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Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, April 15, 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 **March 18, 2021** meeting as written; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

DECISIONS:

- 1. 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.
- 2. 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.
- 3. 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.

HOLDOVERS:

- 4. 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

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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 Hoefer, Nicholas A. Vero, Architect and Michael Burner. Mr. Hulme said they took the house with the same footprint but they reoriented it and in the original survey it was not parallel to the property lines, and making each side parallel to the side yards increased the setbacks and reduced the relief they were seeking. Specifically, what has occurred instead of 6.8' and 9.5' on the East and West of the proposed first floor, they are at 9' and that caused the total side yard to be 18' instead of 16.3'. The proposed second floor went from 10.8' and 13.5' on both sides, which created a total side yard of 26' instead of the 24' originally proposed. Then we reconfigured and altered the deck so it is setback at 9' on each side instead of 6' and 11' that was originally proposed, and we've also reconfigured so we are greater than 75' from the Crest of the Dune, so we have eliminated the rear yard variance for the deck. All of this discussion caused them to look closer and it occurred it may be single and separate entitled to automatic relief and I submitted a Single and Separate search and we are in fact in single and separate ownership and that reduces the required setbacks instead of comparing the side yards to 20' we are comparing them 12.8" and in stead of comparing the total side yard to 50' to 37.5' and it had an even more dramatic effect on the second floor in that its setback 13' and were required to 12.8' and that eliminates the single side yard setback for the second floor as well so they are two more variances we do not need. The 26' for the total side yard setback is now compared to 37.5 as opposed to 50' and in the first hearing, when we discussed this a point of analysis is a percent deviation from the requirement so the fact that requirement is reduced, the percent of deviation is substantially reduced and I believe it is done in a manner that makes it comparable that was provided to the properties to the East of this which got significant side yard setback relief and they were not single and separate. The percentage we are looking for is small.

Mr. Piering asked the benefits by making it more FEMA compliant and moving it out of the Dune Crest.

Mr. Hulme said it will be reconstructed from scratch and built to the current State Building Code and it will be FEMA compliant structure which it is not currently, and is a benefit to the community at large.

Mr. Piering said you mentioned the house to the East got a substantial side yard variance, is it percentage or feet?

Mr. Hulme said both.

MR. Piering said he believed it to be a much narrower lot.

Mr. Hulme said yes, it is. The fairest way is to look at the reduction being sought and that needs to be analyzed in the context of what is required and not the absolute value of what's required.

Mr. Piering said by being single and separate it works in your favor, right?

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Mr. Hulme said yes, the relief you have to give us it smaller because of that.

Mr. Musnicki said the argument on the small lot provision, do you believe you don't need any variances?

Mr. Hulme said no, that eliminates the single side yard setback relief for the second floor only. I'm not saying because of single and separate we don't need variances but of the list of the original variances sought they are eliminated by the single and separate and one is eliminated by the 75' setback for the deck and we still need other relief, but the amount of relief is reduced.

Mr. Musnicki said wouldn't the single and separate provision in the first proposal where it was reorientated it looks very good, the small lot is a second argument, right?

Mr. Hulme said its additional, yes.

Mr. Musnicki asked if its for the footprint and not for the second floor?

Mr. Hulme said it was advertised for relief from both.

Mr. Pasca said for the record, can we go through he variances that are still required and what is eliminated so I know exactly what your final ask is for.

Mr. Hulme said on the East on the first floor we need 9' instead of 12.8' on the West first floor we need 9'. The East is 9', the West side is 9', and the total is 18' and we need relief from all three. We need total side yard of 26' for the second floor; and then we need side yard relief for the deck of 9' on both sides.

Mr. Piering said he thought they need 37.5' total, and that you were going to conform to that?

Mr. Hulme said they can only conform to 26'.

Mr. Piering said okay.

Mr. Pasca said thank you.

Mr. Piering said he is happy to see the Crest of the Dune request eliminated. He asked if there were any other comment or questions.

Mr. Musnicki thanked the applicants for working so hard on this application.

Mr. Hulme thanked Mr. Musnicki.

Motion was made by Mr. Piering to close the hearing of **Kenneth Hoefler, 445 Dune Road (SCTM 905-017-05-005)** for a determination; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

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5. 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 submitted the survey to the Board which reflects the a/c condensers and you noticed there was no lot coverage so we had that added.

Mr. Piering thanked Ms. Herold and they have gone through this they were just waiting on the correct survey. He asked Ms. Herold if she had anything else to add?

Ms. Herold said no.

Mr. Pasca confirmed the survey was dated April 7, 2021.

Ms. Herold said yes.

Motion was made by Mr. Piering to close the hearing of **Barbara Schnitzer, 423 Dune Road (905-017-05-030)** for a determination; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

6. 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. We are in the process of preparing an application to the Planning Board, and I sense you want us to work with them before we return to this Board. I'd like to put it over to May 20, 2021 and we can always adjourn it again.

Mr. Piering said okay.

Motion was made by Mr. Piering to holdover the application of **WHBH Real Estate LLC, 7 Beach Lane (905-011-03-010)** to May 20, 2021; seconded by Ms. Cea and unanimously carried 5 ayes, 0 nays, 0 absent.

7. 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

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50 feet, and from §197-35 C for proposed accessory pool & deck with setbacks of 10 feet where the minimum required is 20 feet.

Nicholas A. Vero, Architect appeared on behalf of the application. He still is waiting for his information from the Title Company and he'd like to hold this matter over to May.

Mr. Piering said okay.

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

NEW APPLICATIONS:

8. Kathleen R Hay, 69 Beach Road (905-012-02-032) Applicant requests variance from §197-35 A to add an integral spa and patio at grade to an existing swimming pool in the side yard where accessory structures are specifically prohibited from being located in the side yard.

James N. Hulme, Esq appeared on behalf of the application had the pool was installed in the side yard because there's no rear yard and if all we're doing is putting in a new swimming pool in this location, we could have done so with a building permit, but the jacuzzi addition brings us to this Board and it's a small 8 x 8 structure, and getting no closer to the lot lines than the pool itself is and I don't think it creates any additional impacts than the pool and the same issue is that there's no rear yard to install it and the jacuzzi is connected to the pool and without the variance you cant locate the jacuzzi next to the swimming pool.

Mr. Piering said he remembers this from when it was originally granted. He asked if there were any questions.

Mr. Musnicki asked the size of the pool, is it going to be 20' x 40'? Because it's not shown on the survey.

Mr. Hulme said the variance in 2017 was a 20' x 40' pool and it's not on the survey. Whatever relief they were granted for the rear yard and side yard will maintain.

Mr. Musnicki asked if we should have a new survey?

Mr. Hulme said he would ask to close the hearing and submit that survey.

Mr. Musnicki said the addition of the hot tub, I see the pool equipment is on the rear of the property behind the house, is that located there still?

Mr. Hulme said yes, I believe it will be in the same location, yes.

Mr. Musnicki said yes.

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Ms. Cea asked if the 2017 variance was for a 20' x 40' swimming pool?

Mr. Hammond said no, it was an 18' x 40'.

Mr. Hulme said okay, it will show an 18' x 40' pool.

Mr. Musnicki said he thought they were asking for a 20' x 40'?

Mr. Hulme said it will be what was granted in 2017, it will be an 18' x 40' pool and he will provide an amended survey showing that.

Ms. Cea said okay.

Motion was made by Mr. Piering to close the hearing of **Kathleen R Hay, 69 Beach Road (905-012-02-032)** for a determination; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

9. Jodi Scherl, 452 Dune Rd (905-017-01-002.02) Applicant requests variances from §197-8 D to construct a second-story addition with a side yard setback of 18.4 feet where the minimum required setback is 20 feet, and with a resultant combined side yard setback of 38.4 feet where the minimum required is 50 feet.

James N. Hulme, Esq., together with John Gramlich, Architect and Jodi Scherl and Saul Scherl.

Mr. Piering wanted to confirm Mr. Hulme received the opposition letter.

Mr. Hulme said yes. There is an existing one-story house with a strange property line as a result of a 1979 subdivision and a 2014 ZBA variance which allowed the house to be elevated and modified as a result of Hurricane Sandy. His client purchased the property in December 2020 and would like to construct a second story on the existing first story and that's what the plans provide. When we presented this for denial, we needed two forms of relief that the Chairman read however in a subsequent submission and a submission that I believe is part of the application the 18.4' side yard was increased to 20' thereby eliminating one of the two variances sought. The second variance for total side yard changed from 38.4' to 20' and the need for the total side yard variance comes from adding the two narrowest points on either side. On the site plan, they are just points and if you progress around the house from those points the side yard setback does eventually get to 50' and even bigger than that. It's a pretty small amount of the house that needs relief and it's a small amount that needs relief. Part of the 2014 ZBA determination, the Board granted from 50' to 40.1'. We are now looking for 1/10 of a foot, it's different than the relief that the Board granted in 2014. Second stories are permitted in this Zone, although the alteration includes an entire second floor the relief we are seeking is relatively small and I think that the opposer is objecting to the second floor in general and she is two (2) doors away at 448 Dune Road so there is an intervening lot between us and them.

Pam Franklin, 448 Dune Road interrupted.

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Mr. Piering asked her to let Mr. Hulme finish his presentation and she can speak after his presentation.

Mr. Hulme said there is a lot between them and he imagines the issue that his clients sits forward but that is the nature of the beast and we're looking for a feature which is a generally allowed feature the second floor; because of the nature of the subdivision line and the existing house and we want square corners in this house we are looking for this relief. To point out, based on the fact we are not looking for single side yard relief, the side of our house closest to the neighbor complies with the neighbors yard we're not seeking relief on that side of the property. Since the second floor is permitted, the fact that we have a second floor that needs a little additional relief to get a sound design and is based on the jury meandered property line and the location of the existing house. I've gone through the five factors in my submission, and its not substantial and no other way to construct it.

Mr. Musnicki asked if it's possible to provide us with an updated survey showing the actual lot coverage, not the total lot coverage but the upland coverage.

Mr. Hulme said yes.

Mr. Hammond said the plans drawn by Mr. Gramlich; February 15, 2021 is what he based his denial off of, but the December 2020 plan is what we're going with? If you update the plot plan, can you put a more recent revision date?

Mr. Hulme said yes. The lot coverage is not increasing as a result of this.

Mr. Musnicki said he understands that, he just would like it shown on the survey.

Mr. Hulme said they will provide a new survey.

Mr. Piering asked what they did with the garage?

Mr. Hulme said it was demolished as part of the 2014 variance.

Mr. Piering said okay, and they constructed an addition. To comply with FEMA you needed significant relief in 2014.

Mr. Hulme said yes, and part of that was lifting the house to FEMA requirements.

Mr. Piering asked Ms. Franklin if she wanted to speak.

Ms. Franklin said in 2014 after Hurricane Sandy they were given substantial relief, and the garage was not demolished but elevated and incorporated into the living space of the house and it was made larger, and covering more of the lot. It is much larger today as a result of incorporating the garage into the living space.

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Mr. Piering asked if they expanded or only incorporated the garage into the living space?

Ms. Franklin said it was not living space, they elevated it and made it living space. They made the house bigger taking up more percentage of the lot. It was after Hurricane Sandy and they were trying to get FEMA compliance but the living space was increased and now making it larger presence will increase the size of the living space in the house itself again. It is very close to our property line, I don't know the setbacks and I haven't reviewed any of the drawings. We only received the notification today.

Mr. Piering said so you know, we won't close it tonight to give you a chance to review that. We will review this again next month so you can review it. Is your overall displeasure with this have to do with the second story or the mass of the house or the setbacks?

Ms. Franklin said the orientation of the house on the Cove itself; it's behind another house and it's behind 450 and diagonally behind our house. The Cove is a lot of small homes and this one because of its orientation is very long because they included the garage and they thought there was a condition no other changes, or substantial modifications can be made.

Mr. Piering said to clarify that; what that means is that they cannot do anything without applying to the ZBA. No Board can legally tell an applicant they can't make an application. They are applying to us to do more changes to the property.

Ms. Franklin said when the garage was incorporated it made it long horizontal building it's much longer than the other home in the Cove and this juts out in to the Cove. It's a large mass and it's very large and originally prior to the last variance it was 25% smaller than it currently is.

Mr. Piering said okay. We saw your letter tonight right before we signed on and we will review it.

Ms. Franklin said it's important to speak to you.

Mr. Piering thanked Ms. Franklin.

Michael Porges, 450 Dune Road, said I agree with everything that she has said. To ask procedurally, is there a 10-day notice?

Ms. Mackie explained to Mr. Porges how the mailing notices are sent out.

Mr. Porges said okay.

Motion was made by Mr. Piering to holdover the application of **Jodi Scherl, 452 Dune Rd (905-017-01-002.02)** seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

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10. Nancy Burner, 168 Beach Lane (905-015-05-005) Applicant requests variances from §197-43 A(1) to erect driveway gates (fence) of 6 feet in height in the front yard where the maximum permitted height is 4 feet, and from §197-43 A(8) to erect driveway gates 4 feet from the street line where the minimum required setback is 20 feet.

Nicholas A. Vero Architect, James N. Hulme, Esq., and Michael Burner, appeared on behalf of the application.

Mr. Vero said they started constructing the gate posts and they are closer to the property than the Code allows and Beach Lane at that point is very wide and there is substantial parking for the Village Beach across the street and there is a right of way of 18' there which includes a 4' wide sidewalk so there is 22' and there's a substantial bike lane on that section of Beach Lane with an additional 10' so there is a substantial space from the traffic right of way in to the driveway. We do understand the nature of gates in this Village and I won't tell you there are no other gates on Beach Lane and they are probably constructed without the benefit of a permit and we have a stop work order and we want to continue and legalize what we have. There is a substantial Belgium block apron on both sides of the gate and we are about 22.5' back from the right of way of the road.

Mr. Piering asked how you differentiate this from the one we just went through on Main Street?

Mr. Vero said I discussed that with Mr. Hulme, and you can see he's here and I don't know the difference I was not involved in that hearing. I'd assume it's no different.

Mr. Hulme said Main Street is busier with a more active sidewalk, and down at this point of Beach Lane the parking for the beach and sidewalk for people to get to the beach which is the active sidewalk is across the street.

Mr. Piering said it's very busy, I took a picture today and there's no other gates down at the end, the house is really setback the house doesn't have a fence, and what you're trying to do is get approval because you started and it's partially there. When I look at the Code and the five factors, I don't see how this can go.

Mr. Vero said there's no history of granting gates on Beach Lane, and I think what the intent is they purchased the house and there was electric run to gate posts with lights on them, and if you look at the more Southerly side of the driveway the electric meter is 6' from the property line and that's where it was put and I think it was the intent to hide that behind the gates. There is a square marked "E" so I think that was the intention of hiding the electric meter on the station and create privacy along Beach Lane for the pedestrian traffic on the Westerly side of Beach Lane. The benefit is truly for the applicant, but we understand the detriment. The argument is that it's 22' from the Beach Lane right of way.

Mr. Piering asked why they can't be moved back>

Mr. Vero said on the Northerly side we could, but the driveway configuration and electric meter it is hard to do it on the Southerly side of the property.

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Mr. Piering asked why they need a gate?

Michael Burner said his wife's intent was to fence in the property because of her pets and also the fact that the deer are encroaching on the property and eating everything she plants. To Mr. Piering's point, there is going to be a fence across the front so it is fenced in, and the back will be too as well.

Mr. Badzik asked if the fence is shown on the survey?

Mr. Vero said no. The 6' fence is to keep the deer out.

Mr. Piering said okay.

Mr. Badzik said they can jump 6' fences as well.

Mr. Vero said I know. I would offer, if the applicant is willing to make them 4' if they can remain in that location if that would help us with the decision.

Mr. Burner said I think the answer is yes, I will tell you that the gates were already made and they could be adjusted but if that's going to help I can convince her that 4' gates will be okay.

Ms. Cea asked the material of the gates?

Mr. Burner said it's a square post in a modern style.

Mr. Vero asked if the Board would like to see a picture of the gates?

Ms. Cea said yes.

Mr. Piering said you may want to think of alternatives because it's a leap. Based on recent applications and what was before us a few months ago on Main Street; a 6' gate 4' off the road is a big reach, and when you consider our five factors I don't see how you can make the argument. If you're going to submit alterations or what they are made of or what you're supposed to do with fencing you can go ahead.

Mr. Burner said the Easterly sidewalk is not busy at all, and if this was on the Westerly side I would agree, if the gates where we planned them to be a car could pull up and it would not be in the road. In addition to the property line, there is grass, then there's a 4' sidewalk, then there's another 4' or 5' and then there's a lane before the road.

Ms. Cea asked the total frontage?

Mr. Vero said it's 22.5' to the gate post from the paved area, and that doesn't include the lane which is an additional 10'.

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Mr. Burner said the lane is wide enough to park a bus, because around 1pm or 2pm every day a bus does park there.

Mr. Hammond said the right of way widens to receive the intersection from Exchange Place just North of this, and it opens up in front of this property and that's why the lane of traffic is much further away.

Mr. Piering said okay.

Mr. Musnicki said there's an earlier site plan that shows one entrance and not two, would you feel comfortable to reduce to one entrance and a 4' gate and setting it back a little further?

Mr. Burner said he'd have to talk to his wife.

Mr. Vero said he'd like to hold it over.

Mr. Piering said okay.

Mr. Burner confirmed that there's a clear understanding of what the Board is asking for?

Mr. Vero said yes.

Mr. Piering said we have to talk about the five factors, that's what we're going to look for when you return and you'll need to address it because you only really said the posts are there and we want to continue going and I can't remember a situation where we granted a variance under these circumstances.

Mr. Burner said that's not the reason.

Mr. Piering said okay.

Motion was made by Mr. Piering to holdover the application of **Nancy Burner, 168 Beach Lane (905-015-05-005)** 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 6:05 p.m.; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.