

March 18, 2021

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, March 18, 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

**MINUTES TO BE APPROVED**

Motion was made by Mr. Piering to adopt the minutes of the **February 18, 2021** meeting as written; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

**DECISIONS:**

**1. Christopher Glover, 52 Lilac Road (905-005-01-017.02)** Applicant requests variances from §197-5 A(1) to construct a second-story addition on an existing dwelling with nonconforming side yard setback (19.6’ existing/proposed, 20’ required) where conformity with current dimensional regulations is required for additions to dwellings with nonconforming setbacks, and from §197-7 D to construct a roofed-over entry patio with a proposed front yard setback is 36.3 feet where a minimum of 50 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

Christopher Glover

**DETERMINATION**

Address: 52 Lilac Road

SCTM #: 905-5-1-17.2

-----X

**I. REQUEST FOR RELIEF**

The applicant, Christopher Glover, is the owner of a parcel of real property located at 52 Lilac Road. The property is located wholly within the R-2 Zoning District. According to the survey of the property drawn by Fox Land Surveying, dated July 3, 2020, the parcel is improved with an existing two-story frame house and garage, wood decks, slate patio and swimming pool and detached frame shed. The existing dwelling has a pre-existing setback of 19.6 feet to the Southerly side lot line, and 13.5’ to the Northerly side lot line where the current minimum side yard setback is 20 feet.

Section 197-5 (A) (1) of the Village Code provides that, in the R-2 Zoning District, no building, structure or land shall hereafter be used or occupied and no building, structure or part thereof shall be

March 18, 2021

erected, moved, altered, enlarged or extended unless in conformity with the regulations herein specified for the district in which it is located.

Section 197-7 (D) of the Village Code provides that, in the R-2 Zoning District, the front yard depth shall not be less than 50 feet; there shall be two side yards totaling not less than 50 feet, neither of which shall be less than 20 feet; and the rear yard shall not be less than 50 feet.

The applicant seeks to construct a second-story addition on an existing dwelling with non-conforming side yard setback and to construct a roofed over entry patio with a non-conforming front yard setback (36.3 feet where 50' is required), as depicted on the plans prepared by Todd O'Connell, AIA, last dated 10/23/20. Therefore, the applicants request the required variances from Sections 197-5(A)(1), and 197-7.D.

### **I. 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 (setback variances) for a single-family residence and accessory 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.

### **II. ZBA PROCEEDINGS**

This application was duly noticed for a public hearing, which was opened on February 18, 2021. The applicant's architect Todd O'Connell 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 February 18, 2021, meeting for a determination at the March 18, 2021 meeting.

### **III. 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.

#### **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 proposal will not have any material adverse impacts on the character of the neighborhood. The applicant has designed the second story additions to be generally within the parameters of the existing footprint, and the first story additions are designed to be in line with the front yard and southerly side yard setbacks, except for the small (46 sf) portico, which would have negligible impacts on the character of the community.
2. *Alternatives:* Given the pre-existing structure and its current setbacks, there are no alternatives that could achieve the benefits sought without the need for variance relief.
3. *Substantiality:* Although the front yard setback nonconformity is mathematically substantial, the substantiality is mitigated by the pre-existing nonconformity.
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:* The Board finds that the benefit to the applicant outweighs the detriment, if any, to the community.
7. *Minimum Variance:* The variances are the minimum necessary to achieve the benefits sought.

The Board therefore grants the requested area variances to construct the second-story addition and roofed over entry patio, as depicted on the survey prepared by Fox Land Surveying, dated July 3, 2020, and the plans prepared by Todd O'Connell, AIA, last dated 10/23/20, 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 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.

March 18, 2021

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: March 18, 2021

Village of Westhampton Beach  
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Christopher Glover, 52 Lilac Road (905-5-1-17.2)** as written; seconded by Ms. Cea and unanimously carried 5 ayes, 0 nays, 0 absent.

**2. Shawn & Antionette Munding, 63 Griffing Avenue (905-013-01-024.03)** Applicant requests variances from §197-7 C for a proposed building area lot coverage of 23.5% where the maximum permitted is 20%, and from §197-7 D for a proposed side yard setback of 15.2 feet where the minimum required is 20 feet with a proposed combined side yard setback of 37.4 feet where the minimum required is 50 feet.

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

**DETERMINATION**

Antionette Munding  
Shawn Munding

Address: 63 Griffing Avenue  
SCTM #: 905-13-1-24.3

-----X

**VI. REQUEST FOR RELIEF**

The applicants, Antionette Munding and Shawn Munding, are the owners of a parcel of real property located at 63 Griffing Avenue. The property is located wholly within the R-2 Zoning District. The property was the subject of a prior ZBA Determination (given to Donna Dowling), dated September 18, 2014, which approved multiple variances to create the uniquely substandard lot, based on extraordinary circumstances.

According to the existing conditions site plan of the property drawn by Deerkoski & Arm Design and Engineering, DPC, James J. Deerkoski, Engineer, last dated January 20, 2021 (incorrectly listed as 2020), the parcel is improved by a one-story frame dwelling, wood deck and detached frame shed.

Section 197-7.C of the Village Code provides that, in the R-2 Zoning District the building area lot coverage shall not exceed 20% of the lot area.

Section 197-7.D. of the Village Code provides that, in the R-2 Zoning District the front yard depth shall not be less than 50 feet; there shall be two side yards totaling not less than 50 feet, neither of which shall be less than 20 feet; and the rear yard shall not be less than 50 feet.

March 18, 2021

The applicant seeks to demolish an existing single-family residence and construct a new two-story single-family dwelling with covered porch, balconies and a covered front entry, inground swimming pool, pool house and patio at grade, all as depicted on the “Proposed Site Plan” of the property drawn by Deerkoski & Arm Design and Engineering, DPC, James J. Deerkoski, Engineer, last dated January 20, 2021 (incorrectly listed as 2020). Based on the denial letter provided by the Village Building Inspector, the application would result in the following nonconformities to the Village Code:

- Section 197-7 C- Lot coverage is 23.5% where 20% is permitted
- Section 197-7 D- Side yard setback (single) is 15.2’ where 20’ is required
- Section 197-7 D- Side yard setback (combined) is 37.4’ where 50’ is required

The applicants have therefore requested variances from these sections to authorize the improvements depicted on the Proposed Site Plan.

## **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)(11), (12), (16) and (17). Accordingly, the application is not subject to review under SEQRA.

## **VII. ZBA PROCEEDINGS**

This application was duly noticed for a public hearing, which was opened on February 18, 2021. The applicant’s attorney, Suzanne M. Mensch, Esq., appeared on behalf of the application, together with Craig Arm, Architect. The Board received a written submission from the neighbors in support to the application. The hearing was closed at the February 18, 2021 meeting for a determination.

## **VIII. 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.

**IX. 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 proposal will not have any material adverse impacts on the character of the neighborhood. The applicant has designed a relatively modest project that is severely constrained by the uniquely substandard property.

9. *Alternatives:* Given the constraints of the parcel, there are no alternatives that could achieve the benefits sought without the need for variance relief.

10. *Substantiality:* The variances are substantial.

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 community.

14. *Minimum Variance:* The variances are the minimum necessary to achieve the benefits sought.

The Zoning Board therefore grants the requested area variance from Section 197-7.C. and 197-7.D. for the proposed lot coverage of 23.5% where the maximum permitted is 20%, and for a proposed side yard setback of 15.2 feet where the minimum required is 20 feet with a proposed combined side yard setback of 37.4 feet where the minimum required is 50 feet, as depicted on the Proposed Site Plan drawn by Deerkoski and Arm, James J. Deerkoski, last dated January 20, 2021 (incorrectly listed as 2020), subject to the following conditions to minimize any adverse impacts from the variance:

**X. CONDITIONS**

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

March 18, 2021

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

4. The variances granted herein shall terminate unless a building permit is issued within one year from the date hereof and construction completed according to said building permit.

Dated: March 18, 2021

Village of Westhampton Beach  
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Shawn & Antoinette Munding, 63 Griffing Avenue (905-13-1-24.3)** as written; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

**3. Jameson Partners LLC, 209 Mill Road (905-008-02-021)** Applicant requests variance from §197-5 A(1) for proposed conversion of office to dwelling in a building with a nonconforming front yard setback (13’ existing, 20’ required) where conformity is required for substantive alterations.

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

Jameson Partners, LLC.

**DETERMINATION**

ADDRESS: 209 Mill Road

SCTM #: 905-8-2-21

-----X

**XI. REQUEST FOR RELIEF**

The applicant, Jameson Partners, LLC., is the owner of a parcel of real property located at 209 Mill Road. The property is located wholly within the HC Zoning District. According to the survey of the property drawn by Raynor, Marcks & Carrington Surveying dated December 29, 2020 (“Survey”), the parcel is improved with a two-story frame house, deck and detached one-story frame cottage.

Section 197-5.A (1) of the Village Codes provides that, in the HC 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 proposes to convert an existing office to a dwelling in a building with a nonconforming front yard setback. The Building Inspector determined that relief from Section 197-5 A(1) is required, due to the pre-existing front yard nonconformity (13.0’ provided where 20’ is required). The applicant has therefore applied for an area variance from this section.

**XII. SEQRA**

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

Since this application involves a residential conversion, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(16) and (17). Accordingly, no further review is required.

**XIII. ZBA PROCEEDINGS**

This application was duly noticed for a public hearing, which was opened on September 20, 2018. The applicant, Nicholas Donahue appeared on behalf of the application. No other persons appeared in support or in opposition of the application. The hearing was closed at the February 18, 2021 meeting.

**XIV. 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.

**XV. FINDINGS AND CONCLUSIONS**

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

15. *Character of the Neighborhood:* The applicant has demonstrated that the granting of the requested relief will not cause any material adverse impacts on the character of the community. The application does not propose any new nonconformities, but due to the conversion and change of use, requires this Board's approval. Since the proposed use is a conforming one, and arguably less intensive than the existing office use, the Board cannot find any adverse impacts that may result from this change of use.

16. *Alternatives:* Given the pre-existing location of the building with a nonconforming setback, there are no alternatives that could achieve the benefits sought without the need for variance relief.



March 18, 2021

17. *Substantiality:* The variance is not substantial in the context of this application.
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 Board finds that the benefit to the applicant outweighs the detriment, if any, to the community.
21. *Minimum Variance:* The variances are the minimum necessary to achieve the benefits sought.

The Zoning Board therefore grants the requested area variances to allow the applicant to convert an existing office into a one family two story residence as depicted on the Survey, subject to the following conditions to minimize any adverse impacts from the variance:

#### **XVI. CONDITIONS**

1. The variances granted herein are limited to the relief set forth in this decision, and pertain only to the structures as they are depicted on the Final Plans, and shall not be construed as creating conforming dimensions. There shall be no further extension (horizontally or vertically), increase, alteration or modification to the structures located on the property that has non-conforming dimensions, without further approval of the 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. There can be no exterior work performed on weekends from May 1 to September 30 and on weekdays from July 1 to September 10.
4. The variances granted herein shall terminate unless a building permit is issued within one year from the date hereof and construction completed according to said building permit.

Dated: March 18, 2021

Village of Westhampton Beach  
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Jameson Partners, LLC., 209 Mill Road (905-8-2-21)** as written; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

4. **Yvonne Figarella, 396 Dune Road (905-017-04-001)** Applicant requests variances from §197-8 C for single-family development with a proposed building area lot coverage of 24.6% where a maximum of 20% is permitted, from §197-8 D to construct a new dwelling with a proposed rear yard setback of 60.8 feet where a minimum of 75 feet is required, from §197-35 C to construct an accessory deck with a setback of 14.8 feet where a minimum of 20 feet is required, and also from §197-35 C to construct an accessory swimming pool with a setback of 17.2 feet where a minimum of 20 feet is required.

March 18, 2021

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

Yvonne L. Figarella

**DETERMINATION**

Address: 396 Dune Road

SCTM #: 905-17-4-1

-----X

**XVII. REQUEST FOR RELIEF**

The applicant, Yvonne L. Figarella, is the owner of a parcel of real property located at 396 Dune Road. The property is located wholly within the R-3 Zoning District. According to the existing conditions survey of the property drawn by Colonial Surveying, P.C., Joseph Seccafico, PLS dated December 20, 2018, and last revised on May 17, 2019, the parcel is improved by an existing two-story dwelling, wood decks, swimming pool, hot tub, bar, wood fence, timber walls, and a wood bulkhead.

Section 197-8.C. of the Village Code provides that, in the R-3 Zoning District, the building area lot coverage shall not exceed 20% of the lot area, exclusive of all areas designated as tidal wetlands by the New York State Department of Environmental Conservation.

Section 197-8.D. of the Village Code provides that, in the R-3 Zoning District, the front yard depth shall not be less than 50 feet on the North side of Dune Road; there shall be two side yards totaling not less than 50 feet, neither of which shall be less than 20 feet; and the rear yard shall not be less than 75 feet.

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

The applicant seeks to construct a new two-story single-family dwelling with an accessory deck and swimming pool, as depicted on the proposed conditions survey of the property drawn by Colonial Surveying, P.C., Joseph Seccafico, PLS dated December 20, 2018, and last revised on December 11, 2020. According to the denial letter of the Village's Building Inspector, the proposal is nonconforming as to the above-referenced code provisions in the following respect:

- §197-8.C. - The proposed lot coverage is 24.6% where the maximum permitted is 20%.
- §197-8.D. – The proposed rear yard setback is 60.8 feet where a minimum of 75 feet is permitted.
- §197-35 C. – The proposed deck is 15’ from the rear property line and the proposed pool is 17.2’ from the rear property line where the minimum setback required is 20’.

The applicant has therefore applied to the ZBA for variances from these code provisions.

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

### **XIX. ZBA PROCEEDINGS**

This application was duly noticed for a public hearing, which was opened on February 18, 2021. The applicant’s attorney, James N. Hulme, Esq., appeared in support of the application. No other persons appeared in support or opposition to the application. The hearing was closed for a determination at the February 18, 2021 meeting.

### **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. The Board is also empowered to impose reasonable conditions to minimize any adverse impacts from the variance.

## **XX. FINDINGS AND CONCLUSIONS**

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

22. *Character of the Neighborhood:* The applicant has demonstrated that the proposal will not have any material adverse impacts on the character of the neighborhood. The applicant has designed the renovation project to be generally within the parameters of the existing development, except that two of the existing nonconformities (lot coverage and accessory structure rear yard setback for the deck) would be reduced with the proposal.

23. *Alternatives:* Given the constraints of the parcel, as well as the pre-existing disturbance to the property through the existing structures, there are no alternatives that could achieve the benefits sought without the need for variance relief.

24. *Substantiality:* Although a 4.6% lot coverage nonconformity is considered substantial, that substantiality is mitigated in part by the existing conditions of the property.

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

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

27. *Benefit vs. Detriment:* The Board finds that 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 benefits sought.

The Zoning Board therefore grants the requested area variances from Sections 197-8.C, 197-8.D, and 197-35.C of the Village Code to allow the construction of a new two-story single-family dwelling, with an accessory deck and swimming pool as shown on the survey drawn by Colonial Surveying, PC, Joseph Seccafico, PLS, dated December 20, 2018 and updated on December 11, 2020 (“Final Plans”), subject to the following Conditions:

## **XXI. CONDITIONS**

3. The variances granted herein are limited to the relief set forth in this decision, and pertain only to the structures as they are depicted on the Final Plans, and shall not be construed as creating conforming dimensions. There shall be no further extension (horizontally or vertically),

March 18, 2021

increase, alteration or modification to the structures located on the property that has non-conforming dimensions, without further approval of the Board.

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

4. The variances granted herein shall terminate unless a building permit is issued within one year from the date hereof and construction completed according to said building permit.

Dated: March 18, 2021

Village of Westhampton Beach  
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Yvonne Figarella, 396 Dune Road (905-17-4-1)** as written; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

**HOLDOVERS:**

**5. 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 J. Hulme, Esq., appeared on behalf of the application. They had hoped to get additional information to the Board before the meeting, and they are tweaking the project and removing the 70' setback variance from the Crest of the Dune and they are looking at where they can center the house on the property and they are looking at the side yard setbacks that may create, and they did not have time to submit that so they'd like to hold this over to the April meeting to work on filing revised plans.

Mr. Piering said okay.

Motion was made by Mr. Piering to holdover the application of **Kenneth Hoefler, 445 Dune Road (SCTM 905-017-05-005)** to April 15, 2021; seconded by Ms. Cea and unanimously carried 5 ayes, 0 nays, 0 absent.

**6. 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. She said that she submitted a holdover request as they are awaiting a revised survey.

March 18, 2021

Mr. Piering said okay.

Motion was made by Mr. Piering to holdover the application of **Barbara Schnitzer, 423 Dune Road (905-017-05-030)** to April 15, 2021; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

**7. 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, together with William Jebaily. They removed the East and West walks and hot tub and the shower and the wood ties and it's shown on the new survey. When you look at the submitted photo from Google it shows houses in this area with similar setbacks and you have letters from both neighbors with non-conforming setbacks and we feel it's consistent with the neighborhood.

Mr. Jebaily thanked the Board for reviewing his application. He has been a resident of the Village for 11 years and they live across the street on the beach, and he bought this two-family home 7 years ago and made it a one family home and he's hoping in the future to have grandchildren and have more space and privacy on the second floor. It was a 6-bedroom home when he purchased it and reduced it to a 4 bedroom and he's trying to bump it up. When he showed the former building inspector the plans, and he said if its going to be a one family home from a two he'd allow him to add a second story.

Mr. Piering thanked Mr. Jebaily. He asked him if they're going straight up?

Mr. Jebaily said only on the front of the house; they aren't changing the back.

Ms. Herold said they are not going beyond the first-floor existing setbacks.

Mr. Jebaily said they are just going straight up in the front, and the back will remain as it exists. They are going to add 1,100 square feet maybe 1,200 square feet.

Ms. Herold said over the years, as you see in the surveys, they have lost a considerable amount of frontage, and the setbacks have been affected greatly and they built a bulkhead to prevent further erosion so we have to ask for the rear yard setback even though the setbacks were legal when it was built.

Ms. Cea asked how many square feet are being added on?

Mr. Piering thought it was 1,100 square feet.

Ms. Cea said okay.

Ms. Herold said it's approximately a 40 x 40 addition.

Mr. Musnicki said it doesn't look like the 8.6' side yard has been reduced; can you reduce that? It looks like you can.

Ms. Herold said if he's suggesting they move it in on the West property line?

Mr. Musnicki said yes, I would on both sides to balance it.

Ms. Herold said that's more of a design issue.

Mr. Jebaily said we are going to do work there, it won' be a big square.

Mr. Musnicki said the lot coverage is almost double what that area calls for, and I know it is what it is, but we're adding more non conformities to the property now.

March 18, 2021

Ms. Herold said if you look at the old survey, they were already over in lot coverage, and the loss of the property on that survey it shows they lost a lot of setbacks on the West side; it went from 2,008 to 175' which affects the lot coverage, not because of the house or pool or deck changing they have all existed since 1996; and that's why we built the bulkhead, so the 6% is not that much when you consider the lot.

Mr. Musnicki said I'd feel more comfortable if you conformed more on the side yard or totals.

Ms. Herold said if the Board grants a decision with that as a consideration, we'd design to that. It makes it more complicated as far as construction.

Mr. Piering said you said it won't be a box what do you mean?

Mr. Jebaily said we will do bump outs.

Ms. Herold said we did that on the front; there will be overhangs on the front and if necessary, we can do something on the side and if it's a condition of the variance we will have to conform to the decision this Board gives us.

Mr. Jebaily said I don't know if its cost effective on the West side that's where the stairs are going, so if I can't put them there, I'm not sure where I will put them. You saw the letters from my neighbors and their house is close to mine and they don't have problems with what we're requesting.

Mr. Pasca said he is trying to understand the survey and the changes between the two; the new survey has dotted lines around the house that weren't on the old survey what are the dotted lines?

Ms. Herold said she doesn't know. As you are aware, I submitted two surveys, the first did not have the correct lot coverage, so I brought this in and I have to say the surveyor is extremely busy and I don't know why the dotted lines are there but I can submit another survey.

Ms. Cea said it looks to go all the way around the property.

Ms. Herold said she thinks he was assuming the roof over hang will carry around the whole house and it won't so I think that's a surveyor's mistake.

Mr. Jebaily said the back of the house isn't two stories so you can't have a roof overhang, it's only a single story.

Ms. Herold said that's correct. She asked if there were other questions. She received the survey two days before the meeting and she submitted it as soon as possible because the surveyors are extremely busy, she believes it's a simple mistake but she wanted the Board to have a survey for this meeting and she can submit a new one.

Mr. Pasca said we just need clarification.

Ms. Herold said it's just a roof overhang and it should only be on the front side, not around the whole house.

Mr. Pasca said the original survey showed the proposed second story addition, and the one I'm looking at now doesn't show the second story addition.

Ms. Herold said that was a mistake, she submitted it and then had it redone and had that removed. The first one had the wrong lot coverage, and I went back to the surveyor and asked them to fix it, but now it has the dotted line that was not always on there and it's just an error, I know that because the overhang doesn't go around the house, it's 1.5' on the front of the house for detail.

Mr. Hammond said roof overhangs up to 12" do not count towards setbacks or lot coverages.

Mr. Piering said okay, we just need that dotted line clarified.

March 18, 2021

Mr. Jebaily said let's just ask the surveyor to eliminate it.

Ms. Herold said yes, she will.

Mr. Jebaily said 12" and under doesn't encroach on the side yard?

Mr. Hammond said yes, and it shouldn't be shown if its 12" or less and within the Village Code it doesn't count.

Mr. Jebaily thanked Mr. Hammond.

Mr. Hammond said if I do an inspection for framing, I will flag it and tell them it has to be cut back.

Mr. Jebaily said okay, thank you.

Mr. Musnicki said he had no other questions.

Mr. Piering asked Ms. Herold if she wanted to close the public hearing, or adjourn it to April?

Ms. Herold said I would like to close the public hearing.

Motion was made by Mr. Piering to close the hearing of **William Jebaily, 506 Dune Road (905-16-1-4)** for a determination; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

**8. WHBH Real Estate LLC, 7 Beach Lane (905-011-03-010)** Applicant requests variances from §197-16.4 A to construct a proposed parking area partially located in the front yard where specifically prohibited, from §197-16.4 D to construct additions resulting in a proposed building of 9,330 square feet in gross floor area where the maximum permitted is 6,000 square feet with special exception criteria per §197-80.2, from §197-17.1 to construct a cabana building with a rear yard setback of 8.3 feet where a minimum of 30 feet is required, from §197-29 C(2)(c) to construct proposed additions representing an increase and/or extension of area devoted to a nonconforming use of a hotel/inn where specifically prohibited, and from §197-63 for a proposed vegetated buffer to the south 5 feet in width where a minimum of 10 feet is required.

James N. Hulme, Esq., appeared on behalf of the application. He said to catch this Board up, they went to the planning board informally and had a very nice discussion with them and we have a list of items from Mr. Hammond to supply to apply and they had some similar comments to this Board and we're going to submit an amended site plan; we've turned the pool 90 degrees so it's now 30' within the setback and eliminated that variance; the cabana which was not a cabana is an equipment room has been eliminated completely, and we're proposing a perimeter fence and privet hedge and most of that is for the planning board. We are working on an analysis comparing space for space between existing and proposed and we're subtracting out of that what's permitted as opposed to continuing non-conforming uses. I detect that you want the planning board to catch up before we continue with this Board, so we will keep submitting and talking to them.

Mr. Piering said it sounds like you're on a good path with the Planning Board so we will wait for their input and continue.

Motion was made by Mr. Piering to hold the application of **WHBH Real Estate, LLC., 7 Beach Lane (905-11-3-10)** over to April 15, 2021; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

**9. Egret Dune Corporation, 95 Dune Road (905-021-04-002)** Applicant requests variances from §197-8 D for proposed side yard setbacks of 10 feet where the minimum required is 20 feet with a proposed combined side yard setback of 20 feet where the minimum required is 50 feet, and from §197-35 C for proposed accessory pool & deck with setbacks of 10 feet where the minimum required is 20 feet.



March 18, 2021

Nicholas A. Vero, Architect submitted a request to hold the application over.

Motion was made by Mr. Piering to holdover the application of **Egret Dune Corporation, 95 Dune Road (905-021-04-002)** to April 15, 2021; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

**NEW APPLICATIONS:**

**10. Ira Kay, 22 Bridle Path (905-006-03-004.17)** Applicant requests variances from §197-35 A to retain an accessory residential storage shed located in the side yard where specifically prohibited and from §197-35 C (1) to retain an accessory residential storage shed located 0.5 feet from the side property line where the minimum required setback is 10 feet.

Joe Walker, Double Check Builders appeared on behalf of the application, together with Ms. Kay. Mr. Walker said he submitted photographs depicting the shed and the house and landscaping and pictures of the interior of the shed which is used to store bicycles and I also submitted two letters from neighbors that are most effected by any decision the Board would make and the nearest adjoining property offering no objection and offering support. The application is only significant in the fact its self-inflicted, they trusted a contractor and it was built from a kit and the placement was in error and it hasn't affected the properties in the area or their value. It is maintained professionally, and we request you grant the application for the life expectancy of the shed only and when it needs to be replaced, we will move it to a conforming location. It came to light because the homeowner made an application to construct a covered over patio and hot tub and this was seen then. I would like to point out that every other item on the property has a CO; the pool, the deck, the house, the basement, etc. the people have tried to be compliant they just have this one small error.

Mr. Piering said the biggest thing is that being so close to the property and in the side, yard had this come to us and you are requesting to put it here we would not permit it or allow it, now long would you say they've had this shed?

Mr. Walker said to the best of my knowledge, several years. I know it's been there for awhile because some of the bicycles inside look old.

Ms. Kay said it has been about seven or eight years.

Mr. Piering said you can't really see it from the street, it's not very visible. The property is landscaped beautifully and I can see where the neighbor to the South is not too bothered by it, and it looks like you're only using it for bicycles, and the fact that you're asking to keep it for the life of the shed is reasonable.

Mr. Walker said the other thing, there's no way even if the homeowner asked, I would never present it as a proposal.

Mr. Piering asked if there are any comments.

Mr. Musnicki said they made a nice, straight forward presentation.

Motion was made by Mr. Piering to close the application of Ira Kay, 22 Bridle Path (905-6-3-4.17) for a determination; seconded by Ms. Cea and unanimously carried 5 ayes, 0 nays, 0 absent.

**11. David Caslow, 32 Beach Lane (905-014-01-011)** Applicant requests variances from §197-35 A for a proposed hot tub & patio extension located in the side yard where accessory structures are specifically prohibited.

Jeremy Wheaton, Hamptons Habitat appeared on behalf of the application. They are seeking a side yard variance and the property is unique and it's 87,000 square feet and based on the constraints of the property the side yard has functioned as the rear yard predominantly because of the Copper Beach Tree in the rear yard dating back to 1966 when the original variance was granted for the swimming pool; in 1980 the tennis court; in 1988 the new swimming pool was

March 18, 2021

installed and in 2009 I secured a cabana. The new owners would like to do minor changes to the preexisting non-conforming structures; specifically, 350 square feet of patio to adjoin the house to the pool patio and the hot tub which is 8 x 8 both in the side yard; they do not need lot coverage, its superficially to the side yard due to the nature of the property.

Mr. Piering said okay. I have a few surveys, but I don't see lot coverage on any of them.

Mr. Wheaton said okay, he can get a survey with lot coverage. I know we are under it based on the lot size.

Mr. Piering said I agree with him, but before we render a determination, we need a survey showing lot coverage.

Mr. Wheaton said that's not a problem.

Mr. Piering said I remember this application from 2009 and I remember the tree root system being mentioned then. He asked if there were any other questions.

Mr. Pasca said there are multiple surveys, I have a Nathan Taft Corwin Survey and I have one that has red markings on it but I can't tell whether the surveyor did that or they have been marked on to a survey because it looks like a pdf that was marked up and it's a good job, but its not a survey if it marked up.

Mr. Piering said okay.

Mr. Wheaton said they will update the survey; the markup was proposed site plan.

Mr. Pasca asks it has to be done by an architect or surveyor.

Mr. Wheaton said okay, we will take care of that as well as the existing and proposed lot coverage for resubmittal on a new survey.

Mr. Pasca said when he does that have him mark the setback lines so it shows its conforming, but I do think the SE corner in the patio will become the closest point to the Southern lot line I just need a clear survey for the record.

Mr. Wheaton said okay.

Motion was made by Mr. Piering to close the application of **David Caslow, 32 Beach Lane (905-14-1-11)** for a determination, pending the receipt of the updated survey; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

Motion was made by Mr. Piering to adjourn the public hearing at **5:45 p.m.**; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.