

April 18, 2019

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, April 18, 2019, at 5:00 p.m. in the Municipal Building, located at 165 Mill Road, Westhampton Beach, New York.

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

Anthony C. Pasca, Esq., Village Attorney

Brad Hammond, Building & Zoning Administrator

Maeghan Mackie, Board Secretary / Building Permits Examiner

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%.

The applicant proposes to place fill 5' from the property line on the North and East side of the property when Chapter 197-27. D. prohibits fill less than 10' from the property line.

The dwelling is being constructed within the Coastal Erosion Hazard Area when Chapter 74-8. C. (Coastal Erosion Management) of the Village Code prohibits new construction within the dune area.

James N. Hulme, Esq., appeared on behalf of the application. 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

Brendan Brogan

DETERMINATION

Address: 213 Dune Road
SCTM #: 905-20-2-7

-----X

I. REQUEST FOR RELIEF

The applicant, Brendan Brogan, is the owner of a parcel of real property located at 213 Dune Road. The property is located wholly within the R-3 Zoning District. According to the survey of the property drawn by Fox Land Surveying, David H. Fox, L.S. P.C., surveyed April 19, 2014, and date stamped received by the Village of Westhampton Beach on September 21, 2018 the parcel is improved with a two-story frame house, third story wood deck, swimming pool and deck with a fence around the pool.

Section 74-8.C. of the Village Code provides that, in the R-3 Zoning District, unless specifically provided for under this Chapter, all activities and development in the Dune areas, other than certain described activities, shall be prohibited.

Section 197-8.D. of the Village Code provides that, in the R-3 Zoning District, the front yard depth shall not be less than 50 feet; there shall be two side yards totaling not less than 50 feet, neither of which shall be less than 20 feet; and the rear yard shall not be less than 50 feet.

Section 197-27.D. of the Village Code provides that, in the R-3 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.

Section 197-35.B(1) of the Village Code provides that, in the R-3 Zoning District, accessory buildings, structures, tennis courts and swimming pools shall be permitted in both the front yard and rear yard on lots lying on the South side of Dune Road.

Section 197-35.C. of the Village Code provides that, in the R-3 Zoning District, accessory buildings, structures, tennis courts and swimming pools cannot be located closer than 20 feet any lot or boundary line, and on lots lying on the South side of Dune Road, the distance shall be 75 feet from the Crest of the Dune and 20 feet from a side or front boundary line.

The applicant is proposing to demolish the existing structure, except for the swimming pool, and construct a new single-family dwelling, decks, and septic system. Originally, the application proposed to remove the pool and sought a more substantial redevelopment that would have required a dozen variances to be granted. During the course of the hearing, the scope of the application and number and/or scope of variances requested was reduced. Under

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the final proposal, which is depicted on the plans drawn by Fox Land Surveying, David H. Fox, L.S. P.C., surveyed April 19, 2014 and last revised February 14, 2019, the following seven variances are requested:

- variance from §197-35.B(1) to allow four-foot wide deck on west side of dwelling;
- variance from §197-35.C to allow accessory structure (deck) on west side of dwelling to be located 17.9' from the westerly side lot line where 20' is required;
- variance from §197-8.D to allow the dwelling's easterly side yard setback of 17.4' from the lot line where 20' is required;
- variance from §197-8.D to allow the dwelling's total side yard setback of 39.6' where 50' is required;
- variance from §197-8.D to allow the dwelling's rear-yard setback of 46.1' from the crest of dune where 75' is required;
- variance from §197-27.D to allow fill within 5' of the northerly and easterly side lot lines in connection with the sanitary system, where 10' is required; and
- variance from §74-8.C to allow the dwelling to be constructed partially within the Coastal Erosion Hazard Area, which is otherwise prohibited.

II. SEQRA

The applicant submitted an Environmental Assessment Form Part I pursuant to the State Environmental Quality Review Act (SEQRA). The action is classified as a Type II action under 6 NYCRR § 617.5(c)(11), (12), (16) and (17), and therefore no SEQRA review is required.

III. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on October 18, 2018. The applicant's 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 written submissions from any neighbors in support or opposition to the application. After making the modifications to the original proposal as described above, 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, and the Board is empowered to impose reasonable conditions to minimize any adverse impacts from the variance.

Finally, the Zoning Board is empowered to grant coastal erosion variances from Chapter 74 where the strict application of the standards of such chapter may cause practical difficulty or unnecessary hardship and the applicant has met the specific requirements of Section 74-13(A)(1) of the Village Code. The more general practical difficulty/unnecessary hardship standards were, in the context of zoning codes, replaced by the more detailed five-factor balancing test described above. While there can be distinctions between the zoning standards and the practical difficulty standards governing coastal erosion variances, in this case, the relevant considerations for a coastal erosion variance overlap and are concurrent with the relevant considerations for a zoning variance. The various variances will therefore be considered together.

IV. FINDINGS AND CONCLUSIONS

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

1. The applicants demonstrated that the final proposal, subject to the mitigating conditions herein, will not cause any material adverse impacts on the character of the neighborhood. The property, like others on Dune Road, is narrow and constrained by front yard setbacks on the north, dune crest (rear yard) setbacks on the south, and side yard setbacks on each side, in addition to the Coastal Erosion Hazard Area requirements and Suffolk County Sanitary Code requirements affecting the southern and northern portions of the lot, respectively. While the applicant's original proposal aggressively sought a dozen variances, many of which were substantial, the applicant considered the comments of the Board and scaled back the

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proposal to eliminate and/or reduce the scope of many of the variances. Among other things, the substantial request for a lot coverage variance was eliminated altogether, the house was shifted as far to the north (away from the dune crest and CEHA line) as practicable, the variance request for the pool was eliminated, the dwelling was made to conform to the western side lot line and is 17.42 feet from the eastern side lot line (a shortfall of 2.58 feet), the accessory structures proposed on the south side of the house and east side of the house were eliminated. While the project still requires some variance relief, the scope of the relief is not dissimilar to the character of the neighborhood or prior relief granted by the Board.

2. *Alternatives:* The applicants have demonstrated that they cannot achieve the benefits sought without the need for variance relief.

3. *Substantiality:* Some of the requested variances are substantial.

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

5. *Self-Created Difficulty:* The difficulty is self-created, as the applicants acquired the property on notice of the development restrictions.

6. *Benefit vs. Detriment:* On balance, the Board finds that the benefits to the applicants outweigh the detriment to the neighborhood.

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

The Board therefore grants the requested as shown on the survey of the property drawn by Fox Land Surveying, David H. Fox, surveyed on April 19, 2014, updated on February 14, 2019, and on the building plans drawn by Temple Simpson, Registered Architect dated December 11, 2018 and date stamped received by the Village of Westhampton Beach on January 25, 2019, all subject to the following conditions to minimize any adverse impacts from the variance:

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

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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, outdoor kitchens, 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: April 18, 2019

Village of Westhampton Beach
Zoning Board of Appeals

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

2. 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 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

Rajesh Garg

DETERMINATION

Madhu Power Garg

Address: 136 Beach Lane

SCTM #: 905-15-5-11.4

-----X

II. REQUEST FOR RELIEF

The applicants, Rajesh Garg and Madhu Power Garg, are the owners of a parcel of real property located at 136 Beach Lane. The property is located wholly within the R-1 Zoning District. According to the survey of the property drawn by Fox Land Surveying dated April 7,

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2010, and last revised on April 12, 2019, the parcel is improved with a two-story frame house, patio, pool, pavilion, storage shed and tennis court.

The applicant is proposing to construct a garage addition to the existing single-family dwelling at the north side of the house, 22.9 feet from the northerly side lot line, resulting in a combined side yard setback of 52.5 feet and a proposed lot coverage of 26.29%.

Section 197-63.P. of the Village Code provides that, in the R-1 Zoning District, for lots with an approved tennis court, lot coverage shall not exceed 25%.

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.

The applicants are therefore requesting relief from Sections 197-63.P and 197-6.D to allow the decreased single-yard setback of 22.9' (where 30 is required) from the northerly side yard, a combined side yard of 52.5 feet (where 70 is required), and a 26.3% lot coverage (where only 25% is allowed).

III. 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 an area variance for a single family residence and 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.

IV. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on December 20, 2018. The applicants' agent, Nicholas A. Vero, Architect, appeared on behalf of the application. No other persons appeared in support or in opposition of the application. After some adjustments were made, resulting in the final proposal as described above, the hearing was closed for a determination at the March 21, 2019, meeting, subject to the submission of an updated survey, which was received by the Village on April 12, 2019.

V. 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.

VI. FINDINGS AND CONCLUSIONS

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

8. *Character of the Neighborhood:* Under the circumstances of the application and the history of the property, the Board cannot find that the granting of the variance will not have an adverse impact on the character of the neighborhood. The history of the property reflects a relatively modern development of the site that “maxed out” every square inch of permissible coverage by constructing a house and porch that has a sprawling 5,466 square foot footprint, plus amenities that include a tennis court, pool and spa, patio, and pavilion. The site is also the recipient of a prior variance to allow the owners to maintain the tennis court in a side yard. The owners at the time made conscious decisions to prioritize large living space and the existing amenities (tennis court, pool, spa, pavilion, and patio) over having a garage. Yet now, without proposing any reductions to the existing structures, the applicant asks for additional relief to allow a new, relatively large garage to be added to the north side of the property, requiring multiple variances for single side yard, total side yard, and coverage. While the Board understands that the flooding of the storage space under the house often prevents use of that space for storage of vehicles, the addition of a large, roofed garage in a nonconforming location, with no corresponding reduction of lot coverage to account for the new structure, is a detrimental solution to the applicant’s flooding problem, and the minimal benefits to be received from having a covered, non-flooding location to store vehicles does not outweigh the detrimental

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impacts on the character of the neighborhood that would result from the three requested variances.

9. *Alternatives:* Although the applicant has claimed that there are no alternatives to achieve the benefits of a covered space for vehicles without the proposed additional structure, the applicants have not explored the reduction of the size of existing structures to make room for a covered garage. In other words, the lack of any alternative, conforming location for a garage is the result of the applicants' and prior owners' decisions to prioritize other amenities and structures over a covered garage.

10. *Substantiality:* The variances, though not all mathematically substantial standing alone, are substantial in context and cumulatively. The addition of a garage as proposed requires three separate variances be given including two yard variances and a coverage variance. These three new variances are in addition to a prior variance granted to allow the tennis court in a nonconforming location. While the coverage variance may appear mathematically small, the Board has, as a policy, considered such requests substantial, particularly for new construction or for additions requested after owners have previously chosen to "max out" every square foot of coverage.

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

12. *Self-Created Difficulty:* The difficulty is clearly self-created and is a result of development design choices made by the applicants and their predecessors, who prioritized living space and the existing amenities over a covered garage.

13. *Benefit vs. Detriment:* On balance, the Board finds that the benefits to the applicant do not outweigh the detriment to the community.

The Zoning Board therefore **denies** the requested area variances.

Dated: April 18, 2019

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Garg, 136 Beach Lane, Westhampton Beach (905-15-5-11.4)** as written; seconded by Mr. DelGiudice and unanimously carried 5 ayes, 0 nays, 0 absent.

3. 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.

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No one 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

Judith Madden

DETERMINATION

Address: 64 Brook Road

SCTM #: 905-7-2-21.1

-----X

I. REQUEST FOR RELIEF

The applicant, Judith Madden, is the owner of a parcel of real property located at 64 Brook Road. The property is located wholly within the R-2 Zoning District. According to the survey of the property drawn by Raynor, Marcks & Carrington Surveying, dated June 14, 2013, and updated on November 9, 2018, the parcel is improved by a one-story frame house.

Section 197-7.D. of the Village Code provides that, in the R-2 Zoning District, the front yard depth shall not be less than 50 feet.

The applicant obtained a variance from this Board on May 18, 2017 to construct additions to the home that would be 23.2' (northern) and 43.9' (western) from the rear property line, but the plans at the time showed a conforming front yard setback of 50 feet.

Due to building error, the front yard setback as constructed is 40'. The applicant is now seeking to maintain a newly constructed dwelling with the nonconforming front yard setback of 49'.

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 area variances for single family residence, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(11), (16) and (17). 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 March 21, 2019.

The applicant, Judith Madden appeared and presented the application. No other persons appeared in support or in opposition of the application. The hearing was closed for a determination at the April 18, 2019, meeting.

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.

IV. FINDINGS AND CONCLUSIONS

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

1. *Character of the Neighborhood:* While the Board does not condone applications for variances as a result of “builder’s error,” under the unique circumstances of this application, a variance to allow the de minimis front-yard encroachment of one foot into the required 50-foot setback will not have an adverse impact on the character of the neighborhood. As such, the impact to the applicant to remedy the error outweighs the impacts, if any, on the neighborhood.
2. *Alternatives:* The applicant has no alternative to achieve the benefit sought (avoidance of the expense of correcting the builder’s error) without a variance.
3. *Substantiality:* The variance is not substantial.
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:* The benefits to the applicant outweigh the detriment, if any, to the community.
7. *Minimum Variance:* The variance is the minimum necessary to achieve the benefit sought.

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The Board therefore grants the requested area variance to allow the house, as built with a 49-foot setback to the front lot line, and as depicted on the survey drawn by Raynor, Marcks & Carrington Surveying, dated June 14, 2013, and updated on November 9, 2018, subject to the following conditions to minimize any adverse impacts from the variance:

V. 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 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, outdoor kitchens, 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 variance granted herein shall terminate unless an updated certificate of occupancy is obtained within 180 days from the date hereof.

Dated: April 18, 2019

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Madden, 64 Brook Road, Westhampton Beach (905-7-2-21.1)** as written; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

5. 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. 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

Richard Ferrucci

DETERMINATION

April 18, 2019

Address: 19 South Road
SCTM #: 905-9-3-14

-----X

VI. REQUEST FOR RELIEF

The applicant, Richard Ferrucci, is the owner of a parcel of real property located at 19 South Road. The property is located wholly within the R-1 Zoning District. According to the survey of the property drawn by Raynor, Marcks & Carrington Surveying, dated March 16, 2006, and updated on February 6, 2019, the parcel is improved by a one and one-half story frame house, detached garage and swimming pool with spa.

Section 197-35.A. of the Village Code provides that, in the R-1 Zoning District, accessory buildings, structures, tennis courts and swimming pools shall be located only in the rear yard.

The applicant is proposing to construct a swimming pool, hot tub, and patio in the side yard of the principal dwelling. The applicant has therefore requested relief from Section 197-35.A.

VII. 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 area variances for accessory residential structures, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(9). Accordingly, the application is not subject to review under SEQRA.

VIII. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on March 21, 2019. The applicant's attorney Richard T. Haefeli, Esq., appeared and presented the application. No other persons appeared in support or in opposition of the application. The hearing was closed for a determination at the April 18, 2019, meeting.

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.

IX. FINDINGS AND CONCLUSIONS

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

8. *Character of the Neighborhood:* The applicant has failed to demonstrate that the granting of a variance under these circumstances will not have an adverse impact on the character of the neighborhood. The applicant has not shown that the character of this neighborhood includes any other properties with pools located within a side yard, instead of within a rear yard as required by the code. Rather, the neighborhood appears to be developed with pools that are located within conforming, rear-yard locations. The property also does not have any unique constraints that could otherwise justify the granting of a variance as requested, such as the existence of no conforming rear yard where a pool could be properly located. Allowing the pool to be located within the side yard under these circumstances would set an undesirable precedent and alter the existing character of the neighborhood in a nonconforming manner. While the applicant has claimed, through counsel, that the benefit to be sought from the variance is to relocate the pool away from the southwesterly rear lot line because errant golf balls sometimes enter the property, the Board does not find the claims of an alleged benefit convincing, and even if the claims were true, the alleged benefit is minimal when weighed against the detriment of the variance.

9. *Alternatives:* The applicant does have an alternative location for the pool that would be in a conforming location, as proven by the existing location of the pool in the rear yard.

10. *Substantiality:* The variance is substantial as it seeks to place a pool within a side yard where pools are prohibited.

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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:* On balance, the Board finds that the benefits to the applicant do not outweigh the detriment to the community.

The Zoning Board therefore **denies** the requested area variances.

Dated: April 18, 2019

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination **Richard Ferrucci, 19 South Road, Westhampton Beach (905-9-3-14)** as written; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

HOLDOVERS:

5. Andersen-Kuntz 97 Hazelwood, Westhampton Beach (905-2-2-20.2) Applicant requests an interpretation of the village code that the Building Inspector erred when he determined that the nonconforming use on the property had been “discontinued” as provided for in chapter 197-29.E. of the Village Code. In lieu of a favorable determination by the Board the applicant requests a use variance from Chapter 197-5.A.(1) to allow multiple contractors offices with workshops and storage. The property is located in the MF-20 Zoning District.

James N. Hulme, Esq., appeared on behalf of the application. He submitted a request to holdover the application.

Motion was made by Mr. Piering to holdover the application of **Andersen-Kuntz 97 Hazelwood, Westhampton Beach (905-2-2-20.2)**; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

6. Donna McDonough, 24 Point Road, Westhampton Beach (905-17-3-25) Applicant requests variances to bring in fill 5’ from the North, East and South lot line when Chapter 197-27.D. of the Village Code requires a minimum of 10’ setback. The applicant also proposes a deck in the required front yard in violation of Chapter 197-35.C. of the Village Code which requires accessory structures in the rear yard only. The property is located in the R-5 Zoning District and the Flood Plain.

No one appeared on behalf of the application. Heather A. Wright, Esq., submitted a request to hold the application over to May 16, 2019.

Motion was made by Mr. Piering to holdover the application of **Donna McDonough, 24 Point Road, Westhampton Beach (905-17-3-25)** to May 16, 2019; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

7. 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. They have revised their plan and replacing the pool in a different location and smaller than the original pool and they are going to remove some of the edging of the tennis court and that lowers their lot coverage to 30.58% and they are only trying to replace the existing pool and entrance stairway to the existing home.

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Mr. Piering asked the size of the pool?

Ms. Wright said it is now 768 square feet with the reduction.

Mr. Piering asked what the reduction in lot coverage is?

Ms. Wright said in 2014 it was 30.8% and that's due to the shifting of the dune line, so we've reduced it more had the dune line not shifted.

Mr. Piering asked what it would be if the dune line did not shift?

Ms. Wright said it is 30/8%, we are bringing it below that number not just below the 30.91% which it is now.

Mr. Piering asked if they made the pool smaller?

Ms. Wright said originally, we asked for a 20' x 48' pool, now it's 16' x 48' and it has been reduced in its width significantly. It's much smaller than what we had and it needs replacement.

Mr. DelGiudice asked what she said about the tennis court?

Ms. Wright said they are taking off 118 square feet.

Mr. Badzik asked if that's along the East side of the property?

Ms. Wright said it is on the West side of the property, it's closest to Dune Road on the Westerly line.

Mr. Piering said he sees what they did and everything is the same, you are just looking to rebuild the swimming pool and its smaller than what you had. Are there any questions or comments?

There were no other questions or comments.

Motion was made by Mr. Piering to holdover the application of **123 Dune Road, LLC., 123 Dune Road (905-21-3-7)**; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

8. 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.

Bailey C. Larkin, Esq., appeared on behalf of the application. They were waiting on a determination from the Planning Board who adopted a negative declaration on March 28, 2019;

Mr. Piering said this is all we were waiting for is that correct?

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Ms. Larkin said yes.

Mr. Piering asked if there were any other questions.

Mr. Musnicki said this was the last piece we were waiting for, has anything changed?

Ms. Larkin said no, nothing's changed.

There were no other questions or comments.

Motion was made by Mr. Piering to close the hearing for the application of **Inlet View Property Management, LLC., 160 Montauk Highway (905-6-1-19)** for a determination; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

9. 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.

Bailey C. Larkin, Esq., appeared on behalf of the application, together with Susan Wilcenski, Spaces Landscape Architecture. After the meeting held last month we filed with the Board a landscape plan and we also took in to consideration raised by the neighbors and the Board and we filed revised plans. The revised elevations submitted have a materials sheet and color elevation and there was a second packet filed with a before and after; what we took in to consideration was the neighbor concerns and they sloped and pitched the roof and eliminates the green living roof.

Mr. Piering said that is gone?

Ms. Larkin said yes. Now it's a sloped roof, and the gable will face Seafield Lane so it's the narrowest portion it will have a gable, although shallow it's a pitched roof. The height has been increased slightly to 32' 9" and 40' is allowed; she is still intending the same design; muted earth tones and color and they eliminated the bluestone fascia and that was raised by the ARB; she has incorporated less glass.

Mr. Piering said the neighbors were concerned about the light.

Ms. Larkin said on the North the pool house portion it is about a 70% reduction in the glass and the number of units of windows was reduced trying to accommodate the neighbors.

Ms. Wilcenski said the concept of the landscape plan has not changed, and privacy is important to her as well as the neighbors. What I did to make it easier, blue red and green on the plan are Evergreens, and in addition to meandering the driveway they are lined with Evergreens and now the large circles are canopies of existing mature trees which are to remain. On the North property line the Privet Hedge is mature at 12' and on the entrance and along the front is an actual buffer of 5' to 6' privet hedge then there is a staggered row of Cedar Evergreen trees that are 9' to 11' and mature trees that pop up so there is already from the road, it is very private. The intent from the road is no view of the house at all, and from the neighbor on the North in addition to the existing there is a dense layering of trees. The Evergreens are 16' to 20' tall, and they'll be strategically placed to block any direct views from the neighbor's house to this house.

Mr. Piering asked if you can see the neighbor's house on the landscape plan?

Ms. Wilcenski said yes. On the North there is a mature Evergreen tree and plantings on the neighbor's side and you can't see through it. There is an ideal amount of trees between the North property owner and the house, we can't get any more in there we have planted it all, the whole space is planted with mature trees.

Mr. DelGiudice asked about the 70% reduction on the glazing on the North elevation.

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Ms. Larkin said it's on the pool house portion which is the closest to the neighbors.

Mr. DelGiudice said the main house does not have much.

Ms. Larkin said on the North side we have removed a few very large picture windows in their entirety.

Anthony Andrews said the top on the plans is the after, and the bottom is the before and it's been reduced greatly.

Ms. Larkin said they filed colored renderings of the house as well. The most narrow width of the house is what faces Seafield Lane.

Mr. DelGiudice asked what the material is? Is it mahogany?

Mr. Andrews said there is a materials list, it's on the 200 sheets, the last page A203, the legend along with a asymmetric view.

Mr. DelGiudice asked if the mahogany is the finished material?

Mr. Andrews said yes.

Mr. DelGiudice asked how it weathers?

Mr. Wittschen said it will dull, it won't change.

Mr. Andrews said they have images on the 200 sheets of relatively freshly installed mahogany.

Mr. Badzik asked if the glazing was only reduced on the North?

Mr. Andrews said they made an effort to reduce it on all sides, some areas more than other. There is a fireplace that has gotten much bigger and is shown. It has been kept more towards Seafield, and on A301 the North elevation of the main house and A200 is the North elevation of the pool house; and A302 is the West elevation of the pool house and what you can see from the road and neighbors house.

Mr. Badzik asked if they have a North side rendering?

Ms. Larkin said she thinks it's only on an angle.

Ms. Wilcenski said on the South side she has a row of mature trees there, and they are going to put them on that side and the neighbor is pretty far away outside of this plan in distance. You can see there is still a lot of Evergreens to break the view from the road looking this way and we have the tree line.

Mr. Piering said there will be a substantial amount of screening.

Ms. Wilcenski agreed, she said they are creating a woodland affect and it will be nice.

Ms. Larkin said they wanted to reiterate the Village Code Section 518 that an application can be denied in one or more harmful effect and we have tried to address the neighbors' concerns and we submit there is no harmful effect on the neighborhood, they did submit an appraisal and we ask you consider that in your decision.

Mr. Piering said okay.

Suzanne Mensch, Esq., appeared in opposition to the application on behalf of 16 Seafield Lane, and 283 Main Street; her clients are appreciative of the substantial modifications that the applicant has made, however they are still strongly believe that is striking visual discord and similarity and they would adversely effect of the neighboring areas, Section 5-1A(2) dictates the ARB preserve the prevailing esthetic character of the neighborhood and enhance the same, the ARB correctly did so in this instance by rejecting the applicants proposal. It is still heavily

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glassed, there are strong concerns about what it will look like at night time. The landscape plan is to hide the house suggests that there is a reason and it's so strikingly dissimilar and we respectfully request you uphold the ARB decision and if you decide otherwise, we would hope that if you decide to permit this application that the landscape plan is part of a condition as it is extensive and the applicant did at some point provided window screenings and that gives the neighbors assurances and it was substantial system.

Mr. Piering said the landscape plan was introduced and part of the record.

Ms. Mensch would like it as part of a condition.

Mr. Pasca asked if they are offering it as a condition?

Ms Larkin said yes.

Mr. Pasca said there has to be a way to articulate that condition, do you have specifications on it.

Ms. Larkin said this is her intention.

Mr. Pasca asked for specifications for the record.

Ms. Larkin said okay. The North side of the house is where Ms. Mensch's clients are and that's the side the glass has been reduced by 70% and there are minimal windows and less than a traditional home, there is substantial glass on the South side and that neighbor has not opposed the applicant. It's a water front property and they would like to enjoy the view.

Mr. Piering said what we're dealing with, the applicant has made significant strides and the opposition is about the style of the house. It still comes down to the style of the house in the neighborhood and that's how I'm reading it. You did a good job. He asked if there were any other comments or questions.

Greg Minasian said he stands with the ARB findings of fact and he'd like that as part of the record.

Motion was made by Mr. Piering to close the hearing of **Gilles Dellaert and Inge Debyser, 20 Seafield Lane (905-14-2-8.2)** for a determination; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

10. 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. I'm submitting this as a Builder's error but it is not a Builder's error it is the architect's error. The property in the rear is 13' wider than it is in the front, it could have been setback 20' from the Westerly property line. The property is not small and trying to be squeezed in there was more than adequate area for the pool to be moved over to allow the garage to be setback 20' and then the garage would not impact the swimming pool. If the architect had done a better job in planning it we would not be here. We have the room to do it, if he placed it 30' from the Westerly side yard there would be more than enough room, and keeping it in the conforming location at 20' we would run in to the same problem, the only property owner that is impacted by this is the neighbor to the East. Where we are proposing the garage is in a secluded portion of the property and my client has a letter from the property owner not objecting to it and he said he gave it to me, but I can't find it and can't present it to you today. The person to the rear is more than 20' and there's no adverse impact and no other property will be able to see the garage.

Mr. Musnicki said he is not following that argument, is it a builder's error?

Mr. Haefeli said yes, but was during the course of construction but it was the architect.

Mr. Musnicki said are you talking about the new construction on the entire improvement?

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Mr. Haefeli said the house was just completed and when the pool was completed, they realized the garage impact. I'm saying if you look at the survey it's not that the pool is 20' from the side yard it is 50' the pool could have been shifted to the Westerly side to allow the garage 20'.

Mr. Musnicki said you have a house that's been designed with a 3-car garage, and at some point he wanted a 5 car garage.

Mr. Haefeli said yes, and he put the pool in a location that prevented the garage from being in a location that would impact the pool,

Mr. Musnicki said when this project started there is a building permit for a 3-car garage and a 2-car garage?

Mr. Haefeli said no. I don't know, there was a BP for the house, and a lot of times the accessory structures come in after.

Mr. Musnicki said in order to make a determination, I would have to see something showing what you're saying, you're saying it was a builder's error that they did want a 3-car garage and a 2-car garage and addition. There was a BP for a house with a 3-car garage and a swimming pool, right?

Mr. Haefeli said there was a building permit for a house, and pool cabana, etc., he does not know if they were included in it.

Mr. Piering said he looks at this, and he sees a proposed 24' x 38' garage, now you chop off 10' of that and there's a 2-car garage that does not need a variance, and we're done.

Mr. Haefeli said his client wants a 3-car garage.

Mr. DelGiudice asked how it impacts the pool?

Mr. Haefeli said it overwhelms the pool, it's a large garage that overwhelms the pool.

Mr. Wittschen said you can move it over.

Mr. DelGiudice said that 10' is not aligned with the edge of the pavers.

Mr. Haefeli said that was the problem with the other. But what I'm saying to you, when it was planned and the pool was put in 50' his client would have the ability to construct the garage in a conforming location.

Mr. DelGiudice asked if he can still build it and shift it over but he doesn't because it can impact the pool?

Mr. Haefeli said yes.

Mr. Pasca asked how close will it be?

Mr. Haefeli said 10'.

Mr. Pasca said you don't show that on the survey from the corner of the pool to the garage as proposed.

Mr. DelGiudice said it has to be 25' from the pool.

Mr. Haefeli said I don't know. The patio is around the pool, when I say pool, I say pool and patio.

Mr. DelGiudice said he has a lot of patio.

Mr. Haefeli said if you move it over 10' it's right next the pool and patio.

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Mr. Badzik said it's still 15' South of it.

Mr. Pasca said you can shift it 4' further back to the 20' line and will increase the separation.

Mr. DelGiudice said you're almost at 30', is he putting plumbing in there?

Mr. Haefeli said yes, it looks like it. I'm making a representation that it's a 3-car garage.

Mr. DelGiudice said the surveyor left the drywell on the plan.

Mr. Pasca said it could be for drainage.

Mr. Piering said this is a 50% variance that can be achieved by other methods, you can make a smaller garage and still have an oversized two car garage in that location.

Mr. Haefeli said it's not a 3-car garage.

Mr. Piering said it's not, but you don't need the variance for a 2-car garage.

Mr. Haefeli said his client wants a 3 car garage and he could have put that on there had the architect designed the rear of the property to allow that and he did not do that, and he left a substantial amount of area on the West side and the only impact is the neighbor to the East who says he has no objection. I believe it will be moved further North. The neighbor most impacted has no objection to it. There are other variances that you have granted in the area and there are two variances on White Oak Lane and I brought them out last month, and one on White Oak and South for a swimming pool in the front yard and on Oneck Lane for a swimming pool in the front yard and the house next to that and there are other houses with it and whether or not it adversely affects the CON and it's the minimum variance where it's located.

Mr. Musnicki said that may be true that we granted variances as you say, we don't grant variances when you have other methods.

Mr. Haefeli said not for a 3-car garage.

Mr. Pasca said you have room for a 3-car garage except the benefit you're seeking is to not have it 10' closer to the pool.

Mr. Haefeli said it will be right up against the swimming pool and that's my argument, it will impact the swimming pool.

Mr. DelGiudice said you're asking for a 38' wide garage, there are so many ways to make it conforming. It's a 38' wide garage for 3 cars.

Mr. Badzik asked if the client has considered the pool or patio?

Mr. Haefeli said yes, it will cost over \$100,000.00. To remove the pool and move it over, it will cost \$100,000.00.

Mr. Pasca said what about taking 10' of the pavers off and relocate it to keep it 10' further from the garage.

Mr. DelGiudice said there's 2,000 square feet of patio.

Mr. Haefeli said you can change the patio at a must lower expense.

Mr. Piering said if we go through the five standards, three are against it.

Mr. Haefeli said it will not adversely impact the character of the neighborhood.

Mr. Piering said this is a 50% variance. Let's go on to number two, can it be achieved by another method? That's been established.

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Mr. Haefeli said not to keep it the distance away from the pool and patio.

Mr. Piering said whether it's substantial, it's a 50% variance, that's substantial. Whether it's self-created? Without question it is.

Mr. Haefeli said it is by the mistakes made the agent, architect.

Mr. Piering said it's still self-created. It's a massive project this didn't just happen, this is a 4,500 square foot house, with a 3-car garage, pool house, pool and patio.

Mr. Haefeli said it's all permitted.

Mr. Piering said this is not permitted.

Mr. Haefeli said the setback is not permitted.

Mr. Piering said my opinion on the five factors, three of them are against you.

Mr. Haefeli said okay.

Mr. Musnicki thanked Mr. Haefeli.

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

Motion was made by Mr. Piering to close the hearing of **Kevin Minassian, 16 Michaels Way, (905-9-3-17.8)** for a determination; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

NEW APPLICATIONS:

11. Michael and Kerry Pasquale, 50 White Oak Lane (905-9-1-8) Applicant requests variances to construct additions and alterations to an existing single-family dwelling. The proposed alterations will create a minimum side yard of 24.8' and a total side yard of 53.1' when Chapter 197-6.D. requires 30' and 70' respectively. The property is located in the R-1 Zoning District.

James N. Hulme, Esq., appeared on behalf of the application, together with Sal Iannone, Architect, together with Michael Pasquale. They are proposing a small second story complying addition to the existing structure and 15' wide garage to the East side of the home. The existing house was built in 1962 at the time when Zoning was considerably different than it is now. This lot is one of 13 or 14 lots that were part of a 1958 subdivision. At the time of that the lot size was only 15000 square feet; the lots as a whole are smaller than you would typically find in the R-1 Zone. At the time the house was built it was built with 23.9' side yard on the West and does not meet the current standard today. Later in 1962 this Part of the Village was up zoned to R-20 which had a 20' single side yard and in 1966 this area as well as other areas were up zoned to R-1 which had substantially bigger lot area requirements which is how we have the side yard and total side yard variance. This house and neighborhood were developed under much different zoning and if that were still the zoning in this area for this property what we would propose wouldn't require any variances at all.

Mr. Piering asked when it was up zoned to the current zoning?

Mr. Hulme said it was in 1966 and it was built in 1962 and two-thirds developed. In and around 1962 it was up zoned to R-20 which still allowed for side yard of 45' total and 20' for each individual side yard and if that was today, we would not need a variance. As indicated what we're seeking is a second story addition over the center of the house and that complies, there are interior renovations and the thing that leads the variance is the one story 15' wide garage to the East of the property reducing the side yard from 39.4' to 28.4' and that affects the single side yard and total side yard. The aerial photograph shows the various houses in the neighborhood and all violate the single and total side yard setback and two specific properties are the McBride

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house, 45 White Oak Lane and the existing house has a single side yard that is 16.5' on one side and 16.8' on the other side.

Mr. Piering asked if McBride got a total side yard setback or individual?

Mr. Hulme said he got a total. There are other issues with that. His point is that the CON is narrow side yards both total and single, and we are even after the addition is added we are still within the scale and scope of the side yard setbacks of the neighborhood.

Mr. DelGiudice asked if this is a renovation?

Mr. Hulme said yes.

Mr. Iannone said yes, and he cross hatched the addition and the garage.

Mr. DelGiudice asked if the first floor remains intact?

Mr. Iannone said yes, we're adding a second floor over the conforming existing house.

Mr. Hulme said we're not incorporating the existing garage, we're just asking to add an existing garage.

Mr. Piering said when he looks at this lot, you talk about up zone, but under the Current Code today if this was vacant the lot conforms with the width. There is a 150' wide property and that this house is already under today's Zoning non-compliant with the total side yard setback on this. Now you want to encroach on to the side yards.

Mr. Hulme said because of the up zoning, none of the houses, or few of them comply right now with the current side yard and total side yard setbacks as required in the zone. The lots are all R-20 lots, and they were changed to R-1.

Mr. Piering asked if they ever had a variance to take a conforming width lot and make it non conforming?

Mr. Wittschen said he believes they turned one down around the corner.

Mr. Piering said that was but that was because it could be in a conforming location.

Mr. Hulme said we would lose the existing house, my client and his family are looking for more space not less.

Mr. Iannone said the only other choice is to put the garage in the rear.

Mr. Piering asked if that's not feasible, can you do that or can you not?

Mr. Hulme said the rear yard already has a pool and deck and this garage ties nicely to the existing house and not so much if its behind it.

Mr. Wittschen asked the size of the garage?

Mr. Hulme said it is 15' x 28' it's not a two car garage, it's very modest. These setbacks are not out of keeping with this particular part of the neighborhood because of how it's developed.

Mr. DelGiudice said for construction methods, is there a basement? If you want to push the garage in you can't because there's a basement.

Mr. Iannone said yes, pushing the garage in we lose square footage of the house?

Mr. Piering asked how many square feet the house is?

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Mr. Iannone believes it's on the prints.

Mr. Piering said I do not see it.

Mr. DelGiudice said the additions are shown but not the total square footage. It is 2,194 existing.

Mr. Hulme said we would add 15' x 28' to the footprint but the second story addition does not add to the footprint.

Mr. DelGiudice said it will be 2,700 to 2,800 square feet after the additions?

Mr. Hulme asked Mr. Iannone if he agrees with that?

Mr. Iannone said he is not sure.

Mr. DelGiudice said he has it, it is about 2,800 square feet.

Mr. Iannone said yes.

Mr. Hulme said it is still a modest house even after the addition, there's no more habitable space to the side yard and it's the minimum size necessary for a garage, and we would not want to drive in from the side.

Mr. Piering said it will be 28' deep and that's not the issue, the side yard is the issue.

Mr. Pasca asked if you detached it and shifted it back and it would be conforming to the accessory structure setback.

Mr. Hulme said it is a detached garage and that's not the applicants desire. It is a nice house, we are not looking to make it much larger we just want to attach a garage so people can drive in, get out of their car and not have to deal with the elements.

Mr. Piering said this is on the East so the house would be most affected is on Oneck, and that's their backyard? Is that correct?

Mr. Hulme said that's correct, yes. It is not side to side, it's side to rear. Their house does not meet any of the R-1 requirements either.

Mr. Piering said it was probably built ahead of time. But they are not asking to increase a non conformity.

Mr. Hulme said but they have a front yard or side yard pool. My point is that even after the modest addition, this is not outside the CON.

Mr. Piering said with or without the garage you can do the living space expansion, so we are only discussing the garage. Are there any other questions.

Patricia Juskowitz, 55 White Oak Lane, appeared in opposition to the application. She has resided here since 1998, she is directly across the street.

Mr. Piering said he remembers her case, she wanted a garage also and that's what I cited before and I do remember your case.

Ms. Juskowitz said she regrets the position she has to take, but I feel that the CON will be affected by this change you will then have two (2) I believe, of the 17 homes in that area that have side yard variances. I believe, although I can't really attest to it that home originally had a garage the same as mine did, and the garage area was incorporated previous to this persons

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purchase of the home, in to the home. When this home was purchased the owner knew that there was no garage and he should have known or investigated the requirements to put a garage there. He created the problem that he now faces and I was required to place my garage as a detached garage which I did and I think the same should apply here.

Mr. Piering thanked Ms. Juskowitz. The question with Ms. Juskowitz's home was that she could put her garage in a conforming location so that's the issue there. He asked if there were other neighbors with questions or comments.

Mr. Hulme said he had nothing more to add.

There were no other comments or questions.

Motion was made by Mr. Piering to close the hearing of **Michael and Kerry Pasquale, 50 White Oak Lane (905-9-1-8)** for a determination; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

12. Bennett-Goldman Family Revocable Trust, 54 Oak Street (905-5-3-22) Applicant requests a variance to convert an existing accessory building to an accessory apartment as defined in Chapter 197-93 of the Village Code on a parcel of land located in the R-4 Zoning District. The proposed accessory apartment will be located in an existing building 6.9' from the rear property line when Chapter 197-93.2.B. (6) prohibits any dimensional non-conformities greater than 70%. In the R-4 Zoning District, accessory structures must be 15' from any yard which would require an accessory structure to be used as an apartment to be no less than 10.5' from the rear lot line. This request is for dimensional relief only. The applicant must also show compliance with the General and Special Standards as outlined in Chapter 197-93.2. of the Village Code, including but not limited to proof that this property is the owner's domicile or principal place of abode.

Nigel R. Williamson, Architect appeared on behalf of the application. This is a pre-existing structure that was previously approved 9 years ago.

Mr. Piering said yes, that's correct. Why did they not do the work? Now it's expired so you are back.

Mr. Williamson said yes. The property has changed ownership, but the other gentleman who applied had another property so that excluded him.

Mr. Piering asked if this is his client's principal residence?

Mr. Williamson said yes.

Mr. Piering asked if we have any questions or comments? Is there proof of residency?

Mr. Pasca said that's not really this Board's job, that's part of the BP permit and they have to prove that when they obtain a BP. They are only here for the dimensional non-conformity.

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

Motion was made by Mr. Piering to close the hearing of **Bennett-Goldman Family Revocable Trust, 54 Oak Street (905-5-3-22)** for a determination; seconded by Mr. DelGiudice and unanimously carried 5 ayes, 0 nays, 0 absent.

EXTENSION REQUEST

13. Tobin, 185 Dune Road, Westhampton Beach (905-20-2-15) Applicant request a one-year extension of their BZA determination dated January 18, 2018, which expired on June 18, 2018.

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Nicholas A. Vero, Architect appeared on behalf of the application. He said his client is in the process of getting a building permit, but they need to obtain their extension before it can be issued.

Motion was made by Mr. Piering to grant the extension request of **Tobin, 185 Dune Road, (905-20-2-15)** to December 18, 2019; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

Motion was made by Mr. Piering to adjourn the meeting at **6:25 p.m.**; seconded by Mr. DelGiudice and unanimously carried 5 ayes, 0 nays, 0 absent.