

February 16, 2023

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday February 16, 2023, 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

DECISIONS

1. 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.

HOLDOVERS:

2. 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.

RENOTICE:

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 6.8 & 6.9 feet where the minimum required is 20 feet, and with a resultant combined side yard setback of 13.7 feet where the minimum required is 50 feet.

Heather A. Wright, Esq., appeared on behalf of the application together with Paul and Lisa Canty. She said this has been on a few times, and we resolved the survey issues and submitted a new survey as required by the Board and since this is a renotice, I'd like to go over the five part test and why we think it satisfies that criteria. The character of the neighborhood, we're looking for side yard and total side yard relief and we're removing 341' of existing front decks and steps in front of the house and enclosing that to create additional living space. They are living in the home full time, and the steps and deck were not safe year round with the weather and it makes sense to gain space and give up deck and stairs to do this. There has been discussion over the hearings, and the neighbors are concerned that the proposed variances would create a detrimental change to the neighborhood. This has been here since 2002 and this has established the character of the neighborhood, and after this was constructed there were other homes with non conforming lot width granted variances for side yard and total side yard and when you read the decisions the Board was concerned about the CON and the dune crest setback so on a lot width of 40' it is important to this Board to maintain the rear yard setback that you granted side yard and total side yard variances. We understand in 2002 they were substantial variances, so we designed this to keep in that footprint; we're keeping the addition in the footprint and removing the back deck so not to exceed lot coverage. I understand there was discussion about whether the variance would impact 441 Dune Road, and it would negatively impact them and that doesn't hold water. We have a property separated by a 10' Right of Way and then a setback to that and the home at 441 is 17' so there are 33' between the dwelling and the neighbors lot and we're not

February 16, 2023

going closer to their house and the right of way is separated by a row of trees so we don't believe it's a negative impact. We've looked at ways to do this, and that's to remove the existing deck and stairs and put the addition in that place, there's only an addition of 79 square feet were not exceeding the lot coverage. In terms of substantiality, mathematically it is we're meeting the regulations, and putting in a new sanitary system and the conformities are not increasing. We believe it meets the five part test and there have been discussions about factors not before this Board.

Mr. Piering asked if you know what was before this house was constructed and the variances granted in 2001 and this actually decreased the non conformity that was there before that. There was a house more non conforming than this was. I did some research and I came up with that.

Ms. Wright said it pulled the house out of the dune, they meet the front yard setback now.

MR. Piering thinks the side yard setbacks were increased.

Ms. Wright said yes. The prior owner did that.

Mr. Piering said he tried to decrease the non conformity if I remember correctly.

Ms. Wright said yes, that's the case with the similar homes too and the Board granted that relief similar to what we have was because they were removing more non conforming structures.

Mr. Piering said that was a big reason why they were granted these variances in 2001.

Ms. Wright said yes, and it established the character of the neighborhood.

Mr. Piering said that is very important to this Village.

Mr. Musnicki asked about the sanitary system.

Ms. Wright said the system is from 2002 and now the requirement is to install the new IA system and an addition of a bedroom requires a new system; it's better for the environment and the Town has mandated them for new construction.

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

Kevin Walsh, Esq., attorney for Robert and Jackie Sprotte appeared in opposition to the application. He appeared in December and he knows that there is a new survey and that was discussed in December and we don't believe its accuracy and we last week asked to have our own survey done at our expense because they don't line up, and first and foremost the survey in front says 40' but the deed is 39.6' and this was a subdivision and the neighbor to the West is also 39.6' so the 40' is skewed and not correct. I don't know if the surveyor did actual measurements I think this Board would want good measurements so they know whether they give or don't give a variance with accurate information. I renew that request, we're not looking to delay this and it would be at our clients expense and if that comes back and supports the data you have now then we're just on to the issue of the variance. I know you can't make the applicant, but the Board can consider that. So far it has been rejected. As to the variance, I don't think they make the test for an area variance and I submitted documents into the last record and I'd like to submit more tonight. I noted that Board Members have complimented precedent in this area and if there's no objection, I'd like to introduce more documents and a copy of the Marooney application, which is the Westerly neighbor with 39.6' frontage, I'd like to provide that decision. This was rendered in 2016 or 2017 and an exhibit "H" which is a letter from the adjacent neighbor to the West, and when that was before this Board and I'll cite two components of this, the neighbor objected to the Marooney variance because it was an enormous house directly against his property. In this case, they required an amended plan to increase the side yard setback and that was for a 9.5' and a 6.3' variance on the two sides for a total of 15.8' and the Board required 8.5' and 9.5' for a total of 18' and that was decided a few years ago. A neighbor objected and the neighbor cooperated and that set the standards so I'm hoping you look at that case and you talk about precedent that doesn't support precedent.

Mr. Piering asked if they have the same width?

February 16, 2023

Mr. Walsh said yes.

Mr. Wittschen is asking if you want them to cu the side of the house?

Mr. Walsh said we're asking them not to go further.

MR. Wittschen said I don't think they are.

Mr. Walsah said it diminishes the setback, it reduces the setback which is why they need the variance.

Mr. Piering said they need a variance either way. When we cut through this, what is your objection?

Mr. Wittschen asked what you want?

Mr. Walsh said to deny the variance, they haven't shown they needed it. The rationale for why we don't get into. They have a large house, they can deny it and build with what you have. The precedent we're setting is, if the neighbor comes in why can't they extend their setback and build more? If they have setbacks less we're going to grant the ability to build a bigger house. On the immediate area this house has the smallest setbacks.

Mr. Piering said okay, you want another survey? What does that accomplish?

Mr. Walsh said the change in the last survey produced a greater variance and more impactful on my client.

Mr. Piering so why do you want another one?

Mr. Walsh said the level of the variance would be greater and we should have accurate data.

Mr. Piering said they are done by professionals, and we get another will we have a match between them to see who is right. This survey was done and it seems like they did a thorough job.

Mr. Walsh said the surveyor doesn't know what the data will find; the same surveyor did a survey a month ago and he had 100' to the crest of the dune and it was a note that it was based on discussions with the Building Inspector and it may not be in the field. It may confirm what you have, but if it doesn't I would want to know the accuracy of a survey. I would put into the record another decision, this case is to the West of Marooeny, and it's in addition and would be "I" and it also required them to reduce their request for the side yard and both were reduced and are larger than this application before you granted this. What you're looking at, the applicants home as relates to side yards is greater, and you have said to shrink yours down and this owner doesn't come close to 9' and you're willing to give him less.

Mr. Piering said we're listening to the testimony, and they made an application and you're making an assumption.

Mr. Walsh said I said you are considering. And your dimensions, and cases that I've seen they are not feet, they are degrees or feet so the difference may not be significant but when you are neighbors it is. And I submit Objectants "8" which is a photograph from my clients window looking out to the West and that's the existing home that's there, so if this comes out 8' or 10' more which is what before the board, their view will be gone. There is a meaningful impact on my client and you should consider this and I was told it wasn't that relevant and they are using their home and marketing it as a four bedroom they already have four bedrooms. So lastly on the five part test, I conclude on that on the test what exists now and what the neighbors have gotten, and my clients setback was required to be 17' against this property and they were required to put 17' and he is less than that and they're seeking to go less. The conformity would support a denial and is it substantial, the difference on the side yard setback and the overall variance is 70% and its self created and the home now is larger than the last variance granted on a similar size lot. It's not that they need something they don't have they juts want more, it's self created. We're hoping to pay for a survey to have a clear understanding, and that could provide information that says we're wrong, but at least you'd be operating at a shot at better information.

February 16, 2023

Mr. Piering thanked Mr. Walsh.

Ms. Wright said she included those decisions because I think it's important; in Marooeny and Hoefer they are distinguishable and they are both involving new construction so they had a clean slate with a proposal which after hearings and hearing comments they scaled back their requests in order to get the decision and that's different where we have an existing dwelling and we can't cut off part of the house so I think it's important to note with the existing dwelling we were mindful of the setbacks and using the space as living space instead of a deck so as an alternative we're enclosing that area and it's 79 square foot addition to the home and relatively small and it's a mis statement to say that the variance to 441 Dune Road will be greater than what's there, that's not the case. In 2002 it was 6' to the property line and was built to what we're asking for now, 6.9' we're not getting closer to the neighbor on that side. A factor is the 10' right of way between the two properties and creates a buffer and if it wasn't there you could look at this differently, and it does create a buffer.

Mr. Pasca asked who owns the West walk right of way?

Mr. Hammond said its public.

Mr. Pasca asked if it was dedicated to the Village?

Mrs. Sprotte said the Village owns it.

Mr. Hammond said he's never seen the title for it.

MS. Wright said their lot is 100' wide and different than a 40' wide lot, and we're making se of the space to gain additional living space and adding 79 square feet.

Mr. Piering asked if there was any other questions, Mr. Walsh wants another survey.

Ms. Wright said we got a survey, and we had another survey.

Mr. Pasca asked if you want to do another survey?

Ms. Wright said no.

Mr. Pasca said we don't have that power to instruct that.

Ms. Wright said when I sent the new survey to the attorney two weeks ago I invited him to contact that survey to ask any questions and they could have been answered.

Mr. Pasca said we have to rely on surveys unless there's a problem, and we saw one and they gave us a new survey and the last version there was a question about the dune crest and that was fixed and I don't see anything and the only thing raised was the frontage, and they can look at it without going on the applicants property and you have to rely on this survey unless there's testimony to support the validity of the survey and we can't go beyond that.

Mr. Walsh said the 79' and if they won't allow the survey, we can't The 79' is a misnomer and I have a difficult time to determine whether they need a lot coverage variance. I think that they are over the 20% and I can't tell because there are no dimensions on the survey there is no length for the addition and I had to try and extract that, so I question whether it's 79 square feet and there building permit says they want to increase it by 1,000 square feet but are we to believe the 79 Square feet is the lower level, and if you see hat they are removing and adding and eye balling it is less than what they are adding. A surveyor can do that and I'm not testifying that they are above it but I believe they are.

Mr. Musnicki said the survey they presented, it shows 20% lot coverage.

Mr. Walsh said yes, but the surveyor doesn't tell the dimension of the front room so it doesn't tell you that on the West walk and that impacts lot coverage so you're relying on him.

Mr. Pasca said they are seeking a coverage variance for this Board to review; your question has to do with Mr. Hammond and there is no lot coverage variance so this Board doesn't have

February 16, 2023

jurisdiction over it; you may have an appeal issue and you want to take issue with the Building Inspector but it's not before this Board and you can appeal it.

Mr. Walsh said if this is approved, it will be an error. And I can't speak to why the dimensions are not requested and there were obvious problems that found their way to the Board and I can't make this Board look at it.

Mr. Pasca said we don't fish for other variances, and we follow the rule. The Board has jurisdiction over the variances determined by the Building Inspector it's not this Board's job to go out and consider other variances; it's his determination not the other way around.

Mr. Walsh said I ask that this Board ask Mr. Hammond if he did an analysis to determine lot coverage is not needed.

Mr. Piering thanked Mr. Walsh.

Mrs. Sprotte said she came to the November meeting, and I knew right away the survey was off and I brought that to you and you told me it was right; you gave me an opportunity to prove it was wrong and the second survey was wrong also and he gave 100' from the crest of the dune which gave him a bigger house on a piece of property 39.6' and we all knew it was wrong, we are all 75' from the dune crest. Now he comes in with survey three made by survey two and he's 78' from the dune crest and gives 200 square feet from the property. My husband went to David Fox and he said it was wrong, and he spoke to the surveyor and there was a big miscommunication between both of them, that's why we ask that we are granted permission. I saw a decision where the Board made a homeowner get a surveyor that the Board chooses. The house is on an angle and in 2001 there was an advisory committee saying it's too big, and in 2023 he wants to make it bigger and I don't understand it. I am asking you to look at all of the evidence and the deck he's saying he's removing that was his walkway not included in square footage and not included re the steps. Take the time to look at it and get it right. I have to live next door to a monstrosity and he will be 77.9' and my house with the deck 59 square feet wide; how is 77.9' against me even though I have the 10' the numbers are off. It's a monstrosity and I'm asking you to consider everything. It's very important to me, the dune crest is important to me and I called Brad when he was flattening the dune; the fence is on the dune and illegal and I don't know why it's not brought up, no one on Dune Road has a fence 75' from the dune crest.

Mr. Piering said these are issues not before us; a fence in the dune if its violation is not for this Board.

Mrs. Sprotte said if there's a violation we can't hear the case.

Mr. Hammond said what's before this Board is what's in the front, and there are many properties that may have violations that should not preclude them from applying to the ZBA.

Mrs. Sprotte asked if it's the Village Law that if there were violations that you can't hear the application.

Mr. Pasca said it will get addressed when they get a CO. If there are violations that will get dealt with.

Mr. Hammond said not everything goes to this Board.

Mrs. Sprotte said he took away square footage he wasn't entitled to it.

Mr. Piering said we have had a lot of questions about this, and we don't take it lightly. We take them very seriously. I think we have enough information.

There were no other questions or comments.

Motion was made by Mr. Piering to close the hearing of **Lisa Canty, 443A Dune Road (905-17-5-7)** for a determination; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

February 16, 2023

3. Frank Calamari & Rosemary Vanacore Revocable Trust, 14 Stillwaters Lane (905-010-04-022) Applicant requests variance from §197-6 D for proposed a portico with a front yard setback of 46.5 feet where the minimum required is 50 feet.

RENOTICE:

Frank Calamari & Rosemary Vanacore Revocable Trust, 14 Stillwaters Lane (905-010-04-022) Applicant requests variance from §197-6 D for proposed a portico with a front yard setback of 45 feet where the minimum required is 50 feet.

Heather A. Wright, Esq., appeared on behalf of the application. This is a renotice and they have a one story single family dwelling and all we are looking to do is cover the entry porch and right now, it is open and 46.5' when 50' is required from the front lot line so by covering it we need a variance. I think its very straight forward and there will be no impact, it's not substantial. They are just trying to be able to keep a shelter from the rain.

Mr. Piering had no questions.

There were no other questions or comments.

Motion was made by Mr. Piering to close the hearing of **Frank Calamari & Rosemary Vanacore Revocable Trust, 14 Stillwaters Lane (905-010-04-022)** for a determination; seconded by Mr. Martinsen and unanimously carried 5 ayes, 0 nays, 0 absent.

4. Daniella Kahane, 121 Seafield Point (905-015-05-010) Applicant requests variances from §197-6 D for a proposed front yard setback (roofed-over entry) of 45.2 feet where the minimum required is 50 feet, also from §197-6 for a proposed addition with a side yard setback of 26.7 feet where the minimum required is 30 feet, from §197-29.1 A for a proposed addition within a required rear yard setback (28.4' proposed, 50' required) representing a prohibited increase in degree of nonconformity of a dwelling with preexisting nonconforming rear yard setback, from §197-35 C(1) for a residential storage shed erected 4.8 feet from property line where the minimum required is 10 feet, and lastly from §197-43 A(8) for a driveway gate installed with a setback of 14 feet where the minimum required is 20 feet.

No one appeared on behalf of the application.

Mr. Piering asked Ms. Mackie to please notify the applicants agent that if they do not appear at the March meeting we will remove the application without prejudice.

Motion was made by Mr. Piering to holdover the application of **Daniella Kahane, 121 Seafield Point (905-015-05-010)** to March 16, 2023; seconded by Mr. Martinsen and unanimously carried 5 ayes, 0 nays, 0 absent.

NEW APPLICATIONS

5. Michael Cohen, 18 Hazelwood Avenue (905-006-01-018) Applicant requests variances from §197-9 C for proposed building area lot coverage of 32.7% where a maximum of 20% is permitted, §197-9 D for a proposed combined side yard of 35.3 feet where in the minimum required is 40 feet, §197-29.1 for proposed conversion of a cabana into an accessory apartment with a nonconforming setback of 8.1 feet where 15 feet is required representing a prohibited increase in degree of nonconformity of a preexisting nonconforming structure, and from §197-35 C to legalize a residential storage shed erected in the side yard with setback of 1 foot where required to be located in the rear yard and with a setback of 10 feet.

Anthony Portillo, Architect appeared on behalf of the application.

Mr. Piering said he wanted to get it on the record, and would like to know if they'd like him to recuse himself.

Mr. Portillo said no. There are a few things going on, the simplest variance is the tool shed and I think that could be a bargaining chip and he believes it was at the house when they purchased it.

Mr. Piering said when we looked at the plans, we have roughly 22 or 23% lot coverage?

February 16, 2023

Mr. Portillo said we are about 22.6% and our request is for 32.7%. And a lot of that is for the existing tennis court creating that issue.

Mr. Piering said that tennis court is creating a big lot coverage issue.

Mr. Portillo said yes; there is a sanitary system in the rear yard but we'll be moving it to the front yard and installing a new IA system. Environmentally it is the right thing to do but it is required for the pool and bedroom addition. The swimming pool we thought about it and we settled at a 16' x 36' and an 8'x8' hot tub and we could have requested more, but I wanted it to make sense to the Board and the layout of the lot with the tennis court. There's an existing deck and we're proposing to put back a deck the same size and we are reducing it from what's existing on the current house. The existing accessory building currently there the addition is not adding an encroachment and the side yard setback is existing and that portion is there so the addition is not encroaching.

Mr. Musinicki asked if he's talking about the cabana?

Mr. Portillo said yes. The owners parents will live there and utilize that and its immediate family. We're proposing the addition on the main house and I think it balances on the house and its older and heavy on the top and we are proposing an addition and a two car garage, there is no garage currently. On the main level we're adding a mud room and half bath and a primary suite above that.

Mr. Piering asked if that's attached to the main house? The master will be above the garage?

Mr. Portillo said yes, that's correct. We talked about a detached garage, it made sense on the property and the layout on the house is elongated and it makes sense that the property is elongated with the property.

Mr. Piering said the problem is the lot coverage, it's 40% increase where we have other cases come before us on this road so is there any way you can decrease the lot coverage. You have a pre existing tennis court.

Mr. Portillo said I think they love the tennis court and don't want to get rid of it; I did research and found a few properties and its obvious they are over lot coverage.

Mr. Piering asked if they are in the R4?

Mr. Portillo said yes.

Mr. Wittschen said he has the lot coverage 25%, but its not.

Mr. Piering said correct, it's only 20% because it's the R4 Zoning District.

Mr. Portillo said I found the homes in this area have pools, and decks.

Mr. Piering said this is a resort community there will be a lot of pools. The lot coverage is a real issue and this is the R4 District.

Mr. Portillo said there's a conversation I can have with the owner.

Mr. Piering said 32.7% lot coverage is a big, big reach and I understand and I know their family lives there in the Summer and I understand it and the tennis cabana is the apartment, and the tool shed is okay. This addition will double the size of the house, so there is a lot and as we balance this out you know what you're living next to, but there are Northerly neighbors and you have to consider how that impacts them. It's a big reach.

Mr. Portillo said the pool is important and we can think about making the accessory building smaller, it is required to be a certain size to be an apartment and we can look at the addition, but they'll probably get rid of the deck and make it a patio to start. With that feedback, I think I have to talk to the owners.

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

February 16, 2023

Mr. Musnicki said there is a big lift here; and I don't know if the tool shed is a big enough bargaining chip. I don't remember a time of turning a cabana into living quarters and we've had applicants wanting to turn the cabana into game rooms and that took two or three meetings to work though; I've never seen it turned into living quarters. That tennis court didn't count in the 1970's for lot coverage, and its 2023 and going over 30% lot coverage, you have to look at this hard and bring it down some and scale it down. A lot of amenities are here proposed and you should really scale it down.

Mr. Portillo said it is a large lot compared to other lots.

Mr. Piering asked the size of the lot?

Mr. Portillo said it's almost half of an acre. The question is the tennis court, if it wasn't there the lot coverage issue wouldn't exist. They don't want to get rid of it and maybe after this meeting they may consider it.

Mr. Musnicki said they could consider a pickle ball court.

Mr. Portillo said he explained to them the tennis court is the problem, but I'll talk to them. If you will allow an adjournment I'll return in March.

There were no other questions or comments.

Motion was made by Mr. Piering to holdover the application of **Michael Cohen, 18 Hazelwood Lane (905-6-1-18)** to March 16, 2023; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

6. Kerim & Alison Kfuri, 31 Exchange Place (905-015-05-027) Applicant requests variance from §197-35 C for retain section of attached accessory deck constructed 17 feet from property line where the minimum required is 20 feet.

Nicholas A. Vero, Architect appeared on behalf of the application. The application before you has a building permit and MR. Hammond requested they cut the deck back and we were looking for permission to add a lower deck in the same foot print as the upper deck and we realized we were off by 3' and we want to match the upper deck.

Mr. Piering said is it constructed?

Mr. Vero said they started to build it and they didn't read the fine print and had to cut it back 3' and you've been to the property and seen it.

Mr. Piering said it's there we have seen it.

Mr. Vero said it can be cut back, but yes its there.

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

Motion was made by Mr. Piering to close the hearing of **Kerim & Alison Kfuri, 31 Exchange Place (905-15-5-27)** for a determination; seconded by Mr. Martinsen and unanimously carried 5 ayes, 0 nays, 0 absent.

7. Charles & Joanne Piluso, 503 Dune Road (905-016-02-013) Applicant requests variances from §74-5 C(2) for a proposed addition to a building within the Coastal Erosion Hazard Area where prohibited, from §197-8 D for a proposed front yard setback of 55.5 feet where the minimum required is 75 feet, from §197-29.1 A for a proposed two-story addition which represents a prohibited increase in the degree of nonconformity of a dwelling with a substandard side yard setback (14.9' provided, 20' required), from §197-35 C for a proposed front deck side yard setback of 14.9 feet where the minimum required is 20 feet, and from §197-35 C to retain portion of rear deck constructed 15.4 feet from the side property line and 31.6 feet from the crest of dune where the minimum required is 20' & 75' respectively.

February 16, 2023

Nicholas A. Vero, Architect appeared on behalf of the application. He would like to talk about the front addition first, they are looking to construct a small addition of 2,200 square feet as they want to expand second floor bedroom and a dining area on the front of the house; the front yard setback to the proposed deck is 55.5' and the addition setback is 68' and we're looking to match the existing side yards and not increasing any non conformity and we're close to conforming total side yard setbacks and its 71.59' wide and typical of those lots in that area. You have granted variances in this area, side yard and front yard 511 Dune Road; 56' to the front yard 11.3' and 11.8' side yard setbacks and 501 Dune Road was one that we did many years ago with 36.9' front yard; 317 Dune Road where we maintained 14.8' on the existing side yard setback and top of dune 45' to the deck and those were recent.

Mr. Piering said are we talking about the front yard?

Mr. Vero said sorry. 511 Dune Road and 501 and 503 Dune Road are similar, existing houses and non conforming setbacks we can't add to the rear of the houses and seeking variances for the front and side yard.

Mr. Piering asked if the side yards are staying the same?

Mr. Vero said yes.

Mr. Musnicki asked what they are doing to the sanitary system?

Mr. Vero said we're not adding a bedroom, we're expanding it. Mr. Hammond pointed out to me that the deck when the house was built is half the size it is now. I have a survey submitted to the Building Department in 2003 and its expanded on the SE corner with a hot tub and I believe the area we are looking to do is maintain what's there today. We can close the hearing and ask to maintain the deck, we can take it away or we can compromise and that would be maintaining it and removing a portion and cutting it on a diagonal.

Mr. Musnicki said you are proposing to put it on an angle?

Mr. Vero said yes. The hot tub was allowed, but it doesn't exist.

Mr. Musnicki asked about adding the hot tub area and a deck around it to the original deck? Squaring the deck off.

Mr. Vero said it is squared off now.

Mr. Musnicki said you added to it, you didn't square it off.

Mr. Vero said the triangle maintains the dune crest setback, and there is no dune crest on it but its really close to the ocean and the new survey shows the dune crest.

Mr. Piering asked if the wood platform will come off?

Mr. Vero said yes it will be removed.

Mr. Piering asked how long the deck was there?

Mr. Vero said he thinks since 2003, but more like in the 1990's.

Mr. Pasca said I would like a survey or site plan that takes away the platform and the proposed deck dimension is shown.

Mr. Hammond said you need a revised front yard setback.

Mr. Vero said they are trying to repair the house and at least order windows and if we could close it that would be helpful; and I can submit them by Wednesday next week.

February 16, 2023

Mr. Pasca said the rear portion is the real question. We need a good survey with the proposals and if we cut it back or add 6' straight across that gives 140 square feet. I suggest you have them return and propose something and you can say what you are comfortable with or not.

Motion was made by Mr. Piering to holdover the application of **Charles & Joann Piluso, 503 Dune Road (905-16-2-13)** to March 16, 2023; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

8. 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 13,441 & 14,793 square feet where the minimum required is 20,000 square feet and featuring proposed lot widths of 80 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 D for a proposed rear yard setback for "Lot 1" of 67 feet where the minimum required is 75 feet, and also from §197-8 D for proposed combined side yard setbacks for both lots of 40 feet where the minimum required is 50 feet.

James N. Hulme, Esq., appeared on behalf of the application, together with Harvey Gessin and Chad Gessin. Mr. Hulme said in December this Board granted relief to allow the two lots with the reduced lot area and the reduced lot width, but declined to grant the necessary variances for the homes and we are back with anew application and different sized proposed homes and I would like to ask the Board to incorporate the two records and my clients have done a nice job in running the eight units and their business that this question has come up why they don't build one house? Two make sense and two as proposed now make some sense but not much smaller and these are economic decisions and two houses at this size still makes economic sense and they can sell them and move on. We made adjustments from the last time and it was reducing the side yards to 20' so that relief is no longer needed so we only need 40' for the total side yard; we reduced the lot coverage down to 20% and eliminated the need for that variance and that accounts for the square footage changes and we had to skew the property line to get enough land on both sides to get to the 20% lot coverage so that explains that. As indicated, we are looking for lot area and 14,793 for the other lot and that represents 200 square feet up and down from what was granted. We're looking for the 80' lot width for each, and that's identical to the prior relief granted and 67' versus 75' for the rear yard setback to the water. The total side yard is typical for the narrow lots, and is not unusual for this Board to give relief for it. 67' to 75' is not unusual and I had project last Fall that was granted more relief. There is suggestion that 75' is a lot of setback for the Bay and that makes sense to protect the dune, but many homes on the Bay are closer to 50' than 75' and the lot width granted was done in December and the lot area was too. I think some of the information provided indicates that the average lot width in the area is 76' and we're at 80' and the average total side yard is 32' and we're proposing 40' and the average lot area is bigger than our proposal and many of the homes are below 20,000 square feet and lots of this size would be offensive to the neighborhood character.

Mr. Piering asked if he's aware of the letter of opposition?

Mr. Hulme said yes, I received it.

Mr. Piering said they were concerned about the total side yards and the narrow lots.

Mr. Hulme said if you start at 486 and down to 506 the average total side yard is 32.65'.

Mr. Piering said this is the Westerly neighbor so the cottage is less than 1'.

Mr. Hulme said it will be 20' now.

Mr. Piering thanked Mr. Hulme for addressing the neighbors letter.

Dick Richardson, 504 Dune Road appeared in opposition to the application. He said he appeared at the last hearing, and he got the new application. I was down there working today and I got a call from the Westerly neighbor and I have a copy of the letter she sent to this Board.

Mr. Piering said that's what we just discussed.

Mr. Richardson said I told her I would read it, but is it okay if I don't?

February 16, 2023

Mr. Piering said we received the letter and Mr. Hulme received it. He summarized the letter and she is opposed to the total side yard setbacks and the small lot sizes. And we looked at this application and when we did we looked at 8 cottages that are going to improve the property by removing them with the sanitary system and they will be homes and not transient rentals.

Mr. Richardson said I understand that, and the lot width should be 100' and the last time I came I got a notice that its been approved at 80'.

Mr. Piering said we approved the subdivision, but not the variances for the houses so that's redone and this is the new application, but the lots were approved, so yes they are approved at 80' wide.

Mr. Richardson said my lot is 80' and my neighbor two houses down is 160' and it's a double lot.

Mr. Piering said yours is 80' and these two will be 80' also.

Mr. Richardson said the side yard is 25'?

Mr. Piering said it can be no less than 20' on each side and total 50' but they are applying for 20' on each side and that's the minimum required on either side so his total will only be 40'' but the 20' will be maintained.

Mr. Richardson said he bought it at 160' and the cottages are a pain, but it's a 160' wide lot so the best thing he can do is build one beautiful home and he wont make as much, but its nicer for the area. And it'll look like the Dunes which is horrible.

Mr. Piering said I understand the Dunes are too close, but they are maintaining the side yard setbacks here.

Mr. Richardson asked if they need a variance for the side yard?

Mr. Musnicki said they do not have the total, it's a combination of the two. They have to sort this out and look at it. Your property is 80' and so are these; and this is replacing a real problem with old sanitary system.

Mr. Richardson said I know. It seems like these two big houses and he bought it at 160' wide lot and he'll make two house and make more money, they will be two big new houses. What I'd like to see is one home in the middle that would be nice. My house was zoned in 1960.

Mr. Piering said they are getting anything more than you have.

Mr. Wittschen asked what his side yard set back is?

Mr. Richardson said he did not know.

Mr. Hulme said they are 13' and 23' for a total of 36'.

Mr. Piering said they will have more than you as far as the setbacks.

Mr. Piering said there are height requirements, and they aren't seeking a height variance.

Mr. Richardson said they have a tough job and do a great job.

Mr. Piering thanked Mr. Richardson.

9. New York Cancer & Blood Specialists, 40 Main Street (905-012-03-015) Applicant requests variance from §197-7 A for proposed conversion of counseling building for use as medical offices with exam rooms where not specifically permitted.

James N. Hulme, Esq., appeared on behalf of the application.

February 16, 2023

Mr. Piering asked what variance you're seeking?

Richard McMullen, CFO New York Cancer and Blood Specialist said they are seeking a womens imaging center in addition to a space for charitable foundation to help with patience assistance and noticed there is a lack of womens imaging and health in this area and we think it will be beneficial to this community.

Mr Musnicki asked where there other centers are?

Mr. McMullen said all over Long Island, and the five boroughs; Riverhead, Patchogue, Port Jefferson, Port Jefferson Station and moving Upstate as well.

Mr. Piering asked what this use entails.

Mr. McMullen said mammography and treatment for womens specific cancers and radiioly.

Mr. Piering said just womens?

Mr. Badzik said imaging and treatment?

Mr. McMullen said hematology and oncology and treatment of cancer.

MR. Musnciki said treatment, is that in and out?

Mr. McMullen said you come in for treatment and you leave, there is no overnight stays.

Mr. Piering thanked Mr. McMullen.

Mr. Hulme said it is not a hospital, its not a walk in center, but they have appointments they receive treatment and they leave. It is proposed in the building known as the Beineke Building at St. Mark's Church and the Churhc has 4.2 acres and there is the main church; and annex housing the offices meeting rooms and the church services; and another 3,400 swaire feet we're seeking to occupy for this new use. I don't think I gave the CO pertinent to this and in 1986 there was a CO for the building itself and it was permitted without a variance, for a general prupose family counseling building and the footpirjnt will remain and the renovations are proposed inside and won't change the footprint and we will have to go to the planning board ot modify thesite plan. The variances is necessary because the property is R2 and to the North is R2 and the East is B1 and I assumed it was part of the B1 and to the South is the great lawn and also R2 but it is preserved and to the West is the Country Club in the R1 and it is surrounded by residential zoning that will never be residetial.

Mr. Wittschen asked if it was used for family counseling?

Mr. Hylme said it was built for that use and supports our theory why you should consider granting relief.

Mr. Pasca asked if that was part of the religious use?

Mr. Hulme said no, it's been ancillary. The Church relies on the income from this building and views that and this as an extension of services provided to the community. It was not itself a religious use or in nature. I think its kind of a unique part of the world because of the uses and the neighbors and as I said there are a ew things that occurred to me this is really a continuation of an accessory use; it was counseling, thus is a medical gtreatment; there is a daycare center thre and ifyou go through the uses in the building code I would venture to guess that both counseling and this use falls into the same or similar categories. They have the same national Code recited in the Code and it's Chapter 62 of the NAICS that covers the uses and in that regard whether it's an imaginng center or counseling it's the ame general category of use so a theory would suggest it's a continuation of a permitted use. The pre existing non conforming of 197-29 similar use; same parking; no physical change to the site is necessary other than the variance to allow the use; but this is a use in substitution for an already legal use and similar in nature. Eventually I think we get to the idea of a use variance, because it's bot permitted in the R2, nor was counseling or day care use and we need to look at the standards that go across with the use variance. I will do them in reverse order of complexity; the last rwequirement is the minimum relief; there's no change to

February 16, 2023

the site no parking addition; no structures added and the renovation is interior only. The parking requirement for this use I believe, is the same as it was for the use it's replacing. The fourth is not self-created, the need to provide this service and the need for the church to benefit economically and the need of the church to put this legally existing building to a proper use drives this relief.

Mr. Piering asked what's in the building now?

Mr. Hulme said it's empty now it is vacant.

Mr. Pasca asked the change in zoning from 1986 to now? The Church has owned the property the whole time, so why was it lawful then but not now.

Mr. Hammond said I don't believe there was a change.

Mr. Hulme said he will research it. The third factor is no change to the neighborhood character; when it was a counseling center it will remain the way people drive and are treated. The second is unique hardship and as I said, this is a church and it's in a residential zone and end of the business zone and the building exists searching for a use and that was built for a use not directly religious in nature. The hardship is unique and the big factor is reasonable return on the permitted use in the Village. I looked at this from a few directions to see what economic benefit there was, if any to building houses on the site or part of it. I looked at it and it's R20 and 20,000 square foot lots and eight residential lots were looked at and 1 acre would be more valuable than half acre and we came to the conclusion shown on the third and fourth column to be unprofitable for eight lots; somewhat more for four lots however that presupposes to the elimination of the Church and that's not something the church is interested in doing and they have served this community over 100 years. So I looked at four half acre lots on part of the property and keeping the Church on the other part and did an analysis on that and the costs associated with and I looked at doing two one acre lots and if you look at the bottom line, both concepts were money losers and beyond the fact they may not realize a return from the changes, they'd lose the ability to use the building they have and the money generated by the lease between the applicant and the Church goes to the bottom line of the income and it's my understanding that the income from this use will provide 25% of the operating revenue the church has. It's significant and helpful to allow the church to continue its mission.

Mr. Piering asked if we have those numbers?

Mr. Hulme said no, I can.

Mr. Pasca asked where these numbers on the chart came from.

Mr. Hulme said the assessed value from the Town GIS. And I looked at the properties in the neighborhood and most are half acre and they all retained the assessed value of one million dollars and the larger lot was five or six million dollars assessed at. All of the assumptions are at the bottom, some was internet research and in consultation with the contractor and the one thing I forgot to include is the park fee and since this is a subdivision there would be a park fee so that would reduce the gain and increase the loss. I think and I touched on this in my written submission, there is a religious land use law which prevents municipalities from introducing a hardship on a religious institution and this is in of itself religious in nature and part of the religious community and supports the work of this community.

Mr. Musnicki asked if there is any paperwork involved with the Benikee Family?

Mr. Hulme said no, they did not exercise control over the building or use.

Mr. Musnicki asked how this use came about, I thought they church would try to find a new counseling type service to fill the space.

Mr. Hulme said I don't know; they needed a tenant is all I know.

Mr. Musnicki said the intensity of the use is a lot greater than a counseling center. When you talk about treatment and imaging and you have staff and clerical and administrative staff; it seems like an intense use.

February 16, 2023

Mr. Hulme said the building isn't getting bigger and it can only be occupied by a certain number of people; but we can look at use projections for the best we can and we can compare and contrast whether there is an increase or not. It's still within the parameters of the parking requirements for that site and the Village Code does not view the change from counseling to this as an increase of intensity in terms of parking because the parking requirement is the same.

MR. Musnickki said that's not so much our concern. That's not the instensity im speaking to, it's the intensity of the use itself from couneling to medical use and treatment and imaging.

Mr. Hulme said they will get more information.

Mr. Musnicki sid the more information the better.

Mr. Pasca said that will fit the character of the neighborhood; it is appropriate to ask if the intentisy will fit the character of the neighborhood.

Mr. Piering said he did not have any other questions.

Mr. Pasca said it might be helpful to get a read from planning, that may help Mr. Musnicki's question in terms of assesin the site impacts to see what they do with it.

Mr. Piering said this site, can you find out how they got this location. Do you think there's a better location for this type of use?

Mr. Hulme said if this were the B1 it would be permitted.

Mr Badzik asked if there are any other mediantreatment uses on Main Street?

Mr. Hlme said I don't beliee so, and I don't believe its precluded in the Code. It's a nice building in a nice location already developed. I suspect that's why it was attractive to the tenant.

Mr. Badzik said Seafield Center is on Main Street.

Mr. Piering asked if that's the B1?

Mr. Hulme said I don't know, I think it's pre existing non conforming use.

Mr. Piering asked Mr. McMullen if he had more to say?

Mr. McMullen said clerical and administrative, we don't have those services and bulling accounting, scheduling are not in this space they are centralized elsehwehre.

Mr. Musnicki said you have a number of places on Long Island, where are they?

Mr. McMullen said Long Island, the five boroughs and upstate.

Mr Musnicki said you found this area needed this?

Mr. McMullen said we found there was a lack of services in this area and the surrounding area as well.

Mr. Piering asked if there were any other questions.