

March 21, 2019

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, March 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

Frank DelGiudice

Anthony C. Pasca, Esq., Village Attorney

Paul Houlihan, Building & Zoning Administrator

Maeghan Mackie, Board Secretary / Building Permits Examiner

ABSENT: John Wittschen

Mr. Piering said before they get started tonight, anyone who is not aware of it, it is a bittersweet night for this Board; this is their last meeting that they will have the Honor of having our Building Inspector with us, he is moving in to retirement mode. He would like to acknowledge him and they have been doing this for 216 meetings and its been a long time together, and he'd like to say how much this Board appreciates everything he's done with them, for them, his knowledge and his friendship. He wants Mr. Houlihan to know he will be sorely missed.

Mr. Houlihan thanked Mr. Piering and the Members of the Board.

Motion was made by Mr. Piering to adopt the minutes of the **February 21, 2019** meeting; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

DECISIONS:

1. 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%.

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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.

2. 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. Mr. Piering stated there was a determination, and the reading was waived.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

-----X

In the Matter of Application of

Andrew Armando Lago
Mary Connolly Lago

DETERMINATION

Address: 36 Harbor Road
SCTM #: 905-17-3-34

-----X

I. REQUEST FOR RELIEF

The applicants Andrew Armando Lago and Mary Connolly Lago are the owners of a parcel of real property located at 36 Harbor Road. The property is located wholly within the R-5 Zoning District. According to the survey of the property drawn by Raynor & Mareks, Surveyors, P.C., dated August 5, 1997 the parcel is improved with a one-story frame house, deck, covered steps and slate walk.

Section 197-27.D. of the Village Code provides that, in the R-5 Zoning District, the placement of fill to raise the existing grade within 10 feet of any property line by more than six inches shall be prohibited.

The applicant proposes to demolish all of the structures and construct a new two-story frame house on piles, with deck patio and walk at grade, and septic system. Although the home, deck and patio have been designed in conformance with the zoning code, the sanitary system approved by the health department requires fill to be placed within 10 feet of the property line. Originally, the applicant sought to place a retaining wall and fill one foot from the northern and front yard property lines, but the application was modified to increase the setback for the

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retaining wall and fill to three feet from the northern property line, while still maintaining the one-foot setback from the western property line at Harbor Road.

II. SEQRA

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

Since this is a request for a variance for accessory residential structures, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(11), (12) and (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 December 20, 2018. The applicant's agent, Colin Bester, R2Q Construction, appeared and presented the application.

Richard T. Haefeli, Esq., appeared at the December 20, 2018 public hearing on behalf of the adjacent property owners at 44 Harbor Road in opposition to the original application. On February 22, 2019, the Board received correspondence from Richard T. Haefeli, Esq., indicating his client had no objection to the proposed retaining wall as shown on the modified Survey drawn by David Fox, dated February 19, 2019.

The hearing was closed at the February 21, 2019, meeting for a determination.

IV. GOVERNING LAW

The Zoning Board is empowered to grant area variances pursuant to Section 7-712-b of the N.Y. Village Law and Section 197-75 of the Village Code.

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

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

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 demonstrated that the proposed variance will not have an adverse impact on the character of the neighborhood. The only variance requested relates to the fill and retaining wall necessitated by the installation of an upgraded sanitary system, compliant with modern County Sanitary Code requirements. The replacement of a currently substandard sanitary system with an SCDHS-compliant system provides an environmental benefit, though it results in the need for the fill variance.
2. *Alternatives:* The applicant demonstrated that there is no alternative to achieve the benefit sought without a variance.
3. *Substantiality:* The variance is substantial.
4. *Physical/Environmental Impacts:* No adverse physical or environmental impacts have been identified. To the contrary, the upgraded sanitary system will result in an environmental improvement to the property.
5. *Self-Created Difficulty:* The difficulty is self-created.
6. *Benefit vs. Detriment:* Under the unique circumstances of this property, the benefit to the applicant outweighs the detriment to the community.
7. *Minimum Variance:* The variance is the minimum necessary to achieve the benefit sought.

The Board therefore grants the requested variance to allow the applicant to construct a new two-story frame house on piles, with decks, patio and walk at grade, and retaining wall and septic system as shown on the survey drawn by Fox Land Surveying, David H. Fox L.S. P.C., dated November 18, 2017, and last revised on February 19, 2019, all 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), increase, alteration or modification to the structure or

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any other structure located on the property that has non-conforming dimensions, without further approval of the Board.

2. No outdoor accessory structures or equipment (including but not limited to air conditioning condensers, HVAC equipment, above-ground utilities, generators, pool equipment, solar panels, garbage/storage bins, etc.) may be located within a required front, side, or rear yard, except as depicted on the approved plans, without further approval of the Board
3. The variances granted herein shall terminate unless a building permit is issued within 180 days from the date hereof and construction completed according to said building permit.
4. There can be no exterior work authorized by this decision performed on weekends from May 1 to September 30 and on weekdays from July 1 to September 10.

Dated: March 21, 2019

Village of Westhampton Beach
Zoning Board of Appeals

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

3. 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.

Heather A. Wright, Esq., appeared on behalf of the application. Mr. Piering stated there was a determination, and the reading was waived.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

-----X

In the Matter of Application of

285 Oneck Lane, LLC.

DETERMINATION

Address: 285 Oneck Lane

SCTM #: 905-6-2-35

-----X

VII. REQUEST FOR RELIEF

The applicant, 285 Oneck Lane, LLC., is the owner of a parcel of real property located at 285 Oneck Lane. The property is located wholly within the R-1 Zoning District. According to

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the survey prepared by Fox Land Surveying, David H. Fox, Licensed Land Surveyor, dated September 29, 2018, and last revised on January 31, 2019 the parcel is improved with a two-story stucco house, pool, covered patio, stucco storage area, stone patio, spa, cabana, slate patio, concrete wall, flag pole, picket fence, frame cottage, one and one-story frame garage / apartment, dog pen, tennis court, two frame sheds, and stucco building.

Section 197-6.B. of the Village Code provides that, in the R-1 District, the minimum lot area shall be 40,000 square feet, and the lot width shall not be less than 150 feet.

According to the applicant's proposed "Subdivision Map 'A', '285 Oneck LLC.'", prepared by Fox Land Surveying, David H. Fox, Licensed Land Surveyor, dated October 15, 2018, and last revised on November 8, 2018, the applicant is proposing to subdivide its parcel of land into four (4) individual lots, with two of the lots (lot 3 and lot 4) having access to Fiske Avenue by two (2) flag strips allowing the parcels to share a common driveway at Fiske Avenue. The two flag strips are proposed to be 12.57 feet wide each. The applicant therefore requires two variances from the lot width minimum of 150 feet to allow each of lots 3 and 4 to have only 12.57 feet of lot width at the Fiske Avenue lot line.

VIII. SEQRA

The applicant submitted an Environmental Assessment Form (EAF) Part 1 in connection with the application. The Board classifies the application an Unlisted action under the State Environmental Quality Review Act (SEQRA). The Board has completed an EAF Part 2 and 3 and finds no potentially significant environmental impacts as a result of the application. The Board therefore adopts a Negative Declaration under SEQRA and authorizes the Chairman to sign the EAF Part 3 (determination of non-significance) as prepared.

IX. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on February 21, 2019. The applicants' attorney Kittric M. Motz, Esq., appeared on behalf of the application. No other persons appeared in support or opposition to the application, and the Board did not receive any written submissions from any neighbors in support or opposition to the application. The hearing was closed for a determination at the February 21, 2019 meeting.

The Board of Zoning Appeals received an Advisory Report from the Planning Board dated February 19, 2019.

IV. GOVERNING LAW

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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.

X. FINDINGS AND CONCLUSIONS

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

8. *Character of the Neighborhood:*

Although the Village does not have any as-of-right provisions allowing the creation of flag lots, and two of the four proposed lots will be significantly nonconforming as to lot width to the extent of the flag strips accessing Fiske Avenue, the Zoning Board has in the past granted variances to allow reduced lot width flag lots where doing so would not result in higher density developments that do not meet the minimum lot area requirements, and there are no other significant planning or zoning reasons weighing against the variances. Here, all four lots exceed the minimum lot area requirement of 40,000 square feet, even when excluding the area of the flag strips. Proposed lot 1 and lot 2 would have full lot widths at the Fiske Avenue lot line, and proposed lot 2 and lot 3 (one of the flag lots) would also have full lot widths at the Oneck Lane lot line. The applicant has proposed, as mitigation, to eliminate the Oneck Lane curb cut for proposed Lot 3 and limit the access of the flag lots to a single common driveway on Fiske Avenue. Since the flag strips would run down the center of the development, between proposed lots 1 and 2, there are no adjacent neighbors who would be impacted by the common driveway.

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

3. *Substantiality:* The variances are mathematically substantial, in that two of the four proposed lots will have nonconforming lot widths at the Fiske Avenue lot line of 12.57 feet where 150 feet is required. The Board notes that this lot width nonconformity is mitigated somewhat by the facts that (a) the nonconformity only impacts the flag pole (common driveway) portions of the proposed lots 1 and 2, and the remaining buildable flag area of the lots will meet and exceed the 150 foot lot width requirement, and (b) the nonconformity only impacts one side of proposed lot 3, since the other side (adjacent to Oneck Lane) is conforming as to lot width.

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 Board finds that the benefit to the applicant outweighs the detriment to the community, subject to the conditions imposed herein.

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

The Zoning Board therefore grants the requested area variances to allow the subdivision of a parcel of land in to four (4) lots, as depicted on the survey of the property prepared by Fox Land Surveying, David H. Fox, Licensed Land Surveyor, dated October 15, 2018, and last revised on November 8, 2018, subject to the following conditions:

XI. CONDITIONS

1. The variances granted herein are limited to the relief set forth in this decision, and pertain only to the plans approved in this decision, and shall not be construed as creating conforming dimensions. There shall be no further extension (horizontally or vertically), increase, alteration or modification to the proposed lots to the extent they have non-conforming dimensions, without further approval of the Board.

2. The variances granted herein shall terminate unless a subdivision map has been filed within 180 days from the date hereof.

3. The variances are conditioned on the applicant completing the subdivision review process and ensuring, in the final plans, that the common driveway is of such width and design as to

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enable complete emergency and fire apparatus access. The details of the common driveway are to be determined in the discretion of the Planning Board, and, if necessary to allow sufficient area for emergency access and screening, the common driveway may be located on any portion of lots 1, 2, 3 and 4 as the Planning Board deems appropriate.

4. There can be no exterior work performed on any of the property, including any of the proposed subdivision lots, on weekends from May 1 to September 30 and on weekdays from July 1 to September 10.

Dated: March 21, 2019

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **285 Oneck, LLC., 285 Oneck Lane (905-6-2-35)** as written; seconded by Mr. DelGiudice and unanimously carried 4 ayes, 0 nays, 1 absent.

4. 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.

Mr. and Mrs. Belknap appeared on behalf of the application. Mr. Piering stated there was a determination and the reading was waived.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

-----X

In the Matter of Application of

Surf and Turf Equities, LLC.

DETERMINATION

Address: 86 Harbor Road
SCTM #: 905-17-2-10

-----X

XII. REQUEST FOR RELIEF

The applicant Surf and Turf Equities, LLC is the owner of a parcel of real property located at 86 Harbor Road. The property is located wholly within the R-5 Zoning District. According to the survey of the property drawn by Raynor & Marcks & Carrington, Surveying, dated September 19, 2018, and updated on January 3, 2019 the parcel is improved by a one-story frame house and decks and outdoor shower.

Section 197-10.C(subsections 1 and 3) of the Village Code provides that, in the R-5

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Zoning District, the building area lot coverage shall not exceed 20% of the lot area and the total of building, off-street parking and impervious surface areas shall not exceed 40% of the lot area. Section 197-10.D. of the Village Code provides that, in the R-5 Zoning District, the rear yard shall not be less than 25 feet measured from the rear line of the main building to the rear lot line of the lot or to the bulkhead, the reach of the mean high tide or the edge of the tidal wetland, whichever is the least distant.

The applicant proposes to maintain a deck that was expanded, without permits, to where it is located 14.9' from the rear yard, with resulting coverages of 36% (building coverage) and 47.6% (lot coverage). Although the property benefits from some grandfathering (i.e., a 20-foot rear setback, 29% building coverage and 40.6% total coverage), the increases require variances, which the applicant now requests.

XIII. SEQRA

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

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

XIV. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on February 21, 2019. The applicant's members and representatives, Martha Belknap and Dorian Belknap, 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.

XV. 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

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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.

XVI. FINDINGS AND CONCLUSIONS

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

9. *Character of the Neighborhood:* The applicant has demonstrated that the granting of the variances herein will not result in an adverse impact on the character of the neighborhood. The Pond Point neighborhood consists of many small lots improved with relatively small homes. While the Board does not look favorably upon applications where structures were expanded without a permit, the applicant in this case acknowledged that it purchased the property knowing full well of the illegality. The applicant addressed some other nonconformities by removing illegal structures, and it only sought to maintain the deck in its present configuration because of the benefits it provides.

10. *Alternatives:* The applicant could reduce the size of the deck to its grandfathered configuration to eliminate the need for variances, but there is no alternative to achieve the full benefit sought (the larger deck) without a variance.

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

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

13. *Benefit vs. Detriment:* Under the unique circumstances of this property, the benefit to the applicant outweighs the detriment to the community.

14. *Minimum Variance:* The variance is the minimum necessary to achieve the benefit sought.

The Board therefore grants the requested variances to allow the applicant to maintain a deck built without permits as shown on the survey drawn by Raynor & Marcks & Carrington,

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Surveying, dated September 19, 2018, and updated on January 3, 2019, all subject to the following conditions to minimize any adverse impacts from the variance:

XVII. CONDITIONS

5. The variances granted herein are limited to the relief set forth in this decision, and pertain only to the plans approved in this decision, and shall not be construed as creating conforming dimensions. There shall be no further extension (horizontally or vertically), increase, alteration or modification to the structure or any other structure located on the property that has non-conforming dimensions, without further approval of the Board.
6. 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
7. 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.
8. There can be no exterior work authorized by this decision performed on weekends from May 1 to September 30 and on weekdays from July 1 to September 10.

Dated: March 21, 2019

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Surf and Turf Equities II LLC., 86 Harbor Road, (905-17-2-10)** as written; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

5. 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. Mr. Piering stated there was a determination, and the reading was waived.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

-----X

In the Matter of Application of

David McBride

DETERMINATION

Address: 45 White Oak Lane

SCTM #: 905-9-1-3

-----X

XVIII. REQUEST FOR RELIEF

The applicant, David McBride, is the owner of a parcel of real property located at 45 White Oak Lane. The property is located wholly within the R-1 Zoning District. According to the applicant’s survey drawn by Fox Land Surveying, David H. Fox, L.S., P.C. dated February 9, 2001, and last updated on January 18, 2019, the parcel is improved with a one-story frame house and garage and swimming pool.

Section 197-6.D. of the Village Code provides that, in the R-1 Zoning District, there shall be two side yards totaling not less than 70 feet, neither of which shall be less than 30 feet.

In 2008, the applicant sought and obtained variances to remove the existing improvements and construct a new home, but the applicant chose not to act upon the variances or demolish the existing home. In 2017, the applicant sought and obtained variances to construct a second story addition, garage and porches, but the applicant again chose not to act upon the variances or construct the second story addition, garage and porches.

At this time, the applicant seeks to demolish an existing dwelling, and construct a new dwelling on the subject property. Although the applicant originally sought both single side-yard and total side-yard variances, the applicant modified the plans to eliminate the single-side yard variance. As depicted on the survey, the applicant now only seeks a 5.2’ foot variance from the 70-foot total side yard requirement to allow a total side yard of 64.8 feet.

XIX. SEQRA

The applicant submitted an Environmental Assessment Form Part I pursuant to the State Environmental Quality Review Act (SEQRA). The application, which seeks only setback variances to allow construction of a single family residence and accessory structures, is classified as a Type II action under 6 NYCRR §617.5(c)(11)(12)(16) and (17). No further SEQRA review is required.

XX. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on February 21, 2019. The applicants’ attorney James N. Hulme, Esq., appeared and presented the application. No other persons appeared in support or opposition to the application, and the Board did not receive any

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written submissions from any neighbors in support or opposition to the application. The hearing was closed at the February 21, 2019 meeting for a determination.

XXI. 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.

XXII. FINDINGS AND CONCLUSIONS

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

15. *Character of the Neighborhood:* The applicant has demonstrated that the one variance for total side yard relieve will not have an adverse impact on the character of the neighborhood. The applicant's prior proposals, both of which were approved, would have required more variance relief. The current application shows more careful consideration of the zoning constraints, and thus even less potential for impacts.

16. *Alternatives:* While the applicant could design a smaller home that conforms fully to the zoning code, the applicant has demonstrated that it could not achieve the benefit sought (a home of this size, with garage) without the need for a total side yard variance.

17. *Substantiality:* The single variance is not considered substantial, as it requests only a 5.2-foot (7%) variance from the total side yard requirement of 70 feet.

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

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

20. *Benefit vs. Detriment*: On balance, the Board finds that the benefit to the applicant outweighs the detriment to the community.

21. *Minimum Variance*: The variances requested are the minimum necessary to achieve the benefit sought.

The Zoning Board therefore grants the requested area variances from 197-6.D. to allow the applicant to demolish an existing dwelling and construct a new dwelling as depicted on the survey drawn by Fox Land Surveying, David H. Fox, L.S., P.C., dated February 9, 2001 and last updated on January 18, 2019, subject to the following conditions to minimize any adverse impacts from the variance:

XXIII. CONDITIONS

9. The variances granted herein are limited to the relief set forth in this decision, and pertain only to the plans approved in this decision, and shall not be construed as creating conforming dimensions. There shall be no further extension (horizontally or vertically), increase, alteration or modification to the structure or any other structure located on the property that has non-conforming dimensions, without further approval of the Board.
10. 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
11. 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.
12. There can be no exterior work authorized by this decision performed on weekends from May 1 to September 30 and on weekdays from July 1 to September 10.

Dated: March 21, 2019

Village of Westhampton Beach
Zoning Board of Appeals

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Motion was made by Mr. Piering to adopt the determination of **David McBride, 45 White Oak Lane (905-9-1-3)** as written; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.

6. 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. Mr. Piering stated there was a determination and the reading was waived.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

-----X

In the Matter of Application of

DETERMINATION

Azam Mistry
Halley Mistry

Address: 100 Griffing Avenue
SCTM #: 905-7-4-16

-----X

XXIV. REQUEST FOR RELIEF

The applicants, Azam Mistry and Halley Mistry, are the owners of a parcel of real property located at 100 Griffing Avenue. The property is located wholly within the R-1 Zoning District. According to the existing conditions survey of the property drawn by Nathan Taft Corwin, III, Land Surveyor, dated December 18, 2018 the parcel is improved by a one-story frame house, wood deck, hot tub, and inground swimming pool.

Section 197-35.A of the Village Code provides that, in the R-1 Zoning District the accessory buildings, structures, tennis courts and swimming pools shall be located only in the rear yard. The applicant seeks to demolish all of the existing structures and construct a new two-story house with a garage, new inground swimming pool, pool house, and patio, as depicted on the proposed survey plans drawn by Nathan Taft Corwin, III, Land Surveyor, dated December 18, 2018 and last revised February 11, 2019. Because the property is surrounded on three sides by roads, including a private road on the eastern side, the proposed swimming pool, deck and hot tub, all of which would be located to the east of the house, are proposed to be located in a front yard, not a rear yard. The structures all meet individual setback requirements but nonetheless require a variance from Section 197-35.A.

XXV. SEQRA

March 21, 2019

The applicant submitted an Environmental Assessment Form Part I pursuant to the State Environmental Quality Review Act (SEQRA). Since this is a request for an area variance for accessory residential structures, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(12). Accordingly, the application is not subject to review under SEQRA.

XXVI. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on February 21, 2019. The applicants, attorney James H. Hulme, Esq., and contractor Nicholas Messina appeared on behalf of the application. Gregory Minasian and Corrine Minasian, 96 Griffing Avenue appeared in opposition to the application, and they requested the applicant be required to provide a buffer between their property and the accessory structures being proposed. The Board did not receive any written submissions from any neighbors in support or opposition to the application. The hearing was closed at the February 21, 2019 meeting for a determination.

XXVII. 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.

XXVIII. FINDINGS AND CONCLUSIONS

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

22. *Character of the Neighborhood:* The applicant demonstrated that the proposed variance will not have an adverse effect on the character of the neighborhood. The existing

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conditions of the property include a similar nonconformity, in that accessory structures are presently located in the same eastern front yard as proposed, albeit rotated somewhat counterclockwise. The proposed plan actually results in a more conforming plan because the proposed pool will be setback farther from the eastern lot line (at a conforming 50 feet) than the existing pool (which is setback at a nonconforming 38.1 feet).

23. *Alternatives:* Due to the unusual circumstance of the parcel having three front yards, there is no alternative that would achieve the benefits sought without the requested variance.

24. *Substantiality:* The variance is substantial.

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

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

27. *Benefit vs. Detriment:* Under the unique circumstances of this property, the benefit to the applicant outweighs the detriment to the community.

28. *Minimum Variance:* The variance is the minimum necessary to achieve the benefit sought.

The Zoning Board therefore grants the requested area variance from Section 197-35.A. to allow the applicant a swimming pool, deck and hot tub in the front yard, as depicted on the survey drawn by Nathan Taft Corwin III, Land Surveyor dated December 18, 2018, last revised February 11, 2019, and date stamped received by the Village on February 12, 2019, subject to the following conditions to minimize any adverse impacts from the variance:

XXIX. CONDITIONS

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

14. 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

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required front, side, or rear yard, except as depicted on the approved plans,
without further approval of the Board

15. 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.

16. There can be no exterior work authorized by this decision performed on weekends
from May 1 to September 30 and on weekdays from July 1 to September 10.

Dated: March 21, 2019

Village of Westhampton Beach
Zoning Board of Appeals

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

7. 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.

Robert Hermann, EN-Consultants appeared on behalf of the application. Mr. Piering stated there was a determination, and the reading was waived.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

-----X

In the Matter of Application of

Denise Zaccheo

DETERMINATION

Address: 19 Point Road

SCTM #: 905-17-3-5

-----X

XXX. REQUEST FOR RELIEF

The applicant Denise Zaccheo are the owners of a parcel of real property located at 19 Point Road. The property is located wholly within the R-5 Zoning District. According to the survey of the property drawn by Fox Land Surveying, dated September 30, 2014, and updated on September 14, 2018, the parcel is improved with a two-story frame house, second story deck and wood deck.

Section 197-35.C. of the Village Code provides that, in the R-5 Zoning District, accessory buildings, structures, tennis courts and swimming pools cannot be located closer than 20 feet to any lot or boundary line in all Zoning Districts except in R-4 where the minimum distance shall

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be 15 feet, and on lots lying on the South side of Dune Road in the R-3 Zoning District, the distance shall be 75 feet from the Crest of the Dune and 20 feet from a side or front boundary line.

The applicant proposes to maintain a deck built without permits 11.4' from the North property line.

XXXI. SEQRA

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

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

XXXII. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on February 21, 2019. The applicant's agent, Robert E. Hermann, En-Consultants, appeared and presented the application.

Susan Caggiano, 15 Point Road, submitted a request to provide written opposition email dated February 21, 2019 the original application. The Board kept the application over for 10 days for Ms. Caggiano to provide written comment. The hearing was closed for a determination.

XXXIII. 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.

XXXIV. FINDINGS AND CONCLUSIONS

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

- 29. *Character of the Neighborhood:*
- 30. *Alternatives:*
- 31. *Substantiality:* The variance is substantial.
- 32. *Physical/Environmental Impacts:*
- 33. *Self-Created Difficulty:* The difficulty is self-created.
- 34. *Benefit vs. Detriment:*
- 35. *Minimum Variance:*

The Board therefore grants the requested variance to allow the applicant a deck built without permits 11.4' from the North property line, as shown on the survey drawn by Fox Land Surveying, dated September 30, 2014, and updated on September 14, 2018, all subject to the following conditions to minimize any adverse impacts from the variance:

XXXV. CONDITIONS

- 17. The variances granted herein are limited to the relief set forth in this decision, and pertain only to the plans approved in this decision, and shall not be construed as creating conforming dimensions. There shall be no further extension (horizontally or vertically), increase, alteration or modification to the structure or any other structure located on the property that has non-conforming dimensions, without further approval of the Board.
- 18. 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
- 19. 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.

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20. There can be no exterior work authorized by this decision performed on weekends from May 1 to September 30 and on weekdays from July 1 to September 10.

Dated: March 21, 2019

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination **Denise Zaccheo, 19 Point Road (905-17-3-5)** as written; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

HOLDOVERS:

8. Andersen-Kuntz 97 Hazelwood, Westhampton Beach (905-2-2-20.2) Applicant requests an interpretation of the village code that the Building Inspector errored 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 Hulme, Esq., appeared on behalf of the application. The Planning Board on March 28, 2019 will undertake a SEQRA determination and hopefully make a recommendation back to you and then I will return to this Board with a presentation.

Motion was made by Mr. Piering to holdover the application of **Andersen-Kuntz 97 Hazelwood, Westhampton Beach (905-2-2-20.2)** to April 18, 2019; seconded by Mr. DelGiudice and unanimously carried 4 ayes, 0 nays, 1 absent.

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

Nicholas A. Vero, Architect appeared on behalf of the application. Mr. Piering said this has been read in to the record several times. Mr. Vero said to review this quickly, the house was built in 2010 and maximized the lot coverage at 25% and they bermed around the tennis court with a fill permit and realizing we did build storage under the house and Hurricane Sandy altered our thinking, and we understand that storm did actually what it was built to do, but we want to acknowledge things have changed with reference to elevated ground water. We are seeing in certain, well most areas along the water 1’ higher of groundwater than normal, up to 18” and I think the Building Inspector can acknowledge that. In lieu of that we are trying to create a space for the garage, and we want to construct a two car garage and we discussed reducing it to a one and half car garage and it wasn’t part of my testimony, we did the elevator at the lower level for their parents who need to use it for access to the home, and that’s why the garage needs to be every bit of that to get a ramp that’s between 10% and 12% and I have reduced the square footage of the garage some, and I reduced the lot coverage to 26.29% according to my revised drawings. Keep in mind that we aren’t really infringing on the neighbor to the North and we are not infringing on the neighbors behind us, and we looked at ways to mitigate the lot coverage and there are patios on grade and they are part of the lot coverage because of the fill and there’s no other way to reduce this other than getting the square footage down, we are reducing it to a 2 car garage and seeking a variance of 26.29% which is less than 10% of a variance over lot coverage. I had my client here if you want to hear from him. It’s been elevated to FEMA compliance, and there’s no way to control the ground water, the dry wells don’t work anymore and they are in the ground water and they are trying to get that water in to the French Drains.

Mr. Musnicki said the side yard and total lot coverage hasn’t changed?

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Mr. Vero said yes, we're at 25% and we are asking for 26.29%.

Mr. Musnicki asked what the total side yard is?

Mr. Vero said they have not changed, we are asking for a variance for 23.5' where 30' is required.

Mr. DelGiudice said his problem with it is the property is large, there's a house, porch, pool, spa, pavilion, patio and tennis court and you are maxed out, the house and porch is 5,466 square feet and now you're asking to increase that over 6,000 square feet, it's maxed out as it is.

Mr. Vero said he understands. We tried to reduce the footprint but I tried to rework it for access in to the house from the garage and that's the only available access and he has his client here to testify to that, his family comes out for the Summer.

Mr. DelGiudice said we have undersize lots where we can work with, but this lot is huge.

Mr. Vero said he understands that. We design a lot of homes with storage under the house and in this case in retrospect we should have looked at it differently we didn't realize how bad it's going to be, but the ground water is terrible they constantly have pumps running to get the water out.

Mr. DelGiudice said it's been a very wet year.

Mr. Vero said I don't know of any time this Board has, we can leave the garage the way it is and they'll have problems.

Mr. Piering said it's not a garage, it's storage.

Mr. Vero said it's an A-Zone.

Mr. Piering said that's the way it was designed to handle that runoff from the water and you can use it for storage, and not for living and it was designed this way so that what you're saying the design doesn't work? No, it does work.

Mr. Vero said it floods more frequently than a coastal storm.

Mr. Piering said you're living on the water.

Mr. Vero said they are trying to mitigate a problem. Would you like to hear from my client?

Mr. Garg said it was designed as a garage and there are garage doors there and meant for the cars, so it's not for storage and the idea was to keep a flat footprint. Yes, there's storage behind that, but the second thing is from the get go, my parents as they age, they cannot move that well so we put the elevator in for their use and we considered not having to go down there but there's no other level for it to go. Her access is only through that level, and we drive in and we historically use that level. If we get rid of that because of the water, and its coming up from the ground and you could look 3' to 4' down the drywell but today it is almost up to the top, and there's water that has come up and there's no issue on that. On a number of occasions, I've had to clean up and had permanent pumps out there and I have to pimp that water out every day and it's not just after rain it's a very regular occurrence. I can't use it as a garage, we have lost 2 cars, and the cars have been flooded. I have to have a place to store my car, and we have to be able to get our family in through the elevator and a ramp doesn't work it's not handicapped accessible. We've designed a house for our family, and we use it all Summer long, and it was built this way for our Family. We have come out here for 17 years every Summer and we consider this our home and we want our family to enjoy our home too and we're not trying to get a bigger home.

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Mr. DelGiudice said you maximized what you can have for your home, but now you're trying to maximize a garage. How big is a two car garage? You maximized your property. How big is a one car garage, and you're asking for a 26' x 20' garage.

Mr. Vero said that's to get the ramp inside of the house, the ramp is taking up 20', elevation 7 to elevation 3 it takes up a lot of space. But a handicapped ramp is needed. That's the reason for the size, and I tried to do a one car garage but it doesn't work for the ramp. It's to try and get an inside space, the elevator access is at that point.

Mr. Musnicki asked when the house was built?

Mr. Vero said in 2010.

Mr. Musnicki asked if anyone believed that the system would work with the storage below and stay dry. There are multiple storm drains and the elevation of the driveway changes, and a heavy rain, forget about high tides and storms, just a heavy storm the water has to go somewhere. I haven't been in the house are there hydrostatic values in the floor?

Mr. Vero said no, only in the walls, we're in an A Zone. I worked with Sue Wilcenski and Mr. Hill and everything was calculated for the 2" rainfall and engineered properly and the water level is much higher, anything between 12" and 18" consistently.

Mr. Garg said the first few years we did not have these problems, but over the time it's gotten much worse and the other properties have sloped their yards towards us and we are the recipient of their water despite their drainage systems. I've noticed a direct correlation to buildings around us with fill, you have to remember this property was a swamp when I bought it. In 2010 the backyard was an insect pool, the reason we filled it was to get rid of the bog that existed and that's helped a lot of people in the area and since then others have installed fill and it's been putting water on to my property and it's getting worse during the climate change. Water levels are going up and we've experienced the results of that.

Mr. Musnicki said I dispute the neighbors being responsible for water on your property, the building department designs and watches things so the water is retained on each property.

Mr. Houlihan said all of those properties have gone through fill and they're no more putting water on this property than they are putting on theirs and it's looked at thoroughly and French Drains and all of the properties are retaining their 2" rainfall. I do agree the water tables have been difficult and it has been higher, but as fair as the individual properties they are all maintaining their water.

Mr. Garg said he notices the frequency and he has now put permanent pumps out there and we want to get our cars above and out and we just need an access way for his family to use the elevator in to the home

Mr. DelGiudice said it used to be hardship, that was a cause for a variance.

Mr. Vero said I don't think I've ever used it.

Mr. DelGiudice asked them to go through the 5 standards.

Mr. Vero said I don't think it's causing a detriment to the neighborhood; I don't think we are harming the environment; it has a state-of-the-art septic system, we have a negative carbon imprint.

Mr. DelGiudice said I'm talking about the new structure.

Mr. Vero said I don't think anyone is here in opposition.

Mr. Piering asked if this benefit can be achieved by another method?

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Mr. Vero said no, we've looked at other methods. I knew we had the elevator but I forgot why we did it.

Mr. Piering said okay. Is the variance substantial?

Mr. Vero said we are looking at an increase which is less than 10% and I know we try to look at standards within the 20%, I don't think its substantial and we're trying to eliminate some areas and there are patios that are not that large, and they're only part of lot coverage because they're elevated and we did look at other ways. When we came in originally we were substantially bigger.

Mr. Piering said okay. The side yard, the total side yard setback is a right of way to the North.

Mr. Vero said yes.

Mr. Piering said okay. Would you say its self-created?

Mr. Vero said everything is self-created.

Mr. Piering thanked Mr. Garg for coming. He asked if there were any other questions.

Mr. DelGiudice asked if there's anything else you can do to minimize it?

Mr. Vero said he's tried.

Mr. DelGiudice asked if we're closing it?

Mr. Vero said he would like to close it.

Motion was made by Mr. Piering to close the hearing of **Garg, 136 Beach Lane, Westhampton Beach (905-15-5-11.4)** for a determination; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.

10. 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.

Heather A. Wright, Esq., appeared on behalf of the application, together with John and Donna McDonough. Ms. Wright said they want to hold it over, but we want to update the Board. We've retained an engineer to redesign the septic system and we believe it will alleviate the Board's concerns and lower the wall significantly, and we want to let the Board know that and we assume based on our last meeting and that was the Board's concern and the decks were not a concern as long as the retaining wall was reduced, and we will submit revised plans and return to the Board in April.

Mr. Badzik said okay.

Mr. Piering said okay.

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

11. 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

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coverage of 30.8% when Chapter 197-8.C. and Chapter 197-63.P. prohibits a lot coverage of greater than 25%. The property is located in the R-3 Zoning District and Flood Zone.

Heather A. Wright, Esq., appeared on behalf of the application. The application was removed without prejudice, and reapplied for further down on the Board's agenda.

Motion was made by Mr. Piering to withdraw the application of **123 Dune Road, LLC., 123 Dune Road, Westhampton Beach (905-21-3-7)** without prejudice; seconded by Mr. DeGiudice and unanimously carried 4 ayes, 0 nays, 1 absent.

12. 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. He said they are waiting on PB SEQRA and they have to make a determination.

Mr. Pasca said we expect it before the next ZBA meeting, you should hold it over for one month.

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

NEW APPLICATIONS:

13. 123 Dune Road, LLC., 123 Dune Road, Westhampton Beach (905-21-3-7) Applicant request variances to demolish an existing swimming pool, patio, and dwelling entrance stairs. The proposed lot coverage will be 31.24% when Chapter 197-8.C. and 197-63.P (1) prohibits more than 25% lot coverage on a lot developed with a tennis court. The property is located in the Flood Zone and the R-3 Zoning District.

Heather A. Wright, Esq., appeared on behalf of the application. The applicant is 123 Dune Road LLC and it was purchased in September 2012 and currently it's improved with a dwelling, decks, swimming pool, patio, pergola, tennis court, fences and boardwalk, and the original CO is from 1999; and they received a variance in May of 2013 for a screened porch addition and renovation. We are proposing to demolish the swimming pool, patio, and dwelling entrance and stairs and reconfigure that and we are seeking a lot coverage variance, we are replacing the pool with a rectangular pool and we will rework the stairs and install new gates and motorized cover. The redesign increases the lot coverage but we believe that we meet the five part test required by the Board. Non-Conforming lot coverage is common on the South side of Dune Road because it's based on the area North of the Crest of the Dune. 133 Dune Road has similar lot coverage 129 Dune Road and it's our position that the requested variance will not impact the character of the neighborhood and we did approach the neighbor next door, and they have no objection to the application and there's no way to do this without a variance. The existing pool exceeds the lot coverage and to replace the pool which needs to be replaced we need to seek a variance, and the 133 square feet is de minimus compared to the neighborhood and the size of the lot.

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Mr. Piering said the thing with this Board is they are increasing lot coverage with new construction, and you said that was what you had to accomplish what you want to do, but you said the pool was 19' x 48' and that's a large pool.

Ms. Wright said the applicant wants to be able to do laps in the pool.

Mr. Piering said we all want things, but there may be a way, you are already over the lot coverage with the tennis court, and it goes to 25% because of that, and you're over 30% and you want to go over that and our goal is always to minimize the variances and with new construction we want to see it brought down.

Ms. Wright said if we bring the lot coverage to 30.91% which is the existing would that be better?

Mr. Piering said that doesn't reduce it, but it doesn't increase it. I am only one person on the Board, but I want you to know how we look at this and why. We don't want it to get bigger.

Ms. Wright said she's discussed that with the client and they can reduce some of the tennis court and we want to make sure we understand the Board's position with respect to the existing lot coverage.

Mr. DelGiudice asked if the Top of the Dune has changed?

Ms. Wright said yes.

Mr. Piering said its very far from the water.

Ms. Wright said what happened was, and the reason why we withdrew the first application is because the calculations done by the surveyor we thought we were constructing the to the current lot coverage and the Dune shift put us over the lot coverage and some items were not calculated by the surveyor so the survey that was approved in 2012 for a variance, the surveyor did not calculate some of the awnings in the lot coverage and we had to try to figure out how that happened and we know the lot coverage is 30.91% and nothing has changed since and we have a letter from the surveyor indicating and explaining why it wasn't included. We want to make sure we're on the same page with respect to the existing lot coverage and because the Dune did change and the adjacent neighbor has a huge lot and it will not impact them.

Mr. Musnicki said in 2012 when it was purchased, are you saying the lot coverage was less than 30.9%?

Ms. Wright said it was 30.8% and we had to try to figure out what happened.

Mr. Badzik said maybe they can reduce the tennis court.

Mr. Piering said the Board in the past has been reluctant to increase non-conforming lot coverage, in all honesty you're not making a case for it.

Ms. Wright said in that case we'd reduce some of the area around the tennis court and try to bring it down to 30.8%.

Mr. Piering said he'd like to see it reduced as low as you can.

Ms. Wright said she believes it will bring them right to 30.91%. Can they hold the application over?

Mr. Piering said yes. We like to get it as conforming as possible.

Ms. Wright said okay.

Motion was made by Mr. Piering to holdover the application of **123 Dune Road, LLC., 123 Dune Road, Westhampton Beach (905-21-3-7)**; seconded by Mr. DelGiudice and unanimously carried 4 ayes, 0 nays, 1 absent.

March 21, 2019

14. Judith Madden, 64 Brook Road, Westhampton Beach (905-7-2-21.1) Applicant requests variances to maintain a newly constructed dwelling with a 49' front yard when Chapter 197-7.D. requires 50'. The property is located in the R-2 Zoning District.

Judith Madden appeared on behalf of the application. We thought we were finished and we went for a final inspection and the updated survey showed it was at 49' and my contractor is here and it was a surprise to both of us, and it was a mistake and everything else is according to the drawings.

Mr. Piering said it came out very nice.

Mr. DelGiudice agreed with Mr. Piering.

Mr. Piering said there's only 1' that you need a variance for?

Ms. Madden said yes.

Mr. Piering asked if there were any comments or questions. There were no comments or questions.

Motion was made by Mr. Piering to close the application of **Judith Madden, 64 Brook Road, Westhampton Beach (905-7-2-21.1)** for a determination; seconded by Mr. DelGiudice and unanimously carried 4 ayes, 0 nays, 1 absent.

15. Gilles Dellaert and Inge Debyser, 20 Seafield Lane, Westhampton Beach (905-14-2-8.2) Applicant requests an Appeal on a decision made by the Architectural Review Board as provided for in Chapter 5-19.A. of the Village Code. The Findings of Fact as required under Chapter 5-19.A. were issued by the Architectural Review Board on October 16, 2018. The property is located in the R-1 Zoning District.

John J. Bennett, Esq., appeared on behalf of the application.

Mr. Piering said before they get started with the hearing, he would like the Village Attorney to make some clarification on the application. This is a unique situation for our Zoning Board, it is not a typical area variance request.

Mr. Pasca said this is not a zoning request at all, this is all being done under Chapter 5. So, the 5 part test has nothing to do with this case and what you are governed by is Section 5-19; that sections creates this Appeal right for the applicant and it does not limit your scope of review at all. Under the Law, and this is not meant as disrespect to the ARB your job is not to defer to the ARB but to give it a fresh set of eyes, they call it the novo review. It does not mean what you can't read what the ARB did, but you are not judging the ARB whether they were acting rationally your discretion matters so you have to give this the novo review and apply the same standards but the Code gives you the power to essentially grant variances as part of the process of Appeal. The second part of 5-19B during the appeal if there are practical difficulties you can vary the strict application from the Code, and your power is broader than the ARB.

Mr. DelGiudice asked when we render a decision what is it?

Mr. Pasca said the same criteria, the design criteria and I assume the applicant will go through that and to feel why they feel they've met it and the only thing is that you can vary the criteria under practical difficulty basis. You aren't judging over the ARB's decision, it's a fresh review by the ZBA.

Mr. Piering said okay.

Mr. Bennett said he represents the applicant and we indeed would like you to take the novo review of his clients request to build what he thinks is a pleasing well-constructed, well designed house to be built of high quality materials all in a manner that is probably going to be despite concerns raised by the neighbors and the findings of the Board, will have no impact on the character of the neighborhood other than a positive one. It's a handsome house, the fact that it's

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not a shingle style house which people seem to dwell on; I have two comments to that, WHB, Quogue, Southampton, East Hampton they are not old Lyme, CT or Deerfield, MA they are an area with vibrant history of varying architecture and all you have to do is drive around those Villages and Town to realize that. You are not relegated to a shingle style traditional home and we've demonstrated that to the ARB and they did not feel the same, and we're hoping you have a better view. We are proposing a single-family residence compatible to the area. We find it hard to see how any of this would result in any harmful effects. Exhibit "A", and I tried to put the argument in writing, and I will bullet point it, but the house is shown is a contemporary house, but it's hard to say that it's a style of home that's been built for many years on the East End and there's a 1920 flat roofed house in the middle of the Historic District in Southampton Village, so to say that this is a type of architecture because it has a flat roof and heavy on glass and has been approved by the ARB in the past and we humbly believe, we think the ARB closed its eye to the genres of architecture in the area. The house is proposed of high quality materials, cedar, bluestone, and high end construction for an Estate area, and one significant thing that we feel the house will be 32' above sea level and 40' is permitted and 44' for a pitched roof home and it's to have the house blend in with the lot and area. The location within the property is located lower than the elevation of the road, and there is a survey part of the application, and the road is at elevation 10.6' and the grade drops to elevation 6 and goes down to 3 at the East end and the road will be obscured by existing Evergreen and be invisible. The home is 150' back from the road where 50' is the required setback so the thought that this will somehow impose itself on the street is hard to believe. In your review, and in your Code, are there any conditions you would feel such as further screening so the leading edge will be less visible from the street is in your purview, and we don't think it's necessary and we'd like to show it to the neighbors, but again if that's a condition the Board wants to impose we have no issue with that.

Mr. Musnicki said on the rendering his understanding is that the first floor is over 10' elevation, which gives it a 7' wall is that correct? Am I seeing it in the rendering?

Mr. Bennett said yes, he can give that to the Board. I think you're right, but I don't want to misrepresent anything to you. We can give a cut sheet.

Mr. Musnicki asked where the first floor elevation is shown on the renderings.

Mr. Bennett said it's on the right.

Mr. Badzik asked the dimension.

Mr. Bennett said he does not know.

Mr. Musnicki said the structure at grade is what?

Mr. Bennett said he will get that information for the Board.

Mr. Houlihan said they show the finished floor at 10 and the second floor finished at 20, so the lower level is about 10' total to the first floor.

Mr. DelGiudice said with the approach we're moving forward with, are we allowed to reference the ARB's decision?

Mr. Pasca said you can reference anything you want. You are not judging what they did, you are not rubber stamping it, you are supposed to give it its own review, it's the same thing you are reviewing a Building Inspectors appeal, you can listen to him and his reasoning but it's your decision to make, and you don't owe the ARB any deference.

Mr. DelGiudice said I see the architecture, and we have an ARB and I read through their determination, and it seems like there were a few meetings where the materials were presented to the ARB. And then I'm assuming, it doesn't get into their recommendations, did they have multiple recommendations.

Mr. Bennett said no, he was taken back. There is a give and take with most ARB's and that did not happen. We presented the application and we asked for comments, and I don't care if you want to inquire with the Chairman who is here, but there was no give and take and that's what I

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usually get before an ARB. Most Board's say they are not here to design your house but most have comments and I think it's fair to say I think the applicant was not interested in what would be called a traditional shingle style home and that's what the objectants wanted. I tried to respond to the objectants in their letter and it deals with mostly that it will not be visible and there are accessory structures between the homes. The applicant did not want to build a traditional shingle style gable house and I don't think the Board has the ability to require anyone to do that, and you can see that in the variations and designs throughout the Village. There were a few times before my involvement and there was not enough data before the Board and we remedied that and I think they had a complete record. Again, we are not in a Historic District and what I tried to do, if you were in a Historic District they don't recommend duplicating forms and styles and detail, architecture moves. I'm not saying a 1890's house is not a pleasant design and I don't have to tell you, architecture is not a static thing. Examples on the street, there are houses on the street that is hardly traditional and it has a flat roof with angular designs, and I think the applicants house is much more pleasing. I will show you 81 Seafield Lane, and 46 Seafield Lane. The flat roof with angular design is 81 Seafield Lane, Exhibit "C" and we showed the ARB 46 Seafield Lane, and it has a flat roof house with the of a center gable which is a nod at an attempt to be traditional, with glass railings, casement windows there is nothing traditional about it other than one peak in the middle. We also showed the Board down the street, and in an area that is surrounded by traditional houses, it is Exhibit "D" and it is 136 Beach Lane and flanked with traditional homes on either side of it. You have to be careful because architecture is subjective and this deviates more from a traditional house than what's proposed.

Mr. DelGiudice asked who approved 136 Beach Lane?

Mr. Bennett said the ARB. We did not think there was anything in the neighborhood or in the History of approvals by the ARB that would have allowed the Board to say this does any violence to the neighborhood, I don't think it's strikingly dissimilar, and the façade is not visible from the road; we are well under lot coverage with reference to the size of scale to the neighborhood; the home is lower than what is permitted in height; and the whole attempt is to make this low lying in a low lying area so for all purposes it will disappear from the public view, it will not be something that will impose on the street. The materials are earth tones, muted colors and will blend with the surrounding area.

Mr. Musnicki asked if it's fair to say the house will be similar to the neighbor to the North.

Mr. Bennett said it's lower, if you look at the aerial, I don't know the height but they are both gable homes and its important to point out, 16 Seafield Lane and 283 Main Street are neighbors opposing it, in between the homes are all the accessory structures, pool houses and the like. I know one is substantially taller, but I am not sure about 283 Main Street. Why do you have the ARB, and why do you have their standards. To conserve property values and that's in the Code, you shouldn't improve anything with a negative economic impact on the neighborhood of the Village and the only evidence in the record below is an appraisal prepared by Michael Lynch who goes through the various types of architecture and he gives significant testimony. At 41 Seafield Lane is a traditional 1899 residence with a pool house that sold for 3 million in 2013, and he points out there was an adjacent residence at 46 Seafield Lane and that did not appear to affect the sales price. It does not appear that the introduction that a non-shingle style home would have any negative effect on the economic point of view on the neighborhood and that's the only expert testimony in the record. I don't think there's any question there is no detriment but this would conserve property values. It's a long house, but that's because we tried to spread the living area out so it's not tall, specifically to blend in to the environment and the wetlands area and we want it to not be a statement, but rather something to blend in. I was surprised there was not more receptivity on the ARB.

Mr. DelGiudice asked if the height of the house is 22.6'.

Mr. Houlihan said it will be approximately that, the grades in the front towards the road are approximately elevation 9' and the first floor has a slab construction shown at 10' a foot above the grade, so yes it will be around 21' to 22' but the top of the house will be 22' high from the existing grade.

Mr. Musnicki said he thought it was a little higher.

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Mr. Houlihan said he can show Mr. Musnicki. The first finished floor has to be at 10 for the FEMA regulations.

Mr. Musnicki said okay, great.

Mr. Bennett said it is much lower than 136 Beach Lane. I do not know what your thoughts are, and I've given you a lot of information.

Mr. Piering asked why when there was opposition by the ARB why did the applicant choose to appeal the ARB's decision. Why did they not change their plan?

Mr. Bennett said he did not hear anything significantly helpful, and to be fair to the ARB it was clear the applicant wanted to build this style home.

Mr. Piering said this is what they wanted, that's what I want to know?

Mr. Bennett said yes. And we went out of our way to show the footprint, the height, that it was going to be screened from the public that the footprint would be soft and soft addition to the neighborhood and if this Village wants to tell people they can only build traditional homes they should say that; it's said in certain areas Mr. Collins at great length, created designed standards for MF Homes and the Trustees enacted that, but it was an abusive discretion.

Mr. Musnicki said Seafield Lane has iconic homes, and you have to admit that. We're talking about the vicinity and that's what the ARB looks at.

Mr. Bennett said that is correct.

Mr. Musnicki said a lot of people look at this as dissimilar.,

Mr. Bennett said it has to be strikingly dissimilar, and it has to be ugly and you may not like contemporary architecture but you cannot say this is ugly. In terms of line and material and scale and impact I don't think you can say that.

Mr. Musnicki said that's subjective.

Mr. Bennett said it's in the Code it has to be strikingly dissimilar.

Mr. Badzik said I don't equate strikingly with the word ugly.

Mr. Bennett said strikingly is jarring. The house is low in profile and sits on the property tastefully, I don't know how you can say it's strikingly dissimilar.

Mr. Badzik said it's subjective.

Mr. Bennett said it's the whole problem with Architectural Review so subjective, and if you want to say to people in the Village of Westhampton Beach that they can only build a traditional home which you haven't, you have to do that. Its only fait to a property owner to give more guidelines. I think the standard is rather high, you have to show that there's some real detriment and when I say economic detriment, that's what the Code says, it talks about an economic detriment and the only evidence in the record is what we submitted and it's not just some appraiser giving his impression he talked about the house and doesn't see how the adjacent house effected the resale value of a shingle style home next to it.

Mr. DelGiudice said when you buy a home, and you know there's an ARB I can't imagine an architect thinking a design is constant. This is a unique design for that neighborhood.

Mr. Bennett said he does not agree with Mr. DelGiudice. There is a flat roof with a gesture towards a gable.

Mr. DelGiudice said the materials.

Mr. Bennett said its cedar, the same materials.

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Mr. DelGiudice said the lines may be similar, my point being is that there is a process and there's the ARB.

Mr. Bennett said he's not suggesting they are powerless he's suggesting it's not quite as broad without real demonstration of harm and that you can deny it because it's not designed in the same style as some of the other houses on Seafield because we've shown there is a variance of style of homes on Seafield. It's unequal treatment and it's very hard and I'm criticizing the Board because I have to, but I'm not critiquing their job.

Mr. Musnicki said watching this through the ARB minutes and their process, approximately 5 meetings, I saw them discuss finishes and materials, and that was the first thing discussed and that was surprising and that went on until the last meeting and after that, you returned with an architect, landscape architect and the landscaping came in to it and I never saw a landscaping plan even though it was talked about.

Mr. Bennett said we can provide you with one.

Mr. Musnicki said maybe it would satisfy some for the visualize impact.

Mr. Bennett said it was shown in renderings, but we can provide the true landscaping planting plan.

Mr. Musnicki said okay.

Mr. Piering asked if they can hear any members of the audience with comment or question.

Mr. Pasca asked if they are looking to close the meeting tonight?

Mr. Bennett said he is not sure, it sounds like they may return next month.

Suzanne Mensch, Esq., 283 Main Street.

Mr. Piering asked where they are in reference to the application.

Ms. Mensch said they front Main Street but back up to the property. She also represents 16 Seafield Lane, Stratta immediately to the North. One thing that strikes her is that the flat roof and the materials on the flat roof were not discussed and that was a huge component and that was striking and it was described that they are going to be growing materials, they are meadows and maybe Mr. Bennett can tell what kind of grasses and they will be growing on top of the large flat roof and that adds a huge component why it is strikingly dissimilar and there's no irrigation intended and it was referred to as a meadow, and her clients have concerns about what it will look like over time, especially in August and will require maintenance and we aren't familiar with it. I don't see too many homes in the area and I did not hear that discussed tonight and speaks to the strikingly dissimilar piece. He is speaking about 46 Seafield and 81 Seafield and that speaks that there are a variety of style of homes in the Village and so the determination was based on the fact that this is a strikingly dissimilar home and in visual discord with the neighborhood. I shared a picture with the Board and those are her client's comments.

The Board thanked Ms. Mensch.

Mr. Piering asked if Greg Minasian had anything to say.

Mr. Minasian said no, he's here to listen and hear what the Board has to say. He thinks the findings of fact state the ARB's feeling; strikingly dissimilar did not have to do with the height, from day 1 there were several meetings they did not change the materials or the style and Mr. Bennett has called it contemporary, but the Board felt it was strikingly dissimilar and visual discord were the words. I have been on the Board for a very long, and he gave us advice as to what Constitutes a neighborhood in the Village of WHB he said when you look left, right and across the street that's the neighborhood.

Mr. Haefeli disagreed with Mr. Minasian.

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Mr. Minasian said there is Dune Road, Griffing Avenue, Oneck Lane and Bridle Path and they are all different neighborhoods, if this was built on Sunset Avenue or Bridle Path they are all different neighborhoods. This is a few hundred feet from Main Street and if this were to be approved, what would be the argument for the ARB for an applicant to build something similar on Main Street and it moves through the Village, so it is strikingly dissimilar. There was a photograph of a contemporary glass house and lit up at night and gave us another view point of a glass house lit up at night and the effect it has on the neighbors.

Mr. Pasca said they are not judging your process, whatever goes in to the record today or whenever that is the record they judge.

Mr. Minasian said 81 Seafield Lane is not a flat roof house, the Board went down there and looked at it, it has a very low slope but it's not a flat roof. I would ask you to focus on the neighborhood and the effect on the neighbors.

Mr. Piering thanked Mr. Minasian.

Mr. Bennett said one thing he found missing before the ARB and you can take it how you want, but there was no back and forth like I see before this Board. So that's his way of saying if there are comments that this Board has, that's the dialogue I think would be helpful.

Mr. Pasca said because you are standing in the ARB shoes, and the Code provides for back and forth, so if there are concerns or questions there should be dialect, and it may be different from variance applications but the ARB Code contemplates a back and forth and because you are being asked to stand in their shoes, you should engage in that process.

Mr. Bennett said if there is something striking about the house and you want us to consider, that's what helps through the process.

Mr. DelGiudice said one thing, strikingly dissimilar, is that the roof? We looked at it and reviewed it, there's a living roof and I don't know if there's anything to point to what it will look like, what does a living roof constitute.

Mr. Bennett said I was going to bring the designer in, but her testimony was so effusive so I want to try and hone that down specifically. But again if those are the design elements we are open to discussion.

Mr. DelGiudice said it's an all glass house, there is a lot of glazing.

Mr. Bennett said it's not an all glass house.

Mr. DelGiudice said it is a lot of glazing and the other examples of contemporary houses, especially the one with the pitches is a house with windows to the neighbors point there is a lot of glazing and the impact and again these are observations.

Mr. Pasca said to put a context on talking about dissimilarity, the lead in to it in the Code is harmful effects, so dissimilarity standing alone it's a harmful effect caused by the dissimilarity, it may be true there's no living roof but you have to find that creates a harmful result.

Mr. DelGiudice said that was brought up to the point of what will it look like in August.

Mr. Pasca said yes, and that's why you have to have that dialogue, but you have to find the effect harmful, and not that it's just dissimilar.

Mr. Bennett said to please ask him the questions, and if he can get helpful comment I can direct the same to my client.

Mr. Piering said this will be held over, there is a lot of material to go through and we will be back in April.

Ms. Mensch asked if there is more testimony.

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Mr. Piering said yes.

Motion was made by Mr. Piering to hold over the application of **Gilles Dellaert and Inge Debyser, 20 Seafield Lane, Westhampton Beach (905-14-2-8.2)**; seconded by Mr. DelGiudice and unanimously carried 4 ayes, 0 nays, 1 absent.

16. Richard Ferrucci, 19 South Road, Westhampton Beach (905-9-3-14) Applicant requests a variance to construct a swimming pool, hot tub and patio that is located in the side yard of the principal dwelling. 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.

Richard T. Haefeli, Esq., appeared on behalf of the application. The property behind it was privately owned and next to it privately owned and it was then purchased by the WH Country Club and the driving range was created and what was occurring then a lot of golf balls were going in to his clients property and they rearranged it to reduce the number of golf balls going in to his property and today he has the same, and occasionally they go in to the pool and he is in the process of rebuilding the pool they are proposing to move it 20' further North which puts it in the side yard and we are going to reduce the incidents of golf balls going in to the property.

Mr. DelGiudice asked if they are being driven in to his property?

Mr. Haefeli said yes. And they can put the golf balls in to an area where there were trees before, there is a house next to him on the East and there's nothing on the West and on the South it's the golf course, The pool will be placed 45' from the Easterly side yard and he can build an addition up to 30' with the front yard setback and he's having this pool 45' and it's over 170' from where the swimming pool is to where the front lot line is and if you add to that, the area of impact would be across South Road and 225' away and there's no house within 200' on the West side of the property and the only house is on the East and his family owns that. In addition there are some homes on White Oak and that's within the neighborhood as defined by the Goldsmith Case that was on Appeal and affirmed, and 2,000 is considered from the property and it can be and that was found in the Goldsmith case. If you go to White Oak and South Road there is a house that last year there was a variance to allow a swimming pool in the front yard.

Mr. Piering said they had 2 front yards.

Mr. Haefeli said he understands that, but it could not be done without a variance. There is one on Oneck and White Oak and there's a swimming pool within 20' of the front yard and there's a copy of the tax map to see the location of his client's property and the location of the other 2 parcels. In addition, there's an existing hedge between the swimming pool and the street, and the house is blocking it from anywhere else and there's a hedge along the Easterly side from the one house.

Mr. Piering asked about the house to the East, it's wide open to that house.

Mr. Haefeli said yes, and it's 45' from the property line and that house is owned by his clients family and they are not objecting.

Mr. Piering said they could sell it next week though.

Mr. Haefeli said yes, but there's no objection and we are putting a pool further than we can put an addition.

Mr. DelGiudice asked if they can solve this with landscaping?

Mr. Haefeli said there are trees, they tried to reduce the impact by using small compression balls and that didn't work, and they pushed the tee boxes back as far as they could but it still results in the balls coming in to his clients property and it wasn't there when he bought the property, and it was not self-created because of that. He has lived there since 1986, and he enjoys living there. I am saying to you, it will not adversely impact the CON, he cannot put it in the location without a variance, it's not substantial because it will be 45' from the side yard and there's no other house

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with an impact on it, and it will improve the environmental conditions. We want to construct a new pool and reduce the impact of golf balls going in to the pool.

Mr. Musnicki said this will not reduce the golf balls coming on to the property. By moving this pool essentially 2' to 5' will that stop the golf balls from going in to the pool.

Mr. Haefeli said if we can move it 20' away we can reduce the golf balls from going in to the swimming pool. We want to move it to a new location and we have 45' from the side yard.

Mr. Musnicki said it's not being moved 20' it's being moved a few feet.

Mr. Haefeli said it's 25' from the rear yard we're removing it roughly 20'.

Mr. Badzik said it's been moved 23'.

Mr. Musnicki said it's driven by golf balls coming on to the property and in to the pool?

Mr. Haefeli said yes, and it was not there when he bought the house and it's being drive by the Country Club.

Mr. Musnicki asked if the country club can take care of that?

Mr. Haefeli said they have improved it, but there are times it happens. They have a major Summer event, there are some of the best golfers in the area to come there to play and they can hit the ball 300 yards so at times it can happen, you can't stop it, but you can reduce the impact of it.

Motion was made by Mr. Piering to close the application of **Richard Ferrucci, 19 South Road, Westhampton Beach (905-9-3-14)** for a determination; seconded by Mr. DelGiudice and unanimously carried 4 ayes, 0 nays, 1 absent.

17. Kevin Minassian, 16 Michaels Way, Westhampton Beach (905-9-3-17.8) Applicant requests a variance to construct a garage located 10' from the East property line when Chapter 197-35.C. of the Village Code prohibits accessory structures less than 20' from the lot line. The property is located in the R-1 Zoning District.

Richard T. Haefeli, Esq., appeared on behalf of the application. He requested a holdover of the application.

Motion was made by Mr. Piering to hold over the application of **Kevin Minassian, 16 Michaels Way, Westhampton Beach (905-9-3-17.8)** seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.

REQUEST FOR EXTENSION:

18. Joshua Porter and Lynn Porter, 15 Jessup Lane, Westhampton Beach (905-10-6-21) Applicant requests a 180 day extension of their September 20, 2018 Board of Zoning Appeals determination which carries an expiration date of March 19, 2019.

Mr. Piering stated that the Board will grant the applicants request for an extension of their September 20, 2018 Board of Zoning Appeals determination.

Motion was made by Mr. Piering to grant the extension of **Joshua Porter and Lynn Porter, 15 Jessup Lane, Westhampton Beach (905-10-6-21)** from September 20, 2018 to March 19, 2019; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

Motion was made by Mr. Piering to adjourn the hearing at 7:00 p.m.; seconded by Mr. DelGiudice and unanimously carried 4 ayes, 0 nays, 1 absent.