

July 21, 2022

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, July 21, 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
Jim Badzik
Daniel Martinsen

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

Maeghan Mackie, Building Permits Examiner / Board Secretary

ASBENT: John Wittschen

Motion was made by Mr. Piering to adopt the minutes of the May 19, 2022 meeting; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.

Motion was made by Mr. Piering to adopt the minutes of the June 16, 2022 meeting; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

DECISIONS

1. 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.

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

Motion was made by Mr. Piering to adopt the determination of **17 Dune Road, LLC., 17 Dune Road (905-22-2-21)** as written; seconded by Mr. Badzik and unanimously carried 3 ayes, 0 nays, 1 absent, 1 abstain.

2. 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.

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

Motion was made by Mr. Piering to adopt the determination of **Steven & Leslie Socol, 5 Michaels Way (905-9-3-17.18)** as written; seconded by Mr. Musnicki and unanimously carried 3 ayes, 0 nays, 1 absent, 1 abstain.

3. 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. Pasca said the Board would like to hold this over for another month, and we need your consent. We're at a 62 day period, and we are missing a Member if we vote tonight it goes down as a denial.

Mr. and Mrs. Cataliotti agreed to hold it over for an additional month.

3. 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 an 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 in 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. 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

Bella 165, LLC.

DETERMINATION

Address: 165 Dune Road
SCTM #: 905-20-2-24.1

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I. REQUEST FOR RELIEF

The applicant, Bella, 165, LLC., is the owner of a parcel of real property located at 165 Dune Road. The property is located wholly within the R-3 Zoning District. According to the survey of the property drawn by Fox Land Surveying dated August 9, 2019 and last revised on February 11, 2022, the parcel is improved by an existing two-story frame house, wood walk, swimming pool, spa, and wood decks.

Section 197-8 (D) of the Village Code provides that, in the R-3 Zoning District, the front yard depth shall not be less than 75 feet on the South side of Dune Road; there shall be two side yards totaling not less than 50 feet, neither of which shall be less than 20 feet; and the rear yard shall not be less than 75 feet (which is measured to the crest of dune).

Section 197-8 (C) of the Village Code provides that, in the R-3 Zoning District, the building area lot coverage shall not exceed 20% of the lot area, exclusive of all areas south of the crest of the northerly dune.

Section 197-29.1 of the Village Code provides that a nonconforming structure may be enlarged, reconstructed, altered, restored, or repaired, in whole or part, provided that the "degree of nonconformity" is not thereby increased.

Section 197-35.C of the Village Code provides that, on lots lying on the south side of Dune Road in the R-3 District, accessory buildings and structures cannot be located closer than 75 feet from the crest of the dune and 20 feet from a side or front boundary line.

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The applicant seeks to construct additions to the existing two-story frame house, with a proposed deck extension, all as depicted on the Fox survey and the plans prepared by Paul Russo, AIA Architect, PC (collectively, the “final plans”).

As identified by the Building Inspector, the final plans are nonconforming to the above-referenced sections of the Zoning Code in the following respects:

- §197-8.C¹. – The proposed building area lot coverage is 29.7% where the maximum permitted is 20%.
- §197-8.D – The proposed front yard setback is 50.3 feet where minimum required is 75 feet.
- §197-8.D – The proposed side yard setback for roofed-over entry is 18.5 feet where minimum required is 20 feet.
- §197-8.D – The proposed combined side yard is 33.6 feet where minimum required is 50 feet.
- §197-8.D – The proposed rear yard setback for squared off addition is 66.9 feet to the crest of dune where minimum required is 75 feet.
- §197-29.1 – The proposed house additions are located with a required front yard, 50.2 feet where 75 feet is required, and also within a required side yard 15.1 feet, representing a nonpermitted increase in the degree of nonconformity of a building with non-conforming front and side yard setbacks.
- §197-35.C – The proposed deck addition is located within a required side yard (16.5 feet where 20 feet is required) and rear yard (35.1 feet where a minimum of 75 feet is required).

The applicant has sought variances from the above-referenced code provisions to allow the construction proposed in the final plans.

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 single family residences and accessory residential 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.

III. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on April 21, 2022. The applicant’s attorney, James N. Hulme, Esq., appeared on behalf of the application. No other persons appeared in support or opposition to the application.

IV. GOVERNING LAW

¹ This section was incorrectly referenced in the turn-down letter and application as subsection “D” but this typographical error has been disregarded in this decision as it is a non-substantive error and all involved correctly identified the code requirement of a 20% coverage limit.

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:

1. *House Additions vs. Deck Additions:* The Board finds that the analysis of the variance factors yields different results for the additions to the house, which include the front additions and roofed-over entry, as well as the squared-off rear addition to the house, and which are collectively referred to hereinafter at the “House Additions,” and for the rear addition to the deck (including the relocated generator), which is referred to hereinafter as the Deck Addition.

2. *Character of the Neighborhood:* With respect to the House Additions, the Board finds that the applicant has demonstrated that the requested variances will not result in a material adverse impact on the character of the community. Generally, the House Additions involve squaring off the southwestern and northeastern corners of the house and the addition of a roofed-over entry at the northeastern side of the house, where the existing setback is the greatest. These House Additions are modestly designed and will provide a benefit to the applicant without a detriment to the character of the neighborhood. On the other hand, with respect to the Deck Addition, the Board finds that this additional encroachment into both the side and rear yard and the additional coverage will cause an adverse impact on the character of the neighborhood by encouraging significant encroachments into areas intended to be protected by the setback requirements and encouraging a disregard of the coverage limits, which the Board seeks to adhere to as much as possible.

3. *Alternatives:* There are no feasible alternatives to achieve the benefits sought.

4. *Substantiality:* With respect to House Additions, while some of the variances are mathematically substantial, they are mitigated by the pre-existing nonconformities and the careful design to retain the general, existing footprint of the house. With respect to the Deck Addition, this is substantial both mathematically and in context, as the existing deck is substantial in size and also substantial in terms

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of its encroachment within the required rear yard setback. Another addition to this deck would exacerbate the substantial existing encroachment into the rear yard, add an encroachment into the side yard, and increase the coverage variance requested.

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

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

7. *Benefit vs. Detriment:* With respect to the House Additions, the benefits to the applicant (additional living space and a better designed home) outweigh the detriments, if any, to the community. With respect to the Deck Addition, the Board finds that the detriment to the community (resulting from the substantial encroachment into the rear yard and the side yard and increased coverage nonconformity) outweighs the benefit to the applicant (increased deck space).

8. *Minimum Variance:* With respect to the House Additions, the variances are the minimum necessary to achieve the benefits sought.

With respect to the Deck Addition, the Zoning Board therefore **denies** the requested variances.

With respect to the House Additions, the Zoning Board therefore **grants** the requested area variances to allow the proposed reconstruction as depicted on the final plans, all subject to the following conditions (in section VI below) to minimize any adverse impacts from the variance and reflect the denial of the Deck Addition variances:

VI. CONDITIONS

1. The applicant shall revise and resubmit the final plans to the Building Inspector to remove the proposed Deck Addition (including generator relocation) and to recalculate the coverage without the proposed Deck Addition. Upon submittal of the revised plans, the extent of the coverage as depicted on those plans shall constitute the extent of the coverage variance allowed for the House Additions.

2. 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, to be revised pursuant to Condition #1, 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, and no increase of coverage, without further approval of the Board.

3. 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 (as revised in accordance with Condition #1), 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.

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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: July 21, 2022

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Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Bella 165, LLC., 165 Dune Road (905-20-2-24.1)** as written; seconded by Mr. Musnicki and unanimously carried 3 ayes, 0 nays, 1 absent, 1 abstain.

4. **Mohammad Rizwan Sabar, 156 Dune Road (905-020-01-023)** Applicant requests variances from §197-8 C for a proposed building area lot coverage of 22.4% where the maximum permitted is 20%, and from §197-8 D for a proposed rear yard setback of 55.08 feet where the minimum required is 75 feet.

James N. Hulme, Esq., appeared on behalf of the application. Mr. Piering stated there was a determination, and the reading was waived.

Motion was made by Mr. Piering to adopt the determination of **Mohammad Rizwan Sabar, 156 Dune Road (905-020-01-023)** as written; seconded by Mr. Badzik and unanimously carried 3 ayes, 0 nays, 1 absent, 1 abstain.

5. **Thomas Schmidt, 66 Exchange Place (905-015-04-049.01)** Applicant requests variances from §197-6 C for a proposed building area lot coverage of 21.9% where the maximum permitted is 20%, from §197-6 D for a proposed front yard setback of 30 feet where the minimum required is 50 feet, a proposed combined side yard setback of 68.3 feet where the minimum required is 70 feet, and for proposed rear setbacks of 30.1 & 17 feet where the minimum required is 50 feet, from §197-35 C for proposed accessory structures located in the side yard where specifically not permitted, for a proposed accessory deck setback of 17 feet where the minimum required is 20 feet, and for a proposed accessory pool setback of 17 feet where the minimum required is 20 feet.

James N. Hulme, Esq., appeared on behalf of the application, and Mr. Piering stated there was a determination and the reading was waived.

Motion was made by Mr. Piering to adopt the determination of **Thomas Schmidt, 66 Exchange Place, (905-15-4-49.1)** as written; seconded by Mr. Musnicki and unanimously carried 3 ayes, 0 nays, 1 absent, 1 abstain.

HOLDOVERS:

7. **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.

Richard Hafeli, Esq., submitted a written request to holdover the application to August 18, 2022.

Motion was made by Mr. Piering to holdover the application of **Egret Dune Corporation, 95 Dune Road (905-21-4-2)** to August 18, 2022; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.

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, together with Bruce Nagel, Architect. Mr. Hulme said as discussed, they are looking to get the two variances necessary to achieve the project that was outlined at the last meeting which is to renovate and reconstruct a home in its current location. This particular part of the Village has a very well developed two Dune and its protected and we are proposing to redo the house, renovate it in its current location which is 19' back from the crest of the dune for the existing deck, and 38' feet for the existing house. When we discuss renovation and reconstruction, it's removal of most of the structure but retaining the existing foundation and that's of great benefit to the applicant and the dune. The house has survived many storms and moving it back would move it lower to the grade and would subject it to more exposure to harm from storms. The house itself survived Hurricane Sandy but the front yard on the Dune Road side flooded and the house if it were located further back would have sustained significant damage. The other thing we wanted to discuss was the foundation, which is essentially the bulk of it is in the nature of a bulkhead and I suggest, that one of the reasons the Dune is close to this house because the houses are there that's why the dune is there. If you start to move it back further the Dune will drift back and if you look at the aerial photograph of the current circumstances and the existing from 1976 the homes except for one are pretty much, while there have been renovations they are in the same line that they have always been with the exception of 195 Dune Road. If you follow the inner dune line it follows along the structures and one of our issues in moving back is that the dune will be impacted by the removal of the existing foundation and the installation of a new foundation. I have a letter from the Engineering firm who detail the existing foundation without a doubt that it needs help but allowing the construction and the help that it will provide it will be a benefit not a detriment and the retaining walls will cause a negative impact and the dune is retained by the timber foundation walls. One of the other questions at the last hearing was the money being spent, and the comparison of moving the house to a new location and we received estimates for that and the first page and into the second page shows a range of costs and estimates for the current proposed project and they also analyzed the cost of a brand new construction eliminating the existing structure, new foundation, etc., etc., would add more than a million dollars to the estimated cost of the project. It is environmentally sound, but to do otherwise has a substantial financial impact. As I started off with my comments, we are only seeking two variances, Coastal Erosion and the setback, and this Board often provides coastal erosion relief and the cost of moving a project out of the area and you've overtime, granted some relief to projects of less than the 75' required. As indicated, what we propose will maintain the deck at 19' back and the home at 38' back from the Crest of the Dune. The house at 119 Dune Road had a lot of other significant differences and you allowed variances for the deck and the house. That project needed a substantial number of variances, all of which were granted and this is a smaller set of variances. 371 Dune Road, you granted the variances for setback to allow for 40' for the house and that's a little more than what is here and that's based on the fact to maintain the swimming pool and this would not be the first time you were granted relief.

Mr. Piering asked if the 40' was for the pool or the house?

Mr. Hulme said you granted a variance to allow the house 40' from the Crest of the Dune, a brand new house. Sometimes we are comparing apples to oranges, and they required more relief. There's no FEMA relief needed, there's no other area variances; there is coastal erosion and a 75' setback and we're no closer to the Dune than other projects that you've granted relief for.

Mr. Piering said you needed relief to build, here you do have some room.

Mr. Hulme said we think there are benefits to the dune in allowing us to stay where we are and leave the bulkhead in the sand.

Mr. Piering asked what is difference from this to the others we've heard.

Mr. Hulme said this foundation is more significant in the dune and we're asking to be allowed to stay, and in the aerial, we are all in this location since 1976 and I believe in this case and those there are benefits to the structures being located where they are. If this was going to be a new house I would not bring the case, we would have plenty of places elsewhere to build but this is not vacant and I think there is benefit and its removal would be detrimental.

Mr. Musnicki said 371 Dune Road, can you submit them to this Board?

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Mr. Hulme said yes.

Mr. Musnicki said are suggesting that this is a benefit to have the bulkhead wall?

Mr. Hulme said that's the engineers conclusion.

Mr. Musnicki said it's your case, if an Engineer was here to say that it would help the case.

Mr. Hulme said okay, we brought it in writing but if it's helpful to have his testimony.

Mr. Badzik said it could be your silver lining.

Mr. Hulme said okay.

Mr. Musnicki said one of the arguments on the analysis for alternatives, we're always looking for alternatives; that doesn't carry a lot of weight in zoning, the applicants needs. Is there anything else beside that?

Mr. Hulme said you analyze the project, the alternatives should be analyzed from the perspective of the project as proposed. Their goal in bringing this is to reconstruct and renovate this home in its proposed location. So someplace else is not an alternative, it doesn't meet the desires of the client.

Mr. Pasca said we had that before, everyone says they do not want to move it if they don't want to. The project has to look more broadly. We are trying to achieve a certain size house, but to say we want to do this is self-fulfilling and every applicant can say the same thing. There's no alternative because this is the only alternative we want.

Mr. Hulme said there's an overriding environmental benefit as supported by our Engineer.

Mr. Musnicki said that's a low bar to say that; the alternative to me is to relocate the new house on a different part of the property which will make it more compliant.

Mr. Hulme said that will cost approximately a million dollars more; that's why the alternative is not attractive.

Mr. Musnicki said okay.

Mr. Piering asked if there were any other questions or comments, does Mr. Musnicki want them to bring the Engineer?

Mr. Musnicki said no, I don't think so. I want to review what they submitted tonight.

Mr. Piering said he wants to also and he wants to hold it over. We will review the information and hold it over.

Motion was made by Mr. Piering to holdover the application of **Michael and Elizabeth Levy, 205 Dune Road (9905-20-2-8)** to August 18, 2022; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

9. WHB Development Partners LLC, 107 Old Riverhead Road (905-022-02-021) Applicant requests variances from §197-30 C(9)(c) for proposed ground mount sign lettering of 38 inches in height where the maximum permitted is 12 inches, from §197-30 C(9)(c) for a proposed ground mount sign area of 32 square feet where the maximum permitted is 25 square feet, from §197-30 C(20)(b) for proposed wall sign letters of 36 inches in height where the maximum permitted is 12 inches, and from §197-30 D(14) for proposed digital gas price ground sign which is internally illuminated where specifically prohibited.

James N. Hulme, Esq., appeared on behalf of the application, together with Irwin Krasnow.

Mr. Badzik said he wanted to make a correction to the Metro Storage sign, and it's above his chin not below his shoulder.

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Mr. Hulme said as you recall this is our second hearing and the main topic from last time was the use of a digital backlit sign and we have eliminated that and resubmitted drawings. I think our arguments from 50 mph to 40 mph and the wall sign being as distant from the road as it is the importance of being able to catch people eye for the price point, mitigates in favor of a slightly larger dimension for the ground sign as well as the wall sign.

Mr. Pasca asked what was eliminated? The last one?

Mr. Hulme said the request for a variance from section 197-30D (14).

Mr. Pasca said okay, thank you.

Mr. Piering said we're talking about the sign on the road, we have the Metro Storage sign and they received a variance and we knew they'd have a second use, is the sign the same size?

Mr. Hulme said it's a little larger than the Metro Storage sign.

Mr. Piering said their sign is 72" wide.

Mr. Hulme said our sign will be 8' wide.

Mr. Krasnow said the sign is smaller, but with the gas prices it is larger.

Mr. Musnicki asked if the prices are still included?

Mr. Krasnow said yes, but not digital. One gives the logo and one gives the prices.

Mr. Hulme said the argument made about the ability to attract the traffic as it slows is more significant for us than Metro Storage, which is why it is slightly larger than the Metro Storage sign. I gave a handmade drawing, and the actual sign is 6' x 10" and ours is 4' x 8" and we have the two components of the store and the gas prices.

Mr. Piering said I measured it, its 46" x 72".

Mr. Hulme said the actual dimension is 3'10" you are off by 2" or they are off by 2".

Mr. Piering said okay, I don't see why you need a bigger sign.

Mr. Hulme said it is more important to the use.

Mr. Piering said the sign will be large enough if it's the same size as Metro Storage.

Mr. Hulme said we're seeking a variance for the second sign to be bigger, it's 4' x 8' and the other sign is 4' x 6'. The part that identifies us as 7-11 is 4' x 4' and the gas price is also 4' x 4'.

Mr. Piering said the only other gas station is the Valero sign with no sign for the gas prices.

Mr. Hulme said we're entitled to a ground sign, and to put whatever appropriate content we'd like to put in there and the only wrinkle is the size; ours is 2' wider than Metro Storage and I'm suggesting the reason for that and the rate of speed people are traveling attracts the attention to visit us as compared to the Metro Storage sign. You decided you want to go to Metro Storage their sign only needs to confirm the location and that justifies the small difference in the size.

Mr. Piering said its 33%; and my GPS tells me where the gas stations are.

Mr. Hulme said that's true.

Mr. Musnicki said that will be the largest gas station on Eastern Long Island; with 16 pumps.

Mr. Pasca said that could be a factor in their favor.

Mr. Musnicki said it is a gas station, and going by at 40 MPH you will notice it.

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Mr. Hulme said there is a lot of landscaping which makes the use obvious.

Mr. Krasnow said that we just want people to see the pricing at the road not at the pump which is an advantage of the consumers and we've had no opposition to it and people want to know the price and the ability to see it is an advantage. Its more of a convenience and impulse and people want to know the price as opposed to seeing it at the pump.

Mr. Pasca asked if they confirmed with 7-11 that this is all they want?

Mr. Hulme said this came from 7-11.

Mr. Krasnow said we decided not to put stuff on the canopy, we want the sign on the building and the monument sign and the original ask was not acceptable to change the prices. Now were asking to change the price manually, but make it so people can see the price as they drive by. At a traffic light people are stopped, visibility is very important as people drive by. If we were at a corner and a light it would be reduced. We just want the ability for people to see the price of the gasoline before they pull in to the gas station.

Mr. Piering asked if there were any other questions.

Mr. Martinsen said the 7-11 on Route 111 is this sign similar in size to that one?

Mr. Krasnow said all of the signs are 4 x 4 or 6 x 6 and we went with a smaller 7-11 which is 4 x 4 and I don't think that sign has pricing and I think it is on a pile on not a monument, we are ground level. If you look at the new BJ's on Sunrise Highway it's 50' up telling everyone the price we're trying to make it convenient and consumer friendly.

Mr. Martinsen said okay.

Mr. Piering asked what else we're reviewing?

Mr. Hulme said the height of the lettering on the building and the ground sign; the limit is 12" which is very small and the Metro Storage has 3 lines of text at 12" each line.

Mr. Piering said it looks like it gets smaller per line. It goes down to 9" the word Metro is large.

Mr. Hulme said the height of all of them together is close to or more than our one logo.

Mr. Piering said okay. How big do you want the logo?

Mr. Hulme said the relief is 38" versus 12".

Mr. Musnicki said that speaks to the logo only?

Mr. Hulme said yes.

Mr. Piering said just the "7"?

Mr. Hammond said the "11" is less than 12".

Mr. Hulme said the key in the Metro is not a letter and its twice the size as the word.

Mr. Piering said the "7" is part of the logo?

Mr. Hulme said yes.

Mr. Musnicki said at the end of the day, it's all about the width of the sign, the height is the same as Metro Storage so there is no change there.

Mr. Hulme said yes and the width is not all logo, only half is logo the other half is information.

Mr. Piering said okay.

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Mr. Hulme said the wall sign is so far back, the letters do need to be bigger?

Mr. Piering asked how that compares to Lidl?

Mr. Hulme said I am not sure, but I did refer to it.

Mr. Piering asked the size of the building letters?

Mr. Hulme said 36" as opposed to 12". The 12" is a Universal number throughout the Village and in the B-1 traffic moves slow, its pedestrian traffic and 2" more doesn't seem to be a benefit for car traffic going double the speed limit. In the B1 the signs are for foot traffic whereas this location the speed limit is 50 MPH and in the Village just North of the railroad tracks it changes to 40 MPH so by the time people slow down they have passed the use.

Mr. Musnicki said you look like you might have a few Members looking for a smaller sign, do you want to close it or hold it over?

Mr. Hulme said that's up to Mr. Krasnow.

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

Mr. Hulme said we can hold it over and return next month.

Mr. Krasnow said I don't see 7-11 wanting to shrink it less than 4 x 4 so we're shrinking the pricing, is there a possible compromise or discussion I should ask them as opposed to all or nothing? What should I go back to them with and suggest to them, what alternative can we propose to them. I looked at it as a 16 square foot sign and not above 25 square feet. If you want us to put a display on the canopy I want to keep it simple, and concise but I really need ideas to discuss with them.

Mr. Piering said I would suggest what's there now.

Mr. Pasca said some stations have one price than two; you have diesel and regular.

Mr. Krasnow said they are above one another.

Mr. Pasca said it's a suggested compromise.

Mr. Hulme said we should take the 30 days and return back to the Board.

Mr. Musnicki said I wouldn't mind something comparable to the Metro Storage sign and they are a flag lot with the sign up front, and I think you can get the job done with a smaller sign.

Mr. Hulme asked if there's an objection to the size of the lettering?

Mr. Piering said the lettering being the "7"?

Mr. Hulme said yes.

Mr. Piering said no, that's part of the logo I personally don't think its an issue. What is the size of the building sign?

Mr. Hulme said 36".

Mr. Piering said you need a bigger sign being that far back.

Motion was made by Mr. Piering to holdover the application of **WHB Development Partners, LLC., 107 Old Riverhead Road (905-22-2-21)** for a determination; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.

NEW APPLICATIONS:

10. Peter Hertz, 104 Griffing Avenue (905-007-03-007) Applicant requests variances from §197-6 D to construct an addition with a proposed rear setback of 31 feet where the minimum required is 50 feet, and from §197-29.1 A as the addition is proposed partially within the required front yard (40.7' proposed, 50' required) and partially within a required side yard (21.7' proposed, 30' required), representing a prohibited increase in the degree of nonconformity of a dwelling with preexisting nonconforming front & side yard setbacks.

James N. Hulme, Esq., appeared on behalf of the application. They are seeking variances to make a modest addition to the home and his client and wife are in the process of down sizing from Quogue to move in to this home after it's been completed. If you visited the site the house was damaged by Fire and that has to be dealt with and they wanted to make it more livable for himself and his family. The lot itself suffers from three challenges, one is that it is in the R1 which requires an acre and its not; the second is that its on the corner with two front yards and the third is that it was constructed diagonally across the property as opposed to oriented on one street. The building inspector chose the front yard as Brook Road although the address is Griffing Avenue. The driveway access is from Brook Road and that being the case, two front yards we need the three pieces of relief as advertised. The front yard is 33' currently, and we're not getting closer but we are increasing the non-conformity by adding square footage. And the side yard is 21.7' versus 30' and that to compare and contrast there is an existing 11.9' setback on that side already. This lot and the lot to the North are undersized and everyone else in the neighborhood can meet the requirements and in addition I provided an excerpt of the new floor plan and what's in yellow is the existing house, so we're adding along one side and along the other side to create a primary suite with a new bathroom and other normal features. I think that the relief in the context of the challenges the lot creates and has are very reasonable and we did hear from one neighbor, and I gave her information and her husband is here and they are to the North and I had further information and their questions had to do with the sanitary and the answer is that we are going to install a new system in the front yard and its currently in the rear yard. There was a question about the flood plain and we are not in it; we agree to put a fence along the property lines and that neighbor asked how long it will take and since we need relief we can't begin to work in the Summer; it could be a six-month project and that's subject to labor and materials and I think they are okay with those thoughts.

Mr. Piering asked what the project limiting fence is?

Mr. Hulme said it's at the request of the building department to keep the debris on the property.

Mr. Piering asked if its temporary?

Mr. Hammond said yes, its not set in stone and its nice for neighbors.

Mr. Hulme said it will keep stuff from things blowing.

Mr. Pasca asked him to repeat the conditions.

Mr. Hulme said a fence along the Northern property line.

Mr. Pasca said okay.

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

There were no comments or questions.

Motion was made by Mr. Piering to close the public hearing for **Peter Hertz, 104 Griffing Avenue (905-7-3-7)** for a determination; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

11. George & Elvira Anderson, 317 Dune Road (905-018-02-022) Applicant requests variances from §74-5 C(2) for proposed major additions within the coastal erosion hazard area where not permitted, from §197-8 C for a proposed combined side yard setback of 36.7 feet where the minimum required is 50 feet, from §197-8 F for a proposed exterior deck that exceeds the height of second habitable floor level where not permitted, from §197-29.1 A as the additions

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are proposed partially within the required side yard (14.8' proposed, 20' required) and partially beyond the maximum allowable height (43.3' proposed, 40' maximum), representing a prohibited increase in the degree of nonconformity of a dwelling with preexisting nonconforming side yard setback and height, and lastly from §197-35 C for a proposed pool with a setback to the crest of dune of 45.8 feet where the minimum required is 75 feet.

Nicholas A. Vero, Architect appeared on behalf of the application. He said he will go through the variances requested; they want to maintain the existing side yard setbacks that are non conforming, we are extending the addition to the North and we're looking to maintain the rear yard setback or Dune Crest setback to maintain 30.2' to the SW corner deck and looking to maintain the setback of 45.4' within the deck to allow for pool construction which is a 10 x 20 shallow pool and maintain the dune crest setback of 54.1' and that will not be expanded but maintained; it is a 4' pool.

Mr. Piering asked if the deck is as is?

Mr. Vero said yes.

Mr. Piering said the side yards remain?

Mr. Vero said yes, one side is conforming on the West; the 14.7' is the Westerly setback and we're looking to go straight out from there. We're also seeking a height variance, we're reducing the height and on the existing structure you'll see plate heights and top of roof heights and the top at the Apex on the Westerly side is 51.82' and we're looking to reduce it to 43.3' and that's on top of the existing plate height where the roof angles on the Westerly wall and if you look at that you will see a 42.3' plate height. There will be one foot of structure and we're asking for a height variance we're reducing it down to the one story elevation and that's 42.3' and we're only 1' higher than that and we're looking to maintain the second floor on the Westerly side and we're flattening that roof to reduce the overall height. For reference we're allowed to be on a flat roof elevation 40, with a peaked roof we can go to elevation 44 so we're reducing the height of the roof. We're looking to maintain the house the first floor and second and build from there which puts us 4' higher than what's prescribed by FEMA which is the 4' height which is being dictated by the existing structure. We talked about a roof deck elevation, and in my drawings I propose in one area more height of 10' and that's why I'm putting a roof deck on top so it doesn't line up with the main first floor so its 18" higher than the main floor of the house. If we're doing a roof deck it has to be level with the height of the second floor.

Mr. Piering said we're asking for 18" of what?

Mr. Vero said above our second floor; I have the first floor rea where I'm asking to raise the height of the ceiling and I'm asking for a roof deck on top of that. The roof deck is off the master bedroom and slightly higher. I'm taking living space from the SW corner and pushing the house back by 14' and taking out 14 x 16 area of two story structure and that will allow more deck on the first floor and gives the Western neighbor of looking SE because their property is further back. I would also like to state that there is a finished space below the first floor which will be removed.

Mr. Badzik asked why they are doing that?

Mr. Vero said to get height in the living room, it's strictly for ceiling height.

Mr. Badzik said okay.

Mr. Vero said there is no advantage to it. We will be reducing the lower level which was built by the previous owners and sprinklering the building, and a new sanitary system. The pool conforms to the 20' setback, and we asked for a variance on 185 Dune Road and this Board granted a variance from the Dune Crest to 41.3' which was built into the existing deck. 511 Dune Road this Board granted variances for the side yard setbacks, and for 445 Dune Road those side yard setbacks were maintained even though it was a new house. There is no variance request for lot coverage and we don't need a front yard setback if we leave the house in its existing location, and they don't have to redo the pile foundation which is in great shape; they are leaving the first floor and leaving most of the walls on the second floor just redoing the roof. There's no detriment to the community or environment and we're updating the septic system. Anytime I

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come before this Board, variances are self-imposed but I think some of the situations that the homes are in and their locations is what drives the variances requested.

Mr. Piering said my question is the height, why can't you make that conforming?

Mr. Vero said we'd have to start from scratch and do new piles; I'm starting at elevation 24 if I start at elevation 20 then it's a new house.

Mr. Piering asked if 7' ceiling would work?

Mr. Vero said if we reduce the existing to 8' I have to wipe out the entire second floor of the house and the first floor and start over.

Mr. Piering said the reason you need the height is keeping the first floor?

Mr. Vero said yes, it's an 8' plate height.

Mr. Piering said he just wanted to know why they needed the height variance.

Mr. Musnicki asked about the mechanicals?

Mr. Vero said I have two rooms and all of the equipment can be below the deck because of the height but they will be located in conforming locations, and I have a few feet on the East side to put them.

Mr. Musnicki said okay.

Mrs. Galperin, 319 Dune Road and they have no problem with the design, from our standpoint a nicer house would be nicer its in disrepair I just want to know about the lot coverage. We were faced with strict limitations and our house is so far back and we were not granted leeway on the Dune Crest or the height, we are at 40' and we have major roof problems because of the roof pitch. We had a vacant parcel, and we had coastal erosion line restrictions and we abided by them and the question I have is the lot coverage. We were taken to task on lot coverage.

Mr. Musnicki said it looks like 19.6%.

Mr. Vero said it is 19.01%.

Mrs. Galperin said okay. We had to stay under the 20%.

Mr. Piering said you see that we try to have anyone with vacant land build within as many conformities as we can.

Mrs. Galperin said okay. This is 14.7' from our house, the drawings were hard to read; we are to the West.

Mr. Vero said they benefit from the two story structure being removed.

Mrs. Galperin said the house will go forward how far?

Mr. Vero said about 22' forward.

Mrs. Galperin said it'll block us completely. The new house will all along our house, we are all the way back and the house is going in that direction. She asked the square footage?

Mr. Piering said the only thing before us is what we discussed. The lot coverage is conforming.

Mrs. Galperin said the lot coverage is fine. If they can construct a pool, that's great.

Mr. Piering said the swimming pool will go in to the existing deck.

Mrs. Galperin said we were told that's impossible. I think the plan sounds good.

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Mr. Piering asked her concern.

Mrs. Galperin asked if it's a full two stories?

Mr. Vero said we step down, and she's welcome to come to his office to look at the plans.

Mr. Piering asked if there were any other questions.

Mrs. Galperin said no.

Motion was made by Mr. Piering to close the public hearing for **George and Elvira Anderson, 317 Dune Road, (905-18-2-22)** for a determination; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.

12. 804F Realty Corp, 112 Montauk Highway (905-004-02-014.01) Applicant requests variances from §197-30 C(1)(a) for proposed signage totaling six (6) signs (ground sign, wall sign, four "V" canopy signs) where the maximum permitted is two signs, from §197-30 C(9)(a) for proposed ground sign setbacks of 5.3 & 6.3 feet where the minimum required is 10 feet, from §197-30 D(7) for two "V" canopy signs proposed above the eave line (on the roof) where not permitted, and also from §197-30 D(7) for two "V" canopy signs proposed covering architectural details (reverse gable cornices) where not permitted.

Barbara Rasmussen, Esq., appeared on behalf of the application. There are two front yards, with a lot of parking required and the pumps and new canopy and aesthetically its important that it be a landmark into the Village. The proposal is that there is a wall sign indicating the name of the store "East End Snack Barn" the ground sign at the corner will replace the existed mounted sign which is non-conforming and more along the lines of the ground sign at the TD Bank across the street. It is non-conforming because it's closer to the setback than allowed; the excessive number of signs beyond two have to do with the logo the "V" for Valero on the canopy for a total of four and six signs in total. The "V" could be a detail as opposed to a sign, it is a logo and the "V" will be the coloring of the Valero chain.

Mr. Pasca asked if there's anything showing it on the canopy.

Ms. Rasmussen said yes. There are four views of the canopy for the South, North, East and West and we wanted to seek the ground sign and canopy as well to draw attention from a distance. They are covering the details on two sections and they are within the roofline both of which are prohibited by the Code and there is no other place to put them on the canopy. The sign lettering is within the Code as far as size of the letters. There is no proposed signs for pricing of the gasoline. The only thing with the coloring is the Valero lettering color, and its set forth by the company and we toned it down and swapped the teal for the white.

Mr. Musnicki asked if the color is blue or teal?

Ms. Rasmussen said it is a teal color.

Mr. Pasca said when this was in front of the Planning Board and the canopy was part of the prior application, the PB was fairly interested in the esthetics of the canopy and they also asked many times are there going to be other signs and signs were removed from the Plans and it doesn't mean they can't ask for the variance, but it was a concern.

Ms. Rasmussen said they were removed intentionally, because they don't have jurisdiction over the signs and we didn't want to get caught up. There are no conditions in the decision.

Mr. Pasca asked if she is sure? He believes that there is a condition in the decision about conforming to the decision. Is it in the ZBA record?

Ms. Rasmussen said she went over it. All signage other than the traffic and circulation and arrows shall be subject to the requirements of the Village Code.

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Mr. Pasca said it was discussed and there were strong feelings about the signs and you have a right to ask for variance, but its fair to tell this Board the canopy was a big deal and the idea of mitigating the impacts of the massing was too.

Ms. Rasmussen said that's a fair statement. It wasn't prohibited. The ground sign always needed a variance, there is no way to put that in a conforming location. As far as the aesthetics of the canopy the Board was opinionated about it, and the peaks and how many peaks we would have so to add some type of signage on it or emblem so it can be seen.

Mr. Piering asked if they are looking for just a "V" just the logo?

Ms. Rasmussen said yes, and there are four proposed.

Mr. Pasca asked if it has to go to the ARB?

Mr. Hammond said all signs have to go to the ARB. This will get referred if they are granted variances.

Ms. Rasmussen said okay. If they are not happy with the signs the ARB will tweak them.

Mr. Piering said there is a ground sign and a wall sign.

Ms. Rasmussen said a ground sign, a building sign, and four "V" on the canopy to alert drivers.

Mr. Piering said the "V" on the canopy how many pumps are there? Six?

Ms. Rasmussen said there are three double sided pumps.

Mr. Piering said there will be "V" on every pump

Mr. Musnicki said there are 12 on each pump.

Ms. Rasmussen said there is nothing to be seen from a distance.

Mr. Musnicki asked if the p umps are colored too?

Ms. Rasmussen said she's not sure. The one "V" because of the canopy situated, there is one we can remove which is facing the vet property and won't be seen from a distance. If they can get a sign on the canopy he would be happy. If you come down Old Riverhead Road you can see it there won't be a tall sign which is shown from a distance.

Mr. Musnicki asked the diameter of the "V"

Ms. Rasmussen said it's 48" x 38".

Mr. Musnicki said it looks substantial.

Mr. Pasca asked what the concern would be that it would be mistaken for something other than a gas station?

Ms. Rasmussen said no, it will just give notice that it's a gas station. Having a pop of color will draw the eye to the corner.

Mr. Badzik asked if they are all proposed for the canopy only and not on the building?

Ms. Rasmussen said its on the canopy only in four locations.

Mr. Musnicki said the locations on the site plan, on the length of the canopy it looks like the "V" is located where

Ms. Rasmussen said on Montauk Highway facing Valero, in the upper right; if you're facing the canopy at the snack barn the upper right; and then the other two are on the East and West end caps.

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Mr. Musnicki said okay. I can see the signs needed for the brand, and everyone knows it's a gas station and the traffic isn't going fast at that corner. Would you think about the "V" only on the length of the canopy and not on the corners.

Ms. Rasmussen said yes.

Mr. Musnicki said that would minimize the impact of them all over.

Ms. Rasmussen said that removes a variance needed as well.

Mr. Musnicki said at least there's identification, and its not overwhelming.

Ms. Rasmussen said we have the ground sign and the Vet side; my client would be happy with that. The Northerly and the Southerly logos are more important to them to reach a greater number of people.

Mr. Musnicki asked the colors on the canopy, what are the colors involved.

Ms. Rasmussen said its natural and white and cedar.

Mr. Piering said that would go to the ARB.

Ms. Rasmussen said we have a building permit for the construction. We plan to start construction in September.

Mr. Piering said there was a problem with the canopies, are we thinking about two "V" instead of four?

Mr. Musnicki said yes, that's my thought.

Mr. Piering said he had no other questions or comments.

Motion was made by Mr. Piering to close the public hearing of **804F Realty Corp., 112 Montauk Highway (905-4-2-14.1)** for a determination; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.

EXTENSION REQUESTS:

Donald Steinert, 96 Seafield Lane (905-15-4-21) Applicant requests a six month extension of the Board of Zoning Appeals determination dated January 20, 2022.

Motion was made by Mr. Piering to grant the applicants extension request, up to and including January 20, 2023; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

Scherl, 452 Dune Road (905-17.000-1-2.2) Applicant requests a six month extension of the Board of Zoning Appeals determination dated July 15, 2021.

Mr. Piering stated that they could have a one year extension if they would like, this way they have time to sort everything out?

Mr. Hulme said yes.

Motion was made by Mr. Piering to grant a one year extension of the July 15, 2021 determination; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.

Motion was made by Mr. Piering to adjourn the meeting at **6:40 p.m.**; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.