

**ZONING BOARD OF APPEALS  
SATURDAY, APRIL 27, 2013  
4:00 P.M.**

**Present:** Chairman Ogden Lewis, T. David Mullen, Charles Mott, Alexander Ames, and Village Attorney Richard DePetris

**Absent:** Robert Treuhold and Brendan Ryan

1) Chairman Lewis brought the meeting to order and explained that the next meeting would be on Saturday, May 18, 2013, at 4 P.M. He then made a motion to approve the minutes of the March 30, 2013 meeting.

**DECISION: MR. LEWIS MOVED TO APPROVE THE MINUTES TO THE MARCH 30, 2013 MEETING. MR. AMES SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY CARRIED.**

2) The first item for the afternoon was a mater presented by attorney **Kittric Motz**, requesting an extension of a variance granted on June 25, 2011. Premises are known as **8 Bayview Drive. TM #902-11-3-19.1**

The board members had already read Ms. Motz request. Ms. Motz explained that she was aware that most extensions were granted for 2 years but she wanted to request a 4 year extension because that would coincide with her DEC permit and the return of Mr. Motz, who would be available to assist. Her request would encompass June, 2013 to June 2017.

**DECISION: MR. LEWIS MOVED THAT THE MOTZ EXTENSION BE GRANTED FOR FOUR YEARS, INCLUDING JUNE 2013 TO JUNE 2017. MR. AMES SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY CARRIED.**

3) Next was the application of **Harold Evans and Tina Brown** for a height variance of 4.47 feet to a maximum elevation of 45 feet, measured from code-defined mean elevation of 5.53 feet where the Zoning code permits a height of 40.53 feet. Premises are known as **160 Dune Road. TM #902-16-2-2.5**

Attorney **Jane Kratz** was present for the applicants, along with their architect, Mr. Ling. On the property is the pre-existing residence that was severely damaged by Hurricane Sandy. The owners are proposing to install 50 to 60 wood timber piles beneath the existing structure, while shifting the existing residence to the west. That would eliminate a nonconformity in the easterly side yard which the Zoning Board had previously granted variance relief for at the time of the Post Beach subdivision several years ago. While moving the house to the west they also propose some interior and exterior modifications including a new floor and other up-grades. The calculation for the maximum height for a structure in the A-1 zone with the existing height of Dune Road created a maximum height of 40.53 feet. The proposed structure with pilings and the state required freeboard would be at the 45 feet at its highest point, requiring a variance of 4.47 feet. They would be seeking the maximum variance required if nothing was done to Dune Road. Ms. Kratz explained that the structure will be 27.6' but their calculations considered the structure at 28 feet, as they were concerned that there would be some construction tolerances as the construction proceeded, which is how they arrived at a maximum height of 45 feet in their variance request. It was also noted that the variances were all requested because of FEMA requirements. The board wanted to know how the fact that there was no longer a dune on that property affects Ms. Kratz's clients. She indicated that she and her clients needed to measure from something, so they used the Coastal Erosion Hazard Line as a maker for their measurements for the finished proposed house. Ms. Kratz said that dune restoration is not part of their plans at the present, although it could possibly be in the future.

The architect, Mr. Ling came forward to explain that the dune restoration was independent of their seeking the variance from the height restrictions. At this point in time, there were no final details or final decisions between his clients or their neighbors as to how to proceed in restoring the dunes. They had retained a landscape consultant that would be actively involved in any future plans for the dunes but that would be a future stage. Using the house elevations, Mr. Ling proceeded to go through and explain to the board, all proposed changes to the structure. He explained that they would be moving the house 8 feet to the west to clear the 25 foot side yard setback requirement. They proposed to square off the house to the northeast with habitable space and enclose an overhand to the south. The proposed changes had reduced the amount of rooms, and the square footage of the house, as well as the footprint. Mr. Ling explained that they proposed to raise the main house, and the eastern portion which had been mostly demolished, would be rebuilt, and squared off. They were seeking a slightly higher roofline to the east on the connector part of the house and an additional 1 foot on the ground floor by lowering the floor, to achieve an 8 foot ceiling height. In reference to the south extension, Mr. Ling noted 2 small portions of the house where they were seeking additional roof-ridge height, as well as lowering the floor, to increase the amount of interior usable square footage. The original house had a sloping roof which constricted the footprint on the second floor. The west extension would remain unaltered although Mr. Ling did explain that they would be reducing the footprint since they would be cleaning up and editing a shed in that area.

Ms. Kratz reiterated that they were making the house FEMA compliant, which was crucial and beneficial to the neighborhood. She explained they were not 'blowing-out' the

house in any dimension whatsoever, and they were basically asking for what they considered to be the minimum to restore what was previously there. Ms Kratz explained that this application was an urgent matter because they wanted to get work underway as soon as possible so as not to have the noise of heavy construction, and the pilings being driven during the height of the summer season. They were hoping to have all the heavy, noisy work finished by the middle of May. They were also hoping to get approval at the meeting. She also included that her clients were mindful of the fact that even though their house would be on pilings, it would still have no dune protection, and that would be a project that they incorporate after further research and discussion with neighbors, in a future phase of their work. The board decided to consider the application further in executive session.

4) Next was the holdover application of **John B. Cunningham** for a variance in order to maintain a "tree-house". Premises are known as **59 Lamb Avenue. TM #902-8-1-13.2**

The applicant, **John B. Cunningham** was present for the discussion. He explained that after much discussion he decided to move the tree-house way back in the rear yard and keep it there. Mr. Cunningham's architect, Bill Mitchell, present to speak to the board. He explained that it was the family's desire to get the tree-house supported, move the other trees out of the way, get the house mover to move it to the rear yard, and put it on 4 piles, and then run some electricity to the tree-house. It would not have running water and it would be less than 16 feet to the top.

Mr. Nowak, the Village Building Inspector, came forward and felt that along with the architect's plans to certify the structure, he would be comfortable, as long as it had a landing and proper stairs.

**DECISION: MR. LEWIS MOVED TO GRANT A TEMPORARY VARIANCE FOR A PERIOD OF 2 YEARS IN ORDER TO PERMIT MAINTENANCE OF THE EXISTING TREE-HOUSE AT A NEW LOCATION AS SHOWN ON THE MAP SUBMITTED AT THE HEARING ON SATURDAY, APRIL 27, 2013, SUCH NEW LOCATION BEING IN THE NORTHWEST PORTION OF THE PROPERTY WITH SETBACKS OF AT LEAST 25 FEET FROM THE NORTHERLY LINE AND THE WESTERLY LINE AND ALSO SUBJECT TO OBTAINING A BUILDING PERMIT FROM THE BUILDING INSPECTOR WITH APPROPRIATE STRUCTURAL SUPPORT AND ACCESS. MR. MULLEN SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY CARRIED.**

5) The last matter on the agenda was the holdover application of **Richard Richards** for a lot coverage variance to 22%, a front yard variance to 44.9 feet, a total side yard variance to 57.4 feet, a height within required yard variance, street frontage variance to 119.80 feet if necessary, and a lot width variance if necessary, in order to permit proposed reconstruction and additions to existing house. Premises are known as **162 Dune Road. TM #902-16-2-3.**

Attorney **Daniel Barker** was present for the applicant. The board members had received and reviewed their information packets. The board did not see any information though, concerning the illegally placed gazebo or why it should be allowed to remain on the property. The gazebo was put up about 28 years ago by Mr. Richard's son and has remained ever since. Mr. Barker explained that at the time of its construction he didn't believe Mr. Richards understood that he needed permission to place the gazebo on his property. In 2005 when surveys were submitted that were reviewed by the village building inspector and the Design Review Board, nothing was called into question about the gazebo. Mr. Barker then continued speaking about their proposed construction project and explained that they wanted to recreate the same living space that was flooded and damaged by Hurricane Sandy. The full project would not be enlarging the existing footprint any but would propose to remove a one story, 1,093 SF. portion of the existing dwelling constructed below the currently required FEMA plan. The new addition would be 941 SF. and is proposed to be constructed above the required FEMA flood plan and 2 foot free board at the level of the second floor of the existing dwelling. The addition will be supported by a piling and girder system having the pilings enclosed at the existing grade level with compliant break-away construction to provide a garage/storage area for the dwelling. They were seeking a variance to allow lot coverage to 22% while 20% is the requirement. The existing lot coverage was at 22.7% and they were proposing a reduction of .7%. Their existing front yard setback is 42.6 feet and they were proposing to reduce the nonconformity 44.9 feet. He also indicated that their project would reduce the total side yard setback. Mr. Barker went through other requested variance including a street frontage variance and a height variance which the architect already explained at a previous zoning board meeting. All the information was contained in their prepared information packet. The board wanted to know if Mr. Barker was requesting a decision be rendered at that meeting which would include a condition that the gazebo be removed, or would he want to adjourn everything, make an application for a variance for the gazebo, and have everything decided on together at a future meeting. Mr. Barker wanted the board to consider granting the variances requested on the proposed addition with a promise from them that they would make a future application for a variance for the gazebo. He felt the gazebo did not necessarily impact their project for the immediacy to go forth with the reconstruction of the living space. Other than the fact that the gazebo had been in its present position for a long time, the board wanted to know what other reason he believe should allow for a variance for the gazebo. The board noted that if the gazebo was removed it would reduce the lot coverage. Mr. Barker explained that besides having the gazebo for a long time, they felt it did not have any negative impact on the community, and the neighbors had never complained and also enjoyed using it. They felt the enjoyment of the gazebo by all involved, outweighed any negative impact, of which there was none. The board felt that if they granted the lot coverage variance that Mr. Richards was requesting, they would be allowing the gazebo and they were not prepared to do that. The board decided to consider the application further in executive session.

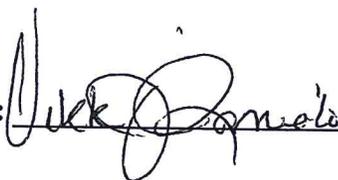
**6) After executive session, the board ruled on the application of Harold Evans and Tina Brown.**

**DECISION: MR. LEWIS MOVED TO GRANT THE REQUESTED VARIANCE. MR. AMES SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY CARRIED.**

7) With respect to the Richards application the board ruled.

**DECISION: MR. LEWIS MOVED TO GRANT MR. RICHARDS REQUESTED VARIANCES AS REQUESTED AND ADVERTISED EXCEPT WITH RESPECT TO THE LOT COVERAGE VARIANCE. WITH RESPECT TO THE LOT COVERAGE VARIANCE: THE BOARD DID NOT GRANT THE LOT COVERAGE VARIANCE TO THE REQUESTED 22% BUT DID GRANT A LOT COVERAGE VARIANCE TO THE EXTENT OF ALLOWING THE LOT COVERAGE SHOWN ON THE SURVEY LESS THE ACTUAL LOT COVERAGE OF THE GAZEBO. THEY GRANTED THE FOREGOING SUBJECT TO THE FOLLOWING CONDITIONS: 1) PRIOR TO ISSUANCE OF A BUILDING PERMIT, APPLICANT SHALL SUBMIT A SURVEY TO THE BUILDING INSPECTOR SHOWING THE LOT COVERAGE FIGURE EXCLUDING THE GAZEBO. 2) THE GAZEBO SHALL BE REMOVED PRIOR TO ISSUANCE OF A CERTIFICATE OF OCCUPANCY FOR THIS PROJECT UNLESS THE APPLICANT HEREAFTER OBTAINS VARIANCES FOR THE GAZEBO, (A LOT COVERAGE VARIANCE, AND A SETBACK VARIANCE), PRIOR TO ISSUANCE OF SUCH CERTIFICATE OF OCCUPANCY. MR. AMES SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY CARRIED.**

Respectfully submitted by:



File date: 5-13-13