

November 18, 2021

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, November 18, 2021, at 5:00 p.m. in the Municipal Building, located at 165 Mill Road, Westhampton Beach, New York.

PRESENT: Gerard Piering, Chairman

Joe Musnicki  
John Wittschen  
Ellen Cea

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

Maeghan Mackie, Building Permits Examiner / Board Secretary

ABSENT: Jim Badzik

Motion was made by Mr. Piering to adopt the minutes of the **October 21, 2021**, meeting as written; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 1 absent.

### **MINUTES TO BE APPROVED**

Motion was made by Mr. Piering to adopt the minutes of the October 21, 2021 meeting; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 1 absent.

### **HOLDOVERS:**

**1. 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. They did not submit anything new, but they did submit a more legible chart for the GFA comparison and they are within 94 square feet or so, and there are due to changes in construction requirements, but the numbers still stand and I thought it would be useful to recap where we've been. The overriding factor from our perspective, there's an existing facility whether it's the main building or supplemental that has the capacity for 22 units, but we're only proposing 16 and that's a compelling fact. We're removing from the premises the old dilapidated structure in the rear and in any event, that necessitated a number of variances and I wanted to discuss them. One is an area variance and they are the variances they are seeking under 197.16.14 197-17 and 197-63; the first is the parking in the front yard and we've modified that and it's only the handicap spots in the front yard now. The second one has to do with the GFA of 6,000 square feet and all of the existing structures are over that as well, and the balancing test and the benefit to the applicant and community in reducing the number of buildings retreating and the uses they are putting it to mitigates in favor of that variance. The cabana has been eliminated and the pools been rotated so we no longer need a variance to that and the 5' buffer is what it is, we've talked to the neighbors and we believe the Southerly neighbor is satisfied with the plan and I am not certain what the northerly neighbor thinks, but we would accommodate reasonable impositions by this Board or the neighbor as far as increasing the density. The other is the 197-29.C. variance and there's a preexisting non-conforming use and I don't think I'll revisit all of them, but obviously the one of great importance and I know Counsel has given their opinion and that requirement can't be varied. The concept that a restaurant is permitted in the HC and our analysis of the GFA as it pertains to 197-29.C. has removed the restaurant before and after and that's how we get in to close proximity to the before and the after. Our desire as it pertains to the restaurant is not to have it open the general public, but to the users of the hotel and I don't think that changes the

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character of the restaurant and I don't the neighbors would want it open to the public and that feature as it would impact the parking. Right now, we will accommodate the people staying at the Inn and the parking lot that we provided for and if this were a restaurant parking may become an issue and so we don't want to get in to that and we don't think the Village wants that and I don't know if this is the place to have that discussion. My recollection is that you wanted to give that concept some thought.

Mr. Piering asked about the outdoor bar?

Mr. Hulme said that is also a permitted use.

Mr. Piering asked if that's private or public?

Mr. Hulme said we are proposing it to be open for the public.

Mr. Piering asked how parking will be affected by that?

Mr. Hulme said we accommodate the parking requirement in our parking plan for that feature.

Mr. Musnicki asked him to explain the restaurant portion, can it come or go off of this plan?

Mr. Hulme said if you're looking to continue a non-conforming use you can't increase that; a restaurant is permitted in the HC so it's not part of the non-conformity so it shouldn't be counted either way because it's permitted, we're not trying to continue a non-conforming restaurant.

Mr. Musnicki said it's not much of a benefit regardless of whether it's public or not and you mention that the GFA is a result of the new building codes?

Mr. Hulme said yes.

Mr. Musnicki asked if the GFA increase is due to building code.

Mr. Elbar said yes, it's due to the compliance for ADA, clearances and that's what's enlarged the square footages.

Mr. Pasca asked if there's any way to quantify that, how much is increasing for Code compliance.

Mr. Elbar said he can look into it; there was an exterior staircase that's not good, and we're creating a new one that's fully enclosed and compliant and fire rated.

Mr. Hulme said we will provide that number, and I think it's more than 94 square feet.

Mr. Pasca said there's only an 80 square foot delta, if the Board accepts the restaurant argument and its an argument to make if you can quantify the code compliance question.

Mr. Hulme said we can and we will do so.

Mr. Piering asked if there were any other questions. He told Mrs. Davis who submitted a letter to our offices today that she has to sign it.

Cindy Davis, 1 Beach Lane signed the letter she submitted today.

Mr. Piering asked Mr. Hulme if he saw the letter?

Mr. Hulme said the room count is what it is, and there's a boarding house and another structure and traditionally it was rented but there's a room count and there's no restriction to renting it out and we can stand by our room count.

Mr. Piering asked if he looked into the use variance?

Mr. Hulme said yes, there's an impact to the uniqueness and economics and you have to analyze the permitted uses in the zone and there area a lot in the HC; from single family residences, to

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grocery stores, to restaurants and it seemed to be a difficult challenge to make a use variance case. But, I did look into it. Based on what we paid for the property, what's its worth and we aren't sure we can meet all three factors.

Mr. Pasca said we did discuss the final number, but can you repeat your position on the decks.

Mr. Hulme said they are not part of the GFA and they are outside and there's more deck space now than there was before, and they don't touch upon or increase the ability to use the premise they enhance a user's ability to use the room but doesn't increase the load on the property because of the decks.

Mr. Piering said there was a question about decks overlooking a neighbor's yard, and has that been resolved?

Mr. Hulme said his client has not heard back from the neighbor and can discuss it further and he presumes its on the North side.

Mr. Piering said he had no other questions.

Mr. Musnicki asked if anyone in the public wanted to speak?

Mr. Piering asked if Mrs. Davis if she has any questions.

Mrs. Davis said her only issue is the square footage from the cottage that's a residence in the back that was used to rent room and largely it was used for staff and students, and the owner was on the premises and it was quiet building used temporarily, and they keep saying the number of rooms has been reduced and it's increasing and doubling and they are going to be bigger. It's just a dramatic increase of the intensity of the use when you add a restaurant, pool, bar and the rooms.

Mr. Piering thanked Mrs. Davis. He asked Mr. Hulme to address Mrs. Davis comments. Is that going to be an increase? You had 22 and you reduced to 16 and how many were in the cottage.

Mr. Hulme said 14 were in the building were preserving, and we're going to 16 and were eliminating 7 but we only need two.

Mr. Piering said you're increasing from 14 to 16 un the main building?

Mr. Hulme said yes, and eliminating the cottage.

Mr. Wittschen asked the number of seats at the bar?

Cory Gluckstall said that there are a number of seats at the outdoor bar and the BOH will impose the number and the outdoor bar is only seasonal as well; if we want an exact number of seats, it's 4 plus one handicapped seat and they are driven by the BOH.

Mr. Wittschen said so it's limited?

Mr. Gluckstall said yes.

Mr. Wittschen said it's only going to be used in the Summer?

Mr. Gluckstall said we have four seats and one handicapped seat, so that's it.

Mr. Pasca asked if SEQRA has been done with the PB?

Mr. Hulme said yes.

Mr. Pasca said do you have enough information, or do you need to have the information about the code compliance presented to vet at the public hearing or should we close it upon receipt of the same?

Mr. Piering said I would like it done at the public hearing.

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Mr. Hulme said okay.

Motion was made by Mr. Piering to holdover the application of **WHBH Real Estate, LLC., 7 Beach Lane (905-11-3-10)** to December 16, 2021; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.

**2. 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 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. She knows that the Board wanted to hold this over to review the matter for additional time, and I am in receipt of Mr. Haefeli's submission and I hope you received my response and I don't know what else to say other than we believe, in our original request which was for 11.8' on the Southerly side and 14' on the Northerly side and we heard what the Board had to say, and we heard what the neighbor had to say and we increased the setbacks proportionate to the existing lot width and we presented a plan which is very much in keeping with the character of the neighborhood and many lots are non-conforming so they don't need relief. We have a non conforming lot with respect to lot width and the other lots have received relief from this Board so we believe what we're proposing is in keeping with the character of the neighborhood, the design and orientation. It's a modest footprint and we can't have a basement and it will be FEMA compliant and we're removing a non conforming garage which was on the property line and it meets the elements of the five part test and I'm happy to answer any questions you have,

Mr. Piering said we read Mr. Haefeli's submission and we did our own research and we pulled the decisions to review, and one was to just square off a screened porch and that's tremendous different than building a brand-new house. The other was rebuilding a house where it was, so those are different.

Mrs. Wright said yes, and the decision was based on the facts and I pointed them out because the lot widths are non-conforming and the setbacks are less or consistent with our proposed setbacks. I cited them because they support the character of the neighborhood, each has to be decided on by the facts and circumstances. 13 Beach Lane is 66' wide and the Board did grant that the house could be replaced in its current setbacks which were its original setbacks; how much more non conforming do you want to make it, it was 11' on one side and 13' on the other and when you look up and down beach lane the orientation and the lot width being non conforming they all have non conforming setbacks.

Mr. Piering said when you go through the five part test, that the first one. Can the benefit be achieved by another method; it can be redesigned and have a very nice house with much less relief needed.

Ms. Wright said it would require relief and you have to balance that with the CON factor, if you constructed it East West it wouldn't be consistent and it would face the Northerly neighbor which is much larger than what was there and no screening, and now we'll design an East West house and stare into their yard.

Mr. Piering said I didn't suggest an East West orientation, you can redesign this house and front on Beach

Ms. Wright said to meet the clients needs a 2,300 square foot print is not huge, and its smaller than 52' we're reducing it significantly and what they need to accommodate their family.

Mr. Piering asked if the variance request is substantial.

Ms. Wright said the lot width is reduced from the required 150' and we only have an 88' wide lot and we reduced the setbacks to be proportionate. This is a buildable lot.

Mr. Piering said it is a buildable lot, but it's undersized.

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Ms. Wright said she believes they meet the five part test, I don't think it will have an adverse impact, it's a benefit to the community. It's FEMA compliant we're removing a non conforming structure, it'll comply with the building codes and improve the neighborhood.

Mr. Piering asked if they are seeking 19.2' on the North and 16.8' on the South side and that's the best you can do?

Ms. Wright said correct. She understands what the Chairman is saying, and the way they look at this is there is a lot that's 88' wide what would be reasonable to ask for, if that's 41% less than 150' required we reduced our setbacks proportionally to that. What is the Board looking for, 1 foot or 2 feet is arbitrary and we heard what the Board said and we came up with a formula and we increased the setbacks by 10 feet.

Mr. Musnicki said to answer her question, what the Board wants but I have a general idea the lot is 88' wide and in order to get your footprint that you'd like to get if you built a house that's 34' wide by 80' long that would get you the footprint you want, as far as the square footage and you get 28' on the north and 26' on the South and now you mention when you look up and down Beach Lane you don't see that type of a house profile, I disagree with that. There are a number of houses that are more narrow and more deep, there are quite a few on Beach Lane. The character of the neighborhood, the neighborhood is not the two houses you cited, it's Beach Lane and that's the Estate area and there are a lot of big estate homes on that road so that's the character of the neighborhood in my view. One of the biggest differences with the two variances, there is no opposition whether in our meeting room or by letter, no one opposed those and now you have opposition that we have to hear. The biggest thing, there are other means you can achieve what you want to do. You came in with a big ask from the getgo and then you backed off and yes, it was on the advice of this Board but you have an overall lot deficiency of 12% and a large parcel so you're not that far off with overall lot and you can stretch that house out and you have almost ½ acre with your plan behind it there's plenty of room. You have some things you can change to bring it closer to compliance.

Ms. Wright said to make two points, I disagree that there are that many homes with that orientation and the Estate area is key, because I think that most of those homes are on larger lots but they have the North South presentation to give it the Estate home and we can turn the house or stretch it out, you're saying 34' x 80' and 34' is a very narrow house and that to my clients is not in keeping with the character of the neighborhood. I appreciate your comments, I just disagree with them.

Mr. Musnicki said it's a blank slate, and you have what you have. We'd like to have it as big as possible but it can't always happen.

Ms. Wright said 13 Beach Lane was a blank slate, and they could have stretched theirs out also and I point that out because it goes to the five factors and the character of the neighborhood.

Mr. Musnicki said it wasn't a blank slate, it was pre-existing and they built in the same footprint and they had no opposition.

Ms. Wright said they demolished the house in 2019 and in 2020 they rebuilt it in the same footprint, but it doesn't change the fact that it was a blank slate.

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

Lisa Kriegel said she wanted to add a personal note, my sister lives in a home in Massachusetts and it's extremely narrow and it feels that the proposal made to shrink the width will create that affect and its not something that appeals to us. We have a large family, and we want to spend time here and its not going to suit our needs. The other thing I wanted to emphasize regarding the side, I want to remind the Board we had a beautiful hedging and screening and with suitable screening that the neighbors had we can be oblivious to one another and the setbacks can be much less relevant because we didn't know they were there before they took down the screening and if they were reinstated we wouldn't be an imposition to the neighbors.

Mr. Musnicki thanked Mrs. Kriegel.

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Richard T. Haefeli said he will rely on his submission, he has nothing else. There was a house on this property they took it down, 13 Beach Lane and they took the house down and the same setbacks were used. I don't believe you can grant the variances they are seeking, but they should be more in proportion with what was there.

Mr. Piering asked Ms. Wright if she wanted to close the hearing.

Mr. Kriegel said it seems clear the neighbor is an issue, other properties could get variances without opposition, and you made a point that there's opposition. Is that correct?

Mr. Musnicki said no, it's not.

Mr. Kriegel asked how the neighbor comes in to play.

Mr. Musnicki said that's a secondary part of this, we operate as a Board and give a decision on its face, if there's opposition from neighbors or a neighbor we take it into account.

Mr. Piering said that's one of the five factors that we look at.

Mr. Kriegel said okay.

Mr. Piering said it's right in the first section of the five factor that we take into consideration and that's what Mr. Musnicki was talking about.

Mr. Kriegel asked if there's a detriment to the neighbor?

Mr. Piering said that's what they are saying.

Mr. Kriegel said if it's important, and there's something the neighbor wants us to we would listen to see if it makes a difference and if we hold off and speak to the neighbor would that help?

Mr. Musnicki said no. These variances run with the property and the neighbor or you may move so the decisions we make today, they live with the property.

Mr. Kriegel said if my wife agrees to reduce by a few feet will that make a difference?

Mr. Piering said we want to minimize the variance. These are substantial. The plot is small, maybe you should build a smaller house. These are the things we have to balance.

Mr. Kriegel said reducing a big structure on the property line is a plus for the Village and neighbor, I think that's an important factor and if build a long narrow house we'd keep that garage because it would benefit a long narrow house.

Mr. Piering said that was brought up and that's part of the record, removing that non conforming structure. Our job is to minimize the variance, to reduce it yes that will help but the side yards are still tight. I know it's a small plot, and the house is 52' wide so you do have wiggle room without making it a railroad car because I understand that too,

Mr. Kriegel said that's their concern.

Mr. Piering thanked Mr. Kriegel. He asked Ms. Wright if they want to hold it over, or close it for a decision.

Ms. Wright conferred with her clients, and asked to hold the application over.

Motion was made by Mr. Piering to holdover the application of **Jamandaly, LLC., 33 Beach lane (905-11-3-19)** to December 16, 2021; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 1 absent.

**3. WHB Development Partners LLC, 107 Old Riverhead Road (905-002-01-019.05)**  
Applicant requests variances from §197-1 to construct a proposed automotive service station accessory convenience store building of 4,872 square feet in gross floor area where the

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maximum permitted is 3,000 square feet, and from §197-17.1 for a proposed rear yard setback of 30 feet where the minimum required is 50 feet.

James N. Hulme, Esq., appeared on behalf of the application. He requested to hold the application over to December 16, 2021.

Motion was made by Mr. Piering to holdover the application of **WHB Development Partners, LLC., 107 Old Riverhead Road (905-2-1-19.5)** to December 16, 2021; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 1 absent.

**4. Keith & Ellen Fell, 12 Bayfield Court (905-010-04-036.05)** Applicant requests variances from §197-1 for a proposed partial conversion of detached garage into cabana with plumbing facilities totaling 1,243 square feet where the maximum accessory structure permitted with plumbing is 200 square feet.

Jason Ormond, Architect submitted a written request to withdraw the application without prejudice.

Motion was made by Mr. Piering to withdraw the application of **Keith & Ellen Fell, 12 Bayfield Court (905-10-4-36.5)** without prejudice; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 1 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 6 & 10 feet where the minimum required is 20 feet with a proposed combined side yard setback of 16 feet where the minimum required is 50 feet, from §197-35 C for proposed accessory deck with setbacks of 6 & 10 feet where the minimum required is 20 feet, and also from §197-35 C for proposed accessory pool with setbacks of 10 feet where the minimum required is 20 feet.

Hugh Merle, Esq., submitted a written request to holdover the application of **Egret Dune Corporation, 95 Dune Road (905-021-04-002)** to December 16, 2021; seconded by Ms. Cea and unanimously carried 4 ayes, 0 nays, 1 absent.

#### **NEW APPLICATIONS**

**6. Carriage Hill Developers Inc, 15 Adam Lane (905-003-02-001.01)** Applicant requests variance from Village Law §7-736(2) to construct a dwelling upon a parcel that does not have direct access to an existing or officially mapped state, county, town or village highway where required for the issuance of a building permit.

Frank A. Isler, Esq., appeared on behalf of the application. As you will see on the survey we submitted there is an easement across the adjacent property that provides a common driveway to Adam Lane and this is an application that you don't see that often and it is a creature of statute where a person has a property that does not have access to a road or highway and a building permit cannot be issued for that reason and as a result there's a remedy which is to come to the BZA and asked for a variance and its referred to as an area variance in the statute and I know you're used to different area variances, but we do have the standards of area variances applied to this application and when you look at them here I think you'll find every one of them is satisfied.

Mr. Wittschen said you don't get this you can't build the house?

Mr. Isler said yes, that's correct. Do you want me to make a full record?

Mr. Wittschen said no.

Mr. Pasca said the main point is to look at the access they are proposing to make sure you're comfortable and it provides sufficient access for whatever that means.

Mr. Wittschen said its okay.

Mr. Piering thanked Mr. Isler.

Mr. Hammond said we have a boiler plate condition prohibiting work in the Summer months and maybe we can discuss if its appropriate and not seeking area relief for the structure.

Mr. Piering said we can make that part of the decision. We have conditions in our decision that we prohibit outside work during the Summer so we have to decide if that will be applicable to this. Do you have a position on that?

Jim Behringer, Carriage Hill Developers, said they developed the neighboring lot.

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Mr. Piering said when we issue variances this condition is in place, so we do protect the Village and its standard and this is a unique situation.

Mr. Isler said this property is not close to another home and to the West is vacant property so perhaps you can waive that condition.

Mr. Musnicki said to make that decision, what is the scope of this work and the time table and the easement.

Mr. Pasca said a variance triggers that condition, to have a small work along the easement trigger that condition preventing construction could be disproportionate to the relief requested.

Mr. Wittschen said when will you start construction?

Mr. Behringer said as soon as we get a permit.

Mr. Hammond said weekends start in May, and weekdays in July and August for exterior work.

Mr. Piering said it's only exterior work.

Mr. Behringer said the landscaping will be in the Summer.

Mr. Isler said to throw another factor and I appreciate why you have to deal with this and the property is compliant with zoning and it applies to where you're varying setbacks and in this if it weren't for access, we would not need any variances in terms of building a house The permit is compliant with zoning so in the spirit of the condition with respect to construction we'd ask that it doesn't fall on this application and as I said, without this access we wouldn't need a variance.

Mr. Piering said I have never seen an application like this.

Mr. Isler said I have done a few in Southold and it is very rare that it happens. The lots over an acre and compliant, but we ask you exercise your discretion with the condition.

Mr. Piering said they will.

Motion was made by Mr. Piering to close the application of **Carriage Hill Developers, Inc., 15 Adam Lane (905-3-2-1.1)** for a decision; seconded by Ms. Cea and unanimously carried 4 ayes, 0 nays, 1 absent.

**7. Brad & Jane Saltzman, 519 Dune Road (905-016-02-005)** Applicant requests variances from §197-35 C to legalize a pool with a side yard setback of 18.6 feet where the minimum required is 20 feet and with a setback to the crest of the dune of 17.2 feet where the minimum required is 75 feet.

Keith Archer, Esq., appeared on behalf of the application. They are proposing a self contained spa like tub on the South side of their residence; and he has Aram Terchunian with him tonight. In 2011 the applicants obtained variances from this board, including for construction with 75' of the CED, on the existing pile and support system and that was completed and CO's were issued and since then there were two items of work completed in the issue of full transparency without permits, a 7.5' x 18.5' extension added to the deck on the South side of the house and the water well 39" 8' x 13' was installed and inserted into the deck and flush with the top of the deck and submitted with this plan and they did not believe they needed permits because it's self contained and in the deck. The waterwall and that's what it is called is a spa and there's no waste system, its heated and its closed in the Winter and not drained and self contained you can sit in it like a hot tub. The applicants are requesting an approval to maintain the existing water well and as indicated in the denial letter 139 square feet of decking was added without a permit and they are proposing to remove it and they understand the significance of what they did without permits and approvals and express their regret. Mr. and Mrs. Saltzman have had the house for sale, and its under contract and the purchasers desire is to maintain the water well and they understand that the removal of the deck is being proposed. Our sole request is to maintain the waterwell in its current location and maintaining it will have no impact on the dune system. They aren't adding any structures closer to the CED and the waterwell it setback and we also submitted an aerial prepared by Mr. Terchunian which shows the location and the number of structures with pools along the same line. Most of them are larger and not hot tubs. With the boards permission I ask Mr. Terchunian be permitted to address the Board.

Mr. Piering said the survey lists this as an endless pool?

Mr. Archer said that's the company, if you go to their website, they have along the top that it's a waterwell.



Aram Terchunian appeared on behalf of the application and said the thrust of his testimony and what's been done is more or less consistent with the previous decision and has no impact on the dune. There are 9 pools in close vicinity and that establishes a water feature common and accepted accessory use and I did go underneath the structure, and I gave two photos that I took this week and it goes to the thrust that the existing piles have to be reused and you can see I labeled the new girder and the old girder on the photos and you can see the support system sits on top of what is existing, and it was done without a permit, but done right.

Mr. Piering said that's what we'd ask.

Mr. Terchunian said the other photo I submit shows that it never touches the dune, it hasn't been excavated or modified and it won't adversely impact the dune.

Mr. Musnicki asked who will address the five part test.

Mr. Archer said he will; this is all self contained on the outside of it and it's all one unit. I spoke with my client, and it doesn't get drained it only gets covered for the Winter. Since the applicant is requesting a variance and the Board is guided by the provisions of the Village Law. Whether there's a undesirable change, we stated there is none being produced to the CON and no detriment to near by property's since its located in the footprint of the approved deck, it doesn't touch or drain below and it has the characteristics of a hot tub and the most important surrounding properties have larger swimming pools. There are no other methods of means of relief and all of the deck and approximately half of the house is within 75' of the CED as it's inserted into the deck due to the surrounding setting, it's the only location for it. Whether the requested variance is substantial we say its not because it's in the existing deck which is there and as Mr. Terchunian testified it's self contained and doesn't sit on the ground. And whether there will be adverse impact, relying on Mr. Terchunian's testimony there is not any it is an insert into the existing deck and it doesn't impact the Dune and it doesn't sit on the ground below it and it doesn't impact any vegetation within that area and whether it was self created since all of the deck on the South side of the house and most of the house itself is within the 75' setback, you can't say its self created, because anything that's done within the footprint of the hoes or the deck would require the variance.

Mr. Hammond said it is considered a movable structure.

Motion was made by Mr. Piering to close the application of **Brad & Jane Saltzman, 519 Dune Road (905-16-2-5)** for a determination at the December 16, 2021 meeting; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 1 absent.

Motion was made by Mr. Piering to adjourn the meeting at **6:13 p.m.**; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.