

January 17, 2019

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, January 17, 2019, at 5:00 p.m. in the Municipal Building, located at 165 Mill Road, Westhampton Beach, New York.

*PRESENT: Gerard Piering, Chairman
Jim Badzik
Frank DelGiudice
John Wittschen*

Anthony C. Pasca, Esq., Village Attorney

Paul Houlihan, Building & Zoning Administrator

Maeghan Mackie, Board Secretary / Building Permits Examiner

ABSENT: Joe Musnicki

Motion was made by Mr. Piering to adopt the minutes of the **December 20, 2018** meeting; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

DECISIONS:

1. Schlusberg, 24 East Division Street (905-10-7-30) Applicant requests a variance to construct a new single-family dwelling with swimming pool, decks and septic system. The property is located in the R-1 Zoning District and requires the following variances:

The dwelling is proposed 20' from the North property line when Chapter 197-6. D. prohibits side yards less than 30'.

Fill for the septic system is being proposed 5' from the North and West property line when Chapter 197-27. C. prohibits fill less than 10' from any property line.

A portion of the swimming pool is not located in the rear yard as required by Chapter 197-35. A. of the Village Code.

James N. Hulme, Esq., appeared on behalf of the application. Mr. Piering stated there was a determination, and the reading was waived.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

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

Schlusberg Family Limited Partnership

DETERMINATION

Address: 24 East Division Street
SCTM #: 905-10-7-30

-----X

I. REQUEST FOR RELIEF

The applicant, Schlusberg Family Limited Partnership, is the owner of a parcel of real property located at 24 East Division Street, Westhampton Beach. The property is located wholly within the R-1 Zoning District. According to the existing conditions survey of the property (titled "Final Survey of Described Property) drawn by Michael W. Minto, Licensed Land Surveyor, dated May 8, 2017 and updated April 11, 2018, the property is improved by a one-story frame residence, garage, deck over bulkhead and boat slip. The property is bounded on the west by East Division Street, which terminates at the property, on the south by Moneybogue Road, an unopened

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“paper” street, the east by Moneybogue Canal, and the north by a private residential parcel owned by Ginger Propper and Marvin Lerner, with an address of 16 East Division Street.

The applicant is seeking to remove all of the existing structures in their entirety and construct a new single family dwelling, terrace, and swimming pool, as depicted on the survey and site plan labeled “Survey / Site Plan of Described Property,” prepared by Michael W. Minto, Land Surveyor, dated May 8, 2017, and updated on September 2018, and date stamped received by the Village of Westhampton Beach on November 5, 2018. According to the survey and site plan, the proposed residence is to be located 20.0 feet from the northern lot line, and will have a terrace partially on the south side of the house, in a side yard. The sanitary system for the residence is to be located on the northwestern portion of the lot and requires the placement of fill within five feet of the northern and western lot lines to accommodate the system.

Chapter 197-6.D of the Village Code provides that, in the R-1 Zoning District, the front yard depth shall not be less than 50 feet; there shall be two side yards totaling not less than 70 feet, neither of which shall be less than 30 feet; and the rear yard shall not be less than 50 feet.

Chapter 197-27.D. of the Village Code provides that, in the R-1 Zoning District the placement of fill to raise the existing grade within 10 feet of any property line by more than six inches shall be prohibited.

Section 197-35.A. of the Village Code provides that, in the R-1 Zoning District, accessory buildings, structures, tennis courts and swimming pools shall be located only in the rear yard. Accordingly, the applicant has applied for the following variances: a side-yard setback variance to allow the house to be located 20 feet from the northern lot line where 30 feet is otherwise required by Section 197-6.D; a fill variance to allow the placement of fill five feet from the northern and western lot lines to accommodate the sanitary system; and a variance from Section 197-35.A to allow the terrace to be located partially in a side yard.

II. SEQRA

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

Since this is a request for an area variance for a residential dwelling and accessory residential structures, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(11), (12), (16) and (17). Accordingly, the application is not subject to review under SEQRA.

III. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on October 18, 2018. The applicant’s attorney James N. Hulme, Esq., appeared on behalf of the application, together with Rocco Lettieri. Richard Handler, Esq., appeared in opposition to the application with his clients, Ginger Propper and Marvin Lerner, 16 East Division Street, and with land surveyor, Floyd Carrington. Burt Rosenquit, 5 East Division Street, also appeared in opposition to the application.

The hearing was closed at the November 15, 2018, 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, and the Board is empowered to impose reasonable conditions to minimize any adverse impacts from the variance.

IV. FINDINGS AND CONCLUSIONS

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

1. *Character of the Neighborhood:* The Board finds that, on balance of the unique circumstances presented by the application, the proposed variances will not result in a material adverse impact on the character of the neighborhood.

With respect to the setback variance, the subject property is constrained by the fact that it is surrounded on three sides by limiting features: East Division Street on the west, Moneybogue Road and substantial wetlands to the south, and Moneybogue Canal to the east. As a result, there is essentially a “negative” building envelope due to the fact that setbacks from all sides of the property leave no practical “as of right” building envelope within which to locate a home. The applicant’s representatives explained that the existing home, located more to the center of the property (further south than the proposed replacement home) is substantially nonconforming to the State-regulated wetlands setbacks. Given the property’s constraints, in particular the wetlands to the south, the applicant has made an effort to locate a relatively modest-sized home in the most suitable location, by orienting the house lengthwise from west to east (and keeping it to a narrow 22.7-foot width), and as far north, away from the wetlands, as practicable. The result, however, is the need for a 10-foot variance from the 30-foot setback requirement from the northern lot line. While the neighbors to the north, Ms. Propper and Dr. Lerner, understandably would prefer that no setback variance be granted, as it would result in the home being located 10 feet closer to their property than otherwise permitted, the Board has in the past found it appropriate to relax required setbacks in order to maximize environmental setbacks, such as setbacks from wetlands, waterways, or dunelands. In this case, the 10-foot relaxation of the northerly setback, combined with the east-west orientation of the road, allows the applicant to achieve a 62.8-foot setback from the wetlands, a setback which the NYSDEC has approved under its wetlands jurisdiction. The Board finds that this strikes the most appropriate balance between competing setback requirements.

With respect to the fill variance, the Board has in the past deemed it appropriate to grant such requests where the applicant has demonstrated that the placement of fill is necessary to accommodate a modern sanitary system in the most environmentally-sensitive location of the property. In waterfront areas such as this, where there are high water tables, the construction of a sanitary system often requires the construction of a retaining wall and placement of fill, in order to cover the sanitary system (which itself must have certain minimum “separation”

distances from groundwater). Although Ms. Propper and Mr. Lerner presented the testimony of a surveyor who expressed concerns regarding potential stormwater runoff issues, the Village has mitigated against the impacts of the importation of fill by requiring applicants to obtain a “fill permit,” which typically requires a site plan review by the Planning Board and a review by the Village’s engineer. The ZBA will condition the fill variance on the completion of this process to the satisfaction of the Village’s Planning Board and engineer.

Finally, with respect to the terrace variance, the small area of the terrace that is technically located within the side yard will not have any noticeable impacts on the character of the community. That small area is actually located on the portion of the property that will be least visible to neighbors.

2. *Alternatives:* The applicants have demonstrated that there are no practical alternatives to achieve the benefits sought without the need for the requested variances. Locating the home with a conforming setback to the northern lot line would require an even larger variance from the NYSDEC’s wetland setbacks and would not achieve the added benefit of maximizing wetland protection. The applicant demonstrated that there is no viable alternative location or design for the sanitary system that would not require the placement of fill within the sanitary system’s retaining wall.

3. *Substantiality:* The variances requested are substantial. The substantiality is mitigated somewhat by the context of the application’s improvement of certain pre-existing conditions, such as the improvement of wetland compliance and sanitary system design.

4. *Physical/Environmental Impacts:* The variances will have no adverse impact on the physical or environmental conditions of the property. To the contrary, the variances are largely the result of the environmental improvements to be achieved by the development, i.e., the increased setbacks from the wetlands for both the house and sanitary system and the modernization of the sanitary system to current health department standards. Such measures will thus result in environmental benefits that inure to the Village as a whole.

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

6. *Benefit vs. Detriment:* On balance, the Board finds that the benefits to the applicants (and to the Village as a whole) outweigh the detriments, if any, to the community.

7. *Minimum Variance:* The variances are the minimum necessary to achieve the benefits sought.

8. *Opposition Arguments:* The Board has considered the arguments made by Ms. Propper and Dr. Lerner, and their representatives, and do not find them convincing or sufficient to warrant a denial of the application. For example, the stated concerns about potential damage to cryptomeria trees from the “shade” cast by a building that is located 20 feet from the property line is incredible and, even if true, would be insufficient to justify a relocation of the home closer to the wetlands. And the concerns about a diminution of property values are speculative and fail to account for the corresponding benefits that all residents receive from protection of the wetlands and waterways. The remaining arguments, while articulately stated, simply do not rise to the level of grounds that would warrant a denial of the requested variances.

The Zoning Board therefore grants the requested area variance to allow the construction of a new single family dwelling, terrace, and swimming pool, as depicted on the survey and site plan labeled “Survey / Site Plan of Described Property,” prepared by Michael W. Minto, Land Surveyor, dated May 8, 2017, and updated on September 2018, and date stamped received by the Village of Westhampton Beach on November 5, 2018, subject to the

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following conditions:

V. CONDITIONS

1. The variances granted herein are limited to the relief set forth in this decision, and pertain only to the plans approved in this decision, and shall not be construed as creating conforming dimensions. There shall be no further extension (horizontally or vertically), increase, alteration or modification to the structure or any other structure located on the property that has non-conforming dimensions, without further approval of the Board.
2. No outdoor accessory structures or equipment (including but not limited to air conditioning condensers, HVAC equipment, above-ground utilities, generators, pool equipment, solar panels, garbage/storage bins, etc.) may be located within a required front, side, or rear yard, except as depicted on the approved plans, without further approval of the Board
3. The variances granted herein shall terminate unless a building permit and certificate of occupancy are issued within 180 days from the date hereof.
4. There can be no exterior work performed on weekends from May 1 to September 30 and on weekdays from July 1 to September 10.

Dated: January 17, 2019

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Schlusberg, 24 East Division Street (905-10-7-30)** as written; seconded by Mr. DelGiudice and unanimously carried 4 ayes, 0 nays, 1 absent.

2. LaCoquille of Westhampton Beach, Inc., 285 Dune Road, Westhampton Beach (905-19-4-5) Applicant requests a Special Use Permit from the Board of Zoning Appeals to replace 44 Sliding Glass Doors and 60 Windows at a 46 Unit Multifamily Cooperative which is a Non-Conforming Use located in the R-3 Zoning District. The Special Permit is requested as provided for in Chapter 197-5 and 197-29.C. of the Village Code.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

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

LaCoquille of Westhampton Beach, Inc.

DETERMINATION

Address: 285 Dune Road
SCTM #: 905-19-4-5

-----X

VI. REQUEST FOR RELIEF

The applicant, LaCoquille of Westhampton Beach, Inc, is the owners of a parcel of real property located at 285 Dune Road. The property is currently improved with a 46-unit multi-family cooperative apartment building, swimming pools and decks. The use of the property as a residential cooperative is not permitted in the R-3 Zoning District and is a non-conforming use.

Section 197-5(1) of the Code imposes certain rules and regulations regarding non-conforming uses. Specifically Section 197-5(1) provides that except as is provided for in Subsection A(2), no building, structure or land shall hereafter be used or occupied and no building, structure or part thereof shall be erected, moved, altered, enlarged or extended unless in conformity with the regulations herein specified for the district in which it is located.

Section 197-29.C(1) of the Code imposes certain rules and regulations regarding non-conforming uses. Specifically, Section 197-29 C provides that a non-conforming use may only be reconstructed or altered by way of a permit from the Zoning Board of Appeals, provided all of the conditions and criteria of that section are met.

The applicant seeks to replace 44 sliding glass doors and 60 windows. Because the renovation is not permitted as of right, the applicant has applied to this Board for a special permit under Section 197-29.C.

VII. SEQRA

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

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

VIII. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on December 20, 2018. The applicant's attorney Hermon J. Bishop, Esq., appeared on behalf of the application. No other persons appeared in support or opposition to the application, and the Board did not receive any written submissions from any neighbors in support or opposition to the application. The hearing was closed for a determination.

IX. GOVERNING LAW

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

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

X. FINDINGS AND CONCLUSIONS

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

- a. The applicant has demonstrated that the proposal will not result in any enlargement, extension or expansion of the nonconforming use [§ 197-29(C)(1)], or increase the degree of nonconformity, increase the height or number of stories, or increase the floor area devoted to the nonconforming use [§ 197-29(C)(2)].
- b. The applicant has demonstrated that the reconstruction is being located upon the same part of the lot occupied by the nonconforming use [§ 197-29(C)(3)].

The project involved alterations to replace patio doors and windows; no changes in the footprint are being proposed.
- c. The applicant has demonstrated that the area of one nonconforming use is not being added to the area of another [§ 197-29(C)(4)].
- d. The applicant has demonstrated compliance with off-street parking requirements [§ 197-29(C)(6)(a)].
- e. The applicant has demonstrated an absence of change in the nature or character of the nonconforming use. [§ 197-29(C)(6)(b)]. The applicant is not proposing any substantive change to the nature of the use, and the replacement of 44 sliding glass doors and 60 windows will not change the character of the use.
- f. The applicant has demonstrated compliance, to the maximum extent feasible, with dimensional requirements, and no new dimensional nonconformities are being created, [§ 197-29(C)(6)(c)].
- g. The applicant has demonstrated that the changes are, if anything, beneficial to the general neighborhood [§ 197-29(C)(6)(d)].
- h. The applicant has demonstrated that any changes to the site will not result in or allow an intensification of the nonconforming use [§ 197-29(C)(6)(f)].

The Zoning Board therefore grants the requested special permit to allow the applicant to replace 44 sliding glass doors and 60 windows depicted on the plans drawn by Royal Home Products, Inc., and submitted with the applicants' Board of Zoning Appeals application, subject to the following conditions to minimize any adverse impacts from the permit:

XI. CONDITIONS

1. The special permit granted herein is limited to the relief set forth in this decision, and pertains only to the plans approved in this decision, and shall not be construed as creating a conforming use. There shall be no further changes to the nonconforming use without further application to, and approval by, the Zoning Board.
2. The special permit granted herein shall terminate unless a building permit is issued within 180 days from the date hereof and construction completed according to said building permit.
3. The granting of this Special Exception is subject to an Updated Certificate of Occupancy being issued by the Building Inspector upon the completion of the work.

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

Dated: January 17, 2019

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **LaCoquille of Westhampton Beach, Inc., 285 Dune Road, Westhampton Beach (905-19-4-5)** as written; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

3. Richard Baumer and Stacy Baumer, 166 Beach Lane, Westhampton Beach (905-15-5-11.3) Applicant requests a variance to construct a garage addition to the North side of the existing dwelling with a minimum side yard setback of 20' and a total side yard setback of 45.7' when Chapter 197.6.D. of the Village Code requires a minimum setback of 30' with a total side yard setback of 70'. The property is located in the R-1 Zoning District and the Flood Plain area.

Nicholas A. Vero, Architect appeared on behalf of the application. Mr. Piering stated there was a determination, and the reading was waived.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

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

Richard Baumer
Stacy Baumer

DETERMINATION

Address: 166 Beach Lane
SCTM #: 905-15-5-11.3

-----X

XII. REQUEST FOR RELIEF

The applicants Richard Baumer and Stacy Baumer, are the owners of a parcel of real property located at 166 Beach Lane. The property is located wholly within the R-1 Zoning District. According to the survey of the property drawn by Raynor, Marcks and Carrington Surveying, dated March 7, 2013, and updated on November 30, 2018, the parcel is improved with a two-story framed house with a second story overhang, pool, and associated decking.

Section 197-6 (D) of the Village Code provides that, in the R-1 Zoning District, the front yard depth shall not be less than 50 feet; there shall be two side yards totaling not less than 70 feet, neither of which shall be less than 30 feet; and the rear yard shall not be less than 50 feet.

The applicant proposes to construct a one-car garage with mechanical room addition to the North side of the existing dwelling, as shown on the survey and on the building plans prepared by Nicholas Vero, architect, dated November 16, 2018. Because the garage addition is to be located 20 feet from the northern side-yard property line (where 30 is required) with a total side yard of 45.7 feet (where 70 is required), the applicant requests the required variances from Section 197-6(D).

II. SEQRA

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

Since this is a request for a variance for a residence with an accessory garage, the application is classified as a Type II action under 6 NYCRR § 617.5(c) (11), (12), (16), and (17). Accordingly, the application is not subject to review under SEQRA.

XIII. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on December 20, 2018. The applicant's architect Nicholas A. Vero, appeared and presented the application. No other persons appeared in support or opposition to the application, and the Board did not receive any written submissions from any neighbors in support of or opposition to the application. The hearing was closed for a determination.

XIV. GOVERNING LAW

In considering applications for area variances, the Board is required to weigh the benefit to the applicant against the detriment to the health, safety and welfare of the community, while considering the following five factors: (1) whether the variance will cause an undesirable change in the character of the neighborhood or a detriment to nearby properties; (2) whether the benefit can be achieved by a feasible alternative; (3) whether the variance is substantial; (4) whether the variance will have any adverse physical or environmental impacts; and (5) whether the alleged difficulty was self-created (which shall be relevant but shall not necessarily preclude the variance).

The Board is charged to grant only the minimum variance necessary and to preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

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

XV. FINDINGS AND CONCLUSIONS

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

9. *Character of the Neighborhood:* The Board finds that the application seeks a modest addition and variance that will not cause a material adverse impact on the character of the community. The parcel is constrained by its narrow width. Previously, a two-car garage existed at the front of the structure but was removed when the residence was elevated to become FEMA compliant. The applicant now seeks to construct a one-car garage at the side of the house. The proposal will result in a home that complies with the Village's coverage limits but requires side-yard relief. Under the circumstances, the proposal is consistent with the character of the neighborhood.

10. *Alternatives:* The applicant demonstrated that there are no alternatives to achieve the benefits sought without the need for variance relief.

11. *Substantiality:* The variances are substantial.

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

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

14. *Benefit vs. Detriment:* The benefit to the applicant from the granting of the variance outweighs the detriment to the community.

15. *Minimum Variance:* The variances are the minimum necessary to achieve the benefits sought.

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The Board therefore grants the requested variance to allow the applicant to construct a one-story garage on the North side of the existing dwelling, 20' from the property line, as depicted on the survey drawn by Raynor, Marcks and Carrington, Surveying, dated March 7, 2013, and updated on November 30, 2018, subject to the following conditions to minimize any adverse impacts from the variance:

XVI. CONDITIONS

1. The variances granted herein are limited to the relief set forth in this decision, and pertain only to the plans approved in this decision, and shall not be construed as creating conforming dimensions. There shall be no further extension (horizontally or vertically), increase, alteration or modification to the structure or any other structure located on the property that has non-conforming dimensions, without further approval of the Board.

2. No outdoor accessory structures or equipment (including but not limited to air conditioning condensers, HVAC equipment, above-ground utilities, generators, pool equipment, solar panels, garbage/storage bins, etc.) may be located within a required front, side, or rear yard, except as depicted on the approved plans, without further approval of the Board

3. The variances granted herein shall terminate unless a building permit and certificate of occupancy are issued within 180 days from the date hereof.

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

Dated: January 17, 2019

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Richard Baumer and Stacy Baumer, 166 Beach Lane, Westhampton Beach (905-15-5-11.3)** as written; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 1 absent.

HOLDOVERS:

4. Andersen-Kuntz 97 Hazelwood, Westhampton Beach (905-2-2-20.2) Applicant requests an interpretation of the village code that the Building Inspector erred when he determined that the nonconforming use on the property had been “discontinued” as provided for in chapter 197-29.E. of the Village Code. In lieu of a favorable determination by the Board the applicant requests a use variance from Chapter 197-5.A.(1) to allow multiple contractors offices with workshops and storage. The property is located in the MF-20 Zoning District.

James N. Hulme, Esq., appeared on behalf of the application. They appeared before the Planning Board last week and they were optimistic but wanted to look at the plan once more before they make any recommendations. There is a site plan submitted to this Board, and it's a general plan as to what's possible which we have presented to the Planning Board and our hope is that they report back that in general terms it will work and return to this Board for continued consideration of the Use Variance.

Mr. Piering said okay. That may be the first one he remembers.

Mr. Hulme said it's the first one he's applied for, and there is possibility. He would like to hold it over to the February meeting and discuss it in more detail then.

Mr. Piering said okay.

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Motion was made by Mr. Piering to holdover the application of **Andersen-Kuntz 97 Hazelwood, Westhampton Beach (905-2-2-20.2)** to February 21, 2019; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 1 absent.

5. Brendan Brogan, 213 Dune Road (905-20-2-5) Applicant requests a variance to demolish existing structures and construct a new single-family dwelling, decks, swimming pool and septic system. The property is located in the B-3 Zoning District.

The application shows decks on the East and West side of the dwelling and not in the front or rear yards as required by Chapter 197-35. B. (1) of the Village Code.

Accessory structure decks and spa on the East side of the dwelling are located 8.7' from the property line when Chapter 197-35. C. of the Village Code requires 20'.

Accessory structure decks on the West side of the dwelling are located 17.9' from the property line when Chapter 197-35. C. of the Village Code requires 20'.

The dwelling has a minimum side yard setback of 16.4' on the East side and a total side yard of 38.3' when Chapter 197-8. D. requires 20' and 50' respectively.

Accessory structure decks on the South side of the dwelling are located 30.2' from the Crest of the Dune when Chapter 197-35. C. of the Village Code requires 75'.

The swimming pool is located 17.7' from the East property line when chapter 197-35.C. of the Village Code requires 20'.

The applicant proposes a rear yard setback to the Crest of the Dune of 34.2' when Chapter 197-8. D. requires 75' minimum.

The applicant proposes lot coverage of 39.2% when Chapter 197-8. C. allows a maximum of 20%.

The applicant proposes to place fill 5' from the property line on the North and East side of the property when Chapter 197-27. D. prohibits fill less than 10' from the property line.

The dwelling is being constructed within the Coastal Erosion Hazard Area when Chapter 74-8. C. (Coastal Erosion Management) of the Village Code prohibits new construction within the dune area.

James N. Hulme, Esq., appeared on behalf of the application. He requested to hold the application over.

Motion was made by Mr. Piering to holdover the application of **Brendan Brogan, 213 Dune Road (905-20-2-5)** to February 21, 2019; seconded by Mr. DelGiudice and unanimously carried 4 ayes, 0 nays, 1 absent.

6. Garg, 136 Beach Lane, Westhampton Beach (905-15-5-11.4) Applicant requests variances to construct a garage addition to an existing single-family dwelling. The garage addition is located 21.2' from the North side yard and the total side yard is 50.8' When Chapter 197-6.D. requires 30' and 70' respectively. The proposed lot coverage is 27.27' when Chapter 197-63.P. allows a 25% maximum for a lot with an approved tennis court. The property is located in the R-1 Zoning District.

Nicholas A. Vero, Architect appeared on behalf of the application. He consulted with his clients and they have reduced the plan 450 square feet to a two-car garage and he was hoping to be in the 25% lot coverage range, and they are now down to 26.44% and he looked in to reducing the tennis court which is 50' x 105' which is the minimum and he did look at some patio space and a lot is around the pool, and if you look at the survey there is no patio around the East and South side of the pool and there's a proposed 20' x 28' garage with access in to the house. They are

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looking to get their car out of harm's way in a storm, and in their driveway it's below the base flood elevation. It would be strictly for cars only.

Mr. Piering said the way its set up you still need a sideyard variance and lot coverage.

Mr. Vero said yes.

Mr. Piering said okay, that's two variances.

Mr. Vero said there is not much they can do in lot coverage.

Mr. Piering said because they maxed out every square inch, they do have a place they can park right now. That's why there's not much that they can do.

Mr. Vero said he will hold it open if you want him to, or he will be willing to close it and take his chance. They can't make a two car garage any smaller, but if it's a one car garage he will need to hold it over to talk to his client. He will talk to them to do something like they just received a variance for, for the property next door.

Mr. Piering said they are at 25% maximum now.

Mr. Vero said it's 26.44% lot coverage, and it was 27.3% before.

Mr. Pasca asked if it's 700 square feet?

Mr. Vero said yes, a one car garage plus some width to get them in and out, and if they can go to 15' and take off 10' on the side they will be back to 30'.

Mr. Badzik said he has a question, the survey from last month was December 20, 2018 and the one today was October.

Mr. Vero said the surveyor allowed him to do it on the site plan, but he will get an additional survey.

Mr. Piering said he thinks he should try to keep working on it.

Mr. Vero said he'd like to hold it over.

Motion was made by Mr. Piering to holdover the application of **Garg, 136 Beach Lane, Westhampton Beach (905-15-5-11.4)** to February 21, 2019; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays 1 absent.

7. Andrew Armando Lago and Mary Connolly Lago, 36 Harbor Road, Westhampton Beach (905-17-3-34) Applicant requests variances to construct a new dwelling with septic system. The fill for the septic system is located 1' from the North and West property line in violation of Chapter 197-27.D. of the Village Code which requires a minimum setback of 10'. The property is located in the R-5 Zoning District.

No one appeared on behalf of the application. Colin Bester requested to hold the application over from January 17, 2019 to the February 21, 2019 meeting.

Motion was made by Mr. Piering to holdover the application of **Andrew Armando Lago and Mary Connolly Lago, 36 Harbor Road, Westhampton Beach (905-17-3-34)** to February 21, 2019; seconded by Mr. DelGiudice and unanimously carried 4 ayes, 0 nays, 1 absent.

NEW APPLICATIONS

8. Donna McDonough, 24 Point Road, Westhampton Beach (905-17-3-25) Applicant requests variances to bring in fill 5' from the North, East and South lot line when Chapter 197-

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27.D. of the Village Code requires a minimum of 10' setback. The applicant also proposes a deck in the required front yard in violation of Chapter 197-35.C. of the Village Code which requires accessory structures in the rear yard only. The property is located in the R-5 Zoning District and the Flood Plain.

Heather A. Wright, Esq., appeared on behalf of the application, together with John McDonough. The lot area is 8,079 square feet and a lot width of 80' and it fronts on Pond and Point Road and there is a CO from March 24, 1982 and the existing house is 920 square feet and they are proposing to reconstruct the existing dwelling to be FEMA compliant.

Mr. Piering asked what they are going to do?

Ms. Wright said they are going to lift the existing dwelling, and shift it back 2' and the reason for that is because they are putting in a new septic system and by doing so they are losing the outdoor space the deck on the back on the property. They are proposing a deck in the front yard and to meet the 20' front yard setback they are moving the house to meet the setback in the front and they are putting a small addition that does not need relief. They are installing a new septic system and it requires fill which does not meet the 10' requirement, and the applicant has spoken to his surrounding neighbors and I have submitted emails from two (2) neighbors with no objection and they all appear to have no objection. The idea of putting the deck in the front yard is better for the neighbors because once we lift the house, the deck in the back will be at level with the neighbor's bedrooms and they lose their privacy. Putting the deck in the front preserves privacy and the neighbors are in favor of that. I submitted with my letter photographs of a number of homes with the decks in the front yard and it's in keeping with the character of the neighborhood and the environmental impact is positive.

Mr. Piering said the variance for the fill is 5' from the sideyard and the proposed addition is 10.1', and my question was can you move the house over, and with the addition you can't?

Mr. Wittschen said no, you can't.

Mr. McDonough said this was really driven by the Board of Health.

Ms. Wright said they got approval from the Board of Health. The house is very small.

Mr. Piering asked how big it will be when it's done.

Mr. McDonough said it will be adding 130 square feet, it's not a big addition. The addition is basically to put stairs to go to the second floor, and we are putting two bedrooms and a bathroom on the second floor.

Mr. Piering has a question about the bedrooms, he looks at it as a four bedroom house, are there any parking regulation problems?

Mr. Houlihan said it's actually three bedrooms.

Mr. McDonough said the surveyor wrote a system up to four bedrooms, but it is not four bedrooms, it's a three bedroom house.

Mr. Piering said okay, he understands.

Mr. McDonough said it's a really tight spot. What everyone likes about this application is that the decks won't be intrusive of the neighbor's yard. I can hear my neighbors to the East when their windows are open.

Mr. DelGiudice asked if there was a deck in the back?

Ms. Wright said the back deck is 180 square feet and it's really designed for access only, it's very small.

Mr. Piering asked how wide it is?

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Ms. Wright said it is 8'.

Mr. DelGiudice said its 8' deep.

Ms. Wright said they looked at different ways, if they did not shift the house could they meet the 10' requirement in the back, or if they shrunk the deck the house juts out, so shrinking it there's only a certain amount that they can reduce the deck and they would not get the 10' anyway, but they did look at it.

Mr. Houlihan said he has an error on the survey, and the original survey showed the grades from ½' about sea level to 1' above sea level and it's more like 2.5' and the plans all show those numbers and the crawl space will have to be shrunk down to meet that or you will need a variance for the height.

Mr. McDonough said the architect is going to change the pitch on the addition and take the balance out of the wall in the basement.

Mr. Houlihan said the actual retaining wall will be just under 5'.

Mr. McDonough said on the second floor the walls are 8' they are going to bring it down to 7'.

Mr. Houlihan said the crawl space has to come down, all of those things have to be changed on the plans and the survey. I realize it was the surveyor's error, but I have to see those because right now you are in violation of the height requirement.

Mr. McDonough said he can submit new plans by the end of the week.

Mr. Houlihan asked if we can make sure that those revisions are adjusted before we give a decision.

Mr. Pasca said you can close it subject to the receipt of the revised plans that deal with the height issue, and please submit it two weeks before the next meeting.

Ms. Wright said okay.

Mr. Piering said the height isn't before us.

Mr. Houlihan said no, but it would have to be. The elevations of the grade are wrong.

Mr. DelGiudice asked what the second set of stairs is for?

Mr. McDonough said it's in the new addition they are putting on.

Mr. DelGiudice said it's the outside stairs, is that to get you in to the house?

Mr. McDonough said yes, one will go to the front deck and one to the back door.

Mr. DelGiudice said it seems like a lot of stairs, what is the elevation they are going up.

Mr. McDonough said they are going to be as much because of the error in the elevations.

Ms. Wright said it will be reduced significantly. With the elevation now it would have to go up 7' but when it's corrected it will only be about 5'.

Mr. DelGiudice said okay.

Mr. Piering said we cannot write a determination without the receipt of the plans and the surveys, and we will review them and if everything is okay we will render a determination.

Ms. Wright said okay.

Mr. McDonough said okay.

Motion was made by Mr. Piering to close the application of **Donna McDonough, 24 Point Road, Westhampton Beach (905-17-3-25)** for a determination, subject to the receipt of the corrected elevations, plans and survey; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

9. Daniel Bernstein and Vivian Bernstein, 37 Exchange Place, Westhampton Beach (905-15-5-28.3) Applicant requests variances to reconstruct a tennis court 3.9' and 14.8' from the North and East property line when Chapter 197-35.C. requires the accessory structure to be a minimum of 20' from the property line. Applicant also requests a variance to reconstruct the tennis court out of Asphalt in violation of Chapter 197-63.P. (6) of the Village Code which prohibits asphalt courts. The property is located in the R-1 Zoning District and the Flood Zone.

Heather Wright, Esq., appeared on behalf of the application, together with Susan Wilcenski, and Daniel Bernstein. They are here because they were before this Board asking to re-open the hearing with respect to the placement the tennis court and they originally agreed to move it, and after that their landscape architect talked to them about why they should not move the court and why they should leave it and enhance the plantings and drainage, it's better for the environment and surrounding property owners and that's why they are back before this Board, they'd like to leave the court in its location and they are proposing to remove 480 square feet and that's to install French Drains and the opportunity to install Evergreens on the Easterly property line and it will be mature plantings and give privacy and screening to the neighbor and the Westerly plantings are in good shape and they can only be enhanced with drainage, and moving the court and removing the plantings will be a detriment to the existing drainage.

Ms. Wilcenski said she wasn't here for the first go around, and she was retained after and she knows the site very well and basically the prior owner lost the site during Hurricane Sandy and they lifted the house and they came up with a whole site plan, and there was drainage and landscaping and all approved by the Village. There was extensive fill and drainage put in and everything was improved except the tennis court and the pool and the guest cottage, and the new owner has to take care of it because it's in bad shape. What I want to explain is that the tennis court, the reason that she is so adamant about it, when we did this to the West of the tennis court what you see in the plan is plantings that have been installed and on top of drainage, you don't see the drainage it's all leaching fields, we de-bogged it and I made it wider and larger than what we were approved for because it's the low point and it's difficult. After that we put in new vegetation and it's screening the tennis court and it happens to be the nicest Evergreens within 10' of the tennis court where we are proposing to move it. Within 10' of the tennis court has very nice mature plantings and they are massed together as a good screen, in fact the neighbors across the street that own two (2) lots and they have submitted a letter saying they are not opposed to this at all. We've tried to get to the neighbors to the East without luck. As I mentioned, we have improved everything from the West and it's working, but we did not improve the tennis court or the property line on the East and what was there was tall Privet hedge which screened the tennis fencing and it's now dead and falling over, there is different weed species popping up and by taking this existing court keeping it intact and cutting it back 4' and adding the leaching field for 100% of the runoff to be collected and then adding a new solid tall 14' Evergreen hedge above the existing tennis court line, the neighbors would have no view of the tennis court. We are reducing the size of the court, we're leaving it as is so we're not removing the asphalt material and we're not going closer to the wetlands, we've added 100% containment of the storm water run off and we don't want to damage it if we move it. And the construction impact will be minimized to the neighbors, it's a lot less than if we move the court. I can't use the materials there I would have to remove it all, and it's all attractive, and it looks great and it's a very nice site. I think it fits the character of the neighborhood, and we're reducing the size and adding drainage, and giving a screen hedge to the neighbor.

Mr. Piering asked if the size of the court is being reduced.

Ms. Wilcenski said yes, and they are cutting off more than 4' that you'd gain if you move it.

Mr. Badzik asked how far from the property line will it be?

Ms. Wilcenski said it will be 15' 7" and we approved it at 20'.

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Ms. Wright said it was 11' 3".

Mr. Badzik said okay.

Ms. Wright said it's 3'9" from the front.

Ms. Wilcenski said she'd rather see a smaller court than move the existing court and impact the whole area.

Ms. Wright said to address the second variance, keeping the existing asphalt surface and we talked about that at length and we read the Code and we understand the intent of the Code to improve drainage and we think, what we're doing, the tennis court has been here for 30 or more years, and the plan we designed improves the site conditions and drainage more so if it's replaced and not reduced and changed the surface. We think this new plan is better than what was approved.

Mr. Piering asked if their approval was to replace it with an asphalt court.

Mr. Houlihan said no, it was with a non-asphalt court.

Ms. Wright said the survey said Har Tru and we did not have that discussion with Mr. Bernstein, but it was brought up and was told it was additional relief needed.

Ms. Wilcenski said they thought they were moving it in kind.

Mr. Bernstein said they were looking for a house with a hard court, when we saw this house we were told the hard court was grandfathered with a CO and it has always been an asphalt court and existed for 30 years and there were no complaints. We were under the impression that replacing it with a hard court would not be an issue, but they'd like to keep the same surface.

Mr. Piering said what you're doing is to ask to leave it where it is and repair the surface.

Ms. Wilcenski said yes, a new surface and new rubber coating.

Mr. Piering said the only time we've given relief for hard surfaces in the Village is if the water table does not allow them to recess the court, do you have a survey showing the water table?

Ms. Wilcenski said that's the case here.

Ms. Wright said you granted the variance to recess the court.

Mr. Houlihan said no, you did not have to recess it but it was going to be Har Tru.

Mr. Bernstein said that was wrong by the surveyor.

Ms. Wright said he did that because he knew the Code.

Mr. DelGiudice said you are asking us to give us a new court, why was it recessed?

Mr. Houlihan said because of drainage.

Ms. Wilcenski said we can't recess it.

Mr. Houlihan said they cannot recess it.

Ms. Wilcenski said there is one elevation that's 2.1' and right now the ground water is probably at 2.1' or 2.5' and in the Summer it will go down, which is why everyone is flooding frequently. What we're doing is trying to improve the drainage by adding more, reducing the amount of surface runoff cutting it back 4' and it's a benefit to do it the way we are proposing as opposed to what was approved. It cannot be recessed.

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Mr. Pasca said the drainage calculations were based on an impervious surface, and you are still capturing the run off?

Ms. Wilcenski said yes.

Mr. Pasca said the Har Tru surface has a coefficient. The question is, have you essentially created the equivalent of that through the drainage plan.

Ms. Wilcenski said she'd have to adjust it. What exists now was calculated to collect it, but we've had so much rain and everything's saturated so it's much more beneficial to add more drainage and redirect the water.

Ms. Wright said the point she was trying to make is, what they are doing drainage wise is better than what you gain by having the Har Tru. If the purpose of the Code for Har Tru is to make the drainage better we've accomplished that by our proposal.

Ms. Wilcenski said it may be equal, it's comparable in run off.

Mr. Pasca said because Har Tru is barely pervious.

Ms. Wilcenski said it's pitched.

Mr. DelGiudice said the benefit to the Board of Zoning Appeals was not removing paving, now we are removing it, and that's gone that benefit is gone.

Ms. Wilcenski said by doing this renovation it will not be nearly as much as if we remove it.

Mr. DelGiudice said you are carting things off and it was being offered as a benefit but now it's gone. You are going down 12" with a tennis court.

Ms. Wilcenski said if we were to remove and restart its much more.

Mr. Bernstein said he understands Mr. DelGiudice and he's fairly correct. What you are gaining is the additional drainage we are installing, you are not losing anything that court is there now without the additional drainage so you get more drainage with the new plan than if we leave it. It is better.

Mr. Badzik said from a drainage perspective, but not from a Code perspective. What is the name of the new rubberized surface.

Mr. Bernstein said it's deco-turf, if it made a huge difference and patch it.

Ms. Wilcenski said they are going to remove 4' and resurface and it's a lot less if they are removing it and replacing it, but the goal is to get additional drainage, no one wants a flooded site so if we can capture water another way that's great but I don't want to leave the existing drainage and I want to screen the tennis court to me that's a goal to leave what exists as working and looks attractive, and what can we do to make it more attractive to the Board by reducing the size of the tennis court.

Ms. Wright said that's why we are reducing it, so we can add the drainage.

Mr. DelGiudice asked if there are a lot of asphalt courts in the Village?

Mr. Houlihan said most are Har Tru. This was a lawfully existing court when it was built.

Ms. Wright said there are still some courts that are asphalt.

Mr. Piering said there is a variance to leave it, and now you want an asphalt court instead of Har Tru.

Ms. Wilcenski said they want to renovate it.

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Mr. Bernstein asked why it can't be repaired in kind?

Mr. Piering said that's what he's talking about, is it new construction or repair and resurface.

Mr. DelGiudice said that's my point. We are starting from scratch.

Mr. Bernstein said the top couple of inches come off and the padding is put down and then they pour new asphalt and they paint it which is one way of doing it. The other way I can open the cracks, fill it and do it all over.

Mr. Houlihan said I can help a little here, the Section of the Code is 197-63.P. (6), tennis courts constructed of asphalt or other similar type of material are prohibited in flood plain areas. The reason the Code did that is Flood Plain areas are a problem and they were looking to eliminate it so there are no problems with flooding and drainage. That's where that came from.

Mr. Piering said you are going to improve the drainage and repair the court.

Mr. Bernstein said or improve the drainage and take off the top couple of inches and repair the court.

Ms. Wright said that's where we started in the very beginning, and there's a distinction between repair and remove and redo.

Motion was made by Mr. Piering to close the application of **Daniel Bernstein and Vivian Bernstein, 37 Exchange Place (905-15-5-28.3)** for a determination; seconded by Mr. DelGiudice and unanimously carried 4 ayes, 0 nays, 1 absent.

10. 123 Dune Road, LLC., 123 Dune Road, Westhampton Beach (905-21-3-7) Applicant requests a variance to reconstruct an existing swimming pool, patio and entrance stair with a lot coverage of 30.8% when Chapter 197-8.C. and Chapter 197-63.P. prohibits a lot coverage of greater than 25%. The property is located in the R-3 Zoning District and Flood Zone.

Heather Wright, Esq., appeared on behalf of the application. She said that they require a lot coverage variance, and they are going to re-apply.

Motion was made by Mr. Piering to adjourn the meeting at **6:00 p.m.**; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.