

December 15, 2022

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday December 15, 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 the minutes of the November 17, 2022 meeting as written; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

DECISIONS

1. 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 the application. Mr. Piering said we have a split decision, we approved the rear portion of the deck, but we kept the side yard setback at 16’.

Ms. Wright said okay.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

-----X
In the Matter of Application of

Pauline Olsten

DETERMINATION

Address: 351 Dune Road
SCTM #: 905-18-2-7

-----X

I. REQUEST FOR RELIEF

The applicant, Pauline Olsten, is the owner of a parcel of real property located at 351 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, David H. Fox, Land Surveyor, dated April 28, 2016 and updated on August 29, 2022, the parcel is improved with a two story frame house and garage, wood decks, and swimming pool.

Section 197-35.C. of the Village Code provides that, in the R-3 Zoning District, on lots lying on the South side of Dune Road, accessory buildings, structures, tennis courts and

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swimming pools cannot be located closer than the 75 feet from the crest of the dune and 20 feet from a side or front boundary line.

The applicant is proposing to expand the existing deck to the extent of a 50.4' setback (where 75' is required) from the crest of dune and an 11.7' setback (where 20' is required) from the eastern side lot line.

Therefore, the applicant requests the required variances from Sections 197-35.C in order to construct the accessory deck extension, as depicted on the survey drawn by Fox Land Surveying, David H. Fox, Land Surveyor, dated April 28, 2016 and updated on August 29, 2022.

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 setback variance for an accessory residential structure, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(12) and (16).

Accordingly, the application is not subject to review under SEQRA.

II. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on November 17, 2022. The applicant's attorney, Heather A. Wright, Esq., 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 November 17, 2022, meeting for a determination at the December 15, 2022, meeting.

III. GOVERNING LAW

The Zoning Board is empowered to grant area variances pursuant to Section 7-712-b of the N.Y. Village Law and Section 197-75 of the Village Code.

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.

IV. FINDINGS AND CONCLUSIONS

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

1. *Character of the Neighborhood:* With respect to the dune crest setback, the Board finds that the applicant has demonstrated that the granting of the variance will not have a material impact on the character of the neighborhood, due primarily to the fact that the deck extension is designed to continue the pre-existing setback (at the western corner) of 50'4' across the property to the eastern corner. However, with respect to the side yard variance, the Board cannot make that finding at the 11.7' distance proposed. If the side yard setback is increased to a 15' distance from the side lot line, the Board can find that the impact on the character of the neighborhood is not material.

2. *Alternatives:* The Board finds that the benefits of an increased deck cannot be achieved without variance relief, but the variance relief could be minimized by reducing the side yard nonconformity and increasing the side yard setback to 15'

3. *Substantiality:* The variances are substantial. The substantiality can be mitigated somewhat by increasing the side yard setback to 15'.

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

5. *Self-Created Difficulty:* The hardship is self-created.

6. *Benefit vs. Detriment:* Subject to the conditions below, including the increase of the side yard setback to 15', the Board finds that the benefits to the applicant outweigh the detriment to the community. (The Board could not reach this finding with respect to the side yard setback of 11.7' as originally proposed).

7. *Minimum Variance:* The originally requested side yard variance is not the minimum required to achieve the benefits sought. As modified by this decision, the variances would be the minimum necessary.

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The Board therefore **partially denies** the application as originally requested but **conditionally grants** the application to the extent of allowing a deck extension as proposed with a 50.4' dune crest setback but only approving a side yard setback variance with a minimum 16' setback from the eastern lot line, subject to the following additional conditions:

V. CONDITIONS

1. Before a building permit may be granted, the applicant shall submit to the Building Inspector revised plans depicting the reduced size of the deck as allowed herein, i.e., with an increased side yard setback of no less than 15' from the eastern lot line. In the event that the Building Inspector cannot determine if the revised plans are in conformance with this decision, the Building Inspector shall have the option to refer the revised plans to the Board for confirmation of compliance with this decision.

2. The variance granted herein is limited to the relief set forth in this decision, and pertain only to the plans approved in this decision, and shall not be construed as creating conforming dimensions. There shall be no further extension (horizontally or vertically), increase, alteration or modification to the structure or any other structure located on the property that has non-conforming dimensions.

3. 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.

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

Dated: December 15, 2022

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the resolution of **Stuart & Pauline Olsen, 351 Dune Road (905-18-2-7)** as written; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

2. 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.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

-----X

December 15, 2022

In the Matter of Application of

Dune Deck Owners Corp.

DETERMINATION

Address: 379 Dune Road
SCTM #: 905-17-5-55.1

-----X

VI. REQUEST FOR RELIEF

The applicant, Dune Deck Owners Corp., is the owner of a parcel of real property located at 379 Dune Road, more commonly known as Dune Deck. The property is located wholly within the R-3 Zoning District. The parcel is improved with several multi-family/hotel buildings, a restaurant and bar, outdoor decks and swimming pool, tennis courts and parking lot. The Building Inspector has confirmed that the existing structures and uses qualify as a lawful pre-existing, nonconforming use under Section 197-29 of the Village Code, in part as a multifamily residential use and in part as a nonconforming membership beach club.

The applicant is seeking to construct a proposed addition that represents a third story on the existing building as shown on the survey prepared by Nelson Pope, dated 6-23-17, last revised 6-29-22, and building plans drawn by Hart Howerton, dated August 19, 2022 (hereinafter collectively referred to as the “plans”).

Because the alterations are proposed to a nonconforming use, which cannot be reconstructed or altered without a special permit in conformance with Section 197-29(c), the applicant has applied to the Zoning Board of Appeals to construct the addition.

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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 involves less than 4,000 sf of nonresidential alterations, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(9). Accordingly, the application is not subject to review under SEQRA.

ZBA PROCEEDINGS

The application was duly noticed for a public hearing, which was opened on November 17, 2022. The applicants' attorney David J. Gilmartin, Jr., Esq., James Tinson, Hart Howerton, Architects, and Mark Hissey, Principal DLV DD, LLC. Although the project represents an expansion of floor area, it was clarified at the hearing that the expansion related to the non-residential beach club portion of the site and thus fell under the allowance, in 197-29(c)(5), for a 25% increase in floor area.

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 November 17, 2022, meeting for a determination at the December 15, 2022 meeting, subject to submission of the requested calculations relating to the size of the beach club expansion. The applicant's architect subsequently provided the requested information by confirming that the beach club portion of the site includes 10,947.2 sf. of space, and thus the proposed Staff Break Room Interior Net Area addition, at 1106 sf., would represent an approximate 10% increase in such space.

VIII. GOVERNING LAW

With respect to reconstruction of nonconforming uses, the Zoning Board is empowered to grant a special permit pursuant to Section 197-29(C) of the Village Code to authorize such reconstruction, provided all of the conditions and criteria of that section are met. The relevant conditions and criteria include the following:

- a. No enlargement, extension or expansion of the nonconforming use shall be permitted.

See § 197-29(C)(1).

- b. The reconstruction may not increase the degree of nonconformity, increase the height or number of stories, or increase the floor area devoted to the nonconforming use. See § 197-29(C)(2).
- c. The reconstruction shall be located upon the same part of the lot occupied by the nonconforming use and shall be relocated to conforming locations. See § 197-29(C)(3).
- d. If a nonconforming use consists of multiple uses, the area of one cannot be added to the area of another. See § 197-29(C)(4).
- e. The applicant shall demonstrate compliance with off-street parking requirements. See § 197-29(C)(6)(a).
- f. The applicant shall demonstrate an absence of change in the nature or character of the nonconforming use(s), except for a reduction in the degree of nonconformity. See § 197-29(C)(6)(b).
- g. The applicant shall demonstrate compliance with dimensional requirements other than those that caused all or part of the nonconforming use. See § 197-29(C)(6)(c).
- h. Any change shall be beneficial to the general neighborhood. See § 197-29(C)(6)(d).
- i. Any change shall be subject to reasonable conditions by the Zoning Board. See § 197-29(C)(6)(e).
- j. The applicant must demonstrate that any change will not result in or allow an intensification of the nonconforming use. See § 197-29(C)(6)(f).

However, under § 197-29(C)(5), a nonconforming membership beach, golf or tennis club may be expanded, rebuilt, extended or enlarged to the extent of 25% of the floor area of the main building devoted to the nonconforming use prior to 2004, subject to certain conditions and limitations.

IX. FINDINGS AND CONCLUSIONS

The Board finds that the applicant has demonstrated that the proposed alteration is in conformance with the requirements of § 197-29(C)(5), to the extent that it represents a 10% increase in floor area of the membership beach club use, within the 25% allowance of that code provision. The applicant has further shown that the alterations will not result in any increase in the scope of the nonconforming use, including no increase in the number of residential units, the number of members than can be accommodated at the site, the number of seats in the restaurant, or the number of required parking spaces. Rather, that alterations are needed only to provide the

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employees with a more comfortable space to store their belongings and take breaks, to provide employees with additional restrooms, and to allow an additional office for security equipment.

The alterations are also carefully designed to be locate within the footprint of the existing structure.

The Zoning Board therefore grants the requested special permit to allow the alterations as depicted on the plans, subject to the following conditions to minimize any adverse impacts from the special permit:

X. CONDITIONS

1. The special permit granted herein are limited to the relief set forth in this decision, and pertain only to the structures as they are depicted on the plans, and shall not be construed as creating a conforming structure.

2. In any future applications involving a proposed expansion of the nonconforming beach club, the 1,106 square feet of additional space allowed herein shall be included in any calculation of the total 25% expansion of beach club space allowed under § 197-29(C)(5).

3. The special permit shall terminate unless a building permit is issued within one year from the date hereof and construction completed according to said building permit.

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.

Dated: December 15, 2022

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **DLV DD, LLC., 379 Dune Road (905-17-5-55.1)** as written; seconded by Mr. Martinsen and unanimously carried 5 ayes, 0 nays, 0 absent.

3. 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.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

-----X
In the Matter of Application of

The Sandpiper at Westhampton Beach, Inc.

DETERMINATION

Address: 476 Dune Road
SCTM #: 905-16-1-27.3

-----X

XI. REQUEST FOR RELIEF

The applicant, The Sandpiper at Westhampton Beach, Inc., is the owner of a parcel of real property located at 476 Dune Road, more commonly known as The Sandpiper. The property is located wholly within the R-3 Zoning District. The parcel is improved by a frame building, wood decks and swimming pool and slate walks, and tennis court, a detached one story frame house, plastic deck, plastic shed, wood deck and slate walkway.

The applicant requests a special permit from the Zoning Board of Appeals for a proposed addition and deck extension to a preexisting nonconforming accessory condominium clubhouse.

Section 197-29.C. (1) of the Village Code provides that, in the R-3 except as provided for in Subsection C (5) a non conforming use may only be reconstructed or altered by way of a permit from the Zoning Board of Appeals. Any enlargement, extension or expansion of a non conforming use shall be prohibited.

Section 197-29.C. (2) (c) of the Village Code provides that, in the R-3 Zoning District a non conforming use shall not be reconstructed or altered so as to increase, extend or enlarge the floor area devoted to the nonconforming use.

Section 197-29.C. (1) of the Village Code provides that, in the R-3 Zoning District except as provided for in Subsection C (5) a non conforming use may only be reconstructed or altered by way of a permit from the Zoning Board of Appeals. Any enlargement, extension or expansion of a non conforming use shall be prohibited.

The applicant has therefore applied to the Zoning Board of Appeals for the foregoing special permit and associated variances to allow it to reconstruct the nonconforming use according to the plans as submitted.

XII. SEQRA

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

Since this is a request to reconstruct a pre-existing structure in kind/in place, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(2). Accordingly, the application is not subject to review under SEQRA.

XIII. ZBA PROCEEDINGS

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The original application was duly noticed for a public hearing, which was opened on September 17, 2015. The applicants' agent Steve Caputo, appeared on behalf of the application.

The Board did not receive any written submissions from any neighbors in support or opposition to the application. The hearing was closed at the November 17, 2022 meeting for a determination.

XIV. GOVERNING LAW

With respect to reconstruction of nonconforming uses, the Zoning Board is empowered to grant a special permit pursuant to Section 197-29(C) of the Village Code to authorize such reconstruction, provided all of the conditions and criteria of that section are met. The relevant conditions and criteria include the following:

- k. No enlargement, extension or expansion of the nonconforming use shall be permitted. See § 197-29(C)(1).
- l. The reconstruction may not increase the degree of nonconformity, increase the height or number of stories, or increase the floor area devoted to the nonconforming use. See § 197-29(C)(2).
- m. The reconstruction shall be located upon the same part of the lot occupied by the nonconforming use and shall be relocated to conforming locations. See § 197-29(C)(3).
- n. If a nonconforming use consists of multiple uses, the area of one cannot be added to the area of another. See § 197-29(C)(4).
- o. The applicant shall demonstrate compliance with off-street parking requirements. See § 197-29(C)(6)(a).
- p. The applicant shall demonstrate an absence of change in the nature or character of the nonconforming use(s), except for a reduction in the degree of nonconformity. See § 197-29(C)(6)(b).
- q. The applicant shall demonstrate compliance with dimensional requirements other than those that caused all or part of the nonconforming use. See § 197-29(C)(6)(c).
- r. Any change shall be beneficial to the general neighborhood. See § 197-29(C)(6)(d).
- s. Any change shall be subject to reasonable conditions by the Zoning Board. See § 197-29(C)(6)(e).
- t. The applicant must demonstrate that any change will not result in or allow an intensification of the nonconforming use. See § 197-29(C)(6)(f).

The Zoning Board is also empowered to grant area variances pursuant to Section 7-712-b of the N.Y. Village Law and Section 197-75 of the Village Code. 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. The Board is also empowered to impose reasonable conditions to minimize any adverse impacts from the variance.

Finally, the Zoning Board is empowered to grant coastal erosion variances from Chapter 74 where the strict application of the standards of such chapter may cause practical difficulty or unnecessary hardship and the applicant has met the specific requirements of Section 74-13(A)(1) of the Village Code. The more general practical difficulty/unnecessary hardship standards were, in the context of zoning codes, replaced by the more detailed five-factor balancing test described above. While there can be distinctions between the zoning standards and the practical difficulty standards governing coastal erosion variances, in this case, the relevant considerations for a coastal erosion variance overlap and are concurrent with the relevant considerations for a zoning variance. The various variances will therefore be considered together.

XV. FINDINGS AND CONCLUSIONS

1. Special Permit: With respect to the request for a special permit pursuant to Section 197-29(C) of the Village Code, the Board finds and concludes as follows:

- a. The applicant has demonstrated that the proposal will not result in any enlargement, extension or expansion of the nonconforming use [§ 197-29(C)(1)], or increase the degree of nonconformity, increase the height or number of stories, or increase the floor area devoted to the nonconforming use [§ 197-29(C)(2)]. The applicant has provided the Zoning Board with proof that the proposal is a replication of the pre-existing building (destroyed by a fire), except to the extent that it incorporates improvements needed to comply to the maximum extent feasible with modern building code, sanitary code, and site plan requirements, and it incorporates, through a reconfiguration of the parking lot, an additional 15 on-site parking spaces (including two handicapped spaces) within the pre-existing parking area.
- b. The applicant has demonstrated that the reconstruction is being located upon the same part of the lot occupied by the nonconforming use [§ 197-29(C)(3)]. The applicant has provided the Board with a survey of the property dated May 16, 2014, last updated October 2, 2014 (prepared by Michael K. Wicks, L.S.), showing the building and improvements as they existed shortly before the fire. The site plan prepared by David Fox, L.S., locates the building in the same location of the site as

the pre-existing building. The only distinctions between the pre-existing and proposed footprints are with respect to some slight alterations at the eastern and western ends of the buildings, where current code requirements resulted in certain minor modifications.

- c. The applicant has demonstrated that the area of one nonconforming use is not being added to the area of another [§ 197-29(C)(4)].
 - d. The applicant has demonstrated an absence of change in the nature or character of the nonconforming use(s), except for a reduction in the degree of nonconformity [§ 197-29(C)(6)(b)]. The applicant is not proposing any substantive change to the nature of the use. The only dimensional changes are the minor modifications needed to make the building more code-compliant.
 - e. The applicant has demonstrated compliance, to the maximum extent feasible, with dimensional requirements [§ 197-29(C)(6)(c)]. Although the reconstruction requires several variances (addressed below), the variances are needed only (a) to allow for the raising of the building to render it FEMA compliant, and (b) to allow for reconstruction with pre-existing dimensional nonconformities.
 - f. The applicant has demonstrated, subject to finalization of the details of the site plan with the Planning Board, that the minor changes to the site are all beneficial to the general neighborhood [§ 197-29(C)(6)(d)]. The changes include building code, FEMA code, sanitary code, and site plan improvements.
2. The applicant has demonstrated that any changes to the site will not result in or allow an intensification of the nonconforming use [§ 197-29(C)(6)(f)].
- a. Character of the Neighborhood: The applicant has demonstrated that there will be no adverse impact on the character of the community resulting from the requested variances. In general, the variances mostly are needed to allow reconstruction of a pre-existing building, subject only to changes needed to improve code compliance of the site. While variances in this case is legally necessary, the impact to the character of the community is neutral to somewhat beneficial, due to the improved site plan and code compliance.
 - b. Alternatives: Because the existing use is nonconforming, and the applicant is seeking to reconstruct what would otherwise be a total loss to the applicant and unit owners, the applicant has demonstrated that the benefit sought by the applicant cannot be achieved without the requested variances. The applicant has minimized the dimensional nonconformities to the maximum extent achievable while still achieving the benefit sought by the applicant.

- c. **Substantiality:** Although in some cases the variances sought are mathematically substantial, the variances are, in context of this site reconstruction, not considered substantial. Most of the dimensional nonconformities are exactly the same as they were prior to the fire, and the height nonconformity is only necessitated due to the need to comply with FEMA and Chapter 91 of the Village Code.
- d. **Physical/Environmental Impacts:** No physical or environmental impacts have been identified. The Zoning Board notes that, while not binding on the zoning analysis, the action has been deemed a Type II action under SEQRA, further corroborating the lack of any adverse environmental impacts.
- e. **Self-Created Difficulty:**
- f. **Benefit vs. Detriment:** Based on an examination of all the circumstances of the application, as guided by the five statutory factors, the Board finds that the benefit to the applicant from the grant of zoning variances outweighs the detriment, if any, to the health, safety, and welfare of the community.
- g. **Practical Difficulties:** Based on an examination of all the circumstances of the application, the Board finds that a strict application of the restrictions of Chapter 74 causes a practical difficulty on the applicant within the meaning of Section 74-13(A)(1) of the Village Code.
- h. **Minimum Variance:** Under the circumstances of this application, the Board finds that the requested variances are the minimum necessary to achieve the benefit sought by the applicant.

The Zoning Board therefore grants the requested special permit, area variances, and coastal erosion variance, as such relief is depicted on the Site Plan prepared by David H. Fox, L.S., dated July 15, 2015 and last revised September 14, 2016, and the schematic plans prepared by Gary D. Cannella Associates, Architects- Planners, last dated August 30, 2016, submitted to the Zoning Board on September 28, 2016, subject to the following conditions to minimize any adverse impacts from the special permit and variance:

XVI. CONDITIONS

- 1. The variances granted herein are limited to the relief set forth in this decision, and pertain only to the plans approved in this decision, and shall not be construed as creating conforming dimensions. There shall be no further extension (horizontally or vertically), increase, alteration or modification to the structure or any other structure located on the property that has non-conforming dimensions.
- 2. The variances granted herein shall terminate unless a building permit is issued within 180 days from the date hereof and construction completed according to said building permit.

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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.

Dated: December 15, 2022

Village of Westhampton Beach
Zoning Board of Appeals

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

4. 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%.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

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In the Matter of Application of

Robert Irving Goldstone Irrevocable Trust
Peter Goldstone

DETERMINATION

Address: 417B Dune Road
SCTM #: 905-17-5-33

-----X

XVII. REQUEST FOR RELIEF

The applicant, Robert Irving Goldstone Irrevocable Trust, is the owner of a parcel of real property located at 417B Dune Road. The property is located wholly within the R-5 Zoning District. According to the existing conditions survey of the property drawn by F.C. Watson Land Surveyor, P.C., dated August 4, 2022, the parcel is improved by a two story frame dwelling with wood decks.

Section 74-5.C.(2) of the Village Code provides that, within the Coastal Erosion Hazard Area, the construction of nonmovable structures or placement of major nonmovable additions to an existing structure is prohibited.

Section 74-8.A. of the Village Code provides that, within the primary dune areas of the Coastal Erosion Hazard Area, major additions and restorations are prohibited.

Section 197-34.A.(5) of the Village Code provides that, in the R-5 Zoning District, no one-family dwelling shall have a habitable floor area greater than 20% of the lot area on which it is located or 2,500 square feet, whichever is the lesser area, nor shall any such one-family dwelling have a habitable floor area of less than 800 square feet.

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The applicant proposes to construct a new two-story single-family residence as depicted on the aforementioned survey and the architectural plans of De-Jan Lu, last dated September 14, 2022 (collectively, the “plans”). Because the plans are nonconforming as to the above referenced code provisions, the applicant seeks the following relief from this Board: (1) relief from 197-34.A.(5) to allow a habitable area of 31% where only 20% is allowed; (2) relief from 74-(C)(2) and 74-8A to allow construction (non-movable structure) within the primary dune area of the Coastal Erosion Hazard Area.

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 variances 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 further review under SEQRA.

XVIII. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on November 17, 2022. The applicant’s attorney, James N. Hulme, Esq., appeared on behalf of the application. Tim Guba, 417A Dune Road submitted a letter in opposition to the application. The hearing was closed for a determination.

GOVERNING LAW

The Zoning Board is empowered to grant area variances pursuant to Section 7-712-b of the N.Y. Village Law and Section 197-75 of the Village Code.

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. The Board is also empowered to impose reasonable conditions to minimize any adverse impacts from the variance.

The Zoning Board is also empowered to grant coastal erosion variances from Chapter 74 where the strict application of the standards of such chapter may cause practical difficulty or unnecessary hardship and the applicant has met the specific requirements of Section 74-13(A)(1) of the Village Code. The more general practical difficulty/unnecessary hardship standards were, in the context of zoning codes, replaced by the more detailed five-factor balancing test described above. While there can be distinctions between the zoning standards and the practical difficulty standards governing coastal erosion variances, in this case, the relevant considerations for a coastal erosion variance overlap and are concurrent with the relevant considerations for a zoning variance. The various variances will therefore be considered together.

XIX. 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 have a material adverse impact on the character of the community, subject to the conditions set forth below. The parcel is located almost entirely within the VE16 flood zone and entirely within the coastal erosion hazard area, such that the entirety of the existing house is pre-existing nonconforming and there is no as-of-right building envelope to relocate the house outside of the coastal erosion hazard area. The proposed new house will replace a non-FEMA-compliant home (with a substandard sanitary system) with a FEMA-compliant, building code compliant home (with a compliant “I/A” low-nitrogen sanitary system). The Pond Point neighborhood is a unique area of the Village where most homes are nonconforming in some respect. The proposed home is designed to meet coverage and setback requirements and only requires a zoning variance due to the floor area, which is modest in size but nonetheless nonconforming to the 20% limit.

9. *Alternatives:* The applicants have no feasible alternatives to achieve the benefits sought without the requested variances.

10. *Substantiality:* The nonconformities are mathematically substantial.

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

12. *Self-Created Difficulty:* The difficulty is self created.

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

14. *Minimum Variance:* The variance is the minimum necessary to achieve the benefit sought.

The Zoning Board therefore grants the requested area variances from Section 74-5.C(2), 74.8.A., and 197-34.A.(5) of the Village Code to construct a new two story single family dwelling and wood decks on piles as shown on the survey drawn by F.C. Watson Land Surveyor, P.C. dated August 4, 2022, and the architectural plans of De-Jan Lu, last dated September 14, 2022 (“Final Plans”), subject to the following Conditions:

XX. CONDITIONS

5. 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 Final Plans, 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.

6. 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.

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

4. 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: December 15, 2022

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt a determination of **Peter Goldstone, 417B Dune Road (905-17-5-33)** as written; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

HOLDOVERS:

5. 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

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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 submitted a revised proposal and they looked at it and the setbacks and as discussed there were concerns about the impact of their view and value based on the location of the home and we came up with an idea to find the midpoint of the house on either side and we moved the house back another 7' to achieve 57'. As we discussed this is a balancing test and we are looking for an equal balance and that's what we're trying to achieve and this leaves us with a significant view of the ocean and moves the house back 7' towards compliance, creates a situation where it will be a new FEMA and building code compliant house and all of the benefits of new construction and the new IA septic system.

Mr. Piering asked about the deck, what is happening with it?

Mr. Hulme said it's moving back to an equivalent distance.

Mr. Piering said the survey says modify existing deck?

Mr. Musnicki asked that distance?

Mr. Hulme said it's 18' in depth.

Mr. Musnicki said you started with 28' is the equivalent 7' off of 28'? It's in the toe of the dune and 20' within the Crest of the Dune.

Mr. Hulme said the house is moving 18' so the deck is moving 19'. Everything is moving back, the existing house is moving back 18' 7" so the existing deck is moving back 18' 7" from its location now.

Mr. Musnicki said so it's 38' from the dune crest for the new deck and we are looking for 75'.

Mr. Hulme said its reducing the non conformity by a significant amount.

Mr. Musnicki said okay.

Mr. Pasca asked if the actual deck is shown on the plans and the survey, is it the shaded gray?

Mr. Hulme said the house is 38' 6" and the rectangle outside of that is the existing deck and its staying the same width.

Mr. Pasca said you were filling the deck in, has that changed?

Mr. Hulme said we're looking to keep the deck at its existing dimension but move it back 18' 7".

Mr. Piering said he would like that in writing.

Mr. Pasca said he would like to see the dune crest distance shown.

Mr. Hulme said okay. He will have the surveyor mark those dimensions up and if there are any more questions, he'd like to just hold it over to January.

Mr. Piering said okay, he did not have anything else.

There were no other questions or comments.

Motion was made by Mr. Piering to adjourn the public hearing of **Michael & Elizabeth Levy, 205 Dune Road (905-20-2-8)** to January 18, 2023; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

6. 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%.

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William Shapiro, Esq., appeared on behalf of the application. He said when he appeared before the last and he needed to inquire about what could be reduced, and if this Board is not willing to grant the variance they would be willing to discuss the removal of the covered porch as shown on the survey. The issue with it is that according to the survey the porch is 252 square feet they are still over the 20% but not as much without making changes to the site.

Mr. Piering said they are seeking a 20' x 45' swimming pool, why can't they reduce the pool by 5' and not need a variance?

Mr. Shapiro said they are swimmers and want to do laps, and that's why they want a larger pool. It's not aesthetically they use it for lap swimming.

Mr. Piering said everything else is conforming on the property except the 1.7% variance you are seeking, but you talked about reducing it by the removal of the covered porch, do you know the amount?

Mr. Shapiro said we're 300 square feet over, and the porch is 252 square feet and we'd need 48 square feet. They don't want to get rid of the porch, but they would.

Mr. Piering said we like to see the variances reduced wherever they can be, I think without knowing the number you have to tell us what you're seeking in lot coverage without the covered porch. We need the calculations of the removal of the covered porch.

Mr. Shapiro said okay. Can you see granting is as proposed?

Mr. Piering said we could do this a few ways, you get a feel for how we are with it, that's a big pool and you can reduce it and not need a variance. Or you can close the hearing and see how it goes and you can always come back by reducing the covered porch.

Mr. Shapiro asked if he could speak with his clients and come back?

Mr. Piering said they will put this on hold and go forward with the next application so he can talk to his clients.

Mr. Shapiro said his clients don't want to amend their application, and his clients feel comfortable closing the hearing as its presented.

Mr. Piering said there were no questions.

Motion was made by Mr. Piering to close the hearing of **Lee and Carolyn Renzin, 2 Lilac Road (905-8-8-3)** for a determination at the January 19, 2023 meeting; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

7. 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.

Mr. Piering said we held this over for the neighbors, but what did you have to present.

Mr. Knotoff said there's a question about a 10' right of way with our neighbor to the East and it's owned by Pond Point.

Mr. Musnicki asked him to clarify what that means?

Mr. Piering said the right of way? There are several owned by pond point.

Mr. Knotoff said they are sticking to their proposal, they are under 20% lot coverage the house is getting wider; they are extending the front non conformity and its an undersized lot and should have been zoned R-5 and wasn't.

Mr. Piering aid it's the R-3 and the variances were given makes it conforming so it's 50' or 60' wide the lot.

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Mr. Knotoff said the front yard is only 39'.

Mr. Musnicki asked for a more current CO, the one you submitted is 18 years old.

Mr. Knotoff said he has 2004.

Mr. Musnicki said he'd like to see something more recent.

Mr. Piring asked if there have been improvements to warrant a new CO?

Mr. Pasca said if there was a transfer of ownership that would call for an Updated CO.

Mr. Knotoff said there was. The daughter bought it from the Father.

Mr. Hammond said sometimes if its within the family, they don't get an updated CO. Deeds within the family, or owner to a Trust we deem it where it wasn't done to a third party, its been past practice not to make them get an Updated CO.

Mr. Pasca asked if that's what this was?

Mr. Hammond said it was built in 2004 and the CO is the most recent we have.

Mr. Musnicki said the new survey, shows a deck being constructed or its as built.

Mr. Knotoff said its an as built.

Mr. Musnicki asked if that would require a new CO?

Mr. Knotoff said not if it had one when it was constructed.

Mr. Musnicki asked Mr. Hammond to comment.

Mr. Piering said according to the survey, they are reading it as a new deck.

Mr. Hammond said the previous survey was unclear, so they added hashing to show the open deck from a fully roofed over deck differentiated but the deck is a different question. If someone had a permit for a deck it would be a certificate of compliance and whenever the the transfer happened they didn't need an updated CO.

Mr. Knotoff said they are year round residents and need extra room for their family.

Mr. Piering said the variances go with the property; that may be true but they can sell the house and the variance goes with the property.

Mr. Knotoff said they are upgrading the sanitary system to the new IA system.

Mr. Piering said that is appreciated. We have applicants who ask for variances for their familial needs but that isn't an argument this Board can entertain.

Mr. Hammond asked if the addition has changed, I don't think you're showing the full proposal on the survey you submitted today. It is different from the original application. Is this just a survey without a plot plan? You're showing the proposed lot coverage without the proposed addition?

Mr. Knotoff said yes.

Mr. Piering said they received a letter from a neighbor, Mr. Watson. He was upset that his letter was not read into the record and we don't read them but they do become part of the record. And he took a few shots at this Board and they are unfounded and vague and he also insulted Westhampton Dunes and I don't think that was called for.

Kevin Walsh, Garden City appeared on behalf of Jacqueline Sprotte and Bob Sprotte and he said there are a few issues at the center of their decision and he has a memorandum he'd like to submit and I apologize for submitting it tonight but I'm hoping you can deliberate on it and the other aspects on this application. I don't have the other survey that was just referenced and the survey I have is from September 2022.

Mr. Pasca said for purposes of this meeting, we can't consider this other than an existing condition survey you can't have a proposed coverage without a plot plan and its back dated to October 2021, it has very little value.

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Mr. Walsh said based on what I have heard and documents I have to submit, I do request an updated CO inspection. Respectfully I think the side yard variance an overall setback variance should not be granted. This property received a significant side yard variance from 2002 but it is also true the Board considered this against an improper standard, its not in the R5 it's in the R3 and was considered for R5 purposes. In the variances you considered you have not gone near the variances given in 2002 to this applicant so at the end of the day this a request you don't go further, but they received substantial variances and they have them but this Board has the ability to say that they are substantial we aren't going to go further. In that regard, the Board has given substantial relief, and the second item I would like to mention is that the house was not constructed how the variances were granted; they flipped the dimensions for the purposes of observing the side yard variances and that suggests a desire not to follow the rules and now they are looking for relief to go further and not following what they should have done. I think when you are seeking relief you should have a history of following the Board. The third item that I think they should consider is that they did not submit sufficient information to consider this. Now we look at the September 2022 survey and in that there are no dimensions to the deck, or the setback line to the dunes; so I tried to figure out the lot coverage and what exists at now and I couldn't do so. I do know that when the building permit was obtained in 2003 the application indicated that the footprint was 1,600square feet for the main house and 610 square feet for the deck and that was the application and that number is very close to the 20%. This addition that's proposed doesn't have the dimensions but an analysis done on all other applications is not done on this house, but I question how it can be under 20% if the prior application brought you close to the 20% and this is an addition and they are adding more than 70 square feet of lot coverage and they'll trigger it. You should be giving variances on all the information and we'd like to see that drawn on a survey. I'd like to submit a copy of the building permit application that I referenced. The surveys were off that the Sprotte's indicated and counsel indicated they have to rely on what they have and I believe that if you compare this survey to the properties to the Marooney's survey to the West of this which was granted a variance in 2016-2017 and there are certain items that haven't moved giving credence to the idea that this survey has an error in terms of how it lines up and if the surveys are correct this house is moving closer to a side yard on one side and further on the other. This argument says we don't have all of the information that you should rely on to make a decision. What I see, I think the corner of the house setback on the Marooney's side will be within 2' of the side yard and I know it should be shown on the plot plan. I am submitting a copy of the applicants survey.

Mr. Musnicki asked if it's the property to the West?

Mr. Walsh said yes.

Mr. Musnicki said you're indicating the Wester property line is off by 2'?

Mr. Walsh said yes, this property has the metes and bounds distance but its not lined up and creates ambiguity and this is an opportune time to get a survey to show us what to consider. I have the Marooney's survey and it was submitted in connection with the Marooney's variance, and I circled on each survey the same stationary item and its clear on the Marooney's survey it is located well within the Canty's property; yet on the applicants survey it is straddling the line of their property and if you follow it how I did you will see the Marooney's wall is on their property ine and in the Canty's survey it doesn't go to that wall so it would slide over and it would put the 5.4' distance between the proposed addition and property line almost to the property line. If you remember, my client told me the Village wanted to know why the planter on the other side which is my clients property and that planter is located in the 10' wide easement. But its shown on the survey because its off and they believe that planter is on the line of the 10' easement and this supports the Board receiving an accurate survey.

Mr. Piering said you are stating there's a discrepancy between the survey and the side yard and what is actually there?

Mr. Walsh said yes; they had significant relief in 2002 and now they're coming back for more and they want more on the side yard than they already have.

Mr. Wittschen asked if they are talking about lot coverage?

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Mr. Walsh said it would surprise me that they did not need lot coverage but we need to know that accurate number. I know you grant relief from it but we need to know the percentage. At the last meeting, it was indicated that surveys can't be contradicted and I knew I had to demonstrate the surveys are not accurate. There's an aerial view and I have identified the four houses that received variances from this Board; in 2021 Hoffer received a variance of 9' on the East and 9' on the West; the Marooney's received 19'; the Sprottes received 17.4' on one side only; then this applicant received in 2002 they received 14' and they received better overall relief than anyone else already. The other three variances granted requested a greater side yard variance when they went in and there was discussion and they modified it and they received the setback relief they were given and they were taking down homes and complying with other over riding issues and this Boards decision reflected that. The non conformity exceeded the benefit and in this case this is someone wanting a larger house and that's not a good zoning reason to give relief and it can be sold, everyone wants a larger house. The last component that I want to speak to is that the applicant has not been straight forward and their approval for the initial house and the sanitary system indicated a 3 bedroom house; they are seeking a fifth bedroom because they've converted a room to a fourth bedroom. In 2002 there are three bedrooms, and they advertise a 4.5 bedroom established home on Air BNB and now it's five bedrooms. If it's a four bedroom it violates their sanitary approval and that should be looked at. I think the most relevant component is that they should not get the variance because they have received a lot to date; and if you are inclined to grant the variance they should submit more information and we are reviewing what the property is like now and what the proposal is.

The Board thanked Mr. Walsh; Mr. Piering asked if there were any questions for him.

Mr. Pasca said he does have questions, but he isn't sure they are for Mr. Knottoff.

Mr. Knottoff said they were aware that the variance in 2002 and what was built doesn't line up and we wanted to correct that with this new variance. Mr. Walsh mentioned that this house doesn't match the original variance granted, and we recognize that and we're trying to correct that.

Mr. Musnicki asked which part doesn't match, he mentioned the house location, and he also mentioned the bedroom count.

Mr. Hammond said the original relief was 6' to the Easterly setback and 8' to the Westerly setback; and the final survey showed 6' and 8' and the new survey has it opposite and that could be one of two things, the house could have been shifted or there is something wrong with the surveys.

Mr. Pasca said he's wondering if the current survey is off; there's a concrete monument shown on the street being 40' exactly West of the North West corner of the applicants property; on the neighbors survey there's a monument shown but it's West of the 40' line and its called a highway angle point. I'm wondering if the surveyors didn't create the property line based on a monument that wasn't meant to be 40' and they shifted the polygon and that could explain the shift, why the western boundary seems to be at odds with the Eastern boundary and it may be possible that theirs is wrong; but it can explain the discrepancy too for the as built versus the current.

Mr. Hammond said the approved Board of Health shows exactly what was built. Which led me to think that the sanitary structures were focused on.

Mr. Pasca asked if they were different surveys?

Mr. Hammond said yes.

Mr. Pasca said there are a lot of questions and if a survey is off, it may be in your favor or it may create more of a setback on the West which is the pinch point it may benefit you to take the time to confirm the surveys.

MR. Hammond said we need the lot coverage on the plot plan too.

Mr. Pasca said there has to be a starting point problem with the current survey to explain the discrepancies and show them the monument.

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Mr. Knotoff said he will look into it.

Mr. Hammond said we have a lot of surrounding surveys they can review.

Mr. Walsh said given to what we submitted we think the CO search should be conducted and if they need a fifth bedroom, where did the fourth come from?

Mr. Piering said when you bring a case to the ZBA we go with anything that's non conforming, they will get an updated CO at that point, and if nothing conforms they won't get a CO until that's remedied. We are getting ahead of ourselves we have to focus on what's before us and not worry about other violations that may or may not exist.

Mr. Hammond said the interior of the space isn't within your purview. If they are given approval, and the old floor plans reflect the new and there is a sanitary review which won't involve this board. But I don't have a mechanism to require an updated CO at the time of application

Mr. Walsh said they applied for a variance to construct a fifth bedroom, but how did they get a fourth bedroom without permits.

Mr. Piering said whether they need it or want it, what they want or need is not applicable for this board. We have to stick to our five factors and the zoning. They can't obtain a CO with violations, but that's not for us to discuss.

Mr. Pasca said if there is a 2' shift in the polygon it could change to be more favorable to their application.

Mr. Piering said they will hold it over, are there any other questions or comments

Motion was made by Mr. Piering to holdover the application of **Lisa Canty, 443A Dune Road (905-17-5-7)** to January 19, 2023; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

Motion was made by Mr. Piering to adjourn the public hearing at **6:00 p.m.**; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.