

December 16, 2021

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, December 16, 2021, at 5:00 p.m. in the Municipal Building, located at 165 Mill Road, Westhampton Beach, New York.

PRESENT: Gerard Piering, Chairman
Joe Musnicki
John Wittschen
Jim Badzik

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

Maeghan Mackie, Building Permits Examiner / Board Secretary

ABSENT: Ellen Cea

Motion was made by Mr. Piering to adopt the minutes of the **November 18, 2021**, meeting as written; seconded by and unanimously carried 4 ayes, 0 nays, 1 absent.

DECISIONS:

1. Carriage Hill Developers Inc, 15 Adam Lane (905-003-02-001.01) Applicant requests variance from Village Law §7-736(2) to construct a dwelling upon a parcel that does not have direct access to an existing or officially mapped state, county, town or village highway where required for the issuance of a building permit.

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

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In the Matter of Application of

Carriage Hill Developers, Inc.

DETERMINATION

Address: 15 Adam Lane

SCTM #: 905-3-2-1

-----X

I. REQUEST FOR RELIEF

The applicant, Carriage Hill Developers, Inc., is the owner of a parcel of real property located at 15 Adam Lane. The property is located wholly within the MF-20 Zoning District. According to the survey of the property drawn by Donald L. Malm, Jr., dated September 15, 2021, the parcel is vacant land.

Section 7-736(2) of the Village Law provides that, in the MF-20 Zoning District, no permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the official map or plan, or if there be no official map or plan, unless such street or highway.

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The applicant seeks to construct a dwelling upon a parcel that does not have direct access to an existing or officially mapped State, County, Town or Village highway where required for the issuance of a building permit.

By letter from the Building and Zoning Administrator dated September 27, 2021, the proposed building permit was denied due to a lack of direct access to an existing or mapped highway, i.e., “erection of buildings on a ‘land locked’ parcel is specifically prohibited under Section 7-736(2) of the Village Law.

Therefore, the applicants filed an appeal seeking either an exception or area variance as authorized under Sections 7-736(3) of the Village Law.

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 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 November 18, 2021. The applicant’s attorney Frank A. Isler, Esq., 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 November 18, 2021, meeting for a determination at the December 16, 2021 meeting.

III. GOVERNING LAW

This application is governed by Section 7-736 of the N.Y. Village Law. Where an applicant cannot meet the direct access requirement of Section 7-736(2), an applicant is authorized by Section 7-736(3) to appeal from the denial of the permit to the Zoning Board for (a) an exception if the circumstances of the case do not require the structure to be related to existing or proposed streets or highways, and/or (b) an area variance pursuant to Village Law section 7-712-b, applying the same provisions as applied to appeals involving zoning regulations. In passing on any such application, the Zoning Board may make any reasonable

exception and issue the permit subject to conditions that will protect any future street or highway layout.

Although Section 7-736(3) allows alternative relief via either an “exception” or “area variance,” the relief of exception appears to be inapplicable to this application because a single family residence clearly is a type of structure that must be related to existing or proposed streets or highways, as confirmed by the Fire Code of the State of New York. The Board will therefore review the application as one seeking an area variance.

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 Board finds that the applicant has demonstrated that the benefit to the applicant outweighs the detriment, if any, to the community resulting from a lack of direct frontage on a street. In this case, the applicant’s property, though technically landlocked, claims to be benefited by a recorded easement across the adjacent property, in order to provide suitable access to Adams Lane/Bridal Path. The span of the easement is minimal, as the subject property is only separated from the road by an area that is between 25 feet and 35 feet long. The easement area is sufficiently wide (approximately 35-40 feet) to accommodate a driveway that is proposed to be 18 feet in width. The driveway appears to satisfy all fire code requirements for access to a single-family residence. And the proposed house and parcel otherwise conform in all respect to the zoning code and do not require any

zoning variances. In contrast to the lack of any apparent detriments to the community, a denial of the application would effectively sterilize an otherwise lawful and conforming building lot, causing a substantial detriment to the applicant. Nonetheless, in order to ensure that the driveway/easement provides the functional equivalent of direct access to the road, (1) no construction shall be allowed to begin on the house and accessory structures until a suitable base surface has been installed on the driveway easement area, sufficient to support construction equipment, as determined by the building inspector, and (2) no certificate of occupancy will be authorized until the finished driveway within the easement area is completed to the satisfaction of the building inspector.

2. *Alternatives:* The applicant has demonstrated that there are no practical alternatives to the granting of a variance in this case.

3. *Substantiality:* The variance is substantial to the extent that the property does not have any direct access onto the street, but that substantiality is mitigated by the easement that, although not the same as fee title, provides a lawful equivalent form of access onto the street.

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 variance to construct a dwelling upon a parcel that does not have direct access to an existing or officially mapped highway, as shown on the survey drawn by Donald L. Malm, Jr., dated September 15, 2021, subject to the following conditions to minimize any adverse impacts from the variance:

V. CONDITIONS

1. No construction shall be allowed to begin on the house and accessory structures until a suitable base surface has been installed on the driveway easement, sufficient to support construction equipment, as determined by the building inspector.

2. No certificate of occupancy will be authorized until the finished driveway is completed within the easement area to the satisfaction of the building inspector.

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3. The variances granted herein shall terminate unless a building permit is issued within one year from the date hereof.

Dated: December 16, 2021

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Carriage Hill Developers, Inc., 15 Adam Lane (905-3-2-1.1)** as written; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 1 absent.

2. Brad & Jane Saltzman, 519 Dune Road (905-016-02-005) Applicant requests variances from §197-35 C to legalize a pool with a side yard setback of 18.6 feet where the minimum required is 20 feet and with a setback to the crest of the dune of 17.2 feet where the minimum required is 75 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

Brad Saltzman
Jane Saltzman

DETERMINATION

Address: 519 Dune Road
SCTM #: 905-16-2-5

-----X

VI. REQUEST FOR RELIEF

The applicants, Brad Saltzman and Jane Saltzman, is the owner of a parcel of real property located at 519 Dune Road. The property is located wholly within the R-3 Zoning District. According to the existing conditions survey of the property drawn by Nathan Taft Corwin, III Land Surveyor, dated September 20, 2010, and last revised on October 19, 2021, the parcel is improved by a two-story frame residence on piles, with garage under the house, and an attached wood deck and endless spa.

Section 197-35.C. of the Village Code provides that, in the R-3 Zoning District, accessory buildings, structures tennis courts and swimming pools cannot be located closer than 20 feet to any lot or boundary line, and on lots lying on the South side of Dune Road in the Residence 3 District, the distance shall be 75 feet from the crest of the dune and 20 feet from a side or front boundary line.

The applicant seeks variances from the above section to legalize an in-deck pool built without a permit, having a side yard setback of 18.6 feet where the minimum required is 20 feet and with a setback to the crest of the dune of 17.2 feet where the minimum required is 75 feet.

The applicant also proposed to condition the variance on the removal of a section of the deck that was built without a permit, as shown on the Corwin survey.

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 variances for an accessory residential structure, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(12) and (16). 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 November 18, 2021. The applicant's attorney, Keith H. Archer, Esq., appeared on behalf of the application. The hearing was closed for a determination at the December 16, 2021 meeting.

IV. GOVERNING LAW

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

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

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

8. *Character of the Neighborhood:* The applicants have demonstrated that the granting of the variances will not have a material adverse impact on the character of the

community. The in-deck pool is small and shallow enough that it will not require any excavation into the dune. It is not of sufficient size to create a separate area for entertainment, and it will not decrease the setback compared to the deck that is pre-existing. While the Board does not look favorably on applications for retroactive approval of illegally-built structures, the applicants have acknowledged the error and also confirmed that they will remove the portion of the deck constructed without a permit. If this request had been made prior to construction, the Board would have found that the small pool addition would not adversely impact the community. Thus, the Board finds no reason to arrive at a different decision solely because the applicants did not seek permission in advance of construction.

9. *Alternatives:* The applicants have no feasible alternatives to achieve the benefits sought without the requested variances.

10. *Substantiality:* The dune crest setback is substantial, though the Board notes that it is within the pre-existing nonconforming deck setback.

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 benefits to the applicant outweigh the detriment, if any, to the community.

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

The Zoning Board therefore grants the requested area variances from Sections 197-35.C of the Village Code to legalize a pool with a side yard setback of 18.6 feet where the minimum required is 20 feet and with a setback to the crest of the dune of 17.2 feet where the minimum required is 75 feet, as shown on the survey drawn by Nathan Taft Corwin, III Land Surveyor dated September 20, 2010, last revised on October 19, 2021 (“Final Plans”), subject to the following Conditions:

VI. 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),

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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. No certificate of occupancy may be issued until the portion of the deck constructed without a permit is removed.

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

5. The 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: December 16, 2021

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Brad & Jane Saltzman, 519 Dune Road (905-16-2-5)** as written; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.

HOLDOVERS:

3. 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 Cory Gluckstal.

Mr. Piering said they received their recent submission, and Mr. Hulme said it was the last issue the Board wanted addressed and as they know the comparison before and after with the restaurant eliminated it is 80 square feet that they are over, and the purpose of the chart was to show the kinds of improvements that needed to be made to the site due to increased regulation and there are different categories and the total is 932 square feet which is larger than the 8-square feet; what that consists of 249 square feet of elevator and mechanical shafts up the three floors, egress on the outside which totals an RPZ and Sprinkler room which is 68 square feet and ADA compliant bathroom on the first floor which is 117 square feet. If you back them out of the numbers that puts them below where the existing is. So we want to provide that information, and I needed to do and put it on the record is that we have indicated that the restaurant use was going to be limited to hotel guests and the bar will not be open publicly; the bar area and restaurant will be limited to hotel guests only and that being the case the parking is adequate and there should not be excess traffic to use the restaurant and bar. That was always

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the case, but I did not understand that so I want the record to be clear and reflect that the uses are limited to the hotel guests only.

Mr. Piering said there were neighbors concerned about this, and about balconies on the house on their property have you talked to them?

Mr. Hulme said his client has attempted to talk to the Southerly neighbors, and they stopped attending the meetings because it's been worked out. And I think Mr. and Mrs. Davis are in attendance and they may have comments.

Mr. Musnicki said I didn't notice any Northerly side balconies, are they only on the West side.

Mr. Hulme said yes, there are no balconies looking over the Northern neighbor.

Mr. Piering said okay, that could be a detriment but it's not the case.

Cory Gluckstal said the accurate count is two decks on the ground floor and one on the top floor, there is three in total and they face the West, there are no decks on the North.

Mr. Musnicki thanked Mr. Gluckstal.

Mr. Piering said he had nothing else to ask or add. They'd like to open it up to the public for comments or questions.

Eileen Streim 12 Library Avenue said as far as the occupancy limit, what will it be with the design changes as opposed to what it was before, if its fully occupied how many people will be there?

Mr. Piering said there are 16 units, and they will have the architect address that question.

Frank BLD Architecture, the rooms were reduced from what was previously there, as far as full occupancy I would have to calculate that.

Mr. Hulme said the proposed units is 16 and if you give me a minute, the existing rooms available are 26; so we're reducing to 16 units.

Mr. Musnicki asked that what it means for occupants.

Mr. Hulme said there is one suite on the top floor which is two bedrooms, and that's one of the 16 units.

Frank BLD Architecture said it's one two bedroom and the rest are single.

Mr. Musnicki asked if it's fair to say it's 36 people.

Mr. Gluckstal said it will be 34 people.

Mr. Pasca said the chart said 22, but you said 26 existing. And now there are 16 proposed units, correct?

Mr. Hulme said yes.

Mr. Piering asked Mrs. Streim if that answered her question?

Mrs. Streim said yes.

Guy Davis and Cindy Davis 1 Beach Lane, Westhampton Beach. Mr. Davis said they are happy to hear the restaurant won't be open for public, and they were concerned about the impact to the neighborhood and the traffic, and they are happy to hear the bar will not be either. In the HC the maximum square footage is 6,000 square feet and we're confused how the non conforming inn and single family residence can get a combined 10,000 square feet and we're concerned about size and fire hazard between our home and the Inn and there are dumpsters and grease traps

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below our bedroom and we don't see how fire trucks will access the building and the size and impact. Mrs. Davis said you're allowing them to bring it up to Code and there's still room to bring it to Code without adding a restaurant and a bar, and you can do the renovations to Code without those there's no compelling need to add a restaurant and a bar.

Mr. Davis said they are concerned about the intensity and the traffic and the parking.

Mr. Piering said the fire issues, the dumpsters those things will be addressed with the planning board.

Mr. Davis thanked the Board.

Mr. Hulme said they took one of his comments, a number of the issues are PB issues and we have gone through the Code and we described whether we meet them and whether we're entitled to a special permit and we'd like to get moving on with the PB but the PB would like this Board to render a determination first, and I'd like to close the hearing

Mr. Piering said they'd like to close the hearing, if there's nothing else to add. We have plenty of input from the neighbors and we're ready to render a determination.

There were no other questions or comments.

Motion was made by Mr. Piering to hold over the application of

4. 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. Mr. Piering said they have everything on record and they are very familiar with the application, with both your presentation and Mr. Haefeli's and I don't think you need to rehash it, unless there's anything you wish to add.

Ms. Wright said we did hear the Boards comments and we revised our plan to increase the North side yard setback to 21.2' and to the South is 16.8' which is what we discussed last time, and I couldn't get a survey done for tonight but I could submit it next week if you'd like. They increased the setback after hearing the neighbors concerned, and they would hope this will help with the privacy concerns.

Mr. Piering asked if there is anything else to add?

Ms. Wright said no, if the records clear they'd like to just close the decision.

Mr. Pasca said it would be subject to the receipt of the revised survey.

Mr. Haefeli said he has nothing else to add, just to emphasize there was a house with a 28' side yard setback. And whatever variance they grant the car will be in the back and he'd just like them to implent screening along the driveway.

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

5. 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.

James N. Hulme, Esq., appeared on behalf of the application. They are still before the PB and they are making progress on the orientations and they are discussing some of the architectural

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features of the projects so they need to hold this over until they work with the PB a little more as it may affect the size of the building.

Mr. Musnicki asked if they are aiming at the building size?

Mr. Hulme said it relates to the style of the building, but what it means for the occupant is that one style is a larger building so depending on what conclusions we reach with the PB that will determine the size of the building for the site and will affect both variances we are seeking.

Mr. Piering asked if you are stuck between two Boards?

Mr. Hulme said no we are actively working with the PB and they are waiting on us.

6. Egret Dune Corporation, 95 Dune Road (905-021-04-002) Applicant requests variances from §197-8 D for proposed side yard setbacks of 6 & 10 feet where the minimum required is 20 feet with a proposed combined side yard setback of 16 feet where the minimum required is 50 feet, from §197-35 C for proposed accessory deck with setbacks of 6 & 10 feet where the minimum required is 20 feet, and also from §197-35 C for proposed accessory pool with setbacks of 10 feet where the minimum required is 20 feet.

Hugh Merle, Esq., appeared on behalf of the application together with Marc Sheiffert Engineer. Mr. Merle said this is our first presentation, and subsequent to filing the application they have retained an engineer and made modifications to the plans so I will turn the presentation over to Marc Sheiffert. Mr. Sheiffert said he took the application over from Nicholas A Vero and the parcel, everyone is familiar with it's 35' wide just East of Rogers Beach and it's initially created in the 1920's after reviewing the deeds and we're reviewing them still and it was created and has since never been touched and Carrie Coakley acquired the parcel a few years ago and we'd like to construct a home on it. The parcel is 35' wide and it meets the lot size of 20,000 square feet and we have to do something about the side yards. It is impossible to meet the requirements with this width, so we're proposing a long house that's two stories with 10' side yard on the East and 6' on the West side which is the Rogers Beach parking lot. The house will be 19' wide and 18' on the inside which is the minimum feasible and it will be a unique design and building that is narrow but we're proposing 5 bedrooms on the second floor with a terrace on Dune Road.

Mr. Pasca asked if these were submitted?

Mr. Sheiffert said no, the previous plans had 10' on either side and we found it was not feasible to have a residence only 15' wide.

Mr. Pasca said we have not seen these plans yet.

Mr. Sheiffert said this is an initially presentation.

Mr. Pasca said the plans have to be reviewed, and the relief has to be determined on how its changing and you can't show up with new plans and ask the Board to review it.

Mr. Sheiffert said we did bring the plans to the building department and we talked to Mr. Hammond who thought I should make a presentation first, and we had them to bring to the Board over a week ago but the Building Inspector suggested we make this presentation.

Mr. Piering asked if he's familiar with the previous variance that we had in the R4 Zoning District in this Village with a 40' wide parcel that they wanted to construct a two story home at 8 Mickies Way. I have mentioned it before.

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Mr. Sheiffert said yes, we looked at it and it's different. On Mickie's Way you determined it was not buildable and this has been in existence since the 1920's.

Mr. Pierign said that parcel on Mickie's Way the Village donated it to the applicant and they wanted to over build it and the Board did not like that and they decided it wasn't worth it and they denied the variance. You have a 35' wide property and you want to construct a two story 5 bedroom house, I would suggest you pay close attention to what we've done in the past, because this two story house is a big ask in an area where you need a 75' wide parcel to build on. Since you're doing an initial presentation I don't want to blind side you in January.

Mr. Sheiffert said this is a property that's been around.

Mr. Piering said we're not arguing it tonight, to ask for a two story house on a 35' parcel it's a huge reach.

Mr. Sheiffert said so was the Eiffel Tower.

Mr. Piering said this isn't Paris. This property, have we determined the history of it the property across the street was sold and this was a through way to the beach, when did it become a buildable lot.

Mr. Sheiffert said that's a good question, and I took in to consideration all of your comments about the buildability of the lot and we reviewed the deeds all the way to 1920 and we're working with NY Title but so far everything we've looked at, there's nothing that shows that it would not be a buildable lot. We don't see anything that would prevent, it was associated with the parcel across the street and it was separated.

Mr. Pasca said the Zoning Code says it's not buildable, you can't build on this lot without variances. You can't start that this is as of right buildable, because you're seeing variances. Part of your job is to demonstrate the hardship and the last few iterations, one consideration is to demonstrate the expectation of this lot, so saying it in the negative that there's no proof is not the same thing as demonstrating that your client purchased it that it was a buildable lot when it was connected to the property across the street and that's all we've seen, it was connected to the property across the street and it is 35' and has the appearance of being an access street. It is part of your challenge to demonstrate that it was a buildable lot.

Mr. Merle said on September 22 a title company said it was single and separate.

Mr. Pasca said it is different, it's not intended to be a buildable lot and I won't do the research for you and I told you that in the first application and make the demonstration, it's not for me to do that research.

Mr. Sheiffert we have heard that and we've proceeded in that direction and because of COVID real property is backed up but we will have it for the next meeting. We want to work with the Board to find something that will be of substance.

Mr. Piering said we have a lot to discuss, but you have to submit the plans to this office.

Mr. Sheiffert said okay.

Mr. Musnicki said once you establish that it is a buildable lot, rather than spin your wheels you should look at this as a substantial ask, it's substantial. There are other means of building on this lot rather than a two story five bedroom house; character of the neighborhood and if it is constructed; is it self created, yes it is if you're talking about this structure. I'm sensitive to property rights and it's true it's buildable and we can discuss it, but with five bedroom two story house it will be tough.

Mr. Sheiffert said we want to create and we don't want to have a one bedroom house, we want to construct something in character with the community. We're close to NYC where lots are 25' and there are new buildings in NYC that are thin towers.

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Mr. Piering said we appreciate that in NYC this is so far out of the norm for this Village. You have a lot of work to do, it's a big ask. I would strongly urge you to look at the past history of this Board and a decision that the Village donated the land to in a smaller community district.

Mr. Sheffert said he read the minutes, and it was different.

Mr. Piering said this is a bigger variance and a bigger reach. We would like to just hold it over until you bring us the plans.

Mr. Musnicki said please make sure we have the materials.

Mr. Piering said you have to submit it 10 days before the hearing.

Mr. Sheffert said okay. They will submit it tomorrow.

Motion was made by Mr. Piering to holdover the application

7. Hampton Jewish Cultural Center, 13/15 Brook Road & 161 Sunset Avenue (905-012-01-039, -040, & -043.01) Applicant requests variance from §197-16.4 D for a proposed main parish house building of 3,959 square feet in gross floor area where the maximum permitted is 3,000 square feet with special exceptions prescribed per §190-80.2.

Hermon J. Bishop, Esq., appeared on behalf of the application, together with Frank Lombardo, Architect.

Mr. Piering said they read Mr. Bishop's submission so he can summarize things.

Mr. Bishop said they have three parcels owned by his client they want to combine them to one lot 39,926 square feet they will demolish the derelict buildings there, and they form the corner lot on Sunset Avenue and Brook Road and they are proposing a two story building with a residential apartment on each floor with three bedrooms each and his architect is here to answer any questions. The first variance is the NYS Law with respect to religious uses and the second is the balancing test which supports our position. The third is the religious land use and it is a Federal Law that says no land use regulation can impose a substantial burden on a religious use without a government interest and we have no compelling governmental interest that would support a determination that a variance shouldn't be granted.

Mr. Munsicki asked Mr. Bishop to go over the balancing test.

Mr. Bishop said the test requires the Board to take into consideration the benefit to the applicant against the health, safety and welfare of the neighborhood and as I discussed, they provide for the public welfare and moral value in the community and it's difficult because of that to use a regulation that would limit a religious use or building used for that purpose. There are five elements that must be addressed, whether there's an undesirable change produced and that's the heart of the variance and we should look at the character of the area to make it binding and in the narrative I went through the surrounding buildings, and all of them are either two or three times the size of our building, or they may be smaller but they are on tiny lots. We're asking for 3,959.12 square foot building on a 39,926 square foot parcel of land so it's more than meet the standard. Whether the benefit can be achieved by another method there is none. There are two provisions of law in the HC District, 197-16.4 which does not allow structures greater than 3,000 square feet. It is not substantial variance, it's a 24% variance and I know this Board, and for non religious uses they have had no difficulty granting a 20% or greater variance, and we're only seeking 24%. There have been decisions I've read.

Mr. Piering said your position is that we've granted bigger variances for non religious uses.

Mr. Bishop said yes. I don't have any specific properties and I was looking at the agenda, and the applicant is looking for a 9,000 square foot building where 6,000 is permitted. We've reduced the size of the building as much as we can, it was 4,200 square foot building originally and we've reduced it 3,959 square feet and we can't reduce it anymore and the Architect can discuss

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that if needed, without it being used for its intended purpose. Whether there's an adverse impact, you have read the EAF this is an Unlisted Action and it's clear there's no environmental issues. Whether it's self created, well every variance is self created in that we don't comply with the Code so they're seeking relief, so yes it is in that respect but we feel it's not because when the HC provisions were passed they did not account religious uses and the impact it may have on them. Even single family residences do not have to go through the owner's SE provisions,

Mr. Piering asked if there were any other questions or comments. He said it will be great to clean the corner up.

Mr. Bishop said they are before the Planning Board as well.

Mr. Pasca said we will have to do SEQRA with the resolution, it's not coordinated but there's no reason you can't issue a SEQRA determination at the same time but we will incorporate the EAF from PB into the ZBA file, is that okay Mr. Bishop?

Mr. Bishop said yes, that's fine

8. George Vickers Jr, 25 & 27 Hazelwood Ave, Westhampton Beach (905-004-02-020 & -019) Applicant requests variances from §197-9 B for a proposed lot line modification that would result in two lots of 13,304 & 13,593 square feet where the minimum required lot area is 15,000 square feet.

Heather A. Wright, Esq., appeared on behalf of the application. The applicant owns two tax lots, and were purchased 2005 and in the R4 Zoning District and the existing lot 19 is 19,773 square feet, and Lot 20 is 7,124 square feet and is non conforming. We are proposing to reconfigure the lots to create two that are 13,304 and 13,593 square feet and obviously they will be under the required 15,000 square feet. If we want to go through the five part test and weigh the benefit we can talk about the lot sizes and the character of the neighborhood and it's the heart of a variance, this will not have an undesirable impact I would argue the two lots is in keeping with the character of the neighborhood. Any of them will have to comply with the R4 Zoning DStandards and there's no other feasible method other than by way of variance, and we're aware of the Code change that took place in July which is the merger requirement and our intention is to merge the lots and make two similar size lots. There won't be an environmental impact, there are two lots and it will now be one.-

Mr. Piering said I look at it and one is oversized and one is smaller, but they're both buildable and it seems like it makes no sense to build a narrow house. I think it makes a lot of sense to me, the one thing I would like to say, it's 92 feet wide and we need 75' but I would caution the applicant if this is granted, and its la logical grant we won't look favorably on an applicant looking for relief on the construction, for a swimming pool or garage.

Ms. Wright said yes, that's okay your comments are on the record.

Mr. Piering said there's another variance on Hazelwood and I don't see a feasible way to grant relief on those lots, and the same applies to this.

Ms. Wright said she understands.

Mr. Piering said he knows that it will be done tastefully. He asked if there were any comments or questions.

Mark Coles, 6 Guldi Street and we're not against the development but we think that he should meet the requirement, there's a way to do it and there are two lots to the right owned by LIPA and he could acquire them, has he tried to do that? There are two lots that are owned by LIPA he could buy them and make the lots 15,000 square feet. When it was purchased he knew what he was buying, we don't think the lots being small are character of the neighborhood. I appreciate that you said you wouldn't grant variances.

Mr. Pierings aid I didn't say that, I said we wouldn't look favorably on it.

Mr. Coles said to get the price point for himself there will be a swimming and patios and coverage.

Mr. Piering said Mr. Vickers is well aware of this Village and he will understand our poiint, it's not realistic to say he should buy something else. There are alit of questions, and we're dealing with what's in front of us and I stated, I live on Hazelwood Avenue and I'm in tune with it, and I'm affected by the Character of the Neighborhood as much as you are, and we try to be open to everyone. I personally don't think it's fair for you to say he should buy two lots from LIPA to make it bigger.

Mr. Coles asked if he's made an effort?

Mr. Wittschen said he doesn't need to.

Mr. Piering said that's not for us to discuss.

Mr. Coles said that would be a way to not require a variance.

Mr. Musnicki said that's not before eus.

Mr. Wlittschen said if you think that's a possibility talk to Mr. Vickers.

Mr. Piering said he has an over sized lot, and number 64 is beautiful and large, and he wants to build on the next lot and he'd need relief to build on the small lot and that doesn't benefit the neighborhood.

Mr. Coles said we agree with that. We look head on at this lots.

Mr. Piering said if he overbuilds he has to come to this Board, and we won't look favorably on that. We're granting a variance on a small lot and then we'd be looking for relief for a large house.

Mr. Musnicki said a lot of of streets in this Village are in a transitional state right now, and whatever he builds on these two lots I venture to say it will increase the property values in the neighborhood.

Mr. Coles said we agree with that, and Hazewlwood Avenue is going through that. We'll be back for things in the future and people will buy and rebuild the small houses on Hazelwood Avenua nd when you grant variances people look for precedent. The Lot to the North there's an old house and someone buys the LIPA lots they can combine them and seek relief.

Mr. Piering said we look at everything individually, ther'es no blanket approval it's all factored individually. At 36 Hazelwood they only needed relief for the flag lot, and had he wanted to do that today he wouldn't need a variance it would be able to be done by right now, and I think your concern with that and now they will over build, we won't allow that to happen.

Mr. Coles said okay, we take comfort in what you say.

Mr. Piering said to remember we are neighbors and we all live here, and I live on this block. The variance goes with the land, not ht eowner and whatever we decide is what the decision is.

Mr. Musnicki said keep in mind this, there will be a footprint that has to be worked with for lot coverage, side yards, and rear and front yards and that won't change.

Mr. Coles said we understand that. It is of great concern that they stick to the lot coverage and setbacks.

Mr. Piering asked if there were any other questions or comments.

Ms. Wright said she had nothing to add.

9. Donald & Nancy Steinert, 96 Seafield Lane (905-015-04-021) Applicant requests variance from §197-29.1 A for a proposed sunroom addition within a required side yard setback (19 feet where a minimum of 30 is required) to dwelling with a preexisting nonconforming side yard setback, which represents a prohibited increase in degree of conformity of a nonconforming structure.

Nicholas A. Vero Architect appeared on behalf of the application. They are proposing an addition on the South West side of the house, it's an extension of their dining room and we're proposing the location because it's off of the kitchen as opposed to locating it in the rear of the house which would require an additional variance for the rear yard setback because it's setback 75 and it's one story, with no bathroom or bedroom. Were increasing the entry to the house for a vestibule and on the South side of the house is the location of the cricket lawn, and there's no house next door which would be imposed by a hardship and this is a lot on Seafield Lane that is non conforming and it's setback far enough off of the front yard so we don't need a variance so there's no other location to create the addition. I was before this Board 20 years ago on this lot and we proposed a second story and garage addition which required other variances and the Board denied that application because of the size and complexing of the addition and this is a much better proposal than we proposed 20 years ago and the neighborhood has houses setback and some are non conforming and I've looked at many houses over the years and the most recent was 4 or 6 Seafield Lane on the East side and we asked for a variance for a screened porch and a side yard setback of 20' which was granted and its similar to this request and we proposed this addition on this side for the sun and the sunset and they like to listen and watch the cricket games on the lawn next door.

Mr Piering asked the addition square footage?

Mr. Vero said it is 350 square feet approximately.

Mr. Piering said it's a sunroom but its just a room?

Mr. Vero said it's part of the space, it's part of the house it's not a three season room.

Mr. Musnicki asked what variance was granted on this parcel previously?

Mr. Vero said we did not get a second floor variance we applied for it, but it was not approved.

Mr. Musnicki asked if that was it?

Mr. Vero said yes, that was it and we were denied for a second floor addition.

Mr. Musnicki said okay.

Mr. Badzik asked they are redoing the chimney?

Mr. Vero said yes.

Mr. Badzik asked if it will be stone?

Mr. Vero said yes.

Mr. Piering asked if there were any other questions or comments.

10. Wayne & Lori Steck, 20 Moniebogue Lane (905-011-02-016) Applicant requests variances from §197-17.1 to construct an addition with a proposed front yard setback of 7.4 feet where the minimum required is 20 feet, and also from §197-17.1 to construct an addition with a proposed side yard setback of 9.8 feet where the minimum required is 10 feet, with a proposed combined side yard setback of 19.8 feet where the minimum required is 25 feet.

James N. Hulme, Esq., appeared on behalf of the application, together with Wayne Steck and Jeff Butler, Engineer. As the Chairman indicated this is 20 Moneybogue Lane it is the end of Moneyboug Lane and a right of way in the HC Zoning District which has a little bit of different requirements than th residential zones, one of which is the lot coverage which we are not seeking

relief from. We're seeking to add a garage and a second story and a roof over an existing deck that's in place. The roofed over deck will remain a porch and not being incorporated in to the house and is the porch area but it will have a roof over the top of it and these additions need relief detailed by the notice and as you can see in the aerial photograph submitted with this packet the lot sits at the end of the right of way at the end of MOneybogue Lane and it interacts very little with the adjacent propertyes and the roofed over deck is on the side of the house adjacent to a large rear yard and accessed not from Moneybogue Lane but a road over, and the garage on the front of the house interacts with the rear yard of the house in front of us so I think it will have little impact on the neighborhood and having a garage for storage for cars and the existing deck roofed over will minimize the impacts of the neighborhood. The 9.8 exists for the deck fo the side yard setback so we're not getting closer than we are in actuality on the sside; the garage is pushin the house forward but it needs to be there to be accessible.-

Mr. Piering asked iuf the garageis 7.4' from the road?

Mr. Hulme said yes, he has to park in the garage because he will otherwise be in the road. He's parking outside now.

Mr. Piering asked if they are working on the house now?

Mr. Hulme said yes. And the work is all subject to building permits.

Mr. Piering asked the size of the garage?

Mr. Butler said its part of the existing house its 18' deep and 16.9' wide. It's an oversized single car garage.

Mr. Piering said its very modest; what's the 12.8 x 16.9'.

Mr. Butler said it's the addition to what is there now, and what's required.

Mr. Pierign said we go to the site.

Mr. Hulme said it will extend in and under.

Mr. Plering said the portion is just an addition and will go deeper into the house.

Mr. Butler said it's a storage area that's part of the house, there's a dashed line for a space to be taken down and captured in the garage.

Mr. Plering said okay. Really, the question is can you have a garage or not, without this relief you can't have a garage at this property?

Mr. Hulme said yes.

Mr. Butler said and in the flood zone there's no other storage available for anything.

Mr. Piering said that's all part of the house. He asked if there were any other questions or comments.