



**United States Department of the Interior**  
**NATIONAL PARK SERVICE**

**FIRE ISLAND NATIONAL SEASHORE**

120 Laurel Street  
Patchogue, New York 11772  
(631) 687-4750

IN REPLY REFER TO:

986-40-2.21

January 23, 2012

Paul M. DeChance, Chairman  
Board of Zoning Appeals  
Town of Brookhaven  
One Independence Hill  
Farmingville, New York 11738

RE: FIP Ventures, LLC, NS Fire Island Blvd., 40.91' EO Picketty Ruff Walk,  
Fire Island Pines  
SCTM# 986.40-2.21  
**BZA Hearing #33 of 1/25/12**

Dear Mr. DeChance:

The National Park Service, Fire Island National Seashore has reviewed the application of FIP Ventures, LLC regarding the application for variances to reconstruct their property in Fire Island Pines on the north side of Fire Island Boulevard, 40.91' east of Picketty Ruff. The property in question was destroyed by a fire in November of 2011.

The National Park Service review is based upon the regulations found in Chapter 36 of the Code of Federal Regulations Part 28—Fire Island National Seashore: Zoning Standards. The regulations in Part 28.11(c) *Reconstruction of nonconforming uses*, discuss under what conditions a nonconforming use may be reconstructed. Part 28.11(c) states:

“If a nonconforming use or structure is severely damaged (as determined by professional insurance practices), destroyed or rendered a hazard, whether by fire, natural disaster, abandonment, or neglect, no alteration, intensification, enlargement, reconstruction, extension, or movement is allowable without compliance with the following conditions:

“(1) No use or structure within the Seashore built in violation of a local ordinance when constructed may be reconstructed except in compliance with the approved local zoning ordinance.

“(2) Local building permit applications for reconstruction shall be filed with the appropriate zoning authority within one (1) year of the damage, destruction or abandonment.

“(3) A commercial or industrial use may not be reconstructed without the approval of the local zoning authority and review by the Superintendent.

“(4) A nonconforming use in the Community Development District or in the Seashore District (i.e. “improved property) may be reconstructed to previous dimensions. It may not be altered, enlarged, intensified, extended, or moved except to bring the use or structure into conformity with the approved local zoning ordinance.

“(5) A nonconforming use in the Dune District may be reconstructed if it can conform to the approved local zoning ordinance and lie north of the crest of the dune at the time of reconstruction.”

Part 28.20 Review by the Superintendent states, “(a) The Superintendent, within 15 working days of the receipt of a copy of an application for a variance, exception, permits for commercial or industrial use, or special permit submitted to the zoning authority for any development, use or change in use shall provide the applicant/landowner and the appropriate zoning authority written comments on the application. The purpose of the review is to determine if the proposed use or development does not conform to the federal standards...”

We are aware that the Town of Brookhaven’s current code is more restrictive than the Federal regulations found in 36 CFR Part 28. Brookhaven Town Code limits the reconstruction of nonconforming structures destroyed by fire or storm. Under current Brookhaven code, if the loss is greater than 75% of the property’s value the property is to be reconstructed in accord with current zoning which limits the property to 50% lot occupancy.

In our review, we have found that a number of discrepancies exist between the building permit applied for in 2007 and subsequently granted by the Board of Zoning Appeals (BZA), and subsequently what is reflected on the Certificate of Occupancy that was issued in 2010 for the property now under consideration. Through the 2007 reconstruction, the building was dramatically intensified, even though there was no increase to the existing lot occupancy. Essentially, the request in the December 18, 2006 application for a building permit was for the “Reconstruction of 2-story building 90.8’ x 54.9’ *in kind*.” (Emphasis added). Given the amount of variances required, the Building Department denied the issuance of a permit and a subsequent variance application was submitted to the BZA. The survey submitted with that building permit application clearly indicates the configuration of “2-story” building in existence in 2006, which was to be “reconstructed in kind.”

In that the Seashore never received a copy of the 2007 variance application until we began investigating this file as a result of this most recent application, we find it curious that that the application to the zoning board in 2007 appears to be different than what was initially applied for in the 2006 building permit application. And, the building shown on the survey submitted with the current (1/3/2012) building permit is clearly not what existed in 2006. The Seashore did not comment on either the 2006 Building Permit application or the 2007 zoning variance application. Copies of those applications and the accompanying survey are enclosed herein.

The building that is being requested for reconstruction in kind today, as a result of the fire that destroyed it in November 2011, is very different than what was requested in that 2007 application. Also, it appears that a Certificate of Occupancy that was issued by the Building

Department in 2010 may have been granted for the building that was significantly intensified when reconstructed, where open roof decks on the one story portions of the building were enclosed, thereby becoming additional second story development. This intensification is clearly inconsistent with the Federal Zoning Standards. We have no application in our files that reflect a request for the construction of that intensification. As built in 2007, the property, and this proposed reconstruction of it, are not consistent with the federal zoning standards, and therefore not exempt from the Secretary of the Interior's condemnation authority found in 36 CFR Part 28.22.

Additionally, we oppose the requested height variance. As we understand the current planning for the reconstruction, building plans are not yet complete. Therefore it does not seem unreasonable to require the reconstructed building to comply with current height requirements as well as looking at lot occupancy and other code requirements. We also understand that the septic field for this property is no longer located on the property but on adjacent residentially zoned property.

Although not a part of the Federal Zoning Standards found in 36 CFR Part 28 the National Seashore is concerned about public health and safety within the boundary of Fire Island National Seashore including structural and wildland fire resulting from development that lacks inadequate or proper fire protection and contamination of groundwater and the waters of the Great South Bay that can be effected by inadequate septic systems and sewage treatment systems. As the Brookhaven Board of Zoning Appeals deliberates this application, we hope the Board will also take into consideration the very real concerns regarding public health and safety and ensure that if this application is approved the resulting development addresses the issues of fire, water, sewage and other public health and safety issues.

We understand the desire to reconstruct this property in a timely manner however there continue to be outstanding questions concerning this property that should be addressed in order to ensure that what is ultimately built does not negatively impact the environment or the community. Therefore, we recommend that the Brookhaven Board of Zoning Appeals not render a decision on this application until a full architectural and site review be conducted that addresses our above referenced concerns.

Thank you for your consideration of the National Park Service, Fire Island National Seashore's comments.

Sincerely,



K. Christopher Soller  
Superintendent

cc: Applicant

Enclosures

**TOWN OF BROOKHAVEN BOARD OF ZONING APPEALS  
ONE INDEPENDENCE HILL, FARMINGVILLE, N.Y. 11738**

**NOTICE OF PROPOSED APPLICATION FOR VARIANCE – SPECIAL PERMIT**

PLEASE TAKE NOTICE, the undersigned **Eric Von Kuersteiner & Anthony Roncalli, c/o Walter Boss P.O. Box 186, Sayville, NY, 11782** Has made application to the Board of Zoning Appeals of the Town of Brookhaven, Suffolk County, N.Y., by filing a petition in writing which will be heard on **January 17, 2007**, pursuant to Article IV, Section 85-29 of the Building and Zoning Ordinance of the Town of Brookhaven and is hereby requesting:

**Height variance, front yard setback, rear yard, minimum and total side yard variances and the percent of lot occupancy to exceed the 50% permitted (95.8%) for reconstruction of commercial building/decking/stairs (more than 50% of original structure being renovated/remodeled).**

**LOCATION: North side of Fire Island Blvd. 40.91' East of Picketty Ruff Walk, Fire Island Pines**

**OWNER OF SUBJECT PARCEL: Anthony Roncalli**

The ordinance requires that all property owners within a radius of 200 ft. (500 ft. for proposed dwellings) be notified of this proposed request. If you require any further information, prior to the scheduled hearing date, please appear in person at One Independence Hill, Farmingville, (1<sup>st</sup> floor). There will be no information concerning this application given over the phone.

All persons interested in the proposed variance – special permit will be heard on the above-mentioned date at **ONE INDEPENDENCE HILL, FARMINGVILLE, N.Y. (AUDITORIUM – 2<sup>ND</sup> FLOOR)**

**TIME: 3 P.M.**

**CASE # 41**

This notice is being sent to you by the undersigned in accordance with the provision of the Building and Zoning Ordinance of the Town of Brookhaven.

Dated \_\_\_\_\_, 2007 Applicant \_\_\_\_\_



# Town of Brookhaven Long Island

OFFICE OF THE BOARD OF ZONING APPEALS

Terry J. Karl, Chairman

Jan. 19, 2007

Re: Eric Von Kuersteiner & Anthony Roncalli ,c/o Walter Boss: North side of Fire Island Blvd. 40.91' East of Picketty Ruff Walk, Fire Island Pines. Applicant requests height variance, front yard setback, rear yard, minimum and total side yard variances and percentage of lot occupancy to exceed the 50% permitted (95.8%) for reconstruction of commercial building/decking/stairs (more than 50% of original structure being renovated/remodeled).

At a public hearing of the Town of Brookhaven Board of Zoning Appeals held **January 17, 2007** application No. **41** was duly considered and action taken as follows:

**Granted, as presented; subject to Chapter 81 - Wetlands & Waterways.**

If this is a notice of approval, it is necessary for you to bring this letter with you to the Building Dept. in order to obtain the required building permit and/or certificate of occupancy or compliance within **two years**. You must comply with Section 85-30 of the Town Code. Failure to do so will render this approval **null and void**.

Please contact our office if you have any questions.

Sincerely,

Laura Rath  
Secretary



# Town of Brookhaven Long Island

OFFICE OF THE BOARD OF ZONING APPEALS

Terry J. Karl, Chairman

Jan. 19, 2007

Re: Eric Von Kuersteiner & Anthony Roncalli, c/o Walter Boss: North side of Fire Island Blvd. 40.91' East of Picketty Ruff Walk, Fire Island Pines. Applicant requests height variance, front yard setback, rear yard, minimum and total side yard variances and percentage of lot occupancy to exceed the 50% permitted (95.8%) for reconstruction of commercial building/decking/stairs (more than 50% of original structure being renovated/remodeled).

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Please contact our office if you have any questions.

Sincerely,

Laura Rath  
Secretary

*ok for front  
flags & access  
walk  
as  
with my # sign  
Sunny*

One Independence Hill • Farmingville • NY 11738 • Phone (631) 451-6477

[www.brookhaven.org](http://www.brookhaven.org)

Printed on recycled paper

**TOWN OF BROOKHAVEN BUILDING DIVISION  
ONE INDEPENDENCE HILL, FARMINGVILLE, N.Y. 11738  
Permanent**

# Certificate of Occupancy

CO# **252231** REVISED DATE

BUILDING PERMIT NO. **09B58816**

SUB-TYPE: **BUS**

ISSUED: **02/24/2010**

EXPIRES

\*

\*(Temporary Certificate and Rental Housing Only)

APPLICANT: **ERIC VONKERSTEINER C/O MICHELLE QUATRALE  
255 HAGERMAN AVE  
EAST PATCHOGUE NY 11772**

**This certifies that the**

Two story type 5A wood framed building 90.8' x 54.9', ground level walkway deck 90' x 5.4', first floor deck 54.3' x 23.8' irregular with steps to grade, 2nd story deck 12.11' x 15.4' and one story building 12.11' x 15.4', occupancy classification mixed use A,B, M - sprinkler system provided.

**Located at No. 37 N/E/S/W N side FIRE ISLAND BLVD.  
Distance 40.91' N/E/S/W E of PICKETTY RUFF WALK  
Village Sayville State of New York  
Map FIRE ISLAND PINES Sect Lot 37A-C**

conforms substantially with Zoning Ordinance, Building Code and other laws if any at date of permit issuance and permission is hereby given for use or occupancy.

SCTM:0200-986.40-02.00-021.000

ITEM NO.3252370

Article 15 of the Executive Law of the State of New York, Section 296-5(A)(1) prohibits discrimination in the sale, rental, or lease of housing accommodations because of race creed, color or national origin.

BY \_\_\_\_\_

  
BUILDING INSPECTOR

**NOT VALID WITHOUT EMBOSSED SEAL**



# Town of Brookhaven Long Island

OFFICE OF THE BOARD OF ZONING APPEALS

**Terry J. Karl**, Chairman

TO: FIRE ISLAND PINES ZONING ADVISORY COMM.  
Rodman Paul, Chairman  
118 Chamber St. 4th Floor  
New York, NY 10007

FROM: BOARD OF ZONING APPEALS

RE: Eric Von Kuersteiner & Anthony Roncalli, North side of Fire Island Blvd.  
40.91' East of Picketty Ruff Walk, Fire Island Pines

DATE: 1/2/07

FOR YOUR INFORMATION, PLEASE FIND ATTACHED A PHOTOCOPY OF  
THE ABOVE-CAPTIONED APPLICATION TOGETHER WITH A COPY OF THE  
SURVEY AND BUILDING DEPARTMENT APPLICATION SCHEDULED FOR  
OUR PUBLIC HEARING OF **January 17, 2007** CASE # **41**.  
THE BOARD WOULD APPRECIATE YOUR COMMENTS.

Encs.

**APPLICATION TO THE BOARD OF ZONING APPEALS**  
 (FILE IN TRIPLICATE - ALL PAGES MUST BE LEGIBLE)

**BACKSIDE OF WHITE PAGE MUST BE SIGNED & NOTARIZED**  
**SEE INSTRUCTION SHEET FOR ADDITIONAL REQUIREMENTS**

FI 3304

APPLICANT NAMED BELOW MUST BE (check one)  
 PROPERTY OWNER  or IN CONTRACT TO PURCHASE

Name: ERIC VAN KURSTENBER AND ANTHONY RONCALLI S/O WALTER BOSS

Address: PO Box 186 SAVILLE, NY 11782

Phone #: 631 597 6262/FAX 597 6868

Also Notify: \_\_\_\_\_

Phone #: \_\_\_\_\_

**LOCATION OF SUBJECT PROPERTY**

N S E W side of FIRE ISLAND BLVD.  
 Distance 40.91' N S  E W of PICKETTY RUEE

WALK  
 Village FIRE ISLAND PINES

Property is zoned CD  
(as shown on current zoning map)

Address of property 37 FIRE ISLAND BLVD

S.C. TAX MAP NO. 0200 986.4 2 21

Has building permit or proposed use been denied by Building Department?  Yes  No

(To be stamped by Building Department) 781539

Request: **SPECIAL PERMIT**

Describe: \_\_\_\_\_

SEC. OF BUILDING ZONE ORD. 85-171 CODES, ETC

PENALTY: Residential  Commercial

Renewal of Special Permit  Sign  CEU

Appeal Administrative Decision  Other

**VARIANCES REQUESTED**

- LOT AREA
- LOT WIDTH
- FRONT YARD SETBACK  0' Allowed 15'
- REAR YARD SETBACK  0' Allowed 20'
- SIDE YARD SETBACK  minimum 0' MIN 5'  
 total 0' TOTAL 10'
- 1st STORY SQ. FT.
- 2nd STORY SQ. FT.
- OTHER HEIGHT  28' Allowed 31' EXISTING
- OCCUPANCY  50% Allowed 95.8% EXISTING

- FEES: Poster  Chain of Title  SEQRA
- Minor Setback  Lot Area  Special Permit
- Cleaning/Buffer/Covenant Relief  Appeal Administrative Decision  Other

1. Is there a school, library, church, hospital, orphanage or fire hall within 200 ft. of the premises in question? YES
2. Is property located on an improved road? NO YES
3. Is road town maintained? YES
4. Is the property in question conforming to the lot area requirement? Yes \_\_\_\_\_ No \_\_\_\_\_
5. When was property acquired? 5/04
6. When was area upzoned? 9/81
7. Has premises ever been the subject of a prior application for a variance/special permit before the Board of Appeals? Yes  No \_\_\_\_\_ If yes, when? 7-8-87 BA186233
8. a) Is the property within one (1) mile from any nuclear power plant or airport? Yes \_\_\_\_\_ No   
 b) Is the property within 500 ft. of the following:
  - (1) the boundary of any village or town? Yes \_\_\_\_\_ No
  - (2) any existing or proposed County, State parkway, thruway, expressway road or highway? Yes \_\_\_\_\_ No
  - (3) any existing or proposed County, State or Federal park or other recreation area? Yes \_\_\_\_\_ No
  - (4) existing or proposed right-of-way of any stream or drainage channel owned by the County or for which the County has established channel lines? Yes \_\_\_\_\_ No
  - (5) the existing or proposed boundary of any County, State or Federally owned land held for government use? Yes \_\_\_\_\_ No
  - (6) the Atlantic Ocean, Long Island Sound, any bay in Suffolk County or estuary of any of the foregoing bodies of water? Yes  No \_\_\_\_\_
9. Is this property situated in (a) Historic District? NO (b) Hydrogeological Sensitive Zone? NO (c) Suffolk County Pine Barrens Zone? NO If yes, Compatible Growth Area? NO or Core Preservation Area? NO
10. Is SEQRA applicable to any part of this application? Yes \_\_\_\_\_ No NO

**LIST THE STRUCTURE(S) REQUIRING VARIANCE(S); SPECIFY WHETHER EACH ITEM IS PROPOSED OR EXISTING.**

MINIMUM TOTAL FRONT YARD SETBACK 15' EXISTING 15' PROPOSED 15'  
MINIMUM TOTAL REAR YARD SETBACK 5' EXISTING 5' PROPOSED 5'  
MINIMUM TOTAL SIDE YARD SETBACK 5' EXISTING 5' PROPOSED 5'  
HEIGHT VARIANCE 28' Allowed 31' Existing. All Proposed Reconstruction  
ALTER/RENOV. EXCEEDING 50% TO MAKE NEW CONSTRUCTION

TOWN OF BROOKHAVEN BUILDING & FIRE PREVENTION

ONE INDEPENDENCE HILL, FARMINGVILLE, NY 11738  
 PHONE # (631) 451-6333 • www.brookhaven.org

APPLICATION FOR BUILDING AND ZONING PERMIT

ET  
3304

Each application must be typewritten or printed and have all information answered. Incomplete or illegible applications will not be accepted.

APPLICATION is hereby made for a permit to do the following work which will be done in accordance with the description, survey and plans submitted pursuant to Section 57 of the Workmen's Compensation Law, Zoning Ordinance, Building Code and all other applicable ordinances and laws.

Article 16 of the Executive Law of the State of New York, Section 396-5 (A) (1) prohibits discrimination in the sale, rental or lease of housing accommodations, because of race, creed, color or national origin.

(Type or print firmly to insure legible copy. No carbon necessary)

ZBA # 181539

Applicant WALTER BOSS No. & St. PO Box 181 Tel. 631 597 6262  
 Village or City SAVILLLE State NY Zip 11782  
 Architect or Engineer \_\_\_\_\_ No. & St. \_\_\_\_\_ Tel. \_\_\_\_\_  
 Village or City \_\_\_\_\_ State \_\_\_\_\_ No. & St. \_\_\_\_\_ Tel. \_\_\_\_\_  
 Contractor or Builder SAME AS APPLICANT State \_\_\_\_\_ No. & St. \_\_\_\_\_ Tel. \_\_\_\_\_  
 Village or City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Tel. \_\_\_\_\_

Property located at No. 37 NSW side FIRE ISLAND BLVD Distance 40.91  
N SW of PICKETTY RUFF LAKE Village FIRE ISLAND PINES State of New York.  
 Map FIRE ISLAND PINES Section PICKETTY RUFF Lows 57A-C  
 Owner of record on tax rolls: ERIC LAUK KUESTERER Item No. 3252370 School District 38  
 County Tax Map Section 986.40 Block 2 Lot 21

Use and size of proposed work RECONSTRUCTION OF 2 STORY BUILDING 90.8 X 54.9 IN KIND. REPAIR & REBUILD FIRST FLOOR DECKING- 20.9 X 3.5, 87.6 X 4.8, 52 X 15 SAREF. FIRST FLOOR DECK 9.4 X 20.3 UNDER SECOND FLOOR 14.8' WIDE STAIRS TO BRABE RECONSTRUCT FIRST STORY OFFICE 16 X 8. RECONSTRUCT AND RECONFIGURE STAIRS 7' X 9.4' TO SECOND FLOOR WITH 7 X 15 STORAGE BEGAIN STAIRS; REBUILD & REPAIR STAIRS FROM GRADE TO SECOND FLOOR 4 X 18; PROPOSED SECOND FLOOR STAIRCASE FRAM 2nd Floor TO FIRST FLOOR 4 X 14 (EGRESS). CHANGE OF USE IN FIRST FLOOR FOR RETAIL SPACE 19.5 X 78 - ALL WOOD FRAME CONSTRUCTION. - Copy job to be removed.  
After/inner. existing 50% to make new construction.

I hereby certify that I have examined this complete application and the statements therein are true and correct, and that all work shall be done in accordance with all applicable Town, County, State and Federal Laws. "Any false statement made herein is punishable as a misdemeanor pursuant to S201.45 of New York State Penal Law."

Date 12/18/06 Print Name WALTER BOSS 1 Walter Boss  
 FOR BUILDING DIVISION USE ONLY: (signature of legally responsible person (owner or authorized agent))

Proposed Use \_\_\_\_\_  
 Zoning District: CO (AE)  
 Property Area  
 Property Wall  
 Front Yard Setback 15' or 10' or 12' or 14' or 16' or 18' or 20' or 22' or 24' or 26' or 28' or 30' or 32' or 34' or 36' or 38' or 40' or 42' or 44' or 46' or 48' or 50' or 52' or 54' or 56' or 58' or 60' or 62' or 64' or 66' or 68' or 70' or 72' or 74' or 76' or 78' or 80' or 82' or 84' or 86' or 88' or 90' or 92' or 94' or 96' or 98' or 100'  
 Rear Yard Setback 3' min 5' allowed Slope Deck  
 Side Yard Setback 3' min 5' allowed Slope Deck  
 Side Yard Setback Rem. yd 50 - 2' Required  
 S.C.H.D.  
 Survey  
 Plans Occupancy Soil Allowed 45.8% perm. yd  
 Other Weight 28 allowed 31 existing  
 Permit approved \_\_\_\_\_ date \_\_\_\_\_ Per \_\_\_\_\_  
 Permit DENIED (expires in 60 days) date 12/28/06 Per JW

Permit No. ....	Issued .....
Receipt No. ....	Issued .....
1st floor area .....	sq. ft. ....
2nd floor area .....	sq. ft. ....
Accessory area .....	sq. ft. ....
.....	.....
.....	.....
Add. Fee .....	Estimated Value .....
Plan. Fee .....	.....
TOTAL .....	CIA .....

Remarks C of O # 15399 C of O # 134692 (2 Sides)  
C of O # 28408 Permit # 06B34015  
C of O # 45831 (D) 20% / 55.8% (E) 15' / 8' (G) 20%  
C of O # 53980 Permit # 134354 (D) - Lot Occupancy - (E) 15' / 8' (G) 20%  
C of O # 134354 (D) - Lot Occupancy - (E) 15' / 8' (G) 20%  
C of O # 134693 (E) Rear Yd - 0' Fd Slope 45' R/W Deck  
C of O # 205098 (E) Side Yd. - 0' Fd Slope 45' R/W Deck

- ( ) 1. Bldg. Insp. approved
  - ( ) 2. Plumbing Insp. approved
  - ( ) 3. Final Survey approved
  - ( ) 4. Electric Cert. approved
  - ( ) 5. S.C.H.D. approved
  - ( ) 6. Fire Prevention approved
  - ( ) 7. Planning Board approved
  - ( ) 8. Highway Dept. approved
  - ( ) 9. Assessment Cert. approved
  - ( ) 10. Lead Test approved
  - ( ) 11. Debris Affidavit approved
  - ( ) 12. Steel Affidavit approved
  - ( ) 13. Disclosure Affidavit approved
  - ( ) 14. Smoke approved
  - ( ) 15. Pictures approved
- ( ) Approved for issuance of certificate
- Per \_\_\_\_\_  
 Remarks \_\_\_\_\_

