

February 17, 2022

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, February 17, 2022, 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
Ellen Cea

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

Maeghan Mackie, Building Permits Examiner / Board Secretary

MINUTES TO BE APPROVED

Motion was made by Mr. Piering to adopt the minutes of the **January 20, 2022** meeting; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

DECISIONS:

1. 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. 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

WHBH Real Estate, LLC.

DETERMINATION

Address: 7 Beach Lane
SCTM #: 905-11-3-10

-----X

I. REQUEST FOR RELIEF

The applicant, WHBH Real Estate, LLC., is the owner of a parcel of real property located at 7 Beach Lane. The property is located wholly within the HC Zoning District. According to the existing conditions survey drawn by Michael W. Minto, L.S. P.C., dated May 20, 2020, the parcel is improved with a three story frame building (Hotel), a pergola over patio, a detached two story frame building and bocce ball court. The facilities constitute a pre-existing nonconforming use.

The applicant seeks to perform a substantial renovation to the facilities. By letter dated November 20, 2020, the Building & Zoning Administrator determined that the original proposal required variances from the following sections of the Village Zoning Code: § 197-16.4.A (parking area located in front yard where prohibited); §197-16.4.D (proposed building 9,330 sf where maximum is 6,000 sf), § 197-17.1 (rear yard setback to cabana 8.3' where 30' required), §197-29.C(2)(c) (extension of area devoted to nonconforming use), and §197-63 (proposed buffer only 5' where 10' required).

The project has evolved over the course of the review process before both the Zoning Board and the Planning Board, each of which has held numerous public hearings at which interested neighbors have actively participated. The applicant has responded to many of the initial concerns raised by neighbors and the Village's Board members and consultants, and the final plans have eliminated or reduced the original nonconformities. The current proposal is reflected on the "Site Development Plans" prepared by R&M Engineering, consisting of sheets SP-1 through SP-11, and EC-1, drawn 5/25/21 and last revised on 1/18/22 (collectively, the "Revised Plans").

Based on the Revised Plans, the only relief requested from the Zoning Board are from the following code provisions:

- §197-16.4 A. – Proposed parking area is partially located in the front yard where it is specifically prohibited. (Most of the parking has been re-located out of the front yard, but relief is still requested for the handicapped spots)
- §197-16.4 D. Proposed building is 9,250 in gross floor area where maximum permitted is 6,000 square feet, with special exception criteria per §197-80.2. (This represents a reduction from the original proposal of 9,330 sf).
- §197-29 C(2)(c) Proposed additions represent an increase and/or extension of area devoted to nonconforming use, which is specifically prohibited (The applicant claims that the de minimis additional floor area, exclusive of the restaurant, is only necessary due to code compliance).
- §197-63 Proposed buffer to the south is 5 feet in width where minimum required is 10'. (The applicant has made accommodations in design to address neighbor concerns, but relief is still required).

II. SEQRA

The applicant submitted an Environmental Assessment Form Part I pursuant to the State Environmental Quality Review Act (SEQRA). The Planning Board acted as lead agency for purposes of coordinated review, which included the Zoning Board. On October 14, 2021, the Planning Board adopted a negative declaration of significance. No further environmental review is necessary.

II. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on February 18, 2021 and remained open for 10 months while the project underwent both Zoning Board and Planning Board review, as well as submission of modified plans and information. During the year-long process, the applicant's, attorney, James N. Hulme, appeared on behalf of the application, together with Corey Gluckstal, WHBH Real Estate Holdings, LLC., and others. Eugene Streim, 12 Library Avenue, and Guy and Cindy Davis, 1 Beach Lane appeared in opposition to the application. The hearing was closed for a determination at the December 16, 2021 meeting.

III. 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.

Because the Inn portion of the project (but not the restaurant) is a nonconforming use, the project is also governed by Section 197-29.C of the Village Code. The Zoning Board is empowered to grant a special permit pursuant to Section 197-29.C of the Village Code to authorize the reconstruction or alteration of a nonconforming use, but "Any enlargement, extension or expansion of a nonconforming use shall be prohibited." A special permit is also subject to several conditions including, as relevant here, that no enlargement, extension or expansion of the nonconforming use is permitted (§ 197-29(C)(1)), the reconstruction may not increase the degree of nonconformity, increase the height or number of stories, or increase the floor area devoted to the nonconforming use (§ 197-29(C)(2)), the applicant shall demonstrate an absence of change in the nature or character of the nonconforming use(s), except for a reduction in the degree of nonconformity (§ 197-29(C)(6)(b)), any change shall be beneficial to the general neighborhood (§ 197-29(C)(6)(d)), and the applicant must demonstrate that any change will not result in or allow an intensification of the nonconforming use (§ 197-29(C)(6)(f)).

IV. FINDINGS AND CONCLUSIONS

With respect to the relief requested under Section 197-29.C of the Village Code, the focus of the Board's inquiry over the course of the application has been on the threshold question whether the proposal was or was not a prohibited extension or expansion of a nonconforming use. The Board required the applicant to present detailed breakdowns of different aspects of the project floor areas. Although the overall project gross floor area is increasing from 8,481 sf to 9,250 sf, the applicant argued that the restaurant portion of the project is a conforming use in the HC district and should not be included in the nonconforming use square footage. While the Board does not believe that it is always appropriate to subdivide different aspects of a use, in this case the restaurant is a distinct use of the property and is a permissible use in the HC District. As a result, the Board agrees that the proper measure is a comparison of the floor area exclusive of the restaurant. Here, the applicant has shown that, exclusive of the restaurant, the gross floor area is 7,514 presently and is proposed to be 7,594. While that does still represent a mathematical "increase" of 80 square feet, the applicant has also demonstrated that code upgrades (for such issues as egress stairs, sprinklers, and ADA toilets) account for 932 square feet of the project's total increase in floor area. The Board has previously found that such increases to allow for modern code compliance is not an expansion of the nonconforming use within the meaning of Section 197-29.C (See, e.g., 10/20/16 Decision for the Sandpiper at Westhampton Beach, Inc., 473 Dune Road, which approved reconstruction with allowances for additional floor area to allow code upgrades). Under the unique circumstances at issue here, the nominal increase in floor area of 80 sf is more than offset by the additional 932 sf required for code compliance.

While the Board finds that no variance is necessary from Section 197-29.C, that does not end the inquiry, because any alteration of a nonconforming use still requires the issuance of a special permit under that section, while taking into account various conditions set forth in that code. With respect to the request for a special permit pursuant to Section 197-29(C) of the Village Code, the Board finds and concludes as follows:

- a. The applicant has demonstrated that the proposal will not result in any enlargement, extension or expansion of the nonconforming use [§ 197-29(C)(1)], or 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)]. While the proposal is certainly a reconfiguration of the pre-existing use, which consisted of separate buildings (a cottage and inn), many of the changes result in beneficial changes for most of the metrics when comparing the pre-existing to the proposed configurations. In addition to the floor analysis discussed above, the beneficial changes include the following:
 - a. The number of buildings is being reduced from two to one.

- b. The total room count is being reduced from 21 rooms (7 in the cottage and 14 in the inn) plus a caretaker's suite to 15 rooms plus a family suite.
 - c. The total side yard setback is increasing from 44.3 to 109.6 feet.
 - d. The rear yard setback is increasing from 22.6 to 108 feet
 - e. The building coverage is decreasing from 9.8% to 7.54%
 - f. Impervious surface coverage is decreasing from 34.27% to 28.85%.
 - g. Most of the present parking is nonconforming because it is located in the front yard, while all but the handicapped spaces in the proposed plan will be outside of the front yard.
- b. The applicant has demonstrated that the reconstruction is being located upon the same part of the lot occupied by the nonconforming use [§ 197-29(C)(3)]. While the reconfiguration is resulting in movement of the buildings and structures, the alterations are generally beneficial ones, as discussed above.
- c. The applicant has demonstrated that the area of one nonconforming use is not being added to the area of another [§ 197-29(C)(4)].
- d. Subject to the Planning Board's primary jurisdiction over the parking plan, the applicant has demonstrated compliance with off-street parking requirements [§ 197-29(C)(6)(a)]. According to the parking analysis, 25 spaces are required for the overall use (including restaurant) and 25 spaces are proposed. This appears to be an improvement over the existing conditions.
- e. The applicant has demonstrated 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)]. The applicant is not proposing any substantive change to the nature of the nonconforming use. Though different amenities will be offered to the guests of the inn, the finds them all to be reasonable accessory uses to the inn.
- f. The applicant has demonstrated compliance, to the maximum extent feasible, with dimensional requirements [§ 197-29(C)(6)(c)]. Although the reconstruction requires some variances (addressed below), the variances are needed only (a) to allow for handicapped parking, (b) to allow a reduction of the buffer, (c) to allow for reconstruction with pre-existing dimensional nonconformities.
- g. The applicant has demonstrated, subject to finalization of the details of the site plan with the Planning Board, that the changes to the site are all beneficial to the general neighborhood [§ 197-29(C)(6)(d)].

- h. The applicant has demonstrated that any changes to the site will not result in or allow an intensification of the nonconforming use [§ 197-29(C)(6)(f)].

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

1. *Character of the Neighborhood:* The relief requested will not result in a material adverse impact on the character of the neighborhood. The buffer variance was reviewed carefully with the input of the adjacent neighbor most affected thereby, and said neighbor reported satisfaction with the outcome. The parking changes, while still requiring some relief for handicapped spaces, result in an improvement compared to the existing nonconformities. And the floor area variance is a result of a pre-existing nonconformity and the reconfiguration of the site in an overall beneficial way.

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

3. *Substantiality:* The variances are in some cases substantial, but the beneficial changes to the site outweigh the mathematical significance of those variances.

4. *Physical/Environmental Impacts:* No physical or environmental impacts have been identified. The project has received a negative declaration of environmental significance from the lead agency under SEQRA.

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

6. *Benefit vs. Detriment:* On balance, the benefits outweigh the detriments of the proposed variances.

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

The Zoning Board therefore grants the requested special exception under §197-29.C. of the Code and the requested variances to allow the applicant to reconstruct the nonconforming use and the restaurant as set forth in the Revised Plans, subject to the following conditions to minimize any adverse impacts from the variances and special exception:

V. CONDITIONS

1. The variances and special exception 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. 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

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front, side, or rear yard, except as depicted on the approved plans, without further approval of the Board.

- 3. There can be no exterior work authorized by this decision performed on weekends from May 1 to September 30 and on weekdays from July 1 to September 10.
- 4. The variances and special exception granted herein shall terminate unless a building permit and certificate of occupancy are issued within 180 days from the date hereof.

Dated: February 17, 2022

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **WHBH Real Estate LLC, 7 Beach Lane (905-011-03-010)** as written; seconded by Ms. Cea nd unanimously carried 5 ayes, 0 nays, 0 absent.

2. Terence & Jeanne Rafferty, 256 Mill Rd (905-008-03-008.04) Applicant requests variance from §197-7 D for a proposed one-story addition with a front yard setback is 36.4 feet where the minimum required is 50 feet.

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

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

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

Terence & Jeanne Rafferty
ADDRESS: 256 Mill Road
SCTM #: 905-8-3-8.4
-----X

DETERMINATION

VI. REQUEST FOR RELIEF

The applicants, Terence and Jeanne Rafferty, are the owners of a parcel of real property located at 256 Mill Road. The property is located wholly within the R-2 Zoning District. According to the survey of the property drawn by Seccafico Land Surveying, dated December 4, 2020, last revised on 11/23/2021 (“Survey”), the parcel is improved with a two-story frame dwelling with a second story deck and a 16’ x 32’ inground pool.

Section 197-7.D. of the Village Codes provides that, in the R-2 Zoning District the front yard depth shall not be less than 50 feet.

The applicant proposes to construct a one-story garage addition with a front yard setback of 36.4 feet where the minimum required is 50 feet. The applicant has therefore requested a variance from Section 197-7.D.

VII. SEQRA

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

Since this application involves a residential conversion, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(11), (12), (16) and (17). Accordingly, no further review is required.

VIII. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on January 20, 2022. The applicant, Terence R. Rafferty appeared on behalf of the application. No other persons appeared in support or in opposition of the application. The hearing was closed at the January 20, 2022, meeting.

IX. 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.

X. FINDINGS AND CONCLUSIONS

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

8. *Character of the Neighborhood:* The applicant has demonstrated that the proposed variance will not have a material adverse impact on the character of the neighborhood. The modest garage addition is a customary accessory structure and is designed in a manner to minimize impacts, notwithstanding that it encroaches into the front yard setback area.

9. *Alternatives:* The applicant has demonstrated that there are no alternatives to achieve the benefit sought. There is no other location where the garage can be installed without the need for variance relief.

10. *Substantiality:* The variance is substantial.

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

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

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

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

The Zoning Board therefore grants the requested area variances to allow the applicant to construct a one-story addition with a front yard setback is 36.4 feet, as depicted on the Survey, subject to the following conditions to minimize any adverse impacts from the variance:

XI. CONDITIONS

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

2. No outdoor accessory structures or equipment (including but not limited to air conditioning condensers, HVAC equipment, above-ground utilities, generators, pool equipment, solar panels, garbage/storage bins, etc.) may be located within a required front, side, or rear yard, except as depicted on the approved plans, without further approval of the Board.

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

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

Dated: February 17, 2022

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Terence & Jeanne Rafferty, 256 Mill Rd (905-008-03-008.04)** as written; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 1 absent.

HOLDOVERS:

3. 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, together with Irwin Krasnow and Ken Bordieri. Mr. Hulme said the relief has changed, and a week or so ago they filed an updated site plan which resulted from many meetings with the Planning Board and discussions with them, and the size of the building.

Mr. Piering said he was looking at the land use and zoning chart, on the proposed use the GFA what is required is 3,000 square feet and your proposed says 2,998?

Mr. Hulme said it is 3,998, it's a typographical error. This form of the site plan came from many hours with the Planning Board and this is where we arrived at a plan and its layout and they're still discussing the architecture of it but this is the layout that I think we'll be seeking approval for and it requires the two variances but not to the scale we originally thought as the store size has been reduced as a result of those conversations. As indicated, we have a 3,999 square foot building and one reason for that is that they do not have to go through the more difficult SEQRA requirements and the building is 41.9' feet from the rear lot line when the Code requires 50' and I wanted to comment about the surrounding area that this building sits in and whether or not the granting of these would have any impact on that area. You are all familiar with the area and to the North is the railroad tracks; the West is a storage facility, and a tennis club and to the South is the VFW and across the street is the Town of Southampton Highway Department yard. Except for the variances we're seeking we have not come close to maxing out what's permitted and the lot coverage is 5.7% and the canopy over the gas pumps is 6.1% for a total of 11% and in the B3 we're allowed 20% coverage. The reason for the variance for the size of the store has to do with the Code definition and it allows a convenience store which is undefined in the Code at a rate of 350 square feet per fueling station. There are 16 separate stations, and that's 5,600 square feet but there is a cap in that definition of 3,000 square feet and we're exceeding it by 998 square feet. In the first instance it's a two element test and we're under the first element. We have an oversized lot of the B3 of 70,000 square feet and the minimum lot size is 40,000 square feet and the Code allows one use per 10,000 square feet so theoretically we could have this plus another use with another building or store on it as well and we have the coverage and lot size and we're choosing not to do that and focusing on this one use and this layout. I don't believe either variance will have a significant impact on the neighborhood, I think it'll improve it. I think that the storage building is rather tall and I think this will break up the much larger building behind us and you won't notice that this is oversized. The other thing I wanted to bring to your attention, a recent change to the Code was the inclusion of a grocery store as a permitted use in the B3 and the Code allows a grocery store to be 5,000 square feet and it's not limited to the 3,000 square feet. Neither is defined in the Code and I guess to a certain extent its one of those things you know when you see and what is sold in this store, and we can provide a list if you'd like, are similar to what you'd find in a grocery store. There is a grocery store element to this and that's limited to 5,000 square feet. At the end of the day based on current regulations and this neighborhood I don't think any of these variances would be impactful on the neighborhood and the building is where it is in part because we need to provide buffering and landscaping and the drive aisles for the trucks to get in and around the site safely. The Entrance is off of Old Riverhead Road and the entrance and exit is on the side flag pole that serves the storage facility; there are aisles, parking and nice landscaping buffered to the South and the front and extra buffering around the dumpster and then the Planning Board asked us to do some significant landscaping along the road to break up the façade of the building and the canopy over the gas pumps.

Ms. Cea asked if the vegetation on Old Riverhead Road, will it be a berm or at grade?

Mr. Hulme said it's at grade. We want people to see the store, but to landscape it to break up the façade and the parking lot. The canopy is 21 feet in height.

Ms. Cea asked the height of the building?

Mr. Hulme said 25'8". The building we think is small, and we've reduced it.

Mr. Piering said the numbers I have with the Speedway in Quogue is 3200 square feet, and the 7-11 on Sunset Avenue is 3,100 square feet.

Mr. Hulme said yes, and we're trying to provide a few more features.

Mr. Piering asked what that is?

Mr. Krasnow said there is more product offering, there is more coffee services they have a beer cage and right now if you look at QuickCheck they are 6,400 square feet and most are larger and the Village did change the Code to allow us to do this and like Mr. Hulme said we had a

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contemporary concept and it was 5,000 square feet and the Planning Board loved the amenities but they did not like the style of the building so we took another concept that we've done elsewhere with less amenities and that fit in to this new 4,000 square foot print which is smaller with more amenities. Having access to the train station people will be able to easily get things and go.

Mr. Piering asked if there will be sit down dining?

Mr. Krasnow said in the other concept there were seven seats, in this store there are no seats.

Mr. Hulme said its surrounded by mixed uses and the storage facility behind us overwhelm us.

Mr. Piering said we don't want to detract from the B1 area, and the B3 district goal and intent and like the B2 should compliment not compete with or weaken the downtown central business district.

Mr. Hulme said the 900 square feet will not create that problem.

Mr. Krasnow said the luncheonette is allowable and its not in this plan.

Mr. Pasca said the 3,000 square foot code limit was put in first to give gas stations more in terms of convenience stores and they picked that because the discussion was the larger you get the more like a grocery store you get and at that time grocery stores were not permitted in this district. Now that the masterplan update was complete, you can have a grocery store up to 5,000 square feet as of right so if this was a Citarella or a small grocery store they would not need a variance for it. And I guess from a character of the community standpoint the fact that the convenience store is 4,000 square feet closer to a grocery store you can consider it unique in the way the Code has been changed to develop this way. You have a 3,000 square foot limit for a convenience store but not a grocery store which is not that dissimilar.

Mr. Musnicki said in August when this plan first came to us I mentioned that as part of the Village vision and the comprehensive plan that they would like to see the gas pumps on the side or rear and not have the site be identified by a gas station primarily and then having a store.

Mr. Hulme said we had that discussion at length with the Planning Board.

Mr. Musnicki said what you bring up this evening about convenience store and grocery store, you have as you said 11% lot coverage, and I'm not a fan of 16 gas pumps facing the road with a large canopy and on the ZBA I don't have anything to move that one way or the other, however if you were to take one of Mr. Collins conceptual plans you're able to get more lot coverage and a larger convenience store and put the pumps on the North side of the property and still visible from Old Riverhead Road either way, would that be an option?

Mr. Hulme said no. We have had lengthy discussions about those issues with the Planning Board, and this is the plan that emerged from them and another assailant point is that the principle use is the gas station so to suggest we need to hide it is counter to what it's permitted use is and that's the gas station.

Mr. Musnicki said okay.

Mr. Piering said he has no other questions or comments. As I look at the rear yard variance, I see the request was reduced and the only other option is moving closer to Old Riverhead Road.

Mr. Hulme said they want a significant buffer along Old Riverhead Road and we need the drive aisles and that pushes the building back to where it is.

Mr. Piering said okay. They have you doing significant landscaping. I don't have anything else to ask. Does anyone else have any comments?

Ms. Cea asked if there is one entrance and exit?

Mr. Hulme said there's an entrance off of Old Riverhead Road and there's a second that goes to the South to the flagpole of Metro Storage, and I believe that was done and this concept was created and provided for. Our ability to use that access was provided for.

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Ms. Cea said she sees what he's referring to. And the other plans that were discussed that Mr. Collins presented are not options because they were secondary to the gas station use?

Mr. Hulme said yes, that was the gist of the conversation with the Planning Board and its how we arrived at this plan.

Mr. Piering said okay.

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

4. 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.

Marc Sheffert Engineer submitted a written request to holdover the application to the Board's March 17, 2022 meeting.

Motion was made by Mr. Piering to holdover the application of **Egret Dune Corporation, 95 Dune Road (905-021-04-002)** to March 17, 2022; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

Motion was made by Mr. Piering to adjourn the meeting at 5:30 p.m.; seconded by Ms. Cea and unanimously carried 5 ayes, 0 nays, 0 absent.