

November 17, 2022

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, November 17, 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
Daniel Martinsen

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 October 20, 2022 minutes as written; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

DECISIONS

1. 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. Mr. Piering stated there is a two part decision, the first part is to allow the subdivision and he’d like to make a motion to adopt the first part of the decision to grant the subdivision.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

-----X

In the Matter of Application of

First Dunes Development, LLC

DETERMINATION

Address: 496 Dune Road

SCTM #: 905-16-1-19

-----X

I. REQUEST FOR RELIEF

The applicant, First Dunes Development, LLC., is the owner of a parcel of real property located at 496 Dune Road. The property is located wholly within the R-3 Zoning District.

According to the survey of the property drawn by Fox Land Surveying, P.C., dated March 13, 2020, and updated on May 1, 2022, the parcel is improved with eight (8) detached frame cottages

November 17, 2022

and attached decks and wood walkway. The cottages are a nonconforming use and are, in many respects, dimensionally nonconforming.

The applicant has proposed to remove the cottages, subdivide the property into two lots, and erect a single-family residence and accessory structures on each of the two newly-created lots. Proposed Lot 1 would have an area of 13,211 sf and width of 80.47', and proposed Lot 2 would have an area of 15,022 sf and width of 79.53'. As depicted on the final site plan prepared by PWGC, last revised 9/6/22, the proposed house and structures for Lot 1 would result in a coverage of 27%, side yard setbacks of 10' for the house and deck from the easterly line and 20' from the westerly line, and a combined side yard of 30 feet, and the proposed house and structures for Lot 2 would result in a coverage of 21.3%, side yard setbacks of 10' for the house, pool and deck from the westerly line and 20' setback for the house and deck from the easterly line, and a combined side yard of 30 feet.

Section 197-8.B. of the Village Code provides that, in the R-3 Zoning District, the lot area shall not be less than 20,000 square feet, and the lot width shall not be less than 100 feet.

Section 197-8.C. of the Village Code provides that, in the R-3 Zoning District, the building area lot coverage shall not exceed 20% of the lot area, exclusive of all area designated as tidal wetlands by the New York State Department of Environmental Conservation.

Section 197-8.D. of the Village Code provides that, in the R-3 Zoning District, there shall be two side yards totaling not less than 50 feet, neither of which shall be less than 20 feet.

Section 197-35.C. of the Village Code provides that, in the R-3 Zoning District, accessory buildings, structures, tennis courts and swimming pools cannot be located closer than 20 feet to any lot or boundary line.

Therefore, the applicants request variances from the following sections:

- 197-8.B – for lot areas of 13,211 and 15,022 where minimum is 20,000 sf and for lot widths of 80.47' and 79.53' where minimum is 100';
- 197-8.C – for proposed coverages of 27% and 21.3% where maximum is 20%;
- 197-8.D – for proposed side yards of 10' where the minimum is 20';
- 197-35.C – for proposed deck setbacks of 10' and for a proposed pool (lot 2 only) of 10' where a minimum of 20' is required.

II. SEQRA

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

Since this is a request for a variance for single family residences and accessory residential structures, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(11), (12), (16) and (17). Accordingly, the application is not subject to review under SEQRA.

III. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on August 18, 2022. The applicants and their attorney, James N. Hulme, Esq., appeared and presented the application.

Richard Richardson, 504 Dune Road appeared in opposition to the application, Anthony Chiarletta 493 Dune Road appeared in opposition to the application and the Board did not receive any written submissions from any neighbors in support or opposition to the application. The hearing was closed at the October 20, 2022, meeting for a determination at the November 17, 2022 meeting.

IV. GOVERNING LAW

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

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

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

V. FINDINGS AND CONCLUSIONS

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

1. Character of the Neighborhood:
 - a. Lot Variances: With respect to the variances needed from Section 197-8.B (lot area and lot width) to allow the proposed subdivision, the Board finds that the applicant has demonstrated that these variances will not have a material

adverse impact on the character of the neighborhood. The proposed lots will be generally of a size and width consistent with other lots on the north side of Dune Road in the vicinity of the property. The creation of the proposed lots will also eliminate a nonconforming use and significant existing dimensional nonconformities, thus resulting in a benefit to the neighborhood.

- b. Residence Variances: With respect to the variances needed from Sections 197-8.C, 197-8.D, and 197-35.C to allow the construction of the proposed residences on the newly-created lots, the Board finds that the applicant has failed to show that these variances will not cause a material adverse impact on the character of the neighborhood. The applicant is proposing to create parcels that are reasonably sized to accommodate substantial residences without the need for setback and coverage variances. While the applicant correctly points out that the proposed homes will be more conforming than the existing property, the applicant has a clean slate and can simply design homes that meet the code setback and coverage requirements. Although the applicant argues that the impact of the 10' setbacks will be most felt by the future owners of these homes (because the exterior setbacks would conform to the single side-yard requirement of 20'), the zoning code's setback requirements do not merely protect individual homeowners, but the entire community, because requiring sufficient spacing between homes results in a community character that has more open space and less dense development. Here, the two proposed homes would be separated by a total of only 20', whereas two conforming proposed homes would be separated by a total of 40'. The character of those two hypothetical developments is materially different.

2. Alternatives:

- a. Lot Variances: With respect to the variances needed from Section 197-8.B (lot area and lot width) to allow the proposed subdivision, the Board finds that the applicant has demonstrated that there is no feasible alternative to achieve the benefits sought (two residences) without the granting of the requested variances.
- b. Residence Variances: With respect to the variances needed from Sections 197-8.C, 197-8.D, and 197-35.C to allow the construction of the proposed

residences on the newly-created lots, the Board finds that the applicant has failed to show that there are no feasible alternatives to achieve the benefit of newly-created homes without the need for variance relief. As mentioned above, the applicant has a clean slate and can simply design homes that meet the code setback and coverage requirements. While the applicant has argued that the financial benefits cannot be achieved with smaller homes, this argument was conclusory and was not corroborated by dollars-and-cents evidence of a financial hardship.

3. Substantiality:

- a. Lot Variances: With respect to the variances needed from Section 197-8.B (lot area and lot width) to allow the proposed subdivision, the Board finds that, while the variances are mathematically significant, in the context of this neighborhood the variances are not substantial.
- b. Residence Variances: With respect to the variances needed from Sections 197-8.C, 197-8.D, and 197-35.C to allow the construction of the proposed residences on the newly-created lots, the Board finds that the variances are substantial. The setback variances would constitute a 50% nonconformity of the required setbacks of 20', and the requested coverage variances are substantial in the context of new construction, where the Board generally finds even mathematically small coverage nonconformities to be substantial.

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

5. Self-Created Difficulty: The hardships are self-created.

6. Benefit vs. Detriment:

- a. Lot Variances: With respect to the variances needed from Section 197-8.B (lot area and lot width) to allow the proposed subdivision, the Board finds that the benefits to the applicant outweigh the detriment to the community.
- b. Residence Variances: With respect to the variances needed from Sections 197-8.C, 197-8.D, and 197-35.C to allow the construction of the proposed residences on the newly-created lots, the Board finds that detriments to the community outweigh the benefits to the applicant

November 17, 2022

7. Minimum Variance: With respect to the variances needed from Section 197-8.B (lot area and lot width) to allow the proposed subdivision, the Board finds that the variances are the minimum necessary to achieve the benefits sought.

The Board therefore **denies** the variances needed from Sections 197-8.C, 197-8.D, and 197-35.C to allow the construction of the proposed residences on the newly-created lots, but otherwise **grants** the variances needed from Section 197-8.B (lot area and lot width) to allow the proposed subdivision, as depicted on the proposed plans, subject to the following conditions to minimize any adverse impacts from the variance:

VI. CONDITIONS

1. The variances granted herein are limited to the relief set forth in this decision, and pertain only to the subdivision plans presented to the Board and shall not be construed as creating conforming dimensions. There shall be no further changes to the dimensions of the proposed lots without further review and approval by the Board.
2. The proposed subdivision shall be subject to review by the Village Planning Board for compliance with the Village’s subdivision code.
3. Prior to completion of the proposed subdivision, the cottages on the property shall be removed and the nonconforming use shall be terminated.

Dated: November 17, 2022

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to grant the subdivision; seconded by Mr. Martinsen and unanimously carried 5 ayes, 0 nays, 0 absent.

Mr. Piering said the second part is for the area variance, and the side yard setbacks and the decision is to deny that.

Motion was made by Mr. Piering to deny the area variance request; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

2. Michael Cavanagh, 28 Halsey Ave (905-009-02-014) Applicant requests variance from §197-35 C for proposed accessory structures located in the side yard where not permitted.

James N. Hulme, Esq., appeared on behalf of the application. Mr. Piering stated there was a determination and the reading was waived.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

-----X

In the Matter of Application of

Michael Cavanagh

DETERMINATION

Address: 28 Halsey Avenue

November 17, 2022

SCTM #: 905-9-2-14

-----X

REQUEST FOR RELIEF

The applicant, Michael Cavanagh, is the owner of a parcel of real property located at 28 Halsey Avenue. The property is located wholly within the R-1 Zoning District. According to the existing conditions survey of the property drawn by Squires, Holden, Weisenbacher & Smith, dated May 12, 2021, the parcel is improved with a two ½ story frame house and garage, decks, patios, enclosed porch, and tennis court. The parcel is also benefitted by a prior variance granted on March 18, 1999, allowing a part of the tennis court, up to 20% thereof, in the side yard.

The applicant is undertaking renovations at the property and has submitted the following plans, which are collectively referred to as the “Plans”:

- Survey drawn by Fox Land Surveying, dated May 18, 2022, and updated on October 5, 2022;
- “Proposed Structures Plan” (2 sheets) drawn by Templeton Landscape Design, last dated 6/8/22
- “Rear Landscape View” drawn by Templeton Landscape Design, last dated 9/22/22; and
- “Wetland Buffer” drawn by Templeton Landscape Design, last dated 9/22/22.

These Plans generally provide for a reconstructed pool and proposed spa, along with hardscape (walkways, a terrace, steps, etc.), outdoor kitchen, and shade structure to be placed partially within the required side yard fronting on Oneck Canal.

Section 197-35.A. of the Village Code provides that, in the R-1 Zoning District, accessory buildings, structures, tennis courts and swimming pools shall not be located in the front or side yard.

The applicant therefore request a variance from section 197-35.A. in order to construct accessory structures in the side yard, as depicted on the Plans.

VII. SEQRA

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

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

VIII. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on October 20, 2022. The applicants and their attorney, James N. Hulme, Esq., and Joshua Rosensweig, Architect appeared and presented the application.

No other persons appeared in support or opposition to the application, and the Board did not receive any written submissions from any neighbors in support or opposition to the application. The hearing was closed at the October 20, 2022, meeting for a determination.

IX. GOVERNING LAW

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

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

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

X. FINDINGS AND CONCLUSIONS

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

8. *Character of the Neighborhood:* The applicant has demonstrated that the granting of the variances will not cause any material adverse impact on the character of the neighborhood. The property is a unique parcel to the extent its side yard is a waterfront boundary, and it has been previously developed with the pool and accessory space in that side yard facing the water. The proposal seeks mainly to replace the pool with a pool/spa in the same general location as the existing pool, and it seeks to add additional landscaping and hardscaping to that side yard area. Given that this side yard has been previously designed and utilized (lawfully) as a de facto rear yard would typically be designed and used, the replacement of the pool and addition of landscaping and hardscaping will not materially alter the existing conditions or cause any adverse impacts.

9. *Alternatives:* There are no feasible alternatives to achieve the benefits sought without the granting of a variance.

10. *Substantiality:* In light of the pre-existing conditions that are not substantially being changed, the variances are not substantial in the context of these unique circumstances.

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

12. *Self-Created Difficulty:* The difficulty is self created to the extent that the applicant acquired the property aware of the side-yard prohibitions. The Board notes that the pre-existing layout of the property mitigates the self-created nature of the hardship.

13. *Benefit vs. Detriment:* The benefits to the applicant outweigh the detriment to the community.

November 17, 2022

14. *Minimum Variance*: The variances are the minimum necessary to achieve the benefit sought.

The Board therefore grants the requested area variances to allow the applicant to construct accessory structures in the side yard as shown on the Plans as defined herein, subject to the following conditions to minimize any adverse impacts from the variance:

XI. CONDITIONS

1. The variances granted herein are limited to the relief set forth in this decision, and pertain only to the structures as they are depicted on the survey, and shall not be construed as creating conforming dimensions. There shall be no further extension (horizontally or vertically), increase, alteration or modification to the structures located on the property that has non-conforming dimensions, without further approval of the Board.

2. No outdoor accessory structures or equipment (including but not limited to air conditioning condensers, HVAC equipment, above-ground utilities, generators, pool equipment, solar panels, garbage/storage bins, etc.) may be located within a required front, side, or rear yard, except as depicted on the approved plans, without further approval of the Board.

4. There can be no exterior work performed on weekends from May 1 to September 30 and on weekdays from July 1 to September 10.

5. The variances granted herein shall terminate unless a building permit is issued within one year from the date hereof and construction completed according to said building permit.

Dated: November 17, 2022

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Michael Cavanagh, 28 Halsey Avenue (905-9-2-14)** as written; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

HOLDOVERS:

3. 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. They have been before this board for a few hearings and he wanted to try to close this matter and his clients are here and they'd like to address the Board as well. To recap where we have been and where we've gone so far we were seeking to reconstruct in its current location, and that would have located it at 38' from the Crest of the Dune which was the area variance needed. In addition we were looking for two Coastal Erosion variances, and the other in the primary dune and after some discussion we offered to move the house to a 50' setback from the Dune Crest and we saw logic in moving it and limited negative to the applicant and the benefit to all is the fact we are not in the primary dune and have eliminated that variance and that seems to be significant to this Board. The Code separately protects the primary dune from the CEHA and there was movement back from the dune and it reduced the amount of the rear yard variance needed and we talked for a few minutes about the double dune this Village has in place so even if it were closer than 75' it would not follow issues with flooding and erosion because it's not part of the other dune. We discussed a number of other variances that this Board has granted which were less than the full 75' and in thinking about them it

November 17, 2022

seems that there was a unique basis on each one, and a unique reason for each as to why you may have chosen to grant that relief. In this case, the 50' in our mind suggests a unique feature that could provide the basis for the relief being granted and that had to do with my clients view of the ocean and I wanted to share that. I took a few minutes to do a study of the existing location, and I have shown the view shed the first arc labeled "A" is the current view, and as you can see it's 203 degrees of a view and its substantial and substantive. We had looked at the factors and offered to move the house back to a 50' setback and that resulted in a view arc of 186 degrees and it's a loss of 20 degrees, over 9% and not overly significant and then we looked at moving it back to the 75' and the view is truncated to 150' or almost ¼ of it is lost as a result if we were to build a house at a further location. ¼ of the view is significant, and something that my clients are looking to avoid having to give up.

MR. Pierjng said if you move it back to the 75' you are in line with your Westerly neighbor?

Mr. Hulme said yes, that's correct but we're behind the house to the East. And its not on this map but if you look at 213 Dune Road that was granted setback relief, we're 25' from the back of where they are. I think it is a balance and we are losing something, someone else is gaining something and the Village is gaining the retreat from the two dunes. I think there's a dramatic difference between the 50' and 75' in degrees.

Mr. Musnicki said you can't get away from the fact that it's still substantial. In the previous meetings I pointed out that there are houses to the West and are new construction as this is, 223 Dune Road, 221 Dune Road, 217 Dune Road, and 215 Dune Road and they are all North and they did not obtain variances.

Mr. Hulme said they could have, and if they had a basis to justify the relief I would suggest you grant that variance. I don't see any major harm to the Village and the environment if you will int eh variance we're seeking. We demonstrated the harm to my clients that the further back they are forced to move.

Mr. Pasca said it's a balancing test; it's the benefit to your client versus the detriment to pthers. If you're making an argument that the view shed is important it's important to the neighbors who are losijng their view shed.

Mr. Hulme said they are not; they are getting an improvement as wel even though it's not as much as they may get back if we move back to 75' the situation bets worse for us but better for them.

Mr. Pasca said if everyone comolied with the setback which is the gial, everyone gets 180 degrees and that's that. If everyone is at the 75' everyone would have the same view shed and that's the goal of the Code.

Mr. Hulme said the balancing test doesn't look at the future, it looks at the community now.

Mr. Pasca said I don't agree with that; the character of the community is defined by the Cod.e You can make an argument its justifiable but you can't discount the compliance with eh Code and the desire to protect everyone with at uniform setback.

Mr. Hulme said in the possible of that future circumstance I may agree; but the reality is what is there now, every foot we move back is of detriment to us and every foot back is a benefit to the neighbors.

Mr. Pasca said just in terms of view shed?

Mr. Hulme said it's a significant detriment and my client can address that

MR. Piering said what you're saying makes sense, but to another point since I've been on this Board our prupose has been to retreat the 75' as much as possible and the ultimate goal ahs been to ove that.

Mr. Hulme said every time there's a negative eimpact on the homeowner in moving back you've granted relief.

Mr. Pasca said that's not true.

Mr. Hulme said 213 Dune Road is the perfect example.

Mr. Pasca said the impetitent is the ability to move forward to the 75' line and that doesn't exist here.

Mr. Hulme said my client can address their concern about flood damage as they get closer to the road and it gets lower as you move closer to the road and fills with water often.

Mr. Piering said he'd like to hear from Mr. Hulme's clients.

November 17, 2022

Michael and Elizabeth Levy appeared; Mr. Levy said we understand your objectives in zoning and protection against storms and tidal surges. We have lived here for 16 years, and we stay during the winter and my family use the beach and dunes a lot and its interesting when you talk about tidal erosion. Hurricane Sandy our house was protected, the houses across the street were flooded and destroyed on the bay side and the water comes in to the Bay has nowhere to go, it breaches the bulkhead floods over and our house was fine and the tides came up across the street and if our house would have been closer to the street it would have incurred damage. If you go over the dune and walk down to the ocean the dunes are getting wider and deeper and five or six years ago we built a table below the dune and its almost under sand now and there's been about 1 foot of extra sand. You don't want across the dune to the ocean anymore you go uphill 5' and this is a continuation of decades and when you talk about the dune its getting wider and the houses are further from the ocean not just in distance but in protection and its very striking. We have lived here for 16 years and we lived through Hurricane Sandy and we feel like without pressing the point we are protected from tidal surge. I encourage you to go to the area and walk the dunes in both directions and you will see it. With regard to the issue, we have been through this for five months and we have a small older house and what we'd like to do expand our house.

Ms. Levy said our daughters have gotten married and have children and our grandchildren are getting bigger and the house feels much smaller and that matters to us to have a dwelling that our family can be comfortable and fit and its very difficult.

Mr. Levy said for the last four or five months we've gone through the formalities and here we are and we actually thought, to be honest we thought our plan was logical in terms of the objectives and we understand the 75' setback but we also thought it was logical because if you look at what happens to the house sin the Dune when they are torn down and whatever variances are granted the dunes erode right away. The house to our East towers above a two and one half story building so its not just the angle . I don't think it's a game between neighbors, I think what we're seeking is in keeping with the neighborhood. We love this neighborhood and we enjoy it the beach and our simple question is what you think its appropriate. Do you think a 75' rigid line is what is appropriate, and what do you think is appropriate relative to where we stand.

Mr. Musnicki said your attorney has a lot of experience in this area and he would advise you generally where a sweet spot may be, and he's been to many meetings an di can't remember us taking a hard line on 75' dune crest.

Ms. Levy said we'd like a suggestion because we don't know anymore.

Mr. Pasca said that's not an appropriate request. I have to say, you are brigin gup a flood argument, and unless you have scientific knowledge that you can in part this Board has to rely on the flood zones and Coastal Erosion zones and the 75' line almost corresponds to the VE 16 zone to an AE 8 zone so that is an objective determination by the FEMA agency who have determined this point from velocity to a lesser zone. You are arguing that you are better off leaving it behind a velocity zone rather than pushing it forward and unless there is scientific proof you can't make that argument.

Ms. Levy asked if FEMA has taken into account the flooding from the bay?

Mr. Pasca said tha'ts a question for FEMA. If you think they are wrong, this Board can't decide that. Those lines run against your argyment.

Mr. Levy said from the getgo one factor that led us to initiate this process is that our house does meet FEMA reglations we're above 16' and I'm not a scientist and you move from 38' North of the Dune to 50' to 75' and you're going downhill, and water goes downhill. I would suggest a house that's 50' North of the Dune is as well protected from any storm surge or tidal surge as 50' or 75'.

Mr. Piering said the argument about water running down hill runs against you as you look at the bay side flooding.

Mr. Levy said their house was protected from Hurricane Sandy because they are 1.5' higher than Dune Road so when the tidal surge came over the bulkhead across the street and across Dune Road it only came part way up on our property because we slope uphill toward our basement, that was our only protection. If it was totally flat you would have had damage to the old houses on the ocean side. The new houses are more protected because they're built up. Its interesting the dynamics of how the eco system and the dunes are changing.

Mr. Piering thanked Mr. and Mrs. Levy.

Mr. Hulme said to add there are different construction standards in each zone and if FEMA is correct about flood risks they are correct about the construction standards too so the difference doesn't create a detriment to the Village.

November 17, 2022

Mr. Pasca said I was addressing the lay person argument that they are better off in a VE zone; you can't make them to decide based on a persons opinion.

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

Mr. Levy asked if these questions were asked on the other houses that were granted variances for?

Mr. Hulme said yes, they did.

Mr. Piering said yes, we did. The minutes are available to review if you ever desire to review them.

Mr. Hulme thanked the Board.

Mrs. Levy asked if they should come back with another proposal?

Mr. Piering said you have to talk to your attorney about that?

Mr. Hulme said we should leave it open for a month, if its okay with my clients it would be my request.

Motion was made by Mr. Piering to holdover the application of **Michael and Elizabeth Levy, 205 Dune Road (905-20-2-8)** to December 15, 2022; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

4. Lee & Carolyn Renzin, 2 Lilac Road (905-008-08-003) Applicant requests variances from §197-7 C to construct a swimming pool that will result in a building area lot coverage of 21.7% where the maximum permitted is 20%.

William Shapiro, Esq., submitted a request to hold this over to December 15, 2022.

Motion was made by Mr. Piering to holdover the application of **Lee & Carolyn Renzin, 2 Lilac Road (905-008-08-003)** to December 15, 2022; seconded by Mr. Martinsen and unanimously carried 5 ayes, 0 nays, 0 absent.

NEW APPLICATIONS

5. Stuart & Pauline Olsen, 351 Dune Road (905-018-02-007) Applicant requests variance from §197-35 C for a proposed accessory deck extension with setbacks of 11.7 feet (side) & 50.4 feet (rear to crest of dune) where the minimum required is 20 & 75 feet, respectively.

Heather A. Wright, Esq., appeared on behalf of the application, together with Mr. and Mrs. Olsen. They purchased the property in 2011 and the lot is conforming with lot area, coverage, side yards and total side yard and the lot width is only 93' and the pool and existing deck are 50.4' from the crest of the dune and that was pursuant to a 2007 variance that was granted to construct the existing home. We are requesting to add 500 square feet to the existing deck for 11.7' for side yard relief. We have a small existing deck, and my client are looking for additional usable space and a lot of the space is not usable in this area as it exists it is more of a walkway around the pool and the deck expansion is designed for more usable space.

Mr. Wittschen asked if the pool exists?

Mrs. Wright said the survey is misleading.

Mr. Puering asked if this is the house that Rocco Lettieri built, it's a wet deck?

Mrs. Wright said yes, the Board determined it was an accessory structure.

Mr. Piering said it was contentious.

Mr. Wittschen asked which is the pool and which is the wet deck?

Mrs. Wright said there is a swimming pool and to the North is the landscape feature or wetdeck. Her clients have owned it for 7 years and the existing deck is not big enough for them and we designed an addition and you can see its an odd shape an dnot ideal but it was designed to maintain the 50.4' dune crest setback which we have already and we did it so we aren't closer to the dune crest.

Mr. Wittschen asked if it's 75' in parts of it?

Mrs. Wright said it's 75' from the coastal erosion hazard area.

Mr. Wittschen asiad there's 50' from the dune crest? And 75' on the other?

Mr. Piering said the house has 75'?

November 17, 2022

Mrs. Wright said yes, that's correct.

Mr. Piering said you want to double the deck in square footage?

Mrs. Wright said the existing usable is a little over 400 square feet and we're adding around 558 square feet.

Mr. Piering said it's a significant increase. You need side yard on this one too?

Mrs. Wright said yes, and that's because we don't want to get closer to the dune crest. In terms of the elements for a variance and we talk about the character of the neighborhood I think this does not have a negative impact on the neighborhood character and we're set way back from the neighbor's lot and our dune line is much closer than it is on the neighbor lots and their pool is closer to Dune Road and there is nothing between and that's where our deck would have its most impact and then the house itself and the neighbor won't be negatively impacted and there is a walkway to the dune on the East side. We have reached out to the neighbors on both sides, we have letters in support from both and no objection to the proposed extension of the deck and the neighbor on the other side did not get a chance to write a letter and we have a letter in support two doors down and I think the character element there is no negative impact. When we talk about the feasibility and substantiality there is no feasible alternative to achieve the deck expansion without going in to the side yard; it may be substantial but it's unique and they are looking for side yard relief for primary structures and that could be massive and impactful but this is an open air structure and deck that is a small portion of the structure as a whole.

Mr. Piering said that's a pretty big deck on the side yard.

Mrs. Wright said we looked at it and there's no other place to put it,

Mr. Piering said it's 12' from the neighbor, so I question the impact.

Mrs. Wright said there is no impact, it won't touch their lot use and enjoyment there are bushes and walkways.

Mr. Piering said where the deck ends you are going out another 8'

Mrs. Wright said yes, and each variance is looked at on their facts and in this case it's doing little to no harm given it's an area that they don't have any recreational use on. They support the application so they are aware of the proposed construction.

Mr. Musnicki said they have owned this since it was built, so they were aware of the deck size when they purchase the house?

Mrs. Wright said yes.

Mr. Musnicki said the deck in the side yard is substantial ask it's a 50% ask on the side yard and that's a lot.

Mrs. Wright said you have to look at it in the context that the lot width is not 100' and that makes a difference and I think the substantiality is one factor in a number of factors and the others outweigh it. The deck location is the least impactful on the neighbors.

Mr. Badzik asked what the existing setback is?

Mrs. Wright said it's 19.9' and it's 11.7' that we're proposing the new setback to be.

Mr. Badzik said the portion of the deck that you are going East, how big is that width proposed?

Mrs. Wright said 19.9' minus 11.7'.

Mr. Badzik said it's around 8'.

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

Mr. Musnicki asked if there were any questions on the West side for this?

Mrs. Wright said I don't think so, it would create an access problem.

Joe Pagac, Architect said the question is about expansion to the west, because of the wading pools / wetdeck and the access is from the front porch, you have to walk through the pool and then the wading pool to access the deck on the West.

Mr. Wittschen said he understands.

Mr. Musnicki thanked Mr. Pagac.

November 17, 2022

Mr. Piering said its a lot in the side yard, does it have to be that wide are you squaring it off to the house?

Mrs. Wright said it juts out a little bit.

Mr. Musnicki said it's a substantial jut out.

Mrs. Wright said the steps come out further than the 19'.

Mr. Piering said you aren't squaring it off, you're going further out. It's a 7% undersize on width, you are over the 7% and that's a big ask.

Mrs. Wright said anything we do is an expansion. We aren't going further to the Dune.

Mr. Piering said there is a good size deck,

Mrs. Wright said I disagree with that, you can fit four chairs and no table it's a very small deck,

Mr. Musnicki said someone made a decision when it was constructed to use the footprint for habitable space and deck space and they chose this and the buyer got what they purchased.

Mrs. Wright said I understand if the applicant was the builder, I would tell them this your design but this is different because they purchased it and live with it and realized their use has changed and the additional space, especially outdoor space on Dune Road would benefit them and they'd like to use more space. It's different when you build a house versus when you buy it this way.

Mr. Martinsen asked if they ever considered filling in the wetdeck?

Mrs. Wright said we did not discuss that; but I looked at it and that doesn't really get where you want the width of the wetdeck is almost the same width of the entry stair it's 6' or 7' wide it doesn't give useful additional space.

Mr. Piering asked if they have more room for a deck on the other side?

Mrs. Wright said that's the side we just discussed because you have to go through the wetdeck to get to the deck if we expanded on that side. I understand what you're saying and the substantiality of the ask, but this is a situation given the location of the proposed constriction is where the benegit outweighs the detriment. If the neighbors house or pool and backyard were up against this deck I can see your argument.

Mr. Piering said if they rebuild their house they will be. He asked if there were any other commnts or questions.

Motion was made by Mr. Piering to close the hearing of **Stuart & Pauline Olsen, 351 Dune Road (905-18-2-7)** for a determination; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

6. Lisa Canty, 443A Dune Road (905-017-05-007) Applicant requests variances from §197-8 D for a proposed addition with side yard setbacks of 5.5 & 8 feet where the minimum required is 20 feet, and with a resultant combined side yard setback of 13.5 feet where the minimum required is 50 feet.

Mark Knotoff appeared on behalf of the application, together with Paul Canty.

Mr. Piering said I did some research on this, and I spoke to the applicant and when this variance was originally granted it was listed as the R5 but it's the R3 so there was a lot of relief granted based on the R5 zoning and that's the Village's fault but I want to put that out there before we start.

Mr. Knotoff said they are proposing a second floor bedroom and bath and first floor living area expansion and it's 500 square feet of lot coverage.

Mr. Pierign asked if it's a lot coverage variance?

Mr. Knotoff said no, the surveyor showed the proper lot coverage but I couldn't print it out but it is 19.6%.

Mr. Piering said is that the proposed?

Mr. Knotoff said yes.

Mr. Piering asked if the addition is only in the front?

Mr. Knotoff said yes.

Mr. Piering asked if they are increasing the side yard non conformity?

Mr. Knotoff said a few inches because of a slight slant.

November 17, 2022

Mr. Piering said you only need this not lot coverage at all? How wide is the lot?

Mr. Knotoff said it is only 50' wide.

Mr. Piering said this is very straight forward, are there any questions?

Mr. Knotoff said the hardship is that they have five children and are year round residents and they need the extra bedroom and bathroom.

Mr. Piering asked the square footage of the house?

Mr. Knotoff said it is 2,644 and the proposed is 3,644.

Mr. Piering asked how many bedrooms they are adding?

Mr. Canty said they are adding a bedroom, not a bathroom we're moving them around. We're making one a jack and jill and moving out to the street. There is porch and we're infilling that and above it and a roof over and I think on the West side we're out about one dozen feet and on the East.

Mr. Wittschen asked if there are neighbor comments.

Mr. Musnicki asked the side yard argument of 5.5' where 20' is needed.

Mr. Knotoff said its a pre existing non conforming lot that's half the width and this lot is only 50' and the required lot width is 100' and there is no where else to put the addition.

Mr. Piering said this is the only logical location for it.

Mr. Badzik agreed with Mr. Piering.

Mr. Wittschen agreed with Mr. Piering.

Jackie Sprotte, 441 Dune Road appeared in opposition to the application. In 1996 we purchased 440 Dune Road and we received variances and we bought the house across the street and waited 12 years and came to this Board for a variance. When I received the survey it was Saturday and I was away and I immediately looked at it and I really thought and I had David Fox and contractors look at it and I was very confident that the survey was correct; and the property is not 50' it's 39.6' wide. The house and I think years ago it was a parcel that was subdivided and each was 39.6' and the survey said 40' and that means my bushes were 1' in the walkway. I took my survey to David Fox and he said the surveyor changed the boundary on the roadway and we have surveyed Dune Road for many years and haven't seen evidence to support a change, and I confirmed 39.6' is correct on both 443 and 443A. The result of this moves the Westerly line $\frac{3}{4}$ too far East; the Easterly line 9.5' too far East and the setback would be approximately 7.5' not 8.3' and that matters with my bushes. 20 years ago there were no houses that would be an encroachment and my problem is that if they go out 8' I get no sun and I know what its like to be in a small house and they have bayside decks if they enclose them they will get enough room. She said she would love to have someone represent her to go over the land use because one attorney said the house is in the wrong spot and side yard setbacks and the original house was supposed to be closer to Dune Road and is still bigger than buying a new house that they'd have to conform with and my other concern was on the survey, besides the numbers being off his deck isn't the original approved deck.

Mr. Piering said that's not before us, we aren't Code Enforcemtn.

Mr. Wittschen asked if it was a replacement or expansion?

Ms. Sprotte said it was raised.

Mr. Canty said I removed a staircase.

Ms. Sprotte said its not on the survey. The new deck is not on the survey.

Mr. Piering said we're getting off topic.

Ms. Sprotte asked if the square footage has to be included in lot coverage?

Mr. Piering said yes. What I'm saying is, keep in mind if any expansion goes on he wouldn't get a CO for illegal structures.

Ms. Sprotte said they got their approval in 2001 and you look at that house you will see its different and they didn't get permits and he doesn't have a CO for the new deck.

Mr. Canty said it's the exact same dimensions.

Mr. Piering said the issue before us is the expansion of the house, if in fact there were illegal structures not included on the lot coverage you wont' get a CO.

November 17, 2022

Mr. Hammond said we review surveys and CO and if that comes to light they may have to return to this Board but we did not do the research yet.

Ms. Sprotte said that's why I'm asking for a holdover.

Mr. Pierign asked if there is an issue with the survey?

Mr. Hammond said I don't know, it shows 39.6' but 40' actual. I'm not sure what they mean by acutal / deed and I don't know if we have a discrepancy and I have to pull the old surveys and I will find out.

Mr. Pasca said when you see that label on a survey it means that the surveyors use jigsaw puzzles and when I read that they determine that border to border 40.00' even though the deed read 39.6' and they determined from the boyoundary to the bouyndary it is 40.00'.

Ms. Sprotte said David Fox said my survey is monuments, and I saw that it looked off.

Mr. Pasca said Mr. Fox isn't here and this Board has to rely on the survey in front of them they can't assume a surveyor made a mistake, and the survey is sealed and unless you came in with something conclusive and you may have a civil remedy this Board won't look at that and if they are making a claim that's adverse to your yitle there is another remedy. But before the ZBA there is a survey that they review.

Mr. Knotoff said its 50' where the house is.

Mr. Pasca said he wasn't referring to the street width.

Ms. Sprotte said they rented their house last Summer and friend asked how many bedrooms so do I give this to Mr. Hammond because there are a lot of discrepancies and the floor plan is different from what they were originally granted.

Mr. Hammond said if it is interior alterations it won't come to this Board, and any complaints and allegations we will follow through and that involves history and we try to address all of the issues and we won't issue a CC or CO without addressing a violation. I dontk now the answer, I will take the complaint and you can submit that at any time.

Ms. Sprotte said you make a decision?

Mr. Piering said yes, it's based on whats before us wth this application any violation is not this Boards purview.

Ms. Sprotte said you make a decision on square footage?

Mr. Piering said we take into account whats in front of us.

Ms. Sprotte said what if the survey si wrong and he builds 1' closer?

Mr. Knotoff said he's a 1' further away.

Mr. Piering said understand that we give a variance basedon the information new have and if that's incorrect it'll be researched and it won't be permitted. We can't police and we aren't enforcement. We are going to lclose the hearing based on whats in front of us and you have other remdedies available.

Ms. Spritte said the original house was an extensive variance, and now he's going for another.

Mr. Piering said he remembers the origibal variance and I was part of the Board that made the mistake.

Ms. Sprotte said she is in the R3.

Mr. Piering asked if the boundary was changed?

Mr. Hammond said this is the R3 and a previous variance referenced R5 and the single and combined side yard in R5 it is 10' and 20' and in the R3 it's 20' and 50'.

Ms. Sprotte said if he enclosed his two front decks it would be great, and he wouldn't be 5.4' from his neighbors.

Mr. Musnicki said you may want representation at the next meeting you'd be better off.

Ms. Sprotte asked if they could hold it over?

Mr. Piering thanked Ms. Sprotte.

Mr. Knotoff said there is a 10' wide biffer between their house and from what I understand it is a right of way for Pond Point to the beach and I thnk her planter is on it and the right of way has no walk there are 20' trees buffer between the two houses so I don't know how it is blocking her sun.

November 17, 2022

Ms. Sprotte said my planter is on the walkway because the survey is off.

Mr. Piering said we're not discussing that. As a courtesy we should hold this over to give Ms. Sprotte a chance to be represented and to give Mr. Hammond a chance to research the property.

Mr. Hammond said I will look through the files.

Motion was made by Mr. Piering to holdover the application of **Lisa Canty, 443A Dune Road (905-17-5-7)** to December 15, 2022; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

7. DLV DD LLC, 379 Dune Road (905-017-05-055.01) Applicant requests variances from §197-8 E for a proposed addition that represents a third story where the maximum permitted stories is two, from §197-29 C(2)(b) as the proposed addition represents a prohibited increase number of stories of a building with a preexisting nonconforming use not permitted, and also from §197-29 C(2)(c) as the proposed addition represents an increase in floor area of a building with a preexisting nonconforming use.

David Gilmartin, Esq., appeared on behalf of the application, together with Lars Fitter Discovery Land Use and Teddy McCarthy Hart Howerton. Mr. Gilmartin said they are looking to expand the property to construct a staff break room for employees only. We anticipate putting it in building 600 and that building ¾ of it is in the flood plain and we have to raise it and this particular part will not be in the flood plain so we can fit it under the building. We're not raising the building or its height, its like a basement if you will. It is a story but the background regulating height and stories are regulated for height; here it is unusual that its going underneath. We would agree to a C&R and it won't be use for members, or anyone but employees. We've run in to issues and there are areas that people need a break in conditioned space because it's a Summer use and as we move along with the operation it is a pressing need. We have a break room, a locker room and bathrooms for men and women so there are areas to get away from the elements and this expansion will not be visible from the beach or the street and we have a nice landscaping and it will not be seen and its minimal, it's 1,200 square feet and if you look at the EIS it's Type II variance and will not have any impact

Mr. Piering said the concern is the third story, and the vision you get is that you are going taller and I went to the site and I toured it and I see you're not going up its due to the flood plain. I can understand that and the fact it will not be an additional story is good.

Mr. Gilmartin said I would not ask for an additional third story.

Mr. Wittschen said it's very straight forward.

Mr. Musnicki asked the FEMA designation?

Mr. MacCarthy said it's AE 7 and our finished first floor is AE 9.

Mr. Piering asked if there were any questions.

Mr. Pasca said you have to address section 197-29.C., it's a tricky section for us and when we write the decisions we have to be careful not to set a precedent and your situation is different you have to help thread the needle for this.

Mr. Gilmartin said this is a different situation, and we're seeking a variance, there are two things going on we're not raising the height of the structure and the limitation for what is available for. We're not expanding the usable area for the use, there are several uses and we can't accommodate more people and it's how you can distinguish between the two and we're asking for a break room not to expand a pre existing non conforming use.

Mr. Pasca said it won't create an increase in membership or rooms?

Mr. Gilmartin said no, it will not.

Mr. Pasca said okay, I understand that and I am just trying to make sure we do not set a precedent.

Mr. Hammond said the Code allows expansion of pre existing non conforming membership beach, golf and tennis clubs; and I think this falls into storage and utility areas differentiation it from the beach club use and it allows for some expansion for Multi Dwelling Units and there may be and we can get that number of what the area devoted to the beach club is and what percentage this represents.

Mr. Gilmartin said this is not an expansion of that use, it's employee use only and you have that extra layer to distinguish it.

Mr. McCarthy said we organized a number of values in breaking down the functionality a long time ago and we were working with the overall preexisting non conforming of 29,141 and the approved plan reduced to 28,567 and that's what been reviewed by this Board. 17,620 is dedicated to the units, and

November 17, 2022

10,947 square feet is not unit and the net increase is 1,106 square feet so it's a 10% increase which qualifies for the two values Mr. Hammond brought forth.

Mr. Pasca said if you consider closing the hearing, submit it subject to the receipt of those calculations.

Mr. Gilmartin said we'll submit it tomorrow.

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

Motion was made by Mr. Piering to close the hearing of **DLV DD, LLC., 379 Dune Road (905-17-5-55.1)** for a determination; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

8. Sandpiper at Westhampton Beach, 476 Dune Road (905-016-01-027.03) Applicant requests permit from the Zoning Board of Appeals under §197-29 C(1) for a proposed addition & deck extension to a preexisting nonconforming accessory condominium clubhouse where a special permit is required for additions to a nonconforming use, and variances from §197-29 C(2)(c) for proposed addition to a preexisting nonconforming accessory condominium clubhouse which represents a prohibited increase in gross floor area devoted to the nonconforming use, and from §197-29.1 A for proposed addition that is located within the required front yard (29.3' proposed, 50' required) representing a prohibited increase in the degree of nonconformity of a building with a nonconforming front yard setback.

Steve Caputo appeared on behalf of the application. He has four representatives from Sandpiper. Charlie LeBrun, Peter and John Blake. I will anticipate your first question regarding the prior zba which said no further expansion and when the original clubhouse on the bay side was contemplated the meeting room was not ever contemplated and COVID allowed unit holders to attend differently and now they would like a conference room and hearing room across the road and that's the primary reason of the building. The secondary is that the property manager will have an office to watch the building plus the tennis court and parking lot. There is an element for security and safety and that's why we'd like to expand that structure.

Mr. Piering asked how big it is?

Mr. Caputo said we'd like to make it 896 square feet, we are doubling it.

Mr. Piering said it's the bay side and on the parking lot?

Mr. Caputo said yes.

Mr. Badzik said you're adding a deck?

Mr. Caputo said yes, on the Westerly parking lot side.

Mr. Musnicki asked if they explored other locations?

Mr. Caputo said yes, there is no other location on the ocean side and we only have the bay side and it's a large parcel and we thought the best way is to go furthest from the bay and attach it to the existing building and we have significant wetlands on the bayside and no other place to construct it. Another point, we have more people out here year round.

Mr. Musnicki said he would like to see landscaping.

Mr. Caputo asked the Board if they would be okay with landscaping?

The Board Members for Sandpiper said yes.

Mr. Caputo said there is landscaping, and it would be fine to cover it and landscape it.

John Blake said we have landscaping that comes across now in front of the building and we can continue that across the new building to the parking lot entrance.

Mr. Piering asked if this goes to Planning?

Mr. Hammond said yes.

Mr. Blake said it will be a continuation of the existing landscaping?

Mr. Musnicki asked if its possible to give a plan?

Mr. Pasca said you can condition it subject to the Planning Board approval.

Mr. Musnicki said okay.

Mr. Caputo said it would be a carry over of their existing approval.

November 17, 2022

Mr. Pasca asked what question he's going to ask. Can you articulate your argument why its not an expansion of a non conforming use.

Mr. Caputo said my argument is that we have no place to put a conference room, it will only be used as a conference room and no habitable space and we have no other alternative location.

Mr. Pasca asked if it will result in the number of occupants and units?

Mr. Caputo said no. There will be no additional units, no change in use; it is strictly going to be used as a conference room and no habitable space.

Mr. Hammond said this Boards relief is only in so far as the clubhouse, there may be other things on the survey pending litigation and with any decision I like to say we aren't signing off on the whole survey just the clubhouse portion.

Mr. Piering said okay.

Motion was made by Mr. Piering to close the hearing of **Sandpiper at Westhampton Beach, 476 Dune Road (905-16-1-27.3)** for a determination; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

9. Peter Goldstone, 417B Dune Road (905-017-05-033) Applicant requests variances from §74-5 C(2) as the proposed dwelling is prohibited construction of a nonmovable structure within the Coastal Erosion Hazard Area, from §74-8 A as the proposed dwelling construction is in a primary dune area where prohibited, and from §197-34 A(5) as the proposed habitable area of the dwelling (1,668 SF) is 32.7% of the total lot area where the maximum permitted is 20%.

James N. Hulme, Esq., appeared on behalf of the application. We are here to remove the existing home that's present and replace it with a new two story home its an upside down house with three bedrooms downstairs and a great room upstairs with a living room, dining room and kitchen. The habitable area is 1,668 square feet proposed; the existing is around 1,100 square feet.

Mr. Piering asked the lot coverage?

Mr. Hulme said it is less than 20% and will remain less; we're not looking for lot coverage.

Mr. Musnicki asked how many square feet is it?

Mr. Hulme said 1,200 square feet, it's 32.7%.

Mr. Piering said you are going up 400 square feet?

Mr. Hulme said yes.

Mr. Hammond said this is R5 and we have a 20% lot coverage and they are 1,020 sqaure feet and in R5 there is a habitable space limit of 20% and the stiars will be discounted; there is a roof deck on this house and what was 1200 was over 20% but I don't know that number. It is an increase of 400 square feet and it's not 12.7% increase they are 25% up to 30% with htabitable space and the lot coverage is conforming.

Mr. Hulme said to all area requirements it complies except the internal space. The square footage of the parking and the height after we designed the house we lowered it by 1' so we didn't need a variance so it's more useful space of three bedrooms and bathrooms and a kitchen living room and dining room.

Milton Merl, 233 – 227 Oneck Lane and friend of the applicant. The West two corners of the house are identical and as such, the setback which should be 10' is 8.5' and we're bringing to 10' on the North side yard in consideration of the front of the house and we're pushing 12' in the Eastern direction and the exact corners are identical and improving the setbacks.

Mr. Musnicki asked how you argue its not sunstantial?

Mr. Hulme said it's a small addition, it's not large.

Mr. Musnckki said we look at it as 20% to 32% that's substantial.

Mr. Hulme said based on the benefit versus the detriment its less substantial, there is no impact on the adiditon. That offsets the substantiality of the relief.

Mr. Musnicki said if you were to comply what would the number be?

Mr. Hulme said 450 square feet would have to be removed. It's not a large house.

Mr. Musncki asked if there are any retaining walls for the sanitary system.

Mr. Merl said it's been engineered we haven't submitted it yet, but we wanted to go to this Board first.

November 17, 2022

Mr. Musnicki said it slopes down a lot.

Mr. Merl said on the proposed plot plan it has grading that were provided by the Engineer and they show where it is. The house is pretty high, the driveway is 10' off of Dune Road so they are high up already and the water table is 10' below so there is at grade enough area for the sanitary system. There will not be any retaining walls or changes to the grade.

Mr. Piering asked if they could address the neighbors letter.

Mr. Hulme said there is a picture from the applicants house and looking at the neighbors. There were different pointws in his letter and the lead one is Coastal Erosion and the entire lot is in the Coatal Erosion so without that reief there is no house and his second comment is about the view. We are building to the limit of the setback, and its not the second story that will block his view by our first floor regardless of whatever we have done, and whatever we build we want to to the setbacks there is no basis for a complaint.

Motion was made by Mr. Piering to close the hearing of **Peter Goldstone, 417B Dune Road (905-17-5-33)** for a determination; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

Motion was made by Mr. Piering to adjourn the meeting at 7:05 p.m.; seconded by Mr. Martinsen and unanimously carried 5 ayes, 0 nays, 0 absent.