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Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, December 17, 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 **November 19, 2020** meeting as written; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

DECISIONS:

1. 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., appeared on behalf of the application.

Mr. Piering stated the determination was not ready and would be rendered at the meeting on January 21, 2021.

2. LIDL Westhampton, 70 Sunset Avenue (905-012-04-020.05) Applicant requests variances from §197-30 C(1)(a) to erect two walls signs totaling 123.5 square feet in area where the maximum permitted total sign area is 20 square feet, and from §197-30 C(20)(b) for proposed wall sign letters of 23.5 inches in height where the maximum permitted is 10” .

No one appeared on behalf of the application. Mr. Piering stated there was a determination, and the reading was waived.

Motion was made by Mr. Piering to adopt the determination of **LIDL Westhampton, 70 Sunset Avenue (905-012-04-020.05)** seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

3. Brian Tyman, 107 Potunk Lane (905-012-01-007) Applicant requests variances from §197-5 A (1) to construct a second-story addition on a dwelling with nonconforming side yard setbacks of 13.8 & 17.2 feet and a combined side yard of 31 feet where the minimum required is 20 feet and 50 feet, respectively, and where conformity is required for additions on nonconforming structures.

4. Galway Holdings LLC, 53 Exchange Place (905-015-05-032.01) Applicant requests relief from a denial from the Architectural Review Board pursuant to §5-19 B to construct a single-family dwelling with associated site improvements as designed.

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James N. Hulme, Esq., appeared on behalf of the application, together with Michael Murphy and Michael Owen. Mr. Piering stated the Board is overturning the ARB decision, and granting the applicants request.

Motion was made by Mr. Piering to grant the application of **Galway Holdings LLC, 53 Exchange Place (905-015-05-032.01)** as written; seconded by Ms. Cea and unanimously carried 5 ayes, 0 nays, 0 absent.

HOLDOVERS:

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.

Mr. Piering asked if there was anyone present for the application? Ms. Mackie said no.

Motion was made by Mr. Piering to remove the application of **Song Living Trust, 335 Dune Road (905-018-02-013)** without prejudice; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

6. Mark & Palmira Cataliotti, 37 Beach Road (905-012-02-039) Applicant requests variance from §197-35 C to construct an accessory garage with attached roofed-over patio with setback of 10 feet where a minimum of 20 feet is required.

David Gilmartin, Esq., appeared on behalf of the application together with Mauricio Duarte, Architect and Mr. and Mrs. Cataliotti. Mr. Gilmartin said he is appearing for the first time and he understood that the Board was okay with the garage but requested they pull the roof overhang in and they have submitted an updated plan showing that and they are 12 square feet that violate the setback and they have pulled it in to 3' setback which is minimal, and they would like to be able to maintain the setback to have the overhang and get out of the elements with the structure and its minimal. The character of the neighborhood is such that there are two-story single-family dwellings, with accessory structures located fairly close to the lot lines. They are looking for relief to have a path to access the pool and then a grass area and the roof overhang butts against the pool area. They can't shift it from the lot line and they'd like to retain some size for it. It's a Type II request under SEQRA so there are no environmental impacts, and whether the request is self-created, it's the existence of the pool and the decking surrounding it which creates an issue and be that as a may the self-created hardship is not something you can deny absent any other compelling factors. This is a minor variance as the plans been amended and their architect is present to answer questions.

Mr. Piering asked how far the roof area is?

Mr. Gilmartin said 17.65' instead of 20' and its at the intersection of the garage.

Mr. Piering said okay. He asked if the garage is 20' wide?

Mr. Gilmartin said yes, and it steps in.

Mr. Piering asked if there were any questions.

Ms. Mackie said there were neighbors present to discuss the matter. Ms. Schermeyer and Mr. Mathena as well.

John Mathena, 35 Beach Road appeared on behalf of the application. He is the Southerly neighbor. From his two upstairs bedroom windows he will see down into this area. I can see their screened porch and there's a large deck and there's this new proposed structure. Last meeting, I saw the plans and they are beautiful but my concern is about the noise and what other activities will be occurring in this area. I will live in this house for a long time, and if this is granted what is it about? I am surprised they've hired an attorney and I wonder if I need it hire an attorney as well.

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Mr. Piering said listening to what he's saying, you understand the variance that they are requesting for this phase is very small and the other parts the pool and the deck are all allowed under the Code legally without a variance. With or without this roofed over patio, I don't see that your issues will not be there. The Village has a way to combat noise, and if they interfere with the enjoyment of your property.

Mr. Mathena said he understands that, he just wanted to state his concern. By virtue that this is an exception, and it's time to look at that and there is a permanence to this.

Mr. Piering said that's correct. He thanked Mr. Mathena for his input.

Sundy Schermeyer, 39 Beach Road, appeared on behalf of the application. She watched the meeting from November and she was not able to participate in it and she submitted a letter and she articulated her concerns and she had a discussion with the neighbor about a garage previously and when she saw the plans it was much more than what was anticipated. It's a 40' long structure, and I'm trying to find in the Code where it speaks, when we put something up in our backyard we were limited to 10' x 20' accessory use restriction that doesn't allow certain things in that area, and I see that use I don't see where it's allowed beyond that size.

Mr. Piering asked what is 40' long?

Mrs. Schermeyer said the roof over is; we were limited to 200 square feet and there was plumbing issues and I was wondering where that exception comes in here.

Mr. Hammond said he could speak to that. Accessory Use or Accessory Structure is fully enclosed cabanas and plumbing to limit them to no larger than 200 square feet to prevent them from turning in to cottages. This roofed over area is a bbq area and a sink so maybe that's the corollary being discussed I didn't interpret an open air bbq area.

Mrs. Schermeyer asked if there's a limit on the size of it, because there's nothing in the Code.

Mr. Hammond said it comes up against lot coverage; we don't have a prescriptive limit to accessory garage or structure or even the cabana without plumbing does not have that either.

Mrs. Schermeyer said she found a decision speaking to a covered patio from this Board that limited it to a certain size from a few years back and I would imagine this would be that same type of space. There was a decision in 2016 that spoke to that. My other concerns are the noise, and about the fire place. I am beside myself about a fireplace being built in an accessory structure; there's no guidelines for an outdoor space and these types of structures from the experience that I've seen are normally most often attached to the residence and that mitigates the impact on the neighbors because they are centrally located on the property and they are further away and to build them along the side yard setback especially if its wood burning. I currently have issues with another neighboring property and their fireplace with a North wind, and now if the wind is going South I have it from an outdoor fireplace that's accessory and on my property line. While you can mitigate noise with Code Enforcement if you impose a wood burning fireplace on the side yard next to my home you will inundate my property with smoke depending on the direction of the wind. I don't think it's appropriate or fair to take place, if it was gas I wouldn't have the concerns that I have but my husband spent his entire adult life renovating every room in this house one by one and this is our largest holding that we have that secures our financial future, and I don't believe that these things should be taken lightly because it can impact my property and reduce its value and I am very concerned about that. Discussion should have been had and maybe we could have reached an understanding to my family as well as theirs.

Mr. Piering said we are getting a little ahead of ourselves.

Mrs. Schermeyer said this is my home.

Mr. Piering said in reviewing the application, is the fireplace part of this application?

Mr. Hammond said the outdoor bbq area, pizza oven is an outdoor fireplace and it wasn't spelled

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out but you can see it on the elevations and such. The principal setback is 20' and you can have a wood burning chimney setback 20' just like this.

Mr. Piering said that is his question, is this something for our Board? If we allow the setback for the covered patio; what is the regulation on the fire place.

Mr. Pasca said as far as I can tell the fireplace does not require a variance. If it's outside the setback it doesn't require a variance, I'm not sure how that's before the Board right now.

Mrs. Schermeyer said 3' in that corner makes a big difference, every foot away from my property matters. While it might be 12 square feet you may think is minimal is not to me.

Mr. Pasca said the fire pit itself is not in the setback area.

Mrs. Schermeyer said she's not talking about the fire pit; she's talking about the fire place in the roofed over area on the back side that faces her property.

Mr. Gilmartin said the only request for relief is the 12 square feet on the plan. And the fireplace under the roof over hang is proposed at 20' and will remain at 20'. But it will have no impact on the neighbors in objection.

Mr. Piering said that was my question, this fireplace which seems to be the sticking point and I understand it; that only has to be 20' away though.

Mr. Gilmartin said that's correct.

Mr. Piering said Mr. Pasca, if this were to be approved now that it becomes conforming because we are giving them a variance, would they be legally able to put it 17.65' from Mrs. Schermeyer property line?

Mr. Pasca said not if there's a condition saying that portion within the 20' setback could not be used for any other structures than what's shown on the plan.

Mr. Gilmartin said they agree to that condition.

Mr. Piering said okay.

Mrs. Schermeyer said she thinks they will have to figure out themselves how to mitigate the issues that can arise.

Mr. Gilmartin said he's happy to talk to Mrs. Schermeyer.

Mr. Mathena said he would ask everyone to consider mitigation; and these are our homes and I think everyone has valid reasons for pursuing them and if we have conversations I would like to be involved and it seems that it has been minimized but I think that had I not gone over to the Village Hall to see the plans and realize what they were constructing, with no wall I would not have known what they were constructing. You are entering a conversation about the things we find to be of concern.

Mrs. Schermeyer said one other thing, there were several comments made about us not living in our home which I do live in; it's my primary residence and my husbands, he sits on a Board that requires him to have a primary residence in this Village.

Mr. Piering said okay.

Mr. Gilmartin said they will accept that and he will speak to Mrs. Schermeyer and Mr. Mathena as well.

Mr. Musnicki said since the applicant has representation this evening, he wanted to bring up again that this was to finish the wall on that side where the fireplace is to minimize the noise from that roof over area.

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Mr. Gilmartin said it's not a wall that is something they'd entertain; they have discussed mitigation and screening on the property line to help provide and encourage more privacy between the two homes.

Mrs. Schermeyer said that would be greatly appreciated.

Mr. Gilmartin said they will continue the discussions.

Mr. Piering asked if there was anything else anyone would like to add? There were no further questions or comments.

Motion was made by Mr. Piering to close the application of Mark and Palmira Cataliotti, 37 Beach Road (905-12-2-39) for a determination; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

NEW APPLICATIONS:

7. Jeremy & Jennifer Stoehr, 16 Oak Street (905-008-03-028) Applicant requests variance from §197-35 C to construct an accessory swimming pool 12.2 feet from the rear property line where a minimum of 15 feet is required.

Jeremy Stoehr appeared on behalf of the application. Mr. Stoehr stated they are proposing an inground swimming pool and their sanitary system is in the rear yard and that requires a 20' setback so they need a 2.8' rear yard setback to construct the pool.

Mr. Piering asked the size of the pool?

Mr. Stoehr said it is 16' x 32' and they only need a rear yard setback.

Mr. Piering asked who lives in the rear of his property?

Mr. Stoehr said it was a Village employee, I believe she sold it, and Verizon abuts the Eastern facing rear yard and he has had no objection from any of the rear neighbors.

Mr. Piering said they are well within the lot coverage. He asked if there were any questions. He said it appears this is the only place they can construct this pool because of the sanitary system.

Mr. Stoehr said yes, that's correct.

Mr. Piering said we should make note that the pool is in the rear because of the sanitary and there have been applicants who don't want their pool this far away and this applicant is okay with it being so far back from the house. This application is pretty straight forward.

Mr. Musnicki asked where the pool equipment and dry well will be located?

Mr. Stoehr said the dry well will be on the South side where the gravel pit area is shown on his survey and his pump and heater. That's the commercial neighbor and the noise from the pump won't disrupt the residential neighbors.

Mr. Musnicki said okay.

Motion was made by Mr. Piering to close the application of Jeremy Stoehr and Jennifer Stoehr, 16 Oak Street (905-8-3-28) for a determination; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

8. Christina Iacono Young, 6 Michaels Way (905-009-03-017.13) Applicant requests variances from §197-6 D to construct a screened porch on an existing deck with a side yard setback of 21 feet where a minimum of 30 feet is required and for a resultant combined side yard of 56.7 feet where a minimum of 70 feet is required, and from §197-35 C to reconstruct an accessory swimming pool with a setback of 15.875 feet where a minimum of 20 feet is required.

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Christina Young appeared on behalf of the application. She said that she purchased this house in April of 2020 and it was her first Summer here and she realized the deck is in really bad shape as well as the railings. They want the same footprint, it will not change but there is a portion of the deck that needs to be rebuilt, same footprint but they want to make a screened in porch. The only other component that she wants to add is the hardship she can't go further back because of the wetlands. She walked the property with her neighbor and she showed them the existing deck footprint won't change, with the exception of the hot tub, the wood was a curved design and it gets very wet so it rots so it would be more prudent to square that off. She can defer to her architect; they aren't trying to do too much and she bought the house and it was snowing so she didn't get a good look at the deck. The existing swimming pool was not marble dusted and when she got the estimate to repair the existing pool it would be \$30,000.00 because of structural issues, and its location is right out of the kitchen door and the proximity of it and I want to move the new pool so when you walk out of the door you aren't right on top of the pool so it makes sense since they are redoing the deck, they should redesign the pool so it's a little further away from the house. The design shimmied the pool to the edge of the existing deck.

Mr. Piering asked if the only change is the location of the pool?

Ms. Young said yes, and where the deck is round, she is making the corners squared off. She wants to put a screened in porch where her eating area is right now. If you went to her house, you saw an eating area that she wants to screen in.

Mr. Piering asked what she means by an eating area?

Ms. Young said where her existing table is; the area of the porch where they eat outside in the Summer.

John Laffey, Architect shared the screen. He showed the existing porch and that the screen porch will go over the existing porch; and the swimming pool area as it exists, he showed the rounded area for the spa and where they will square it off for the new deck and pool. It is 11 square feet in the corner and very minimal. The existing pool is 12' x 24' and the new pool is 6" wider.

Mr. Piering asked if the deck that they want to covered is existing?

Mr. Laffey said yes. They all follow the roofline of the main house and there's minimal impact on the neighbors, and it's 8' of screened porch and the top of the roof is 17' to the top. There is not a lot of property on the site due to the wetlands so this is the only real location for a porch and to eat and entertain; the total deck area is 990 square feet and that includes 220 square feet for the porch. I think it's a nice layout and effective and there is no real other location for the screened porch. 67% of her land is wetlands and she's limited as to what area she can develop.

Mr. Piering said okay; he asked if there were any questions or comments. There were no questions or comments.

Motion was made by Mr. Piering to close the hearing of **Christina Iacono-Young, 6 Michaels Way (905-9-3-17.3)** for a determination; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

9. Kenneth Hoefler, 445 Dune Road (SCTM 905-017-05-005) Applicant requests variances from §197-5 A(1) to construct a second-story addition on a dwelling with preexisting nonconforming side yard setbacks where conformity is required for additions on preexisting nonconforming buildings (proposed side yard setbacks of addition are 10.8' & 13.5' where a minimum of 20' is required and with a combined side yard of 24.3' where a minimum of 50' is required), and from §197-35 C to reconstruct an attached rear deck with side yard setbacks of 6 & 10.8 feet where a minimum of 20 feet is required and a rear yard setback of 70.2 feet to the crest of the dune where a minimum of 75 feet is required.

James N. Hulme, Esq., appeared on behalf of the application together with Aram Terchunian, First Coastal, Michael Berner, and Kenneth Hoefler. Mr. Hulme said if you go to the site you find a house with a main story containing a kitchen, bedrooms and living space and an understory containing habitable space. They submitted the CO's and affidavit indicating it is fully covered by the CO's. The house is small and in need of updating and on behalf of our

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client we looked at what we could do and how to improve the house and improve the situation for the neighborhood. We arrived at a proposal to eliminate the existing understory, lift the existing main floor and relocate the main floor closer to the road by 17' while still maintaining the existing setbacks for the structure. In addition, we are proposing a second-floor addition that is the subject of this application and rather than trying to get the variances to get the existing setbacks in place for the first floor we stepped back the second floor 4' on each side to arrive at the proposed setbacks. We are proposing the elimination of a large deck toward the crest of the dune and that deck is located 43' from the Dune and we are replacing it with a smaller deck that runs the width of the house which is driving the side yard variance request, and for the most part as its closed point it 70.2' from the crest of the dune and the other it is the full 75' and we're seeking that variance to square the deck where as if we rebuilt it parallel it would be odd shaped configuration and limit the use of the already reduced deck. Lastly, we propose a small swimming pool and hot tub in the deck both of which meet the dune crest setback. In a nutshell that's the proposal and we think that the variances are both appropriate and minimal. The house is small and not getting bigger and we're giving up the understory which ran the width of the house and replacing it with a second story that does not run the entire width of the house. The entire project benefit is moving back substantially from the dune crest almost to full compliance to the 75' and we're not impacting the neighbors than they are already impacted. If you look at the aerial photograph submitted with the application, we are right now parallel to the existing houses and we are moving back 17' we will be behind some of them and appropriately spaced from the neighboring properties.

Mr. Musnicki said he has a few questions. What is the proposed lot coverage?

Mr. Hulme said it is well below the 20%. We will provide it, but I believe it's well below the 20%.

Mr. Musnicki said okay. On the plan, as far as lifting the house and moving the house and taking this understory out and building a new second floor, how is that going to be achieved and the building plans in my packet show all new construction it doesn't show anything existing being used.

Mr. Hulme said we are reusing the exterior.

Mr. Musnicki said that's not indicated on the plans at all. How do you do this, it's a 40- or 50-year-old structure, how do you achieve this?

Mr. Hulme said we're going to pick it up and move it conventionally. We aren't lifting the understory because it's on a slab and it was determined we could not pick that part up, but we believe in the standard method used to move houses the existing main floor can be picked up and moved.

Mr. Musnicki said my last question is, 197-5 how do you square with that, you can't move it to a new location, as of right you can raise this house in place but I don't know that you can't move it to a new location and not have current setbacks.

Mr. Hulme said all I can say is that this was reviewed by the Building Inspector and it wasn't called out for a variance. We are putting a second floor in a preexisting non-conforming relocated structure.

Mr. Piering asked Mr. Hulme if he's stepping in the second story?

Mr. Hulme said yes, 4' from the edge of the first floor.

Mr. Piering asked the setbacks?

Mr. Hulme said the ones in the public notice.

Mr. Piering said okay. He asked the dune crest setback, how far forward are they moving the house?

Mr. Hulme said 17' from the current location.

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Mr. Piering said you still need a dune crest variance for the deck?

Mr. Hulme said yes, the dune crest is angled and we'd have to angle the deck so we're asking for a little relief to create a square / rectangle deck.

Mr. Piering asked why they can't move the house 21' forward, instead of 17'.

Mr. Hulme said they want to maintain their ocean view and they thought this was a good compromise.

Mr. Piering said okay, that's duly noted. How much of the deck do you need a variance for?

Mr. Hulme said it's a triangle with a base of 5'.

Mr. Terchunian said it's 185 square feet.

Mr. Piering asked if the width of the house is maintaining the same, is the property only 64' wide?

Mr. Hulme said yes, that's correct.

Mr. Piering said he's happy to see it being moved out of the dune. That's a real benefit to the community. He asked if there were any other questions or comments.

Mr. Badzik said he is okay with the presentation.

Mr. Musnicki asked if they will return next month with the answers to his questions?

Mr. Hulme said yes, he would ask to close it and they will submit that information.

Mr. Musnicki said no, I would not be agreeable to closing it. I still have questions; I don't know how they got this far moving the house to a new location and I would like to see that clarified and it wasn't in the original document from Mr. Hammond but I would like to see that and review that further.

Mr. Hulme said he will talk to Mr. Hammond if it's being held over and they will figure that out.

Mr. Piering said he doesn't understand Mr. Musnicki's request; what is he looking for going forward.

Mr. Musnicki said we have a 50-year-old house, that the client would like to move to a new location, and I don't know if that's allowable under 197-5, and the plans that are shown shows new construction it doesn't show the existing house structure will be used for the first floor and those are my two main concerns.

Mr. Hulme said they will address that at the next meeting.

Mr. Piering said okay, they will hold it over. Please make sure the lot coverage is shown on the survey.

Motion was made by Mr. Piering to holdover the application of Kenneth Hofer, 445 Dune Road, (905-17-5-5) seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

Motion was made by Mr. Piering to adjourn the meeting at 6:11 p.m.; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.