

April 21, 2022

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, April 21, 2022, 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
Jim Badzik
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 March 17, 2022, meeting; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

HOLDOVERS:

1. Eric S Miller, 13 Stacy Drive (905-010-05-028) Applicant request variance from §197-35 A to construct a pickleball court in the front yard where accessory structures are specifically prohibited from being located.

James N. Hulme, Esq., submitted an updated site plan, and shows the proposed landscaping subject to any conditions that may be imposed. As a reminder this Board approved a tennis court variance on this property and it's much smaller, it's 880 square feet and the total square footage is 1,800 square feet. A question asked was of the recess requirements, and I said no and I think that's the correct answer but in consultation with the Building Department is that structures less than 2,000 square feet are not subject to the recessing but a tennis court is. That was basically the input that was needed and you have already granted relief here already and we had a discussion about the location and moving it closer to our house moves it closer to the neighbors as well, and 25' off of the property line and road and landscaping is appropriate and the setback requirements are satisfied so the only issue is it is in the front yard.

Mr. Piering said this is in the Stillwaters neighborhood.

Mr. Musnicki said he does not have too much of an issue with the front yard location, however the structure itself consist of not only the surface, but the fencing, netting and everything else so you are not giving 20' side yard or front yard on that.

Mr. Hulme said the idea is, if that's not what we've shown that's what we're looking to provide for no other relief. I see what you're saying and we can slide it over so the fence is 20' away.

Mr. Musnicki said he'd like to see the square footage recalculated for the entire structure.

Mr. Hulme said it's 1,800 square feet in total with everything as shown on the site plan. The playing surface is 880 square feet, but the fenced area is 1,800 square feet.

Mr. Musnicki said it says 880 square feet that's not accurate.

Mr. Hulme said he will have that put on the site plan. If you are inclined to close the hearing, we can provide that site plan.

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

There were no comments or questions.

Motion was made by Mr. Piering to close the application of **Eric S. Miller, 13 Stacy Drive (905-10-5-28)** for a determination; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

HOLDOVER:

2. 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.

Chieffert Engineering submitted a request to holdover the application to May 19, 2022.

Motion was made by Mr. Piering to holdover the application of **Egret Dune Corporation, 95 Dune Road (905-021-04-002)** to May 19, 2022; seconded by Ms. Cea and unanimously carried 5 ayes, 0 nays, 0 absent.

3. Westhampton Beach Fire District, 92 Sunset Avenue (905-012-04-006.02) Applicant requests variances from §197-30 C(9)(a) to erect a digital ground sign with a setback of 7 feet where the minimum required is 10 feet, §197-30 C(9)(c) for a proposed sign area of 31.17 square feet where the maximum permitted is 12 square feet, §197-30 D(4) for a proposed sign capable of displaying animated images where specifically prohibited, and from §197-30 D(14) for a proposed sign that is internally illuminated where also specifically prohibited.

Eric Cherches, Esq., appeared on behalf of the application. I wanted to make sure that the Board received the rendering that was submitted by the Fire District since the prior hearing.

Mr. Piering said yes.

Mr. Cherches said it gives the idea, and they are somewhat across the island throughout fire districts and schools as well, and they are requesting it to provide public information and public safety and it can be used for a variety of important functions; blood drives, COVID sites, relief aid efforts which was recently done to help Ukraine. This would be something in furtherance of that as well, Amber Alerts, road closures, weather advisories, public safety reminders like smoke alarm batteries, fire prevention tips and critically important to the Fire District is recruitment as well, they are all volunteers and this would help as well, and community spirit. I know Mr. Pasca requested an outline of the Monroe Balancing Test and what we're seeking is alternatively a variance, and we're seeking an exemption of the Village Code since it's a Fire District and under the 9 factors of the Monroe Test we believe the balance weighs in favor in preventing this application. I have prepared a memorandum for the Board outlining the Monroe Balancing Test. Essentially, we're seeking, under the test is an exemption is that this is in furtherance of the public safety mandate, and alternatively if this Board doesn't feel those are grounds then we're seeking a variance to construct the sign.

Mr. Piering said they are seeking three variances, not one.

Mr. Cherches said it's LED imaging, so the sign area is larger than what is permitted; the animated imagery is an exception, where that's permitted, and the internal illumination and the setback. The setback is 7' and we can move it back more but this is a sign the public needs to see so we'd like it as close to the road as possible.

Mr. Piering said they will need time to review his memorandum.

Mr. Cherches said the Monroe Balancing Test was applied by this Board in the past, in 2016 there was a determination to approve a sign application.

Mr. Pasca said it was not applied. A variance was granted, the Board did not find that Monroe applied.

Mr. Cherches said we're requesting it be applied, and alternatively a variance be sought.

Mr. Musnicki said on the Monroe Balancing Test, are you requesting us to look at that and move forward and okay this application based on that without moving to a variance?

Mr. Cherches said they're seeking an alternative to the variance, it's specific to this application as

April 21, 2022

it's applied to each application. We are seeking in the alternative if this Board doesn't feel that the Test applies then we're seeking a variance.

Mr. Musnicki asked if each variance is taken by itself or as a whole application?

Mr. Cherches said from your standpoint you have to apply each of the three requests to the whole application. This will seek a variance for those three applicable codes.

Mr. Musnicki said okay.

Mr. Piering said you mentioned you could move the sign back, how much further can you move it back? You are seeking 7' and 10' is required.

Mr. Cherches said 10' will place it too far off, and I'm sure if they felt 8' or 9' was appropriate we could accommodate that but this location was suggested by the vendor and the Fire District agrees because of the visibility and lack of it defeats the purposes.

Mr. Piering said these signs are programmable, and there are so many different things that can be displayed, and the one at the School which was not granted by us has spinning things, and the sign changes and what would you put on it?

Mr. Cherches said it's going to be consistent for what the fire district is established, one is for public safety. A school is different from public safety. These are types of signs and in the past you asked why it's needed and the bells ringing for the fire district and these movable signs are not esthetically pleasing so this is something which would be esthetically pleasing consistent with the Fire Districts purpose and will enhance the beauty of this Village and many others use them.

Mr. Muniscki said I get that, and I feel strongly about getting the message out and there is new technology now, but my question is the size of the sign it's almost three times the size of an allowable sign, is there any movement on a smaller sign?

Mr. Cherches said no, the way they are manufactured this is customary and standard. It was adopted by the Fire District.

Mr. Musnicki said when you say they are all over Long Island and there are a lot of things all over Long Island that don't fit in this Village.

Mr. Cherches said the people in charge of the sign is the Fire District who are civic participants in this Village and it's not an outside commercial entity seeking a sign for its own display purposes, they are your fellow residents and citizens and volunteers and aware of what's appropriate.

Mr. Musnicki said it is still 32 square feet, it's huge and LED On top of it on two sides, you'll see that message or messages from a long way away. My concern is that do we need a sign that large?

Mr. Cherches said they are public safety messages, so yes, I hope they can be seen from a distance, not disruptive of course.

Mr. Piering asked if there would be a time that they sell advertising on it?

Mr. Cherches said he does not believe so, it's solely for the purpose of the public safety; maybe Happy 4th of July, or Congratulations to the local graduates.

Ms. Cea asked the size of the sign at the high school? Do we know that? Is it larger or smaller than what's proposed?

Mr. Piering said he doesn't know, I think it might be the same size.

Mr. Badzik said it might be smaller and there's a cap stone to it. He asked who the vendor is?

Mr. Culver said Visual Information Services, they installed Quogue's as well. Eastport and Riverhead have it and we're almost the only district without it.

April 21, 2022

Ms. Cea said you mentioned earlier about a variance in 2016 and the Monroe Balancing Test was not applied?

Mr. Pasca said it was argued, but it was not reached by the variances were granted. It was referenced in the decision but that was on the basis of the decision.

Mr. Cherches said it was not applied, from our standpoint we believe the balancing test applies but if the Board feels it doesn't and wants to approve a variance on the basis that's acceptable as well.

Mr. Musnicki asked them to go through the Monroe Balancing Test.

Mr. Cherches said I have outlined the nine considerations and factors that the Court held, it was a 1988 Court of Appeals decision relating to the airport in Rochester and the Court said with respect to one municipality and in our case the Fire District seeking a Code Exemption from another municipality, in this case the Village of Westhampton Beach seeking immunity, the grant of authority.

Mr. Musnicki said the nature and the scope seeking immunity, I get that and the encroaching governments legislative grant of authority I understand; the kind of function has been described; the effect local land use regulation would have on the concerned we know what that is.

Mr. Pasca said I haven't had a chance to read this memorandum, it's a lot more nuisance than the way you're running through each thing and we have to consider each element carefully and compare and contrast the benefits and they may not balance the same way, and you may find that the prohibition against animated signs weighs differently than the setback and you have to do a balancing test very carefully; I don't want to just treat it as something simplistic because it's not.

Ms. Cea said generally overall, is this a municipality developing within another jurisdiction, or is it within its own jurisdiction.

Mr. Pasca said it's the Fire District coming to eh Village seeking immunity from the Village's zoning code.

Mr. Cherches said for construction of signage on its own property.

Mr. Pasca said they don't have their own zoning powers, they are seeking immunity from the Village's zoning powers.

Mr. Piering asked if they ever thought about going to the Board of Trustees to get immunity, you can seek any variance you wish. Having these signs specifically prohibited and amortized out of the Village years ago, it would seem the Trustees would be the place to start.

Mr. Cherches said it's a viable suggestion, but it's not a sign it's particularly for the Fire District as opposed to a commercial purpose.

Mr. Piering said okay. I don't think we're going to close this tonight, but I think we need to read what you submitted and if there is any public comment you may do so.

Mauro DiBenedetto, 21 Adam Lane, Chief of Fire Department and listening to this Board I find it mind boggling that you'd think we're putting up cartoons or soliciting information. We're all volunteers that are here, and I make time for this Village and community and I think having a sign up would just get our message out a little more clear. We can't make it smaller, if you can't see it what's the point. It's not enormous it's the same size as every other one you've passed and I don't see why you're dragging your feet, we're not here for ourselves we're here for the Community and for you to drag your feet and cost us money because of these delays and the pricing keep rising and we're here and if something happens we have to leave this to go to a fire and you have to think about what we're asking for and who is asking.

Mr. Piering said we're carefully thinking about it and I respectfully disagree with you and we're here to support our Village also.

Mr. DiBenedetto said you should take into account who is asking.

April 21, 2022

Mr. Piering said with all due respect, we are and this would have been open and closed last month with a denial. This is our second hearing.

Mr. DiBenedetto said this has been going on much longer.

Mr. Pasca said we asked last month, and we just got this Memorandum tonight and we haven't had a chance to read tonight and that's not fair. You're criticizing the Board and that's not right.

Mr. DiBenedetto said you should move it along faster.

Mr. Piering said we have an obligation to this Village and we take it very seriously, and we just received this memorandum tonight and we asked for it last month and we ask for things 10 days in advance so we don't have to put things over and we all have obligations too.

Mr. Musnicki said with all due respect, we know you have more protocol and we're volunteers to a certain degree and if this was for a business one meeting it would have been closed and denied and we need to be fair and we need to weigh this application heavily and just like you we have a lot of stake in the Village.

Mr. Piering said we appreciate your passion also. He asked if there was any other comments or questions.

Motion was made by Mr. Piering to holdover the application of **Westhampton Beach Fire District, 92 Sunset Avenue (905-12-4-6.2)** to May 19, 2022; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

4. Denise Breger, 28 Meadow Lane (905-010-03-021) Applicant requests variance from §197-6 E A(1) to legalize a finished attic that represents a third story where the maximum stories permitted is two.

James N. Hulme, Esq., appeared on behalf of the application. They were before this Board last month to legalize the third story on this property and it occurred prior to his client purchasing it and one question raised was how it came to be and whether they are going to sell the house. There are no plans to, and his client owned the adjacent property and they were thinking of selling this when they discovered this issue and they want to cure it and sold another property and are keeping this property and they would like to retain it with the third story as converted prior to the purchase. His client indicated that they had photographs and some were submitted and not many were of the space in question, there was one photograph which was a window in the converted space and there are a set of stairs which match completely as they exist now. IN addition, they were accompanied by an affidavit indicating it is how it looks when it was purchased and the other value is to show the exterior the same as it was when it was purchased. There are no changes to the exterior portions of this property subsequent to their purchase to demonstrate what it is today and what was done was not done by his client. You asked us to get an estimate for the cost of converting the space back into an attic, and I have an estimate of \$30,000.00.

Mr. Piering asked if they got a price for sprinklering it?

Mr. Hulme said they have an estimate just around \$30,000.00 and the cost to sprinkle the entire building comes to \$83,000.00. And it is very much an estimate, and until you do it you don't know how many walls have to be opened and repaired but the overriding issue is having to sprinkle the whole house just not the third floor and they are aware of the price and still interested in going forward because they believe the third story adds value to the use of their house and adds value to the property itself. In summary, the granting of this variance won't change the neighborhood, the appearance, the functionality.

Mr. Piering said they are willing to spend this much money to legalize the space to conform to NYS Code?

Mr. Hulme said yes; they see it as having value to their living there and to the ultimate value of the house itself.

April 21, 2022

Mr. Piering thanked Mr. Hulme. He 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 **Denise Breger, 28 Meadow Lane (905-10-3-21)** for a determination; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

NEW APPLICATIONS:

5. Judy Madden, 64 Brook Road (905-007-02-021.01) Applicant requests variances from §197-35 C to install an accessory swimming pool with setbacks of 13.7 & 15 feet where the minimum required is 20 feet.

Steve Caputo, Expeditor appeared on behalf of the application, together with Judith Madden. Mr. Caputo said this is for a side and rear setback for a swimming pool and due to the unique nature of the property we are far enough from the neighbors and the rear property line is not straight and it is on an angle to the neighbors and we don't have a reasonable alternative or anywhere else to place a pool other than where we have shown you on the survey and we don't believe it will have an adverse impact, it's not substantial and its consistent with the area. The application is for side and rear and we are able to move the pool so we don't have to seek rear setback relief and I have updated surveys to give the Board.

Mr. Piering said the survey we have shows 20' from the rear setback line. It is dated November 2, 2022. The application you're asking for side relief only? You don't need rear yard setback?

Mr. Caputo said we only need a side yard variance for 15'.

Mr. Piering asked if you know the history of this property? They received two variances recently, and they asked for a pool and they withdrew that from the application because they had to meet the 20' setback.

Mr. Caputo said we are able to get the rear yard setback of 20', and it's a unique shaped pool.

Mr. Piering asked where they are going to put the pool equipment?

Mr. Caputo said the East and it has to be closer to the house and to the East.

Mr. Musnicki said it looks like it's on the West?

Mr. Caputo said if we have to move it we could and we could go East of the location of the pool.

Mr. Piering said there is plenty of room on the East side of the pool.

Mr. Pasca asked if the changes of the plans changed anything other than the location? Are the dimensions the same?

Mr. Caputo said yes, they are.

Mr. Musnicki said the 15' side yard is abutting against a property to the West, and they have their pool and recreational areas, their backyard is 15' away. You could put a traditional shaped 15 x 30 pool with an interior staircase, and the staircase is 4' x 8' could be eliminated, you could slide this pool to the East and at that point you are looking for a rear yard variance of 4' to 5'.

Mr. Caputo said the steps are on the East, and if we shift the pool to the East we get more narrow as we go East so we need more forgiveness.

Mr. Musnicki said the steps are extended steps and if you put interior steps, a corner staircase you can use that square footage in a better way you're not extending it to the East.

Mr. Caputo asked if you'd like to move the pool to the East?

April 21, 2022

MR. Piering said in past hearings we established we don't want 20' from the rear.

Mr. Musnicki said I feel the impact is less to the rear yard than it is to the side yard.

Mr. Caputo said the Board established they don't want forgiveness along the rear yard. We're removing the rear yard setback, and we're seeking a side yard setback of 6.5' and if we move it to the East we need a rear yard setback and I researched and I understood it would not be granted.

Mr. Musnicki said when you have another property abutting yours, I think that's more impacted.

Mr. Caputo said there is another property abutting the other side. I was just following what the Board discussed in the past hearings, they did not want another visit on rear yard setbacks and we went to the side which is the only place we felt it would be best.

Mr. Musnicki said okay.

Mr. Piering said the old survey shows a kidney shaped pool.

Mr. Caputo thought it was 12.5' from the rear property line. It was much closer.

Ms. Madden said she did not ask for that, the person who was working on her home told the surveyor to plot the pool there and I didn't know where it was going and when I mentioned it was too close he said this Board would direct me where it would.

Mr. Piering said they reviewed the minutes from the last meeting and they are familiar with it. You withdrew the pool with the understanding that you could redesign it and come back.

Ms. Madden said she was concerned with the renovation at that time.

Mr. Piering said we're concerned about the houses right there; there's a house to the North and we are concerned about that setback and now you are only seeking a side yard setback.

Mr. Musnicki asked if they told you this will cost you about 35% more than a traditional pool, the cover, the construction, the liner, and it won't look like a pool.

Ms. Madden said for safety I want an automatic cover and I can't with the odd shaped pool. So this is preferable for me, the traditional shape pool.

Mr. Piering said it's a 16' x 32' pool?

Mr. Musnicki said there are two different sizes, the plans show one size and the survey shows another. My suggestion is that you may want to amend it or come up with an alternative plan to float and see where it goes.

Mr. Caputo asked if you're suggesting moving it East and seek rear yard forgiveness and side yard?

Mr. Piering said we established we don't want to see a rear yard setback. You can shrink the pool down, the area is very small you may have to make it smaller.

Ms. Madden said she wouldn't spend that money for something that small, a 10' x 20' pool would not be worth it.

Mr. Piering said we had a hearing on this last time in 2017 and there are neighbors involved and that's why we have our setbacks, and your property is small in the back yard and not conducive to a swimming pool.

Ms. Madden said there is a shed, and that neighbor wouldn't see the pool because of their shed.

Mr. Caputo said the shed is on the property to the North.

April 21, 2022

Mr. Musnicki said since there was a variance previously, and that is usually in the packet for the Board to review and make it part of the information and that was not in my packet, and I received that today and I haven't had a chance to review it or the minutes connected to it. I would like to hold it over to review the prior decision and minutes.

Mr. Piering said as a point of reference, with the application it does say any prior variances granted need to be included and they weren't in this case that's why Mr. Musnicki hasn't had a chance to review them. I think this is a difficult situation, you don't have room for a 16 x 32 pool and I know it tapers down and the rear yard setback is not something that applies on your property.

Mr. Caputo asked if they'd entertain a modified plan smaller than 16 x 32 and to show the forgiveness on the side yard is less than 6.5' or is this becoming a hard no?

Mr. Piering said our job is to minimize the variances, if you can do that we would entertain that and it's not a hard no, absolutely not but we've established at previous hearings years ago that the rear yard setback is.

Mr. Caputo asked to hold over the application to revisit the pool plan.

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

Suzanne Mensch, Esq., appeared on behalf of Greg and Andrea Kaloustian, 98 Beach Road. This was just given to her today and she only has the survey that has the rear setback and it sounds like it's been removed.

Mr. Piering said they revised it and they removed it and a Board Member has thrown an alternative.

Ms. Mensch said she appreciates what this Board is speaking to on the rear setback and she'll share that with her client and talk to Mr. Caputo as well.

Motion was made by Mr. Piering to holdover the application of **Judy Madden, 64 Brook Road (905-7-2-21.1)** to May 19, 2022; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

6. Robert Schoenthal, 22 Bayfield Lane (905-010-06-003) Applicant requests variance from §197-6 D in conjunction with a proposed subdivision that would create a resultant side setback of 22.8 feet where the minimum of 30 feet is required.

Richard T. Hafeli, Esq., appeared on behalf of the application. They have a parcel that's 97,000 square feet which is more than the required 40,000 square feet and we want to subdivide the property into two lots and in order to do that we could put a straight line down and created the vacant lot of 38,000 square feet or we could do a 55,000 square foot lot and a 40,000 square foot lot and as a practical matter the total area of the variance is 320 square feet out of the 57,000 square feet and the problem is that the rear has a mud room and utility room and that creates the problem in trying to create two (2) 40,000 square foot lots and the only areas is where the variance is involved and the rest would be in compliance with the Code. The front yard is 50' and a good portion would be part of it and the same thing in the rear and it has no impact on anything other than the rear of the existing building, it's part of the house and used for a mud room and utility room and I don't think it's substantial and won't impact any neighbors.

Mr. Piering asked about the SEQRA determination? Does the Planning Board have to review it?

Mr. Pasca said the only variance is a setback for the proposed new line? I think that's Type II.

Mr. Piering asked if its unlisted?

Mr. Hafeli said in my opinion no, but you should ask your Village Attorney.

Mr. Musnicki said this lot you're creating will the structure have to move?

April 21, 2022

Mr. Haefeli said not at the present time, the only structure that would have to be moved is the tennis court because it would not comply as a separate lot and I can discuss that with the Planning Board and I don't think they should be removed before they sell and split the property. If they keep it as it is for the next year, there's no reason to do it. Those structures should be taken in to consideration when a Building Permit or CO issued for the vacant lot.

Mr. Pasca said you have to deal with it one way or the other at the time of subdivision.

Mr. Hafeli said I would do it with the Planning Board.

Mr. Musnicki said you have no CO status because they aren't allowed on this property.

Mr. Hafeli said when we have a planning board approval, if I get the variance it will still be in the same time and it will not be a single lot at a point in time and when it gets sold then it has to be addressed.

Mr. Pasca said it has to be dealt with before a map gets signed.

Mr. Hafeli said I said that, it will be signed by the Planning Board.

Mr. Pasca said they can't sign a map without them removed, or a variance to allow them to stay.

Mr. Hafeli said to allow them to remain we need a variance?

Mr. Pasca said yes, they just granted a variance to allow a tennis court to remain on a stand-alone parcel, but I don't see how the Planning Board can sign the map with a non-conforming structure the day they sign the map.

Mr. Hafeli asked if they have to come back before this Board, I assumed we had to deal with it, yes but I didn't think we had to today because we're only seeking a variance and I have to deal with it with the Planning Board. The variance expires and I would have to renew it and we are limited with what we can do with circumstances.

Mr. Piering said okay. Once this is split up and a structure is on a vacant parcel it has to be addressed so let's deal with what is before us.

Mr. Pasca said regarding SEQRA you could do uncoordinated review and make your own determination, or if you want you can assume the Planning Board will make a determination and coordinate the review.

Mr. Hafeli for purposes of this application, it would seem to me you can do your own review and the Planning Board can change it if they don't like that determination. We're only seeking a 7' side yard setback for a total of 325 square feet.

Joan Levan, 17 Oneck Road appeared on the application. She has concerns about the 40,001 square feet which is the subdivision and on the survey it abuts my property and secondly there are comments about the character of the neighborhood and if you go from Oneck Road and Bayfield and around Stevens to the end of Jessup Lane there are four properties, mine included that are over 90,000 square feet and it's referred to as the Estate section and beautiful and all of the neighbors are not here in the Winter and I reached out to a few and they asked if this would get held over because they'd like to attend and any building that is single family structures their lots are 44,500 square feet in that range, and 40,000 square feet would be the smallest lot in the whole neighborhood and there's one lot that's 37,000 square feet and it's been that small forever and I don't know when the Code was changed to 40,000 square feet and this is just 40,001 square feet.

Mr. Piering said this will be a conforming lot, what is the neighbors concern?

Ms. Levan said it is abutting my property, and I'm concerned about privacy. I don't know what kind of structure would go on a 40,000 square foot lot and I'd like to know how it progresses next and does he get a variance and how far along to the building department.

Mr. Piering said he has the property, it's just a matter of the Planning Board approving it, the only issue before us is to do this one of the small parts of the structure on the existing houses will be less than the minimum side yard setback so it's a de minimus variance. The 40,000 square feet isn't before this Board. What happens next, the process is the same, they must apply for a building permit and follow all the setbacks and height requirements and it's not detrimental that I can see and I understand you're used to a big area and this will be in the confines of the Village Code.

Mr. Pasca said you are entitled to come to the Planning Board meeting and voice your opinion and they will have a different review, this Board's review is a very small piece of the application.

Ms. Levan said I heard something from another application, if they get this variance, okay and when they go to build can they apply for a variance?

Mr. Piering said no it doesn't; but they are building on a vacant conforming parcel and you need good reason to seek a variance, we won't look on it too favorably.

Motion was made by Mr. Piering to close the application of **Robert Schoenthal, 22 Bayfield Lane (905-10-6-3)** for a determination; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

7. Bella 165 LLC, 165 Dune Road (905-020-02-024.01) Applicant requests variances from §197-8 D to construct additions resulting in a proposed building area lot coverage of 30.3% of the lot where the maximum permitted is 20%, and with a proposed front yard setback of 50.2 feet where the minimum required is 75 feet, also from §197-8 D to construct roofed-over entry with a side yard setback of 18.5 feet where the minimum required is 20 feet, with a proposed combined side yard setback of 33.6 feet where the minimum required is 50 feet, and also from §197-8 D for proposed rear square-off additions with a rear yard setback to crest of dune of 66.9 feet where the minimum required is 75 feet, and from §197-29.1 as proposed additions are located within a required front yard (50.2' proposed, 75' required) and also within a required side yard (15.1' proposed, 20' required), representing a nonpermitted increase in degree of nonconformity of a building with nonconforming front and side yard setbacks.

James N. Hulme, Esq., appeared on behalf of the application, together with Paul Russo, Architect. The list sounds like a lot but it is really not that much there are a lot of pieces to make it more square and livable. This lot came into existence as a result of a 1980 subdivision and it was granted and at that time the house that's there was built and the Code was different. The lot is only 75' and that was the requirement in 1980, and the upland lot size is 50,000 square feet and the total area in coverage and the coverage that existed was well under the 20% requirement and it was built to the required rear yard and front yard setback requirements at that time. As is shown on the survey, the existing is a two story single family residence all covered by a CO and prior to the Zone change in 1998. What we're proposing are additions to the house and to make it more reasonably shaped and with respect to the architect to make it more sensible design and that has triggered variances, all of which are small in nature. There are a few ways to look at that and to do so is by the site plan in which I have identified the various variances to show how minimal in nature they are. The first variance is lot coverage which derives from the expansion of the deck and however, I would point out the current lot coverage is 26.4% and we're looking to add less than 500 square feet to the overall coverage. When this house was first built the lot coverage didn't relate to the upland area but it related to the entire area and the before and after would have been well under the required 20% and the applicant is burdened by the change in rules. The second variance has to do with the front yard setback and that is compared to the existing and the required is 75' and the 51.2' of the existing structure. As you can see there is 12 square feet of additional space added to the front of the house to account for the one-foot change in the front yard setback.

Mr. Piering asked if the front yard setback is being decreased?

Mr. Hulme said we are decreasing it by 1 foot.

Mr. Russo said what is existing is a 1980's house and it was purchased by the owners and they wanted to make it more Hamptons Shingle Style and I was charged with the task to change the

April 21, 2022

architecture and bring certain classical elements. We are adding to the rounded bay window structure which comes out closer to the road not on the ground floor. The whole house will change from flat roof to traditional roof and that corner of the house is what's changing 1 foot toward the road.

Mr. Hulme said it's not increasing habitable space inside, it's just a bay window. The third variance is a side yard for a roof over entry deck of 18.5' and because of the manner in which it's being modernized it needs an entrance and we're looking to do a covered entrance and a stairway and there's a small 99 square foot and the side porch is 91 square foot under the roof. The fourth variance, is a total side yard of 33.6' when 50' is required and driven by an entry porch and the fifth variance is a rear yard setback of 66.9' as opposed to the required 75' and there's an existing portion being squared off with 4 square feet on either side and one portion is at the 66.9' as opposed to the existing setback. The setback is the same it's just four lateral feet. The sixth and seventh have to do with the increase in the degree of non-conformity and since this is a relatively new section of the Code I was not certain how to express the change, and the easiest way is that we're adding 13 square feet in the front which is the sixth variance one foot closer to the road and then the same thing for the back which is very small amount of increase in the degree of non-conformity. There are a lot of factors but each component is small and most are in support in changing the architecture of the house. It is mostly decks and architectural features being added.

Mr. Piering asked if you're increasing the non conformity?

Mr. Hulme said only in two areas. Not in the side yard, that's a different variance we're seeking, it's side yard relief for the entry porch and the staircase which is 4' wide. I think it's usually allowed or counted as needing a variance as long as it is 4' and not grand double wide stair case.

Mr. Hammond said it is 4' and uncovered can encroach.

Mr. Piering said okay, he asked if there were any questions.

Mr. Musnicki asked Mr. Russo if he looked at the house and when they purchased this home the thought was to do this work.

Mr. Russo said yes, it was purchased with the intent of redesigning it.

Mr. Musnicki said it's an improvement to the architecture. Was there any thought of working with what you have, instead of the new facades and fascia?

Mr. Russo said it is basically small additions and roof design which pulled it from the 1980s architecture. I did very minimal to create a drastic difference.

Mr. Wittschen said it looks good.

Mr. Russo said it's not a new home, it's a renovation and the skin and detail makes it look much nicer.

Mr. Hulme said the only increase in habitable space is already covered interior space and there is a second floor that we're filling in and that doesn't require any variances. The increase in habitable space is already covered. It is the space under the roof line already and that doesn't create the need for any variances.

Mr. Russo said the square footages happen to be below the open-air spaces now. It's a unique home as it exists, there's no front entrance and parking and we're maintaining the side entrance.

Mr. Hulme said it allows us to create a really nice improvement.

Mr. Musnicki asked if the Easterly staircase is included in the calculations?

Mr. Russo said yes.

April 21, 2022

Mr. Hammond said the deck extension, and his denial was written on the plot plan and it was not advertised so there are two variances needed for that.

Mr. Musnicki asked if it's on the East side?

Mr. Hammond said he didn't see the deck as being added, he thought it was existing and he did not advertise for that and it would need to be and it would be two more variances. It's 16.5' instead of 20' and 30' instead of 75' to the Crest of the Dune.

Mr. Hulme said the Crest of the Dune is existing it's just elongated.

Mr. Hammond said yes.

Mr. Piering said we have to readvertise for that.

Mr. Hulme said okay. We will hold it over.

Mr. Hammond said it happens often and then new surveys get handed in and things are added.

Motion was made by Mr. Piering to holdover the application of **Bella 165, LLC., 165 Dune Road (905-20-2-24.1)** to May 19, 2022; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

Motion was made by Mr. Piering to adjourn the meeting at **6:45 p.m.**; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.