

February 21, 2019

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, February 21, 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
Joe Musnicki
John Wittschen

Anthony C. Pasca, Esq., Village Attorney

Paul Houlihan, Building & Zoning Administrator

Maeghan Mackie, Board Secretary / Building Permits Examiner

ABSENT: Frank DelGiudice

Motion was made by Mr. Piering to adopt the minutes of the **January 17, 2019** meeting; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

DECISIONS:

1. 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.

Linda Kabot 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

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In the Matter of Application of

Daniel Bernstein
Vivian Bernstein

DETERMINATION

Address: 37 Exchange Place
SCTM #: 905-15-5-29.1

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I. REQUEST FOR RELIEF

The applicants, Daniel Bernstein and Vivian Bernstein, are the owners of a parcel of real property located at 37 Exchange Place. The property is located wholly within the R-1 Zoning District. According to the survey of the property drawn by David H. Fox, L.S. P.C., Fox Land Surveying, dated November 6, 2017, and last updated on November 29, 2018 (“11/29/2018 Fox Survey”), the parcel is improved with a two-story frame house (which serves as the main house), a screened porch, asphalt tennis court, decks and attached garage, and a detached one-and-one-half story frame house (which serves as an accessory cottage).

The ZBA, by determination dated August 16, 2018, granted a variance from Section 197-63.P (3) of the Village Code (which requires, in this district, that tennis courts be recessed a minimum of two feet below grade) and authorized the reconstruction of the tennis court, at grade, but under a plan that would have relocated the court away from its current location.

Now, the applicants propose to reconstruct in its current location, and with an asphalt surface, but with some size reductions, so that it would be located 3.9' and 14.8' from the North and East property line, all as all depicted on the 11/29/2018 Fox Survey.

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.

Section 197-63.P (6) of the Village Code provides that tennis courts constructed of asphalt or other similar type of material are prohibited in floodplain areas.

Applicants therefore request relief from Sections 197-35.C and 197-63.P(6) of the Village Code.

II. SEQRA

The applicant submitted an Environmental Assessment Form Part I pursuant to the State Environmental Quality Review Act (SEQRA). Because the application involves the reconstruction of a single family residence, accessory structures, and setback variances, the action is classified as a Type II action under 6 NYCRR § 617.5, and therefore no SEQRA review is required.

III. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on January 17, 2019. The applicants' attorney Heather A. Wright, together with Susan Wilcenski, Spaces Landscape Architecture and Daniel Bernstein, 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 or opposition to the application. The hearing was closed for a determination at the February 21, 2019, meeting. The property is subject to the receipt of two (2) prior variances, August 15, 2013 and August 16, 2018.

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

1. *Character of the Neighborhood:* The Board finds that, under the unique circumstances of this application, allowing the existing tennis court to remain in its current location, and be resurfaced with an asphalt surface, subject to the size reductions and implementation of drainage systems, will not cause an adverse impact on the character of the community. In order to address the request for an asphalt surface, the applicants have demonstrated that the drainage systems they will install as a condition of this variance will have more storage capacity and better drainage than a tennis court with a pervious surface. And the applicants have also demonstrated that, due to the unique existing site conditions and landscaping, the previously-contemplated relocation of the tennis court would actually have a more deleterious effect than allowing its reconstruction in its present location, albeit with some size reductions.

2. *Alternatives:* While the applicants have alternative locations to construct the tennis court, such locations would not achieve the drainage and landscaping benefits that result from maintenance of the existing location.

3. *Substantiality:* The variances are substantial.

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

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

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6. *Benefit vs. Detriment:* On balance, the benefits to the applicants outweigh the detriments, if any, to the community.

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

The Board therefore grants the requested variances to allow the reconstruction of the tennis court as shown on the survey drawn by David H. Fox, L.S. P.C., Fox Land Surveying, dated November 6, 2017, and last updated on November 29, 2018, and all subject to the following conditions to minimize any adverse impacts from the variance:

VI. CONDITIONS

1. The variances and special permit 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. There can be no exterior work performed on weekends from May 1 to September 30 and on weekdays from July 1 to September 10.
3. The variances 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.

Dated: February 21, 2019

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Daniel Bernstein and Vivian Bernstein, 37 Exchange Place, Westhampton Beach (905-15-5-28.3)** as written; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 1 absent.

HOLDOVERS:

2. **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 have appeared before the Planning Board with a site plan schematic and they are at the point where they need to address SEQRA in some fashion and that was discussed with the Planning Board hearing, and the Planning Board is willing to take Lead Agency for this review, and they are willing to subject to

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this Board agreeing to the same. Once that's done they will return to the Planning Board and then return to this Board to advance the Use Variance pending before this Board.

Mr. Pasca said the hearing is open, if you want to make a presentation you are inclined.

Mr. Hulme said he would like the Planning Board comments on the record before they proceed.

Mr. Piering said he thinks they should make a motion to allow the Planning Board to act as Lead Agency for SEQRA purposes; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.

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

3. 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, together with Brendan Brogan and Temple Simpson, Architect. The most current version of the survey is dated February 14, 2019 and that reflects all of the changes to date, and they have a set of building plans to match that as well. This is a 75' lot, and the existing structures is a single family residence with a pool, deck and hot tub and they have CO's for everything but the hot tub. They have lot coverage between 37.8% and 39.2% and there was discrepancy in the surveys, the most recent suggests it is 37.8%. The current West sideyard setback is 21.9' and the East is 16.4' and the west side walk way is setback 17.9' from the lot line and the pool is currently 17.7' from the Eastern property line. Our intention is to raze the house and retain the swimming pool; and removing the deck around the pool. The project requires a lot of variances, 10 in total and we have reduced that through

modifications to 7 variances. And of the remaining 7 variances requested 3 have been modified and I would like to go through those and explain them. The first one was deck in the sideyard on the East and West, we have eliminated the Eastern walkway and retained a 4' walkway along the Western side of the house. Our plan would be to take it down and rebuild it but we want to retain that feature of the house, on the West. The second one was deck and spa on the East 8.7' from the property line which has been removed from the current plan, there is no variance for that. The third was the accessory structure deck on the West for 17.9'; the dwelling itself is currently 16.4' on the East and 38.3' total, and that has been increased by 1' and is 17.4' and the total is 39.6' sideyard. The accessory structure 30.2' from the Crest of the Dune has been eliminated altogether. The next variance was the pool 17.7' from the Eastern lot as we are retaining the pool, we're hoping to retain that dimension. We are keeping the pool exactly where it is today. The original plan had a rear yard of 34.2' rather than 75' and we have retreated from the Crest of the Dune, we have eliminated the ocean side deck and retreated the house back to 46.1' from 34.2' and the existing 31.2'. The lot coverage of 39.2% has been reduced to 20% so the lot coverage does not require a variance. The next variance was the fill from the property line and that has to do with the septic system and that's very customary and usual and since the Coastal Erosion Hazard Line is where it is we are seeking a variance from that still.

Temple Simpson provided the Board with a diagram of what presently exists and what they are proposing. The existing pool they would like to remain in the existing location, and they've removed the deck and made it grass. They are not keeping the house but they are keeping the footprint. The pilings are to remain. The coverage is limited by the existing pool. They are 4' over the pool on the second floor and they are okay with that, they have a small deck on that side over the pool.

Mr. Piering said okay.

Mr. Hulme said to give the Board a sense of the neighborhood he has aerial photographs, and the first is from 2004.

Mr. Pasca asked if they can put those diagrams in to the record.

Mr. Simpson said yes.

Mr. Hulme said the existing house is highlighted as it exists in 2004 and 2018 and it is in very much in keeping with the neighborhood, with the exception of one and they are retreating back from where most houses currently are. He gave the 2004 and 2018 and that's because they asked him to look at Mr. Pollack's property, and there is a sharp contrast to be seen between what he had as opposed to what we are proposing, and as opposed to what you gave Mr. Pollack as opposed to what we're proposing and it's less. We are well in to the Coastal Erosion and the Crest of the Dune and Mr. Pollack was in neither location at the time, and therefore you chose not to give him a variance to allow him to impact in to those two areas and that's in sharp contrast to us and the rest of the neighborhood. We are willing to retreat to a certain extent and the way we see this working and the pool in this location it would be difficult to build a structure 75' back and this is substantial step forward.

Mr. Wittschen asked if they would have to go another 30'.

Mr. Hulme said yes.

Mr. Piering said the question was that this is being driven by the pool, and we wanted to see that. My predecessor would say you can swim in the Ocean, you don't need a pool. If that was a pool that was in disrepair we would tell you to rework the application, but it's in good shape and we understand the driving factor.

Mr. Hulme said that was their thought too. And they know they cannot obtain variances and then in a few months submit a permit to get rid of the pool and I think you can see why they want to keep it.

Mr. Piering said you have done a lot of work with this application since you first applied.

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Mr. Hulme agreed. He said it was very creative and still respectful to the neighborhood.

Mr. Musnicki said as usual with these narrow lots on Dune Road, mechanicals in the sideyard where are you proposing them.

Mr. Simpson said they are proposing inside the façade or on the roof out of the visibility.

Mr. Musnicki asked him to explain the inside remark.

Mr. Simpson said it will all be on the roof.

Mr. Musnicki asked where the pool equipment will go.

Mr. Simpson said they will locate it near the house inside the coverage area, is that a concern. They can put it in the breakaway area in the utility room down there.

Mr. Piering said you have to find a place for it, we will not allow it in the sideyard.

Mr. Hulme said they understand. He thinks their proposal is a house in keeping with the scale and nature of the neighborhood, and they've kept it as best they can with their goal and respect the Crest of the Dune and the coverage which is a big variance. The lot is narrow and it's not unusual to look for relief.

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

Mr. Houlihan said he put 17.7' from the East property line, and that was when I thought the pool was going to be removed so that variance can be eliminated if the pool is not going to be removed. If it's not a replacement they do not need a variance for that.

Mr. Hulme thanked Mr. Houlihan.

Mr. Pasca confirmed they are now only seeking six (6) variances.

Mr. Hulme said yes.

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

Mr. Hulme said they will submit the revised construction plans to match the survey for the file.

Mr. Piering said okay, he thanked Mr. Hulme.

Motion was made by Mr. Piering to close the application of **Brendan Brogan, 213 Dune Road, Westhampton Beach (905-20-2-5)** for a determination; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

4. 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.

No one appeared on behalf of the application. Nicholas A. Vero, Architect requested to hold the application over to March 21, 2019.

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

5. 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.

Colin Bester appeared on behalf of the application. He appeared two months ago and there was objection raised by a neighbor's attorney, Richard T. Haefeli, Esq., and since that meeting he did not have the approval from the Board of Health which he has since obtained. In essence the Board did not have a problem with the 1' variance on the road side, but they should re visit the retaining wall location. He spoke with Mr. Haefeli and said the neighbor to the North was the only objectant and asked what they could do to satisfy them, and they have agreed to move the retaining wall 3' from the property line and they have obtained a boundary line agreement. His client does not care about the shed on the property line and they agreed to everything the neighbor was objecting to. They have modified the survey and if the Board finds it satisfactory when he submits an application to the Village you will see it has been moved 2' to the South so it's a total of 3' from the North property line.

Mr. Hulme said he has since spoken with Richard Haefeli and they have reached an agreement between the boundary line and easement and this will allow the neighbors to the North to retain the driveway, parking and shed on this property for the period of time in which he owns the property. Mr. Haefeli and I have exchanged emails and the last one acknowledged and agreed that the survey has been modified to their satisfaction. They have removed any objection they had to the project.

Mr. Pasca asked if they can forward that email to Ms. Mackie for the record.

Mr. Hulme said yes.

Mr. Piering said there was no question about that when it was first presented.

Mr. Bester said okay. He spoke with John Condon the Engineer and he went three (3) round with the Board of Health and this was the plan they found acceptable after 9 months. I explained to him after the last Board of Zoning Appeals meeting, it was asked to look at other systems and Mr. Condon said the only other system is the new system and they require trench drains and given the square footage of this you will need 23' square feet and it will be very expensive and we would have to start all over with the Board of Health. He could do Engineering Diagrams but this is the best case scenario.

Mr. Musnicki said he thinks he initiated that conversation, since then he knows there is a time factor with the Board of Health, but can you send us something from John Condon to substantiate that?

Mr. Bester said yes, he can.

Mr. Piering said to be clear, if you move this house further South you would have to go back to the BOH.

Mr. Bester said yes. The relationship between the house and cesspool is static then no you would not, but if you do a lot of movement you have to go back to the Board of Health.

Mr. Piering said substantial movement is considered more than 2' or 3'.

Mr. Bester said yes. We will be forced to start over with the Board of Health.

Mr. Pasca said there will be a time fairly soon when they are almost mandatory.

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Mr. Bester said the truth is, if we had just started the process we would look in to that, but where we are now this is our best bet for the site.

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

There were no comments or questions.

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

6. 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 197-27.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.

No one appeared on behalf of the application. John McDonough requested a holdover of the application to March 21, 2019.

Motion was made by Mr. Piering to hold over the application of **Donna McDonough, 24 Point Road, Westhampton Beach (905-17-3-25)** to March 21, 2019; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 1 absent.

7. 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.

NEW APPLICATIONS

8. 285 Oneck, LLC., 285 Oneck Lane (905-6-2-35) Applicant requests a variance to subdivide a parcel of land into 4 lots. Lot 3 and Lot 4 will be flag lots accessed by two 12.57' wide strips of land taking access off of Fiske Avenue. The 12.57' access strips are in Violation of Chapter 197-6. B. which requires 150' lot width at the road. The subject property is located in the R-1 Zoning District and the Flood Zone.

Kittric M. Motz, Esq., appeared on behalf of the application, on behalf of Heather A. Wright, Esq. They are here to request a four lot subdivision on four and a half acres and the minimum lot requirement is 40,000 square feet, with 150' width; each lot exceeds the minimum lot areas and three of the four have direct road access so one flag is needed to create the fourth lot. This is to limit the vehicular access from Oneck Lane and route all traffic in to the lots off of Fiske Avenue by one common driveway. There will be curb cuts eliminated and only one entrance way, there are two new driveways on Oneck Lane and three on Fiske Avenue and they are proposing one. The proposed flag runs down the center and keeps it from the neighbors and in addition the subdivision is removing a number of non-conformities on the property, it has been demolished already. There were numerous structures in the front yard and sideyard and illegal structures and habitable space, all of which have been removed. The property will now, if you see fit to allow the fourth lot there will be conforming construction and lots. It closely resembles the decision granted on Hazelwood Avenue; they meet the Code in the terms of area and width and they are not proposing higher density than otherwise allowed. There are lot width issues in terms of alternatives which would lead to the need for future variances, and this proposal provides the most conformance. The substantiality is for the flag portion, but given the relative size of the remainder of the lot it is appropriate. There are at least 11 other flag lots in the Village. The impact will have a Code Compliant sanitary system and the construction and density will be limited. The benefit to the community as well as to the applicant is the traffic and removal of pre-existing non-conformities and the FEMA compliant construction, there will be less drainage issues and this is the minimum variance required in order to obtain the relief sought.

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Mr. Piering said you will only have one entrance off of Fiske Avenue and no access of Oneck Lane, what are you proposing there?

Ms. Motz said there is a wall there that they are proposing to keep.

Mr. Piering asked if that's legal?

Mr. Houlihan said it's pre-existing and has a CO.

Mr. Piering said okay. That will remain?

Ms. Motz said yes.

Mr. Badzik asked if the gate will be closed off?

Ms. Motz said yes, they will close it in with vegetation, and she believes it is going to be covenanted with the Planning Board.

Mr. Pasca asked if all four lots share one common driveway?

Ms. Motz said yes.

Mr. Musnicki said there are no provisions for flag lots, can you make your argument for the pole portion of the flag as you roll the square footage in to that in to the entire lot.

Ms. Motz said on the two flags, lot 3 and lot 4; lot 4 has a total area of 47,020 but the flag part of that is 44,364 square feet; and 53,646 for lot 3.

Mr. Musnicki said okay, I wanted that on the record by the applicant. He does not want future applicants to assume that the flags counted towards the lot requirement. I see what you're doing and the pole is rolled in to the square footage, to make it over and above the 40,000 square feet.

Mr. Pasca said no, they show with it and without, without including the pole they are in excess of 40,000 square feet.

Mr. Musnicki said okay, he just wanted that on the record.

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

Kathy Mara, 15 Fiske Avenue, said they are concerned about the variance which will affect the sideyard and rear yard setbacks.

Mr. Piering said the way he is looking at it, all four of the properties are over 40,000 square feet which is the requirement in the R-1.

Ms. Mara said she is concerned with the driveway, is the variance for just that only?

Mr. Wittschen said the variance is not for the setbacks, they are what is in the Code.

Ms. Mara thanked the Board.

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

Motion was made by Mr. Piering to close the application of **285 Oneck, LLC., 285 Oneck Lane, Westhampton Beach (905-6-2-35)** for a determination; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

9. Surf and Turf Equities II LLC., 86 Harbor Road, (905-17-2-10) Applicant requests variances to maintain a deck built without permits. The proposed building area lot coverage with the deck is 36.7% when Chapter 197-10. C. (1) only allows 20%. The deck is located 14.9' from the rear lot line when Chapter 197-10.D. requires a 25' setback. The total off street parking and impervious surface areas shall not exceed 40% and applicant proposes 47.6%. The application is located in the R-5 Zoning District and the Flood Zone.

Dorian and Martha Belknap appeared on behalf of the application. They knew the deck was over built and they did research and what gave them the wherewithal to move forward is knowing 11 years ago it was constructed and there's a survey verifying that it's been there for over 11 years. The previous applicant went to the Building Department to add a second story on to the house and it was reviewed and the violation was known, but it did change hands. They knew they had to cut it back to the CO size which is shown on the survey or obtain a variance. They are hoping to obtain a variance and they have researched the area to support the argument they are not adversely affecting the neighborhood and they have 11 sites that show properties to verify they are in keeping with the character of the neighborhood. Some circumstances in the area are more extreme, but there is a middle ground with them all.

Mr. Musnicki asked if the survey they had at closing is part of the packet?

Mr. Belknap said the only difference is three (3) sheds that are removed.

Mr. Musnicki said they will need to see that survey.

Mr. Belknap said he has the survey used at closing, and you will see there were three (3) sheds that have been removed. They were on the property line.

Mr. Musnicki asked if they closed with the entire deck?

Mr. Belknap said yes.

Ms. Belknap said the hash marks on the survey are shown what was CO'd.

Mr. Belknap said the part that is not shown as a hashmark was added on 11 years ago, and could have been before that but that's when it was last surveyed.

Mr. Musnicki said when you closed you had to take the chance.

Ms. Belknap said at the last minute, the seller decided not to do the Updated CO and it was a last minute to decide to take it upon ourselves, and we chose to take it as is. We were very aware of our options. They would just like to keep the deck, they removed the three (3) sheds.

Mr. Belknap said the packets he has start off with a picture of the deck as it is now and the David Fox survey from 11 years ago; and then we have basically a summary sheet with all of the properties that are similar in circumstance to our house.

Ms. Belknap said some of the surveys did not have the calculations so we asked Floyd Carrington to do so.

Mr. Belknap said if they go to the summary sheet, and you go 1/3 of the way down, the lot coverage and distance to the bulkhead is shown, and this is all from public records or Google Earth.

Mr. Badzik said you look like you are in the center of all of the houses, it is a medium of the neighborhood.

Ms. Belknap said yes.

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Mr. Piering said since you have been in the house you have decreased the lot coverage by removing the sheds.

Mr. Belknap said yes.

Mr. Piering asked how they can establish when it was built.

Ms. Belknap said we can only say at least 11 years ago based on the David Fox survey which is what exists today.

Mr. Belknap said on a practical matter, this type of Trexx was the original development and that came off of the market close to 15 years ago, but there's documentation stating it's at least 11 years old.

Mr. Pasca said the part that's cross hatched is pre-existing non-conforming?

Mr. Houlihan said yes.

Mr. Pasca said okay, so what is the coverage that you would consider pre-existing non-conforming.

Mr. Houlihan said it is everything but the wood deck that is not cross hatched.

Mr. Pasca asked the grandfathered coverage?

Ms. Belknap said what is added is 5' to the rear of the deck, it was CO'd at 20' and is 14.9' at present, the lot coverage was increased by 7%, it is now 36%.

Mr. Belknap said again what you are driving is that it was over the allowed.

Mr. Pasca said if you compare the percentages and the question is what the grandfathered number is, and I think it might be worth having the surveyor calculate that.

Mr. Houlihan said I think it's 710 square feet.

Mr. Pasca asked if it's the difference of 710 versus 1200; it's a 6.6% variance, I am just trying to hon down what is at issue. It sounds like a 27% variance, when it is a 6.6%.

Ms. Belknap said yes, that's correct.

Mr. Houlihan agreed with Mr. Pasca.

Mr. Badzik said he sees that.

Mr. Musnicki said that's a combination of removing sheds and adding deck.

Mr. Pasca said no the sheds did not count.

Mr. Musnicki said it's solely about the deck at this point?

Mr. Belknap said yes. It is 470 square feet.

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

Mr. Belknap said they did receive a call from their immediate neighbor at #80, and he asked what they were doing and they were supportive of it and they can remember the decks being there and have no problems with it. It is their North East neighbor.

Mr. Badzik said the summary sheet is very concise.

Ms. Belknap said they moved the sheds, and cleaned up the debris in the yard; what they really want to do is keep the deck as it exists. It is enjoyable and pleasant and important to the property and good to see the area of the yard not washing away.

Mr. Belknap said it will be difficult to remove the deck.

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

Padriac Smith, 96 Point Road, they have cleaned up the house it looks a lot better, they did take down the sheds and I don't know what other properties have variances but he'd like to see them.

Ms. Belknap said they were not addressing variances but they were showing the other properties who are similar to theirs.

Mr. Smith said he has no opposition to the application.

Motion was made by Mr. Piering to close the application of **Surf and Turf Equities, LLC., 86 Harbor Road, Westhampton Beach (905-17-2-10)** for a determination March 21, 2019; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.

10. Inlet View Property Management LLC., 160 Montauk Highway, (905-6-1-19)

Applicant requests variances to construct a new 4,075 square foot addition to the existing retail Beverage Barn. The applicant requests the following variances to accomplish the addition. The property is located in the B-2 Zoning District.

Proposed lot coverage of 21.93% when Chapter 197-17.1 allows a maximum of 20%

Proposed building setback of 30.5' from Pine street when Chapter 197-17 requires 50'.

Parking is proposed within the 30' Buffer Zone on Pine Street when Chapter 197-63. G.(11)(b) prohibits encroachments into the buffer.

The dumpster is located within 20' of the front lot line in violation of Chapter 96-13 and 197-63. G.(11)(b)

The proposed project provides 52 parking spaces when Chapter 197-19 and 197-21 require 54 spaces.

John J. Bennett, Esq., appeared on behalf of the application, together with Richard Searles, Architect. Mr. Piering said he is an adjoining neighbor at 5 Hazelwood Avenue, and he sees no reason to recuse himself and would like that on the record.

Mr. Bennett said he has no objection to that. He thanked the Board for allowing him to go first. There are a fair number of variances, and in light of what they are trying to do in reality it is not that aggressive. They are trying to clean up the site significantly and get the loading of the trucks and delivery all inside the building and he thinks that is the primarily goal. They are also trying to add to the property to accommodate an increase in the business. What they have done is moved the delivery loading and unloading inside of the building, and get all of the activity off of Pine Street where it is now in a problematic way. He thought it was very tolerant of the Village to allow it to go on for so long, but now they want to get it all done inside. They need some relief to be able to accomplish this goal. They need a 21.93% lot coverage variance, and that is 1,180 square feet of additional coverage. What is important to note, 1,600 square feet of the enlargement is for the delivery aspect and that's a benefit to the community reducing noise, traffic and esthetic improvement. They are expanding 30.5' to Pine Street and the existing building does not recognize the current required setback of 50' and it's not a terrible increase in the degree of non-conformity. They do require a few parking spaces, there are 54 required and they can fit 52 parking spaces on the site.

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Mr. Piering asked if they can get the other two on the site?

Mr. Bennett said they have tried; you need circulation and appropriate aisles for that and in moving the spaces the circulation and traffic became a problem so they cannot. They are hoping to obtain a few space variance. All of the deliveries are located within the existing building and the loading and unloading will not impact the parking. The site is narrow and established and built before the setback requirements were put in place. There is a small amount of relief needed for the dumpster, and it will be screened but it does not meet the transitional yard setback, it is only 13'. They have added a new landscape aisle on Pine Street to help clean it up, and that will also prohibit the use of Pine Street. There is an aerial photograph in terms of character of the neighborhood showing the parking to the East, which is the Fruit King and the parking is along Pine Street frontage, and I don't know if it's pre-existing non-conforming.

Mr. Houlihan said it is pre-existing.

Mr. Bennett said never the less it goes with the character of the neighborhood in terms of this site. I think it's a benefit because it cleans the site and recognized the need for more space in the building. It creates the circulation for delivery and I am not trying to be blasé about it, but taken as a whole I don't think it's too aggressive.

Mr. Piering said I know what the starting point was and this has really come a long way.

Mr. Bennett agreed with Mr. Piering. They did struggle with a few things, and they wanted a loading dock within the 30' setback and we saw that was problematic for the Village and in an effort to mitigate the application, we removed it. The site is tight but I think it's a healthy growth and one that will clean the neighborhood up.

Mr. Musnicki said the previous owners were unsuccessful to divide the lots?

Mr. Houlihan said they did not get a variance, they initially applied and it caused other variances, so they did not get approval.

Mr. Piering said SEQRA needs to be done on this.

Mr. Bennett said it's just over 4,000 square feet.

Mr. Pasca said the Planning Board has not done SEQRA either; we can defer to them if this Board wants to coordinate and let the Planning Board take the lead and it will go faster.

Mr. Bennett said okay, they are fine with that.

Mr. Pasca said it will be processed by the Planning Board a lot faster. This is not a final resolution, and if you are willing to defer to the Planning Board you should resolve to let them know they are okay with taking Lead Agency and coordinating the review.

Mr. Piering said he is okay with that. He asked Mr. Bennett if he was finished with the presentation, and asked if there were any comments or questions.

Stephen Frano, 10 Pine Street, he is in favor of the variances and said it will clean up Pine Street and he is greatly affected by it and with regard to the number of parking spaces he has never seen it full, that won't make a difference. The dumpsters will be screened and that's the biggest thing is to screen Pine Street and they would like everything moved off of Pine Street. Every day its out there and sometimes the street is blocked by the trucks and you can't get through this will help tremendously and will be a big help and clean up the neighborhood tremendously.

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

Motion was made by Mr. Piering to ask the Planning Board to consent to Lead Agency for purposes of SEQRA; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

Motion was made by Mr. Piering to holdover the application of **Inlet View Property Management, LLC., 160 Montauk Highway, Westhampton Beach (905-6-1-19)** to March 21, 2019; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 1 absent.

11 Westhampton Bath and Tennis Owners Corp., 231 Dune Road, (905-19-2-12)

Applicant requests a Special Permit to alter and renovate the Bar, Bridal Suite and to install ADA improvements at the interior of the building. The Special Permit is required because the Bath and Tennis is a non-conforming use. The Special Permit is required as provided for under Chapter 197-29. C. of the Village Code. The property is located in the R-3 Zoning District and the Flood Plain.

James N. Hulme, Esq., appeared on behalf of the application. They are seeking to make minor changes to the inside of the building to the bridal suite and bar area.

Matt Wittmer, Architect appeared on behalf of the application. The existing ballroom is on the Ocean and the area of the renovations is the bar area as well as the bridal suite.

Mr. Hulme said they are existing now as the bar area and bridal suite so they are modifying existing features, they are not new. They cannot increase the degree of non-conformity, height or increase the floor area.

Mr. Piering said that's correct. They are here because it's a non-conforming use.

Mr. Hulme said he has a request, perhaps there are brides booking for the Spring and Summer and would like to get started and they would like to submit a Building Permit.

Mr. Pasca said you have to go through the 29-C criteria. He asked the Board if they are comfortable with that?

Mr. Piering said yes, he is.

Mr. Pasca said you can do a resolution approving it subject to a written determination at the March 21, 2019 meeting.

Mr. Hulme said that will work for him.

Mr. Houlihan said it is fair to say that none of the expansions in 29-C that would disqualify this or increase the non-conformity and some are being done for ADA accessibility and nothing more than that.

Mr. Piering said he is okay with Mr. Hulme's request.

Mr. Pasca said the motion is **to approve the Special Permit for Westhampton Bath & Tennis Owners Corp., 231 Dune Road, Westhampton Beach (905-19-2-12)** with an understanding that the findings will be made at the March 21, 2019 meeting; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 1 absent.

12. Nicholas Messina, 100 Griffing Avenue (905-7-4-16) Applicant requests a variance to construct a swimming pool, deck and hot tub in the front yard when Chapter 197-35. (A) of the Village code allows accessory structures in the rear yard only. The property is located in the R-1 Zoning District.

James N. Hulme, Esq., appeared on behalf of the application, together with Nicholas A. Messina, Contractor and applicant. He is seeking to remove the existing dwelling and construct a new home. The property is a corner lot with three front yards as a unique challenge, and the definition that made a private road a road had a width dimension to it and this road is not 50' as per the prior code and it's more than 30' and the house and pool were built without variances because the rule did not apply then. We have provided a modified survey which is last dated

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February 11, 2019. The house was reduced by 800 square feet and the relief was not changed. There are one or two other sideyard pools in the area, but the real driver is the third road.

Mr. Piering said you have three front yards and the house today is at an angle.

Mr. Hulme said this is unique, it happens once in a while. There is a conforming location for the pool which would be to rotate everything, but the as of right location is more detrimental to the neighbor to the South than the proposed to the East. If we rotate it our pool would be in the neighbors sideyard. If you approve it where it's proposed the setback and the road and house across the street will be impacted.

Mr. Piering asked how far it is off the private road?

Mr. Hulme said it is more than 50'.

Mr. Piering asked if you want to make Griffing Avenue the front yard.

Mr. Hulme said yes. The applicant is allowed to pick the front yard.

Mr. Pasca asked if that road only serves one parcel?

Mr. Hulme said yes.

Mr. Houlihan said there are a couple of houses down there.

Mr. Pasca asked if they use it?

Mr. Houlihan said yes. It's the only way to get down that road.

Mr. Hulme said it's the only way to get to the South properties on the water.

Mr. Houlihan said there was a permit a few years ago and the only way I could access the lot is by that private road.

Mr. Hulme said he has nothing more to add.

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

Greg and Corrine Minasian, 96 Griffing Avenue, said he did not receive the new survey but the pool stayed the same. They reduced the house by 800 square feet. Their house is directly South of the applicant's property; he has no objection to the application the house has changed but is the pool and patio the same as what was advertised?

Mr. Hulme said yes.

Mr. Minasian said he has no objection to the placement of the pool and patio, but he is concerned about the trees if they are removing any, he would like to see a wooded buffer remain on the South and supplemented with Evergreens to shield the pool; he'd like to see a planting plan if possible and when they built their pool they maintained a 30' buffer and they'd ask for a similar buffer and ask where the pool equipment is going.

Mr. Messina said they can put it on the North.

Mr. Minasian asked if they are putting in propane tanks.

Mr. Messina said they have a buried tank and they will put it on the North.

Mr. Minasian said he just wants to see a buffer.

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Mr. Messina said that's fine.

Motion was made by Mr. Piering to close the application of **Nicholas Messina, 100 Griffing Avenue, Westhampton Beach (905-7-4-16)** for a determination; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

13. David McBride, 45 White Oak Lane (905-9-1-3) Applicant requests a variance to demolish an existing dwelling and construct a new dwelling on the subject property. Applicant requests variances for a minimum side yard on the South side of 29' and a total side yard of 64.8' when Chapter 197-6. D. of the Village Code requires 30' and 70' respectively. The property is located in the R-1 Zoning District and the Flood Zone.

James N. Hulme, Esq., appeared on behalf of the application. They did not change the house, but they moved it, and the survey is dated January 28, 2019 and as read in the notice originally constituted there were two variances required, we noticed we had some room and if we moved the house 1' we eliminated the single yard setback so they are only seeking a total sideyard setback of 64.8'. This is their third time before this Board, in 2008 they applied for variances and a copy of that variance that was granted has been submitted. This part of the Village used to be R-2, half-acre zoned and it was up zoned to full acres and there were lots that met the half acre requirements and there are wetlands that force the house forward the lot is narrow.

Mr. Piering asked how narrow the lot is.

Mr. Hulme said it is approximately 120 feet. The client was not ready to live out here full time, and the cost was too expensive. In 2017 he came back with a small one-story garage addition to the one-story house and that required five variances, and because of the existence of the structure, that variance was granted as well. Subsequent to the FEMA issues that would have required him to lift the house and it was constructed on a slab and it did not make sense to just get a garage. He went back to the drawing board and designed a new house which is no longer requires lot coverage or rear yard or front yard relief and no longer requiring any single sideyard relief but only the one total sideyard variance relief that was granted to a much greater extent to this property in the past.

Mr. Musnicki said the argument for not meeting the total sideyard lot coverage is the lot width?

Mr. Hulme said yes, to build a house in this area would be difficult without that relief and you are imposing acre zoning restrictions on a half-acre parcel.

Mr. Piering said there are wetlands that would restrict it from being built deeper.

Mr. McBride said yes. They had a non-jurisdiction letter and they have not received any denial for the new plans, he has to replant the area and he has to put a drywell system in to take all of the water from the impervious surfaces in to the drywell so they do not hit the stream any faster than if there was no house there.

Mr. Hulme said a condition of the original approval was to install a drain in the Village road which was done, even though he did not build any house or addition.

Mr. McBride said yes, he did put the drain in.

Mr. Pasca asked if there is a DEC approval for this?

Mr. McBride said no approval, but he has a letter saying it is okay subject to certain things. He has approval from his previous applications, but he submitted everything to the DEC two months ago but has no approval as of yet, but he would expect one in another month or so.

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

Motion was made by Mr. Piering to close the application of **David McBride, 45 White Oak Lane, Westhampton Beach (905-9-1-3)** for a determination; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

14. Denise Zaccheo, 19 Point Road (905-17-3-5) Applicant requests a variance to maintain a deck built without permits 11.4' from the North property line when Chapter 197-35. C. of the Village Code requires 20'. The property is located in the R-5 Zoning District and the Flood Zone.

Rob Hermann, EN Consultants appeared on behalf of the application. They are seeking 8.6' of sideyard setback relief for a 10' x 27' deck extension. He is not here to justify why the owner did so with no permit, but from his conversations she was guided by bad advice. He is here with the hope to convince the Board to grant the relief had it been requested prior to construction. The hardships leading to the need relate to the small lot size and narrow lot width typical of this district. Most interesting and unusual to him about this variance, because of the manner in which the district setbacks were created in 1983 had a roofed over deck been constructed, or an enclosed porch addition or fully habitable dwelling addition in this footprint she would not need a variance. The reason for that, any of those types of addition that would be considered part of the dwelling are permitted within 10' of the property line and the reason for this from his reading of the Code is because when Local Law 12-1983 the Village realized it was impossible to meet the setbacks in this district. The Law did not provide dimensional relief for accessory structures in this District which are required pursuant to 197-35.C. which requires 20' from any lot line in the District. This is double that required of a primary dwelling. The accessory requires 20' and the principal does not. Treating it as an accessory setback we find ourselves here. The open air deck is less visually intrusive and should not be required to meet a twice greater setback. The majority of the properties facing Pond Point pond along the Westerly shoreline have attached rear yard decks most of which are similarly non-conforming. I spent time in the Village office and based on my review of the surveys of all of the property's that extend up the Westerly shoreline, 9 of the 13 located to the North are improved with attached decks situated closer than 20'. Many are non-conforming and the case earlier gave you detailed information of the non-conforming area. And I did find a lot of those are also constructed pursuant to Building Permits since 1983 including setbacks of 14' and 10' and those were issued by the Building Department at those times without relief from the Board, they aren't granted variances but seeks of the nature of the area. The owner most directly affected to the North have provided letters of no objection to the deck being maintained and it does not adversely impact their use and enjoyment. Its also worth noting, perhaps in contrast to the earlier case, this property and its structure are otherwise compliant with the R5 Zoning requirements. With respect to lot coverage, the building area lot coverage is 18.5% which is less than the allowable 20% and after the removal of the fire pit the total lot coverage is less than the allowable 40%. With respect to the environmental impacts before we could file an application we had to go to the DEC and they ultimately issued a warning letter which legalizes the deck with a condition that it be maintained by the Village, and it required the vegetation at the rear be permanently maintained and undisturbed. They did receive an email from the owner to the South, Caggiano which seemed they indicated that they just learned of the variance request today, they are in Florida and they called EN Consultants and he can say they have known about this variance pursuit we asked them to offer support and at that time, they indicated they would support it but they wanted a revised letter to include Ms. Caggiano and we did that but we did not receive anything, and now they are objecting to the variance. The only thing I say is the deck does not require a lot coverage variance, or a variance as it relates to that neighbor's property it only needs sideyard setback relief and that neighbor is in support of the application.

Mr. Wittschen said they did not state their objection.

Mr. Hermann said if they cut off the 8.6' of the deck on the North, the rest could be maintained without the Board's consent. It's just the Northerly section of the deck we're asking you to allow to be left.

Mr. Musnicki said the neighbor with the objection is to the South?

Mr. Hermann said yes.

Mr. Musnicki said when you mention existing building area lot coverage, house 742 deck, 616 square feet is existing?

Mr. Hermann said yes. There is nothing proposed; the survey is a little confusing and the only reason it's proposed because the fire pit is not conforming rather than creating a variance for that we want to remove it. We are proposing to reduce the lot coverage to 38.3% through the removal of the fire pit and that has nothing to do with the deck but that's why it's existing and proposed for lot coverage and not for building area; yes it includes the deck they are seeking relief for. It also includes the long section of the deck too.

Mr. Musnicki said your argument is based on she received bad advice from a contractor.

Mr. Hermann said yes, the contractor and the homeowner were a combination of responsibility. I think it's natural for a homeowner to hear what they want to hear, but the contractor should have obtained a permit or built the deck with a permit. Had I come to this Board before it was built the application and relief is reasonable to apply for a grant

Mr. Musnicki asked what the financial burden to take it apart would be?

Mr. Hermann said he is not sure, he thought she obtained that cost estimate, and he apologizes he does not know it, but it was part of her decision to apply for the variance. We did not realize they needed a variance once they got approval from the DEC. They got a letter from Mr. Houlihan stating it was an accessory structure and we argued that, but that is the way the Code is and that is how we got to this Board. Almost every property has one of these decks.

Mr. Piering asked if there were any other questions, he appreciates Mr. Hermann's approach with this Board.

Padriac Smith, said he thinks Mr. Hermann did a really good job. He is aware of the situation, he knew it was built a few years ago with no permit and there was a stop work order issued.

Mr. Piering agreed with Mr. Smith.

Mr. Hermann said they have been at this for a while, they could not even approach the Village to legalize this without an approval from the DEC and that took some time to obtain.

Mr. Piering said okay. The minor dilemma this board has is the letter from the neighbor, we don't know why she is objecting. We are going to hear what her opposition is, or give her the opportunity to argue it.

Mr. Hermann said okay.

Motion was made by Mr. Piering to close the application of **Denise Zaccheo, 19 Point Road, Westhampton Beach (905-17-3-5)** for a determination; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.

REQUEST FOR EXTENSION

15. Bernstein, 37 Exchange Place (905-15-5-29.1) Applicant requests an extension of their August 16, 2018 Board of Zoning Appeals approval.

No one appeared on behalf of the application. Heather A. Wright, Esq., submitted an extension request in writing.

Motion was made by Mr. Piering to grant the extension request of **Bernstein, 37 Exchange Place, Westhampton Beach, (905-15-5-29.1)** for six (6) months; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

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Motion was made by Mr. Piering to adjourn the public hearing at **7:20 p.m.**; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 1 absent.