

October 15, 2020

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, October 15, 2020, at 5:00 p.m. in the Municipal Building, located at 165 Mill Road, Westhampton Beach, New York.

PRESENT: Gerard Piering, Chairman  
Jim Badzik  
Joe Musnicki  
John Wittschen  
Ellen Cea

Anthony C. Pasca, Esq., Village Attorney  
Brad Hammond, Building & Zoning Administrator

Maeghan Mackie, Building Permits Examiner / Board Secretary

**MINUTES TO BE APPROVED**

Motion was made by Mr. Piering to adopt the minutes of the **August 20, 2020** meeting as written; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 0 absent.

Motion was made by Mr. Piering to adopt the minutes of the **September 17, 2020** meeting as written; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 0 absent.

**DECISION:**

**1. Dane Carillo, 22 Oneck Road, (905-009-03-046)** Applicant requests a variance from §197-35 C for an accessory detached garage constructed 17.1 feet from the property line where a minimum of 20 feet is required.

VILLAGE OF WESTHAMPTON BEACH  
ZONING BOARD OF APPEALS

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

Dane Carillo

**DETERMINATION**

Address: 22 Oneck Road  
SCTM #: 905-9-3-46

-----X

**I. REQUEST FOR RELIEF**

The applicant, Dane Carillo, is the owner of a parcel of real property located at 22 Oneck Road. The property is located wholly within the R-1 Zoning District. According to the existing conditions survey of the property drawn by Raynor, Marcks & Carrington, Surveying, dated April 28, 2003 and last dated July 29, 2020, the parcel is improved with a two-story frame house, detached garage, swimming pool, slate patios, pool house and shower.

Section 197-35.C. of the Village Code provides that, in the R-1 Zoning District, accessory buildings, structures, tennis courts and swimming pools cannot be located closer than 20 feet to any lot or boundary line.

The applicant constructed an accessory detached garage 17.1 feet from the westerly side lot line. The applicant now requests a variance to allow the garage to remain in its present location.

## **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 setback variance for an accessory residential structure, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(12) & (16). 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 September 17, 2020. The applicant, Dane Carillo appeared on behalf of the application. The hearing was closed 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.

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

## **V. FINDINGS AND CONCLUSIONS**

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

1. *Character of the Neighborhood:* The applicant has demonstrated that the granting of the requested variance will not have a material adverse impact on the character of the neighborhood. Although the Board does not look favorably on post-construction requests to forgive construction that was performed in violation of a permit (or without benefit of a permit), the Board credits the applicant's explanation for the mistake and does not find it to have been intentional. In any event, had the applicant come to the Board prior to construction, the Board would have found that the minor side-yard deviation is justifiable given the constraints imposed by the easement in the northwest corner of the property, and the pre-existing configuration of the driveway, which together would create an impractical entrance to the garage if it were located in a conforming location three feet to the east, placing it partially behind the house.

2. *Alternatives:* The applicant has demonstrated that there are no feasible alternatives to achieve the benefits sought without the granting of the variance.

3. *Substantiality:* The requested variance is not substantial within the overall context of the application.

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

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

6. *Benefit vs. Detriment:* On balance, the benefit to the applicant outweighs the detriment, if any, to the community.

7. *Minimum Variance:* The variance is the minimum necessary to achieve all the benefits sought, as explained above.

The Zoning Board therefore grants the requested area variances variance to construct an accessory detached garage that was constructed 17.1 feet from the property line, as depicted on the survey of the property drawn by Raynor, Marcks & Carrington, Surveying, dated April 28, 2003 and last dated July 29, 2020, subject to the following conditions to minimize any adverse impacts from the variance:

## **VI. 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),

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increase, alteration or modification to the structure or any other structure located on the property that has non-conforming dimensions, without further approval of this 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 is issued within one year 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: October 15, 2020

Village of Westhampton Beach  
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Dane Carillo, 22 Oneck Road (905-9-3-46)** as written; seconded by and unanimously carried 4 ayes, 0 nays, 0 absent.

**HOLDOVERS:**

**2. Michael & Karoline Kelsen, 72 Beach Lane (905-015-03-004.06)** Applicant seeks an interpretation that the Building Inspector erred in his determination that the subject detached building with preexisting apartment is a nonconforming building and that the proposed game room over garage should be deemed an accessory use to the single-family dwelling principal use. In lieu of a favorable determination from the Board, applicant requests a variance from §197-6 A(2) for proposed habitable space (game room over garage) in detached structures deemed not to be normal and accessory to principal single-family dwelling use, and from §197-29 C(1) for proposed reconstruction and additions to a detached building with preexisting nonconforming apartment where a permit from the Zoning Board of Appeals is required for reconstruction of building with nonconforming use, and irrespective of interpretation, the applicant also seeks a variance from §197-1 for a proposed half-bathroom within accessory building (game room over garage) where plumbing facilities are not permitted in detached buildings other than cabanas/accessory apartments.

James N. Hulme, Esq., submitted a request to holdover the application of **Michael & Karoline Kelsen, 72 Beach Lane (905-015-03-004.06)** to November 19, 2020; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 0 absent.

**3. Mathew & Deborah Vivek, 206 Main Street (905-013-02-020.06)** Applicant requests variances from §197-43 A(1) to erect a driveway gate (fence) in the front yard that is 7 feet in height, where the maximum permitted is 4 feet, from §197-43 A(3) for proposed driveway posts/pillars that are 7 feet in height where the maximum permitted is 6 feet, from §197-43 A(7) for proposed driveway posts/pillars that are 1 foot from the lot line where the minimum required setback is 3 feet, and from §197-43 A(8) for proposed driveway gates 1 foot from the street line where the minimum required setback is 20 feet.

James N. Hulme, Esq., appeared on behalf of the application. Mr. Piering said that Mr. Hulme submitted a new survey last month, and asked if Mr. Hulme had anything to add.

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Mr. Hulme said it's a 6' gate, 6' pillar 10' back and they have reduced it to two (2) variances needed he just wanted to get the survey in to the record and if there are no questions, he would like to close the hearing.

Mr. Piering said if the gate is 10' back from the road, the hedge is close to the road what will be in that gap?

Mr. Hulme said there is nothing at the moment, he thinks the hedge will grow in to it but they are not proposing a fence. If you drive by you will not see the gates unless you are directly in front of them because the hedge blocks the view. At 10' from the property line they are double that from the street itself.

Mr. Musnicki asked what he meant by that?

Mr. Hulme said the edge of the pavement is more than 10' from the property line, and the gates are 10' back so it would be more than 20' from the road.

Mr. Musnicki asked if that's an actual marker?

Mr. Hulme said he's scaling it in his head, and he doesn't have a scaled ruler but the edge of pavement is more than 10' from the property line.

Mr. Musnicki said he appreciates them going from a 90% variance to a 50% variance, the sticking point for him is the gate height and I think this is the third or fourth appearance on this but the height has been driven by privacy concerns and your client recently purchased this property, and within 1,000 feet of this there are two (2) multifamily complexes, a Post Office, a Drug Store, and the Eastern Village entrance I don't really see the privacy argument.

Mr. Hulme said that is all the more reason to allow privacy. And within that 1,000 feet there are a lot of gates more than 6' tall.

Mr. Musnicki said yes, we went over that a few meetings ago.

Mr. Hulme asked them not to punish his client for obtaining a permit when others did not.

Mr. Musnicki said this Board does not have the weight to make those decisions, and allowing 6' when 4' is allowed is more arbitrary. In addition, when the client purchased the property there was one entrance and they chose to add another entrance. I don't see the privacy argument.

Mr. Hulme said he respects Mr. Musnicki's comment and 6' is more difficult to peer over and that privacy issue alone is there.

Mr. Musnicki asked if the gates will open inward?

Mr. Hulme said he doesn't know, but if that's a condition he has no issue with it.

Mr. Musnicki said even 10' setback the vehicle will be on the sidewalk.

Mr. Hulme said he has no issue with the gate opening inward or sideways.

Mr. Pasca said if they are rolling gates they can roll to the side without blocking the car traffic.

Mr. Hulme said that condition will be fine.

Mr. Musnicki said he has nothing further to add.

Motion was made by Mr. Piering to close the application of **Mathew and Deborah Vivek, 206 Main Street (905-13-2-20.6)** for a determination; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 0 absent.

**NEW APPLICATIONS:**

**4. Christopher Cordella, 25 Maple Street (905-005-01-024)** Applicant requests variance from §197-5 A(1) to construct a second-story addition on a dwelling with a nonconforming side yard setback of 10.3 feet where the minimum required is 15 feet and where conformity is required for additions on nonconforming structures

Christopher Cordella appeared on behalf of the application, together with Erik Bjerneby, EAB Architectural Designs. He said the existing structure is a one story one family dwelling in the R-4 and the lot is slightly undersized for the zone, so we are working with a smaller lot than typically allowed. We are proposing a second story addition over the existing 850 square foot house and there's a 10.3' side yard setback on the North and they are seeking a second story addition and two smaller one story additions on the side and rear and we are not increasing or changing any other setbacks than existing and the existing front yard meets the requirement and the total side yard complies as well. They are proposing an 850 square foot second story two-bedroom addition.

Mr. Piering asked him to compare it to the character of the neighborhood.

Mr. Bjerneby said there is a mix of houses on that street, and the height is adequate. The neighbor to the North has tall bushes and a driveway and they are set away so they are not creating something near another structure it's 35' away.

Mr. Piering said doing this addition, the big thing is the North sideyard setback and I guess your argument is that it can't be achieved by another method?

Mr. Bjerneby said yes.

Mr. Piering said this is very straight forward, are there any other questions or comments.

Mr. Musnicki asked if there will be any mechanicals within the 10.3' sideyard setback. There's basement egress on that side, is it a window?

Mr. Bjerneby said yes, there is a window to remain and there is no intention of putting mechanicals there.

Mr. Piering said if you put mechanicals there you will need additional relief.

Mr. Bjerneby said he understood.

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

Motion was made by Mr. Piering to close the application of **Christopher Cordella, 25 Maple Street (905-5-1-24)** for a determination; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 0 absent.

**5. Song Living Trust, 335 Dune Road (905-018-02-013)** Applicant requests variances from §197-35 C to construct an accessory pool and deck with rear setbacks of 33 feet and 31 feet respectively, where the minimum required setback from the rear yard/crest of dune is 75 feet.

Christopher Pagliaro, Architect appeared on behalf of the application, together with Amy Song, and He said he was the architect on the original application and when they originally endeavored to build the house they had no intention on constructing a swimming pool, but they want to redesign the pool

Mr. Piering said he would like to go over this and we heard this not too long ago when they were building the house and they wanted Dune Crest setback and we suggested to the attorney that they move the house forward and get a front yard variance so they did not have to get a Crest of the Dune variance and they complied with that; they were also given a height variance at that

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time and they were given a total side yard variance and now you are coming back and wanting to go back in to that crest of the dune area that were so careful not to disturb and I have to be honest, that this is just my opinion but it doesn't sit well when you get the variances you want and come back to ask for more from what we originally did not want to happen. I would suggest a few things, you can pull the application without prejudice or you can put the pool in the front yard which is allowed in that district. I just did not want you to be broadsided.

Mr. Pagliaro said thank you.

Mr. Piering said with that, are there any other questions or comments? Or do you want to hold this over?

Mr. Musnicki said he did not hear the exact reason on the initial application why a pool was not submitted the audio was not great.

Mr. Pagliaro said they did not feel they wanted a pool.

Amy Song said when they started the project they did not want a pool, but when we brought the house to comply with the FEMA requirements we realized there was an enormous void and we're pulled all of the way back and the neighbors are flanked and the neighbors to the right have a pool and the neighbors to the left are further up and aesthetically it feels disconnected. We would like to see some continuity between the house and the 70' straight to the beach. We have owned the house for 40 years and we want it to be esthetically pleasing and respectful to the community. It's not something we intended to backdoor its just after going through the process and moving the house back and we don't have a view, we have just a cavity almost.

Mr. Pagliaro said he believes it's a little under 3,000 square feet and the lot is narrow. There is a high point on the east and west property line at 20 and it's very far South and I think the Crest of the Dune interpretation says to connect the two points and he's engaged coastal engineers to review that and they have asked to continue the hearing was because the pool crosses the line, and I think we can be more responsible if we pull the back out and maybe it has to be re-noticed and can be done by turning it 90 degrees and I would like to have the dune crest assessed.

Mr. Piering said had this been presented to us at the time of the application it may have been looked at differently in the layout and we were very concerned about maintaining that distance. If the neighbors came to this Board they could not rebuild their house in the position they are in. We can't make them tear the house down and move it but to rebuild they would not be in the location that they are in.

Mr. Pagliaro said we want this to be clear, that the pool was never intentional.

Mr. Piering said we don't think you were trying anything devious. I just want you to understand that in the past that has happened, but we don't think that here.

Mr. Pagliaro said we had the conversation about the perception.

Mr. Musnicki said i agree with Mr. Piering; I don't think it's a double dip but as the Chairman pointed out it's quite a heavy lift and the Dune Crest is looked at very strongly. In my opinion I would relook at it and see how you can minimize it and possibly employ a local talent that has been in this situation in this community.

Mr. Pagliaro said he is from CT but they have hired a local person. I know how much the setback is respected.

Mr. Piering said they can hold it over.

Motion was made by Mr. Piering to holdover the application of **Song Living Trust, 335 Dune Road (905-18-2-13)** to November 19, 2020; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 0 absent.

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Motion was made by Mr. Piering to close the public hearing at **5:35 p.m.**; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 0 absent.