

January 21, 2021

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, January 21, 2021, 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
Ellen Cea

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

Maeghan Mackie, Building Permits Examiner / Board Secretary

DECISIONS:

1. 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. Mr. Piering stated there was a determination, and the reading was waived.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

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In the Matter of Application of

Michael Kelsen

DETERMINATION

Karoline Kelsen

Address: 72 Beach Lane

SCTM #: 905-15-3-4.6

-----X

I. REQUEST FOR RELIEF

The applicants, Michael Kelsen and Karoline Kelsen are the owners of a parcel of real property located at 72 Beach Lane. The property is located wholly within the R-1 Zoning District. According to the survey of the property drawn by Fox Land Surveying, dated September 25, 2018, and updated on

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November 13, 2019 the parcel is improved with a three-story frame house, second story deck, swimming pool, frame pool house, and detached frame garage. The garage has legally pre-existing living space, including a living room on the first floor, and bedroom, kitchen and bath on the second floor (hereinafter referred to as the “apartment”), as depicted on the existing floor plans filed with the application.

The applicants seek to reconstruct the garage/apartment building by (a) shifting the building in a southeasterly direction, to increase the side-yard and rear-yard setbacks to conforming 20-foot setbacks, (b) reconfiguring the apartment living space (without any increase in floor area) and the storage spaces, and (c) enlarging the footprint and gross floor area of the building to accommodate a first floor 2-car garage and second floor game room. The new second floor game room is proposed to be separated from the apartment living space by interior walls, with no interior doors or connections, and by providing for access to the game room only by a separate set of stairs that is not accessible from the apartment living space. (Although the applicants original proposal included a bathroom within the game room, the applicants thereafter modified the proposal to eliminate the game room bathroom.)

The final proposal is reflected in the plans prepared by MIG Architect, PLLC, dated March 3, 2020, last revised June 3, 2020, consisting of sheets “A-1” and “A-2”, and the survey by Fox Land Surveying dated September 25, 2018 and last revised February 11, 2020 (the “final plans”).

Based on the denial letter from the Building & Zoning Administrator dated March 26, 2020, the proposed conversion is inconsistent with the following sections of the Zoning Code:

1. 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 game-room space in the detached structure is not normal and accessory to a principal single-family dwelling use.
2. 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.

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(The original denial letter also noted the additional bathroom's inconsistency with Section 197-1, but since the applicants removed the additional bathroom from the final plans, that issue is no longer before the Board).

The applicants have taken an appeal to this Board and claim that the Administrator's interpretation regarding the non-accessory nature of the proposed game-room space is incorrect and that the conversion should be permitted as proper as-of-right accessory uses. Alternatively, the applicants seek a special permit under 197-29(C) and/or area variances from the above sections as necessary to allow the addition of the game room space. In any event, the applicants seek the special permit under 197-29(C) to allow the reconfiguration of the nonconforming apartment space within the building.

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 accessory residential structures, the application is classified as a Type II action under 6 NYCRR 617.5(C)(12), and no further review is required.

III. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on November 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 continued and changes were made to the plans, as noted above. The hearing was finally closed at the November 19, 2020, meeting for a determination.

IV. 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 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).

V. 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 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 game room within a detached accessory building is customary and incidental to a single-family residential use.

In the application of Diaz, 7 Bayfield Lane, dated July 16, 2020, the Board previously determined that such habitable spaces are not customary and incidental to a single family residential use when such spaces are located in a detached building, and the Board finds no factual evidence to support a reversal or modification of this finding and adheres to that portion of the decision rendered in the Diaz application.

The Board therefore **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, as a matter of right. Rather, the Board agrees with the interpretation of the Building Administrator and finds that the proposed uses of the detached garage/apartment structure are not permissible accessory uses.

However, the Board has re-examined the nature of the relief requested and, at least with respect to this application (which includes a complete separation of the proposed habitable game room from the existing nonconforming apartment living space), finds that the nature of the nonconformity of the game room is that of a conforming use within a nonconforming structure rather than a nonconforming use. There is no doubt that the proposed game room would be a customary residential accessory use if it were located in the primary residential structure, which

is required to conform to principal structure dimensional requirements. But the proposed game room – an otherwise conforming use – is proposed to be located within a detached accessory structure, where it is not customary. The nonconforming condition thus relates to the structure, not the use.

As the New York Court of Appeals has explained in a case regarding the difference between use variances and area variances, area variances do not “seek to change the essential use of the land” but involve “matters such as setback lines, frontage requirements, lot-size restrictions, density regulations, and yard requirements.” *Khan v. ZBA of Village of Irvington*, 87 N.Y.2d 344, 639 N.Y.S.2d 302 (1996). Many courts have interpreted second residential structures located on the same residentially-zoned parcel as being dimensionally nonconforming, as opposed to being nonconforming as to use. *See, e.g., Dawson v. Zoning Board of Appeals of Town of Southold*, 12 A.D.3d 444 (2d Dep’t 2004); *Wambold v. Vill. of Southampton Zoning Bd. of Appeals*, 140 A.D.3d 891 (2nd Dep’t 2016).

The Board notes that the Village of Westhampton Beach has adopted Section 197-14.A, which declares expressly that “the use of any parcel of land for both a single-family residence and a 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...” is a nonconforming use. This code provision does, in some cases, modify the general rule set forth above, such that a detached building used “for dwelling purposes” would be considered a nonconforming use, rather than a nonconforming structure put to a conforming use. But in this case, the proposed game room is designed in such a way that it will be completely separated from the portions of the accessory building that are “used for dwelling purposes.” Because of this complete separation, which includes separate access that is not shared with the living space, the Board finds that the game room is a conforming use in a nonconforming structure, as distinct from the apartment portion of the building, which is a nonconforming use.

As such, the Board finds that an area variance, not a use variance, is the appropriate form of relief requested by the applicant to allow the game room to be constructed within a detached accessory structure.

In addition, because the applicant is proposing a reconfiguration and relocation of an accessory structure that is used in part as a nonconforming use (the apartment use), the application is also subject to the special permit requirements of Section 197-29(C). 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 game room would be located within a building that contains the pre-existing nonconforming use, that portion of the proposal is subject to review under §197-29(C). And because the pre-existing apartment space is also being reconfigured and relocated, that portion of the proposal is also subject to review under §197-29(C).

The Request for an Area Variance

With respect to the statutory requirements for an area variance to allow the game room to be constructed within a detached accessory building, the Board finds as follows:

1. *Character of the Neighborhood:* The applicant has demonstrated that, under the unique circumstances of this application, and on full balance of all of the relevant considerations, the application will have a net beneficial impact on the character of the neighborhood. The Board is mindful of the fact that the addition of some habitable space (such as a game room) in an accessory building that does not meet the principal yard setbacks, can result in adverse impacts on the neighborhood. In this case, the Board has balanced those concerns with the various beneficial improvements that the applicants are proposing to make with respect to the pre-existing conditions of the property, including the increased setbacks proposed for the garage/apartment, and the reduction in the floor area devoted to the nonconforming apartment. On balance, the Board finds that the positive changes outweigh the concerns over potentially detrimental changes.
2. *Alternatives:* The applicant cannot achieve the benefit sought (addition of a game room above the garage) without the necessity of a variance. Nor is there any other practical location for the proposed game room.
3. *Substantiality:* The proposed 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:* On balance, the benefits to the applicant outweigh the detriment, if any, to the neighborhood.

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

The Zoning Board therefore **grants** the requested variance as described above and as shown on the final plans, subject to the below Conditions, which are necessary to minimize any adverse impacts from the variance:

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

With respect to the portion of the application that seeks a reconfiguration of the apartment living space – including by reducing the overall floor area devoted to the nonconforming use and relocating the accessory structure to meet the accessory setbacks – this request meets the criteria under §197-29(C) because:

- . The proposal is not an “enlargement, extension or expansion of a nonconforming use” but is actually a reduction thereof (§ 197-29(C)(1)).
- The reconstruction does not increase the degree of nonconformity, increase the height or number of stories, or increase the floor area devoted to the nonconforming use, but does the opposite by decreasing the nonconformity (including the setback nonconformities) and floor area devoted to the nonconforming use (§ 197-29(C)(2)).
- The application will not change the nature or character of the nonconforming use, except for a reduction in the degree of nonconformity (§ 197-29(C)(6)(b)).
- As stated above, the proposed change is, overall, beneficial to the general neighborhood (§ 197-29(C)(6)(d)).
- The applicant has demonstrated that the changes to the structure will not result in or allow an intensification of the nonconforming use (§ 197-29(C)(6)(f)).

With respect to the addition of the game room to the building, the applicants have demonstrated that the care given toward separation of the game room (a conforming use in a nonconforming structure) from the apartment (a nonconforming use) will ensure that the nonconforming use is not enlarged or intensified. The Board will require the applicants to record covenants to ensure that (a) the separation between the game room and the nonconforming apartment use is maintained in perpetuity, (b) no kitchen facilities, bathroom facilities, or plumbing shall be added to the game room, (c) the game room shall not be used for sleeping or cooking purposes, and (d) the game room shall be accessory to the principal residence only.

The Board therefore **grants** the application for a special permit under 197-29(C), subject to the Conditions below.

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, 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 one year 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.

5. The applicants shall file a declaration of covenants and restrictions, in a form to be approved by the Village Attorneys, reflecting the conditions that

(a) The physical separation between the game room and the nonconforming apartment use shall be maintained in perpetuity. The two areas of the building shall be separated by a solid wall, and no interior connections (open hallways, doors, or windows) between the game room and apartment shall be permitted.

(b) No kitchen facilities, bathroom facilities, or plumbing shall be installed within the game room. The only kitchen facilities, bathroom facilities, and plumbing allowed within the structure shall be those designated on the final plans within the apartment area of the structure.

(c) The game room shall not be used for sleeping or cooking purposes.

(d) The game room shall be accessory to the principal dwelling only.

Prior to recording, applicant shall provide a title certification to the Village Attorney identifying all the persons who must sign and consent to the declaration, along with a copy of the proposed final declaration for recording. Upon receipt of approval from the Village Attorney, applicant shall record the declaration, fully executed, with the Suffolk County Clerk, at the applicants' sole

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cost and expense. A copy of the recorded declaration shall be filed with the building inspector prior to the issuance of a certificate of occupancy for the structure.

Dated: January 21, 2021

Village of Westhampton Beach
Zoning Board of Appeals

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

2. Brian Tymann, 107 Potunk Lane (905-012-01-007) Applicant requests variances from §197-5 A(1) to construct a second-story addition on a dwelling with nonconforming side yard setbacks of 13.8 & 17.2 feet and a combined side yard of 31 feet where the minimum required is 20 feet and 50 feet, respectively, and where conformity is required for additions on nonconforming structures.

No one appeared on behalf of the application. Mr. Piering stated there was a determination, and the reading was waived.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

-----X

In the Matter of Application of

Frank Mulvey
Michelle Mulvey

DETERMINATION

Address: 107 Potunk Lane
SCTM #: 905-12-1-17

-----X

VII. REQUEST FOR RELIEF

The applicants, Frank Mulvey and Michelle Mulvey, are the owners of a parcel of real property located at 112 Potunk Lane. The property is located wholly within the R-2 Zoning District. According to the survey of the property drawn by Raynor, Marcks and Carrington, Surveying, dated August 11, 2020, the parcel is improved with a two-story frame house and detached shed.

Section 197-5.A (1) of the Village Code provides that, in the R-2 Zoning District, except as provided for in Subsection A (2), no building, structure or land 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 applicant seeks to construct a second-story addition on a dwelling with pre-existing, nonconforming side yard setbacks of 13.8 feet and 17.2 feet, and a total combined side yard of

31 feet, where the minimum required setbacks are otherwise 20 feet (individual) and 50 feet (combined). Therefore, the applicant requests a variances from Section 197-5.A.(1) to allow the second-story addition with nonconforming setbacks that are equal to (but not greater than) the pre-existing setbacks.

VIII. SEQRA

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

Since this is a request for area variances for single family residence, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(11), (16) and (17). Accordingly, the application is not subject to review under SEQRA.

IX. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on November 19, 2020. The applicant appeared and presented the application together with his tenant, Brian Tymann.

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 November 19, 2020, meeting for a determination.

IV. GOVERNING LAW

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.

X. FINDINGS AND CONCLUSIONS

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

8. *Character of the Neighborhood:* The applicant has demonstrated that the granting of the variance will not have a material adverse impact on the character of the neighborhood. The proposed setbacks for the second story addition would replicate the setbacks for the remainder of the house and would not result in any detrimental impacts.

9. *Alternatives:* Given the pre-existing conditions and size of the lot, the applicant has no alternatives to achieve the benefit sought without the requested variance.

10. *Substantiality:* The proposed setbacks are, mathematically, substantially nonconforming, but in the context of this property and the pre-existing conditions, the variance itself will not result in any substantial new nonconformity or any substantial increase in the degree of the pre-existing nonconformity.

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

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

13. *Benefit vs. Detriment:* The Board finds that the benefit to the applicant outweighs the detriment, if any, to the health, safety and welfare of the community

14. *Minimum Variance:* Under the circumstances, the variances are the minimum necessary to achieve the benefit sought by the applicant.

The Board therefore grants the requested area variances to construct a second story addition, on an existing two story frame dwelling with non conforming side yard setbacks, as shown on the survey of the property drawn by Raynor, Marcks and Carrington, Surveying, dated August 11, 2020, subject to the following conditions to minimize any adverse impacts from the variance:

XI. 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 one year 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: January 21, 2021

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **107 Potunk Lane (905-12-1-7)** as written; seconded by Ms. Cea and unanimously carried 5 ayes, 0 nays, 0 absent.

3. Mark & Palmira Cataliotti, 37 Beach Road (905-012-02-039) Applicant requests variance from §197-35 C to construct an accessory garage with attached roofed-over patio with setback of 10 feet where a minimum of 20 feet is required.

Mauricio Duarte, Architect appeared on behalf of the application. Mr. Piering stated there was a determination, and the reading was waived.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

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

Mark Cataliotti
Palmira Cataliotti

DETERMINATION

Address: 37 Beach Road
SCTM #: 905-12-2-39

-----X

XII. REQUEST FOR RELIEF

The applicants, Mark Cataliotti and Palmira Cataliotti, are the owners of a parcel of real property located at 37 Beach Road. The property is located wholly within the R-2 Zoning District. According to the survey of the property drawn by Scalice Land Surveying, dated October 3, 2020, the parcel is improved with a two-story frame residence with screen enclosed porch, and wood deck, and detached frame shed, and inground swimming pool.

The applicant is proposing to construct an accessory garage with attached roofed over patio, as depicted on the site plan (sheet "A-1, Zoning Plot Plan") prepared by John R. Bracco Architecture/Mauricio J. Duarte Design, dated December 4, 2020.

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Section 197-35.C of the Village Codes provides that, in the R-2 Zoning District, accessory buildings, structures, tennis courts and swimming pools cannot be located closer than 20 feet to any lot or boundary line.

The applicants are therefore requesting relief from Section 197-35.C. to allow the construction of an accessory garage with attached roofed-over patio.

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 an accessory residential structure (a garage and roofed over porch), the application is classified as a Type II action under 6 NYCRR § 617.5(c)(16) and (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 November 19, 2020. The applicants' agent, Mauricio Duarte, appeared on behalf of the application. Sundry A. Schermeyer, 39 Beach Road, Westhampton Beach, and Edwin D. Williamson, 40 Beach Road, submitted letters and appearing in opposition.

The application originally proposed the structure to have a roofed-over porch that was closer to the side yard setback. But after hearing concerns from the Zoning Board that the applicant could minimize the requested variance by reducing the size of the roofed-over deck, the final plans, as described above, were presented. In the final plans, only a small, triangular section of the roofed-over deck would fall within the required side yard. Otherwise, the majority of the deck is conforming to the setback.

The hearing was closed on December 17, 2020 for a determination.

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:

15. *Character of the Neighborhood:* The applicants demonstrated that the final proposal, as modified from the original proposal, will not have a material adverse impact on the character of the community. The garage, due to the location of the driveway, is not expected to have any adverse impact on the community, where such garages are commonplace. With respect to the roofed over deck, the Board was concerned that the original proposal could have an adverse impact on the neighbor, because the nonconforming setback of 14.8' would have resulted in an outdoor, open entertainment area that is in close proximity to the neighbor. The applicant took the Board's concerns into consideration in the final plans, which reduced the size of the roofed-over deck and increased the setback (at the corner thereof) to 17.65 feet, and reduced the amount of the deck that is within the setback area to just a small triangular portion thereof. While the neighbor still objected to the proposal, the objections largely related to the general opposition to the roofed-over deck, but most of that deck is located in a conforming location and requires no variance. The small portion of the deck that still requires a variance cannot be said cause any material impact on the neighbor.

16. *Alternatives:* The applicant demonstrated that the benefit sought cannot be achieved without the requested variance.

17. *Substantiality:* The requested variance for the garage is mathematically substantial, but less so in the context of the neighborhood where such structures are commonplace. The requested variance for the roofed-over deck is less substantial, both mathematically and in context of the design, which locates a large majority of the structure within a conforming setback location.

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

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

20. *Benefit vs. Detriment:* The benefit to the applicant outweighs the detriment to the neighborhood.

21. *Minimum Variance:* With respect to the final plans proposed, the variances are

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the minimum necessary to achieve the benefit sought.

The Zoning Board therefore grants the requested area variances to construct an accessory garage with an attached roofed over patio, as shown on the survey of the property drawn by Scalice Land Surveying, Dated October 3, 2020, and the final site plan prepared by John R. Bracco Architecture, dated December 4, 2020, subject to the following conditions to minimize any adverse impacts from the variance:

VII. 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 one year 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: January 21, 2021

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Mark & Palmira Cataliotti, 37 Beach Road (905-12-2-39)** as written; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

4. Jeremy & Jennifer Stoehr, 16 Oak Street (905-008-03-028) Applicant requests variance from §197-35 C to construct an accessory swimming pool 12.2 feet from the rear property line where a minimum of 15 feet is required.

No one appeared on behalf of the application. Mr. Piering stated there was a determination and the reading was waived.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

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

Jeremy Stoehr
Jennifer Stoehr

DETERMINATION

Address: 16 Oak Street
SCTM #: 905-8-3-28

-----X

XIII. REQUEST FOR RELIEF

The applicants, Jeremy Stoehr and Jennifer Stoehr, are the owners of a parcel of real property located at 16 Oak Street. The property is located wholly within the R-4 Zoning District. According to the existing conditions survey the parcel is improved with a two-story frame house, detached garage, outdoor shower and wood deck.

Section 197-35.C. of the Village Code provides that, in the R-4 Zoning District accessory buildings, structures, tennis courts and swimming pools cannot be located closer than 20 feet to any lot or boundary line.

The applicant seeks a variance to construct a swimming pool 12.2 feet from the rear lot line as shown on the survey drawn by Raynor, Marcks and Carrington, dated November 4, 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 area variance for an area variance for an accessory residential structure (a pool), the application is classified as a Type II action under 6 NYCRR § 617.5(c)(16) and (12). Accordingly, the application is not subject to review under SEQRA.

XIV. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on December 17, 2020. The applicant, Jeremy Stoehr appeared and presented the application. No one appeared in opposition to the application. The hearing was closed for a determination at the January 21, 2021 meeting.

XV. 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.

XVI. FINDINGS AND CONCLUSIONS

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

22. *Character of the Neighborhood:* The applicants demonstrated that the proposal will not result in a material adverse impact on the character of the neighborhood. The pool is located in a similar location to that of the adjacent property to the north, and the closest point of the nonconforming setback is adjacent to a commercial property. The proposed pool is modestly sized and in keeping with the character of the neighborhood.

23. *Alternatives:* Due to the location of the sanitary system in the rear yard, there is no other location for the proposed pool without abandoning and reconfiguring the sanitary system into the front yard.

24. *Substantiality:* The variance is not substantial in the context of the application, i.e., a 12.2' setback is proposed where 15' is required, and the nonconformity relates primarily to a setback from a commercial parcel.

25. *Physical/Environmental Impacts:* No physical or environmental impacts have been identified. The applicant has obtained a wetland permit from the NYSDEC.

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

27. *Benefit vs. Detriment:* The benefit to the applicant outweighs the detriment, if any, to the community.

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

The Zoning Board therefore grants the requested area variance from Section 197-35.C. to construct a swimming pool, as depicted on the survey of the property drawn by Raynor, Marcks

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and Carrington, dated November 4, 2020, subject to the following conditions to minimize any adverse impacts from the variance:

XVII. 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 one year 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: January 21, 2021

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Jeremy and Jennifer Stoehr, 16 Oak Street (905-8-3-28)** as written; seconded by Ms. Cea and unanimously carried 5 ayes, 0 nays, 0 absent.

5. Christina Iacono Young, 6 Michaels Way (905-009-03-017.13) Applicant requests variances from §197-6 D to construct a screened porch on an existing deck with a side yard setback of 21 feet where a minimum of 30 feet is required and for a resultant combined side yard of 56.7 feet where a minimum of 70 feet is required, and from §197-35 C to reconstruct an accessory swimming pool with a setback of 15.875 feet where a minimum of 20 feet is required.

No one appeared on behalf of the application. Mr. Piering stated there was a determination and the reading was waived.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

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

Christina Iacono Young

DETERMINATION

Address: 6 Michael’s Way
SCTM #: 905-9-3-17.13

-----X

XVIII. REQUEST FOR RELIEF

The applicant, Christian Iacono Young, is the owner of a parcel of real property located at 6 Michaels Way. The property is located wholly within the R-1 Zoning District. According to the survey of the property drawn by Fox Land Surveying, dated March 5, 2020, and updated on November 23, 2020, the parcel is improved with a two-story frame house and attached garage, a deck, and a swimming pool.

Section 197-6.D. of the Village Code provides that, in the R-1 Zoning District, there shall be two side yards totaling not less than 70 feet, neither of which shall be less than 30 feet.

Section 197-35.C. of the Village Code provides that, in the R-1 Zoning District accessory buildings, structures, tennis courts and swimming pools cannot be located closer than 20 feet to any lot or boundary line.

The applicant is proposing to construct a screened porch on an existing deck with a single side yard setback (from the southerly lot line) of 20.4 feet, and to reconstruct an accessory swimming pool with a single side yard setback (from the southerly lot line) of 15.9 feet, and a total side yard setback of 56.1 feet.

XIX. 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 area variances for single family residence and accessory residential structures, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(11), (12), (16) and (17). Accordingly, the application is not subject to review under SEQRA.

XX. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on December 17, 2020. The applicant's architect John T. Laffey, appeared and presented the application. No other persons appeared in support or in opposition of the application. The application was closed for a determination at the December 17, 2020 meeting, for a determination.

XXI. 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.

XXII. FINDINGS AND CONCLUSIONS

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

29. *Character of the Neighborhood:* The applicant demonstrated that the requested variances will not have a material, adverse impact on the character of the neighborhood. The proposed porch is to be located on an existing open deck, which is pre-existing, nonconforming as to the side yard setbacks. The pool is also being located in an area where the deck is pre-existing and is, in essence, a reconfiguration of the pre-existing pool. No additional impacts will result from the proposal.

30. *Alternatives:* The applicant has demonstrated that she cannot achieve the benefits sought without the requested variances.

31. *Substantiality:* The variances, though mathematically substantial, are not substantial in the context of the pre-existing nonconformities, which are not increasing.

32. *Physical/Environmental Impacts:* No physical or environmental impacts have been identified. The applicant has obtained a wetland permit from the NYSDEC.

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

34. *Benefit vs. Detriment:* The benefit to the applicant outweighs the detriment, if any, to the community.

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

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The Zoning Board therefore grants the requested area variances from Sections 197-6.D. and 197-35.C. to construct a screened porch on an existing porch and reconstruct a swimming pool, as depicted on the survey of the property drawn by Fox Land Surveying, dated March 5, 2020, and updated on November 23, 2020, and the accompanying plans by John P. Laffey, architect, dated 10-2-20, subject to the following conditions to minimize any adverse impacts from the variance:

XXIII. 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 one year 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: January 21, 2021

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Christina Iacono Young, 6 Michaels Way, (905-9-3-17.13)** as written; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

HOLDOVER:

6. Kenneth Hoefler, 445 Dune Road (SCTM 905-017-05-005) Applicant requests variances from §197-5 A(1) to construct a second-story addition on a dwelling with preexisting nonconforming side yard setbacks where conformity is required for additions on preexisting nonconforming buildings (proposed side yard setbacks of addition are 10.8' & 13.5' where a minimum of 20' is required and with a combined side yard of 24.3' where a minimum of 50' is required), and from §197-35 C to reconstruct an attached rear deck with side yard setbacks of 6 & 10.8 feet where a minimum of 20 feet is required and a rear yard setback of 70.2 feet to the crest of the dune where a minimum of 75 feet is required.

James N. Hulme, Esq., appeared on behalf of the application, together with Kenneth Hoefler, Aram Terchunian First Coastal, Michael Berner, Elder Co., and Nicholas A. Vero, Architect. Mr. Hulme said that they looked at their previously submitted plans and the concept to lift and relocate the house is not something they are sure that can be done easily, or at all. Based on the size of the house relative to the lot size they would be in a predicament with piles in front of the house and lift the house from behind them and put them on the new ones. If we put the house in front of the piles we can't access the lot to put the piles in and move the house. That being the case, we decided based in part of Mr. Vero's work showing a new house; We discussed building a new house in the location shown on the survey that we have provided. The lot presents a number of challenges, it is only 65' wide and narrow and it has a total area of 30,000 square feet but the upland is less than half of that and the FEMA elevation is AE 16 and the existing house is not FEMA compliant it is on a slab with two stories of living space, the lower story of habitable space would be lost anyway. As indicated we are proposing a new house with the ocean side setback 17' from the existing house and that results in the sideyard setback variance and the deck. What this ends up, assuming we're approved is a two story house almost a 1,500 square foot reduction in lot coverage we are relocating all but a little bit of the deck beyond the Dune Crest setback, and we can't set it all back because of the angle the Dune Crest goes, so we are seeking a small variance for that to square off the deck. The setbacks for the new first floor are the same as the existing; and the setbacks for the second floor are 4' greater than the existing setbacks. The obvious hardship is the narrowness of the lot, the small nature of the house, the inability to relocate the home and to end up with something comparable in size and space as to what we currently have.

Mr. Piering said his first question is can you move the house forward so you eliminate completely the Crest of the Dune variance request?

Mr. Hulme said the house meets that requirement, it's only a portion of the deck that doesn't. The closer to the ocean the better so we're looking for a compromise location to preserve some of the nearness to the ocean but only for a small portion of the deck so it can be rectangular as opposed to an angled deck.

Mr. Piering said but you could move it back 5' and completely eliminate a variance, and you could make the deck smaller. And put the pool and the hot tub in the deck and completely eliminate that variance.

Mr. Hulme said it would eliminate the pool hot tub and most of the deck.

Mr. Pasca said the pool doesn't touch the 75' line.

Mr. Hulme said we are trying to avoid having an angled deck; we can cut the deck back we're moving back 17' and we think it's substantial.

Mr. Piering said it is a new house.

Mr. Hulme said yes, but only because of the technical issues.

Mr. Terchunian said one of the other considerations is that the purpose of the 75' Dune Crest is to move the home out of the mass of the dune itself; in this case by moving it back 17' it moves it out of the Dune and into a flatter area of the property so that there is no impact on the dune itself and the 75' is an artifact of the crest of the dune but doesn't represent the full shape of it. The purpose is being met by relocating the house of the dune area.

Mr. Piering thanked Mr. Terchunian.

Mr. Hulme said moving back any further, right now we are parallel to the homes on either side of us so when we move back we'll be further in front of them and the more they will interfere with our East and West sight lines.

Mr. Pasca said everyone who moves first says the same thing.

Mr. Hulme said we are moving back.

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Mr. Piering said there's no question it moved back a significant amount.

Mr. Hulme said it's a small part of a two-dimensional structure in that zone and not impactful.

Mr. Piering said he's looking a photograph he took on his phone. Mr. Musnicki had questions, right?

Mr. Musnicki said yes; I see the benefit bringing it into FEMA compliance and the Dune Crest setback but I always have an issue with new construction especially in the beach areas having the benefit, or trying to use the benefit for pre-existing locations from 40-50 years ago. There can be side yard give back, but I would like to see some side yard give back, it's a new decade and I don't think that anyone should enjoy the pre-existing non-conforming setbacks from 1975.

Mr. Hulme said the law doesn't speak in terms of the condition of the neighborhood. The pre-existing conditions is the character of the neighborhood, these setbacks. The lot is only 65' wide and if we did 20' and 20' the house would only be 15' wide it's not a massive house we are trying to retain the house we have and some value to pre-existing rights and we are not asking for more than what we have now, in fact for the second floor we're giving up 4' on each side and we are providing a give back and moving the structure back 17'.

Mr. Musnicki said I'm not asking you to meet today's requirements, I don't know what that value is that you're describing that you have. Clearly, there are variances that you are requesting.

Mr. Hulme said the house as it sits right now has these setbacks and that's the impact on the neighborhood and we're not looking to increase that we're looking to maintain that on the first floor and less impactful on the second floor.

Mr. Musnicki asked if we're going by the balancing test and you can't achieve the results by other means, by increasing the setbacks that's one thing you can do. The setbacks are substantial on the first floor, it's 68% and on the second floor it's 52%. It is substantial and you can achieve housing there in another method.

Mr. Hulme said sure, then the house is substantially smaller than the character of the neighborhood and they are relatively small.

Mr. Pasca said you can add depth to it, you have room in the front to make it longer without losing floor area.

Mr. Hulme said yes. In an extreme we're building a bowling alley then; we're trying to make it have shape and dimension. It's only a few rooms broad.

Ms. Cea asked the coverage on the first floor?

Mr. Musnicki said it's 68% on the first floor; 52% on the second.

Mr. Hulme said he is not sure the way to compare it is by percentages, unless you compare the adjacent lots which are very comparable to what we have in setbacks.

Mr. Pasca asked if they put that together, statistics on the existing setbacks.

Mr. Hulme said no, but he can.

Mr. Pasca said it could be helpful.

Mr. Hulme said okay

Mr. Piering asked Mr. Pasca to repeat what he said.

Mr. Pasca said to see the adjacent property setbacks and it's hard to look in the abstract, and it may help show where it fits in the setbacks, is it average, better than average? It's hard to judge from an aerial photograph.

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Mr. Hammond said its very close tot the R5 on Dune Road. They do get smaller as you go North and East on Dune Road.

Mr. Hulme said he will take the time to do that. He asked if there were any other questions or comments.

Mr. Vero said with respect to the side yard setbacks, and the experience they have gone through the standard is 20' as a minimum and if we use that as a standard what's been approved, we would wind up with a 24' wide house and I think, what we were trying to do, in good faith we were trying to lift it and move it to a more conforming location and its' impossible to do that and it's on a slab and sleepers and the first floor doesn't exist. It becomes impossible to use the existing footprint and the intent was to move it closer to the Road and out of the Dune as far as possible and maintain the side yard setbacks and wedding caking the second floor by doing the setbacks an additional 4' to get closer to a better percentage of a side yard setback and it would be more conforming to the 64' wide lot. From what I was told from the last meeting you had and discussed this project; we were close with understanding the setbacks on the side yards and I think originally when Mr. Piering talked about completely getting out of the dune and that's achievable and if it will help the side yard setback. They can get it all out of the dune, and he would offer that if it helps with the side yard.

Mr. Piering so you can pull it out of the dune? Okay. This is 64.13' wide lot and it's in the R3 Zoning District which is a minimum of 100' wide so there is a disadvantage there.

Mr. Vero said yes.

Mr. Piering said okay. I don't have any other questions or comments. Were you going to provide character of the neighborhood?

Mr. Hulme said yes. We will do a review of the neighborhood and their side yard setbacks.

Mr. Piering said okay. He asked if there were other questions or comments.

Motion was made by Mr. Piering to holdover the application of **Kenneth Hoefler, 445 Dune Road (905-17-5-5)**; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

NEW APPLICATIONS:

7. Barbara Schnitzer, 423 Dune Road (905-017-05-030) Applicant requests variance from §197-35 C to legalize a deck extension constructed 9.34 feet from the property line where a minimum of 20 feet is required.

Diane Herold, Architect appeared on behalf of the application. This is in response to a 2004 violation issued by the Building Department and we compared the 1991 survey to the 2001 survey and it showed that the West deck was increased by 3.2' feet and increased the lot coverage by 0.6%. The variances are not substantial, the proposed lot coverage is 26%. The original survey showed a 12.6' setback to the West deck and it was reduced to 9.4' and it was substantially decreased because of an extension of a kitchen. Many properties are similar in non-conforming setbacks and there are two front yards, Dune Road and Midland Walk. The driveway to the neighboring property to the South East corner and makes the East deck very public, therefore the West deck is a more comfortable outdoor space. It was self-created and for suable outdoor space. I submitted photos and surveys of the driveway and house where the deck is located.

Mr. Piering said he has surveys, none are recent the most recent is from 2017, and when I look at that survey and going out to the property and seeing it there are a/c condensers not shown on the survey, on the side of the property.

Ms. Herold said that would be Lisa, she is the surveyor and not local so she may not realize that it had to be on there.

Mr. Piering said it was from 2017 he'd like to see it updated.

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Ms. Herold said okay.

Mr. Piering said we want a more recent survey; he also had a question about the lot coverage what is it?

Ms. Herold said it is 25.4% under the CO for house; but it's increasing to 26%.

Mr. Piering asked if lot coverage relief is part of this?

Mr. Hammond said the survey I had that was legal was 25.4% and the more recent is 25.2% because they included steps that aren't normally added so it didn't appear to go up at all to me. It seemed to be a net zero or possibly went down, I don't know if it's a mis calculation, but if we're updating the survey it should be clarified.

Mr. Pasca said if the prior was mis calculated but the current is not it could be an increase.

Mr. Hammond said if there's 12' of stairs you need a landing and they should not count against lot coverage.

Mr. Pasca said if the prior version counted it but the current did not it has to be apples to apples.

Mr. Piering said there are a few things missing on the survey, I'd like to see it updated.

Ms. Herold said I will suggest a different surveyor.

Mr. Piering said we can't tell people who to use.

Ms. Herold said okay, she will have the a/c condensers shown and the lot coverage calculated.

Mr. Piering said the deck was extended when the kitchen was extended.

Ms. Herold said no the kitchen was always there, they just want to use that side of the house and frequently homeowners don't realize they need a permit for a deck. They weren't trying to mislead anyone.

Mr. Piering asked why it wasn't dealt with in 2004.

Ms. Herold said the homeowners husband passed away and in going through his records they discovered the violation. It was something the family wasn't aware of.

Mr. Piering said okay. We will hold it over to February.

Ms. Herold said okay.

Motion was made by Mr. Piering to holdover the application of **Barbara Schnitzer, 423 Dune Road (905-17-5-30)**; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

8. William Jebaily, 506 Dune Rd (905-016-01-004) Applicant requests variances from §197-5 A(1) to construct a second-story addition on an existing dwelling with nonconforming side yard setback of 8.6' where 20' is required, a substandard combined side yard of 29.2' where 50' is required, and second-story addition has a rear yard setback of 62' where 75' is required, all where conformity with current dimensional regulations is required for additions to dwellings with nonconforming setbacks.

Diane Herold, Architect appeared on behalf of the application.

Mr. Piering said a previous variance was issued and the applicant withdrew the West side shower, do you remember that?

Ms. Herold said yes.

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Mr. Piering said the shower is gone on the West, but now there is one on the East that's not on the survey. Do you know how that happened?

Ms. Herold said no.

Mr. Piering said the shower is there, there's a shower head and wall, and the doors are taken off for the Winter because the hardware is there. The survey is not complete because it's not mentioned on the survey.

Ms. Herold said okay, so you want the survey updated?

Mr. Piering said yes, I will want to see an updated survey and the side yard setback of the shower.

Ms. Herold said okay.

Motion was made by Mr. Piering to hold over the application of William Jebaily, 506 Dune Road (905-16-1-4) seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

9. 804F Realty, 112 Montauk Highway (905-005-02-014.01) Applicant requests variances from §197-5 A(1) for proposed partial conversion of a building with a nonconforming side and rear yard setbacks (16.3' side yard existing where 20' is required, 12.9' rear yard existing where 50' is required) where conformity is required for substantive alterations, from §197-17.1 for a proposed canopy with front yard setbacks of 20.1 & 25.5 feet where the minimum required is 50 feet, and from §197-22 C for proposed parking 6 feet from the property line where the minimum is required 10 feet.

Barbara Rasmussen, Esq., appeared on behalf of the application, together with David Bittner, Robert Chase, applicant and High Point Engineering.

Ms. Rasmussen said that in 2006 the ZBA granted the applicant relief for the proposed canopy and we have modified that canopy so the requested relief is larger than what was previously granted. We are looking for variances to allow the existing structure to remain in its location, and converted to a convenience store. There are no exterior modifications by way of increasing of the non conformity on the building and the last variance is to allow four parking spaces to front facing Old Riverhead Road within the 10' buffer and as the Board is aware it has two front yards, Old Riverhead Road and Montauk Highway and there's no way to accommodate the parking. The canopy was modified and reduced so the lot coverage variance was removed. We are still before the PB as it relates to the site plan approval, and the BOH approval, and DPW approval to reduce the curb cuts on the site as well. I think it's a minimal request.

Ms. Cea asked her to clarify the curb cut reduction.

Ms. Rasmussen said they are proposing three instead of four; and that's as suggested and agreed upon by the DPW of Suffolk County. There's an entrance only on Montauk Highway and Exit only on Montauk Highway and the curb cut on Old Riverhead Road will be both. It will eliminate a curb cut at that intersection and we've discussed with the County and my client is willing to cooperate in widening the corner and give away that corner to the County.

Ms. Cea confirmed they are willing to?

Ms. Rasmussen said yes, when the County is ready to do so. The proposal as you can see takes that in to account.

Mr. Piering asked if the curb cuts on Montauk Highway are two way? Entrance only from both directions?

Ms. Rasmussen said each will be one direction. The curb cut to the East is entrance only; and the curb cut on the Western is exit only on Montauk Highway.

Mr. Piering asked if its right turn only?

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Mr. Pasca said yes, it is right turn only. It's an entrance only from Montauk Highway from the West, there is no left in to the site from Montauk Highway and that was designed on purpose.

Mr. Piering said okay.

Ms. Rasmussen said the canopy is similar to the 2006 approved canopy; the pumps will be reconfigured to allow the flow to work better on the site and to allow the truck to fill the pumps in and out of the site in a feasible way.

Mr. Piering asked if the canopy is to keep people dry when it rains?

Ms. Rasmussen said a fire suppression issue as well. But yes, it is esthetic and to keep people dry and keeping them out of the elements.

Mr. Piering asked about signage.

Ms. Rasmussen said we don't need variances, and we will discuss it with the Planning Board and ARB along with the lighting. There will be a sign in the canopy but he's willing to be flexible and amendable to many aspects including the esthetics.

Mr. Piering said I don't see much difference between the 2006 approval to now.

Ms. Rasmussen in 2006 we weren't asking for relief for the existing building because we could not do a convenience store, we are just looking to permit the continuance of a non conformity and it was approved at 24' and 26.9' and now we're seeking 20.1' and 25.5' so we're seeking a few more feet.

Mr. Piering said you are reconfiguring the pumps?

Ms. Rasmussen said yes, and we are still within the 20% lot coverage. The prior design had an issue with the truck flow and the entrance and exit; they still have six pumps but two can't be used. They are taking the same number of pumps and widening it out and the last time we didn't need the parking variance which is triggered by the expanded convenience store.

Mr. Piering said okay, will the truck be on Old Riverhead Road?

Ms. Rasmussen said yes. They are asking for 6' and the requirement is 10' and if we can't do that, we would need a parking variance because we'd lose spots.

Mr. Piering said okay. He asked if there were any other questions.

Mr. Musnicki said how the tank truck gets in and out of the property?

Ms. Rasmussen said we went through that at length with the Planning Board and had an analysis done and submitted. The truck will be coming primarily down Old Riverhead Road and enter on the curb cut and exit on to Montauk Highway and continue East.

Mr. Pasca said no, they will be going West. They have to exit heading West on to Montauk Highway. It is a West only.

Ms. Rasmussen said the truck exits and heads further East.

Ms. Cea said the curb cut is the other way.

Mr. Pasca said its setup to turn West only.

Ms. Rasmussen said there are two.

David Bittner said it will exit on to Montauk Highway and head West on to Montauk Highway.

Mr. Musnicki asked if there was an island.

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Mr. Bittner said the truck cannot maneuver and head East.

Mr. Pasca said the Village Engineer opined on it, and looked at it and agreed with the engineers and configuration of it and said it is ideal.

Mr. Piering asked if there were questions.

Ms. Rasmussen said that she spoke to the Vet next door and any screening he wants to see will be accommodated and the fencing and landscaping concerns will be addressed.

Mr. Piering said for the record, he is an abutting neighbor and asked if they want him to recuse himself?

Ms. Rasmussen said only if you are objecting to the application.

Mr. Piering said okay, thank you.

Motion was made by Mr. Piering to close the hearing of 804F Realty, 112 Montauk Highway, (905-5-2-14.1) for a determination; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

REQUEST FOR EXTENSION:

10. Beth D'Alessio, 3 Liggon Lane (905-3-1-6.1) Applicant requests a one-year extension of the variance granted on June 18, 2020 which will expire on March 17, 2021 up to and including March 17, 2022.

No one appeared on behalf of the application.

Mr. Piering made a motion to grant the extension request of **Beth D'Alessio, 3 Liggon Lane (905-3-1-6.1)** seconded by Ms. Cea and unanimously carried 5 ayes, 0 nays, 0 absent.

11. Brogan, 213 Dune Road (905-20-2-5) Applicant requests an extension of their ZBA determination dated April 18, 2019 up to and including January 20, 2022.

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

Mr. Piering made a motion to grant the extension request of **Brogan, 213 Dune Road (905-20-2-5)** seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

Motion was made by Mr. Piering to adjourn the meeting at **6:00 p.m.**; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.