property has a CO. The notice as read detailed the relief relative to the house and in the same manner the tennis court was not included and since it remains, I wonder if the deck and pool relief goes away because it's not being removed and replaced and we need lot coverage. We are removing the existing house and constructing a new house and it is proposed at 2,200 square feet as compared to the existing which is 2,100 square feet so it's being replaced in comparable size and reconfigured. One of the big issues is the lot coverage, which is substantial but as we have seen it is a direct result of the fact of the tennis court original construction which was not counted in lot coverage so the lot coverage as it exists without the tennis court is 47%; but the existing lot coverage not including the tennis court is 17% and since the house is getting slightly larger, the coverage increases but the coverage that all of the structures except the tennis court is 18.8%. If you discount the tennis court they are below the allowable 25% in that Zone for a house and tennis court. To note, the East side is compliant and will be afterwards but we are getting a few feet further from the Eastern property line; there is also a deck on the East which is a 4' wide walkway and that extends down the side of the house but it meets the requirements and because of the flood zone the house existing and proposed is over 18' elevation, so instead of going out of the house down to the Because tennis courts did not count in lot coverage, they built out the rest of the property in compliance with the Code and then was subject to the change in the Code which made them come out of compliance as far as lot coverage goes. As indicated in the notice we're constructing in the CEHA and between two existing structures, and as you did with another matter, we retained the swimming pool and that puts us in the CEHA and there's no other place to put this house and we will do whatever mitigation during construction as necessary. This will do nothing but improve the flood safety of this property and the adjacent. I would suggest the standard is the practical difficulty and that's the area variance analysis and contained in the written submission. The one thing we like to do as submitted is a study showing the existing and the proposed, which is to fit within at least on the South East and West the existing footprint and we're extending the house further to the street but won't affect any critical things like the Dune Crest setback and we are maintaining or increasing the side yard setback as they currently exist.

Mr. Piering said if you take the tennis court down the problems are solved.

Mr. Hulme said they did not want to.

Mr. Lettieri said they own the lot across the street as well.

Mr. Hulme said that's true and all it contains is a walkway to the bay.

Mr. Piering asked if it's buildable?

Mr. Hulme said no, it's not.

Mr. Piering said he doesn't understand Mr. Lettieri's point.

Mr. Hulme said he's trying to say that they control more property than just this and it will remain forever unbuilt.

Mr. Musnicki said you made a statement about the pool and the deck and you were hoping those variances would go to pre-existing, and I'd like clarification on that.

Mr. Piering said it has a CO for it.

Mr. Hammond said there were three (3) different plans for this, it was my error. They are keeping the deck and the pool and if it's appropriate those variances would fall away if they are remaining and not being reconstructed. If you're moving forward and filling in deck then there is new deck being built in the CEHA.

Mr. Hulme said the new deck is on the East, and we comply completely except for the 4' walkway with the side yard setback on the East.

June 17, 2021

Mr. Lettieri said they are removing the ocean side wedge, and the height of the deck is driving the height of the house.

Mr. Hammond said you were moving the house forward 13' so that means you will put deck in that portion, so that's within 75' on the Crest of the Dune so I don't know that all variances fall off.

Mr. Hulme said yes; if the Board's inclined to allow the portion of the new house to remain at 40' the deck is less impactful.

Mr. Pasca said the property across the street was mentioned as unbuildable, are there C&R's on that lot?

Mr. Hulme said I don't believe so, just as it's been looked at by the professionals.

Mr. Pasca said if there are not covenants, and if your clients are offering as mitigation that could be considered to confirm that lot will remain unbuildable.

Mark Hissey, Discovery Land Company 379 Dune Road says they are three doors down and they'd like to look at the elevations and our concern is how the visuals would affect their property and I can go to Mr. Hulme's office to look at them.

Mr. Hulme said that would be fine.

Mr. Lettieri said you can come to my office as well, we're reducing the height we are at 40' in height and there's no variance and the house now is 45' and then there are chimneys above that and there's an analysis that shows what is being reduced in height.

Mr. Hulme said the existing roof is 45' and the proposed is 39.95'.

Mr. Piering asked where they are located?

Mr. Hissey said they are three doors down to the West on the Ocean; they are Dune Deck Beach Club, 379 Dune Road. He will reach out to Mr. Hulme and Mr. Lettieri.

Barbara Rubinstein, 365 Dune Road. They are on the East of this and they object to moving closer with the side yard and we object to a larger swimming pool.

Mr. Piering said the swimming pool is going to remain.

Ms. Rubinstein said the side yard is coming closer to their home.

Mr. Hulme said they are not coming closer to their home; they are asking for a variance from 20' to 15'.

Mr. Piering said they are asking for 5' of relief, they are supposed to have a 20' setback and they are asking for 15' setback which is what they have.

Ms. Rubinstein said the current side yard is 15'?

Mr. Hulme said yes, it is 15.1' and we're proposing the same setback on that side.

Ms. Rubinstein said so the house won't be closer on the side yard to us?

Mr. Lettieri said yes, and it won't be as high as it is now.

Ms. Rubinstein asked how much lower the house will be?

Mr. Lettieri said 5.5' to 6'.

Mr. Piering said it will be lower, and not closer. And your concern was not moving closer to you than it is and a question about the pool, are there any other questions or comments.

June 17, 2021

Ms. Rubinstein said you answered our questions at the moment.

Mr. Hulme said they are moving part of the house from the Dune Crest.

Mr. Lettieri said this is similar to what we did at 505 Dune Road and we built a new house and scaled it back and stayed within the square footage and added a pool and built in the same footprint.

Ms. Rubinstein asked if they are moving closer to the Crest of the Dune?

Mr. Lettieri said no, we're moving back from the Crest of the Dune. Everything moves back and only the second story is 1' back from the Crest of the Dune; the first floor is 3' and the rest is 13' back and we're only adding 100 square feet to the new house compared to the existing house that's there so it's the same square footage but overall it's shorter, there aren't a lot of chimneys and it's more streamlined.

Mr. Piering asked Ms. Rubinstein to address the Board, and not the applicant.

Ms. Rubinstein said okay.

Mr. Musnicki said in fairness on that square footage, the overhangs are new and that's a benefit also.

Mr. Lettieri said it's the footprint, not roof overhangs. On the back of the proposed house the first floor a portion is 13' back and a portion on the second floor on the West that cantilevers over 2' on the proposed. So it looks like it's only retreating 1' but at the lower level it retreats 2' to 3' and on the East it retreats 13'. I'm doing the best I can leaving the pool and deck and cleaning the walkway to the beach cleaned up and straight and pull the house closer to the road and leaving the pool and deck and I moved the septic system and I am using a new one and installing it on the East side in the driveway.

Ms. Rubinstein asked if they are moving the sanitary to the East?

Mr. Lettieri said yes.

Ms. Rubinstein asked how close it will be to their property?

Mr. Lettieri said it is 27' from the property line on the East and the septic system is the new system where it filters the waters out and it's underground and the grade is high but I am able to install it with no retaining wall and I can get the fill up and put the new system in and that purifies the sewer and it goes in to a leaching field and there won't be a retaining wall which you would need if this was a regular system in the front yard.

Mr. Piering said that's a very large upgrade. He asked the square footage of the house?

Mr. Hissey asked who he should address his questions to?

Mr. Piering said the Board.

Mr. Hissey said the design of the new house, is that being pulled back from the Dune Crest on the beach side, and you're installing an IA System, has that been approved by the County?

Mr. Piering said it has to be approved by the Department of Health; and pulling it back from the Dune Crest, yes, they are doing that.

Mr. Lettieri said they are going back 13' and 4' and 3' back from the dune crest.

Mr. Piering said it's not what we ultimately want, but this is an interesting application to install the house and leave the tennis court and pool.

June 17, 2021

Mr. Lettieri said right now it's a square, and we're going to create a "T" and retreating on the ocean side. Eliminating deck on the ocean side and moving it with a clean straight line to the beach. The house is light and transparent with glass and gray in tone and it's lower so it will be more open.

Mr. Hissey said thank you.

Ms. Rubinstein asked when they do the construction?

Mr. Piering said with a variance request they are not allowed exterior construction during the Summer; so if it's approved in July theoretically they can't start outside construction until September 10.

Ms. Rubinstein said that's still the height of the season.

Mr. Piering said that's our rule and we do that with all of the variances, before that they could start and work any time they'd like. If they didn't need a variance, they could work all Summer, so there is some control.

Mr. Piering said you didn't try to cut the size down at all? The house is 43' wide.

Mr. Lettieri said I cut it down on the East side and it's not that wide, and by creating that I felt coming off the Dune was more important than the side yard.

Mr. Hulme said if you look at the neighborhood, our house is comparable in size to the houses on either side of us.

Mr. Piering said you are saying you can't do this any other way without removing another structure and move it all forward?

Mr. Hulme said that's correct.

Mr. Lettieri said it's boxed in.

Mr. Piering said you're saying it's the character of the neighborhood and there shouldn't be any adverse effect so it's not changing. I went to look at it to make sure it was a working pool. I think I have covered all of my questions. He asked if there were any other questions or comments.

Ms. Cea said with the tennis court, you said its 47% and without it its 17% and with the new square feet its 18%?

Mr. Hulme said yes, that's correct. The tennis court was a critical feature in purchasing this home.

Mr. Lettieri said my overall goal, we're not going to sugar coat it the house is ugly as it exists and doesn't add any value; the height its all an eye sore and I live in this community and have to see things like that and I try to rectify them for the future for the Village's overall improvement.

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

There were no other questions or comments.

Mark Hissey wished the applicant luck and welcomed them to the neighborhood.

Motion was made by Mr. Piering to close the hearing of Brian and Blair Lichter, 371 Dune Road (905-18-2-1.3) for a determination; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

**10. Jamandaly LLC, 33 Beach Lane (905-011-03-019)** Applicant requests variances from §197-6 D for proposed side yard setbacks of 11.8 & 14 feet where the minimum required is 30

June 17, 2021

feet, and also from §197-6 D for a proposed combined side yard setback of 25.8 feet where the minimum required is 70 feet.

Heather A. Wright, Esq., appeared on behalf of the application. This property was purchased in May 21018 and in the R1 Zoning District; the property is non conforming to lot area and lot width; the lot currently has a two car garage and we're here today to request two variances for side yard relief from North and South and total side yard relief. To begin, I want to talk about the lot and the character of the neighborhood; we believe it won't have an undesirable impact, the lot is constrained in its width and to give perspective without a variance we would be entitled to an 18' wide home and we tried to do the best we could with the lot size we have. Some of the lots on Beach Lane are larger, and facing Beach Lane and there are a few smaller lots and our proposed development is consistent with them. 13 Beach Lane was granted similar variances due to lot width constraints, and 15 Beach Lane as well. Without a variance, it's difficult to build a single-family home so we can't achieve what we're trying to do without variances. We were careful in our design and my client owns 37 Beach Lane which is the adjacent lot and we positioned the smaller setback on that side and we put the proposed driveway on the other side closer to 33 Beach Lane and the remaining structures conform to the current zoning requirements. The foot print is 2,800 square feet and we are well under the allowable 20% lot coverage; we're seeking side yard and total side yard relief.

Mr. Piering said I look at this and I see the house is 62' wide.

Ms. Wright said that's correct.

Mr. Piering asked why its positioned this way, you have an 88' wide lot and obviously realistically you need side yard relief and we figure out the percentage we can come up with round figures where you should be as far as the side yard setbacks and ask for reasonable relief. This house is wide, and you have plenty of room going back you did a great job putting the accessory structures in the rear yard you can design this and turn it 90 degrees and change the design and have the same size house and have a significant difference in the side yard setbacks.

Ms. Wright said they explored that option, they are trying to avoid the rail road type appearance and the home being long. We also thought a house configured that way would be less desirable to the neighborhood. Being next to a pool or accessory structure, now you're facing part of the house if you pull it back. We were careful to have ti face Beach Lane and we looked up and down Beach Lane and the other homes on Beach Lane follow this design.

Mr. Piering said he understands that; but in doing the math this is a 17.5' side yards instead of 10' and 11' and 14' and total side yards you can increase. This could be a 50' wide house an di don't think anyone would call it a rail road car house. I think with a narrow lot you have to make concessions to the size of the house; this on a 150' wide lot it would fit perfectly and you have something half that and I think you can reduce and minimize the variances.

Ms. Wright said okay, she understands what he's saying. They will explore pulling it back, and it will change the appearance of the home. They will see what they can do to minimize the extent of the variances.

Mr. Musnicki said he agrees with Mr. Piering said the Zone is 150' wide lots, and you only have 88' that's a 40% deficiency and you apply your deficiency to that you arrive at 42' of combined side yards to work with and that's the width of your house and things are balanced. You really have to make a strong argument its not substantial and that the benefit can't be achieved in another manner, and I'm not hearing that and its self-created.

Ms. Wright said okay, mathematically it is, but the fact that it's only 88' wide in terms of self creation the lot size is only 88' and I hear what you're saying and we will go back to our options and present them at the July meeting.

Mr. Piering said that's a great idea.

Gregory Blum, appeared in opposition to the application. He and his wife live at 29 Beach Lane and their home is under construction, and we thought there would never be a house built on this lot. The use and enjoyment part of our house abuts their property line and we don't want to be

June 17, 2021

obstructionist and I reached out to the property owner and I don't know that we found a conclusion, but given the size of the house being proposed and its position our use and enjoyment is impacted and I submitted a letter to the Board and we're against this position of this house given the fact that the homeowner owns the adjacent lot so it would seem if they want to impose the use and enjoyment, why not move the project closer to the existing house and perhaps they could put the driveway in the center and a more modest home can be constructed.

Mr. Piering said that's what we're trying to accomplish today too. He is curious why they'd think no one would develop this lot.

Mr. Blum said when we researched the zone and we understood what a buildable lot was and we knew they owned both lots and we thought they'd keep it vacant and we were wrong. It was just surprising to us that they are proposing a house.

Mr. Piering said he has their letter, and you heard that they are going to reappear in July.

Motion was made by Mr. Piering to holdover the application of **Jamandaly LLC., 33 Beach Lane (905-11-3-19)** to July 15, 2021; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

**11. Barbara Schnitzer, 423 Dune Road (905-017-05-030)** Applicant requests variance from §197-35 C to legalize a deck extension constructed 9.34 feet from the property line where a minimum of 20 feet is required and from §197-10 B(1) for a resultant building area lot coverage of 26.2% where a maximum of 20% is permitted.

Diane Herold appeared on behalf of the application. They submitted a revised survey and the addition is only 3.62' and that's only a 7% increase so most of the percentage over the 20% allowed is already existing. The deck has existed since 2004, and you realize we're seeking to cure a violation that they received.

Mr. Piering said they were just waiting on the survey.

Ms. Herold said that's correct.

Mr. Piering asked if there were any questions.

Motion was made by Mr. Piering to close the hearing of **Barbara Schnitzer, 423 Dune Road (905-17-5-30) for a determination**; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

**12. Jodi Scherl, 452 Dune Road (905-017-01-002.02)** Applicant requests variances from §197-8 D to construct a second-story addition with a side yard setback of 18.6 feet where the minimum required setback is 20 feet, and with a resultant combined side yard setback of 36.1 feet where the minimum required is 50 feet.

James N. Hulme, Esq., appeared on behalf of the application, together with Saul and Jodi Scherl. Mr. Hulme said they finally got to the correct survey, and it shows based on their proposal shows two variances, one is a side yard variance in the North East corner and a total side yard of 36.1' instead of 50'. The first thing is that the 18.5' on the NE corner is really just to get a square corner on that side of the property, so that becomes 20' quickly.

Mr. Piering asked if the survey was submitted May 26?

Mr. Hulme said yes, that's correct its last dated May 21, 2021. The one variance in the NE corner of the house 18.6' it was quickly pulled away from the property line and get to 20' for that part of the house. The Eastern part is setback 36.3' and there was confusion about whether it extends out over the entire first floor and it does not as shown on the survey. The proposed addition is 20.3' from the Western property line and the total side yard variance is larger because the building inspector concluded we have to compare closest to closest. With the 17.5' it becomes 20' as well and none of the proposed additions are any closer than 20' on that side of the house. In the context of what we're proposing and based on the existing you want the second floor to sit over the first floor and I think this is the minimum relief and the most modest relief.



June 17, 2021

We have a few letters and comments and I want to address them. The neighbors are trying to insist that the prior variance created a special condition, but as the Village Attorney explained last month it's not a condition or unique to this property it's just something in all of the decisions, and it says that the variances you received are what you are approved for and now we're seeking new in accordance with the Law. As to the balance of their opposition, they provided to the Board information on 21 properties in the vicinity of the existing home, only 5 of them are in the R3 Zoning District; the balance in their opposition are in Pond Point and that's not really a neighborhood to neighborhood comparison; there are division lines and different standards between the two districts. For the most part, those comparisons are not appropriate. Of the five that are within the R3 and are neighbors to the East, four are already two stories and one of them is not. Character of the neighborhood is two story homes and all of the properties including our own is well below the lot coverage requirements for the zone we're in and another comment is that the house is large, and our lot is larger than 3 out of the 5 comparable lots and there's no analysis in the opposition as to what the buildout may be on them. The houses may be smaller doesn't mean they have to be we're looking for minor relief to construct a second story and the bulk of the proposed structure meets the requirements of the zoning code. They tried to suggest the number of bedrooms, but we're not proposing more than allowed by the Village Code and we will need approval for a sanitary system which services the home and if we don't get the BOH permit for that system then we can't build the house. The system proposed is a new IA system, so rather than being a detriment to the environment I suggest it's a positive, and the existing system could be very old. In any event, this addition as proposed is appropriate for the size of the lot and neighborhood and I seek your agreement by granting the variances we're seeking.

Mr. Piering said when I look at this, if this property was vacant would you be seeking these variances?

Mr. Hulme said I don't think we'd need more than this. It's not a vacant lot, it has an existing home on it.

Mr. Piering said I see everything's conforming except for what you're requesting, so if this was vacant and you wanted to build a two story home, you don't need lot coverage or height, front or rear yard setbacks and you would just need the side yard setbacks we're discussing. It was raised, and a question I looked into was about boot strapping and building one variance to another, and I backed it off and looked to see if this could be done if it was vacant land.

Mr. hammond said combined and side yards are typical on dune road and the lot is a strange shape and we wish we had 20,000 square feet of upland, the lot is not small it's just oddly shaped and the previous combined was 40' and now its 36' and it is increasing but they are smaller points. The 18' in the rear is the odd shaped vertex but it doesn't seem like a lot.

Mr. Piering said he understands its vacant, he was just looking at it that way.

Mr. Hulme said he agrees; they could build this house brand new based on the shape of the lot.

Mr. Piering said they received a lot of information, and he has not had a chance to review it all but it seems like this house could be built and they've covered a lot of it. He asked if there were any questions from the Board.

There were no questions from the Board.

Joan Morgan McCGivern, Esq., appeared on behalf of the application. She represents 450 Dune Road and 448 Dune Road and they have objected to the application, and I understand two other neighbors have submitted letters; Karen Merritt and Denise Zacchero and we think this is substantial and the new one is a 27.68% variance from the combined side yard setbacks and we feel that they are bootstrapping off the previous decision which recognized then the substantial variances. For the purposes of this hearing, I'd like to share my screen to show the neighborhood analysis that we did of the houses facing Pond Point of which the subject property faces Pond Point. They looked at the subject properties and adjoining properties and houses that face along the bay and asked the sizes of the houses and their heights. We feel that you are just focusing on whether they are two story or not misses the point, we're talking about the size of the house. The average size of the house is out of character, they are proposing 4,000 square feet and that's not

June 17, 2021

in character and the neighborhood is the houses that face the cove. Two of the factors you're supposed to consider are the change in the neighborhood and we think clearly 4,002 square feet would produce an undesirable change in the neighborhood and then among the other factors are the impact on the environment the house sits on wetlands and we feel the additional four bedrooms would impact the environment. It's not enough to say that if the BOH doesn't grant it, there's no worry and kick the bucket down the road. You have an independent obligation to assess the five factors to consider the impact on the environment and I know some of the neighbors are on the zoom call so I'd like to allow them the opportunity speak.

Mr. Musnicki said before you move forward, I don't want to miss this point. I am glad Mr. Piering raised before the fact that this house possibly could be built, if it were a vacant lot without variances; it's a two-story house with bedrooms and bathrooms and could be built without variances.

Ms. McGivern said it's out of character with 8bedrooms.

Mr. Musnicki said we're not looking at that; we're looking at side yard variances.

Ms. McGivern said the prior variance allowed them to convert the garage and that's why the house is so wide to begin with.

Mr. Musnicki said they chose not to build over that space.

Ms. McGivern said they already received substantial variances.

Mr. Musnicki said we can only look at the application on its face value today.

Ms. McGivern said it's a large house and out of character with the neighborhood.

Mr. Musnicki said the R5 District, pond point is not the neighborhood. Those homes are really cottages and small lots and this is a much larger property in a different zone and if this were vacant a pretty good size two story home could be built. You couldn't argue that.

Ms. McGivern said it's excessive.

Mr. Piering said we can't compare to Pond Point.

Ms. Porges said this is the largest home in that stretch without a second story, it's not about the second story the reason it's so large is because it does use more land usage than the other homes. It uses close to 25% and that's why it's so wide so the previous 2014 variance which was substantial allowed it to be a sprawling large home which is set on the Cove; it doesn't front on the road and sits on the cove in the midst of bungalows and two-story homes which are less than the square footage of this home. I would like to say in 2014 we relied on the wording in that decision, and the board noticing it was substantial. I have spoken to neighbors in Pond Point and some may not have received letters, but they are upset that such a large home will be there and similar to the hotel in town which is 8 bedrooms like this home. There are swans that nest nearby. I understand the zoning, I just ask you consider the fact that the home does not border Dune Road and is on the Cove. This will be a scar upon the neighborhood.

Mr. Musnicki said that was a well put argument, but it still goes back that without variances, they could build a two-story home.

Ms. Porges said it uses a lot of the lot usage as allowed in 2014. My home is 2,000 square feet and my neighbors are smaller than 2,000 square feet so this is out of character with the homes and the ones on the Cove, it will be double the size of the other homes in the neighborhood.

Mr. Hulme said it's a larger house, but also on a larger lot and it not exceeding any standard is the fact that the lot coverage is less than 20%. There is confusion because the Board granted a lot coverage variance when the original house was submitted, but I don't think it was necessary to grant that and I think they looked at the DEC definition of lot coverage as opposed to the Village Code and so the existing house as documented in the surveys has a lot coverage of less than 20% and we're not adding to it at all. And in fact, the second floor is stepped back

June 17, 2021

substantially on the West side of the property. To the extent of a visual encroachment, we're not encroaching in that direction. Pond point is not the R-3.

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

Motion was made by Mr. Piering to close the application of **Jodi Scherl, 452 Dune Road (905-17-1-2.2)** for a determination; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

**REQUEST FOR EXTENSION:**

**13. Traynor, 91 Old Riverhead Road (905-2-1-7.2)** Applicant requests a one year retro active extension of their May 21, 2020 Board of Zoning Appeals determination up to and including November 21, 2021, as the applicant had to finalize their site plan approval with the Planning Board and other involved agencies.

Motion was made by Mr. Piering to grant the extension request for **Traynor, 91 Old Riverhead Road (905-2-1-7.2)** up to and including November 21, 2021; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

Motion was made by Mr. Piering to adjourn the meeting at **6:41 p.m.**; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.