

May 21, 2020

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, May 21, 2020, at 5:00 p.m. in the Municipal Building, located at 165 Mill Road, Westhampton Beach, New York.

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

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

Maeghan Mackie, Building Permits Examiner / Board Secretary

Motion was made by Mr. Piering to adopt the minutes of the **April 16, 2020** meeting as written; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

**DECISIONS:**

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

James N. Hulme, Esq., appeared on behalf of the application, together with Joshua Rosensweig and William Barba, Architect.

VILLAGE OF WESTHAMPTON BEACH  
ZONING BOARD OF APPEALS

-----X

In the Matter of Application of

Crampton Society, LLC.

**DETERMINATION**

Address: 119 Dune Road  
SCTM #: 905-21-3-8

-----X

**I. REQUEST FOR RELIEF**

The applicant, Crampton Society, LLC., is the owner of a parcel of real property located at 119 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 dated April 15, 2017 and last revised

May 21, 2020

on September 6, 2019, the parcel is improved by an existing two-story frame house, cantilever deck, pool house, swimming pool, and detached frame garage.

Section 74-8 (A) (8) of the Village Code provides that, in the R-3 Zoning District, major additions and restorations are prohibited in a primary dune.

Section 197-5.A (1) of the Village Code provides that, in the R-3 Zoning District except as is provided for in Subsection A(2), no building, structure or land shall hereafter be used or occupied and no building, structure or part thereof shall be erected, moved, altered, enlarged or extended unless in conformity with the regulations herein specified for the district in which it is located.

Section 197-8 (E) (1) (B) of the Village Code provides that, in the R-3 Zoning District the highest point of each pitched roof does not exceed 44 feet above mean sea level.

Section 197-34 (G) of the Village Code provides that, in the R-3 Zoning District the maximum floor area for all one-family dwellings in any zoning district shall not exceed 6,000 s.f., which is the minimum lot area for the Zoning District wherein the dwelling is located multiplied by 15% and multiplied by 2.

Section 197-35.C. of the Village Code provides that, on lots lying on the South side of Dune Road in the Residence 3 District, accessory buildings, structures, tennis courts and swimming pools cannot be located closer than 75 feet from the Crest of the Dune.

The applicant seeks to elevate and construct additions and alterations to the existing dwelling in an amount that exceeds 50% of the full replacement cost of the existing dwelling, within a Coastal Erosion Hazard Area. The original plans filed with the Building Department and Zoning Board proposed to maintain the reconstructed home in the same location as the existing home, with a portion of the structure lying south (seaward) of the crest of the dune. After the initial hearings with the Zoning Board, the applicant submitted modified plans that propose to (1) relocate and restore the home and associated decks so that all structures would be completely north (landward) of the crest of the dune, and (2) remove the existing frame garage that is located partially within the Coastal Erosion Hazard Area, both as shown on the survey drawn by Fox Land Surveying, dated April 15, 2017, and updated on March 4, 2020, and the plans drawn by Austin Patterson Disston Architects, dated January 10, 2020 (hereinafter, the "Final Plans"), all subject to a dune restoration plan to be approved by the Coastal Erosion Administrator.

May 21, 2020

As identified by the Building Inspector/Coastal Erosion Administrator, the Final Plans are nonconforming to the above-referenced sections of the Zoning Code and Coastal Erosion Management Code in the following respects:

- §74-8.A(8) – The proposed additions/alterations represent a restoration (exceeding 50% of the full replacement cost of the existing dwelling) within the primary dune area where such restoration is prohibited.
- §197-5.A(1) – The proposed additions/alterations are within a required yard (13.8' from the crest of dune/rear property line where 75' is required), and is thus nonconforming; conformity is required for additions.
- §197-8.E(1)(b) – The proposed roof ridge height is 49.65 feet above sea level where the maximum permitted is 44 feet above sea level.
- §197-34.G – The proposed dwelling floor area is 6,582 square feet where the maximum permitted is 6,000 SF.
- §197-35 C. – The proposed deck is 10' from the crest of the dune (rear property line) where the minimum setback required is 75'.

The applicant has sought, from this Board, two forms of relief: (1) an interpretation that the Building Inspector erred in his determination that the dwelling is located within the primary dune area where restorations are prohibited, and (2) variances from the above-referenced code provisions to allow the construction proposed in the final plans.

## **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 variances for single family residences 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.

## **III. ZBA PROCEEDINGS**

This application was duly noticed for a public hearing, which was opened on November 21, 2019. The applicant's attorney, James N. Hulme, Esq., appeared in support of the application, together with Charles Bowman, Land Use Ecological Services, and Joshua Rosensweig, Austin Patterson Disston Architects. No other persons appeared in support or opposition to the application.

May 21, 2020

Over the course of the hearing, the original plans were modified until the Final Plans were submitted. The modifications resulted in a reduction of the requested variances only (with no increases in the relief requested and no new variances requested other than those originally advertised). The Board determined that no new public notice was required.

The hearing was closed for a determination at the February 20, 2020 meeting, pending the receipt of a revised dune restoration plan to be received and approved by the Coastal Erosion Administrator. The applicant submitted the revised dune restoration plan on April 16, 2020, and the same was approved by the Building Inspector on May 4, 2020.

#### **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 also empowered to impose reasonable conditions to minimize any adverse impacts from the variance.

The Zoning Board is also 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.

Finally, the Board is authorized to entertain appeals from interpretations of the Building Inspector/Coastal Erosion Administrator under both the Zoning Code and Coastal Erosion Management Code. See N.Y. Village Law Section 7-712-b(1) and Section 74-13 of the Village Code. In considering such appeals, the Board is required to conduct a “de novo” review and entertain all available evidence on the subject, whether such evidence had been previously presented to the administrator. The Board in such cases stands in the shoes of the administrator and is empowered to “reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.” (Village Law § 7-712-b(1)).

## **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, under the unique circumstances of the subject property, that the granting of the variances as requested in the Final Plans, subject to the conditions herein, will not have a significant adverse impact on the character of the community. The historic significance of the existing home, which, though being altered somewhat, is largely retaining its character, is a benefit to both the applicant and community. The home is 110 years old and is one of the few remaining oceanfront homes to have survived the 1938 hurricane and subsequent storms. The requested variances are driven by the applicant’s desire to retain the historic significance of the home but with updated construction standards. As a result, (a) the roof ridge elevation variance is necessitated by the need to elevate the home (while retaining its existing design height) to comply with the FEMA VE16 zone construction requirements, (b) the floor area variance is necessitated by the need to create additional habitable floor space within the home’s upper level (on its landward side) as a result of the elimination of the basement level (which is not permitted under modern FEMA standards within the VE zone), and (c) the dune crest setback and Coastal Erosion Hazard Area variances are necessitated by the need to maintain (with some landward movement) the historic location of the home on the

property. During the application process, the applicant was sensitive to the Board's initial concerns about minimizing the floor area variance and relocating the home in a northerly direction to eliminate the "negative" dune crest setback. As a result, while the original proposed plans requested 6,907 square feet of habitable space, the applicant reduced the request to 6,582 square feet and demonstrated that it was the minimum necessary to create space for the lost uses in the basement level. And while the original proposal sought to replicate the existing location of the home, which crossed southerly over crest of the dune to create a negative setback (where 75 northerly of the dune crest is ordinarily required), the Final Plans proposed to relocate the home approximately 14 feet in a northerly direction so that the house would have a 13.8' setback from the dune crest and the deck would have a 10-foot minimum setback from the dune crest. The applicant also agreed to condition the variances on the implementation of a dune restoration plan, whereby the northerly area of the dune formerly occupied and disturbed by the existing home and retaining wall would be restored to a more natural condition, and the applicant has proposed removing the detached garage that is located partially within the CEHA area and mostly located in the VE16 FEMA zone, and reconstructing a new garage in a new location wholly outside of the CEHA area and in the lesser AE8 FEMA zone. While the Board is not abandoning its general policy of seeking to relocate restorations and new construction as far north of the dune crest as practicable, the historic significance of the home is truly unique and is part of the existing character of the community. As a result, the proposed location of the home, when balanced with the other beneficial improvements being made to the property, will not have an adverse impact on the character of the community under these unique circumstances.

2. *Alternatives:* The applicant has demonstrated that there are no feasible alternatives to achieve the benefits sought – i.e. a restoration, with additions, of the historic home in a modern, FEMA compliant setting, while largely retaining the general historic location of the home – without the need for the requested variances.

3. *Substantiality:* Some of the requested variances, in particular the dune crest setback and CEHA variances, are substantial. The substantiality of the variances is mitigated somewhat by the pre-existing conditions on the property, and the pre-existing nonconformities to the dune crest setback and Coastal Erosion Management Code, both of which are being improved by the relocation of the restored home approximately 14 feet to the north and away from the dune crest.

4. *Physical/Environmental Impacts:* No adverse physical or environmental impacts have been identified. To the contrary, the restoration of the dune and the reconstruction of the home in a FEMA-compliant manner would only have beneficial physical and environmental impacts.

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

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

7. *Minimum Variance:* The variances, as requested in the Final Plans, are the minimum necessary to achieve the benefit sought.

The Zoning Board therefore grants the requested area variances from Sections 74-8.A(8), 197-5.A(1), 197-8.E(1)(b), 197-34.G, and 197-35.C of the Village Code to allow the proposed reconstruction as depicted on the Final Plans, all subject to the following conditions (in section VI below) to minimize any adverse impacts from the variance.

With respect to the applicant's alternative request for an interpretation that the Coastal Erosion Administrator erred in determining that the restoration was located in a primary dune area and thus prohibited by Chapter 74 of the Village Code, the Board finds that such request is academic and moot in light of the fact that the Board has granted the applicant's request for a variance under Chapter 74. Nonetheless, to the extent that a determination on the appeal would still be required, the Board hereby denies the appeal and upholds the Administrator's determination. The applicant has not adequately demonstrated that dune area on the subject property is comprised of two separate dunes (a primary and secondary), as opposed to one larger (primary) dune area with connected formations. While it is true that the dune area has a dip in elevations as it is viewed from the seaward tow of the dune to the landward tow of the dune, that in and of itself does not result in the creation of two separate dunes, as the definition of the phrase "primary dune" includes an acknowledgment that one or more relatively small dune formations may exist seaward of the primary dune and will be considered to be part of the primary dune for purposes of Chapter 74. In this case, the northerly portion of the dune area, which the applicant describes as the secondary dune, contains the more substantial formations, rising to an elevation of over 26 feet above sea level, as compared to the southerly portion that rises to the relatively lower level of only 18 feet above sea level. The majority of the "middle" area of the dune has a low elevation of 12 feet above sea level, which is only six feet lower than

May 21, 2020

the southerly high point, and a small pocket that is as low as 10 feet above sea level. On the evidence presented by the applicant, the Board is unable to find that the southerly area of the dune is a separate “primary dune” from the northerly “secondary dune” and instead agrees with the Administrator that the entire dune system is a single “primary dune.”

## VI. CONDITIONS

1. The variances granted herein are limited to the relief set forth in this decision, and pertain only to the structures as they are depicted on the Final Plans, and shall not be construed as creating conforming dimensions. There shall be no further extension (horizontally or vertically), increase, alteration or modification to the structures 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. There can be no exterior work performed on weekends from May 1 to September 30 and on weekdays from July 1 to September 10.

4. No certificate of occupancy may be granted until the applicant has completed a dune restoration plan under a properly issued Management Permit by the Coastal Erosion Administrator. 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 21, 2020

Village of Westhampton Beach  
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Crampton Society, LLC., 119 Dune Road (905-21-3-8)** as written; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

**2. James Traynor, 91 Old Riverhead Road (905-2-1-7.02)** Applicant requests variances from §197-5 A(1) for proposed conversion of a nonconforming building (substandard side yard setback of 7.8’ & front yard setback of 22.7’) for Contractors’ Administrative Office Use where conformity is required for alteration, from §197 Attachment 2 for proposed side yard setback of the “Office 2” building of 20 feet and a combined side yard is 89.9 feet where the minimum required is 50 & 100 feet respectively, and also from §197 Attachment 2 for proposed side yard setback of the “Special Trade” building of 26 feet and a combined side yard of 89.1 feet where the minimum required is 50’ & 100’ respectively.

No one appeared on behalf of the application.

May 21, 2020

VILLAGE OF WESTHAMPTON BEACH  
ZONING BOARD OF APPEALS

-----X

In the Matter of Application of

James Traynor

**DETERMINATION**

Address: 91 Old Riverhead Road

SCTM #: 905-2-1-7.2

-----X

**I. REQUEST FOR RELIEF**

The applicant, James Traynor, is the owner of a parcel of real property located at 91 Old Riverhead Road. The property is located wholly within the HD Zoning District. According to the survey of the property drawn by Fox Land Surveying, dated January 15, 2016, and updated on February 12, 2019, the parcel is improved with a two-story frame house and detached frame garage.

Section 197-5 (A) (1) of the Village Codes provides that, in the HD Zoning District except as is provided for in Subsection A(2), no building, structure or land shall hereafter be used or occupied and no building, structure or part thereof shall be erected, moved, altered, enlarged or extended unless in conformity with the regulations herein specified for the district in which it is located.

As depicted on the site plan prepared by the Raynor Group, P.E. & L.S. PLLC, dated 3/15/19, and last revised December 18, 2019, the applicant proposes to convert a 1,888 sf non-conforming two story frame house to an Administrative Contractor’s Office (“Office 1”) and to add two buildings: a 1,776 sf office building (“Office 2”) near Old Riverhead Road and a 9,744 sf Special Trade building in the western portion of the property. The applicant requests variances from §197-5 A(1) for the proposed Office 1 conversion because the nonconforming building will have a substandard side yard setback of 7.8’ & front yard setback of 22.7’, and will be used for a Contractors’ Administrative Office Use, where conformity is required for alteration. Additionally, the applicant seeks relief from §197 Attachment 2, for proposed side yard setback of the “Office 2” building of 20 feet and a combined side yard is 89.9 feet, where the minimum required is 50 & 100 feet respectively, and also from §197 Attachment 2 for proposed side yard setback of the “Special Trade” building of 26 feet and a combined side yard of 89.1 feet where the minimum required is 50’ & 100’ respectively.

**II. SEQRA**

May 21, 2020

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 non-residential structures, the application is classified as an “Unlisted” action under 6 NYCRR § 617.2(ak). Accordingly, the application is subject to review under SEQRA.

The Planning Board, as lead agency conducting coordinated review, adopted a “negative declaration” of environmental significance on February 27, 2020. The Zoning Board, as an involved agency, is bound by that determination.

### **III. ZBA PROCEEDINGS**

This application was duly noticed for a public hearing, which was opened on March 19, 2020. The applicant’s attorney, David Gilmartin and their agent, Vincent Gaudiello, Licensed Professional Engineer appeared on behalf of the application. No other persons appeared in support or in opposition of the application. The hearing was closed at the April 16, 2020, 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.

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

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

1. *Character of the Neighborhood:* The applicant has demonstrated that the granting of the variances will not have a material adverse impact on the character of the neighborhood. The proposed development of the property appears to have a reasonably-conceived site plan layout, which will be subject to detailed site plan review by the Planning Board. Due to the unique configuration of the property (which consists of two rectangularly-shaped areas joined only at a smaller portion of each area), the property is not capable of being utilized for the permitted uses without the need for setback variances. The property is in the HD district and bound in part by the Industrial I-1 district to the north and west, and the B-3 business district to the north of the eastern portion of the property. The offices will be located in the eastern portion of the property, consistent with B-3 uses, and the special trade building located in the rear, western portion of the property, adjacent to and more consistent with the I-1 uses. All uses are conforming uses, subject to special permits and site plan review, both of which will ensure minimal impacts on the community.

2. *Alternatives:* The applicant has demonstrated that the benefits sought cannot be achieved without the need for variance relief.

3. *Substantiality:* The variances are mathematically substantial, but the substantiality is mitigated somewhat by the pre-existing configuration of the property and pre-existing location of the Office 1 building.

4. *Physical/Environmental Impacts:* No physical or environmental impacts have been identified. The project received a negative declaration of environmental significance.

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

6. *Benefit vs. Detriment:* On balance, the benefit to the applicant outweighs the detriment, if any, to the community.

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

The Zoning Board therefore grants the requested variances as described above and as shown on the site plan drawn by The Raynor Group, P.E. & L.S. PLLC, dated 3/15/19 and last updated December 18, 2019, subject to the following conditions to minimize any adverse impacts from the variance:

## **VI. CONDITIONS**

May 21, 2020

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 this Board.
2. The variances granted herein shall terminate unless a building permit and certificate of occupancy are issued within 180 days from the date hereof.
3. 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 21, 2020

Village of Westhampton Beach  
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **James Traynor, 91 Old Riverhead Road, Westhampton Beach (905-2-1-7.2)** as written; second by Mr. DelGiudice and unanimously carried 5 ayes, 0 nays, 0 absent; 1 abstain.

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

No one appeared on behalf of the application.

VILLAGE OF WESTHAMPTON BEACH  
ZONING BOARD OF APPEALS

-----X

In the Matter of Application of

Gerard Reda

**DETERMINATION**

Suzanne Reda

Address: 104 Oneck Lane

SCTM #: 905-8-1-24

-----X

**VII. REQUEST FOR RELIEF**

The applicants, Gerard Reda and Suzanne Reda, are the owners of a parcel of real property located at 104 Oneck Lane. The property is located wholly within the R-2 Zoning

May 21, 2020

District. According to the survey of the property prepared by William R. Simmons, III, L.S. P.C., Surveying, dated January 7, 2010, and last revised on January 25, 2020, the parcel is improved with a two-story frame dwelling, and detached frame garage.

Section 197-5.A.(1) of the Village Code provides that, in the R-2 Zoning District except as provided for in Subsection A(2) no building structure or land hereafter be used or occupied and no building, structure or part thereof shall be erected, moved, altered, enlarged or extended unless in conformity with the regulations herein specified for the district in which it is located.

Section 197-7 (A) of the Village Code provides that, in the R-2 Zoning District the only permitted uses are a one-family detached dwelling, home occupations and accessory uses.

Conversely, under Section 197-14 (A) of the Village Code, in the R-2 Zoning District, the use of a parcel with a single family residence and a separate building used for dwelling purposes, is deemed a prohibited use.

The applicant proposes to construct a bathroom within a detached building / structure and a proposed addition to a detached garage in a non conforming location, as well as modifications to a roofed-over patio structure where further modifications are in violation of Condition No. 1 of the Board of Appeals determination D16026 dated December 15, 2016. The applicant therefore requests variances

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

### **VIII. 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 structure, 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.

### **IX. ZBA PROCEEDINGS**

This application was duly noticed for a public hearing, which was opened on April 16, 2020. The applicants architect Todd O'Connell appeared and presented the application, together with the applicants Gerard Reda and Suzanne Reda. The Board received letters of opposition from Patti Robinson, 106 Oneck Lane, Westhampton Beach, Maxine Meyer, Oneck Lane, Westhampton Beach and Margaret Heffernan, 110 Oneck Lane, Westhampton Beach. The hearing closed for a determination at the April 16, 2020 meeting.

### **X. 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.

### **XI. FINDINGS AND CONCLUSIONS**

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

May 21, 2020

8. *Character of the Neighborhood:* The Board finds that the proposed variances would have an adverse impact on the character of the community. Detached garages like the one on the subject property, are not customarily used for living quarters, and second dwelling units are not permitted uses in this district. Arguably, the applicant may have been required to apply for a use variance to obtain such drastic relief. (See 197-14.A). But even if the area variance standards applied, the significant impact on the character of the community would not justify the granting of the variance. As for the proposed deck, the location of the proposed deck would have a significant impact on the privacy of neighbors. The property has been the subject of multiple prior applications, some of which have been denied. The December 15, 2016 grant of a variance to allow the proposed covered porch addition only 12'1" from the south property line was permitted but only subject to a prohibition against further expansion. By proposing a sitting area atop the covered porch, the applicant seeks to expand the nonconformity in a manner that would have more of an impact on the neighbors than the original, covered porch would.

9. *Alternatives:* The applicant cannot achieve the benefits sought without the need for variance relief.

10. *Substantiality:* The variances are substantial. The request for living space to be added to a detached garage is deemed a prohibited use and the request for a second floor deck to be added only 12.08' from the neighboring property line is a significant variance where the required side yard setback is 20'.

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:* The benefits to the applicant do not outweigh the detriment to the character of the neighborhood.

The Zoning Board therefore **denies** the requested area variances from Sections 197-5-A (1), 197-7.A., and 197-75.

Dated: May 21, 2020

Village of Westhampton Beach  
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Gerard & Suzanne Reda, 104 Oneck Lane (905-008-01-024)**; seconded by Mr. DelGiudice and unanimously carried 5 ayes, 0 nays, 0 absent.

May 21, 2020

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

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

Mr. Pasca said that there was not a determination on the matter.

**HOLDOVER:**

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

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

Mr. Piering said he wanted to see the property and he did and he asked Mr. Hulme if he had anything to add.

Mr. Hulme said a structure part of the CO is a two-story building with an apartment and a garage and sometime prior to this application the garage was converted to a media room, and I think some of you have seen it so you know what it looks like. The conversion was made without change to the footprint and no change to the façade and there is just more space for them to use and the legalization to that as well as the other structures derived from a ZBA in 2014 and this particular building and others were granted a SE permit to allow the apartment to continue and with limited use; it ceased a separate residence and became accessory apartment. The granting of that I believe, the Coutts indicated SE permits are an indication the Use is in harmony with the Zoning and will not adversely affect the neighborhood and the covenant that was filed and converted this from a preexisting conforming structure subject to the requirements of 29.C. of the Code and made it accessory on the property. I would suggest as a result of that, one way to look at this is like a shed or a pool or other such things that are a matter of law, it doesn't need a variance. We reconfigured the shed and built the pool and I think there is a certain legal support for that position and I think it's interesting to note the Building Inspector did not cite 29-C as an area of necessary relief to allow the conversion to remain and two (2) other sections of the Code which requires conformity and the reasons I suggested, the ZBA and granting of the Special Exception permit made this use as it pertains to this property in conformity and with the Code and allowed it to continue and the impact of the use has not changed. It's an apartment and additional space but it does not allow more people to use it or in another way and not in conformity with the Village Code. The ZBA from 2014 and taking in to consideration the Special Use permit is a suggestion is the use is in harmony with the neighborhood and does not affect it. That certainly, the other section was the one that talked about the permitted uses are single family residences and accessory uses and putting that together, it is a legal existing accessory use and the change does not violate that requirement. If we're not there we're seeking a variance to allow the expansion to be made and the balancing test, the footprint did not change; the exterior did not change; the use to which it can be put has not changed. The only real change is that the person using the accessory apartment has more space to use and its located in the property where it is way back in the South West corner of the property and therefore it impacts the neighbors very little because to the West there is an accessory building on the adjacent property and to the South we abut the rear with a swimming pool and a shed and the rear yard to the Southerly property. The only way to legalize this conversion is to get the variance, and without that we have to convert it back tow hat it was before. The next is the substantial nature the use is not changing; the footprint is not changing and the location is not changing and the setbacks are not changing and there's no impact to the neighbors so I suggest under those circumstances it is not substantial. Environmental impact it is a single unit apartment with more space, self-created yes but that does not carry as a whole.

Mr. DelGuidice said before this it was an accessory building, but now it's a cottage. It has an apartment above, and the square footage on the lower level has doubled and there's more inhabitation.

May 21, 2020

Mr. Hulme said the number of bedrooms is the same.

Mr. DelGiudice said yes, that's right now.

Mr. Hulme said we can't anticipate any more behavior, it was a two story apartment.

Mr. DelGuidice said it has doubled.

Mr. Hulme said that doesn't increase the impact on the neighborhood. The number of bedrooms and bathrooms has remained the same. We don't want to anticipate the future use.

Mr. DelGuidice said we have a lot of these that come to this Board and there was a variance and approved and changed a long the way and its sort of approving bad behavior.

Mr. Hulme said that's not a standard.

Mr. DelGuidice said we approved something that hasn't changed, that is.

Mr. Hulme said in the context of the interpretation that I'm seeking, I think with the steps you took you converted it to an accessory use. This was a cottage, the then owner gave up the right to commercial rent it and limited the use to friends and family and that limitation continues and we're not eliminating that. My perspective is that the number of bedrooms and bathrooms do not increase and those are the indicators that people look to when trying to decide the intensity of the use and I don't think it has changed with this conversion.

Mr. Piering said to one bay of the garage is for a ping pong table, and the other side is an extensive theater and it's not something I would say they would remove to put a bedroom in. The theater was extensive.

Mr. DelGuidice said the variance goes with the property and its approved and the next guy moves in and doesn't want the theater and converts it to a 3-bedroom 2-bathroom cottage, it's a sizable structure.

Mr. Piering said he would have to come back to this Board, to get a CO and have that approved he would have to get it approved.

Mr. Hulme said if you decide to grant it and require a covenant and says what JP indicated there is no issue with that, then a subsequent purchaser has notice of that and there is enforcement that way.

Mr. Piering said the theater is not something you will take out to replace with a bedroom it's a large theater.

Mr. Hulme said it is not impactful.

Mr. Pasca asked how they reconcile with 197-14 of the Code which was put in to the Code in 2016. How can you call an accessory use with living quarters permissible with no use variance.

Mr. Hulme said the filing of the covenant is something that took it out of the purview of a use variance and what is allowed the Board to grant an area variance.

Mr. Pasca said the Code was adopted in 2016 for a reason and in 2016 we went through this process to come up with a uniform way to deal with it, and everything, a second dwelling will be deemed non-conforming and the benefit is that the main dwelling can be expanded and it was absolutely clear that any second dwelling was non-conforming unless you got a non-conforming use. I do not understand how you're arguing it's conforming with a covenant.

Mr. Hulme asked what the definition of a second dwelling in the Code is?

Mr. Pasca said no. The Code says regardless of whether it is intended for, or used by a second family, or as an accessory to the single-family members of the owners or occupants of the single-

May 21, 2020

family residence, shall be prohibited use, unless it is nonconforming use as defined in 197-1, or a use variance shall have been granted therefor by the Zoning Board of Appeals it is clear we include the concept of guest house for accessory purpose. It was to make it easier in some respect to deal with the main dwelling without being called a non-conforming use.

Mr. Hulme are you saying I need a Use Variance?

Mr. Pasca said I'm saying 197-14 applies to this.

Mr. Hammond said when I wrote the denial, I thought the garage was accessory to the single family dwelling and that was transformed in to the theater, I did not think this was part of the expansion of the apartment because there was no communing door or anything, it was to remain solid and I did not cite this section because I thought it was used for the principle residence.

Mr. Pasca asked if its separated?

Mr. Hammond said there was a wall on the original floor plan, you could not get from the garage to the apartment there were separate doors.

Mr. Hulme said that's a good question, he is not sure. His assumption was that this is part of the apartment.

Mr. Pasca said we have to look at this, it's kind of fundamental whether the right relief is being requested. If it's 197-14 applies then you need the SP under 197-29 and meet that criteria; if it doesn't apply it has to be clear it's not connected to the apartment, otherwise it falls under 197-14 so that may need to be looked at and the floor plans looked at to see which sections apply. This could be precedent setting if we don't deal with it.

Mr. Hulme said okay, he would like a hold over.

Mr. Piering said yes, he understands.

Motion was made by Mr. Piering to holdover the application of **Brennan & Sadie Diaz, 7 Bayfield Lane (905-10-4-41)** to June 18, 2020; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

## **NEW APPLICATIONS**

**6. Michael & Karoline Kelsen, 72 Beach Lane (905-015-03-004.06)** Applicant seeks an interpretation that the Building Inspector erred in his determination that the subject detached building with preexisting apartment is a nonconforming building and that the proposed game room over garage should be deemed an accessory use to the single-family dwelling principal use. In lieu of a favorable determination from the Board, applicant requests a variance from §197-6 A(2) for proposed habitable space (game room over garage) in detached structures deemed not to be normal and accessory to principal single-family dwelling use, and from §197-29 C(1) for proposed reconstruction and additions to a detached building with preexisting nonconforming apartment where a permit from the Zoning Board of Appeals is required for reconstruction of building with nonconforming use, and irrespective of interpretation, the applicant also seeks a variance from §197-1 for a proposed half-bathroom within accessory building (game room over garage) where plumbing facilities are not permitted in detached buildings other than cabanas/accessory apartments.

James N. Hulme, Esq., appeared on behalf of the application. To be clear there was another matter on for decision which was deferred to next month, and that application has nothing to do with this and the relief just that they are on the same property. As you know, this property is improved with a single family residence, pool, and pool house, a detached garage and two story apartment. This relates to the garage and apartment building and my client wants to preserve some, if not all of the features in the 2 story apartment and it's not limited but the building itself is old and in need of care and the building is located in violation of the required side and rear yard setbacks, so rather than trying to move it and renovating it my client asked the architect to come up with a plan to build a new building in a conforming location which is what we have

May 21, 2020

proposed. The new building will be conforming as to the setbacks and height, it will be a two-car garage and one-bedroom apartment game room and half bath. This particular configuration provides a separate entrance from the game room and bathroom so they are not joined together and not part of one another, they are separate functions. The relief in order to do this takes on various forms and there's no relief needed for the garage it's a permitted accessory use. The apartment in order to allow for its continuance we would offer up the covenant limiting its use to friends and family and give up the commercial rent ability of the apartment and the apartment is one bedroom and one bathroom is the same as existing. The apartment is 509 square feet as opposed to the 637 square feet of the existing apartment of the older building. We discussed in the other application whether it makes it accessory or not, and I don't know if 197-14 is implicated but I will look at it. We are replacing the apartment with a modern built apartment but if you go through 197-29.C. analysis for the apartment component which I did in detail, you will find it meets all of the requirements and it's still the single family apartment that meets the height and setback requirements and the area is less than the current area and there is parking. The character of the neighborhood is not changing; the neighborhood benefit is that we're moving from the adjacent property line and good for the neighbors. The reasonable conditions we agree to limit the use to family and friends and the use has not intensified. The unknown is the game room and whether it's a permitted use or whether it would be entitled to and customary and usual and thereby permissible and in the Code an accessory use has three (3) elements; something customary, incidental to the main use; and subordinate to the main use the proposed is subordinate and incidental so the real question is whether it's customary. Throughout this neighborhood its common to have detached and they are mainly apartment uses but I don't know that precludes game rooms. 19 Beach Lane, the corner of Beach & Main and 66 and 75 Seafield; there are main houses and other accessory structures and full-blown cottages in the neighborhood of this structure. That would be a way to look at the three elements and they each pass muster as far as being permitted in the neighborhood and compare it to the fact that the use exists on the property and we're not creating new and I suppose to look at it would be to analyze as a whole as opposed to two separate components and we meet all of the requirements of 29.C except the square footage goes up to 908 square feet, so it's an increase of 230 square feet. Is this undesirable there's an apartment with a garage before and after. Other feasible methods would be to retrofit and renovate the existing structure and its better for my client and the community to meet the dimensional setbacks and height and we're replicating and the desirable impact is not more, and it may be self-created but that does not carry the weight one way or the other.

Mr. Piering said you are removing a garage and based on that you want to build a new one. That apartment, there was no plumbing.

Mr. Hulme said the builder may have been over anxious and it was an apartment.

Mr. Piering said there was no plumbing.

Mr. Hulme said he will provide an affidavit, and it was an apartment and he did see it.

Mr. Piering said you are attesting that there was plumbing?

Mr. Hulme said yes.

Mr. Musnicki said I have not heard of an application like this, and explain to me how you have the pre-existing non-conforming apartment and you carving out that use and square footage and putting it in to a building twice the size. The new structure is twice the size as the old.

Mr. Hulme said yes, a good part is the garage is going to be bigger. We are proposing a two-car garage.

Mr. Musnicki said I am not understanding if you can take the use of 500 square feet and put it in a new structure twice the size of the old one as a reconstruction.

Mr. Hulme said setting aside the game room, 29-C says we're rebuilding and making it more in conformance with the Code and it's bigger but meets the dimensional setbacks and height

May 21, 2020

setbacks and it's smaller than the existing and I think the apartment use rings every bell of 197-29 C

Mr. Musnicki said my question is that there is an existing building now half the size of the proposed building; are you speaking to the apartment now and that preexisting use and not the entire building.

Mr. Hulme said no there are two other uses; the game room and may be allowable because it's a different accessory use and the garage which is clearly accessory. I don't think we need to build two buildings.

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

Mr. Pasca asked the size of the game room?

Mr. Hulme said it is 400 square feet.

Mr. Pasca said if you're doing it separately you would need a variance for the 200 square foot limit, and you have been doing this a long time and you put a label on the plan "game room" and if you label it apartment it would look like an apartment.

Mr. Hulme said that's why we created a separate entrance. I suppose if we remove the bathroom will that make it more palatable.

Mr. Pasca said I am having a hard time seeing how it's not a second apartment.

Mr. Hulme said I have to consult with my client but the removal of the bathroom and separate entrance makes it purely accessory. I will have to talk to my client about the removal of the bathroom, but I am happy to discuss it with him if it makes the lift a little easier.

Mr. Musnicki asked Mr. Hammond to look at the definition of non-conforming use, chapter 197-page 23.

Mr. Hammond said a building, structure or lot and all uses of buildings, structures or lots or part thereof lawfully existing at the time of the enactment of this chapter or any amendment thereto which do not conform to the use regulations of the district in which they are situated. A whole building is non conforming if it has a non conforming use in it. The game room is what we talked about, I'm not comfortable with habitable structures in accessory as of right and they become abused in beach front communities and this time of year I like this Board to review them, so they have conditions if they get approved and the new owner can't say they didn't know.

Mr. Hulme said I am amendable to those restrictions. The only question is whether they are willing to remove the bathroom which may make it a better application.

Mr. Hammond said as of 197-14 you may need relief from that section as well.

Mr. Hulme said it sounds like I have to do some homework on this.

Mr. DelGiudice said the size of this too, we are doubling the size and the footprint is double.

Mr. Hulme said the size doesn't offend the Code Sections.

Mr. DelGiudice said the size is an issue.

Mr. Hulme said if its attached we wouldn't need a variance.

Mr. DelGiudice said yes.

Mr. Hulme said okay.

May 21, 2020

Mr. DelGiudice said I'm keying in on the size because other things were mentioned.

Mr. Hulme said the main building will dwarf this building. It's not out of keeping in scale or scope.

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

**7. Beth D'Alessio, 3 Liggon Lane (905-003-01-060.01)** Applicant requests variances from §197-5 A(1) for a proposed addition within required front (25.6' proposed, 40' required) & side yard (10.7' proposed, 15' required) setbacks where conformity is required for additions to nonconforming buildings, from §197-9 C for a proposed building area coverage of 23.8% of the lot area where the maximum permitted is 20%, and from §197-9 D for proposed side yard setbacks of 10.7 & 13.8 feet where the minimum required is 15 feet with a proposed combined side yard of 24.5 feet where the minimum required is 40 feet, and also from §197-9 D for a proposed rear yard setback or 37.1 feet where the minimum required is 40 feet.

Heather A. Wright, Esq., appeared on behalf of the application, together with Beth D'Alessio, and Peter Podlas, Architect. This lot has a lot of 6,000 square feet and lot width of 60 feet; the existing structure is non-conforming and the subject property is a small lot and it may be hard to see and the plans for the existing structure are on the slide as well and the structure is only 400 square feet; there are two bedrooms, one bathroom and a small kitchen and this is non-conforming for the side yard setback, total side yard and front yard setback. We are proposing a 797 square foot addition and requires variances and for conformity and the side yard and total side yard, front rear and lot coverage. The neighborhood itself you can see to the West there is Hazelwood Avenue and the East is Rogers Avenue and many appear to be non-conforming and if you look on Rogers Avenue the setbacks appear to be very tight on some of the lots and we believe our proposal is in keeping with the character of the neighborhood. There is no increase in the bedrooms, there will be two bathrooms a kitchen and living area. We took in to account the neighbors and the least impact; 60A Hazelwood Avenue we decided to build to the West and that is who would be most impacted. It is close to the street and faces Hazelwood Avenue and you can see there is a 6' stockade fence well within the lot of 60A that creates a divider or buffer between the lots and it has been there for quite some time, they have maintained the area and looking at the addition we felt that would have the least impact. On the East we are maintaining the 10.9' setback and staying in line with the existing structure setback and not getting any closer to Liggon Lane and the 25.6' setback and the neighbors to the North. 7 Vaughn Court is similar in size and it got relief from this Board to construct what exists today and we are not negatively impacting the neighbors. We don't believe we can achieve a modest size house any other way we are adding 700 square feet and the total will be 1,024 square feet and it's modest. If you want to look at the other factors, mathematically it is substantial but the lot is half the size of the R4 Zoning requirements. It will remain two bedrooms, and the difficulty is not self created because it's a non conforming lot. Page 3 of the PDF that she sent shows the screen shot. On page 4 you can see the fence and you can see the house and how it's positioned closer to Hazelwood Avenue.

Mr. Piering said the lot is small, and you want to do a modest addition.

Ms. Wright said yes, that's it.

Mr. DelGiudice asked if there's a crawl space under the house?

Ms. D'Alessio said a very small one in the kitchen.

Mr. DelGiudice said I saw the bilco door off to the side.

Ms. Wright said it shows 7.7' and we are going to relocate that and it's less than the setback required on that side and it will be a partial basement underneath.

May 21, 2020

Mr. DelGiudice asked if they need a revised survey because of the basement entrance is shown at 7.7'

Mr. Piering said yes, we should have it updated and corrected.

Motion was made by Mr. Piering to close the hearing of **Beth D'Alessio, 3 Lignon Lane (905-3-1-60.1)** for a determination; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

**8. Clint & Elisa Greenbaum, 61 Seafield Lane (905-005-03-011)** Applicant requests variances from §197-5 A(1) for proposed additions that increase floor area within a required yard of a dwelling / accessory building with preexisting nonconforming setbacks to the rear property line where conformity is required for additions to preexisting nonconforming buildings (9.1' proposed, 50' required), and from §197-6 D for a proposed addition connecting principal dwelling & detached accessory building resulting in a principal rear yard setback of 8.1 feet where the minimum required is 50 feet.

Clint & Elisa Greenbaum appeared on behalf of the application, together with William Heine, Architect. Mr. Heine said that they are applying again since 2001 wherein they put a one room addition for a therapy pool for their son Jake, and it is not a detriment to the neighbors. They are seeking to create exercise space and renovate a detached garage cottage and there is a bathroom and unfinished storage attic and the space has not been renovated since 1987 by the previous owner to make it more accessible for our son we want to attach the Eastern side by expanding to the Western side and there is 6' between the cottage and the house and as a result it will not be separate and it will create a larger exercise room, lose the bedroom and sauna and maintain the bathroom and a real stairway. The new second story will have two finished storage areas and it won't be living area and the current garage has a non conforming rear yard setback and the dwelling has a non-conforming rear yard when 50' is required and the previous subdivision created the setbacks and the total lot size is undersized and 40,000 square feet is required. The neighbors to the West have provided a letter stating they do not object to the project and no objection to the construction during the Summer. He went on to say currently the lot coverage is 9.8% and that's going to increase to 10.3%. Part of the hardship was when the house was first built it is 98.5' from Seafield Lane, and in doubling the front yard they took 48.5' from the rear yard, and when we FOIL'd the building permit file we could not find a building permit file and there was one for the swimming pool in the side yard and the other was the Greenbaum variance in 2001 to enclose an indoor pool and that the setback went from 50' to 39' and there was a 1964 building permit with a CO and at the top it says clarification of CO 120-1967 and the second line of the description calls it an attached garage and we are not sure why it's attached but it goes on for building permit 59-1987 and in the description it calls it bathroom bedroom exercise room in attached garage so it was confused whether it was attached or detached and it's a one car garage and I'm not sure why it is being referred to as attached. As far as undesirable change to the CON and it can not be seen from the street, and this addition is on the rear of the addition. The North setback is 30' and the South setback is 97'. From the North and South it is hardly recognizable. The detriment is the neighbor to the West and they have no objection to the application, and they have reviewed it and no objection to it. Could this be achieved in another method, yes it could in a different location but in two ways we are benefiting. Currently this is detached form the house and they don't use it as much as if it were connected If it's non conforming inside a detached garage so therefore its not non conforming and would eliminate a bedroom and we would still have an exercise room, bathroom and the dormer is to create access for the sons bedroom. Is it substantial, it appears to be but when you think both exist and we're connecting the two we are not really adding toward the property line until you get to the second floor and that's a shed dormer for access. The adverse effect is only 185 square feet and there is no environmental impact. Self-creating they doubled the front yard setback and anything behind it requires a variance.

Mr. Piering asked the size of the dormer?

Mr. Heine said the dormer is not creating new footprint, it is 164 square feet.

May 21, 2020

Mr. Piering said so you are connecting this one building to the main house, and it exists there and use for it and our concern was always to connect and the neighbors okay with it. What I see with this is that you're trying to connect the two with a short connection.

Mr. Heine said okay.

Mr. Musnicki said when the house was built it was pushed back, I find it hard to believe any Board would allow an accessory structure within 5' of the rear property line.

Mr. Heine said it's 8'.

Mr. Musnicki said do you think perhaps it had not been subdivided at that time?

Mr. Heine said the Greenbaum's believe that, but they are not sure. In 1964 they added language to the CO stating there was an affidavit of exiting prior to 1967 of that detached garage, and I was not sure November 1967 meant to the Village, but for some reason it's not the CO that way.

Mr. Hulme said the endless pool is that in this new space?

Mr. Heine said yes, it will not be in this space it's in an existing space.

Mr. Musnicki said so as far as their son having access to certain parts of the house, how does that play in to this project.

Mr. Heine said if you look at the first floor plan of my drawings, you see the indoor swimming pool and a short hall in to this activity room and their son would be able to exercise there with his therapist and go back and forth between the two areas, and in order to maintain the humidity the pool has to be in an enclosed room.

Mr. Musnicki asked him to address the substantial nature again.

Mr. Heine said the addition to the house, when you add the detached garage to the house it becomes part of the principle dwelling the 8.1' at the rear is to a principle dwelling so it's a semantic type of thing, do we call it a garage or a house at 8.1' it appears substantial.

Mr. Musnicki said it is substantial. What is your argument to the substantiality because it's been there and now you're attaching a structure to another?

Mr. Heine said yes.

Mr. Musnicki said okay.

Mr. DelGudice said the existing footprint hasn't changed, it's a breezeway between the two, the garage will remain the same?

Mr. Heine said yes, they are only adding 185 square feet.

Mr. Piering said an important point to remember, the existing garage will remain a garage and we don't want that to be converted in to living space and that so close 8/1' from the neighbor.

Mr. Heine said yes.

Mr. Piering said Mr. Greenbaum has told me personally it will remain a garage.

Mr. Heine said yes.

Mr. Greenbaum said yes, that's where we keep our bikes.

May 21, 2020

Mr. Hammond said we could not locate the files, but he concurs with Mr. Heine and I did not want to call it non conforming and the Greenbaum's have not touched the area and by connecting it, it solves non conformities and they don't use it for other families but connecting it gets rid of a bigger problem.

Mr. Piering said he remembers the pool variance years ago.

Mr. Pasca said I was going to echo that; in a way the elimination of a non conformity and use so that's a bigger deal than the creation of a setback non conformity to the main house.

Mr. Badzik said yes.

Mr. Piering thanked Ms. Pasca.

Motion was made by Mr. Piering to close the application of **Clint & Elisa Greenbaum, 61 Seafield Lane (905-5-3-11)** for a determination; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

**REQUEST FOR EXTENSION:**

**9. 43 Rogers Avenue (905-6-1-31)** Applicant requests a one (1) year extension of the variance granted on October 17, 2019 for up to and including April 17, 2021.

No one appeared on behalf of the application.

Motion was made by Mr. Piering to grant the extension request of 43 Rogers Avenue (905-6-1-31) up to and including April 17, 2021; seconded by Mr. DelGiudice and unanimously carried 5 ayes, 0 nays, 0 absent.

Motion was made by Mr. Piering to adjourn the meeting at 6:29 p.m.; seconded by Mr. DelGiudice and unanimously carried 5 ayes, 0 nays, 0 absent.