

September 17, 2020

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, September 17, 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

DECISION:

1. 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.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

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In the Matter of Application of

Kevin Butler

DETERMINATION

Address: 104 Main Street

SCTM #: 905-12-4-32

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I. REQUEST FOR RELIEF

The applicant, Kevin Butler, is the owner of a parcel of real property located at 104 Main Street. The property is located wholly within the B-1 Zoning District. According to the site plan drawn by Fox Land Surveying, dated April 30, 2019, and updated on June 25, 2019, the parcel is improved by three buildings: (1) a two and a half-story building with wood step and concrete ramp, Building “A”, (2) a one and one-half story building with second story deck, Building “B”, and (3) a one and one-half story building with first and story deck with roof over, Building “C”. Section 197-17.1. of the Village Code provides that, in the B-1 Zoning District, the minimum lot width required is 60 feet.

The applicant proposes to subdivide the existing lot into two lots, one of which – proposed Lot “2” – would have a 56.44’ lot width. The applicant therefore seeks a variance to allow the 3.56-foot variance from the 60-foot requirement.

II. SEQRA

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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 to allow what is in effect an individual lot line variance of less than 4 feet from that otherwise permissible, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(16). Accordingly, the application is not subject to review under SEQRA.

II. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on August 20, 2020.

The applicant's agent, Jodi Giglio, 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 August 20, 2020, meeting for a determination at the September 17, 2020, meeting.

III. GOVERNING LAW

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

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

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

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

IV. FINDINGS AND CONCLUSIONS

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

1. *Character of the Neighborhood:* The applicant has demonstrated that the variance will not result in any adverse impact on the character of the neighborhood. Three buildings presently exist on one parcel. The applicant is seeking to do a “paper” division that will result in the separation of one of the buildings onto its own parcel. The division will not result in any new construction or expansions. The property is also unique and the variance is minimal. Thus, no unwanted precedent will be set by the granting of the variance.

2. *Alternatives:* The applicant has demonstrated that there are no feasible alternatives to the requested variance. The location of the lot line division is largely dictated by the existing location of the buildings, and the approved health department plan.

3. *Substantiality:* The variance is not substantial, as the 56.44-foot lot width will result in less than a 6-percent nonconformity (3.56-foot deficiency) to the required 60-foot width.

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 Board finds that the benefits to the applicant of the paper division outweigh the detriment if any to the community.

7. *Minimum Variance:* The variance is the minimum necessary to achieve the benefits sought.

The Zoning Board therefore grants the requested variance for the subdivision of one lot into two lots with Lot “2” having a width of 56.44’, as shown on the survey drawn by Fox Land Surveying, dated April 30, 2019, and updated on June 25, 2019 all subject to the following conditions to minimize any adverse impacts from the variance:

V. 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 approved lot line without further review and approval of the Board.
2. The variances granted herein shall terminate unless a subdivision map is approved and filed within one year from the date hereof and construction completed according to said building permit.

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Motion was made by Mr. Piering to adopt the determination of **Kevin Butler, 104 Main Street (905-12-4-32)** as written; seconded by Mr. DelGiudice and unanimously carried 5 ayes, 0 nays, 0 absent.

HOLDOVERS:

2. 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., submitted a written request to hold the application over to the October 15, 2020 meeting.

Motion was made by Mr. Piering to holdover the application of **Michael & Karoline Kelsen, 72 Beach Lane (905-15-3-4.6)** to October 15, 2020; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

3. 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.

James N. Hulme, Esq., submitted a written request to hold the application over to the October 15, 2020 meeting.

Motion was made by Mr. Piering to holdover the application of **Mathew & Deborah Vivek, 206 Main Street (905-013-02-020.06)** to October 15, 2020; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

NEW APPLICATION:

4. Dane Carillo, 22 Oneck Road, (905-009-03-046) Applicant requests a variance from §197-35 C for an accessory detached garage constructed 17.1 feet from the property line where a minimum of 20 feet is required.

Dane Carillo appeared on behalf of the application. Mr. Carillo said that when the plans for his garage were drawn by the architect they were inline with the driveway, but right on the property line to the neighbor McCloud and they pulled it forward away from that and when it got staked out it was within the setbacks, and it was dug before COVID-19 pandemic shut all of the work down, and the concrete was poured and they didn't see any easement in their title report so they didn't move it.

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Mr. Piering asked if it was an error on the architects part or the surveyor?

Mr. Carillo said it is staked behind the garage in the left corner.

Mr. Piering said it looks like it has to be in this location for the garage to function, is it a two car garage?

Mr. Carillo said yes, and there's no insulation or anything it is unfinished garage space.

Mr. Piering said a 24' wide garage is very standard and asked if there were any questions from the Board.

Mr. Musnicki said it looks like when its laid out on the survey it is obvious if you shift it 3' to the East it will be behind the house.

Mr. Carillo said when it was drawn in its current space it will be closer to the neighbors house, and we pulled it forward and it got staked out different than it was drawn.

Mr. Hammond said 20' to the North 20' to the West would be within the driveway easement, and if its moved 4' they would lose their ability to turn.

Mr. Musnicki said if its moved, they lose the ability to turn in to the right garage bay.

Mr. Piering said there were no other questions or comments.

Motion was made by Mr. Piering to close the application of **Dane Carillo, 22 Oneck Road (905-9-3-46)** for a determination on October 15, 2020; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

EXTENSION REQUEST:

5. 285 Oneck Lane, LLC., 285 Oneck Lane (905-9-2-35) Applicant requests, to the extent necessary, an extension of their Board of Zoning Appeals determination dated March 21, 2019, up to and including January 31, 2021.

No one appeared on behalf of the application. Mr. Piering stated the applicant has requested an extension of their determination up to January 31, 2021.

Motion was made by Mr. Piering to adopt the extension request of **285 Oneck Lane, LLC., 285 Oneck Lane (905-9-2-35)** to January 31, 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 **5:10 p.m.**; seconded by Mr. DelGiudice and unanimously carried 5 ayes, 0 nays, 0 absent.