

August 18, 2022

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, August 18, 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  
Jim Badzik  
John Wittschen

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

Maeghan Mackie, Building Permits Examiner / Board Secretary

ASBENT: Daniel Martinsen

### **MINUTES TO BE APPROVED**

Motion was made by Mr. Piering to adopt the minutes of the **July 21, 2022** meeting as written; seconded by and unanimously carried 4 ayes, 0 nays, 1 absent.

### **DECISIONS**

- 1. Mark & Palmira Cataliotti, 37 Beach Rd (905-012-02-039)** Applicant requests variance from §197-35 C(1) to maintain an accessory residential storage shed located 0.8 & 4.3 feet from property lines where the minimum required is 10 feet.
- 2. Peter Hertz, 104 Griffing Avenue (905-007-03-007)** Applicant requests variances from §197-6 D to construct an addition with a proposed rear setback of 31 feet where the minimum required is 50 feet, and from §197-29.1 A as the addition is proposed partially within the required front yard (40.7' proposed, 50' required) and partially within a required side yard (21.7' proposed, 30' required), representing a prohibited increase in the degree of nonconformity of a dwelling with preexisting nonconforming front & side yard setbacks.
- 3. George & Elvira Anderson, 317 Dune Road (905-018-02-022)** Applicant requests variances from §74-5 C(2) for proposed major additions within the coastal erosion hazard area where not permitted, from §197-8 C for a proposed combined side yard setback of 36.7 feet where the minimum required is 50 feet, from §197-8 F for a proposed exterior deck that exceeds the height of second habitable floor level where not permitted, from §197-29.1 A as the additions are proposed partially within the required side yard (14.8' proposed, 20' required) and partially beyond the maximum allowable height (43.3' proposed, 40' maximum), representing a prohibited increase in the degree of nonconformity of a dwelling with preexisting nonconforming side yard setback and height, and lastly from §197-35 C for a proposed pool with a setback to the crest of dune of 45.8 feet where the minimum required is 75 feet.
- 4. 804F Realty Corp, 112 Montauk Highway (905-004-02-014.01)** Applicant requests variances from §197-30 C(1)(a) for proposed signage totaling six (6) signs (ground sign, wall sign, four "V" canopy signs) where the maximum permitted is two signs, from §197-30 C(9)(a) for proposed ground sign setbacks of 5.3 & 6.3 feet where the minimum required is 10 feet, from §197-30 D(7) for two "V" canopy signs proposed above the eave line (on the roof) where not permitted, and also from §197-30 D(7) for two "V" canopy signs proposed covering architectural details (reverse gable cornices) where not permitted.

### **HOLDOVERS:**

- 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.

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Richard Hafeli, Esq., appeared on behalf of the application. He said that he submitted a letter indicating that they are withdrawing the application for the side yard setback and they are only requesting a total side yard setback, and they are using 197-26 as the basis of the variance and that's the only set back needed and its from the restrictive provisions reducing them to 16.5' setback.

Mr. Pasca asked if there are new plans? He did not see any.

Mr. Hafeli said I assumed there were new plans to reflect the 10' side yards and if they aren't here I would have to ask the architect. I don't have them, I assumed he would have submitted them.

Mr. Pasca said okay, he did not have them.

Mr. Piering asked how they got to 10'.

Mr. Haefeli said 197-26C says the side yard setbacks can be reduced to the width of the lot, its 35% and the setback is 7' and the Code says you can't go below 10' and based on that provision, I'm entitled to sideyard setbacks on each single side yard. I need a total side yard from 37' down to 16.5' setback.

Mr. Piering said thank you.

Mr. Haefeil said we're discussing the specific provision 197-26 than I would b required to have under the normal provisions of the zoning code. I don't think I have to go through the memorandum I submitted.

Mr. Piering asked how it became a buildable lot.

Mr. Haefeli said in 1953 it became a buildable lot when the zoning code came in to effect because it did not meet the width or area requirement. In 1953 based on the Code in effect we would have met the side yard setback of 10' but the total side yard setback of 30' would require at 10' setback and that's in my memorandum and I included the number of lots that do not meet the required setback relief. It based on 197-26 today, and the small lot provision in the 1953 Code.

Mr. Musnicki asked if its single and separate?

Mr. Haefeil said yes, there was an abstract to this Board which indicates in 1949 everything but 35' was transferred to someone else which became part of Rogers Beach and there was only 35' of the lot left and that was before Zoning Code. That's why it falls into the small lot provision. The single and separate establishes that.

Mr. Musnicksi said assuming we get past that, why don't you describe the five factors we look at and how it pertains to the five factors.

Mr. Hafeli said okay. The character of the neighborhood, I'm asking for a 16.5' side yard variance, and I submitted surveys and there is a property on the Westerly side of Rogers Beach and they have similar setbacks, and I can't build on the lot without a variance and the applicant is not entitled to use the lot without a variance. In view of the fact that there are lots with total side yards of substantial variances the actual variance I'm requesting is not substantial and since there's a parking lot next to it, part of it abuts the parking lot there's no environmental significance.

Mr. Musnicki asked about the character of the neighborhood.

Mr. Haefli said there are lots on Dune Road with 38' width with houses that are currently in the R3 and there is 443A and 443 Dune Road one of which is the R5 and the other is in the R3 and they have certificates of pre-existing zoning and they have 36' wide lots and my memorandum shows the setbacks.

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Mr. Musnicki said that's not the neighborhood.

Mr. Hafeli said between the bridges there are lots with side yard setbacks.

Mr. Musnicki said I'm talking about the structure itself on a narrow lot.

Mr. Hafeli said you should look at the structures on the West side of the Village, the two lots I just referred to and there are homes on them, and you can build on those lots.

Mr. Musnicki said that's not the neighborhood.

Mr. Hafelei said Dune Road is the neighborhood, and you have to take in to consideration everything on Dune Road. There's a house to the West of Rogers Beach with a total side yard less than what we're requesting and the others are comparable and they are comparable to what we're requesting.

Mr. Musnicki asked if this is in his memo?

MR. Hafeli said yes The lots, their setbacks, the lots between the bridges, and the ones that do not have the side yard setback and the ones to the West still in the R3 is further West and there are homes if you look they have been constructed.

Mr. Piering said he would like to see the updated plans.

Mr. Haefeli said yes, I will get them to you.

Motion was made by Mr. Piering to holdover the application of **Egret Dune Corporation, 95 Dune Road (905-21-4-2)** to September 15, 2022; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

**6. Michael & Elizabeth Levy, 205 Dune Road (905-020-02-008)** Applicant requests variances from §74-5 C for proposed major additions to the dwelling (nonmovable structure) within the Coastal Erosion Hazard Area (CEHA) where specifically prohibited, from §74-8 A(8) for proposed major additions and restoration of the dwelling within the primary dune area where specifically prohibited, and from §197-29.1 A as proposed additions are located within a required rear yard (75' required from crest of dune), representing a prohibited increase in degree of nonconformity of a building with nonconforming rear yard setback.

James N. Hulme, Esq., appeared on behalf of the application. He thanked the Board for the discussions on this, and as a result he'd like to adjourn the application they are reevaluating the project to see if they can lessen the variances requested.

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

There were no questions or comments.

Motion was made by Mr. Piering to holdover the application of **Michael & Elizabeth Levy, 205 Dune Road (905-020-02-008)** to September 15, 2022; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.

**7. WHB Development Partners LLC, 107 Old Riverhead Road (905-022-02-021)** Applicant requests variances from §197-30 C(9)(c) for proposed ground mount sign lettering of 38 inches in height where the maximum permitted is 12 inches, from §197-30 C(9)(c) for a proposed ground mount sign area of 32 square feet where the maximum permitted is 25 square feet, from §197-30 C(20)(b) for proposed wall sign letters of 36 inches in height where the maximum permitted is 12 inches, and from §197-30 D(14) for proposed digital gas price ground sign which is internally illuminated where specifically prohibited.

James N. Hulme, Esq., appeared on behalf of the application together with Irwin Krasnow. Mr. Hulme said he submitted a modified plan and reduced the square feet of the ground sign and as a result they have reduced it to two variances, and both relate to the size of the lettering on the store, and there's no signage over the gas pumps. I think you were in agreement that because the

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building is so far away the size of the lettering is appropriate and we're seeking a variance for the symbol logo height on the now compliant sign.

Mr. Musnicki asked the height of the logo?

Mr. Hulme said it is 36" which is the ground sign.

Mr. Piering said you did a nice job, it looks good.

Mr. Musnicki thanked them for the change.

Mr. Pasca asked when it was submitted?

Mr. Hulme said August 4, 2022.

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

There were no questions or comments.

Motion was made by Mr. Piering to close the application of **WHB Development Partners, LLC., 107 Old Riverhead Road (905-22-2-21)** for a determination; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 1 absent.

### **NEW APPLICATIONS:**

**8. Athanasios Polydor, 40 Library Avenue (905-011-03-020.03)** Applicant requests variances from §197-11 D(1) to construct an addition with a proposed front yard setback of 20.4 feet where the minimum required is 40 feet.

James N. Hulme, Esq., appeared on behalf of the application, together with William Barba Architect. Mr. Hulme said it's an existing house on a flag lot in the MF 20 Zoning District and its one of the two in this district. The other is adjacent to this and in our submissions the existing house does not have a garage and the thrust is to erect a two story structure with a garage on the first floor and a small den and other improvements on the second floor. Because of the nature of this lot and a flag lot the front yard was selected as was the rear, and the pool is on the other side of the house we are going to install a garage it is in practice a side yard and abuts the side yard of the property closest to it and the side yard setback requirement in this Zone is 15' so we're not proposing a structure to go that far, it's a structure that will go to 20' from that lot line. It's a garage, and that needs to relate to the house and driveway and the location of the flag pole dictates the driveway and we go in to the parking area and existing garage. It's not a two car garage it's only 1.5 car garage so it really only is one car internal and other usable space on the first floor.

Mr. Musnicki said the neighbor submitted a letter, but would you consider on the side facing the neighbor using clear story windows.

Mr. Barbara asked which side it was?

Mr. Musnicki said it's to the North.

Mr. Barbra said we can remove that window, or use a clear story window.

Mr. Piering said I went to the site and I was in the back yard and the applicants pool and there's a new house to the East and they are looking into his pool too and the applicants pool and the South East on Beach Lane there are windows too and in that neighborhood and you start to have houses so close you will have houses looking into the pool and we try to maintain privacy and consideration. As I was out there today to notice the new house to the West looking into your pool.

Mr. Barbra said the property to the East is new construction to.

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Mr. Piering said you're coming out 20' and cutting the distance in half from the front yard, you're going from 40' to 20', is that necessary?

Mr. Hulme said it has to be one car, and it would be nice to have a two-car garage. As you know, if you have a garage you want to store your things in it so we have come to the minimum width.

Mr. Barbra said there is a shower that we're working around and not come off of that. It's a master bedroom shower.

Mr. Pasca asked if the shed will be removed?

Mr. Barbra said we're willing to forego the shed altogether.

Mr. Hulme said it's going to be eliminated.

Mr. Pasca asked if you can get more conformance by making it longer as opposed to the front yard setback.

Mr. Hulme said the new structure has to relate to the existing and we don't want to extend beyond that, and I know this is a front yard, but it's a side yard and abuts the side yard of the most impacted neighbor and if it were in fact a side yard we'd go to 15' and not 20' and I get that but that is our compromise that we're seeking.

Mr. Pasca said then there's three side yards; you need one front yard and wouldn't the other be the front yard?

Mr. Hulme said yes. That's why it's not legally a side yard, but practically it is. When you look at the impacts, you should look at the impact on a side yard and it's impacting the side yard. A person owning a home, that's their side yard what do they have to expect it's a side yard and they are asking for practical reasons to be treated that way. As we indicated we're happy to accommodate privacy concerns and landscaping.

MR. Barbra said the light will come from the East and Westerly windows, and we're treating it as a side yard and assuming that it's going to be the back area.

Mr. Badzik said in the pictures the row on the right is the addition that structure on the left?

Mr. Barbra said yes. The house is 1970 contemporary and the addition will go over it and they don't want the addition to be too large.

Mr. Badzik said okay. He asked if there are any thoughts about Mr. Pasca's suggestion?

Mr. Barbra said he spoke with the Building Inspector and he agreed where the pool is in the rear yard and if we treat the Western side as the front yard we would still need a variance, in any case a buildable structure is hard for a one car garage.

Mr. Hulme said I can't speak for everyone, my own garage is deep and not wide and It's not as functional.

Mr. Barbra said if we do what Mr. Pasca referenced, the structure would be narrow but the functionality would be disrupted. It would be my concern that architecturally the den would get closer to the existing house and make the mass larger.

Mr. Musnicki said that's a good argument that technically it is a side yard for all intents and purposes and if that's true you could go to 15' and you are going to 20'.

Mr. Piering asked where the window is?

Mr. Barbra said it's a single bathroom window that we're willing to get rid of.

Mr. Piering said then it will not look over his pool and satisfy the neighbors concern?

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Mr. Barbra said yes.

Mr. Piering asked if there were any other questions or comments. He wants to make sure the neighbors concerns were addressed.

Mr. Barbra said they are fine with removing the window and they are willing to remove it as a condition of the variance.

There were no other questions or comments.

Motion was made by Mr. Piering to close the hearing of **Athanasios Polydor, 40 Library Avenue (905-11-3-20.3)** for a determination; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

**9. Shirley Tong, 29 Maple Street (905-005-01-033)** Applicant requests variance from §197-29.1 A for a proposed addition located partially within the required side yard (13.9' proposed, 15' required), representing a prohibited increase in the degree of nonconformity of a dwelling with preexisting nonconforming side yard setback.

William Heine, Architect appeared on behalf of the application. His client purchased this house in 2016 and looking at the records it was built in 1947 and undersized lot and has a pre existing undersized setback to the North property line when 15' is required. It speaks to the hardship not being self created.

Mr. Piering asked if you're looking to square off the back of the house?

Mr. Heine said yes. They want to add a bedroom and bath and in order to do that they need to go to the line where it preexists, and the house is skewed and the setback is 13.85' and they did a reverse gable on the roof so the lowest portion is the closest to the property line to minimize the mass. There was a permit approved in 2014 for a 9' extension on the front squaring off the back corner but ending at the rear wall and adding a second floor and they did hold it back 1' from the existing wall of the house so they met the 15' setback but it was a much more massive addition to the house so we've kept it to 1 floor, one bedroom, one bath to continue the existing setback. We are decreasing the lot coverage to 16.9% by removing the deck in the area of the footprint of the addition so the lot coverage decreases. We are under on the gross floor area.

Mr. Piering said he did a nice job.

Mr. Pasca said the plan from the surveyor versus his plan, the terrace is different. The surveyors terrace goes to the pool, and yours does not.

Mr. Heine said we eliminated it and it doesn't count in lot coverage, and not in the side yard setback we're seeking a variance for.

Mr. Pasca said okay.

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

There were no other questions or comments.

Motion was made by Mr. Piering to close the hearing of **Shirley Tong, 29 Maple Street (905-5-1-33)** for a determination; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.

**10. 85 & 105 Montauk LLC, 85, 105 Montauk Hwy & 105 Oak St (905-005-01-012, -053.01 & -052.02)** Applicant requests variances from §197-17.1 to reconstruct a restaurant with proposed front yard setbacks of 10.5 & 20.2 feet (corner lot) where the minimum required is 50 feet, and from §197-63 B for proposed transitional front yard of 10.5 feet to the building and 10.8, 12 & 24 feet to the parking areas where the minimum required is 30 feet.

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Nicholas A. Vero, Architect appeared on behalf of the application. He said he provided the board with a zoning analysis and the shaded area is his building envelope which is not existent. It has been quite awhile that I've been working on this, and we received a referral from the planning board and we're seeking the variances needed to construct this building. You know the site, and everyone drives by it every day and we have been working on this for a long time and we'd like to get approvals and clean up the site and build the restaurant. We are proposing to locate the building in the front yard pretty much where it exists today, it's one and one half story today and the existing is a little bit smaller than the proposed. We are looking to build a 3,500 square foot two story restaurant. We have another restaurant on the property which is currently Boom Burger.

Mr. Wittschen asked if they are going to operate this?

Mr. Vero said yes. My client purchased the property to the South and it was in the B2 Zone, then it was a home and we're going to demolish that and we got approval to convert it back to the B2 Zone from residential and we have merged the lots and we have to merge the other lot as part of the planning board approval. There is no parking for the current Boom Burger, and we're going to combine the two to establish parking. We have tried many different ways to increase the buffers between parking and the residential aspects and we've come up with 20' on the West and South and a substantial corner landscape area and it is a lot more than what is there now; there's a fence there that people park right up against currently. We would be implanting drainage, lighting, landscaping, paving, new septic system for the new facility the existing system for Boom Burger is fine and we don't have to upgrade that.

Mr. Musnicki asked where they are with planning?

Mr. Vero said we've answered the majority of the concerns and the planner and engineer are on board with it.

Mr. Pasca said he's spent a lot of time with the planning board and they wanted to make sure the site plan worked well enough before sending it to this Board and they didn't want to send them here to find out the site plan didn't work; they spent a lot of time with the applicant and they were comfortable enough to refer them to this Board.

Mr. Vero said there are a few small tweaks and we were going to wait for comments from this board so we can tweak them together.

Mr. Pasca said it has been a long process, but productive.

Mr. Piering said the parking calculations are done, is the planning board okay with it?

Mr. Veor said yes.

Mr. Pasca said no variances are cited for parking.

Mr. Vero said we're combining them, Boom Burger runs a lot during the day and the parking has been calculated and their traffic is a lot of foot traffic. I have addressed the other concerns with service and the trash pick up which has been addressed with planning.

Mr. Piering asked if it will be sit down?

Mr. Vero said it hasn't been established but we'll max out the number of seats we can have. It will probably be a restaurant and there are a good group of established restaurants on Montauk Highway and if its run correctly it can be an established restaurant.

Mr. Musnicki asked if the hours will cross over?

Mr. Vero said no they won't. We have enough parking if there was a cross over, and that was discussed with the Village Engineer. I would like to pull it off of Montauk Highway and Oak Street to match the bank, but we did make sure the entrances on Oak Street line up and the SCDPW provided comments and I have an application to the BOH.

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Mr. Musnicki said the buffer takes up a lot of the space.

Mr. Vero said yes, and were asking for relief, the Planning Board would require 30' and we've established 20'.

Mr. Musnicki asked if the bank required that much of a buffer?

Mr. Vero said I think so, but we're trying to match the entrance on Oak Street.

Mr. Pasca said it's a residential transitional buffer that's why it's more important here.

Mr. Vero said it could be between 10' and 30' and it will be dense. I have done others and this will be 20' and very dense.

Mr. Piering thinks a 20' is very good.

Mr. Vero said the landscape buffer between Boom Burger and the residence to the South has a maximum buffer and we can't do more because of the ingress and egress and there is a heavy landscape plan.

Mr. Badzik said the plan to the South there is an area that says paved area, what is that?

Mr. Vero said it's the transitional pedestrian buffer area and hopefully outdoor dining.

Mr. Badzik asked if there's a door?

Mr. Vero said yes, the main entrance is on the corner of Montauk and Oak and there is a door in the back on Oak Street.

Mr. Piering said the relief you are still moving it back quite a bit?

Mr. Vero said off of Oak Street, yes; but the setback on Montauk Highway be pretty similar we're trying to parallel everything for the parking and the corner opens up some with this layout and there's a site line.

Mr. Badzik asked there is a buffer from Montauk Highway and coming down Oak Street to the ingress and egress?

Mr. Vero said yes, it's all around the building.

Mr. Badzik said okay.

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

Mr. Musnicki said as the Village grows, I think the parking will be tight and coming off Montauk Highway us a nightmare and leaving will be too,

Mr. Vero said they can only have a right turn off Montauk Highway. If you remember going through the process with Barry Bernstein's building and I don't know if that came before the ZBA there was an hour of operations covenant that we did and we did the construction methodology because he had a tough time with the garbage, refuse, people in and out and there was covenants written in their approval and I don't think there have been issues since he opened and I can offer that up. Boom Burger is established and they will remain as long as they can maintain the level of service, and we can covenant things and I know we have to discuss.

Mr. Pasca said that's more appropriate for Planning Board.

Mr. Vero said yes, that's correct. The landlord owns the Boom Burger and this building so they can covenant that if they want to. Mr. Hill will review it well.

Mr. Piering said it's a good question.



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Mr. Musnicki said what looks good today, and you look to the West of here other Villages, Huntington, Bayshore and they went through this decades ago and everything looked great but now it's very busy.

Mr. Vero agreed. He said the planning board will review a lot of these questions in depth.

Mr. Musnicki said he'd like his concerns noted.

Mr. Piering said he had nothing else to add.

There were no other questions or comments.

Motion was made by Mr. Piering to close the application of **85 & 105 Montauk, LLC., 85 & 105 Montauk Highway & 105 Oak Street (905-5-1-12, 53.1 and 52.2)** for a determination; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.

**11. First Dunes Development 496 LLC, 496 Dune Road (905-016-01-019)** Applicant requests variances from §197-8 B for a two-lot subdivision with proposed lot areas of 13,211 & 15,022 square feet where the minimum required is 20,000 square feet and featuring proposed lot widths of 80.47 & 79.53 feet where the minimum required is 100 feet. Applicant also requests variances associated with proposed single-family development of the two potential lots from §197-8 C for proposed building area coverage of 23.4% for "Lot 1" and 22.6% for "Lot 2" where the maximum permitted is 20%, from §197-8 D for proposed side yard setbacks of 10 & 15 feet for both lots where the minimum required is 20 feet with proposed combined side yard setbacks of 25 feet where minimum required is 50 feet, from §197-35 C for proposed deck setbacks of 10 & 15 feet for both lots where the minimum required is 20 feet, and also from §197-35 C for a proposed pool setback for of 15 feet for "Lot 1" where the minimum required is 20 feet and for a proposed pool setback of 10 feet for "Lot 2" where the minimum required is 20 feet.

James N. Hulme, Esq., appeared on behalf of the application, together with Harvey Gessin. We have a property about 28,000 square feet in the R3 which contains 8 legal cottages which have been rented out for years in this Village and we are before the Planning Board for the subdivision but they directed us to discuss the variances needed. We are a victim of our own success, because five ten years ago people would want them gone, but they have been run well and there have been few complaints. There are 8 legal cottages each with a separate sanitary system and separate coverage and we're looking to eliminate the 8 uses for 2 uses. The goal requires two sets of variances, and the first has to do with what's necessary to create the lots themselves, the lot size and width are the two variances needed to create the lots and we readily admit they would be small lots and subject to a Code that would allow them to build on each lot something equivalent to one cottage. We're seeking variances for a building envelope as well and I will discuss that detail. In looking at this we looked at the big picture, and that's the overriding thing is the residential zone and there are single family residences and not properties with 8 structures so granting the variances and subdivision brings this area in to compliance with the goal of the residential zoning and particular along Dune Road. We're replacing a non-conforming use with two uses that are typical and customary in this Zone. That's the big picture view and I want to drill down to see what we're proposing and the impact of that compared to what's there now and the first one has to do with the substitution of the sanitary systems for 8 pre existing the systems that exist; that's a certain environmental benefit. If you look at this, the existing structures there are over 3400 square feet of footprint and another 2600 square feet of deck that exists. If you look at the envelopes as proposed, the proposal is 3500 square feet of footprint of the two structures and 2,180 for the proposed deck and pool that's what will be on the bay side of this property. Very comparable I will say, I think we're 130 square feet in coverage for Residential part than we are now. Overall the coverage is dropping but not to 20% and its less coverage after than there is before and the other feature is that some of the relief we are seeking is on us and what I mean is that some is the internal lot line and we're impacting our selves to a greater extent than anyone else. Our 10' side yard setback for the houses is against that interior lot line and the larger 15' is on the exterior lot line so we tried to position the houses that the greater impact is on ourselves and not the neighbor. I think houses with less than 2,000 square foot footprints is not out of keeping with houses on that part of Dune Road or any part other than Pond Point. Yes, the lots are small but all of the ways it is comparable in size to other homes and we're not increasing the non-conformity of the lot because the square footages are

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comparable and reduced some. Back to the big picture, we're moving to a circumstance where it's a single-family residence on a single lot which is the goal of the zoning in this Village.

Mr. Pasca asked if there are building plans?

Mr. Hulme said no.

Mr. Pasca said I don't know how you can entertain the variance request without plans because they only approve setback variances in relation to a building and without those plans, a window could become an issue on a setback variance and without the plans we can't evaluate the neighbors impact. I get why you don't want to do it but you're asking for an Advisory opinion with no plans. A two story with all glass that might overlook a house will have different impacts than a one and one half story with no windows.

Mr. Hulme asked if they could covenant that?

Mr. Pasca asked if they could submit basic plans with the understanding that will give parameters to look at.

Mr. Gessin said he has something they could look at.

Mr. Pasca said they'd have something to work off of.

Mr. Piering said it's a very unique application and you want relief to build bigger houses and you can make this more narrow you know how we are with the side yard setbacks and to create two lots with this much relief.

Mr. Hulme said if this were a vacant lot I wouldn't be here. But it's not, it's one that has a substantial significant use and we're substituting one for the other and I think we're becoming more conforming to the overall zoning.

Mr. Wittschen asked if there is lot coverage?

Mr. Hulme said yes, the proposed is very much comparable to the existing, it's less.

Mr. Wittschen asked the actual for each?

Mr. Hulme said 23.4% on one and 22.6% on the other.

Mr. Badzik asked if everything that's there today will be demolished completely?

Mr. Hulme said yes.

Mr. Musnicki asked if this has been there 50 years?

Mr. Hulme said yes, it's preexisting non-conforming.

Mr. Musnicki said it has seen its day and life, and you're arguing you are substituting things and that may have been fine 40 years ago but it's 2022.

Mr. Hulme said it's not a financial loss and it's being rented, it just makes more sense to proceed.

Mr. Musnicki said it's non conforming, you can't say I have this and I want that, its non conforming and it's a new day and now its new construction and it's a substantial ask for the subdivision. On top of that subdivision ask, there are 9 variances that follow that and it's a substantial ask. The first one is the biggest hurdle and without the subdivision its not proceeding, a 35% ask is a lot.

Mr. Hulme said the existing condition is not irrelevant, we're replacing coverage with coverage and there is advantages to new construction.

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Mr. Pasca said the Board looks at existing conditions all of the time and makes that decision of the improvements even on single family dwelling in the dune crest setback and they do treat those applications differently than if someone were coming in with a vacant lot.

Mr. Hulme said the restrictions on a pre existing non conforming use cause this to happen, you want residences not cottages being individually rented. They can legally exist, but you want them to go away and we're agreeing that we want to make them single family dwellings but this is the help we need to make it financially viable. That's the idea behind non conforming zoning.

Mr. Pasca said the list of variances takes up ¼ of the page, if you do the same for the existing site it would take up two pages; there are setback variances all over not to mention the density. Has this been analyzed the benefit or change to the septic existing versus proposed?

Mr. Hulme said no, but I'm sure they can.

Mr. Pasca said that would impact the fourth factor.

Mr. Musnicki said one parcel is financial benefit?

Mr. Hulme said yes.

Mr. Piering said this is very unique.

Mr. Hulme agreed. He said if there is relief granted, there is no other spot in this Village that would have this.

Mr. Piering said we never had an application to create two sub standard lots with bigger houses on them. We just did one on Hazelwood Avenue in the R4 Zoning District, where there was one lot and we moved the division line and created two lots and my comment at that time, you created these we will not look favorably to build over sized structures on them. We also have another on Hazelwood Avenue and they created three minimal lots and we don't want people to ask for variances to build on it and I look at this the same way.

Mr. Hulme said none have 8 independent uses being eliminated.

Mr. Piering said that is a benefit, but you're going to start with a blank slate. If we give the subdivision variance, it will be a blank slate and they are pretty wide houses and it's a lot I think. I'd like to see the side yard setbacks get better.

Mr. Pasca said this is a question, did anyone look at whether there is a way to do a two lot with a flag lot?

Mr. Hammond said DEC regulates subdivision for tidal and they will need DEC; right now he's 50' from the front and 75' from the back and they have jurisdiction 300' and 75' is the standard setback they hold them too making it longer and setting it further back, the DEC will probably not allow further encroachment to the North it's not fully bulkheaded.

Mr. Pasca said even though there are 8 cottages?

Mr. Hammond said we have to get there before the PB is done, and they need to know what they can do.

Mr. Hulme said we will look at that. But I agree with Mr. Hammond and the DEC issue.

Mr. Hammond said the flaglot in the back the DEC will say no, you are forcing activity closer to the water

Mr. Hulme said they will work on it and return next month.

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

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Richard Richardson, 504 Dune Road appeared and he said the only good thing about this is the elimination of the cottages. They were moved here after WW2.

Mr. Musnicki asked where he is in relation to this?

Mr. Richardson said I am three houses to the West. He showed the plan to Diane Herold and they discussed the application, and he read notes from Ms. Herold. The survey does not indicate the shore line on the North and it may be necessary to file a variance with more information. Suffolk County Dept. of Health, the survey shows the test hole 3.8' to ground water the sanitary system will probably require a retaining wall for part or all of the sanitary wall and that retaining wall will require a footing; the survey shows a 5' setback from the property line and this would be reduced and not conforming to the 5' setback from the system and property line. The Village flood zone AE 7 the survey should be revised the LIMWA line for this property which may be required for the first floor elevation and add the flood zone to the survey. Building square footage should be 1,440 square feet times two story which is 3,080 square feet; and they will be 6 bedrooms and the Code requires two spaces for 3 bedrooms and five parking spaces would be required. Total height of the proposed structure is 32 feet no variance should be granted. As the property is being subdivided non conforming lots should not be used to calculate setbacks and the minimum lot area is 20,000 square feet and the minimum lot width is 100' and 80.47 and 79.53 are proposed. The minimum side yard is 20' and 10' and 20' are proposed. They survey does not indicate the setback for the pool. The Village Engineer prefers cars do not back on to Dune Road and the 20' width makes it difficult for cars to turn around the survey shows a location for cars in the driveway and the cars are drawn 8x18 and the driveways do not require enough space.

Mr. Piering said we know Diane Herold and she should have been there to review this; anything that gets approved this will be addressed and that's not before us tonight.

Mr. Richardson said I oppose this application, I oppose two houses and it's a single piece of property and it's 150' and it shouldn't be subdivided with two big houses.

Mr. Piering said they made this application, and anyone can appear to this Board to request variances and if they decide they want a helipad on the front yard they can ask for it but it doesn't mean they will get it. This is not a slam dunk for this.

Mr. Richardson said I came here from Patchogue and last month I went to the Planning Board hearing but what they should do they bought the property and they rent the cottages and there should be one nice house built there and that's nice for the Village and instead of two. If you go down to the Dunes all of the house are right next to eachother.

Mr. Piering said 80' parcels on Dune Road are not uncommon.

Mr. Richardson said my house was built in 1960 and it's 80'.

Mr. Piering said we're working through the process and we appreciate the concerns and we don't have plans yet.

Mr. Richardson said I don't want to sit on the sidelines and something goes through.

Mr. Piering said a lot of the concerns may be resolved but they can seek variances for anything they'd like.

Mr. Musnicki asked if he would submit the comments to this Board?

Mr. Pasca said I am uncomfortable because he's reading Diane Herold's comments, and she didn't chose to come and she should be the one to say it. We need to know if that's authorized, and she's a professional and she may have a reason to not sponsor the comments. I would rather her submit them.

Anthony 493 Dune Road across the street and he's on the ocean side. I am overjoyed if they want to demolish the bungalows and when I first bought the property I figured I would have a problem and in 2014 when we were building our home I went there on a Sunday to meet my

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contractor and I found people sleeping on my second floor from their party. We haven't had any issues with Mr. Gessin owning it, and I needed variances to build my home and in that way I am happy if this goes through to see the cottages demolished. There is an easement on my property for that property to get to the ocean and it's not a public walkway and its specific for that property only, that walkway only those people on the bayside in that lot can use it and I would propose that we put a gate up for that and the owners can have keys and my house only sits a few feet from it and as they walk back and forth they stare at us on our deck.

Mr. Pasca said that's not a lot to ask but that's something between you and the owners. Are you saying you'd prefer two houses to use the right of way versus the 8?

Mr. Charletta said yes. Most of the time they are nice people and families using the cottages but the bottom line it would be an improvement to the neighborhood and I think, yes one big house would be nice but if two get rid of the bungalows and if they decrease the size that would be nice too. I would be in favor of that and I can see over the bungalows and see the bay and if they build the houses I will have less of a view, but we would get rid of the bungalows.

Mr. Piering said I would think it would be a big improvement for you.

Mr. Charletta said yes, it would be less people using the walkway. He asks that the easement, if it's subdivided the easement survives that and they should maintain it and I take care of it, again the applicant is the third owner but I would be in favor of demolishing the bungalows.

Mr. Hulme asked them to adjourn the public hearing to September.

Motion was made by Mr. Piering to adjourn the hearing of **First Dunes Development, 496, LLC., 496 Dune Road (905-16-1-19)** to September 15, 2022; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

**REQUEST FOR EXTENSION:**

**Bella 165, LLC., 165 Dune Road (905-20-2-24.1)** Applicant requests to reopen the public hearing.

Mr. Piering said Mr. Hulme submitted a request to reopen a hearing for a discussion and they need a unanimous vote to do so.

Mr. Hulme said there is a member missing does that affect it?

Mr. Pasca said no, it's just whoever is present.

Mr. Piering said we are a small Village and we wrote our decision so we want to hear. I would make a motion to reopen the application for a discission,

Mr. Musnicki: Nay

Mr. Piering said that's that; it had to be unanimous.

Mr. Hulme said he understands. They modified the plan and will live with the variances.