

May 19, 2022

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, May 19, 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 **April 21, 2022** meeting as written; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

DECISIONS

1. Eric S Miller, 13 Stacy Drive (905-010-05-028) Applicant request variance from §197-35 A to construct a pickleball court in the front yard where accessory structures are specifically prohibited from being located.

James N. Hulme, Esq., appeared on behalf of the application, and the reading of the determination was waived.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

-----X

In the Matter of Application of

DETERMINATION

Eric S. Miller 2020 Trust
Eric S. Miller, Trustee

Address: 13 Stacy Drive
SCTM #: 905-10-5-28

-----X

I. REQUEST FOR RELIEF

The applicant, Eric S. Miller 2020 Trust, is the owner of a parcel of real property located at 13 Stacy Drive. The property is located wholly within the R-1 Zoning District. The property the parcel is improved with a single-family two-story dwelling, porch, deck and swimming pool.

Section 197-35.A. of the Village Code provides that, in the R-1 Zoning District, accessory buildings, structures, tennis courts and swimming pools shall not be located in the front or side yard.

The applicant is proposing to construct a pickleball court in the front yard where accessory structures are specifically prohibited. The final location of the pickleball court is depicted on the site plan prepared by Nicholas A. Vero, Architect, PC, dated 4-25-22. The applicant therefore seeks the required variance from Section 197-35.A.

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 a variance for an accessory residential structure, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(12). Accordingly, the application is not subject to review under SEQRA.

III. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on March 17, 2022. The applicant's attorney James N. Hulme appeared and presented the application.

The application originally proposed a location of the pickleball court that was 10 feet closer to the front and side yards. After hearing the concerns of the Zoning Board, the applicant proposed to increase the setbacks to those depicted on the 4-25-22 site plan.

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 April 21, 2022, meeting for a determination at the May 19, 2022, meeting, subject to receipt of the revised site plan (which was thereafter received).

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.

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:* The applicant demonstrated that the proposed pickleball court would not have an adverse impact on the character of the neighborhood. In 2014, the Zoning Board approved a variance to allow a tennis court to be constructed in the same general location of the pickleball court, twenty feet from the front and side lot lines. The proposed pickleball court is significantly smaller than the tennis court and is proposed to be setback an additional 10 feet from both lot lines.
2. *Alternatives:* No feasible alternatives exist to achieve the benefit sought (a location for the pickleball court) without placement in the front yard. (See Board determination 9/18/14)
3. *Substantiality:* The variance is substantial.
4. *Physical/Environmental Impacts:* No physical or environmental impacts have been identified. (See Board determination 9/18/14)
5. *Self-Created Difficulty:* The difficulty is self-created. (See Board determination 9/18/14)
6. *Benefit vs. Detriment:* The benefit to the applicant outweighs the detriment to the community, subject to the conditions below.
7. *Minimum Variance:* The variance is the minimum necessary to achieve the benefit sought.

The Board therefore grants the requested variance to allow the construction of a 60'6" x 30'3" pickleball court, in the front yard, as depicted on the site plan dated 4-25-22, subject to the following conditions to minimize any adverse impacts from the variance:

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), 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,

May 19, 2022

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: May 19, 2022

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of Eric S. Miller, 13 Stacy Drive (905-10-5-28) as written; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

2. Denise Breger, 28 Meadow Lane (905-010-03-021) Applicant requests variance from §197-6 E A(1) to legalize a finished attic that represents a third story where the maximum stories permitted is two.

James N. Hulme, Esq., appeared on behalf of the application, and the reading of the determination was waived.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

-----X

In the Matter of Application of

Denise M. Breger

DETERMINATION

Address: 28 Off Meadow Lane

SCTM #: 905-10-3-21

-----X

VII. REQUEST FOR RELIEF

The applicant, Denise M. Breger, is the owner of a parcel of real property located at 28 Off Meadow Lane. The property is located wholly within the R-1 Zoning District. According to the survey of the property drawn by Nathan Taft Corwin, III, Land Surveyor dated July 28, 1997, and last revised on January 26, 2022, the parcel is improved with a two-story frame house on pilings, a wooden deck with railing, a detached 10.2' x 20.2' pool house, and inground swimming pool.

Section 197-6.E of the Village Code provides that, in the R-1 Zoning District, no building may exceed two stories.

The applicant is proposing to legalize a finished attic that represents a third story where the maximum stories permitted is two.

VIII. 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 a variance for a single-family residence, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(11) and (17). Accordingly, the application is not subject to review under SEQRA.

IX. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on March 17, 2022. The applicants' attorney James N. Hulme 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 April 21, 2022, meeting for a determination at the May 19, 2022, meeting.

X. 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.

XI. FINDINGS AND CONCLUSIONS

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

8. *Character of the Neighborhood:* Although the requested variance could have an impact on the character of the neighborhood as a result of the precedent it could set, and the domino effect that could result, the applicant has demonstrated sufficiently unique circumstances that minimize the potential for such adverse impacts. Although the Board does not, as a policy, look favorably upon requests for variances to legalize improvements that were made without a permit, the applicant has provided proof that the third story was finished at the time of her purchase of the property, that she reasonably believed that the third story was lawful, and that she acquired the property at a time before the requirement for an updated certificate of occupancy would have alerted her to the illegality of the finished third story. The Village now has a requirement for obtaining an updated certificate of occupancy upon transfer, thus precluding the likelihood of this circumstance repeating itself. Also minimizing the impact on the character of the neighborhood is that the applicant has acknowledged that she will have to retrofit the third-story with sprinklers to comply with the NYS Code.

9. *Alternatives:* There are no alternatives to achieve the benefit sought (maintenance of the pre-existing third story space) without the need for a variance.

10. *Substantiality:* The variance is substantial.

11. *Physical/Environmental Impacts:* If the third story is made code compliant through a proper sprinkler system, the variance would not cause any known physical or environmental impacts.

12. *Self-Created Difficulty:* The difficulty is self created to the extent that the property was acquired at a time when the third story was not lawful. Mitigating this factor is the evidence that this applicant was unaware of the illegality and that the transfer occurred before the Village's requirement for updated certificates of occupancy on transfer was codified.

13. *Benefit vs. Detriment:* Although the balancing of the benefits vs. detriments is a close determination, the Board finds that the benefits slightly outweigh the detriments, under the unique circumstances of this case.

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

The Board therefore grants the requested variance to allow the applicant to legalize a finished attic space that represents a third story where the maximum permitted is two stories, subject to the following conditions to minimize any adverse impacts from the variance:

XII. CONDITIONS

May 19, 2022

1. The third story space shall be made code-compliant with respect to all applicable New York State Building and Fire Codes, including through the installation of any required sprinkler system, prior to issuance of any certificate of occupancy.

2. 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.

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.

4. 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.

Dated: May 19, 2022

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Denise Breger, 28 Meadow Lane (905-10-3-21)** as written; seconded by Ms. Cea and unanimously carried 5 ayes, nays, absent.

3. Robert Schoenthal, 22 Bayfield Lane (905-010-06-003) Applicant requests variance from §197-6 D in conjunction with a proposed subdivision that would create a resultant side setback of 22.8 feet where the minimum of 30 feet is required.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

-----X

In the Matter of Application of

Robert Schoenthal

DETERMINATION

Address: 22 Bayfield Lane

SCTM #: 905-10-6-3

-----X

XIII. REQUEST FOR RELIEF

The applicant, Robert Schoenthal, is the owner of a parcel of real property located at 22 Bayfield Lane, in the R-1 zoning district. According to the survey of the property prepared by David H. Fox, LS,

May 19, 2022

dated December 20, 2021, the property is improved with a two-story frame house, a slate patio, a swimming pool, a detached one-story frame garage, detached frame shed, and tennis court.

Section 197-6.D. of the Village Code provides that, in the R-1 district, no side yard shall be less than 30 feet.

The applicant seeks to subdivide the parcel into two lots, the division line of which would result in a side-yard setback to the existing dwelling of only 22.8 feet. Therefore, the applicant requests the required variance from Sections 197-6.D. to create the subdivision that would require side setback relief of 22.8 feet where the minimum of 30 feet is required.

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 a setback variance for a single-family residences and accessory residential structures, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(16) and (17). Accordingly, the application is not subject to review under SEQRA.

XIV. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on March 17, 2022. The applicant's attorney, Richard T. Hafeli appeared and presented the application.

Joan Levan, 17 Oneck Road appeared in 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 April 21, 2022, meeting for a determination.

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.

XV. FINDINGS AND CONCLUSIONS

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

15. *Character of the Neighborhood:* The applicant demonstrated that the proposed setback variance would not have an adverse impact on the character of the neighborhood. The decreased side yard setback will, in effect, impact only the proposed new lot to be created by the applicant. The nonconformity is essentially an internal one. The applicant has acknowledged that the accessory structures on the newly-created lot would have to be removed or a further variance sought to keep them on the new lot without a principal dwelling, but that this issue would be addressed during the subdivision process. The lots themselves are dimensionally conforming.

16. *Alternatives:* No feasible alternatives exist to achieve the benefit sought (a subdivision into two parcels, without relocation of the existing house) without the need for a setback variance.

17. *Substantiality:* The variance is not insubstantial (a 24% nonconformity).

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

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

20. *Benefit vs. Detriment:* The benefit to the applicant outweighs the detriment to the community, subject to the conditions below.

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

The Board therefore grants the requested variance in conjunction with a proposed subdivision that would create a resultant side yard setback of 22.8 feet subject to the following conditions to minimize any adverse impacts from the variance:

XVI. CONDITIONS

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

May 19, 2022

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.

5. Nothing herein shall be construed as approving the retention of the accessory structures on the newly-created lot, without a principal dwelling.

Dated: May 19, 2022

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Robert Schoenthal, 22 Bayfield Lane (905-10-6-3)** as written; seconded by and unanimously carried ayes, nays, absent.

HOLDOVERS:

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.

5. Westhampton Beach Fire District, 92 Sunset Avenue (905-012-04-006.02) Applicant requests variances from §197-30 C(9)(a) to erect a digital ground sign with a setback of 7 feet where the minimum required is 10 feet, §197-30 C(9)(c) for a proposed sign area of 31.17 square feet where the maximum permitted is 12 square feet, §197-30 D(4) for a proposed sign capable of displaying animated images where specifically prohibited, and from §197-30 D(14) for a proposed sign that is internally illuminated where also specifically prohibited.

Eric Cherches, Esq., appeared on behalf of the application. He said he is not sure what more he can add as this is their third appearance and at the last meeting he submitted a memorandum and Mr. Pasca said the Monroe Factor should be applied to each issue with respect to the application, and there are four areas of relief they are seeking; the setback, the sign area, the display of animated images, and the internal illumination. I suggest whether the test is looked at to each and every provision, or whether the totality of the application really it is the totality of it but either way we come to the same conclusion and that is under the test this application should be granted. We have been through the public safety concerns regarding the fire department and the Chief at the last meeting and one evident thing is that this is the Fire Department it's not commercial or a business and they will be good stewards of this sign, and it's necessary to the function of the Fire Department. The age we live in is the messaging and digital and the way it will enhance their mission statement and function are important. It will be used for blood drives, COVID vaccination spots, relief aid efforts, Amber Alerts, road closures, public safety reminders, weather advisories

May 19, 2022

and very often public safety reminders save a life. Fire prevention and recruitment which are very important and a sign showing this to show they are stepping in to the 21st Century is important. General community spirit, good will and HOidays; and they are all necessary to the Village function. I understand your hesitancy because it's different and new, but this is not a neon sign, it's LED sign and I know the Village is different and this sign will enhance it and if there are any questions I will field them.

Mr. Piering said the NY Zoning Law Practice, the Fire District comes from a limited immunity. This Board, since this was constructed this Fire house; we've granted parking, signs and height setbacks and we are involved in the importance of it. My feeling is, the Village in 2006 did away with these signs for a reason, and they amortized them out over a 5 year period and after 2011 we didn't have them and there was a reason for it. The Fire District wants a sign that's much bigger than allowed, close to the road, the setback and illuminated LED so this is a big leap and this isn't too minimize the importance of what they do, but when we have something prohibited in the Code it's a big reach.

Mr. Cherches said he understands, and from 2006 and 2022 the 16 years the signs are different; the size is important, it's not advertising a commercial establishment and its conveying public information. This is very unique and very idiosyncratic for the fire department. The balancing factors weigh in favor of it and I suggest that the Fire District is concerned about doing something esthetic and these are the way they are manufactured and if it's too small it can cause a public safety hazard. It's meant to convey information and be seen but I completely understand the Village doesn't want them all over the Town, but this is not that and it's very unique. It's new and different and its changed

Mr. Musnicki said on the decision, one of the 9 things they point out is the fact that both entities should work together and I think it's important and I don't feel that when I asked a question about the size you say it has to be that size for various reasons, including that's how its made, how other municipalities have them and they don't come smaller, there are people who I know who do signage and they say it can be made smaller and be made in 1' increments.

Mr. Cherches said he's unaware of whether it can be made smaller.

Mr. Musnicki said that's in the Monroe Decision and important to him; we are generally not going to say no, and we work with the applicants as they come forward, and homeowners and contractors and architects and I would venture to say the Fire District is someone I would give deference too and look at these more closely and I need to know I'm being heard and there is flexibility if there is not any, my decision is easier to make and I don't want to go there.

Mr. Cherches asked if they should speak to the manufacture to see if they can make it smaller?

Mr. Musnicki said yes, and the animation is too. The messaging we spoke about in the last few meetings it hits home with me and I wouldn't expect the Fire District to change the letters on a sign every day.

Mr. Cherches said those old signs are aesthetically displeasing.

Mr. Musnicki said I understand it's not a commercial establishment and you have certain requirements and needs and obligations to the public, but I am still looking for the working together aspect and I'm not seeing that.

Mr. Cherches said the extent of the public interest to be served; this isn't the school and I know there's an issue there but this is public safety and its not hyperbolic to say the sign could potentially save a life and the message needs to be seen and digital and fluent and it has to get out there. It is not a commercial establishment, it's a separate municipality and if you apply the balancing test there is only one way to grant it in the public interest.

Mr. Pasca said the Monroe Test; one reason I suggested each of the regulations be looked at independently because the ultimate aim of the test is to weigh the interest in enforcing the Code versus the function of the Fire District. Each of the variances the four of them, may balance out differently for you. One example, because you said it has to be a fluid sign. The prohibition against animated signs was a big deal, and they said they want it and they have not said why they have to have an animated sign that moves as opposed to one that doesn't and it may balance

May 19, 2022

different from the setback requirement, and the size. The message is the goal they are trying to achieve, and the Village has its own interest to protect so the balancing of the two competing interests is what they are designed to get to the bottom of. One issue I have with the memorandum and analysis it's one sided and I don't blame you for wanting to explain your client's side but you're not acknowledging the Village's importance. The Village has amortized out some of these signs so it's very important to enforce them and the balancing has to be taken in to account and it may balance in your favor but it's very important to say it has to have all these factors; a lot of what you said is that the manufacturer said this is how it has to be done and there are others and you have not said they all say it this is the only way. You are saying the reason it has to be done this way is because that's how the manufacturer said.

Mr. Cherches said I don't think you were paying attention.

Mr. Pasca said it's an acknowledgement of the interest the board has to weigh.

Mr. Cherches said the fire districts interest is shared by every member of this community so yes, it is. You're looking at it as prism and commercial.

Mr. Pasca said I read cases dealing with Fire Districts and they don't always win. My point is to say there are a fire district and win which is how it feels.

Mr. Cherches said it's not what he said,

Mr. Pasca said you have to look at the four non conformities and balance the Village's interest and you have to decide whether it justifies

Mr. Cherches said he suggests the interests are shared, it's not seeking an exemption for any reason but for public safety.

Mr. Pasca said there is no question that they've expressed their interest and that side of the balancing test and that's what Monroe is designed and that is what this Board has to decide. I'm not telling the Board how to make that decision, but each of the four non conformities and going through the importance on both sides. I won't make arguments for or against it.

Mr. Cherches said it's not a missing one factor fails the application.

Mr. Pasca said I agree; this Board has dealt with 99% of the applications are a five factor test and they apply them to each application. The Monroe Test is another and it's nine factors and they are used to that and they are aware that they have to take all of the factors in to account.

Mr. Cherches said he has nothing more to add.

Donald Metcalf, 41 Old Country Road, Fire Commissioner. He said we want to speak about the size; the vendors came and set them up and we looked at them from different distances and that's how we decided on this size. I think the Village knows the importance of the signs, they roll one out at the traffic circle time and time again.

Mr. Piering asked if there were any other questions or comments; there were not.

6. Judy Madden, 64 Brook Road (905-007-02-021.01) Applicant requests variances from §197-35 C to install an accessory swimming pool with setbacks of 13.7 & 15 feet where the minimum required is 20 feet.

Steve Caputo appeared on behalf of the application. They provided an updated plan to the Board and they are proposing a 3' setback variance and the rear yard is not an issue we have 20' and there is only a 3' on the West side and the pool equipment has been moved to the East within the setback and we're proposing on the West a 6' fence and vegetation to give additional privacy to those neighbors. And we have not hear from them we heard from the rear neighbor and they are no longer concerned since we changed our plan, and we're doing everything we can not to impact our Westerly neighbor for a 3' setback. It is the Beach Road side, and 3' from the property line and we are running a 6' fence and the pool will be blocked by the fence and vegetation.

May 19, 2022

Mr. Piering asked about screening the rear?

Mr. Caputo said we can, it needs a fence regardless so we can.

Mr. Piering said I know it's conforming and I know it would be nice to have.

Mr. Caputo said she will do it. We agreed we are not requesting a setback on the rear yard setback.

Mr. Piering asked if there are any questions or comments.

NEW APPLICATIONS:

7. Bella 165 LLC, 165 Dune Road (905-020-02-024.01) Applicant requests variances from §197-8 D to construct additions resulting in a proposed building area lot coverage of 30.3% of the lot where the maximum permitted is 20%, and with a proposed front yard setback of 50.2 feet where the minimum required is 75 feet, also from §197-8 D to construct roofed-over entry with a side yard setback of 18.5 feet where the minimum required is 20 feet, with a proposed combined side yard setback of 33.6 feet where the minimum required is 50 feet, and also from §197-8 D for proposed rear square-off additions with a rear yard setback to crest of dune of 66.9 feet where the minimum required is 75 feet, from §197-29.1 as proposed additions are located within a required front yard (50.2' proposed, 75' required) and also within a required side yard (15.1' proposed, 20' required), representing a nonpermitted increase in degree of nonconformity of a building with nonconforming front and side yard setbacks, and from §197-35 C for a proposed deck extension with a setback to the side yard of 16.5 feet where 20 feet is required, and also from 197-35 C for a proposed deck extension with a setback to the crest of dune of 35.1 feet where a minimum of 75 feet is required.

James N. Hulme, Esq., appeared on behalf of the application, there were two forms of relief that required advertising and the plan has not changed and the advertising was undertaken. There were two variances not advertised and they have been.

Mr. Musnicki asked if he reapplied?

Mr. Hulme said no, they just readvertised it. It's in the description but it's not in the application.

Mr. Musnicki asked if they are looking at them?

Mr. Hulme said it's the pool deck expansion and the dune crest setback and on the East the deck is going to be 16.5' when 20' is required and to give more space on the deck and its narrow.

Mr. Musnicki asked if the lot coverage of 29.7% include everything?

Mr. Hulme said yes, and it was advertised. The property is over its lot coverage, and the reason being when the house was built it was based on the lot not the upland portion and the property is well protected with three dunes so it's not a safety or flood issue.

Mr. Musnicki said if this deck gets expanded to the East, the generator will move East also?

Mr. Hulme said if you'd like them relocated its not a problem.

Mr. Musnicki said he thinks the heavy lift is the deck itself.

Mr. Hulme said the generator and all of that will be removed.

Mr. Musnicki said okay.

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

Mr. Hammond said the plot plan hasn't changed and he didn't call out the variances and after their presentation they were clearly marked as new deck and that's why I noticed it but nothing has changed since they submitted the application.

8. Michael & Elizabeth Levy, 205 Dune Road (905-020-02-008) Applicant requests variances from §74-5 C for proposed major additions to the dwelling (nonmovable structure) within the Coastal Erosion Hazard Area (CEHA) where specifically prohibited, from §74-8 A(8) for proposed major additions and restoration of the dwelling within the primary dune area where specifically prohibited, and from §197-29.1 A as proposed additions are located within a required rear yard (75' required from crest of dune), representing a prohibited increase in degree of nonconformity of a building with nonconforming rear yard setback.

James N. Hulme, Esq., appeared on behalf of the application.

9. 17 Dune Road LLC, 17 Dune Road (905-022-02-021) Applicant requests variances from §74-5 C(2) for a proposed dwelling within the Coastal Erosion Hazard Area where construction of nonmovable structures are prohibited, from §197-8 D for a proposed front yard setback of 57 feet where minimum required is 75 feet, also from §197-8 D for a proposed combined side yard setback of 45 feet where the minimum required is 50 feet, from §197-35 C for a proposed accessory deck setback to the crest of dune of 59 feet where the minimum required is 75 feet, and also from §197-35 C for a proposed accessory pool setback to the crest of dune of 60 feet where the minimum required is 75 feet.

Heather A. Wright, Esq., appeared on behalf of the application, together with Steve Gaetano, owner and architect. All of the structures are within a CEHA and not FEMA compliant, and the existing dwelling 103' from Dune Road, but its 4.9' from the Easterly line and 6.8' from the SE corner and there's a wood deck that leads all the way down that is 4.9' from the top of the dune and the wood deck and stairs encroach on to the top of the dune and we are going to demolish the existing structure, move it out of the CEHA and there will be a new sanitary system, the existing wood deck, and the whole walk way and restore the Dune and provide access to the Ocean on the walkway on the Westerly side of the property. They are constrained with the 75' setback from the Dune and Dune Road and the CEHL and we're here for relief from that front yard setback of 57' and total side yard of 45' and then a setback from the Crest of the Dune 57'. We're going to comply with FEMA and removing non conformities and we believe it is in keeping with the neighborhood and we're not exceeding the lot coverage and we've centrally located the house and it improves its and moved 18' and not so close to the neighbor. If you look at 15 Dune Road we're positioning our house similar to that dwelling, and at 19 Dune Road we are lined up with them. You can see the location of the proposed dwelling and the homes on either side and we're moving our structure further from the existing structure. The setbacks we designed are in keeping with 15 Dune Road and we're not encroaching to the Dune Crest and we're improving that by removing the deck, walkway and deck on the home and it is in keeping with the character of the neighborhood, when we look at the feasibility it would be impossible to build a home without variances. It is a reasonably sized house for her clients needs and we're improving the setback significantly and it may be mathematically substantial but the constraints are a lot. They are putting in a new sanitary system and making it FEMA compliant and the five part test this design complies with that. We have the CEHA variance and we are looking at the two additional elements and a FEMA compliant home is reasonably safe from flooding and there is not alternative location. The setback from the front yard is 75' and we're at 85' from the NE corner and whatever we construct will construct some way in to the CEHL similar to other homes on Dune Road.

Mr. Musnicki asked if the mechanicals will be in the sideyards?

Ms. Wright said they are underneath.

Mr. Gaetano said nothing in the side yard they are at elevation 10 and in the rear by the pool.

Mr. Piering said it is a modest pool. And that will be in the deck itself?

Ms. Wright said yes, some other homes have decks and we would prefer the pool in the deck and we're giving up deck space and there is not much in the way of decking beyond the East and West sides of the deck.

Mr. Piering asked if the existing house is 100' off of Dune Road, and you want to bring it to 57', and how much bigger is the house?

May 19, 2022

Ms. Wright said it is approximately 2,040 and the existing is 1,500 not including the deck. It is bigger than the existing but keeping with the neighbors and smaller to the house to the West.

Mr. Piering asked if they saw the neighbors letter?

Ms. Wright said yes, they are doing all of the things that she's concerned about. But I think her argument about the dune shift and the 5' works in their favor showing their constraint and the dune impacts them and they are consistently building with the neighbors.

Mr. Gaetano said they are maintaining the 75' with the Dune Crest with the house.

Ms. Wright said yes, it's the pool and deck that are not.

Mr. Badzik asked where 23 and 24 Dune Road is in relation to this?

Ms. Wright said they are three houses to the West.

Mr. Badzik said bay and ocean side?

Ms. Wright said yes.

Mr. Piering asked if there were any other questions or comments. There were no further questions or comments. I like that you are moving it from the Dune Crest and the front yard is what we like to see instead of the dune crest.

Ms. Wright said the deck is 5' from the Dune Crest now, and the existing deck is being proposed 30'.

Mr. Piering asked where the house sits.

Ms. Wright said the existing house sits about 50' from the Dune Crest, it is all the way up.

Mr. Piering said you're pulling it out, and the house will now be 75' from the Dune Crest.

Ms. Wright said yes. The existing deck attached to the dwelling is 38' from the Dune Crest.

Mr. Piering asked when the existing variance was from? 2013 did they act on it?

Ms. Wright said no.

Mr. Piering asked if it expired?

Ms. Wright said yes.

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

10. Steven & Leslie Socol, 5 Michaels Way (905-009-03-017.18) Applicant requests variance from §197-35 A for proposed accessory structures (pool, patio, sheds & trellis) to be located in a front yard (corner & through lot) where specifically prohibited.

Heather A. Wright, Esq. appeared on behalf of the application, together with Craig Arm. Architect. This is a vacant parcel and it's in the R1 Zoning District, and the lot is a U Shaped lot with road frontage on three sides and created as part of this 1981 subdivision and they need relief because of the three sides of road frontage. The way it was designed was to put the pool and trellis what would be considered the front yard but behind the house but create a back yard in this location. This is not an optimal location for the proposed pool if it's in a compliant location; the structures would meet the 50' front yard setback so the space is created between the structures and neighbors and the idea is instead of putting it in a triangular piece and rear yard and closer to the neighbor and we rotated everything and looking to create the back yard in the proposed location. We also did not want to design it compliant because the driveway would be facing on top of the neighbors

May 19, 2022

driveway and it's on a curve so it makes more sense with this layout and we're proposing 8' privet along the back to cut off any front yard and turn it into a back yard. If we look at the five part test, all of the lots are approved with single family dwellings and we designed it to keep in character with the neighbor; 1 Michaels Way needed relief for two front yards and did something similar and I think it's important to note we're complying with the 50' setback and a unique lot and in this scenario, a compliant location is not feasible and it's better for the neighborhood. I know you received an email from the neighbors and we are installing Privet Hedge. There's 50' to the property line and then there's the road and if they meet the setbacks it is quite a distance.

Mr. Piering said you ay pool, patio and shed?

Mr. Arm said on either side of the open trellis on the far side of the pool an there's a storage shed not a traditional pool house.

Ms. Wright said they are on either side of the trellis.

Mr. Piering said if this was a traditional front yard this would be in the rear yard and there are three front yards driving this. He does not have any questions or comments.

There were no other questions or comments.

11. Joy Hepburn, 339 Mill Road (905-008-01-014.03) Applicant requests variance from §197-35 A for proposed accessory pool to be located in a front yard (corner lot) where specifically prohibited.

Scott Wexler, Swim King Pools appeared on behalf of the application. We're replacing an existing pool with a rectangular pool 18 x 40 and mainly heading to the rear yard and the existing pool is 22' off of the front property line so it's already in the front yard. The way this property is designed its old and doesn't meet any of the setbacks. The driveway eats up the rear portion of the property so we're stuck with this area and the old pool is in poor condition.

Mr. Piering said this is an odd shaped property, you're just replacing something already there?

Mr. Wexler said yes.

Mr. Musnicki asked if the pool equipment is going next to the driveway?

Mr. Wexler said it will be behind the front line of the house, more towards the driveway not the street.

Mr. Musnicki asked where the front is?

Mr. Wexler said in the bend on the survey it says 70.9 and that's where it'll be within the fence.

Mr. Musnicki said okay.

12. Mark & Palmira Cataliotti, 37 Beach Rd (905-012-02-039) Applicant requests variance from §197-35 C(1) to maintain an accessory residential storage shed located 0.8 & 4.3 feet from property lines where the minimum required is 10 feet.

Mr. and Mrs. Cataliotti appeared on behalf of the application,

Mr. Piering said part of the their previous decision was the removal of the shed, why do you want to keep it?

Mrs. Cataliotti said they intended to take it down and they wanted to present their case and its costly to remove it and they need to plant trees for privacy and they don't have as much storage as they thought they would have and we would like to ask for some forgiveness. We spoke to the neighbors and they are all in agreement without hesitation and we felt it was worth our time to ask for it not to incur the additional cost and we did not now it required a variance and we

May 19, 2022

intended to take it down. We do hear the street noises from the fire house and it affords us a little more privacy than just a fence and we need to plant trees if we remove it.

Mr. Piering said that was part of the hearing removing the shed.

Mrs. Cataliotti said she did not realize how restrictive it was and thought they could apply later.

Mr. Piering said this is a problematic one because the scope of the hearing was part o fit.

Mrs. Cataliotti said it was their ignorance.

Mr. Piering asked why they can't move it to a conforming location.

Mr. Cataliotti said there is no room. Where it is now, is in a spot that really does not bother anyone.

Mr. Badzik asked if its on a foundation?

Mrs. Cataliotti said no.

Mr. Cataliotti said it's 8'x 12' and under 100 square feet.

Mr. Badzik asked if they can move it up against the deck, the South side?

Mrs. Cataliotti said there is porch.

Mr. Cataiotti said it won't be 10' off.

Mr. Badzik said it wouldn't need a variance.

Mrs. Cataliotti said they felt misguided the last time, and they intended to comply with the original plan, and thy should have asked for everything at the start.

Mr. Piering said having an attorney would not affect the hearing.

There were no other questions or comments.