

August 20, 2020

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, August 20, 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

Frank DelGiudice

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

Maeghan Mackie, Building Permits Examiner / Board Secretary

ABSENT: John Wittschen

MINUTES TO BE APPROVED

Motion was made by Mr. Piering to adopt the minutes of the **July 16, 2020** meeting as written; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

DECISIONS:

1. 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.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

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In the Matter of Application of

John Rote
Nadine Rote

DETERMINATION

Address: 79 Oneck Road
SCTM #: 905-10-1-27

-----X

I. REQUEST FOR RELIEF

The applicant, John Rote and Nadine Rote, are the owners of a parcel of real property located at 79 Oneck Road. The property is located wholly within the R-1 Zoning District.

According to the existing conditions survey of the property drawn by Fox Land Surveying, dated May 19, 2020, the parcel is improved with a one and one half story frame house and garage, and swimming pool.

Section 197-35.A. of the Village Code provides that, in all Zoning Districts, except the Residential District 3, accessory buildings, structures, tennis courts and swimming pools shall not be located in the front or side yards.

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The applicants requested a variance to construct a cabana with a roofed over patio that is partially located in the side yard, as depicted on the May 19, 2020 survey.

II. SEQRA

The applicant submitted an Environmental Assessment Form Part I pursuant to the State Environmental Quality Review Act (SEQRA). Since this is a request for an area variance for accessory residential structures, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(12). Accordingly, the application is not subject to review under SEQRA.

III. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on July 16, 2020. The applicants architect Salvatore Iannone, Jr., appeared on behalf of the application. Joyce Friedman, 1 Meadow Lane appeared and commented on the application. The hearing was closed for a determination at the August 20, 2020 meeting.

IV. GOVERNING LAW

The Zoning Board is empowered to grant area variances pursuant to Section 7-712-b of the N.Y. Village Law and Section 197-75 of the Village Code.

In considering applications for area variances, the Board is required to weigh the benefit to the applicant against the detriment to the health, safety and welfare of the community, while considering the following five factors: (1) whether the variance will cause an undesirable change in the character of the neighborhood or a detriment to nearby properties; (2) whether the benefit can be achieved by a feasible alternative; (3) whether the variance is substantial; (4) whether the variance will have any adverse physical or environmental impacts; and (5) whether the alleged difficulty was self-created (which shall be relevant but shall not necessarily preclude the variance).

The Board is charged to grant only the minimum variance necessary and to preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

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

V. FINDINGS AND CONCLUSIONS

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

1. *Character of the Neighborhood:* The granting of the variance in this case will not cause an adverse impact on the character of the neighborhood. Only a small portion of the

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cabana (i.e., the northernmost section, is located technically outside of a permissible rear yard location, though it will be, functionally, within the area of the property that acts as the rear yard. The property is a corner lot, and the home's configuration (as an "L" shape) and location (setback 51 feet from Meadow Lane and 101.9 feet from Oneck Road) limits the available "conforming" locations for the proposed cabana.

2. *Alternatives:* No alternative location exists for the cabana to be located wholly within the rear yard. Although it might be possible to located the cabana further to the south to minimize the area that is outside of the rear yard, the impact on the neighbor to the south would be more significant and the beneficial configuration of the cabana with respect to the pool would not be achieved.

3. *Substantiality:* In light of the small amount of the cabana actually requiring a variance, the requested variance is de minimis in this context.

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

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

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

7. *Minimum Variance:* The variance is the minimum necessary to achieve all the benefits sought, as explained above.

The Zoning Board therefore grants the requested area variances to allow the applicant to construct a cabana with a roofed over patio, as depicted on the May 19, 2020 Survey, subject to the following conditions to minimize any adverse impacts from the variance:

VI. CONDITIONS

1. The variances granted herein are limited to the relief set forth in this decision, and pertain only to the plans approved in this decision, and shall not be construed as creating conforming dimensions. There shall be no further extension (horizontally or vertically), increase, alteration or modification to the structure or any other structure located on the property that has non-conforming dimensions, without further approval of this Board.

2. No outdoor accessory structures or equipment (including but not limited to air conditioning condensers, HVAC equipment, above-ground utilities, generators, pool equipment,

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solar panels, garbage/storage bins, etc.) may be located within a required front, side, or rear yard, except as depicted on the approved plans, without further approval of the Board.

3. The variances granted herein shall terminate unless a building permit is issued within 12 months from the date hereof.

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

Dated: August 20, 2020

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **John & Nadine Rote, 79 Oneck Road, (905-010-01-027)** as written; seconded by Mr. DelGiudice and unanimously carried 4 ayes, 0 nays, 1 absent.

2. 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.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

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

Renato Negrin

DETERMINATION

Address: 257 Oneck Lane
SCTM #: 905-9-2-19.3

-----X

VII. REQUEST FOR RELIEF

The applicant, Renato Negrin, is the owner of a parcel of real property located at 257 Oneck Lane. The property is located wholly within the R-1 Zoning District. According to the survey of the property prepared by Raynor, Marcks & Carrington Surveying, dated March 11, 2020 and last revised on June 16, 2020 (hereinafter, "Survey"), the parcel is improved with a two story frame house, swimming pool and slate patio.

Section 197-6.D. of the Village Code provides that, in the R-1 District the front yard depth shall not be less than 50 feet.

Section 197-35.A. of the Village Code provides that, in all Zoning Districts except in the Resident District 3, accessory buildings, structures, tennis courts and swimming pools shall not be located in the front or side yard.

The applicant proposes to construct two one-story additions with the proposed front yard setbacks of 39.5 feet and 47.2 feet¹ and to legalize a shed constructed without a building permit in the front yard. The applicant therefore seeks a variance from Section 197-6.D to construct the additions and a variance from Section 197-35.A to maintain the shed.

VIII. SEQRA

The applicant submitted an Environmental Assessment Form (EAF) Part 1 in connection with the application. Since this is an application for setback variances for a residence and an accessory structure, the Board classifies the application a Type II action under 6 NYCRR 617.5(c)(11), (12), (16) and (17). No further review is required under SEQRA.

IX. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on July 16, 2020. The applicant's architect, John Himmelsbach, 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 closed for a determination.

X. GOVERNING LAW

The Zoning Board is empowered to grant area variances pursuant to Section 7-712-b of the N.Y. Village Law and Section 197-75 of the Village Code.

In considering applications for area variances, the Board is required to weigh the benefit to the applicant against the detriment to the health, safety and welfare of the community, while considering the following five factors: (1) whether the variance will cause an undesirable change in the character of the neighborhood or a detriment to nearby properties; (2) whether the benefit can be achieved by a feasible alternative; (3) whether the variance is substantial; (4) whether the variance will have any adverse physical or environmental impacts; and (5) whether the alleged difficulty was self-created (which shall be relevant but shall not necessarily preclude the variance).

The Board is charged to grant only the minimum variance necessary and to preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

¹ There is a discrepancy between the Survey and the architect's site plan, which lists the latter setback at 46'-4" rather than 47.2 feet. This decision treats the Survey as the accurate reflection of the applicant's request for a variance.

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

XI. FINDINGS AND CONCLUSIONS

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

8. *Character of the Neighborhood:* With respect to the proposed additions on the Oneck Lane side (eastern side) of the residence, the Board finds that such additions will not adversely impact the character of the neighborhood in a material way. The additions are modestly sized and designed appropriately for the subject property to minimize impacts. On the other hand, with respect to the shed, the Board finds that the maintenance of the shed, which was illegally built only 12.1 feet from Halsey Avenue, without a permit, would adversely impact the character of the neighborhood and create an undesirable precedent.

9. *Alternatives:* With respect to the additions, the applicant demonstrated that there are no practical location to construct the specific additions requested (an additional bay for the garage and the small gym) without variances. With respect to the shed, there are locations for a shed that would not require a front yard variance, and the applicant acknowledged that the expansion of the garage, with the additional storage space, would minimize the need for a shed altogether.

3. *Substantiality:* The gym setback variance is not substantial. The garage setback variance is substantial but the substantiality is mitigated somewhat by its design and the context of the application. The shed variance is substantial.

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

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

6. *Benefit vs. Detriment:* With respect to the additions for the gym and garage, the Board finds that the benefits to the applicant outweigh the detriment to the community. With respect to the shed, the detriment to the community outweighs the benefits to the applicant.

7. *Minimum Variance:* With respect to the additions, the variances are the minimum necessary to achieve the benefits sought.

The Zoning Board therefore **denies** the portion of the application that seeks an area variance from Section 197-35.A. to legalize the shed constructed without a building permit, but the Zoning Board **grants** the portion of the applications that seeks area variances from Section 197-

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6.D to allow the applicant to construct two one-story additions on the Oneck Lane side of the house, with setbacks of 47.2' and 39.5 feet, as shown on the survey prepared by Raynor, Marcks, and Carrington dated June 16, 2020, subject to the following conditions to minimize any adverse impacts from the variance:

XII. CONDITIONS

1. The variances granted herein are limited to the relief set forth in this decision, and pertain only to the plans approved in this decision, and shall not be construed as creating conforming dimensions. There shall be no further extension (horizontally or vertically), increase, alteration or modification to the structure or any other structure located on the property that has non-conforming dimensions, without further approval of this Board.
2. No outdoor accessory structures or equipment (including but not limited to air conditioning condensers, HVAC equipment, above-ground utilities, generators, pool equipment, solar panels, garbage/storage bins, etc.) may be located within a required front, side, or rear yard, except as depicted on the approved plans, without further approval of the Board.
3. The variances granted herein shall terminate unless a building permit is issued within 12 months from the date hereof.
4. There can be no exterior work performed on weekends from May 1 to September 30 and on weekdays from July 1 to September 10.

Dated: August 20, 2020

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination **Renato Negrin, 257 Oneck Lane (905-009-02-019.03)** as written; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 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.

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James N. Hulme, Esq., submitted a request to holdover the application of **Michael & Karoline Kelsen, 72 Beach Lane (905-015-03-004.06)** to September 17, 2020.

Motion was made by Mr. Piering to holdover the application of **Michael & Karoline Kelsen, 72 Beach Lane (905-015-03-004.06)** to September 17, 2020; seconded by and unanimously carried 4 ayes, 0 nays, 1 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 foot from the lot line where the minimum required setback is 3 feet, and from §197-43 A(8) for proposed driveway gates 1 foot from the street line where the minimum required setback is 20 feet.

James N. Hulme, Esq., appeared on behalf of the application. He said at the last hearing they eliminated two of the variances by reducing the pillar height to 6' and they moved the pillars back to 5' from the property line when 197-43.A.7. requires them 3' so that left them with 5' setback when 20' is required and 6' gates when 4' is the required height. His clients discussed it with him and they cannot obtain an updated survey but they would be willing to move it back another 5' to 10' from the property line, and the requirement is still 20' and they would move them back but they do not want to reduce the height for the privacy reasons as discussed. He will submit a new survey to be reviewed, and he wanted to comment on an remark made by the Village Attorney and a lot of people are using the driveway as a turn around and this house is the first residence on the North side of Main Street but it's 1.5 blocks from the circle and there are a number of people who pass the circle and turn around and go back down Main Street and the issue exists, and the overarching issue is the privacy they would like to obtain, but moving it back to 10' should fix the issue of the cars tail end interfering with the sidewalk and vehicular traffic on the street. Another question he wanted to raise, the Building Inspector applied 197-43.A.1. of the 4' height standard to the gates, and I'm wondering whether or not that applies because the Code talks about 4' high for a fence and if you look at the definition of a fence in the Code a gate does not meet that requirement and the gate may not be a fence and another section of the Code talks about driveway gates, in addition to fences and pillars and that could explain why the Village is full of gates more than 4' in height.

Mr. Hammond said the definition of a gate is a hinged barrier in an opening, its part of the fence.

Mr. Hulme said okay, we are seeking that variance as well as the one for 10' instead of 5' from the road and I am relying on the various reasons that we gave to privacy concerns. Another comment regarding a wall down Main Street, we are moving them 10' off of the property line so that won't be the case.

Mr. Hulme said you are asking for a variance to move the gates 10' instead of the required 20' and the other is for 6' in height instead of the required 4'.

Mr. Pasca asks what that means with respect to the rest of the lot line.

Mr. Hulme said they are not proposing fences. The landscaping is 5' or more in thickness.

Mr. Badzik said the landscaping is not 10' behind and if I understand that, there will be a space when you pass the hedges before you get to the two pillars and the fence.

Mr. Hulme said that's a good question.

Mr. Pasca said if it's 6' you will need a variance because then it's a 6' fence connecting.

Mr. Hulme said they are not proposing any fencing.

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Mr. DelGiudice said they can install additional landscaping.

Mr. Hulme said if this intrigues the Board, he is happy to submit a survey showing the gap filled with landscaping and that could be a condition of the approval, expressly not allowing a 6' fence connection to the hedge and it must be filled with landscaping.

Mr. Pasca said if you're not proposing a 6' connection that doesn't require a variance, I leave it to the Board.

Mr. DelGiudice said there doesn't need to be a connection.

Mr. Hulme said they are not asking for that, it's not amongst the relief they are seeking.

Mr. Badzik asked if the column height was reduced to 6', is the proposed gate 7' at the center

Mr. Hulme said no his clients would agree to reduce it to 6'.

Mr. Badzik said the picture submitted shows a raised gate, but it will now be 6' in height.

Mr. Hulme said there will be no point in the pillars and the gate that is higher than 6'.

Mr. Piering said he would like to see the survey with in on there to see where it will line up. He said they can adjourn it to September so they can look at the survey and if there are questions, they can ask them next month after reviewing the new survey.

Motion was made by Mr. Piering to holdover the application of **Mathew & Deborah Vivek, 206 Main Street (905-013-02-020.06)** seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

NEW APPLICATIONS:

5. 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.

Jodi Giglio appeared on behalf of the application. They proposed this subdivision in 2013 and they applied to the Board of Health and because of the depth to groundwater they had to install shallow pools, they received a variance from the Board of Health Board of Review and they had to create a new lot line and to meet the setbacks for the buildings. They received the variance from the Department of Health and they have an approval from them to allow the two-lot subdivision, and it was agreed when sewers were installed in Westhampton Beach they would hook up to them. When they returned to the Planning Board it was noticed that they only had 56.44' of street frontage on Lot 2 so they asked them to apply to this Board. This doesn't create any environmental impacts and it betters the sanitary on the site and they will have new conforming sanitary and the covenants were filed to connect to the sewers and there's no negative impact, they are existing buildings with uses and there's no hardship created by this subdivision.

Mr. Piering said the subdivision line is not shown on the survey.

Ms. Giglio said she has it.

Mr. Piering said if you can submit that to us in the next ten (10) days, we can go forward with this.

Ms. Giglio said she will. The Village has the Board of Health survey, and the subdivision map is on file in the Village office and she will send it to our office. Can this be approved prior to the planning board meeting next month.

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Mr. Piering said you can go back to the Planning Board and it can be pending our approval. We need to see what you're asking for, we need a survey for the record.

Ms. Giglio asked if its okay for the Planning Board to proceed pending a ZBA approval.

Mr. Hammond said yes, he has no opposition to that and he did not think the Planning Board had issued with subdivision.

Ms. Giglio said okay, they were waiting for final approval from the Planning Board.

Motion was made by Mr. Piering to close the hearing of **Kevin Butler, 104 Main Street (905-012-04-032)** for a determination; seconded by Mr. DelGiudice and unanimously carried 4 ayes, 0 nays, 1 absent.

Motion was made by Mr. Piering to adjourn the meeting at **5:30 p.m.**; seconded by Mr. DelGiudice and unanimously carried 4 ayes, 0 nays, 1 absent.