

May 16, 2024

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, May 16, 2024, 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 and Zoning Administrator

Maeghan Mackie, Building Permits Examiner / Board Secretary

DECISIONS:

1. Jim Badzik, 27 Sunswyck Lane (905-015-04-003) Applicant requests variances from §197-1 to construct an accessory building with plumbing facilities of 1,399 square feet where the maximum permitted is 200 square feet, and from §197-35 A to construct the accessory building within the front yard (corner lot) where not permitted.

Jim Badzik recused himself and Mr. Piering stated the Board had a determination.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

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In the Matter of Application of

Jim Badzik

DETERMINATION

Address: 27 Sunswyck Lane

SCTM #: 905-15-4-3

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I. REQUEST FOR RELIEF

The applicant, Jim Badzik, is the owner of a parcel of real property located at 27 Sunswyck Lane. The property is a corner lot, located on Seafield Lane and Sunswyck Avenue wholly within the R-1 Zoning District. According to the survey and site plan of the property prepared by Fox Land Surveying, dated January 6, 2023 and last revised on February 20, 2024 (“Survey”), the parcel is improved with a two story frame house a detached one-story frame garage, and a detached one story frame artist studio.

The applicant originally proposed to expand an accessory building used as an artist’s studio to 1,399 square feet, and to add plumbing facilities and a deck, and to relocate it from the rear yard to a location that was within 20’ from Seafield Lane. During the course of the public hearings, the size of the structure was reduced from 1,399 square feet to 1,200 square feet and the plumbing was eliminated from the main studio space, as per the plans prepared by Dean W. Van Tassel & Associates, dated 12-21-23, and the front-yard setback was increased from 20’ to 22’ and finally to 32’ feet on Seafield Lane, as per the Survey.

In its final configuration, the proposal was deemed to require a variance only from Section 197-35.A. of the Village Code, which provides that, in the R-1 district, accessory buildings, structures, tennis courts and swimming pools shall not be located in the front or side yard. The main house is located 65.3' from Seafield Lane and 35.6' from Sunswyck Avenue. The proposed location of the renovated studio would place it fully within the Seafield Lane front yard (i.e., the 65.3' area between the main house and lot line. Accordingly, the applicant requested a variance from Section 197-35A.¹

II. SEQRA

The applicant submitted an Environmental Assessment Form (EAF) Part 1 in connection with the application. Because the application involves variances for an accessory residential structure, the action is classified as a Type II action under 6 NYCRR § 617.5(c)(12) and (16), and therefore no SEQRA review is required.

II. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened August 17, 2023. The applicant's architect, Dean VanTassel, appeared on behalf of the application, and he was subsequently joined by the applicant's attorney, Heather A. Wright, Esq. The applicant, who is a Board of Zoning Appeals Member, recused himself from the application at each public hearing. Multiple neighbors appeared in opposition to the application and sent in written letters of opposition to the application. The hearing was closed at the April 18, 2024 meeting for a determination.

IV. 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.

¹ Originally, an additional variance was requested relating to the plumbing in an accessory structure that was more than 200 sf, but after the redesign of the studio, that variance was deemed unnecessary and withdrawn.

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

III. FINDINGS AND CONCLUSIONS

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

1. *Character of the Neighborhood:* The proposed variance will have a material adverse impact on the character of the neighborhood. The placement of a large accessory structure within the front-yard setback area will cause a permanent impact on the views from the public right of way and set an adverse precedent that could be used to justify many accessory buildings and structures to be located in front yards based only on an applicant's preferences. Although the Board does not base its determinations on the strength of community opposition, the Board finds that the various neighbors who appeared in opposition to the application credibly described the adverse impacts that would be caused on the character of their neighborhood if this variance were granted. The applicant argued that the inclusion of a hedge at the street would largely screen the visual impact of the building for those who are standing on the edge of the pavement closest to the building, but the significant impacts of a large structure (1,200 sf, 16.5+ foot ridge height above natural grade) in a nonconforming front yard cannot be completely mitigated by the inclusion of landscaping, and the rendering submitted by the applicant, as well as the neighbors' testimony, established that the building would still be visible.

2. *Alternatives/Minimum Necessary:* It is undisputed that the applicant's property is sufficiently large that there are alternative locations for the placement of the proposed studio building without the need for a variance. The property is over 50,000 sf, and the location of the existing home closer to Sunswyck Avenue leaves a large area to the rear of the house where the same structure could be located without the need for a variance. In fact, the Survey depicts one such location at the rear lot line, with a conforming location and setback. The applicant also did not demonstrate why it would not be feasible to build an addition to the principal dwelling to achieve the added studio space without the need for an accessory building variance.

The applicant argued that alternative locations for an accessory studio are less beneficial because they would either result in the potential damage to some desirable trees or would result in the loss of use of portions of the applicant's yard. While the Board acknowledges the applicant's desire to preserve older trees, the letter from the applicant's expert, George Tiska, only raised concerns over the risks to the trees if the structure were expanded in its existing location. The applicant did not adequately demonstrate why those risks could not be minimized by rotating the building 90 degrees, by relocating the building to another area that would not impact the tree root system, or by replanting some of the trees.

In any event, allowing the applicant to obtain a significant variance to place an accessory structure in a front yard in order to save desirable trees and to save other areas of the rear yard for the

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applicant's personal backyard space, would place too high a priority on an applicant's personal preferences as weighed against the requirements of the Village's zoning Code, which prohibits accessory structures in front yards for the general benefit of the community as a whole. The balancing of the personal benefits to the applicant under those circumstances would not outweigh the more significant and permanent impacts on the community.

Finally, even if the Board could find that some relief were appropriate, the applicant has not shown that the proposed location, with a 32' setback, is the minimum necessary to achieve the benefits sought. For example, considering that the minimum front-yard setback in the R-1 district is 50' for a principal dwelling, the applicant could have reduced the impact of the requested variance for the accessory building by locating it to achieve the 50' setback standard.²

3. *Substantiality:* The variance is substantial. The location of a large accessory building within a front yard is a significant nonconformity, particularly where the entirety of the building is also located within the minimum 50' front yard setback for dwellings in the R-1 district.

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

5. *Self-Created Difficulty:* The difficulty is self-created and, as indicated above, driven by personal preferences rather than a limitation created by the size or configuration of the property.

6. *Benefit vs. Detriment:* On balance, the benefits to the applicant do not outweigh the impact on the community.

The Zoning Board therefore **denies** the requested area variance to allow the construction of an accessory building with plumbing facilities and a deck totaling 1,197 square feet 32' from Seafield Lane.

Dated: May 16, 2024

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Jim Badzik, 27 Sunswyck Lane (905-15-4-3)** as written; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 0 absent, 1 recused.

HOLDOVERS:

2. **Michael Jesselson, 49 Bayfield Lane (905-010-04-033)** Applicant requests variances from §197-6 A(2) for proposed habitable space (studio) in detached building, which is deemed not to be normal and accessory to principal single-family dwelling use, from §197-35 A for proposed studio building which is located partially in the front yard where prohibited, also from §197-35 A for proposed pool & cabana which are located in the front yard where prohibited, and lastly from §197-35 A for existing tennis court proposed to be maintained in the front yard where prohibited.

² Such a proposal still would have required a variance because of the house's 65.3' setback, making at least part of the accessory building located within that front yard.

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Karen A. Hoeg, Esq., submitted a written request to hold the application over to June 20, 2024. Mr. Piering asked Ms. Mackie to please ask the applicant to attend the meeting on June 20, 2024 or the application will be withdrawn without prejudice.

Motion was made by Mr. Piering to holdover the application of **Michael Jesselson, 49 Bayfield Lane (905-10-4-33)** to June 20, 2024; seconded by Mr. Bazik and unanimously carried 5 ayes, 0 nays, 0 absent.

3. Build Coastal LLC, 26 Old Riverhead Rd (905-004-02-009) Applicant requests variances from §197-17.1 for a proposed front yard setback (roof-over) of 20.5 feet where the minimum required is 50 feet, and from §197-29.1 A for a proposed second-story addition which represents a prohibited increase in gross floor area of a preexisting building with a nonconforming front yard setback (24.5' existing/proposed, 50' required) and nonconforming side yard setback (18.8' existing/proposed, 20' required).

Tom Downing appeared on behalf of the application, together with Chris Mensch and Gaby Tchilinguirian, Architect. Mr. Downing said they were here two months ago and they are looking for a front yard variance to the existing single story building that they are seeking a second story addition on. They are reducing it in the rear and squaring off the existing footprint and they need a 1.2' on the Northerly side yard and they presented to this Board and Mr. Pasca suggested they go to the Planning Board and getting their input. We appeared before them and they had no objection to the site plan, but they did have comments about the design but they had no objection to the site plan.

Mr. Piering said the building is non conforming now and you want to add a second story and you're not increasing the non conformity?

Mr. Pasca said vertically only.

Mr. Downing said we're staying within the footprint.

Mr. Pasca said they are going vertically up.

Mr. Downing said there is a small structure in the rear they are removing and they want to square it off and there's no variance needed and it's a 1.2' variance in the side yard.

Mr. Piering said I think the Board has a good idea what you want to do and you may need less of a variance if you go to planning and if we approve this and you need less you don't need to return to this Board.

Mr. Downing said yes.

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

Mr. Pasca asked the existing square footage?

Mr. Downing said it is

Mr. Pasca said it is a Type II action,

Mr. Hammond said the uses and the amount of uses are not changing, and the addition is less than 4,000 square feet so it is a Type II action.

Mr. Tchilinguirian said there is an awning that does need a variance.

Mr. Hammond said yes, that is advertised.

Mr. Tchilinguirian said he is clarifying it for the record.

Motion was made by Mr. Piering to close the hearing of **Build Coastal, LLC.. 26 Old Riverhead Road (9054-2-9)** for a decision; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

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4. Mark & Christine Tobin, 185 Dune Road (905-020-02-015) Applicant requests variance from §197-8 F for attached rear second-story deck constructed approximately 6 feet above the second floor where exterior decks are not permitted to exceed the top of the finished floor of the second story.

Nicholas A. Vero, Architect submitted documents today and a request to hold the application over to June 20, 2024.

Motion was made by Mr. Piering to holdover the application of **Mark & Christine Tobin, 185 Dune Road (905-020-02-015)** to June 20, 2024; seconded by Mr. Martinsen and unanimously carried 5 ayes, 0 nays, 0 absent.

Extension Request

5. Hamptons Landmark, 97 Hazelwood Avenue Applicant requests an extension of the Board of Zoning Appeals decision dated February 15, 2024 up to and including September 30, 2024.

Heather A. Wright, Esq., appeared on behalf of the application.

Motion was made by Mr. Piering to grant the extension request of **Hamptons Landmark, LLC., 97 Hazelwood Avenue** to September 30, 2024; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

Motion was made by Mr. Piering to adjourn the meeting at **5:33 p.m.**; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.