

September 16, 2021

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, September 16, 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

Motion was made by Mr. Piering to adopt the minutes of the **August 19, 2021**, meeting as written; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

DECISIONS:

1. Westhampton Beach Country Club, 35 Potunk Lane (905-009-03-023.01) Applicant requests a permit from the Zoning Board of Appeals as provided by §197-29 C(1) to demolish a two-story dwelling utilized for staff housing and reconstruct a substantially similar building elsewhere on the property at a later date.

Kittric Motz, Esq., appeared on behalf of the application. Mr. Piering stated the Board has granted the variance and the reading of the determination was waived.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

-----X

In the Matter of Application of

Westhampton Beach Country Club

DETERMINATION

Address: 35 Potunk Lane

SCTM #: 905-9-3-23.1

-----X

I. REQUEST FOR RELIEF

The applicant, Westhampton Beach Country Club, is the owner of a parcel of real property located at 35 Potunk Lane. The property is located wholly within the R-1 Zoning District. According to the survey of the property drawn by The Raynor Group, P.E., dated June 15, 2021, the parcel is improved with several structures relating to the Club’s facilities, including a clubhouse, pro shop, maintenance building, two-story house, and one-story house.

Section 197-29.C(1) of the Village Codes provides generally that a nonconforming use may only be reconstructed or altered by way of a permit from the Zoning Board of Appeals, subject to several conditions, including that any enlargement, extension, or expansion of a nonconforming use shall be prohibited. Section 197-29(C)(5) of the Village Code further provides that a nonconforming membership beach, golf or tennis club may be expanded, rebuilt,

extended or enlarged to the extent of 25% of the floor area of the main building devoted to the nonconforming use prior to the effective date of this subsection, provided that certain conditions are met.

As depicted on the survey/site plan drawn by The Raynor Group, P.E., dated June 15, 2021, the applicant proposes to demolish and ultimately rebuild an existing two-story house used for staff housing. At this time, however, the applicant wishes to perform the demolition but hold off on the reconstruction until it can finalize its plans. In other words, the applicant seeks to bifurcate the demolition/reconstruction process, perform the demolitions now, but not lose the pre-existing, nonconforming status of the staff housing building while the plans for the new building are being finalized. The applicant therefore permission under, and seeks relief from, §197-29.C to allow it to perform the demolition at this time and reconstruct a substantially similar building at a later date.

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 approvals to demolish and rebuild a non-residential structures under 4,000 square feet, the application is classified as an Type II action under 6 NYCRR § 617.5(c)(9). Accordingly, the application is not subject to further review under SEQRA.

III. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on July 15, 2021. The applicant's attorney, Kittric Motz, Esq., and representative, George Vickers, appeared on behalf of the application. A neighbor, John McCaffrey, appeared to discuss the application. No other persons appeared in support or in opposition of the application.

At the hearing, the neighbor, Mr. McCaffrey raised questions about the replacement building, but the applicant's representatives confirmed that the current step of the process is only the demolition of the building, and that it did not have specific plans prepared yet for the building's replacement. The Board discussed with the applicant and Mr. McCaffrey that the Board could only consider the demolition request but could not render any decision on the proposed replacement building until plans were provided that would enable the Board to determine if the reconstruction was permissible under Section 197-29(C) and met the conditions and requirements therein. The Board asked the applicant's representatives to identify a time-

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frame for presentation of the replacement building plans, and the representatives believed that the plans would be presented in the near future, and at least within the next three years. In light of the delay between demolition and construction, the Board asked the applicant to provide detailed floor plans of the existing building prior to demolition, in order to serve as a baseline for reviewing the not-yet-designed replacement building and its compliance with the statutory requirements.

The hearing was closed at the July 15, 2021, meeting, subject to the applicant providing the Board with a floor plan and square footage calculation of the existing building. On August 11, 2021, the applicant provided existing floor plans and area calculations, prepared by Jason M. Ormond, Architect, dated August 3, 2021, entitled “As-Built Floor Plans,” Drawing no. A-101, for the Westhampton Beach Country Club. The existing area calculations were determined to be 1,700 sf for the first floor, 1,630 sf for the second floor, and a total conditioned area of 3,330 sf plus a covered porch of 140 sf.

II. GOVERNING LAW

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.” An exception to this limitation applies to membership golf club, allowing certain limited expansion rights. (§ 197-29(C)(5)). 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)).

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.

III. FINDINGS AND CONCLUSIONS

The Board finds that the subject application is, in essence, a hybrid application requiring relief under both Section 197-29(C) and for a variance. The Section 197-29(C) relief is required whenever a nonconforming use is reconstructed or altered, and the variance relief is required because Section 197-29(C) generally contemplates a simultaneous demolition/reconstruction and the applicant is seeking only to demolish the building in contemplation of reconstruction, but without losing the grandfathered nonconforming status.

Under the unique circumstances of this application, the Board finds that there is no adverse impact that will result from the bifurcation of the demolition/reconstruction process, in order to allow the applicant to demolish the building while it continues to develop its plans for the reconstructed building, provided that the applicant understands that it is not receiving any “pre-approval” of the new building that has not yet been designed. The applicant’s representatives confirmed that such planning process may take up to three years, though they expect the process not to require that long of a period. Such period of time is not found to be unreasonable under the unique circumstances of this membership club, which understandably must address a variety of factors during the planning process. But until the applicant presents plans for the proposed reconstructed building, the Board cannot evaluate whether the new building complies with the requirements of Section 197-29(C), so the Board cannot pre-approve any plans at this time. However, to the extent that the applicant seeks to demolish the existing building, no adverse impacts will result from the demolition alone, and such demolition can be approved in contemplation of returning to complete the process within the three-year planning

period anticipated by the applicant.

The Board further finds that the existing floor plans and area calculations, prepared by Jason M. Ormond, Architect, dated August 3, 2021, entitled "As-Built Floor Plans," Drawing no. A-101, for the Westhampton Beach Country Club, shall be adequate to serve as a baseline and reference to the existing building when the applicant returns to complete the reconstruction process. The Board recommends that the applicant also take photographs of the existing building prior to demolition, to the extent that such photographs may aid in the evaluation of the to-be-prepared proposed plans.

The Zoning Board therefore grants the requested relief, to the following extent:

- (1) The Board approves, under Section 197-29(C), the demolition of the staff housing building as shown on the site plan drawn by The Raynor Group, P.E. & L.S. PLLC, dated June 15, 2021; and
- (2) The Board grants the requested variance relief from Section 197-29(C) to allow the applicant to bifurcate the demolition and reconstruction process, and perform only the demolition processes at this time, while the applicant develops its plans for the reconstructed building, subject to the conditions set forth below, to minimize any adverse impacts from the variance.

To the extent the application, as filed, implicitly seeks any approval of the reconstructed building, such portion of the application is denied, without prejudice to the applicant re-applying to the Board, within three years hereof, for approval of the reconstructed building, under Section 197-29(C) of the Village Code. At such time, the proposed replacement building will be evaluated for compliance with the conditions of Section 197-29(C), and shall be subject to all other applicable regulations, including but not limited to the Village's site plan and architectural review regulations, the Suffolk County Sanitary Code, and New York State Fire and Building Codes as may be applicable at the time of the application.

IV. CONDITIONS

1. In order to preserve the applicant's nonconforming status for the staff housing building that is to be demolished hereunder, the applicant shall re-apply to the Board, within three years hereof, for approval of the proposed reconstructed building under Section 197-29(C).

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- 2. Nothing herein shall be construed as an approval of any proposed reconstructed building, which shall be evaluated for compliance with Section 197-29(C) at the time of presentation, based on the consideration of the existing conditions as reflected in the baseline floorplans and area calculations prepared by Jason M. Ormond, Architect, dated August 3, 2021, entitled “As-Built Floor Plans,” Drawing no. A-101, for the Westhampton Beach Country Club.
- 3. There can be no exterior demolition work performed on weekends from May 1 to September 30 and on weekdays from July 1 to September 10.

Dated: September 16, 2021

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Westhampton Beach Country Club, 35 Potunk Lane (905-9-3-23.1)** as written; seconded by Ms. Cea; and unanimously carried 5 ayes, 0 nays, 0 absent.

2. All Sunset Lawn LLC, 25 Sunset Lane (905-005-04-018.02) Applicant requests variances from §197-1 for a proposed tennis court which represents an accessory structure/use on a lot without a principal single-family use where an accessory use must be located on the same lot as the principal use, and from §197-35 C for proposed tennis court setback of 11.6 feet where the minimum setback required is 15 feet.

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

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

All Sunset Lawn, LLC.

DETERMINATION

By: Dawn Fischer, Manager

Address: 25 Sunset Lane

SCTM #: 905-5-4-18.2

-----X

I. REQUEST FOR RELIEF

The applicant, All Sunset Lawn, LLC., by Dawn Fischer, Manager is the owner of a parcel of real property located at 25 Sunset Lane, Westhampton Beach (the “subject property”). The subject property is located wholly within the R-4 Zoning District. According to the existing conditions survey drawn by JM Land Surveying, John Minto, L.S., dated August 17, 2020 the subject parcel is vacant.

The applicant is owned by Dawn Fischer and Stacy Friedman, All Sunset Lawn, LLC., who owns the adjacent parcel located at 228 Sunset Avenue, 228 Sunset, LLC., (the “adjacent property”) through a separate limited liability company. The adjacent property is improved by a two story frame residence, a porch, a slate patio, a greenhouse, an inground swimming pool and detached 7.5’ x 9.6’ shed. The

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applicant seeks permission to install a 36.0' x 78.0' tennis court at the subject property for purposes of being accessory to two story frame residence on the adjacent property.

If the two properties were a single parcel, the proposed tennis court would be conforming as to both use and dimensional regulations and therefore would require no variances. However, since the tennis court is not located on the parcel on which the two-story frame residence is also located, the tennis court is defined, under Section 197-1 of the Village Code, as 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. Although the applicant offered to condition the approval on the recording of covenants confirming that the tennis court would only remain on the vacant parcel, so long as the two properties remained in the same "beneficial ownership" (i.e., owned by the same shareholder), the tennis court would still technically fall under the definition of a accessory since it is not located on the "same lot" as the two story frame dwelling.

The applicant therefore seeks a variance from Sections 197-1 and 197-35.C of the Village Code.

II. SEQRA

The applicant submitted an Environmental Assessment Form Part I pursuant to the State Environmental Quality Review Act (SEQRA). Since the application is for a nonresidential structure involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance (see below), the application is a Type II action, and no further review under SEQRA is required.

III. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on May 20, 2021. The applicants' attorney James N. Hulme, Esq., appeared and presented the application. No other persons appeared in support or opposition to the application. The Board did not receive any written submissions from any neighbors in support or opposition to the application. The hearing was closed at the August 19, 2021, meeting for a determination.

IV. GOVERNING LAW

The Board finds that the application is in the nature of an area variance rather than a use variance. As the 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) (quoting 2 Anderson, New York Zoning Law and Practice § 23.06 [3d ed.]). In this case, the existence of the tennis court on adjacent lot would itself be a permitted use in the R-4 Zoning District, but it is only prohibited here

because there is a legal lot line (the line separating 25 Sunset Lane from 228 Sunset Avenue) that separates the single family dwelling from the tennis court which is accessory to its use. Stated differently, if the two lots were merged into one lot, the tennis court would be a fully conforming use. And since the two lots here are owned by the same beneficial owner (Dawn Fischer, who owns both LLCs that own the two lots), who is proposing to covenant that the variance shall lapse if the two properties are separated in terms of common ownership, the only nonconformity relates to the existence of the lot line rather than any actual use of the properties themselves. Accordingly, under these unique circumstances, the Board will apply the criteria governing area variances to this application.

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

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

V. FINDINGS AND CONCLUSIONS

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

1. *Character of the Neighborhood:* Subject to the conditions imposed herein, including the recording of covenants necessary to ensure that the two properties are, during the duration of the variance, utilized jointly and owned by the same beneficial owner, the applicant has demonstrated that the granting of the variance will not adversely impact the character of the neighborhood. The tennis court, though technically not on the “same lot” as the single family dwelling, will, subject to the covenants, be functionally dependent and retain the appearance of a fully conforming tennis court, since there will be no other use on the subject property. The covenants will ensure that the variance shall lapse and the tennis court shall be made conforming or be removed in the event of either a change of ownership or the addition of a new single family dwelling use on the subject property.

2. *Alternatives:* The applicant has demonstrated that there are no feasible alternatives to achieve the benefit sought without the granting of a variance.

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3. *Substantiality*: The variance is substantial to the extent that it seeks to erect a sign on a lot on which the sign would otherwise be prohibited. However, since the covenants will effectively ensure that the two lots are, for practical purposes, utilized as one lot under the same beneficial ownership, the practical effect is insubstantial.

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*: Subject to the conditions herein, the benefits to the applicant outweigh the detriment, if any, to the community.

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

The Zoning Board therefore grants the requested variance from Section 197-1 of the Village Code, to allow an otherwise conforming (dimensionally) tennis court on the subject property to be used as an accessory use to the single family two story frame dwelling on the adjacent lot, subject to the following conditions to minimize any adverse impacts from the variance:

VI. CONDITIONS

1. The variance granted herein shall automatically lapse upon the earlier of the following events: either (i) the subject property and the adjacent property are no longer held in the same ownership or the same beneficial ownership (e.g., held by entities that are owned by the same shareholders in the same proportion), or (ii) the subject property is improved with a new use. Upon the occurrence of either of those events, the tennis court shall either be removed from the subject property or made into a fully conforming tennis court (such as by being put to use to on a lot with a single family dwelling on the subject property).

3. Nothing herein shall be construed as authorizing any other deviation from the Village's regulations and requirements relating to tennis courts, other than the "same lot" requirement contained in Section 197-30.D(11).

4. The applicant shall file a declaration of covenants and restrictions, in a form to be approved by the Village Attorneys, reflecting the foregoing conditions. 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 cost and expense. A copy of the recorded declaration shall be filed with the building inspector prior to the issuance of any permit for the erection of the tennis court.

Dated: September 16, 2021

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **All Sunset Lawn, LLC., 25 Sunset Lane (905-5-4-18.2)** as written; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

3. Lavelle Irrevocable Trust, 16 Woodland Avenue (905-012-02-018) Applicant requests variance from §197-7 D to construct an addition with a side yard setback of 14.9 feet where the minimum required is 20 feet.

Heather A. Wright, 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

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

The LaVelle Irrevocable Trust **DETERMINATION**
Laura LaVelle and Beth LaVelle, Trustees
Address: 16 Woodland Avenue
SCTM #: 905-12-2-18
-----X

V. REQUEST FOR RELIEF

The applicants, The LaVelle Irrevocable Trust by Laura LaVelle and Beth LaVelle, Trustees, are the owners of a parcel of real property located at 16 Woodland Avenue. The property is located wholly within the R-2 Zoning District. According to the survey of the property drawn by Fox Land Surveying, David H. Fox, L.S. P.C., dated December 29, 2020 and updated on February 26, 2021, the parcel is improved by a one and one-half story frame house and garage, enclosed porch and wood decks.

Section 197-7.D. of the Village Codes provides that, in the R-2 Zoning District the front yard setback 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 applicants have applied for the necessary variances to allow them to construct an addition with a side yard setback of 14.9 feet.

VI. 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 a principle residence and accessory structures, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(9), (10) and (12). 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 August 19, 2021. The applicants attorney Heather A. Wright, Esq., appeared on behalf of the application. No other persons appeared in support or in opposition of the application. The hearing was closed 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 applicants demonstrated that the proposal will not have an undue adverse impact on the character of the neighborhood. The property is irregularly shaped and abuts commercial properties to the west. Under the circumstances of this particular neighborhood, the proposals do not appear to pose a threat for adverse impacts.

9. *Alternatives:*

10. *Substantiality:*

11. *Physical/Environmental Impacts:* No adverse physical or environmental impacts were identified.

12. *Self-Created Difficulty:* The difficulty is self-created because the applicants acquired the property subject to the zoning regulations at issue. The Board notes that this factor may not, standing alone, support a denial of the variances.

13. *Benefit vs. Detriment:* Based on an examination of all the circumstances of the application, as guided by the five statutory factors, the Board finds that the benefit to the applicant from the grant of zoning variances outweighs the detriment, if any, to the health, safety, and welfare of the community.

14. *Minimum Variance:* Under the circumstances of this application, the Board finds that the requested variances are the minimum necessary to achieve the benefit sought by the applicant.

The Zoning Board therefore grants the requested variance to allow the applicants to construct an addition with a side yard setback of 14.9 feet, all as depicted on the survey, 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 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.

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

3. The variances granted herein shall terminate unless a building permit is issued within 180 days from the date hereof and construction completed according to said building permit.

Dated: September 16, 2021

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **LaVelle Irrevocable Trust, 16 Woodland Avenue (905-12-2-18)** as written; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

HOLDOVERS:

4. 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, together with Architect and Principal, Corey Gluckstal. Mr. Hulme said he resubmitted materials, and the Board should have received September 1, 2021 letter and July 26, 2021 updated site plan. The site plan shows the relocation of the parking, so that we still have parking in the front yard, and the variance needed is the handicap space in the front yard, and they thought it was best to leave it for the front of the premises, and the pool has been relocated to meet the rear property line setback. He said he submitted an extensive chart showing the current and the proposed floor area coverage. As you can see, the gross floor area goes up by a small amount of 451 square feet and I guess it's a question of whether it is de minimus or not. The living area has gotten smaller, the bathrooms have gotten larger to make them accessible and there is storage and utilities and the change in the restaurant bar and lounge area by a small amount and detailed in the chart. This also shows there are outside decks and they went from 601 porches to 1469 which are three decks and entries and a porch and we submitted a study showing the exterior decks, and then also to make sure we're talking about the same things we submitted the current proposed floor plan and we resubmitted the existing floor plan to compare. We went through a detailed analysis of the requirements of 197-29 and I don't think anything suggests that we don't meet those requirements but I would discuss that if needed. We have eliminated one variance with the pool and we have reduced another with the parking and I hope you find it makes sense to leave the handicap parking in the front yard for ease of access.

Mr. Piering asked if there was a parking variance?

Mr. Hulme believed there was a front yard parking request. They have changed the size of the spots to the new standard, and as I said we moved most to behind the front yard line except for the one handicap parking space.

Mr. Musnicki said this is a much-improved site plan, and he sees the cabana has been removed and he sees a Beach Tree has been removed.

Mr. Gluckstal said the tree on the South side is dying and its rotted and becoming hollow so we have to take it down, and if I may in general context, I appreciate the feedback and I strongly believe we've made great efforts to beautify it and reduced the intensity and consciously reduced the number of rooms to 16, and the 451 square foot variance is vertical and needed to square the building off. I appreciate this Board's feedback, and I want to provide a plan that meets the needs of the community, and I'm hoping to get the benefit and move along with the seasonal process and I know there will be scheduling and timing of next Summer and we're sensitive to that.

Mr. Hulme said in the Planning Board process we'll address landscaping issues and things of that nature. We've met with the neighbors on both sides and the landscaping agreements will be submitted to the Planning Board for their review.

Mr. Piering said the neighbors were encouraged to pay attention to the Planning Board process. My question is about the increase in the deck size, can you address that for us? It is a significant increase in the non-conforming use.

Mr. Hulme said some are connected to individual rooms and the overriding thing, there's an increase in square footage and if there's a question of the non-conformity increasing, we feel we're decreasing and we may be adding an amenity not fully realized in the prior circumstances

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but there were not porches and decks that were associated as they are with the current project. They are all outdoors and don't touch on the GFA.

Mr. Piering asked how it affects the use of the Inn, there's a bar on the outside which was a concern of the neighbors.

Mr. Gluckstall said I believe the question was how the decks impact the existing use.

Mr. Piering said there's a large increase, and there was a concern about the outside bar, and people living around it.

Mr. Gluckstall said the majority are confined to the Units on the West and they are not public spaces and dedicated solely to the rooms. On the South side they are related to the bar and I believe it's small and they were to satisfy elevations and access in to and out of the property and the areas to the public for gathering, they aren't on the decks. The front porch existing and the area where the public can congregate are not on the decks. They are for handicap accessibility, mechanical systems and elevations. In regards to the neighbors and the concern for gathering, I've developed a good relationship with the neighbors, and I believe they are welcoming the project and the events that may occur through the guests.

Mr. Piering thanked Mr. Gluckstall.

Peter Sacriponte, South Neighbor; I had two concerns the headlights coming in to my house and I worked closely with Mr. Gluckstall, they have been nothing but cooperative and I support the 5' variance and I have put in trees to see if lights will go through and it won't and we're excited to have the Inn and I think it'll add value to the community and I'm not concerned about the music at night and they are highly professional and I am supportive of this. What I don't want to see as a resident and tax payer I don't want to see it remain the way it is for another season and I don't know how the process works to start construction, and I am a lawyer but I would urge you to move it through as soon as possible so that next Summer it looks much nicer than it does today.

Mr. Pasca said procedurally this has to deal with SEQRA so we can't close anything, the Planning Board is lead agent and this cannot have action taken until that's been done. The urging of moving things forward is more on the Planning Board. This Board can't act until the Planning Board does so.

Mr. Piering said we do like to move things along.

Mr. Hulme agreed.

Mr. Pasca said the floor area question is a big deal, and there are multiple conditions set forth in 197-9.C. and one is the area; the code says "the building area lot coverage shall not exceed 20% of the lot area."

Mr. Hulme said we disagree about the interpretation and we believe they can, this is a section of the Zoning Code and if it meets the five-part standard they are in the position to vary those requirements. I guess what you're saying if we are one square foot over it violates the rule and we're thinking its minimal compared to the scope and size of the project, and I think it would be a small variance.

Mr. Pasca said the issue is not whether you can get one, it's whether it's a use variance or area variance. And when it's a non-conforming use being expanded what is permitted by the Code it's a Use Variance and its expressly prohibited and it says no non-conforming use may be expanded the floor area and it's not written in the way and it's a prohibition and I'm not judging the application, but we have a Code to deal with and a lot of non-conforming uses that the second that if the Code is bent for this, it opens the flood gates to allow others to come in and allow an expansion of a non-conforming use.

Mr. Hulme said you don't grant an area variance without applying the variance.

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Mr. Pasca said what stops another non-conforming use from saying its de minimus, and the Codes written to prohibit the expansion of non-conforming use and there's different ways for them to be dealt with and this Village Does not allow it; there are different ways that Towns and Villages deal with non-conforming uses and we have to respect how the BOT have dealt with it and they've made exceptions, membership clubs can expand up to 25% and if you want to try to talk to the BOT to create another carve out and if it is enticing thing to the Village that may be a route to go. If a carve out can be made for certain types of changes, but it's hard to see how its fit in with a 450 square foot expansion, plus the deck expansion.

Mr. Hulme said okay, assuming we work something about the 451 square feet are the decks in the same category?

Mr. Pasca said I don't know, that's something this Board has to think about.

Mr. Hulme said okay.

Mr. Pasca said I will not opine to that and I don't know if there's precedent.

Mr. Hulme said okay, if there are more questions, we will answer them and due to SEQRA we will be returning.

Mr. Pasca said areas devoted to the non-conforming use is how the Code was written, and if all you're doing is changing the surfacing if it's interior floor area and there is a flat-out prohibition against them expanding.

Mr. Musnicki said there was existing outdoor space to the South, was that calculated as preexisting.

Mr. Hulme said yes.

Mr. Musnicki said the second thing is, explain the argument on the existing and proposed footprint.

Mr. Hulme said the first and second floors are the same size.

Mr. Musnicki said I thought I read that the existing footprint and the two buildings are being reduced to one the foot print is smaller.

Mr. Hulme said yes, as a whole because we're removing the cottage, but the main building is not getting larger.

Mr. Gluckstall said there is an existing cottage in the SW corner and it's of no integrity or quality and we hope to demolish it and green over it and transposing that into the existing footprint which will not enlarge, when we take the back of the building and we create a vertical of the existing Inn and we square off the back of the building and because we are squaring it off we're increasing the square footage. The footprint is not expanding, we're transposing the cottage and transferring that square footage into the building and again, it's because we're squaring off the Units which are saw toothed, the ground floor is in its entirety the second story does not take up the entire foot print and the third is less.

Mr. Piering asked if the 451 square feet is just from squaring it off?

Mr. Gluckstall said yes. We reduced the number of Units and reduced the sanitary requirements, parking and less of an environmental impact.

Mr. Musnicki asked if footprint for footprint is it equal, less or ore.

Mr. Gluckstall said its less. We're not expanding that, we're just going vertical, we've increased the livable area.

Mr. Piering asked if there were any other comments or questions. There were no further comments or questions.

Motion was made by Mr. Piering to holdover the application of **WHBH Real Estate, LLC., 7 Beach Lane (905-11-3-10)** to October 21, 2021; second by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

5. Jamandaly LLC, 33 Beach Lane (905-011-03-019) Applicant requests variances from §197-6 D for proposed side yard setbacks of 11.8 & 14 feet where the minimum required is 30 feet, and also from §197-6 D for a proposed combined side yard setback of 25.8 feet where the minimum required is 70 feet.

Heather A. Wright, Esq., appeared on behalf of the application. She submitted revised surveys. We took back the Boards comments from their last meeting, and I think we did what you suggested what would be acceptable. We increased the Northerly and Southerly setback to 19.2' and 16.8' and that reduces the setbacks in proportion to the width of the house compared to what's required under the Code. 150' is required and we only have 88' and we reduced the setbacks to correspond to that deficiency and we're moving farther from the neighbor and there is space between the two and we're maintaining the north south orientation, consistent with other homes and the lots at 13 and 15 B each Lane have similar setbacks and correspond to this. So, I'm hoping this is what the Board is looking for and I understand the neighbors retained Mr. Haefeli and I will answer any questions there are.

Mr. Piering said I don't have any questions right now; I am just looking at the survey tonight. What is the total side yard setback?

Ms. Wright said together, it is 36 and change.

Mr. Piering asked if there were any questions.

Richard T. Haefeli, Esq., appeared in opposition to the application, and the neighbor to the North and I would like to put this over because I think there's an issue as to whether it's a valid small lot and valid preexisting non-conforming and if I'm correct they have to request variances from lot area and width; and there was a single and separate submitted and that went back to 1970 and the Code came to being in 1953 and based on that for these two lots that was in the file for 37 Beach Lane it appears that the lot in question was part of another lot in 1961 when it was transferred to Bossung and the code states that on small lots it doesn't apply if it has lots separate from all and I believe it's not separate and I believe there's a lot to the West it was part of. And there was one deed which contained two lots, and I only got the deeds today so I haven't had time to present that part of the application. The Code states to have a small lot, it has to have been in existence prior to 1953 and cannot be part of any lot, and last month you adopted a single and separate provision which requires them to be separate from all adjacent lots and I believe in 1953 when the Code was created and in 1961 when it was transferred out it was part of the lot to the West and then this lot was transferred to other people and came to where it is now.

Mr. Pasca asked what you're asking, the Building Inspector makes the initial determination and this Board only reviews what's presented to it based on an appeal or the variances sought. This board can't reach out and look at other issues, isn't your relief directed to the building inspector to rethink his decision.

Mr. Haefeli said if it's an invalid lot, then the application should be for lot width and lot area.

Mr. Pasca said you can't make that argument to this Board and you have to challenge the building inspector's determination, and they don't create issues that haven't appealed to the board.

Mr. Haefeli asked how you make a determination to the side yard setback when you have to grant other variances.

Mr. Pasca said that's an argument to make to the building inspector.

Mr. Haefeli said it can't be limited, it's an invalid lot.

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Mr. Pasca said we disagree, the Boards jurisdiction is limited by the appeal it doesn't reach out and decide whatever issues.

Mr. Haefeli said I want to hold it over.

Mr. Piering asked what we do, if we go forward and we grant or deny this application; what happens with this argument?

Mr. Pasca said my opinion this is made to the building inspector, if he disagrees, he may have an appeal right back to the Board, and the application is based on a decision that Brad made and the applicant appealed and sought a variance to that determination, and your jurisdiction is appellate only and based on the jurisdiction. No appeal was filed from that portion of the order.

Mr. Haefeli said what was submitted to the building inspector was incomplete. How do you know until they are notified?

Mr. Pasca said it's been on the Board for two months.

Mr. Haefeli said I got involved in the last three weeks by the neighbors and I want to present why it can't be granted; you can't tell me I can't put it over and I'm presenting something to you which you say I can't present. I want to hold it over to present a case with reference to the two variances being requested.

Mr. Piering said this Board has granted hold overs to neighbors when they've raised issues, from that aspect I would think asking to hold it over is not unreasonable. We are a Village and we have done this in the past where people have asked for a holdover and we've honored it and I understand you just got involved, and we don't appreciate that and it was held over last month and now you want to hold it over again.

Ms. Musnicki thanked Ms. Wright for revising the survey and the plan, however the math how do you get to, 40% deficiency and I agree with that; how do you get a combined side yard of 35' or 36' when I see 42'.

Ms. Wright said the 40% was applied to each individual side yard; but it's on each individual not the total.

Mr. Musnicki said the combined is a benefit rather than the individual.

Ms. Wright said it's 18' and we're at 19' on one side, and 16.8' on the other side.

Mr. Wittschen said it's 36.5'.

Mr. Musnicki said okay.

Ms. Wright said okay. To address Mr. Haefeli's point, I understand that it's policy to hold applications over for neighbors, the point is for issues relating to the relief requested and we're appealing a decision of the Building Inspector and that was for the proposed plan that exceeds the side and total side yard setback and a new issue that's not before the Board and Building Inspector and I find it inappropriate and it has been on for two months, and we held it over to revise the plans and they were present at the first hearing and aware of the boards comments and issues and I have a problem holding it over another month and I'm not sure you have the authority to address this issue right now.

Mr. Piering said we may not have the authority to address the issue, but we could decide to hold it over. He asked Mr. Hammond to comment about this issue.

Mr. Hammond said when I looked at the history and aerials and CO' records and there were two and one for the subject lot and one to the South and the lot to the North we've heard from the neighbors which was well over sized and conforming. And there was a house until 1982 and in the 1970's there were houses and that was good enough for the single and separate and I can't attest because I did not do the title history and I just relied on the Building Department records

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with two separate house and in 1982 and 1983 it's been in single and separate to the 1970's which I thought was okay.

Mr. Piering thanked Mr. Hammond.

Mr. Haefeli said he made a statement that in 1982 there were lots and houses and I would like to see those setbacks and would that help guide this Board. If there was a house in 1982, would you want to know that so you make a decision based on what was there, I would like to review the files and return on the issue.

Mr. Pasca said a jurisdictional issue, if the Building Inspector makes a determination but the basis of his decision was never challenged by anyone other than the applicant, there is a 60-day time period to challenge a decision and these neighbors have been aware for well over 60 days because they did get noticed and if they wanted to challenge the decision their time is up. It was never jurisdictionally presented and it's too late to bring the arguments up. Asking Mr. Hammond to explain himself is one thing, but to question the validity of his decision is another,

Mr. Haefeli said I want to bring up whether they are proper variances or not. Can't I raise that issue as the objectant, the variances should be less.

Mr. Piering said that's for us to decide.

Mr. Haefeli asked if I can introduce information to this Board that should not grant these variances, and I don't agree with the Board's attorney and to put it over to review whether they are adequate and I think it's reasonable to hold it over for another month.

Mr. Piering said I don't see what a house in 1982 is pertinent to this application.

Mr. Haefeli said I can't say they should only be 5' because of, I want that opportunity to do that.

Mr. Piering asked why he can't do it right now.

Mr. Haefeli said I want to review the files, he indicated that there were preexisting CO based on a survey, should you look at the setbacks on that to make a determination to see if they are greater than 1962.

Mr. Piering said we don't need to do that; we're going to take the application on face of this application.

Mr. Haefeli said there was a house in 1962 and they had setbacks, and the CO was issued in 1984.

Mr. Hammond said preexisting CO said there was an application that it preexisted zoning, prior to 1953 and neither would have variances because they preexisted the Code and it's been vacant since 1982 and 1984 there's no record but it disappears.

Mr. Piering said we're going to make a decision based on what is there today.

Mr. Haefeli said the code in 1982 is the same as it is today; 1966 it was rezoned to 1 acre.

Mr. Piering said if its demolished, which happens often and they come for new variances and new relief and that's the same as what's happening.

Mr. Haefeli asked if the Board wanted to consider the setbacks in 1984.

Mr. Piering said we have to consider what's there now.

Mr. Haefeli said I'm asking to present that to you in a month.

Ms. Wright said two points, this is purely a tactic to push it over for a month; I got a letter by regular mail that you were retained on September 10, 2021 and the Village contacted me a few days prior to let me know you were retained. At the last meeting, it was by Zoom and they were

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aware of the Board's concerns and their suggestion and to say this is the first time we're hearing about it and need another month, it's a delay. I ask you to close the hearing and issue a determination.

Mr. Piering asked if there were any other questions or comments. He said he is inclined to hold it over.

Mr. Musnicki said he is too.

Mr. Wittschen said he is too.

Motion was made by Mr. Piering to holdover the application of **Jamandaly, LLC., 33 Beach Lane (905-16-2-9)** to October 21, 2021; seconded by Mr. Musnicki and unanimously carried 4 ayes, 1 nay, 0 absent.

6. Warren & Linda Friedman, 511 Dune Road (905-016-02-009) Applicant requests variances from §197-8 D to reconstruct a fire-damaged dwelling with a proposed front yard setback of 50.3 feet where the minimum required is 75 feet, and also from §197-8 D for proposed side yard setbacks of 11.8 & 11.3 feet where the minimum required is 20 feet, with a proposed combined side yard setback of 23.1 feet where the minimum required is 50 feet, from §197-35 C for a proposed accessory deck setback of 11.8 feet where the minimum required is 20 feet and also from §197-35 C for a proposed accessory pool setback of 11.3 feet where the minimum required is 20 feet.

The application for **Warren & Linda Friedman, 511 Dune Road 905-016-02-009** was re-advertised and the minutes for the same are incorporated into the new public notice. The transcript of the meeting is printed in the minutes under application number eight (8) on the agenda.

7. WHB Development Partners LLC, 107 Old Riverhead Road (905-002-01-019.05) Applicant requests variances from §197-1 to construct a proposed automotive service station accessory convenience store building of 4,872 square feet in gross floor area where the maximum permitted is 3,000 square feet, and from §197-17.1 for a proposed rear yard setback of 30 feet where the minimum required is 50 feet.

No one appeared on behalf of the application. James N. Hulme, Esq., submitted a request to hold the application over to October 21, 2021.

Motion was made by Mr. Piering to holdover the application of **WHB Development Partners, LLC., 107 Old Riverhead Road (905-2-1-19.5)** to October 21, 2021; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

HOLDOVER/ RE ADVERTISEMENT:

8. Warren & Linda Friedman, 511 Dune Road (905-016-02-009) Applicant requests variances from §74-5 C(2) to construct a nonmovable building within the structural hazard area where prohibited, from §197-8 D to reconstruct a fire-damaged dwelling with a proposed front yard setback of 50.3 feet where the minimum required is 75 feet, and also from §197-8 D for proposed side yard setbacks of 11.8 & 11.3 feet where the minimum required is 20 feet, with a proposed combined side yard setback of 23.1 feet where the minimum required is 50 feet, from §197-35 C for a proposed accessory deck setback of 11.8 feet where the minimum required is 20 feet and also from §197-35 C for a proposed accessory pool setback of 11.3 feet where the minimum required is 20 feet.

Nicholas A. Vero, Architect appeared on behalf of the application. He has nothing new to add and he submitted revised surveys showing the Coastal Erosion Hazard Line and flagged the top of the dune.

Mr. Piering said this was held over to readvertise the Coastal Erosion Hazard Line and I don't have anything else to add.

Mr. Pasca said depending on what you want to do, we failed to advertise it properly we don't have a written decision but I know they need to get to the Board of Health and to do so they need

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a decision from this Board while you normally don't do a decision in advance of a written determination this may be the appropriate moment for an oral decision subject to a written decision to set for the conditions and it's up to this Board and its unique enough if you wanted to do that it won't set a precedent.

Mr. Vero said he's in the Board of Health and they need a written decision from the Board to release the next step and I can't go to the ARB without this Boards permission, so if we can get a few steps going by the time I'm at those points you'd have a written decision and I know you're being asked on the spot to approve something.

Mr. Piering said we understand that and I'd like to make a motion that we approve this variance, subject to a written determination.

Mr. Pasca said it's to approve the variances to direct me to write a resolution to provide a letter of approval to take to the Board of Health.

Motion was made by Mr. Piering to close the application of **Warren & Linda Friedman, 511 Dune Road (905-16-2-9)** for a determination; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

Motion was made by Mr. Piering to close the hearing at **5:58 p.m.**; seconded by Ms. Cea and unanimously carried 5 ayes, 0 nays, 0 absent.