

July 16, 2020

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

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

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

Maeghan Mackie, Building Permits Examiner / Board Secretary

Motion was made by Mr. Piering to adopt the **May 21, 2020** minutes as written; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

Motion was made by Mr. Piering to adopt the **June 18, 2020** minutes as written; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

DECISIONS:

1. 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.

2. Brennan & Sadie Diaz, 7 Bayfield Lane (905-010-04-041) 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, 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, from §197-29 C(1) & §197-29 C(2)(c) where such conversion represents a non-permitted increase in floor area devoted to the nonconforming use of a second dwelling in a residential district, and applicant requests a permit from the Zoning Board of Appeals in accordance with §197-29 C(1) to legalize such alterations to a nonconforming use.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

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In the Matter of Application of

Brennan Diaz

DETERMINATION

Sadie Diaz

Address: 7 Bayfield Lane

SCTM #: 905-10-4-41

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I. REQUEST FOR RELIEF

The applicants, Brennan Diaz and Sadie Diaz, are the owners of a parcel of real property located at 7 Bayfield Lane. According to the survey of the property prepared by David H. Fox, LS, dated August 6, 2018, and updated on December 3, 2019, the property is improved with a

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two-story frame house, a detached garage & apartment with a covered deck, a swimming pool, and a detached one-story frame cottage.

This application involves only the detached garage & apartment structure. Specifically, the applicant seeks to legalize an otherwise unapproved conversion of the garage portion of the structure to habitable space that includes a game room and media room.

Based on the revised denial letter from the Building & Zoning Administrator dated May 29, 2020, the proposed conversion is inconsistent with the following sections of the Zoning Code:

1. Section 197-5.A (1) of the Village Code provides that, except as 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. The Administrator found that the proposed conversion represents an enlargement of nonconforming habitable area.
2. Section 197-6.A (2) of the Village Code provides that, uses permitted in the Residential District 1 include accessory uses, which are further defined in Section 197-1 as those uses that are, among other things, “customarily incidental and subordinate to the principal use of a building and property....” The Administrator found that the proposed habitable space in the detached structure is not normal and accessory to a principal single-family dwelling use.
3. Section 197-29 (C) (1) of the Village Code provides that, with some exceptions not applicable here, a nonconforming use may only be reconstructed or altered by way of a permit from the Zoning Board of Appeals, but that any enlargement, extension or expansion of a nonconforming use shall be prohibited. The Administrator found that a permit was required.
4. Section 197-29 (C) (2) (C) of the Village Code provides that, a nonconforming use shall not be reconstructed or altered so as to increase, extend or enlarge the floor area devoted to the nonconforming use. The Administrator found the increase in floor area devoted to the nonconforming use to be not permitted.

The applicants have taken an appeal to this Board and claim that the Administrator’s interpretation regarding the non-accessory nature of the proposed habitable space is incorrect and that the conversion should be permitted as proper as-of-right accessory uses. Alternatively, the applicant seeks a special permit under 197-29(C) and/or area variances from the above sections

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as necessary to legalize the conversion of a detached garage to a recreation room as depicted on the plans drawn by Salvatore Iannone, Jr., Architect dated December 26, 2019, and date stamped received by the Village of Westhampton Beach on February 18, 2020.

II. SEQRA

The applicant submitted an Environmental Assessment Form Part I pursuant to the State Environmental Quality Review Act (SEQRA).

Since this is a request for an interpretation and special permit/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)(17) & (37), and no further review is required.

II. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on March 19, 2020.

The applicant's attorney, James N. Hulme appeared and presented the application.

No other persons appeared in support or opposition to the application, and the Board did not receive any written submissions from any neighbors in support or opposition to the application.

The hearing was closed at the June 25, 2020, meeting for a determination.

III. GOVERNING LAW

With respect to the request for an interpretation, the Board is authorized to entertain appeals from interpretations of the Zoning and Building Administrator under 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)).

With respect to the applicant's alternative requests, the Zoning Board is empowered to grant a special permit pursuant to Section 197-29(C) of the Village Code to authorize the reconstruction or alteration of a nonconforming use, but "Any enlargement, extension or expansion of a nonconforming use shall be prohibited." A special permit is also subject to

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several conditions including, as relevant here, that no enlargement, extension or expansion of the nonconforming use is permitted (§ 197-29(C)(1)), the reconstruction may not increase the degree of nonconformity, increase the height or number of stories, or increase the floor area devoted to the nonconforming use (§ 197-29(C)(2)), the applicant shall demonstrate an absence of change in the nature or character of the nonconforming use(s), except for a reduction in the degree of nonconformity (§ 197-29(C)(6)(b)), any change shall be beneficial to the general neighborhood (§ 197-29(C)(6)(d)), and the applicant must demonstrate that any change will not result in or allow an intensification of the nonconforming use (§ 197-29(C)(6)(f)).

Finally, to the extent the applicant asks for area variance relief, when 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).

III. FINDINGS AND CONCLUSIONS

A. The Request for Interpretation

The applicant first asks the Board to overturn the Building Administrator's interpretation that the proposed habitable space for a game room and media room in the detached garage/apartment structure is not allowed because it is not a normal accessory use to a single-family residential parcel.

Under the Village's Zoning Code, an accessory use is defined as follows:

A use customarily incidental and subordinate to the principal use of a building and property and when located on the same plot with such principal use or building. No such accessory building, other than a cabana or pool house of less than 200 square feet in floor area or a valid existing accessory apartment, as defined in this Code, shall contain any bath, shower or plumbing facilities.
(Emphasis added)

The key requirements of this definition are, essentially, that the use be both customary and incidental/subordinate to the principal use of the building and property. These requirements are underscored where, as in this case, the proposed accessory use is to be located within an accessory building, for the definition of accessory building is "A subordinate building, or portion

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of the main building on a lot, *the use of which is customarily incidental to that of the main or principal building.*” (Emphasis added)

The Courts have explained that this question is a factual one:

Whether a proposed accessory use is clearly incidental to and customarily found in connection with the principal use depends on an analysis of the nature and character of the principal use of the land in question in relation to the accessory use, taking into consideration the over-all character of the particular area in question. This analysis is, to a great extent, fact-based.

N.Y. Botanical Garden v. Bd. of Standards & Appeals of City of N.Y., 91 N.Y.2d 413, 420 (1998).

The applicant urges the Board to find that the inclusion of habitable space like a media room or game room within a detached accessory building is customary and incidental to a single-family residential use.

The Board finds no factual evidence to support this claim. While the Board is well-aware that there are many types of non-habitable uses within detached buildings that are customarily found on residential parcels, such as garages, sheds, and equipment enclosures, the Board does not have common knowledge of the types of habitable uses customarily found within detached buildings such as the uses proposed by the applicant, like finished media rooms and game rooms. Nor did the applicant present evidence of any such custom when asked to do so by the Board. The only habitable detached use that the applicant claimed was customary was a pool house. But the Code definition quoted above confirms that pool houses and cabanas are singled out for specific treatment, as follows: “No such accessory building, other than a cabana or pool house of less than 200 square feet in floor area or a valid existing accessory apartment, as defined in this Code, shall contain any bath, shower or plumbing facilities.”

The Board is also mindful that there is a difference in intensity of accessory uses for the customary non-habitable uses, like garages and sheds, as compared to the habitable uses proposed by the applicant. Accessory buildings are subject to less stringent setback requirements than principal buildings. As a result, while habitable uses such as media rooms and game rooms may be commonly found within principal buildings, it is a different issue to determine whether such uses would also be customary if located in a detached, accessory building like a garage.

Given the lack of evidence supporting the claim that these types of accessory uses are customarily located within detached accessory buildings, the Board **denies** the request for an interpretation that would allow the proposed uses to be deemed customary accessory uses within a detached accessory building to a single-family residential property. Rather, the Board agrees

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with the interpretation of the Building Administrator and finds that the proposed uses of the detached garage/apartment structure are not permissible accessory uses.

B. The Request for a Special Permit under 197-29(C)

The applicant has alternatively asked for a special permit to legalize the use of the game room and media room within the detached building. The genesis of this request is §197-14(A) of the code, which defines as a nonconforming use on a single-family residential property any “separate building used or designed to be used in whole or in part for dwelling purposes in that it contains cooking and/or sleeping facilities...” Here, the garage/apartment is such a separate building and therefore is defined as a nonconforming use under the code.

Because the media room and game room would be located within the pre-existing nonconforming use – through a conversion of the garage space to the media room and game room – the applicant has argued that it can be allowed under §197-29(C). As mentioned above, however, that section only allows alterations of nonconforming uses where the use is not expanded or intensified, but it specifically prohibits any expansion of the nonconforming use through a variety of conditions.

The Applicant cannot meet the requirements of 197-29(C) under these circumstances, where it is proposing to convert the non-habitable portion of the building (the garage, which would itself be a conforming and customary accessory use but for its location within the same building as the apartment) into habitable, nonconforming and non-customary accessory uses, as found above. Under those circumstances, the proposal would be a prohibited “enlargement, extension or expansion of a nonconforming use” within the meaning of 197-29(C)(1). The applicant also cannot meet the specific conditions that are required by the code, including the following:

- The proposal would both “increase the degree of nonconformity” and “increase the floor area devoted to the nonconforming use” by changing the otherwise conforming garage use into a nonconforming use. See § 197-29(C)(2).
- The applicant cannot demonstrate an absence of change in the nature or character of the nonconforming use(s), except for a reduction in the degree of nonconformity, where the otherwise conforming garage space is being put to a new, nonconforming accessory use. See § 197-29(C)(6)(b).

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- The proposal does not appear to be beneficial to the general neighborhood, since new nonconforming accessory uses are being substituted for a conforming one. See § 197-29(C)(6)(d).
- The change would result in or allow an intensification of the existing nonconforming use for the same reasons. See § 197-29(C)(6)(f).

The Board therefore **denies** the application for a special permit under 197-29(C).

C. The Alternative Request for an Area Variance

The applicant has alternatively requested area variances to allow the proposed use.

Based on the Board's finding that the proposed accessory uses are not permitted accessory uses within a detached accessory building that is itself defined as a nonconforming use under the Code, the Board does not believe that an area variance can be granted to allow the uses to be introduced into the accessory building. With respect to nonconforming uses, absent a specific grant of permission to expand in a zoning code, the general rule in New York is that an expansion of a nonconforming use requires a use variance. See *Crossroads Recreation, Inc. v. Broz*, 4 N.Y.2d 39, 172 N.Y.S.2d 129 (1958) (applying use variance criteria to application to expand nonconforming use); *Angel Plants, Inc. v. Schoenfeld*, 154 A.D.2d 459, 546 N.Y.S.2d 112 (2d Dep't 1989) ("It is well settled that a use variance is necessary to expand a business conducted as a prior nonconforming use"); and *Upper Delaware Ave. Ass'n of Delmar, Inc. v. Fritts*, 124 A.D.2d 273, 508 N.Y.S.2d 73 (3d Dep't 1986) ("Since the florist business was a prior nonconforming use, a use variance was necessary to expand the greenhouses").

In the Village of Westhampton Beach, the Zoning Code does not allow the expansion of nonconforming uses. To the contrary, the Code specifically disallows such expansion under 197-29(C)(1) ("Any enlargement, extension or expansion of a nonconforming use shall be prohibited."). Therefore, the general rule requiring a use variance to expand the nonconforming use would apply. The applicant has not requested a use variance.

Even if an area variance were an available remedy, the Board would deny that relief. The Board could not find that the granting of variances would not adversely impact the character of the community since it would result in the intensification of a nonconforming use and the substitution of new nonconforming uses for the garage use, which would otherwise be conforming but for the fact that it is located within a building that is a nonconforming use under 197-14(A). The applicant also has alternatives to achieve the benefits sought, since there is plenty of room on the property to add a media room and game room to the principal dwelling.

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And the variances would appear to be substantial, given the prohibition in the code against intensification and expansion of nonconforming uses.

The Board therefore **denies** the alternative request for area variances.

Dated: July 16, 2020

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Musnicki to adopt the determination of **Brennan & Sadie Diaz, 7 Bayfield Lane (905-10-4-41)** as written; seconded by Mr. DelGiudice and carried 4 ayes, 1 nay, 0 absent.

HOLDOVERS:

3. 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. He said they were trying to decide whether they were in the position to grant the variance under 197-C and he submitted a memorandum addressing that, and it's his conclusion that the Board was in apposition to grant such variances, and should be as an area variance, not a use variance. He is happy to discuss that but where they are there is two (2) different ways to look at the project. The first is the apartment which is the same size, stories, and bathroom as the one that exists now. That under the requirements of 197-29 C meets those requirements. The garage is a permitted accessory structure, and then the game room has to do with whether its accessory additional and permitted under the Code like the pool house, shed, an artist studio. That is one way to analyze this. Another is to just apply 197-29C to the whole project, and if the Board concluded that the game room is an expansion and he would be asking for area variance relief to allow that to occur. We did legal research about Special Permit requirements, and first of all whether or not whether a ZBA has a variance to grant a waiver and if they can, whether that analyzed under the standards or Use Variance standards. We concluded that you could in fact waive a requirement of a Special Permit and I believe that the analysis of that should be based on the area variance standard and not the use variance standard.

Mr. Pasca said one is, the decision rendered earlier may impact this application and you have not been able to review it; you do want to see it and make a record whether or not and address that with relation to this application then I would suggest holding this over or giving you an opportunity to do written submission for 10 day period to make a record.

Mr. Hulme said since I do not know anything more than it was a denial, I would prefer to hold this open for all purposes.

Mr. Pasca said okay. The other thing, and I did read your letter but I did not get a chance to discuss it or provide my thoughts on it to the Board. I will say generally now, and you are free to disagree. I do not agree that the Board can allow an expansion of a non-conforming use by area variance when 197-29.C. says an expansion is prohibited. I understand the CaseLaw where the condition cannot be met, the condition can be varied by variance so if the Code says that you

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need a 40,000 square foot lot in order to qualify for special permit the Board is free to grant an area variance for a 35,000 square foot lot to allow it. In this case, 197-29.C. starts out by saying you can reconstruct or alter a non-conforming use by way of a special permit and it immediately says any expansion shall be prohibited. So I am having a hard time seeing how the fundamental requirement can be ignored, it is the fundamental requirement of the statute.

Mr. Hulme said he will address that at the next meeting. We discussed that in my office and I don't see a distinction between square footage, it's just a condition.

Mr. Pasca said its not a condition, it is saying you are eligible for a Special Permit to reconstruct a non-conforming use, but you can't get one to expand a non-conforming use. It's the requirement in the Code. By saying we will vary that, we can do what we want. I will make a record, and there is a comparable case in the Town of Southampton to allow expansions up to 50% and they tried to exceed that and the Court says you cannot go beyond the Code so in our case, our Code is much less flexible than the Town of Southampton Code because no expansion is allowed. To say the Bord can do it by area variance for a non-conforming use it is not consistent with the law.

Mr. Hulme said he will look at the Town case too.

Mr. Piering asked if they are talking about the game room only, the apartment will be smaller, and the garage is an allowed use. Are we only talking about the game room?

Mr. Pasca said the building being expanded. The Code is defined in 197-14 as the building, and if it contains living space it's considered a non-conforming use. How do we make this application fit within that if the Use is being expanded by the floor area addition? That is what led to this discussion.

Mr. Piering said okay, so under our Code he cannot expand his garage?

Mr. Pasca said correct. As long as its attached to the living space, he cannot expand.

Mr. Piering said okay, he understands he just does not understand the logic.

Mr. Hulme said if he built a third building just a garage there's no limitation, but if its attached to the building he is stuck with this section of the Code.

Mr. Pasca said that's the Code saying it; but if you read 197-14 it defines any building with any living space detached as a non-conforming use. If the building is non-conforming it cannot be expanded under 197-29.

Mr. Hulme said it's a building put to several different uses.

Mr. Pasca said the Code says any part of the building for dwelling purposes it's a non-conforming use.

Mr. Hulme said he's not certain about what it says, it's convoluted.

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. DelGiudice and unanimously carried 5 ayes, 0 nays, 0 absent.

4. Mathew & Deborah Vivek, 206 Main Street (905-013-02-020.06) Applicant requests variances from §197-43 A(1) to erect a driveway gate (fence) in the front yard that is 7 feet in height, where the maximum permitted is 4 feet, from §197-43 A(3) for proposed driveway posts/pillars that are 7 feet in height where the maximum permitted is 6 feet, from §197-43 A(7) for proposed driveway posts/pillars that are 1 feet from the lot line where the minimum required setback is 3 feet, and from §197-43 A(8) for proposed driveway gates 1 feet from the street line where the minimum required setback is 20 feet.

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James N. Hulme, Esq., appeared on behalf of the application. This morning he submitted updated information.

Mr. Piering said he will have to go through it.

Mr. Hulme said they are seeking four (4) variances relative to the driveway gates, but they are moving the gates and columns back 5' from the original 1' request.

Mr. Piering asked if they are eliminating that variance?

Mr. Hulme said yes, and they are reducing column heights from 7' to 6' so they are removing two (2) variances and reducing another. They are now seeking variances for relief under the height limitation of the gates themselves, which is 197-43.A.1, 197-A-.3, and 197-A7 and still seeking relief from 197-A 8 so they are moving towards the 20' but not all of the way. Instead of 1' they are placing them setback 5'. There is no fence, just the columns and the gates and at 5' that is as far back as they can go with keeping them inline with the hedges. The motivation is that as they discussed this is one of the first houses as you leave the commercial district and people are using the driveway as a turn around, and his clients have young children and they are trying to secure their yard from the deer. The other feature is that when they bought this property they bought it with the idea that they would put the gates up and I did not represent them in the purchase, and I don't know if they reviewed the Code, and they did drive around town and saw many other gates and they assumed they could do the same. I provided photographs of various gates in the vicinity of the Town and you can see that the gates are almost all over 6' tall and most of them are located 3.5' back from the sidewalk. It is routinely done in this Village that gates taller than 6' are pretty common.

Mr. Piering asked if they are allowed to be there, or did they construct them with no permits.

Mr. Hulme said I don't know.

Mr. Piering said they will have to find out.

MR. Hulme said he would suspect they are not variances.

Mr. Piering said they are Code violations so that's not going to help you.

Mr. Hulme said some are substantial and aged and its something the Village has allowed for a long time. I would hate to have to be penalized because they went the right route. I can't say whether they were variances granted and its difficult to FOIL this at the moment.

Mr. Piering said he has been on the Board for a long time, and I can only thing of one other time we went through this but they were set very far back off of the road.

Mr. Hulme said this application stands on its own.

Mr. Piering said I don't see the character of the neighborhood, and that North side of Main Street does not have anything like this.

Mr. Hulme said none are like this. This house is uniquely situated and whether they got variances or not that's the character of the neighborhood.

Mr. Piering said I see it as that North side of Main Street.

Mr. Hulme said none are across from Seafield, or the business condos, or Beach Road and Beach Lane and Main Street.

Mr. Piering said you need two (2) variances? You need relief from the 20' setback, and what else do you need?

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Mr. Hulme said a (1) said no fence in the front yard can have a fence in height greater than 4' and because the gate is higher than 4' we need a variance.

Mr. Piering asked why the gate needs to be taller than 4'.

Mr. Hulme said to provide privacy.

Mr. Piering said a 4' fence can, I don't see why they need a 7' gate.

Mr. Hulme said it's in style with the gates in the Village. Architecturally it is good looking and provides privacy along with the hedge. They need more privacy than what a 4' one can provide, and there is not a single gate in this Village that is 4'.

Mr. Musnicki said Mr. Hulme's clients looked around the community, they knew their location, they saw Seafield Center, they saw the condos to the West, they knew they were steps from Main Street and the traffic there and shortly thereafter their purchase they put a new curb cut in so that didn't bother them to have egress and ingress on that property, and now you're asking for a 75% variance in a location and its substantial, even with moving it from 1' to 5' you will still have vehicles parked on the sidewalk waiting to go in. If the gate is install where it's proposed it will be parked on the sidewalk while it's opening.

Mr. Hulme said it's not a huge imposition on the foot traffic.

Mr. Musnicki said it is. People pulling in and backing out is common place in the Village. My house on Library Avenue people make three point turns it's a function of traffic in teh Village.

Mr. Hulme said he suspects it happens more in this location than anywhere else. Its right at the end of the business district.

Mr. Pasca said there's a circle there that you don't need to do a three-point turn.

Mr. Hulme said the front yard is only 50' so if we go back 20' the gates will be in the middle of the yard.

Mr. Musnicki said it would be nice if all of the properties could accommodate all of these accessories and some locations just can't accommodate certain features.

Mr. Hulme said he does not think it's a tremendous imposition to the public and if you do the balance it lands in favor of his client. There's no other house situated the same as this house.

Mr. Piering said that is a criteria in review.

Mr. Hulme said there's a substantial hedge, so I don't think the presence of these gates will change the character of the neighborhood in any significant way.

Mr. Musnicki asked if this benefit can be achieved by other means, and I think with a little work it can.

Mr. Hulme said that needs to be asked in context with my client's goals, and that is to create privacy in an area where they can play safely in the front yard. I don't know putting these gates 20' back will achieve their goal.

Mr. Musnicki said I don't agree with that, they have chosen to make their front yard a driveway, and not yard space.

Mr. Hulme said I don't agree with that, just because it's a driveway doesn't mean you don't use it like you do yard space.

Mr. Badzik said the employee delivery truck and other entrances to Seafield are not off of Main Street, they are off of Seafield lane so the amount of traffic used on the main street side is limited.

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In fact if there's anyone to make a case that they are using their driveway it's the homeowner on Main & Seafield; and there's no need and you can make a right or left out of the South Main Street entrance, so the only people would be various traffic leaving the Village and deciding to turn around which I don't think is an increase or volume and I don't think Seafield as a reason stands up.

Mr. Hulme said it's a business use which the traffic needs to find its way, it's a business not a residence. Even if the traffic is directed around the corner and the main offices are on the corner of Main and Beach and it's a busy intersection because it abuts the business district and that's only one component of the argument, the other is the safety and privacy in the front yard.

MR. Musnicki asked Mr. Hulme if his client would be interested in relooking at this again, or do you want to close it for a determination.

Mr. Hulme said he's always happy to relook at it but they thought moving it back 5' they addressed the concerns. He isn't sure whether the issue is with the setback or the height.

Mr. DelGiudice said the height seems pretty easy, it creates barrier but it doesn't need to exceed 4' and you can't use the driveway to turn around whether it's a 4' gate or 6' gate.

Mr. Hulme said however they got there, there is not a single gate that's not 4' tall.

Mr. Piering said if its not allowed on the Code, we have not given variances for gates 7' tall in the past. You can make the argument character of the neighborhood, but not that they received variances.

Mr. Hulme said however that came to be, that's the character of the neighborhood.

Mr. DelGiudice said there are a lot of non-permitted structures that are not seen and I don't think that can be used to support a case.

Mr. Hulme said the occasional structure yes, but this is almost universal.

Mr. Pasca said to qualify something, MR. Hulme is correct if they were pre-existing, variances or illegally. The first are legitimately part of the consideration because they are legal, the third part if they are there because they were illegally constructed, I don't know how enough scofflaws can be part of the community.

Mr. Hulme said it's one thing in a backyard or inside a house, but the gates are right out front.

Mr. Pasca said you are making a case for enforcement.

Mr. Hulme said the lack of enforcement the Village has passively approved this.

Mr. Hammond said the Code was amended in 2000 and I did not look at whether it touched the gates, so the gates before 1983 and if this section was added in 2000 there would be many more. Enforcement is tough, and just my one year plus, I have to have them permitted but I can't speak to what was constructed prior to when I got here. If they were on a survey sometimes the height is not called out so it's tricky to prove it after the fact, and its maybe not something we've focused on but applications that don't meet the Code have to come before this Board.

Mr. Hulme said he would like to talk to his clients further than this, and he will communicate their decision to the Board. He would like to hold it over.

Motion was made by Mr. Piering to holdover the application of **Matthew & Deborah Vivek, 206 Main Street (905-13-2-20.6)**; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

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NEW APPLICATIONS:

5. John & Nadine Rote, 79 Oneck Road, (905-010-01-027) Applicant requests variance from §197-35 A to construct a cabana with roofed-over patio that is partially located within the side yard where accessory structures are prohibited.

Salvatore Iannone, Architect appeared on behalf of the application, together with Nadine and John Rote and they are proposing to relocate the swimming pool and the cabana which cannot be moved into the rear of the residence. The neighboring property on Meadow Lane is the South and the neighbor on Oneck is the side yard.

Mr. Piering asked if the pool that's there will be in a better location?

Mr. Iannone said yes, we're moving it further in to the rear yard and I don't see variances for it to be in that location. There was the original house, and a wing added to the house which made the "L" shape which is what we have today. We are asking for relief of 120 square feet in to the rear and the pool and spa is 250 square feet.

Mr. Piering asked if that's the pool and the spa of 250 square feet?

Mr. Iannone said yes.

Mr. DelGiudice asked him to show his plan again where Meadow Lane and Oneck.

Mr. Hammond said the Code was changed last year saying accessory structures must be in the rear yard and we changed that to say not located in the front and side yard so the pool and spa are complexly conforming, and the line shows it inline with the garage on Meadow so take that everything South is the rear yard so then the Western fronting Oneck draw a parallel line along the property line, and everything within that box is undefined yard, it's not side yard, rear yard, front yard, it is undefined. There is a corner where the existing pool in the side yard, and there's a corner of the cabana and the North roofed over section and patio sliver because of the jog on the garage addition, it pushes it in to the side yard because its outside of the box it's hard to explain and I had a drawing it's quite minor. Just focus on the yellow part not the pool and spa the yellow part of the cabana,

Mr. Iannone said its 120 square feet of the cabana.

Mr. DelGiudice asked if they can shift it down?

Mr. Iannone said yes, we proposed that we tried to get the cabana on access with the pool for symmetry but we would still need relief.

Mr. DelGuidice said the side yard can be slid to 70 feet.

MR. Iannone said I would need a few feet, but this is the preferred location for symmetry.

Mr. Musnicki asked if its self-contained or with the pool.?

Mr. Iannone said its separate and raised and there's a seating wall, but that's not part of the variance.

Mr. Musnicki asked where the pool mechanicals will be located.

Mr. Iannone said in the corner within the 20' rear yard setback.

Mr. Musnicki asked if that was the south west corner?

Mr. Iannone said yes.

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Mr. Piering said you know you will not get a variance for the equipment?

Mr. Iannone said yes.

Mr. Musnicki asked if he received the neighbors letter the Southerly neighbors. They have concerns about noise and landscaping.

Mr. Piering asked if Mr. and Mrs. Friedman were here?

Mr. and Mrs. Friedman said yes, they are.

David Friedman, 1 Meadow Lane appeared and they are the adjacent neighbor to the South. They looked at the plans and they were confused by the application and Ms. Mackie tried to answer our questions, but we have not had a chance to see the record and things of that nature and our concern is the extensiveness of the renovation. As neighbors we want to work things out and we have been trying to, and we are lucky we got to see the notice of this. We reached out to their architect and we tried to reach a compromise and going back and forth and where we stand now is that our neighbors are prepared to install a fence 50' off of Meadow Lane in the South West corner along our boundary, in addition they will install Evergreen plantings on their side of the fence to help minimize noise and privacy issues. The only other issue is that we would like some comfort that the Evergreens would be either grow to provide additional privacy and noise barrier above the fence.

Mr. Piering asked if he wants a fence and the Evergreens?

Mr. Friedman said yes. But the Evergreens in his experience they grow tall and provide additional coverage. But they indicated that they would file a final landscape plan and they asked for a copy, and to confirm that in dealing with fence issues that we would be given reasonable access to work on the fence and I would hope that would be worked out. If we can, we would like to hear from Mr. Iannone and we would withdraw our objection.

Mr. Piering said after sitting through the hearing tonight, you realize they do not need a variance for the swimming pool, and they only need a variance for the cabana and Mr. DelGiudice suggests sliding it back closer to minimize that variance, that puts it closer to your house. If you can work this out, because without a variance they can build their pool as of right.

Mrs. Friedman said that's what they want.

Mr. Friedman said that's why they reached out to Mr. Iannone.

Mr. Piering said he hopes that they understand what they were seeking and there's no more confusion.

Mr. Pasca said they are in agreement that they would prefer the cabana where it is, is that correct?

Mrs. Friedman said yes, that's correct.

Motion was made by Mr. Piering to close the hearing of **John and Nadine Rote, 79 Oneck Road (905-10-1-27)** for a determination; seconded by Mr. DelGiudice and unanimously carried 5 ayes, 0 nays, 0 absent.

6. Renato Negrin, 257 Oneck Lane (905-009-02-019.03) Applicant requests variances from §197-6 D to construct two one-story additions with proposed front yard setbacks of 39.5 & 47.2 feet where the minimum required is 50 feet, and from §197-35 A to legalize a shed constructed without permit in a front yard where accessory structures are not permitted.

John Himmelsbach, Architect appeared on behalf of the application. They are seeking a front yard variance for a one-story addition for a garage on the North East corner; they front Halsey and Oneck and they meet the setback from Halsey and if they construct the addition for the

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garage of 11' which is a 10.5' encroachment. And they are looking to expand the gym and do an addition there which is 2'8" encroachment into the 50' setback.

Mr. DelGiudice asked if it's a single level addition?

Mr. Himmelsbach said yes.

Mr. Piering said it will balance out the two sides of the house.

Mr. Himmelsbach said yes. He said the shed can be removed if they get the garage and they will do so.

Mr. Piering said that's important, if you are able to get the variance to do the garage addition you will remove the shed?

Mr. Himmelsbach said yes.

Mr. Piering said this is pretty straight forward, were there any questions.

Mr. Musnicki said on the garage, it is called a two-car garage, so you want to add another bay?

Mr. Himmelsbach said it only measures 18' wide so I would call it a 1.5 car garage, the plan is pretty clear it's one and a half.

Mr. Piering asked how big they are proposing?

Mr. Himmelsbach said they are proposing 28.5 feet wide, two and a half car garage. One thing about it when it was built the front wall of the garage is a wall with the power and utilities and we can keep that, and make it a bay so that's why it's a 10.5' addition.

Mr. Musnicki said okay.

Motion was made by Mr. Piering to holdover the application of **Renato Negrin, 257 Oneck Lane (905-9-2-19.3)** for a determination; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

7. Kevin Butler, 104 Main Street (905-012-04-032) Applicant requests variance from §197-17.1 to in conjunction with a two-lot minor subdivision application where "Lot 2" has a proposed width of 56.44 feet where the minimum required is 60 feet.

Ms. Mackie stated that the applicant failed to do their mailings and public notices, and the application must be re-advertised and re-noticed.

REQUEST FOR EXTENSION:

8. Brendan Brogan, 213 Dune Road (905-20-2-5) Applicant requests an extension of their Board of Zoning Appeals determination dated April 18, 2019 which expired on May 21, 2020. Applicant would like an extension up to and including November 21, 2020 as the project was put on hold due to the COVID-19 Pandemic and NYS Pause Order.

James N. Hulme, Esq., appeared on behalf of the application. Mr. Hulme stated they are seeking an extension of the ZBA approval.

Mr. Piering said the Board was okay with it, but think because of everything that has gone on with COVID-19 they would prefer to give them six (6) months, extending it to January 21, 2021 instead of November.

Mr. Hulme said he was okay with that.

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Motion was made by Mr. Piering to grant the extension request for **Brendan Brogan, 213 Dune Road (905-20-2-5)** up to and including January 21, 2021, seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

9. Shane Peros, 222 Oneck Lane (905-10-1-2) Applicant requests an extension of their Board of Zoning Appeals determination dated December 19, 2019 which expired on June 19, 2020. Applicant would like an extension up to and including December 19, 2020, as the project was put on hold due to the COVID-19 Pandemic and NYS Pause Order.

James N. Hulme, Esq., appeared on behalf of the application. Mr. Hulme stated they are seeking an extension of the ZBA approval.

Mr. Piering said the Board was okay with it, but think because of everything that has gone on with COVID-19 they would prefer to give them six (6) months, extending it to January 21, 2021 instead of December.

Mr. Hulme said he was okay with that.

Motion was made by Mr. Piering to grant the extension request for **Shane Peros, 222 Oneck Lane (905-10-1-2)** up to and including January 21, 2021, seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

Motion was made by Mr. Piering to adjourn the meeting at **6:10 p.m.**; seconded by Mr. DelGiudice and unanimously carried 5 ayes, 0 nays, 0 absent.