

May 16, 2019

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, May 16, 2019, at 5:00 p.m. in the Municipal Building, located at 165 Mill Road, Westhampton Beach, New York.

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

Anthony C. Pasca, Esq., Village Attorney

Brad Hammond, Building & Zoning Administrator

Maeghan Mackie, Board Secretary / Building Permits Examiner

ABSENT: Frank DelGiudice

**DECISIONS:**

**1. 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.

No one appeared on behalf of the application.

There is no determination available for the application of **123 Dune Road, LLC., 123 Dune Road, Westhampton Beach (905-21-3-7).**

**2. 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.

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

Inlet View Property Management, LLC.

**DETERMINATION**

Address: 160 Montauk Highway

May 16, 2019

SCTM #: 905-6-1-19

-----X

**I. REQUEST FOR RELIEF**

The applicant, Inlet View Property Management, LLC., is the owner of a parcel of real property located at 160 Montauk Highway. The property is located wholly within the B-2 Zoning District. According to the survey drawn by Raynor, Marcks and Carrington Surveying, dated April 20, 2004, and updated on January 11, 2019, the parcel is improved with a one-story concrete block building used as a commercial beverage store, and a two-story frame building used as a luncheonette with apartment above.

As depicted on the Site Plan for the Proposed Expansion for Circle M. Beverage, prepared by Richard Searles Architect, P.C., dated March 30, 2017 and last revised on January 5, 2019 (the "Site Plan"), the applicant is proposing to renovate and construct a 4,075 square foot addition to the existing beverage store building. The northern portion of the property, where the luncheonette building is situated, will remain generally unchanged except for the relocation of the dumpster as depicted on the Site Plan. The proposed renovations and additions to the beverage store building include retail space, a walk-in cooler, accessory warehouse areas, and an interior loading/parking area. Additional site improvements include the addition of curbing and landscape islands, parking and other improvements designed to improve the existing conditions of the site.

The improvements described above and depicted in the Site Plan will result in certain nonconformities for which the applicant now seeks variances. The variances requested are as follows:

1. Dumpster Location: Section 197-35.C. of the Village Code provides that, in the B-2 Zoning District, no container shall be located in or on a public right-of-way. Containers shall be set back a minimum of 20 feet from any road, right-of-way or property line, except that containers of recyclable materials may be located curbside for periods not to exceed 24 hours per week incident to any municipal-wide recycling program. In the Site Plan, the dumpster is proposed to be located within 20' of the front lot line facing Pine Street.
2. Front Yard Setback: Section 197-17 of the Village Code provides that, in the B-2 Zoning District, a 50-foot front yard depth is required. The proposed addition has a minimum setback from Pine Street of only 30.5 feet.

3. Lot Coverage: Section 197-17.1 of the Village Code provides that, in the B-2 Zoning District, 20% is the maximum building lot coverage. The Site Plan proposes a new lot coverage of 21.93%.
4. Parking Spaces: Section 197-19 of the Village Code provides that, in the B-2 Zoning District, off-street parking and truck loading spaces shall be provided and maintained as an accessory use to all permitted and special exception uses of buildings, structures and lots in amounts not less than those specified in this article. All such parking spaces shall be considered to be required spaces on the lot on which they are located and shall not, therefore, be encroached upon or reduced in any manner. Section 197-21 of the Village Code provides that, in the B-2 Zoning District, requires 1 parking space per 200 square feet of gross floor area. Based on the interpretation of the Building Inspector and Planning Board, the foregoing would require a total of 54 parking spaces. Only 52 parking spaces are proposed, including three indoor parking spaces.
5. Transitional Yard: Section 197-63.G. (11) (b) of the Village Code provides that, in the B-2 Zoning District, the minimum front transitional yard shall be 30 feet. The Site Plan proposes both some parking spaces and the dumpster to be located within the front transitional yard.

The applicant therefore requests variances from these provisions to allow the Site Plan to be implemented.

## **II. SEQRA**

The applicant submitted an Environmental Assessment Form Part I pursuant to the State Environmental Quality Review Act (SEQRA). The matter was classified as an “unlisted” action under SEQRA and underwent coordinated review conducted by the Planning Board, acting as lead agency. On March 28, 2019, the Planning Board adopted a negative declaration of significance. No further SEQRA review is required.

## **III. ZBA PROCEEDINGS**

This application was duly noticed for a public hearing, which was opened on February 21, 2019. The applicants’ attorney, John J. Bennett, and architect Richard T. Searles, appeared and presented the application.

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No other persons appeared in support or opposition to the application, and the Board did not receive any written submissions from any neighbors in support or opposition to the application. The hearing was closed at the April 18, 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. The Board is empowered to impose reasonable conditions to minimize any adverse impacts from the variance.

Finally, in connection with requests for variances from off-street parking requirements, Section 197-24.A of the Village Code requires the Board, if it grants such a variance, to “...clearly set forth the extent of such variance or variances by stating the number of spaces required pursuant to this article, the reduced number of spaces required by reason of the decision by the Board of Appeals and the number of spaces thus avoided or waived by the determination of the Board of Appeals.” In addition, Section 197-24.B and C requires an “off-street parking space fee” of \$6,500 per space to be paid to the Village of Westhampton Beach off street parking fund for all variances given from the off-street parking requirements.

#### **V. FINDINGS AND CONCLUSIONS**

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

1. *Character of the Neighborhood:* In this case, the Board finds that the requested variances, individually and cumulatively, will not cause a material adverse impact on the character of the neighborhood, provided that the various proposed site and operational

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improvements are made conditions of the final site plan approval and are set forth in enforceable covenants. The applicant has worked with the Planning Board and its consultants to arrive at an overall Site Plan that both provides the applicant with certain benefits but simultaneously addresses many pre-existing deficiencies of the site. The applicant has offered, as part of the proposed Site Plan, to implement these improvements. While the requested variances are not insubstantial, and could have impacts on the character of the community without any mitigation measures, the overall project (with the various mitigation measures) will result in a net improvement to the site and neighborhood by, among other things, eliminating the overflow of trucks and loading activities on the adjacent roads. Nonetheless, strict conditions will have to be implemented to ensure that these improvements and mitigation measures are put into effect.

2. *Alternatives:* The applicant has demonstrated that there are no alternatives to achieve the benefits sought (the additional space for the beverage building) without the requested variances.

3. *Substantiality:* The variances are substantial in several respects.

4. *Physical/Environmental Impacts:* No physical or environmental impacts have been identified. The project has received a negative declaration of significance. The Board notes that the determination of no impacts is expressly conditioned on the implementation of the proposed mitigative measures.

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

6. *Benefit vs. Detriment:* On balance, the Board finds that the benefits to the applicant outweigh the detriments to the community, provided that the proposed mitigating conditions are implemented.

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

8. *Off Street Parking Number and Fee:* Pursuant to Section 197-24.A of the Village Code, the Board finds that the required number of spaces for the site, as proposed in the Site Plan, is 54 spaces, and the actual number of parking spaces provided is 52 spaces, including the three indoor spaces, leaving a shortfall of two parking spaces. Pursuant to Sections 197-24.B and C, the variance granted herein shall require the payment of an off-street parking space fee of \$13,000 to be paid to the Village of Westhampton Beach off street parking fund.

The Board therefore grants the requested area variances to allow the applicant to construct a 4,075 square foot addition, all subject to the following conditions to minimize any adverse impacts from the variance:

**II. 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.
2. Prior to the issuance of any building permit, the applicant shall pay an off-street parking space fee of \$13,000, to be paid to the Village of Westhampton Beach off street parking fund.
3. The applicant shall be required to keep the three designated indoor parking spaces open and available for parking for delivery truck and employee parking. The three spaces shall not be converted to general storage or warehouse space or any other uses other than off-street parking. The applicant shall also be prohibited from parking delivery trucks outdoors and shall only park such vehicles indoors when not in use during normal business hours. At the time of the recording of any covenants in connection with the Site Plan approval by the Planning Board, the applicant shall be required to include covenants, in a form suitable to the Planning Board and Village Attorneys, ensuring that the three interior parking spaces be maintained as such in perpetuity and prohibiting the parking of delivery trucks outdoors other than when they are in use during normal business hours.
4. The applicant shall be required to implement the various site improvements and operational improvements as described. The implementation and details of these improvements shall be left to the discretion of the Planning Board as part of its final Site Plan determination and covenants, but a violation of any condition or covenant of the Planning Board shall be considered a violation of the variances granted herein.
5. There can be no exterior work performed on weekends from May 1 to September 30 and on weekdays from July 1 to September 10.

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- 6. The variances granted herein shall terminate unless a building permit is issued within 180 days from the date hereof and construction completed according to said building permit.

Dated: May 16, 2019

Village of Westhampton Beach  
Zoning Board of Appeals

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

**3. 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.

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

Gilles Dellaert  
Inge Debyser

**DETERMINATION ON  
APPEAL**

Address: 20 Seafield Lane  
SCTM #: 905-14-2-8.2

-----X

**I. REQUEST FOR RELIEF**

The applicants, Gilles Dellaert and Inge Debyser, are the owners of a parcel of real property located at 20 Seafield Lane. The property is located in the R-1 Zoning District. The parcel is improved with a two-story frame dwelling and detached garage.

The applicants have submitted a Building Permit application proposing to demolish the existing two-story frame dwelling and detached garage, and construct a new two-story frame dwelling on piles, with an attached garage and pool house which was disapproved by the Architectural Review Board on September 4, 2018 and subject to a written Findings of Fact dated October 16, 2018.

The applicant thereafter filed an appeal to ZBA, pursuant to section 5-19 of the Village Code, from the determination of the Architectural Review Board.

**II. SEQRA**

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The applicant submitted a Short Environmental Assessment Form under the State Environmental Quality Review Act (SEQRA). Since the application involves the reconstruction of a single family residence, the matter is classified as a Type II action under 6 NYCRR §617.5(c)(11), and no further SEQRA review is required.

### **III. ZBA PROCEEDINGS**

This application was duly noticed for a public hearing, which was opened on March 21, 2019. The applicants' attorneys, John J. Bennett, Esq. and Bailey C. Larkin, Esq., appeared and presented the application over the course of two meetings. Suzanne Mensch, Esq., appeared in opposition to the application on behalf of Sean Farrell and Rene Farrell, 283 Main Street, Westhampton Beach, and John A. Stratta and Diana Stratta, 16 Seafield Lane, Westhampton Beach. Greg Minasian, Chairman of the Architectural Review Board, appeared to present that Board's position regarding the underlying application.

During the course of the proceedings, modified plans were submitted to address certain concerns expressed by members of the public and the Architectural Review Board. Specifically, the plans were modified to eliminate the "living roof", create a modest pitch to the roof, and replace a bluestone fascia with cedar, and to reduce the glass, including on the north elevation of the pool house and main house. The final plans are reflected in the revised elevations prepared by Anthony Andrews, P.E., dated April 9, 2019, date stamped received by the Village on April 11, 2019. The applicant also submitted a landscaping plan prepared by Susan Wilcenski, dated October 22, 2018 and date stamped received by the Village on April 4, 2019. The applicant also confirmed in writing dated April 4, 2019 that a shade system is proposed to be installed to mitigate the impacts of light from within the house, and that such system was a voluntary condition of approval.

### **IV. GOVERNING LAW**

The Zoning Board is empowered to entertain appeals from decisions of the Architectural Review Board under Section 5-19 of the Village Code, which provides as follows:

#### **§ 5-19 Appeals.**

A. Any person aggrieved by a decision of the Architectural Review Board may request, within 30 days of the filing of the decision by the Architectural Review Board, that the ARB make formal findings of fact. In the event of such a request, the ARB shall make findings of fact within 15 days after the request is filed in the Village Clerk's office, shall thereafter provide the person with an opportunity to answer the findings by a submission of formal proof and shall reconsider the application on the basis of such answer. If a person is still aggrieved by the decision of the ARB after reconsideration, such person may appeal to the Board of Zoning Appeals, in accordance with its rules, within 30



days after the filing in the office of the Village Clerk of the decision of the ARB after reconsideration.

B. The Board of Zoning Appeals shall fix a reasonable time for the hearing of such appeals and may reverse or affirm, wholly or partly, or may modify the action appealed from insofar as it relates to the provisions of this chapter. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the provisions of this chapter, the Board of Zoning Appeals shall have the power, in passing upon appeals, to vary or modify the application of such provisions in harmony with their general purpose and intent so that the spirit of this chapter shall be observed, public safety and welfare secured and substantial justice done.

In considering such appeals, the Board is required by law to conduct a “de novo” review. *See Bd. of Architectural Review & Historic Pres. v. Zoning Bd. of Appeals*, 279 A.D.2d 523 (2d Dep’t 2001). While the decision of the Architectural Review Board may be considered, the ZBA is required to give the application a fresh review and may reverse, affirm, or modify the decision in its discretion, applying the applicable provisions of Chapter 5 of the Village Code.

The standards for approval and disapproval of an application are set forth in Sections 5-16 and 5-18, respectively, of the Village Code. Under Section 5-16, approval is warranted if a building “...would be in harmony with the purpose of this chapter, would not be visually offensive or inappropriate by reason of poor quality of exterior design, monotonous similarity or striking visual discord in relation to the sites or surroundings, would not mar the appearance of the area, would not impair the use, enjoyment and desirability and reduce the value of properties in the area, would not be detrimental to the character of the neighborhood, would not prevent the most appropriate utilization of the site or of adjacent land and would not adversely affect the functioning, economic stability, prosperity, health, safety and general welfare of the entire community.” Conversely, under Section 5-18, disapproval is warranted if the Board finds “one or more of the harmful effects” by reason of monotonous similarity (subsection A), striking dissimilarity, visual discord or inappropriateness (subsection B), or visual offensiveness (subsection C). In all cases, the Architectural Review Board (or ZBA, on appeal) is required to confer with the applicant to allow it to make changes (see §5-18), and to impose reasonable conditions to mitigate against harmful impacts (see § 5-17). The ZBA is further empowered, under Section 5-19.B to grant variances to the provisions of Chapter 5 in the event of practical difficulties or unnecessary hardship.

In applying these standards, the Board is also aware of the subjective nature of architectural review. The courts have upheld municipal regulations that are based solely on

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aesthetic considerations, but have cautioned that the public interest in aesthetics is not as great as that in public safety. See *Modjeska Sign Studios, Inc. v. Berle*, 43 N.Y.2d 468, 478, 402 N.Y.S.2d 359, 365–66 (1977); *Rochester Tel. Corp. v. Vill. of Fairport*, 84 A.D.2d 455, 458, 446 N.Y.S.2d 823, 826 (4th Dep’t 1982). It has been stated that, where a property owner has the right to use his property in a certain manner, “[a] denial of that right solely on aesthetic grounds should be based upon a showing that ‘the offense to the eye . . . [is] substantial and . . . [has a] material effect on the community or district pattern.’” *Sackson v. Zimmerman*, 103 A.D.2d 843, 844, 478 N.Y.S.2d 354, 356 (2d Dep’t 1984) (quoting *Matter of Cromwell v. Ferrier*, 19 N.Y.2d 263, 272, 279 N.Y.S.2d 22, 30 (1967)); accord, *Vill. of Hempstead v. SRA Realty Corp.*, 160 Misc. 2d 819, 823, 611 N.Y.S.2d 441, 444 (Sup. Ct. Nassau County), *aff’d*, 208 A.D.2d 713, 617 N.Y.S.2d 794 (2d Dep’t 1994).

## V. FINDINGS AND CONCLUSIONS

1. Applying the foregoing standards, the ZBA finds that the final plans, as modified and conditioned on the implementation of the proposed landscape plan and shade system, would be in harmony with the purpose of Chapter 5, would not be visually offensive or inappropriate by reason of poor quality of exterior design, monotonous similarity or striking visual discord in relation to the sites or surroundings, would not mar the appearance of the area, would not impair the use, enjoyment and desirability and reduce the value of properties in the area, would not be detrimental to the character of the neighborhood, would not prevent the most appropriate utilization of the site or of adjacent land and would not adversely affect the functioning, economic stability, prosperity, health, safety and general welfare of the entire community.

2. While the initial application, and the one presented to the Architectural Review Board, did present some genuine concerns relating to the aesthetic impacts from the living roof and the purely flat-roof design, and the extensive use of glass (which could result in some impacts from lighting), the applicant did modify the plans to address these concerns to the extent feasible, while still maintaining the applicant’s programmatic purpose and stylistic goals.

3. The Board cannot conclude, on the evidence presented, that there is a basis for denial under any of the criteria of Section 5-18 of the Village Code. The thrust of the opposition to the application by the neighbor (and as expressed by the Architectural Review Board) is that the modern style of the home will be strikingly dissimilar to surrounding homes, which have a traditional architectural style. While there is some evidence that the modern design is dissimilar

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to the more traditional homes in the immediate vicinity of the subject property, particularly on Main Street, there is also evidence that modern homes have been approved and constructed relatively close by. Chapter 5 does not define a geographic area that must be considered for purposes of determining striking discord. The ZBA is not convinced that such a narrow limitation of the geographic area in this case should be applied.

4. Even if the ZBA accepted the premise that the area could be narrowly construed such that this would be the only contemporary design in the “area,” the ZBA finds insufficient evidence, in the context of this application and property, to support a finding of “striking” discord and dissimilarity to the point where it can be found to be “harmful” to the neighborhood, as would be required by Section 5-18 of the Village Code, or a substantial “offense to the eye” or “material effect on the community or district pattern” as would be required under New York law. Under the Code and New York law, dissimilarity alone is insufficient; rather, the dissimilarity must result in substantial harmful impacts. Those impacts are not found in this case due in large part to the mitigating factors unique to this application. Among other mitigating factors, the ZBA finds compelling the facts that the proposed house and pool house are to be (1) substantially setback from the nearest public right of way (Seafield Lane), (2) oriented lengthwise such that the narrowest portions of the home will be visible from the public right of way, and (3) screened with an extensive landscape plan that will minimize the visibility of the home from either the right of way or the adjacent properties. Based on all of those mitigating factors, even if the home were “dissimilar,” the ZBA cannot find that such dissimilarity will cause harmful impacts on the neighborhood. This conclusion is further supported by the affidavit appraisal report prepared by Michael Lynch, who concludes that the contemporary design, if implemented, will not have any adverse effect on property values in the immediate area and, if anything, could increase property values.

5. In making this determination, the ZBA emphasizes that it is making no categorical pronouncements or precedents about the appropriateness of modern and contemporary architecture in all areas, nor is the ZBA criticizing the Architectural Review Board’s decision and findings. The ZBA’s role on this appeal is not to sit in judgment of the Architectural Review Board’s decision but to view the application de novo, and the applicant did make design changes since the prior determination being appealed to the ZBA. The ZBA is mindful that the Village has not seen fit to create a historic district and does not impose strict

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prohibitions against modern architecture, which is prevalent throughout the Village, particularly on waterfront properties. The characterization of a building as “modern” or “contemporary” versus “traditional” or “historic” thus appears not to be a categorical bar to its construction under Chapter 5. On the other hand, there may very well be circumstances where a modern design is so starkly in discord and harmful within the context of a particular neighborhood that it should be denied. The ZBA cannot pass on such hypothetical scenarios but merely finds, for this property, and in the context of the mitigating factors and the design changes offered by the applicant, that this is not such a case where harmful effects have been shown.

The ZBA therefore grants the appeal of the applicant subject to the conditions proposed by the applicant, namely, the implementation of the Landscape Plan prepared by Susan Wilcenski dated October 22, 2018 and the incorporation of the shade system as described in the April 4, 2019 letter of John J. Bennett, Esq., counsel for the applicant.

Dated: May 16, 2019

Village of Westhampton Beach  
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Gilles Dellaert and Inge Debyser, 20 Seafield Lane, (905-14-2-8.2)** as written; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.

**4 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.

VILLAGE OF WESTHAMPTON BEACH  
ZONING BOARD OF APPEALS

-----X  
In the Matter of Application of

Kevin Minasian

**DETERMINATION**

Address: 16 Michael’s Way  
SCTM #: 905-9-3-17.8

-----X

**I. REQUEST FOR RELIEF**

The applicant, Kevin Minasian, is the owner of a parcel of real property located at 16 Michaels Way. The property is located wholly within the R-1 Zoning District. According to the survey of the property drawn by Nathan Taft Corwin, III Land Surveyor, dated June 27, 2017,

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and updated on January 28, 2019, the parcel is improved with a two-story frame house and garage, inground swimming pool, stone patio and pool house.

Section 197-35.C. of the Village Code provides that, in the R-1 Zoning District, accessory buildings, structures, tennis courts and swimming pools cannot be located closer than 20 feet to any lot or boundary line in all zoning districts.

The applicant is proposing to construct a 24' x 38' detached garage located 10' from the East property line.

## **II. SEQRA**

The applicant submitted an Environmental Assessment Form Part I pursuant to the State Environmental Quality Review Act (SEQRA). ). Since the application is for an accessory residential structure, and area variances for individual lot line setbacks, the action is classified as a Type II action under 6 NYCRR §617.5(12), (16), and (17). No further SEQRA review is required.

## **III. 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, appeared and presented the application. No other persons appeared in support or in opposition of the application. The application was closed for a determination at the April 18, 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.

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Finally, the Board is empowered to impose reasonable conditions to minimize any adverse impacts from the variance.

## V. FINDINGS AND CONCLUSIONS

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

1. *Character of the Neighborhood:* The Board finds that the character of the neighborhood would be adversely impacted by the establishment of a precedent for the substantial relaxation of setback requirements with little or no justification therefor.
2. *Alternatives:* The applicant clearly has feasible alternatives to achieve the primary benefit sought (the erection of a large garage) without the need for a variance. The applicant's survey depicts the permissible accessory building envelope, and there is clearly sufficient room in the same area of the yard to locate the structure without requiring any variance. The applicant claims that this is not feasible because it would place the garage "too close" to the pool patio. The Board rejects this claim. The applicant clearly has room to construct the garage in a conforming location. The proposed location appears solely to be a matter of preference by the applicant, not any difficulty or hardship.
3. *Substantiality:* The variance (10' of relief where 20' is required) is 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 Board finds that the benefit to the applicant does not outweigh the detriment to the community.

The Board therefore **denies** the requested area variance.

Dated: May 16, 2019

Village of Westhampton Beach  
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Kevin Minasian, 16 Michaels Way (905-9-3-17.8)** as written; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

**5. 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. Mr. Piering stated that the Board did not have a determination at this time.

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Mr. Hulme said okay.

**6. 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.

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

Bennett-Goldman Family Revocable Trust

**DETERMINATION**

Address: 54 Oak Street

SCTM #: 905-5-3-22

-----X

**I. REQUEST FOR RELIEF**

The applicant, Bennett-Goldman Family Revocable Trust, is the owner of a parcel of real property located at 54 Oak Street. The property is located wholly within the R-4 Zoning District. According to the existing conditions survey the parcel is improved with a two-story framed house, swimming pool, paver patio, and detached accessory building.

Section 197-93 of the Village Code provides that, in the R-4 Zoning District accessory apartments shall only be permitted in the R-2 and the R-4 Zoning Districts, and they shall not be permitted in any other Zoning District.

Section 197-93.2(B)(6) of the Village Code provides that, in the R-4 Zoning District in addition to other applicable rules, the lot containing the dwelling to which the accessory apartment is to be added shall comply with the district area and dimensional regulations, except that a nonconforming lot may be eligible for an accessory apartment, provided that the lot area is not less than 70% of the required lot area for the zone it is located in. All other dimensional nonconformities shall not be less than 70% of the required setback or lot width requirements.

The applicant seeks a variance to convert an existing accessory building to an accessory apartment. The proposed accessory apartment will be located in an existing building that is

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setback 6.9' from the rear property line. Since the required rear yard setback for accessory structures in the R-4 district is 15.0 feet, the 70% rule would require, for this lot, a setback of 10.5'. The applicant thus seeks a 3.6' variance from the required 10.5' setback in order to allow the existing structure to be converted to an accessory apartment.

## **VI. SEQRA**

The applicant submitted an Environmental Assessment Form Part I pursuant to the State Environmental Quality Review Act (SEQRA). Since the application is for a residential and/or accessory residential structure, and area variances for individual lot line setbacks, the action is classified as a Type II action under 6 NYCRR §617.5(11), (12), (16), and (17). No further SEQRA review is required.

## **II. ZBA PROCEEDINGS**

This application was duly noticed for a public hearing, which was opened on April 18, 2019. The applicants' architect Nigel Robert Williamson appeared and presented the application. No one appeared in opposition to the application. The hearing was closed for a determination at the May 16, 2019, meeting.

## **III. 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:

7. *Character of the Neighborhood:* Under the unique circumstances of this application, the Board finds no adverse impacts will result from the granting of the variance. The accessory building is pre-existing, nonconforming. The conversion of the existing building to an apartment will not materially alter the character of the community.

8. *Alternatives:* The applicant has no feasible alternatives to achieve the benefit sought without a variance. While the structure could theoretically be relocated to a conforming setback, such relocation would not be cost effective or feasible.

9. *Substantiality:* The variance is mathematically substantial, but the substantiality is mitigated somewhat by the fact that the nonconforming setback is pre-existing and is not going to be changed.

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

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

12. *Benefit vs. Detriment:* The Board finds that the benefit to the applicant outweighs the detriment, if any, to the community.

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

The Zoning Board therefore grants the requested area variance to allow the applicant to convert an existing accessory building to an accessory apartment, subject to the following conditions to minimize any adverse impacts from the variance:

## **V. CONDITIONS**

1. The variance granted herein is 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.

2. The variances granted herein shall terminate unless a building permit is issued within 180 days from the date hereof and construction completed according to said building permit.

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3. 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: May 16, 2019

Village of Westhampton Beach  
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Bennett-Goldman Family Revocable Trust, 54 Oak Street, (905-5-3-22)** as written; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.

7. **Schlusselberg, 24 East Division Street (905-10-7-30)** Applicant requests a variance to construct a new single-family dwelling with swimming pool, decks and septic system. The property is located in the R-1 Zoning District and requires the following variances:

The dwelling is proposed 20' from the North property line when Chapter 197-6. D. prohibits side yards less than 30'.

Fill for the septic system is being proposed 5' from the North and West property line when Chapter 197-27. C. prohibits fill less than 10' from any property line.

A portion of the swimming pool is not located in the rear yard as required by Chapter 197-35. A. of the Village Code.

No one appeared on behalf of the application. Mr. Piering stated that the Board was re-adopting the determination to accept and incorporate the Local Determination of Suffolk County into the record. The reading of the determination was waived.

VILLAGE OF WESTHAMPTON BEACH  
ZONING BOARD OF APPEALS

-----X  
In the Matter of Application of

Schlusselberg Family Limited Partnership

**DETERMINATION**

Address: 24 East Division Street  
SCTM #: 905-10-7-30

-----X

**I. REQUEST FOR RELIEF**

The applicant, Schlusselberg Family Limited Partnership, is the owner of a parcel of real property located at 24 East Division Street, Westhampton Beach. The property is located wholly within the R-1 Zoning District. According to the existing conditions survey of the property (titled "Final Survey of Described Property) drawn by Michael W. Minto, Licensed Land Surveyor, dated May 8, 2017 and updated April 11, 2018, the property is improved by a one-story frame residence, garage, deck over bulkhead and boat slip. The property is bounded on the west by East Division Street, which terminates at the property, on the south by Moneybogue Road, an unopened "paper" street, the east by Moneybogue Canal, and the north by a private

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residential parcel owned by Ginger Propper and Marvin Lerner, with an address of 16 East Division Street.

The applicant is seeking to remove all of the existing structures in their entirety and construct a new single family dwelling, terrace, and swimming pool, as depicted on the survey and site plan labeled “Survey / Site Plan of Described Property,” prepared by Michael W. Minto, Land Surveyor, dated May 8, 2017, and updated on September 2018, and date stamped received by the Village of Westhampton Beach on November 5, 2018. According to the survey and site plan, the proposed residence is to be located 20.0 feet from the northern lot line, and will have a terrace partially on the south side of the house, in a side yard. The sanitary system for the residence is to be located on the northwestern portion of the lot and requires the placement of fill within five feet of the northern and western lot lines to accommodate the system.

Chapter 197-6.D of the Village Code provides that, in the R-1 Zoning District, the front yard depth shall not be less than 50 feet; there shall be two side yards totaling not less than 70 feet, neither of which shall be less than 30 feet; and the rear yard shall not be less than 50 feet.

Chapter 197-27.D. of the Village Code provides that, in the R-1 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.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.

Accordingly, the applicant has applied for the following variances: a side-yard setback variance to allow the house to be located 20 feet from the northern lot line where 30 feet is otherwise required by Section 197-6.D; a fill variance to allow the placement of fill five feet from the northern and western lot lines to accommodate the sanitary system; and a variance from Section 197-35.A to allow the terrace to be located partially in a side yard.

## **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 an area variance for a residential dwelling and accessory residential structures, the application is classified as a Type II action under 6 NYCRR §

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617.5(c)(11), (12), (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 October 18, 2018. The applicant's attorney James N. Hulme, Esq., appeared on behalf of the application, together with Rocco Lettieri.

Richard Handler, Esq., appeared in opposition to the application with his clients, Ginger Propper and Marvin Lerner, 16 East Division Street, and with land surveyor, Floyd Carrington. Burt Rosenquit, 5 East Division Street, also appeared in opposition to the application.

The hearing was closed at the November 15, 2018, meeting for a determination.

On January 17, 2019, the Board adopted a written determination approving the variances, subject to certain conditions. Thereafter, a question was raised as to whether the application should have been subject to a referral to the Suffolk County Planning Commission (SCPC) under General Municipal Law §239-m. The Board had not referred the matter to the SCPC based on the assumption that the Intermunicipal Agreement (IMA) between the Village and County exempted this type of variance application. Nonetheless, because it was unclear whether this property would fall under an exception to the IMA (relating to properties abutting estuaries of bays), the matter was subsequently referred to the SCPC, which, on April 1, 2019, corrected on May 16, 2019, responded to the referral and indicated that the matter was one for "local determination."

Notwithstanding that the "local determination" response has no impact on the Board's decision-making (i.e., it is neither a recommendation in favor or against the application), Ms. Propper, through counsel, has claimed that the original Board determination of January 17, 2019 was technically "void" because it pre-dated the SCPC referral and response. In order to avoid any questions as to the validity of the Board's January 17, 2019 determination, the Board is adopting this new determination, subsequent to the referral and response.

### **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.

#### **V. FINDINGS AND CONCLUSIONS**

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

14. *Character of the Neighborhood:* The Board finds that, on balance of the unique circumstances presented by the application, the proposed variances will not result in a material adverse impact on the character of the neighborhood.

With respect to the setback variance, the subject property is constrained by the fact that it is surrounded on three sides by limiting features: East Division Street on the west, Moneybogue Road and substantial wetlands to the south, and Moneybogue Canal to the east. As a result, there is essentially a “negative” building envelope due to the fact that setbacks from all sides of the property leave no practical “as of right” building envelope within which to locate a home. The applicant’s representatives explained that the existing home, located more to the center of the property (further south than the proposed replacement home) is substantially nonconforming to the State-regulated wetlands setbacks. Given the property’s constraints, in particular the wetlands to the south, the applicant has made an effort to locate a relatively modest-sized home in the most suitable location, by orienting the house lengthwise from west to east (and keeping it to a narrow 22.7-foot width), and as far north, away from the wetlands, as practicable. The result, however, is the need for a 10-foot variance from the 30-foot setback requirement from the northern lot line. While the neighbors to the north, Ms. Propper and Dr. Lerner, understandably would prefer that no setback variance be granted, as it would result in the home being located 10

feet closer to their property than otherwise permitted, the Board has in the past found it appropriate to relax required setbacks in order to maximize environmental setbacks, such as setbacks from wetlands, waterways, or dunelands. In this case, the 10-foot relaxation of the northerly setback, combined with the east-west orientation of the road, allows the applicant to achieve a 62.8-foot setback from the wetlands, a setback which the NYSDEC has approved under its wetlands jurisdiction. The Board finds that this strikes the most appropriate balance between competing setback requirements.

With respect to the fill variance, the Board has in the past deemed it appropriate to grant such requests where the applicant has demonstrated that the placement of fill is necessary to accommodate a modern sanitary system in the most environmentally-sensitive location of the property. In waterfront areas such as this, where there are high water tables, the construction of a sanitary system often requires the construction of a retaining wall and placement of fill, in order to cover the sanitary system (which itself must have certain minimum “separation” distances from groundwater). Although Ms. Propper and Mr. Lerner presented the testimony of a surveyor who expressed concerns regarding potential stormwater runoff issues, the Village has mitigated against the impacts of the importation of fill by requiring applicants to obtain a “fill permit,” which typically requires a site plan review by the Planning Board and a review by the Village’s engineer. The ZBA will condition the fill variance on the completion of this process to the satisfaction of the Village’s Planning Board and engineer.

Finally, with respect to the terrace variance, the small area of the terrace that is technically located within the side yard will not have any noticeable impacts on the character of the community. That small area is actually located on the portion of the property that will be least visible to neighbors.

15. *Alternatives:* The applicants have demonstrated that there are no practical alternatives to achieve the benefits sought without the need for the requested variances. Locating the home with a conforming setback to the northern lot line would require an even larger variance from the NYSDEC’s wetland setbacks and would not achieve the added benefit of maximizing wetland protection. The applicant demonstrated that there is no viable alternative location or design for the sanitary system that would not require the placement of fill within the sanitary system’s retaining wall.

16. *Substantiality*: The variances requested are substantial. The substantiality is mitigated somewhat by the context of the application's improvement of certain pre-existing conditions, such as the improvement of wetland compliance and sanitary system design.

17. *Physical/Environmental Impacts*: The variances will have no adverse impact on the physical or environmental conditions of the property. To the contrary, the variances are largely the result of the environmental improvements to be achieved by the development, i.e., the increased setbacks from the wetlands for both the house and sanitary system and the modernization of the sanitary system to current health department standards. Such measures will thus result in environmental benefits that inure to the Village as a whole.

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

19. *Benefit vs. Detriment*: On balance, the Board finds that the benefits to the applicants (and to the Village as a whole) outweigh the detriments, if any, to the community.

20. *Minimum Variance*: The variances are the minimum necessary to achieve the benefits sought.

21. *Opposition Arguments*: The Board has considered the arguments made by Ms. Propper and Dr. Lerner, and their representatives, and do not find them convincing or sufficient to warrant a denial of the application. For example, the stated concerns about potential damage to cryptomeria trees from the "shade" cast by a building that is located 20 feet from the property line is incredible and, even if true, would be insufficient to justify a relocation of the home closer to the wetlands. And the concerns about a diminution of property values are speculative and fail to account for the corresponding benefits that all residents receive from protection of the wetlands and waterways. The remaining arguments, while articulately stated, simply do not rise to the level of grounds that would warrant a denial of the requested variances.

The Zoning Board therefore grants the requested area variance to allow the construction of a new single family dwelling, terrace, and swimming pool, as depicted on the survey and site plan labeled "Survey / Site Plan of Described Property," prepared by Michael W. Minto, Land Surveyor, dated May 8, 2017, and updated on September 2018, and date stamped received by the Village of Westhampton Beach on November 5, 2018, subject to the following conditions:

## **VI. CONDITIONS**

1. The variances granted herein are limited to the relief set forth in this decision, and pertain only to the plans approved in this decision, and shall not be construed as creating conforming

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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, 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 and certificate of occupancy are issued within 180 days from the date hereof.

4. There can be no exterior work performed on weekends from May 1 to September 30 and on weekdays from July 1 to September 10.

Dated: May 16, 2019

Village of Westhampton Beach  
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Schlusberg, 24 East Division Street (905-10-7-30)** as written; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

**HOLDOVERS:**

**8. Andersen-Kuntz 97 Hazelwood, Westhampton Beach (905-2-2-20.2 )** Applicant requests an interpretation of the village code that the Building Inspector 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. There was an interim decision and this was referred to the PB and they made a referral back to this Board, and I had intended to present all of the issues having to do with the Use Variance, but the financial data is over three years old and I’m getting that updated. And I should be able to make a presentation next month.

Mr. Pasca said what you can do when you come, Use Variances this is the first one in five years, we’d like you to go through that criteria which is different from the five factors.

Mr. Hulme said yes, he will do all of that at once next month and hopefully finish it all.

Mr. Piering said okay, they will hold it over.

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

**9. 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



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requires accessory structures in the rear yard only. The property is located in the R-5 Zoning District and the Flood Plain.

No one appeared on behalf of the application. John McDonough submitted a request to hold over the application of **Donna McDonough, 24 Point Road, Westhampton Beach (905-17-3-25)** to June 20, 2019; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 1 absent.

**NEW APPLICATIONS:**

**10. Daniel Napoli, 17 Griffing Ave, Westhampton Beach (905-013-03-010)** Applicant requests variances from §197-6 D to construct a covered front entry 22.5 feet from the front property line where the minimum setback required is 50 feet, and to construct a second-floor addition 25.71 feet from the front property line and 17.75 feet from the side property line where the minimum required setbacks are 50 and 30 feet, respectively.

Sal Iannone, Architect appeared on behalf of the application, together with Douglas Nappi, Dragon Fly Landscape.

Mr. Piering said he was confused about the drawings.

Mr. Iannone said okay, he hopes this will make it easier. They are in the R-1 Zoning District and slightly undersized in width and they want to do work to the existing house and some additions. On page 1 of the drawings you will see the covered porch they want to add, the existing front door is facing the side and they want to move it to face the street and add a porch for coverage. On the next page you will see that in the plan view, and you will see the existing conditions and proposed drawings, and the additions will be conforming to the setbacks. The hatched area is the addition in a conforming location at the rear and 30' from the side yard. The second-floor plan shows the existing and proposed conditions, and the addition on the second floor is also conforming to the Code. The 30' setback goes through the middle of the existing house. They want to add a few dormers, the house has a Hip Roof, and they want to add 2 dormers facing the street and one facing the rear over the existing roof.

Mr. Badzik asked if the dormer on the side of the house align with the end of the house?

Mr. Iannone said yes. And if you look at the roof plan you will see where it's occurring.

Mr. Piering said the dormers are going what is there, right over the existing roof?

Mr. Iannone said yes, it's just to change the appearance from a Hip Roof to a Gable Roof.

Mr. Piering said they had questions about the survey. They just wanted to know where the dormer was.

Mr. Badzik said on the survey it says 17.1' and it's written as 17.75' what is that a measurement to?

Mr. Iannone said the 17.1 is to the old porch that's being remove.

Mr. Badzik asked where the 17.75 is shown on the survey?

Mr. Iannone said it's the 18' and that's the dormer and the rear of the residence.

Mr. Badzik said okay.

Mr. Musnicki said on page 2 the existing and proposed shows a red line, and that should be on both correct?

Mr. Iannone said yes, the 30' setback goes through the middle of the existing house.

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Mr. Piering asked if they just bought the house?

Mr. Iannone said he believes they have owned it for a few years.

Mr. Piering said there are three houses in a row on Griffing that are pre-existing.

Mr. Iannone said yes, they are all kind of tight up to the road.

Mr. Piering said you are very restricted with what you can do, the properties are deep but the houses were built right on the road.

Mr. Iannone said yes.

Mr. Piering asked if the only thing in the front yard is the roof?

Mr. Iannone said yes, it comes out 3' in to the front yard and it is 7' wide, and I am putting two brackets to hold up the roof to give you protection from the elements.

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

Mr. Hammond said Mr. Houlihan did the denial, he would just like to verify the dimensions to make sure they do not need more relief. As long as we noticed it and its more restrictive we are okay.

Mr. Iannone said the existing roof on the garage is sagging and I need to reinforce that, and I don't know if I need to come back to the BZA because it wasn't advertised. We plan on taking the roof off and the whole house will be re-shingled, we are going to steepen the pitch, yes. If we have to re-advertise it we will come back.

Mr. Hammond said it depends if you are adding floor area.

Mr. Iannone said the air conditioning compressors need to go somewhere.

Mr. Piering said that should be addressed now, you can't come back asking for more side yard relief for the air conditioning compressor, you can either put it in a conforming location or you can hold it over and add it to this. We have been through this before with other applicants.

Mr. Iannone said the only place they can go will require a variance, we were proposing to put them on the side yard within the 17.1'.

Mr. Pasca said that should go through the Building Inspector, and present him with what you want, and we should hold it over present it to the Building Inspector and they will decide whether it's appropriate to re-advertise it. If you want to add something then you can and we will re-advertise it and he may decide it does not require a variance.

Mr. Iannone said okay.

Motion was made by Mr. Piering to holdover the application of **Daniel Napoli, 17 Griffing Avenue (905-13-3-10)** to June 20, 2019; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.

**11. Flavio Sinchi, 33 Oak St, Westhampton Beach (905-008-03-020)** Applicant requests a variance from §197-5 A(1) to construct a dormer addition within the required front and rear yards on a dwelling with preexisting nonconforming front and rear setbacks where conformity is required for additions, and a variance from §197-9 D to construct a front porch with a front yard setback of 18 feet where the minimum required is 40 feet.

No one appeared on behalf of the application. The application could not be heard, the Board did not have jurisdiction.

**EXTENSION REQUEST**

**12. Tri Properties, LLC., 10 Dune Road, Westhampton Beach (905-22-1-23)** Applicant requests an extension of their BZA approval dated December 20, 2018, which will expire on June 20, 2018; The applicant seeks a 6 month extension to expire on December 20, 2019.

No one appeared on behalf of the application. Kittric M. Motz, Esq., requested an extension of the December 20, 2018 Zoning Board determination for 6 months.

Motion was made by Mr. Piering to grant the extension request of **Tri Properties, LLC., 10 Dune Road, Westhampton Beach (905-22-1-23)** for 6 months; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 1 absent.

**13. Nikolaidis, 36 Hazelwood Avenue, Westhampton Beach (905-6-1-11.1)** Applicant requests an extension of their BZA approval dated December 20, 2018, which will expire on June 20, 2018; The applicant seeks a 6 month extension to expire on December 20, 2019.

No one appeared on behalf of the application. Richard T. Haefeli, Esq., requested an extension of the December 20, 2018 determination of the Zoning Board.

Motion was made by Mr. Piering to grant the extension request of **Nikolaidis, 36 Hazelwood Avenue, Westhampton Beach (905-6-1-11.1)** for 6 months; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.

Motion was made by Mr. Piering to adjourn the meeting at 5:25 p.m.; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.