

June 20, 2019

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, June 20, 2019, at 5:00 p.m. in the Municipal Building, located at 165 Mill Road, Westhampton Beach, New York.

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

Anthony C. Pasca, Esq., Village Attorney

Brad Hammond, Building & Zoning Administrator

Maeghan Mackie, Board Secretary / Building Permits Examiner

**HOLDOVERS:**

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

James N. Hulme, Esq., appeared on behalf of the application. He has some information to provide to the Board and to recap this application, they sought a Use Variance and they took a detour to the PB who did SEQRA and they adopted a Negative Declaration, Unlisted Action and they reviewed the site plan for the PB to opine as to whether or not the two uses would work as proposed, which they felt it would. Under State Village Law our burden is to demonstrate unnecessary hardship if we were not granted the variance, and that’s under the 4 factors the first is a reasonable return and contrasting and comparing that to the proposed use; whether it is unique the CON and whether it’s self-created. First talk about self-created, his client owns the property by virtue of inheritance, she did not create the situation, it has been used in a commercial sense and never residentially and is really a victim of a change in zone that took place in 2003 that changed from Industrial to Multi Family, and the property was in the family at the time of that zone change.

Mr. Pasca asked when that’s when the use became non-conforming?

Mr. Hulme said yes. The roofing contractor was there, but I submitted a time line chart that showed the break in activity but all of the uses have been of a commercial nature. I don’t think there’s any way to have been construed as self-created. The CON, to the North is a pre-existing non-conforming use of a concrete plant; to the South is an area associated with a car wash and auto repair shop and part of that is zoned B-3 and the other is zoned MF; to the West is the Town Highway Department and another part of the carwash; and to the East are two residential homes which are also in the MF Zone. One of the commercial uses we are seeking to continue has existed since 1977 so there is no change in the CON if you were to grant the relief; the third category is one of the unique nature of the request that we’re making, and for that I want to share an aerial which identifies the zoning districts in and around the subject premises. As you can see, there is a confluence of all kinds of zoning; we are in the MF -20, directly next to us is the B-3 and to the South is the B-2 and R-4 so this is a unique parcel within and around the Village. The granting of the relief here will not cause a cascade of relief for the balance of the MF area.

Mr. Pasca said to put in context what you’re deciding; you have decided one use is a legal pre-existing non-conforming use even if you deny it, it does not revert to residential, it’s one use versus two uses in the building.

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Mr. Hulme agreed with Mr. Pasca. The fourth and the most important of them all is a reasonable return on the permitted uses. They are located in the MF-20 Zone and in that zone is a single family, two family or MF residence and our uses are none of those. MF on this lot is not possible because it requires too much property; so that leaves us with a one family or two-family structure to compare and contrast to what we have now and what we're seeking. Applying the area setbacks there are 4,000 or 5,000 sq. ft. building envelope, but building a 5,000 sq. ft. house would be out of keeping with the residential neighborhood. The houses in the residential area are 800 to 1,800 sq. ft. in size and if we convert it to the residential that would be the target size home and that would produce a rental income of \$1,500.00 to \$1,800.00 as opposed to the \$2,000.00 in the rent we create. If we make that conversion without taking in to the costs to build it, we are losing money.

Mr. Piering asked why the rent would be so low?

Mr. Hulme said because you are surrounded by commercial uses.

Mr. Piering said that sounds very low, and I want to know why it's so low.

Mr. Hulme said because other than the two (2) houses across the street this is a commercial use, you are asking her to take one legal use away and build a house in an area that's less than desirable for a single family residence. In support of that I provided a letter a few years ago and that is still applicable, the residential property surrounded by commercial has a significantly lower value; the analysis that Mr. Foglia did in 2016 was based on the assessed valuations of the Town records, and an indicator of relative value. I took the 2018-2019 assessed value from the Town records and the conclusion that can be reached is that the commercial property is valued at \$634,000.00 and that as a residential property would be around half of that if it were converted from commercial to permitted residential use. We arrived at that number based on an average of the houses across the street; 118 Hazelwood Avenue is in more keeping with what we'd have if we built a house at 97 Hazelwood Avenue. The other thing you need to factor in with the proposed conversion is the cost to get there. Until you decide what you're going to build, I provided housing sizes and estimates for the cost of construction and what that would lead to, and you could end up spending more money to build it than the value of the property after it's built. That being a negative number suggests that it's an unreasonable return, as opposed to continuing the one legal use that we have and getting the second use by a variance.

Mr. Musnicki asked if there are any submissions from the PB.

Mr. Hulme said what they were imparting to you, they rendered no opinion on whether the variance should be granted, but should you grant the variance the site plan would function properly.

Mr. Piering said the property values are the same that you submitted a few years ago?

Mr. Hulme said the numbers changed significantly. 97 Hazelwood Avenue as commercial remained the same, but as a residential property it dropped significantly. They have value in a relative comparison.

Mr. Piering said we do not question the location, the argument you made is pretty sound. I appreciate your summary because it has been going on for quite some time. Is there any one with comments or questions?

There were no comments or questions.

Mr. Hulme said he would like to add that the discussion with the PB, and assuming we're successful we will return to them to complete the Site Plan.

Mr. Pasca said he will corroborate with Mr. Hulme, the PB is looking at the site improvements, and they will improve the site and the Character of the Community you can consider that; if they don't obtain a variance they will keep it as it is and that's substandard, and if they do get the variance they will improve the site and that falls under the CON factor.

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Mr. DelGiudice asked what we are agreeing to? Are we agreeing to the two tenants?

Mr. Pasca said it's a second use within the site, and no expansion of the building using the existing footprint and the PB improvement on the site.

Mr. Hulme said both uses have fallen under the category of general contractor.

Mr. Pasca said it's in a way a use density issue where it's not the building that's changing, but the number of nonconforming uses in the building. If you grant the use variances, you will allow a second non-conforming use within the same structures subject to the PB site improvements.

Motion was made by Mr. Piering to close the application of **Andersen-Kuntz, 97 Hazelwood Avenue (905-2-2-20.2)** for a determination; seconded by Mr. DelGiudice and unanimously carried 5 ayes, 0 nays, 0 absent.

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

No one appeared on behalf of the application.

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

**3. 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.

Salvatore Iannone, Architect appeared on behalf of the application.

Mr. Piering asked if he met with Mr. Hammond?

Mr. Hammond said the numbers we advertised are less.

Mr. Piering said we were also concerned about the air conditioning units.

Mr. Hammond said that has been worked out.

Mr. Piering said okay, great. We didn't want to close it until you sorted that out. Is that taken care of?

Mr. Hammond asked Mr. Iannone to recite on the record what the actual numbers are.

Mr. Iannone said there are 3 dormers; the rear is 18' off of the side yard; the front is 25.9' and the interior is 33.9' and the front portico is 22.5'. The 17.9' is 18' now off of the side yard; the 25.9' was 25.71' from the front property line; and the 22.5' remains.

Mr. Pasca said okay.

Mr. Piering said the covered front entry is the portico and that's 22.5'?

Mr. Iannone said yes.

Mr. Piering said we got it. He asked Mr. Hammond if he had anything else.

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Mr. Hammond said no, they have it all squared away.

Motion was made by Mr. Piering to close the application of **Daniel Napoli, 17 Griffing Ave, Westhampton Beach (905-013-03-010)** for a determination; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

**4. 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.

William Slight Architect appeared on behalf of the application, together with Bradford Govern, contractor. Mr. Slight said they have an old pre-existing house on a triangular lot,

Mr. Piering said there were extensive hearings on this property so we are pretty familiar with it, and I thought we had a magnificent solution to this property, why are we moving on from that solution.

Mr. Govern said they did not have the finances to do that project to tear the house down and build a new one. We did some research and the farm house was there and the road came in after, so we are attempting to say let's rebuild a new house and turn it back to the community.

Mr. Piering said you are right on the road.

Mr. Slight said it's not new construction.

Mr. Piering said you cannot afford to do what they received approval for?

Mr. Slight said yes. In the alternative in having to build what was approved, we looked at the structure, the building is sound and the foundation is poor, but we have a method by which we can replace the foundation by piers and grade beams, and the house is gutted inside.

Mr. Piering asked if they will take the house down and build a new foundation?

Mr. Slight said no, it will be piecemealed under the existing house, and sonar tubes will be inserted under the existing building line and when they are in place a grade beam will be placed to support the structure around the perimeter of the house. We will not have to raise or remove the house and stabilize it and do the work and there will be a new adequate Code compliant foundation when we're done.

Mr. Piering said okay, I'm not a builder or architect.

Mr. Govern said it's done all of the time.

Mr. Wittschen asked who owns the property?

Mr. Govern said Flavio Sinchi.

Mr. Musnicki said Mr. Sinchi owns the property, can I assume he is only investing in this property?

Mr. Govern said correct, he wants to move to Hampton Bays.

Mr. Musnicki said I'm not a builder either, but it's amazing that a 100 year old structure is in good condition and rebuilt, a few things we look at is can the benefit to the applicant be achieved by other means, and the other means were described in a variance granted months ago. We went through a lot of comments from the community to get that variance; you brought up financial hardship here and if you want to use that you have to prove that. You can't just state it will be too expensive.

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Mr. Govern said the homeowner is in to the property for \$360,000.00 and he wants to sell the house; he can't afford new construction because that's \$300.00 per square foot and he cannot afford that. I have advocated to the neighbors to clean the site up. If he built a new house it would be over \$1 million dollars.

Mr. Wittschen asked what your cost will be and how are you going to recoup that?

Mr. Govern said it will be around \$125,000.00. We recoup our money by selling the property and turn it back over to the community and when we sell that, I get the \$125,000.00 that I am putting up to help renovate it, and the owner can move on to Hampton Bays.

Mr. Piering said you work in local real estate, what will that property sell for right now with the variance that they received approval for?

Mr. Govern said people can't wrap around a project like this, they need to build it to get out of it.

Mr. Sclight said there are not construction plans for that construction. It surprised me, you approved plans that were conceptual and hand drawn.

Mr. DelGiudice said we are a zoning board.

Mr. Sclight said when I questioned the building inspector about this he insisted I would have to draw the plans as they were presented to this Board. I said there were a number of aspects that don't make sense.

Mr. Govern said it's the same house, and same footprint. The farmhouse was not built on the highway.

Mr. Piering asked when did the road come in compared to when the house was built and how does that equate to when your client bought it?

Mr. Pasca said you're making an argument this is not self-created, the Deed is in the record it was purchased in 2015 and the conditions were in place that was self-created as a matter of Law, and you have to move on from that argument.

Mr. Govern said all we are trying to do is take the blight on the neighborhood, and complete the project.

Mr. Pasca said what about the alternative about relocating the same house on a new foundation in a more non-conforming location that was approved in the last variance. The location was the most important at that variance. You are talking about a new foundation for a house, why can't you take the same house and put it on the same foundation in a more conforming location.

Mr. Sclight said the house that was approved is too costly to build.

Mr. Pasca said the same house you are building, pick it up and move it to a new foundation in a more conforming location.

Mr. Sclight said the cost of that is more than the value of the structure we are moving.

Mr. Pasca asked dollars and cents what that is, your burden is to move this.

Mr. Sclight said it will cost about \$60,000.00 plus \$30,000.00 to move the foundation, before we begin the construction.

Mr. Pasca asked what the cost of the foundation we're going to build will be?

Mr. Sclight said it will be around \$15,000.00

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Mr. Govern said construction is costly.

Mr. Piering said we understand that, one thing you have to realize is that this property is not unique in the Village when there are houses in non-conforming locations, we have them move to more conforming locations, and the fact that the road came in after it was built does not factor in to this. When people come to rebuild a house, we ask them to put it in a more conforming location. You should look through a lot of our decisions; they are multimillion dollar houses on Dune Road and the Code that's in place today is what houses have to conform to. I appreciate what you're trying to do, but you can't do that where it is. We are not prone to saying rebuild it because the location is non-conforming because it's a very non-conforming location. You have to show us how this financially impossible for your client to do. We don't have proof of your argument.

Mr. Govern said I would ask this, if you would agree if we can roll that house and put in a new foundation in a conforming location, would you approve us?

Mr. Musnicki said the new building inspector should speak to the foundation and the method you are proposing.

Mr. Schlight said the reason we came to this point is because we hit a blank wall with the building inspector and there was a level of hostility we encountered.

Mr. Hammond said he had no conversations on this property, he represented what he wanted to do and I generated this denial and that's about the second story dormer and portico. I take the position that it can be fixed where it is, I do have questions about the under pinning as depicted, but that's not really for this board to review, I will work that out. The placement if you are going for additions, those additions would need a different set of relief. I agree that typically you can get a variance with a plot plan and lot coverages and the look of the house should not matter, that being said there are times where through the process there are concessions and agreements made on the record that may factor in to this and I appreciate when you read the conditions and they can produce a building within that envelope and setbacks I may not send it back to the BZA, but I did not have any meeting with Mr. Schlight.

Mr. Schlight found the wording and he said, the variance granted herein is limited to the relief set forth and pertain only to the plans as approved in this decision and shall not be construed as conforming dimensions. The plans were hand drawn plans and pencil drawn plans and elevations of the house.

Mr. Wittschen said we saw plans.

Mr. Pasca said there were plans; if they want to make an application to build the same house in the general location, even if you need a slight variation there is a location for it. Its impossible to pre-determine the application and there is a precedent.

Mr. Govern said we want to do the plan we are proposing.

Mr. DelGiudice said you are coming to the ZBA and it was here before, it depends on what Mr. Houlihan said and he's not here and can't explain his thoughts, and if there was neighbor opposition and it took us a few meetings to massage the elevations where the neighbors were comfortable which was the condition of the aesthetics, and you want to renovate it and put additions on.

Mr. Schlight we are diminishing the footprint.

Mr. DelGiudice said you are adding a dormer.

Mr. Schlight said we're adding headroom and making a more pleasing front elevation.

Mr. DelGiudice said you are increasing the nonconformity.

Mr. Schlight said there is a porch that's there.

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Mr. DelGiudice said it says construct a front porch with a front yard setback.

Mr. Sclight said that's contained within heated space, and this carves that out and creates a covered entry which is a porch. The measurement from the front property line, is taken to.

Mr. DelGiudice asked where the plan is that you're trying to accomplish.

Mr. Hammond said the front porch has been extended another foot and that requires a variance.

Mr. Sclight said we can modify it by 1'. There is a step you take down.

Mr. Pasca said this isn't a forum to argue with the Building Inspector, make a presentation to the Board if you want.

Mr. DelGiudice said you need to make a presentation to this Board.

Mr. Pasca said you do not have to make a presentation.

Mr. Govern said we're making a presentation.

Mr. Musnicki said is this one story or two stories?

Mr. Sclight said it's the same building, the only change from the envelope is the dormer on the front. What we're doing is raising the roof to give move.

Mr. Wittschen said if you did not do that you don't need a variance.

Mr. Sclight said if you don't ask you don't get.

Mr. Wittschen said if you did not add the dormer, you don't need a variance.

Mr. Hammond said if you don't extend the porch you don't need a variance.

Mr. Wittschen said you represented that you're not changing anything.

Mr. Sclight said that's not true.

Mr. Wittschen said what you need to do is go back to the Building Department, state your case without anything, if you're not making changes you don't need a variance.

Mr. Govern said okay.

Mr. Sclight said okay.

Mr. Musnicki asked whether its one story or two?

Mr. Sclight said it has a finished second story built within the roof. The plans I submitted have a plan of the existing floor plan and the bedrooms are in the same location.

Mr. Musnicki said there is a second story?

Mr. Sclight said there's a second story with a pre-existing stair?

Mr. Musnicki asked why the CO says a single story?

Mr. Govern said he asked, they said it was not documented.

Mr. Wittschen said if you can construct the house with no changes.

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Mr. Slight said the house is 25' smaller in area than what's currently on the site.

Mr. Pasca asked if they understand what they need to do?

Mr. Piering said we can hold it over?

Mr. Pasca said Mr. Hammond will explain what he needs to do if they do not want to obtain a variance.

Mr. DelGiudice said there was neighbor opposition.

Mr. Pasca said the main issue was not the style, but it was the massing and size and the original plans that came in were for a much bigger house and there was a compromise that the neighbors were comfortable with. That final plan was not about the style of the house but the sizing and the massing.

Mr. Slight said when he gave an alternate design with the roof sloping away instead of the twin gables, which was less impact, he said no it has to be the hand drawn drawings.

Mr. Piering said Mr. Houlihan is not here, and its hearsay and not applicable. You're not going to stand here and let you take shots at Mr. Houlihan who is not here.

Joel Vengroffand Annette, 20 Maple Street said he's in the real estate business and I appreciate what you're doing and we live directly behind this house. It's a long property but the house is directly through our back yard, we have a pool and my concern is the upstairs dormer if there are changes to it to the back to the windows is there any difference in the plans?

Mr. Piering said if there are any changes, they'll return to this Board.

Mr. Slight said the dormer faces South and you are to the West.

Motion was made by Mr. Piering to holdover the application of **Flavio Sinchi, 33 Oak Street, (905-8-3-20)**; seconded by Mr. Musnicki; 5 ayes, 0 nays, 0 absent.

### **NEW APPLICATIONS:**

**5. Newman/Corre, 307 Dune Rd, Westhampton Beach (905-018-02-029)** Applicant requests variances from §74-8 C to construct accessory structures within the Coastal Erosion Hazard Area, from §197-8 C for a building lot coverage of 28.2% where the maximum permitted is 20%, from §197-8 D to construct a dwelling with a side yard of 15 feet and a combined side yard of 40.8 feet where the minimum required is 20 & 50 feet respectively, from §197-27 D to place fill for a sanitary system 5 feet from the property line where the minimum setback required is 10 feet, from §197-35 B(1) to construct an accessory equipment platform in the side yard where accessory structures must be constructed in the front or rear yard, and variances from §197-35 C to construct a deck 32.7 feet from the crest of the dune and a pool 51.7 feet from the crest of the dune where accessory structures must be setback 75 feet from the crest of the dune, and to construct accessory decks 10.9 & 15 feet from property lines and a cabana and equipment platform 10.9 feet from property lines where the minimum setback required for accessory structures is 20 feet.

Karen Hoeg, Esq., appeared on behalf of the application. The denial states that the pool is being removed and its being replaced in kind and its being replaced from a liner to gunite and they are proposing a new IA sanitary system. The lot sits on the ocean on Dune Road and in the Coastal Erosion Hazard Area and improved with a 2-story single family residence, the decking is 3,174 sq. ft. and the pool is 504 sq. ft. and they are removing a shed. The property received a CO in 1978 for a single-family residence and later were issued for fencing, additions and beach walkway; a variance was issued in 1978 to accommodate a hot tub, we are proposing the existing piles to remain the front yard setback will not change, nor will the height. And any redevelopment will require variance relief and dune crest setbacks and the property is nonconforming. Relief from the side yard setback is needed, the shed being removed sits 5.3' from the Easterly property line and the side yard setback on the West is improved to 15' where its at 11.6' now, the pool is proposed to remain in its existing location; and currently its at 25.4'.



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the lot coverage is being reduced to 28% and the deck is being reduced by 1,000 sq. ft. and the cabana is 132 sq. ft. which will contain a bathroom and pool equipment. This is similar to what currently exists. We are installing a new sanitary system; decreasing lot coverage, and the existing asphalt driveway is being replaced with a pervious driveway.

Chuck Bowman, Land Use submitted an aerial and in the Coastal Erosion Hazard Area is that the goal of the regulations is when there is new construction to see if you can make it as non-conforming as possible. What we tried to do, we looked adjacent to the East and West the deck projected further South and we drew that line to reduce the size of the deck to keep the pool in the same place and the reduction of the deck and changing the driveway and reduce the lot coverage which is another goal of this Board, it's 20% and most houses cannot meet that, and the extra dune area will be replanted and kept as open space. He will be right in line with the other houses and I think that's a reasonable expectation.

Mr. Piering asked what the owner was not happy with?

Mr. Bowman said they don't like to reduce the deck area.

Ms. Hoeg said they bought the house last Summer.

Mr. Bowman said we knew we had to come up with reductions and reduce the encroachment in to the Coastal Erosion Hazard Area. They are doing the new IA system which everyone should be encouraged to do and the house is not seeking to be larger, they are reducing the number of bedrooms

Scott Campbell, Architect appeared on behalf of the application. With the requirements on this lot, there was a learning curve and we developed the design and we met with Mr. Houlihan for his input and like stated the homeowner is looking for a more contemporary version and more efficient than what exists. What we're doing is taking it down to the existing piles which will remain, there were structural engineers drawings submitted and they are in good shape and there are four helical piles to go in the front for the proposed work, but we're within the front yard setback and overall we're looking to do a reasonable design. We're not looking to expand the square footage, the homeowner loves the spot on the back deck with an updated house.

Mr. Badzik asked who the engineer is.

Mr. Campbell said it's Paul DeLandro.

Mr. Piering said there is no question about the pilings?

Mr. Bowman said yes, they were inspected and certified.

Mr. Campbell said the existing house drawings were in the file, they were looked at and they did an inspection on the site as well and he's confident that they'll work.

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

Ms. Hoeg said it is proposed for 3,200 square feet.

Mr. Musnicki asked if the number of bedrooms will be reduced?

Mr. Campbell said no, it's being increased by one.

Mr. Musnicki said there are seven variances you're seeking; can we go through them.

Ms. Hoeg said its helpful to look at the plan which shows the dark blue hashing which shows what is existing and whats proposed and the offsets.

Mr. Piering said we know the Coastal Erosion Hazard Area variance, we understand that one. How far are you from Dune Road? The minimum side yard is 15' is that to the house?

Ms. Hoeg said to the house and deck on the West its 15' and on the East it's proposed at 10.9'.

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Mr. Musnicki asked why they can't tighten that up?

Mr. Campbell said the side yard setback is for a 100' lot and this lot is 75'. The house is 15' on 1 side and 25.8' on the other but it is the deck that is 10.9' and the other side we're pulling in.

Mr. Musnicki said I can see that, but on the East side I am concerned with that setback. The cabana and the accessory deck.

Mr. Piering asked how they can reduce that?

Mr. Campbell said they can look at pulling it in, there is a storage shed and we did pull in from that, but I think we can bring it in more.

Mr. Piering said okay, how much?

Mr. Wittschen asked if they want to relook at it?

Mr. Campbell said its as wide as it is to accommodate pool furniture.

Mr. Piering said this Board's job is to minimize the variance, this is a modest house on a narrow lot but we try to keep the minimum side yards, we have been more apt to give relief from total side yards than minimum.

Mr. Musnicki said they are on the right track with the 100' wide requirement on a 75' wide lot.

Mr. Campbell said they have 15' on both sides, and the HVAC platform can be pulled back as well.

Mr. Musnicki said we're not going to close this tonight, this is up for discussion now for you to think about and make changes if you want to.

Mr. DelGiudice asked what the platform is for?

Mr. Bowman said we could do 15' on both side yards.

Ms. Hoeg said the other platform is for the mechanicals, we can pull that back to 15' and both side yards would be 15'.

Mr. Piering said the equipment in a side yard will be an issue you should work on that.

Mr. Wittschen said they should make sure this is something they can do before giving the definitive answer to the Board.

Mr. Piering asked if they can take this in order.

Mr. Musnicki said he thought they were.

Mr. Piering said the next one was for the platform but you said you can move it to meet the 15' side yard.

Mr. Bowman said we tried to reduce the lot coverage and increase the lot coverage and we tried to get away from the Coastal Erosion Hazard Area as much as possible.

Mr. Piering asked him to talk about the pool.

Mr. Campbell said there was a prior approval for the pool and it's a liner pool and the client wants to switch from liner to gunite and the footprint will stay, we are shifting a small area on the West to the North because we're pulling the deck back.

Mr. Musnicki said the pool will require pilings correct?

Mr. Campbell said he does not know. The contractor did not mention that.

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Mr. Bowman said they'll go back to the contractor and if there are new piles for the pool he can indicate the same.

Mr. Piering said the next variance is for the fill on the East side.

Mr. Bowman said yes, that's driven by the BOH and they require separations.

Mr. Musnicki said that cannot be reconfigured to gain 5'?

Mr. Bowman said no, the lot is already very narrow and it's too difficult to put a sanitary system under the driveway and they want it accessible at all times.

Mr. Wittschen asked if they have made a submission to the BOH?

Ms. Hoeg said yes.

Mr. Piering said the deck now.

Ms. Hoeg said they are going to 40' on the East and 42.7' on the West, it will be squared off.

Mr. Piering asked if they are ripping up and replacing the deck?

Mr. Campbell said yes, right now it's multi-level with paint that's peeling.

Mr. Piering said you are taking off a significant portion of that.

Mr. Bowman said yes.

Mr. Musnicki asked where the pool mechanicals are going?

Ms. Hoeg said in the cabana,

Mr. Musnicki said okay.

Mr. Piering said I think we've gone through all seven variances, and we've made some suggestions, and you can't do any work now so we have time to work through this.

Mr. Bowman said they'll make the changes and resubmit the same and return to this Board.

Mr. Piering said okay. He asked Mr. Hammond if he had anything to add.

Mr. Hammond said Mr. Houlihan did the denial, and it's pretty extensive, and he noticed what he wrote in his denial.

Mr. Piering said you're going to decrease the non-conformity, and that's the goal. Let's make sure you can make the changes and return to this Board.

Motion was made by Mr. Piering to holdover the application of **Newman / Corre, 307 Dune Road (905-18-2-29)**; seconded by Mr. DelGiudice and unanimously carried 5 ayes, 0 nays, 0 absent.

**6. Metro Storage, Westhampton, LLC., 105 Old Riverhead Road, Westhampton Beach (905-2-1-19.5)** Applicant requests variance from §197-30 C(9)(c) to erect signs with a total area of 48 square feet where the maximum permitted is 25 square feet, from §197-30 C(9)(e) to erect two ground mounted signs on a lot where only one is permitted, from §197-30 D(11) to erect a sign on a different lot than the advertised business where signs must be installed on the same lot, and from §197-30 D(14) to erect an internally illuminated sign where internally illuminated signage is prohibited.

Philip Butler, Esq., and Eric Meyn, Bohler Engineering, together with Bob Heilman, Metro Storage and Dan Barry, Project Manager appeared on behalf of the application. This application was before this Board in 2017 for the height for the elevator bulkheads, as you remember this is a flag lot with an out parcel on Old Riverhead Road and originally the plan was to place a

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monument sign on the South side and due to site constraints and some features we can't help a fire hydrant, light pole and foliage there are visibility issues so the solution we came up with is to place the sign on the North however that is the other parcel. We are seeking two signs on one lot to preserve the ability for the front lot to place a ground sign as well; and we exceed the maximum sign area as well, and the area is combined. We are only erecting one sign. We are withdrawing the interior illuminated sign, so that variance is not being requested.

Mr. Badzik asked if it will be illuminated?

Mr. Butler said yes, but exterior and compliant with the Code.

Mr. Heilman said they'll be ground mounted but shielded.

Mr. Piering said it will be Code compliant, right?

Mr. Heilman said yes.

Mr. Butler said we don't think this will have a negative impact on the CON; it will be on the adjacent parcel, not the actual parcel and that's because of the flag and that speaks to the uniqueness of this; this is one of two flag lots on Old Riverhead road and does not create precedent for future applications.

Mr. DelGiudice asked if the sign will be on the other lot?

Mr. Butler said yes. The lot that fronts Old Riverhead Road in the corner of that lot.

Mr. Heilman said we own both lots. If and when that's sold we will create the easement for that sign.

Mr. Piering said to be clear, you are seeking relief to erect a sign a few feet off the property flag and to be able to maintain a future tenant to seek their own sign, but you are not going to put two signs up right now? You are not preventing someone in the future to be able to erect a sign on this lot because you have one.

Mr. Butler said yes. In the instance it's not dimensioned properly they'll need relief for that.

Mr. DelGiudice said he was confused on the square footage.

Mr. Meyn said each sign is 24 square feet, individually they are code compliant so the square footage is combined so it's a total of 48 square feet.

Mr. Musnicki said he thought they were on different parcels?

Mr. Butler said originally, they were, now on the out parcel they are proposing two signs, one for Metro Storage that they'll install now, and the second for the next tenants use.

Mr. DelGiudice asked the square footage?

Mr. Butler said 24 square foot double sided.

Mr. Musnicki said you are only installing one now?

Mr. Butler said yes. We would have had to come anyway because you cannot place a sign on the lot in which the use does not pertain.

Mr. Heilman said there is a lot of utility in that area.

Mr. DelGiudice said the easement is only created if you sell the lot in front?

Mr. Heilman said yes, we are going to create an easement automatically for the sign.

Mr. Butler said they are close to being done; can we receive a decision tonight?

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Mr. Piering said no, we will have one on July 18, 2019.

Mr. Pasca said because it's the same owner, you do not need to force them to have an easement, legally there is no easement, the condition is upon separation of ownership you are required to create an easement or remove it. You can't have an easement over property you own, but upon separation you create it and that will be a condition.

Mr. Butler said you have to do that regardless; we are fine with that as a condition of approval.

Mr. Hammond said the lot in front has to take access from the Flag, so the thought was the sign that eventually happens may be 24 square feet on top of this, but it makes sense to have them closest to the entry if they have the same entry. It's confusing to have them elsewhere.

Mr. Pasca asked how they want it worded, there are two parts one is to put it on the lot over the line but you want to forecast to a purchaser they are allowed a sign, how do you propose it to be worded.

Mr. DelGiudice said they are on the highway, they can have a building and ground sign.

Mr. Pasca said Mr. Hammond raises a good point, they will want it to be closer to the existing sign.

Mr. Heilman said we don't want to determine where the sign is.

Mr. Hammond said yes, but in granting this we aren't looking to preclude a future owner from erecting their own freestanding sign.

Mr. Butler said without submitting a plan that shows two signs, we couldn't get a denial for two signs. I can draft verbiage if you so wish.

Mr. Pasca said no I think we can work it out.

Mr. Hammond said if the future person makes an application, they may go to the BZA and they can come back to these minutes and show we discussed it. It makes sense to have one sign on a lot, if the front lot is sold there are two businesses.

Mr. Pasca said the condition is the entrance is the same, they are forced in to this there is no choice,

Mr. Heilman asked if they can get another curb cut off Old Riverhead Road.

Mr. Pasca said that's why it was improved that way, no they probably would not.

Mr. Butler said where the utilities had to go drew the constraints on the original proposed location.

Karen Hoeg, Esq., said she represents Prime Storage, they would like to not see that the sign not advertise for the additional parcel. There will be two (2) signs.

Mr. Pasca said that will require another variance, the business is allowed one freestanding sign.

Ms. Hoeg said you're seeking relief to put the sign off site.

Mr. Butler said we are going on the assumption; it won't be for Metro Storage. It has to be for a different use, not Metro Storage.

Mr. Pasca said that will force them to come back if they want a second sign. We will word it that the second sign is only for a future building if and when a new building opens.

Mr. DelGiudice asked if there's a building sign?

Mr. Heilman said we have an awning sign.

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Mr. DelGiudice asked if they are maxed out on signs?

Mr. Pasca said yes, and if they try for another, they will need another variance.

Motion was made by Mr. Piering to close the application of **Metro Storage, Westhampton, LLC., 105 Old Riverhead Road, (905-2-1-19.5)** for a determination; seconded by Mr. DelGiudice and unanimously carried 5 ayes, 0 nays, 0 absent.

**DISCUSSION:**

**7. Song, 335 Dune Road (905-18-2-13)** Discussion regarding conditions and height limitations issued in the applicants request for variance.

Karen Hoeg, Esq., appeared on behalf of the application, together with Christopher Pagliaro, Architect.

Mr. Piering said you were very accommodating when we asked you to move the house out of the Dune and we have now plans to build the house, we were going to keep this to the 40' height limitation and that's in the minutes. And we've done two other decisions with the same limitations. This is just a discussion.

Christopher Pagliaro, Architect and they were represented by his former partner. He offers an apology that he believes they were asked about the 40' and no matter what he was incorrect, the overall height was 46' above Mean Sea Level, and his response innocently, but incorrectly was to Mean High Tide and that's where we have the gap in what happened. We never considered the 40' because we were building in the X Zone and he was not prepared for the answer. We were proposing to hit the 32' above grade. The mass is the same, and by right we would divide it in half, and by variance it would be by three stores and that was our philosophy with the lower level uninhabitable. The simple solution is to show a design that's the same but lowered by 6' so we're not piercing the 40' which would satisfy the resolution and our approval we can lower the house by 6' and in order to do so, our lowest level will be at approximately 10' and still a slight upslope from the road. In which case we would have to slope the land to create the driveways and I could not find anything that precluded them from removing grade.

Mr. DelGiudice asked what the finished floor be at? The first habitable floor?

Mr. Pagliaro would be at 20.43 and the lowest horizontal structure has to be 1' above any velocity zone, and that's VE 16 so it can be at elevation 17 and our lowest is at 18.4'. This would be in full spirit of the approval and provide 6 less feet of height.

Mr. Pasca said if they do that, you don't need to come back to the BZA?

Mr. Hammond said yes, that's correct.

Mr. Pagliarolo said he has to present all of this to his client and he believes it's a solution; the other alternative would be to build an X Zone compliant house with no garage and we wouldn't need the third story.

Mr. Piering said and then you would not need a variance regardless.

Mr. Pagliarolo said would they apply the previous variances, if it built an X Zone compliant house. I can bury a basement in an X Zone?

Mr. Hammond said for it to be a basement, it has to be 50% below the grade.

Mr. Pagliarolo said he's 90%. Would the front and side variances still be applicable or do we have to come back?

Mr. Pasca said you have to modify the decision, it mandated you build to an AE Design, and the reason was for the third story, and if you come back to say you're not seeking that there is a likelihood they eliminate that condition. I don't know they can approve a building permit with a condition from the BZA that you don't meet.

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Mr. Pagliarolo said yes, I get that. If that's my client's direction I would return to this board.

Mr. Pasca said you will modify the decision.

Mr. Hammond said there were combined side yards too, and Coastal Erosion Hazard Area too.

Mr. Pasca said there was one decision, if it was two decisions you would have to modify the decisions.

Ms. Hoeg asked if it's a letter request, or a public hearing.

Georgia Malone, 333 Dune Road, said this is an option they may present. And her architect said you do need variances, and therefore they have to go back to this Board.

Mr. Piering asked what she's talking about? Our attorney said yes, they need to modify the decision.

Ms. Malone asked if they need a public hearing?

Mr. Pasca said it's hypothetical.

Ms. Malone said they are incorrect, in their presentation they stated they were proposing to comply with the design standards of a FEMA VE zone structure; they are not in compliant with the 40' height requirement, we asked them to hold them to a 40' height limitation which is sea level it's not 32' it's 40' and there are two places in the decision where its made very clear. This was agreed to.

Mr. Pasca said you're arguing something that no one is disputing.

Mr. DelGiudice said we don't give determinations from Sea Level.

Mr. Hammond said yes, in special flood zones. It's 32' above your average grade.

Mr. Pagliarolo is what they agreeing to.

Mr. Hammond said the first option they presented would not need to go back to the BZA.

Mr. Pagliarolo said there are two separate garage types, one below the house as originally designed and if they choose the two story non story variance, we can build an accessory garage to 14' but I would work that out to see if we can.

Mr. Hammond said accessory in the front yard is for pool, cabana, garage, and tennis court.

Ms. Hoeg said yes, garage is allowed in the front yard

Mr. Piering said you are willing to bring it down and work it out.

Ms. Malone said the garage is not something we talked about.

Mr. Pagliarolo said he'd have to modify the original approval if they build the garage.

Ms. Malone said the whole purpose is the height of 40' and now they want to build something at 47'.

Mr. Piering said they are bringing it down so it's 40' from your point of view.

Ms. Malone said it will interfere with her view.

Mr. Pagliarolo said if they go with the two story as of right, they can build a garage in the front yard. If they do not need the story variance, they are allowed to construct a garage in the front yard because the two story solution goes back to the original height that we proposed, because we worked on that with the 32' from average grade. The resolution with no garage in the front frees up about 6' in height.

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Mr. Piering said he understands that.

Mr. Musnicki said you have to present these two things to his client?

Mr. Pagliarolo said yes. I have a responsibility to express certain things to him, but I felt it was necessary to show you we have to lower the slope of the driveway.

Ms. Malone said she proposed that they'd meet with her architect and see if we can work out a solution, and I've been trying to.

Mr. Piering said we're here now.

Mr. Pasca said this was just a clarification, it's informal, there's no application before the board there was a question raised and it's been answered and they know their answer; no reliefs been granted no changes have been made to the decision other than its been clarified, probably in your favor and it's been clarified you were correct in your way at looking at it.

Ms. Malone thanked the Board.

Mr. Hammond said we can summarize and say we don't know their direction, the first option will not require further action from the board, and the second will require a new public hearing.

Ms. Malone said if they do the second option they need a hearing?

Mr. Hammond said without the client making a decision, one option does not require any option and that lowers the building 5' and the other being a change of a previous decision enough to warrant the applicant returning to the board.

Ryan Fletcher, Contractor asked the condition of work hours.

Mr. Hammond said there is a boiler plate relief.

Mr. Piering said we protect the privacy of the residents and enjoyment of our area. We put restrictions on outside work in the Summer time, what happens is from July to September you can't do anything outside; and from May to July you can't do any exterior work on the weekends.

Ms. Malone asked if the board's determination in December had a limit?

Mr. Hammond said yes, 6 months.

Mr. Piering said yes, they get extended and that's in case there's a change in zoning or situation changes so variances don't go on indefinitely.

**REQUEST FOR EXTENSION:**

**8. Ocean Spray Pools, Inc., 97 Old Riverhead Road (905-2-1-6.3)** Applicant requests an extension of the October 18, 2018 BZA approval, up to and including October 18, 2019.

Joseph C. Musnicki appeared on behalf of the application.

Motion was made by Mr. Piering to grant the extension of **Ocean Spray Pools, Inc., 97 Old Riverhead Road (905-2-1-6.3)** up to and including October 18, 2019; 4 ayes, 0 nays, 0 absent, 1 recused.

Motion was made by Mr. Piering to adjourn the meeting at 7:20 p.m.; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.