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Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, April 16, 2020, at 5:00 p.m. in the Municipal Building, located at 165 Mill Road, Westhampton Beach, New York.

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

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

Maeghan Mackie, Building Permits Examiner / Board Secretary

**MINUTES TO BE APPROVED**

Motion was made by Mr. Pierign to adopt the minutes of the February 20, 2020 meeting as written; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

**DECISIONS:**

**1. Crampton Society LLC, 119 Dune Road (905-021-03-008)** Applicant seeks an interpretation that the Building Inspector erred in his determination that the dwelling is located within the primary dune area where restorations are prohibited and that the dwelling is located within the secondary dune area where there is no prohibition of engaging in a restoration. In lieu of a favorable determination by the Board, the applicant requests variances from §74-8 A(8) for proposed additions and alterations that represent a restoration (exceeding 50% of the full replacement cost of the existing dwelling) within a Coastal Erosion Hazard Area primary dune area where prohibited. Irrespective of the above item, the applicant also requests variances from §197-5 A(1) for proposed additions within a required yard (within 75' of the crest of dune/rear property line) where conformity is required for additions, from §197-8 E(1)(b) for a proposed roof ridge height of 49.65 feet above sea level where the maximum permitted is 44 feet above sea level, from §197-34 G for a proposed dwelling floor area of 6,907 square feet where the maximum permitted is 6,000 square feet, and from §197-35 C for a proposed deck that extends 5 feet past the crest of the dune (rear property line) where the minimum setback required is 75 feet.

James N. Hulme, Esq., appeared on behalf of the application. Mr. Piering stated that the Board received his submission of the dune restoration plans today, and therefore they would have to hold it over to May 21, 2020 for a determination.

**2. Deborah Fein, 13 Beach Lane (905-011-03-011)** Applicant requests variances from §197-6 D to construct a dwelling with side yard setbacks of 11.5 & 14 feet where the minimum required is 30 feet, and with a resultant combined side yard of 25.5 feet where the minimum required is 70 feet.

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

Motion was made by Mr. Piering to adopt the determination of **Deborah Fein, 13 Beach Lane (905-11-3-11)** as written; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

**3. HCMC, 51 Old Riverhead Road (905-004-01-010)** In association with a site plan application to construct additions and convert a building for a contractors' office use, applicant requests variances from §197-5 A for proposed conversion of and additions to a nonconforming building (substandard front yard setback) where conformity is required for additions and alterations, from §197 Attachment 2 for a proposed front yard setback of 27.4 feet where the minimum required is 50 feet, and from §197-80.7 F for a proposed rear yard setback of 49.3 feet where the minimum required is 50 feet.

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

Motion was made by Mr. Piering to adopt the determination of **HCMC, 51 Old Riverhead Road (905-4-1-10)** as written; seconded by and unanimously carried 5 ayes, 0 nays, 0 absent.

#### **NEW APPLICATIONS**

**4. Brennan & Sadie Diaz, 7 Bayfield Lane (905-10-4-41)** Applicant requests variances and/or interpretation that such variances are not required from §197-5 A(1) to legalize conversion of a detached garage to a recreation room where the building is considered nonconforming as it is attached to an apartment, and from §197-6 A(2) where converted recreation room use in an out-building is deemed not to be normal and accessory to the principal single-family dwelling use.

James N. Hulme, Esq., appeared on behalf of the application. He said that as discussed in his application, this is a property subsequent to his clients purchase, there was a fully legal cottage with a multi car garage converted to habitable space as part of the cottage. The first part of his application was an interpretation to look at it as a typical accessory structure to get a CO for and the use of an a apartment was abandon and limited as accessory by a prior ZBA and addressing this as an interpretation as to whether or not its an expansion or just an ongoing slightly altered accessory use for a shed or swimming pool the change did not change the use of the property or the footprint of the building and it didn't expand its use as accessory it just enhanced the ability and seeking the standard variances under the factors that were discussed in the past or whether it produces an undesirable change, no cars may be an improvement, but all of the changes were internal and does not allow the use to any greater extent than the use before now there's just additional space to use The third factor is substantial, and it does expand the living space not the building it doesn't expand the use to which it can be put and similarly to what I said before it isn't expected to be any environmental impact. This is one of the few cases where I can't argue that it's self created, but it's not determinative.

Mr. Piering asked when his client bought the house?

Mr. Hulme said they bought it not too long ago. It was August, 2018.

Mr. Piering asked when this happened? Was this done when they bought the house?

Mr. Hulme said he believes the applicants converted it. They are not the owners any longer.

Mr. Piering asked who is the owner?

Mr. Hulme said the applicant was the owner at the time of application.

Mr. Piering asked who represented the seller?

Mr. Hulme said he represented the seller when they purchased it.

Mr. Piering asked if the new owners new this was not legal?

Mr. Hulme said yes.

Mr. Piering asked what exactly it is.

Mr. Hulme said it is a media room; there's a big TV in there, and it's ancillary to the apartment.

Mr. Piering asked how big the conversion is?

Mr. Hulme said it was a two-car garage, and both bays were incorporated there is no garage space.

Mr. Piering said it looks like its 40' x 40'. How much of that is the theater?

Mr. Hulme said all of it; they took the garage space and turned it in to the media game room.

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Mr. Piering said he would like to see it.

Mr. Badzik asked if it's the first floor or second.

Mr. Hulme said first.

Mr. Piering asked what the 15' is.

Mr. DelGiudice said it says family room.

Mr. Piering said there's a jog and that's another 15'.

Mr. DelGiudice asked if that space was there or was it open garage.

Mr. Hulme said it was just open garage when the renovation happened. If the Board would like to see it, they can hold it over so they can go to the site.

Mr. Piering said yes, I would like to, it's a big conversion.

Mr. DelGiudice asked if there was a bathroom in the original plan?

Mr. Hulme said it was a fully functional apartment; everything was there before and covered by the CO.

Mr. DelGiudice said there's a bathroom and then a room labeled family room and a kitchen and utility room.

Mr. Hulme said that was all there and covered by the original CO.

Mr. Musnicki said that Mr. Hulme's argument is when it was a garage there were cars, now it's habitable space so now there's not a big difference on the neighborhood or property. It is clearly an alteration that's not allowed so how do you get around that? What's your argument there.

Mr. Hulme said the interpretation, this was converted to an accessory use by this Board, and we have reconfigured the interior of that building. The variance argument is that there's little or no impact on the neighborhood at all relative to the conversion. It's still an apartment, it's not a multiple building it's just an apartment

Mr. Musnicki said let's step back to the accessory use part of it, the building inspector feels that's not a customary accessory use and I tend to agree with that.

Mr. Hulme said we have expanded that and it's still accessory and therefore it's customary and usual use for this property and in fact accessory apartments are scattered throughout the Village.

Mr. DelGiudice said when we first saw this, I don't know if anyone knows how it got to this and it was approved by the Board stuff like this when you see an application you have reservations because you know this will happen and in my opinion its like you're expecting to see this two years down the road; they got a variance and expanded the use and now they're asking for another variance. I think if it was presented this way years ago you would not have gotten the approval.

Mr. Hulme said he did not agree with Mr. DelGiudice; every application has to stand on its own and you have to apply the factors to this as a new application, and I don't think the potential bad acts in the chain of custody should necessarily.

Mr. DelGiudice said 200 square feet is an issue in the Village and we've had that before this Board, and I think to Mr. Piering's point if we can have access it would help.

Mr. Hulme said that's fine he would hold it over to do that.

**5. James Traynor, 91 Old Riverhead Road (905-2-1-7.02)** Applicant requests variances from §197-5 A(1) for proposed conversion of a nonconforming building (substandard side yard setback of 7.8' & front yard setback of 22.7') for Contractors' Administrative Office Use where

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conformity is required for alteration, from §197 Attachment 2 for proposed side yard setback of the “Office 2” building of 20 feet and a combined side yard is 89.9 feet where the minimum required is 50 & 100 feet respectively, and also from §197 Attachment 2 for proposed side yard setback of the “Special Trade” building of 26 feet and a combined side yard of 89.1 feet where the minimum required is 50’ & 100’ respectively.

David Gilmartin, Esq., appeared on behalf of the application, together with Vincente Gaudiello, Raynor Group. Joseph Musnicki recused himself. Mr. Gilmartin said the property is in the HD District and it is irregular and it looks like it’s two lots by an entry way and undersized and when they applied to the BOT to change the zone and we were looking to change from HD to B2 but we thought that was more appropriate and the BOT changed the uses to B2 and one thing they did not do was change the dimensional regulations. The requirements require 200,000 square feet or 5 acres and we have 63,770 and a lot width of 300’ is required and the front is 122’ and the rear is 149’ wide and that lack of width creates the setback and total side yard variances needed. When we looked at the development of the lots one is that there’s an existing building that predated zoning and that’s proposed office building 1 and we had to work around that and the configuration of the lot and one was getting access to the rear while still being able to develop the front. We spent a lot of time with working with the locations and we retained the existing building and built a separate and it was dictated by safety measures to access the rear portion with any emergency equipment and anything else made access convoluted. We came up with the configuration that way and it’s the reason why based on the width of the lot and the configuration that we need the side yard variances. We have done a few things that I think made the application better, retaining that existing office would allow us next to a commercial lot and allowed us to push the office building 2 as far off of that Southerly line and maintain the safety access. In looking at the balancing test it’s clear that the variances would allow a productive development of a property challenged in its configuration and I don’t think there’s a detriment to the community. We look at the character impact and we’re surround by B3, Industrial and Hotel District and across the street is B2 and the character of the community is commercial respect with the contiguous uses to the North and in the B3 is Ocean Spray and whatever uses will also come in there. When I looked at the property today, it looked like a few units were available. To the South in the same HD District appears a residence with a swimming pool. To our North and our West which is along the rear portion of the property there is the WHB Tennis and Sport which is Industrial Zone and to the East is CR 31 and across the street is an old restaurant and car dealership, and then South of that is a retail store. As I explained initially the challenge was the configuration, while we can fit most square footage, it presents a challenge on the front part of the lot we can meet setbacks but it would be in the middle and interfere with the rear access and emergency access to the rear.

Mr. Delgiudice asked what the dashed lines are.

Mr. Gaudiello said yes.

Mr. Gilmartin said we shifted that to the I Zone and away from what looks like the vacant to the South and then opens to the lot there; we thought it better to shift that back to the tennis court and I Use. It was a challenge with the configuration to avoid the variances and we thought it was better than what we could do as of right. We meet lot coverage, and that’s what we can use to consider the size, The PB has seen this initially and they issued a Negative Declaration Under SEQRA, and I think it’s fair to say that during that hearing the PB was supportive of this plan and finally I would argue that the hardship is not self-created it’s a preexisting lot and the imposition of zoning that created the hardship.

Mr. Piering asked why they needed three buildings, the one in the back is quite large. What is the purpose.

Mr. Gilmartin said it’s a special trade contractor request we are looking to maximize the size and opportunity so it’s a productive use on the lot. And the size restrictions are not violated, it’s set up as two lots and our challenge in the front was access and providing the emergency access to the rear and Mr. Gaudiello can talk about that. But that issue is not what they are seeking variances for, they are shifting to the North away from the property that’s not being used yet and the front is residential and we tried to have less impact on that lot.

Mr. Gaudiello said the reason beyond that the applicant is looking to retain the existing structure; as far as expanding on that to provide the office space we felt that by going with two smaller size

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buildings as far as adding on to the existing one it makes for a better plan and design, from a massing standpoint as you drive down CR 31 that speaks volumes.

Mr. Piering said the ARB or PB will look at that second building. The first one is a house converted to an office. What will the other building look like next to it.

Mr. Gaudiello said it's an attractive building and we've appeared before the PB twice and no comment as made regarding the concern of that and I don't know where we stand with the ARB and we'll respond to any comments, but we intend to make it as attractive as possible.

Mr. Hammond said if they got the zone change the building could be within the setbacks. And I will add to Dave Gilmartin's comments about the size. With respect to these lots with the negative setbacks we tried to alleviate some of that with the back portion. If they got the change, they would still need variances.

Mr. Piering said it's 22' back but it looks like everything else might meet the setback.

Mr. Hammond said it makes it more dysfunctional and he thinks their engineer can speak to it.

Mr. Gaudiello said the intent is provided with parking; we are creating a situation that its not ideal on either side and we favored it to one side which is zoned in I 1 and then allowed for the circulation on the Southerly bound; as you come in to the property that lends itself to create that aisle along the Southerly side of the building.

Mr. DelGiudice said if you shift it south, when you pull in to that lot it makes it more tough.

Mr. Gaudiello said the South East corner relative to coming in to the site it's in the middle of it.

Mr. DelGiudice said if you have to you can shift it West; whether it moves West or East it's confirming it's really the North and South and I see why you ended up there. The minimum width for the aisle is 24' and you have 10' to play with but I don't know if it does anything.

Mr. Gaudiello said we tried to make it wider and the intent is to put the trade shop in the back so the larger work vehicles would have more aisle width than expected in a standard parking area.

Mr. Piering asked how far Mr. Merrill's house is, the neighbor to the South.

Mr. Gaudiello said it would be 12' to the property line, and I don't know if they are represented at this hearing and they have been at the PB hearing and the applicant has met with Mrs. Ryder and we spoke about the proposal and her primary concern was what we're doing as far as landscaping goes and we have on the plan before the PB fully intend to landscape the area between the Southerly portion and the parking lot.

Mr. Piering said he took a few photographs and there's some trees there he would like to see more landscaping and his concern on how it will affect that property owner.

Mr. Gaudiello said they have not gotten in to the nuts and bolts with the PB as far as the details of the design but it's their intention to landscape as much as necessary and give that property owner to the South reassurance that they will not be impacted.

Mr. Hammond said these uses are special exceptions and there will be Public Hearings with the Trustees so the buffering can be addressed through the PB and Trustees.

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

Mr. DelGiudice said his question is about he parking, is there too many or are they at the required amount.

Mr. Gaudiello said they are where they need to be, and if you look at drawing C2 in their packet, they are required 49 and they have 48 exterior and 1 interior. There is a total of 52 spaces. We tried to balance the location with the parking schedule and we tried to put them in close proximity to each building.

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Mr. DelGiudice said his only other issue is the lighting, the second building with the residence next door he hopes to see a good lighting solution.

Mr. Gaudiello said they have full intentions on meeting that requirements.

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

Motion was made by Mr. Piering to close the application of **James Traynor, 91 Old Riverhead Road, (905-2-1-7.2)** for a determination; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 0 absent, 1 recused.

**6. Gerard & Suzanne Reda, 104 Oneck Lane (905-008-01-024)** Applicant requests variances from §197-1 for proposed bathroom within a detached building/structure of 680 square feet (340 SF each floor) where the maximum allowable detached building/structure with plumbing facilities is 200 square feet, from §197-5 A(1) to for a proposed addition to a detached garage in a nonconforming location where additions to nonconforming buildings must be in conformance with current zoning regulations (setback of 2.5' where 20' is required), from §197-7 A for proposed habitable space in a detached building/structure other than a cabana or accessory apartment where such finished habitable space is deemed not to be a normal accessory use to the principal single-family dwelling use, and from §197-75 for proposed modification to roofed-over patio structure where further modifications are in violation of condition 1 of previous Zoning Board of Appeals determination, D16026 dated December 15, 2016.

Todd O'Connell, Architect appeared on behalf of the application, together with Gerard Reda. Mr. O'Connell said the applicant has an existing covered patio with a flat roof and a railing and he wanted to utilize that flat roof and we're not enlarging it but we're putting a new railing on it, and there is one there currently and he'd like to utilize the roof of that balcony and we're not intensifying the square footage and we don't think it'll impact the character we're not increasing the size or the height. The Reda's purchased this property a year ago and they have children and they want to enjoy it to the fullest extent possible. Unfortunately, it's a nonconforming lot and whatever we do will need relief to provide a 20' setback on a 50' lot is impractical. There is a pool in the middle of the property and they'd like a cabana for that pool and they are looking to build a small room on top of the garage. In the notice it talks about a second story on the detached garage; it's all sloped roofs and it does create space under it and the amount of space that's over 5' is 196 square feet; the area that would be under 7' high ceiling is 120' square feet and the total height is 120' but once again being that the property is non conforming no matter what we require relief. They use the garage and want to maintain it and its access of the one car garage so we're only taking a small portion of it to get the bathroom for the pool and it's internal. We understand we're asking for relief for the height and use of the accessory structure, we wish the lot was conforming but it's not practical with the property. We created the minimal space that they could be happy with before this Board and we did not see any other option we were conscious of the neighbors with no windows on the North side of the garage and as far as the esthetics, it's setback and we're not expanding the house to the side and making the massing of the existing structure and I don't feel its impact will be negative as the garage is set so far back and with that I will answer any questions the Board may have.

Mr. Piering said as we go through this, are you aware of the history on this property with previous variance requests.

Mr. O'Connell said yes, they seem to be much larger second floor spaces so what we're proposing is deminimus in comparison.

Mr. Piering said so a second story garage with an apartment is deminimus?

Mr. O'Connell said in comparison to the previous cases, it is; this is not a full two-story structures it's only 120 square feet of usable space and it's for the family use for the pool and it's not an apartment.

Mr. Piering asked if they think it's okay to keep expanding this after still seeing the denials issued. We've granted a variance for the house already, there was a 836 square foot second story addition to the existing dwelling, I have a hard time not looking at anything with a second story 2' off of

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the property line; we've gone through this several times and we've been clear and you talk about the patio roof and utilizing what was there and we were clear we did not want that use for that purpose. What's different now that we did not allow then. I don't know that we would have approved that roof had you wanted to make it a deck.

Mr. O'Connell said he was not there and he did read the variance and the approval, that there would be no further expansion so he can not speak to that; we're not expanding the use and as far as I know why we can't walk out the window to sit on the roof.

Mr. Piering said if you can do that, what are you looking to do that's different.

Mr. O'Connell said we're trying to enhance the character of it and utilize it. The side is not changing, and previously if it was a pitched roof it may have been a different story about that's not the case, it's set up for what it can be used for.

Mr. Piering said it's set up for a covering over the patio. We look at the aspects and one thing we look at is character of the neighborhood this property keeps coming back. I would think when they bought the property they would have gone through the history to see what was allowed and with such a small narrow piece of property why can't you put the pool house behind the pool

Mr. O'Connell said he would have looked at that as being more intense and the density

Mr. Piering asked the lot coverage.

Mr. Badzik said 14%.

Mr. Piering said as of right you may be able to build a pool house back there with no variance. He asked if they received the letters of opposition.

Mr. O'Connell said yes, they did.

Mr. Piering said okay.

Mr. Musnicki said he looks at this as a two part application. The garage expansion where you're taking a structure that's non conforming and looking to expand the use of it and also the size of it would never be granted; I don't see the reason to grant that especially since the Chairman brought up that there are other choices in the area to entertain a pool house. The second part of the application over a deck, and you said that you can enter that room from the second floor and use that as an entertainment space;; a roof is a roof and a deck is a deck so I don't think that would be allowed. The property is very narrow at 57' wide and we look at is the character of the neighborhood and to have a second floor deck overlooking the back yard is not something that any neighbor wants to be next to. If this were an expansion of that and it was allowed I might look at it differently, but an open deck I can't.

Mr. Piering said there is a lot of history on this property and we've been through it so many times.

Mr. O'Connell said to have a place outside of the pool with a bathroom, detached behind the pool is a much larger expense than what we're proposing, if my client does not want to go in that direction would the board have an issue with a bathroom in the garage and I know I can't put plumbing in a space greater than 200 square feet.

Mr. Piering asked how big the garage is?

Mr. DelGidice said 342 square feet.

Mr. Piering asked how will it be used as a garage?

Mr. O'Connell said it's wide enough.

Mr. Piering said we don't want accessory apartments and if that's what you want to do you have to apply for that and discuss that with the Building Inspector, but that's just putting a bathroom in the garage internally?

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Mr. O'Connell said yes, just a half bath for the pool.

Mr. Piering said that's a lot more reasonable and a big difference from the application they are making.

Mr. Hammond said its past and continue practice, if the areas don't commune the bathroom took advantage of the existing square footage but there was no access to and from that would be permittable.

Mr. DelGiudice said an exterior door for the bathroom?

MR. Hammond said it's two adjoining buildings.

Mr. Piering asked if there was anything else to add.

Motion was made by Mr. Piering to close the hearing of **Gerard & Suzanne Reda, 104 Oneck Lane (905-8-1-24)** for a determination; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

**7. Michael & Karoline Kelsen, 72 Beach Lane (905-015-03-004.06)** Applicant requests a variance from §197-5 A(1) to create additional habitable space within previously unfinished attic space on a preexisting nonconforming finished third-story of a single-family dwelling, representing an increase in degree of nonconformity where §197-6E limits single-family dwellings to two stories.

James N. Hulme, Esq., appeared on behalf of the application. The property contains a three-story single-family residence, a pool, pool house and garage with an apartment. The lot is more than double the size that's required in the R1 Zone There has been a pre-existing third story and changed in configuration and the third story divides in to three separate sections and what it originally looked like were two bedrooms and a bathroom, the South End was unfinished attic and the North End was and it was undergoing extensive renovations and under three permits and as part of that process and not part of the permit the center section remained unfinished attic but the North section became finished conditioned spaced and as I said I don't believe it was part of the permits for the renovations but they did take place and during that renovation and which for reasons unknown was never completed by a prior owner and the permits were not closed out. So when my clients acquired they property they did with the renovations unfinished and with the 3 open permits still being renewed as prior to taking title to the property so we did so under those conditions and our modification showed that the North section of the third floor being changed back to attic space, but after our own renovations continued our clients were thinking that it might be nice to try to re establish that as habitable space on part of the existing third story and that's what leads us to the variances that we're seeking today and that's the going to remain unfinished attic and the North space we're looking to convert to a TV room as proposed and shown in the plans and we're here because the Code section that the building inspector cited conformity and the threshold that he's asked both before and after if it's granted, we have a legal third story and whether it's a matter of degree or not. To go through the factors, the view from the street and neighbor will not change at all; it will look to all of the world as being the same and we're not changing the windows in that section so the outward appearance will not change. The only way to get relief is with the variance, and the substantial nature is that it's only 400 square feet in a rather large house and to the outside world no one will know that it occurred and the self-creation he is not sure; and there's no environmental impact. The only way to the third floor is the stairs from the first floor so it is part of the normal use of the residence and you had that approval for the middle section, correct?

Mr. Hulme said yes.

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

Motion was made by Mr. Piering to close the application of **Michael & Karoline Kelsen, 72 Beach Beach Lane (905-15-3-4.6)** for a determination seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

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Motion was made by Mr. Piering to adjourn the meeting at 6:24 p.m.; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.