

September 15, 2022

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, September 15, 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
John Wittschen
Daniel Martinsen

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 August 18, 2022 meeting; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

DECISIONS

1. 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. 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

WHB Development Partners, LLC.

DETERMINATION

Address: 107 Old Riverhead Road

SCTM #: 905-2-1-19.5

-----X

I. REQUEST FOR RELIEF

The applicant, WHB Development Partners, LLC., is the owner of a parcel of real property located at 107 Old Riverhead Road. The property is located wholly within the B-3 Zoning District. According to the survey of the property dated June 23, 2021, and updated on February 1, 2022, the parcel is vacant land.

On July 18, 2019, the ZBA granted a variance to allow two ground signs on the subject property, one for the Metro Storage facility that is located on the adjacent lot, and one for the

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subject property. One condition of the July 18, 2019 variance provided that “The variances granted herein shall permit a second ground sign to be erected on tax lot 19.5 to advertise any future business on tax lot 19.5, provided that neither the future, second sign (related to the future business on tax lot 19.5) nor the present sign (related to the business on tax lot 19.6) may exceed the area permitted for a single ground sign (i.e., 25 sf per sign).”

The current applicant is in the process of developing the subject property as an automotive fueling station and 7-11 convenience store. This application seeks approval of a proposed signage plan prepared by Cummings, dated July 29, 2022, which includes

- one ground sign totaling 24 square feet, with the “7” in the 7-Eleven logo being 38 inches tall, and the prices for the fuel being 10.75 inches tall, and
- one building sign totaling 49.8 square feet, with 36-inch lettering.

Relief is required from Section 197-30.C.9(c) of the Village Code, which provides that, in the B-3 Zoning District, the maximum area of a sign shall not exceed 25 square feet. Relief from this section is needed because the building sign would be 49.8 square feet. (The proposed ground sign is conforming as to this section)

Relief is also required from Section 197-30.C.9(b) of the Village Code, which provides that, in the B-3 Zoning District, size of lettering on ground signs shall not exceed 12 inches in height. Relief is needed from this section because the “7” is proposed to be 38 inches in height.

Relief is also required from Section 197-30.C.20(b) of the Village Code, which provides that, in the B-3 Zoning District, size of lettering on wall signs shall not exceed 12 inches in height. Relief is needed because the proposed wall sign lettering is 36 inches in height.

Therefore, the applicant requests the required variances from Section 197-30.C(9)(c) and (b), and 197-30.C(20) (b).

II. SEQRA

The applicant submitted an Environmental Assessment Form Part I pursuant to the State Environmental Quality Review Act (SEQRA). The application is a Type II action under 6 NYCRR § 617.5(c)(9), and thus no further review is required.

III. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on June 16, 2022. The applicant’s attorney, James N. Hulme, Esq., and Irwin Krasnow, appeared and presented the application.

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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 original application sought an additional variance for an internally illuminated sign (digital numbering) and for the size of the ground sign in excess of 25 s.f. After hearing the concerns of the ZBA, those requests were eliminated.

The hearing was closed at the August 18, 2022, meeting for a determination.

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 proposed variances will not adversely impact the character of the neighborhood. With respect to the wall sign, the building on which the sign is to be located is set so far back from the street (160 feet) that the larger lettering of 3 feet and larger size of 49.8 sf will not appear as large as a conforming sign would appear if setback closer to the street. Similar relief has been granted under such circumstances, such as was the case more recently with the Lidle sign approved on 12/17/20, with 123.5 square feet and 5.5-foot tall lettering where it was set back 159 feet from the road. With respect to the ground sign, only the “7” (which is more akin to a logo) is to exceed the lettering height, and the

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applicant eliminated the request for internal illumination/digital numbering and for a total sign area variance. The Board notes that the applicant was mindful not to include any request for additional sign variances, such as by proposing signage on the canopy or by proposing additional signage beyond the number permitted for the property. The overall sign plan is thus relatively modest in relation to the property and use.

2. *Alternatives:* The applicant has demonstrated that there are no practical alternatives to achieve the benefit sought (visibility of the signage) without the requested variances.

3. *Substantiality:* Some of the variances are mathematically substantial, but that is mitigated by the context of the application for the reasons stated above.

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

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

6. *Benefit vs. Detriment:* The benefits to the applicant outweigh the detriments, if any, to the community.

7. *Minimum Variance:* As modified, the variances are the minimum necessary to achieve the visibility benefits sought.

The Board therefore grants the requested variances to allow a ground sign with lettering 38 inches in height, and for a proposed wall sign with letters 36 inches in height and 49.8 square feet, as shown on the site plan drawn by Cummings, dated July 29, 2022, all subject to the following conditions to minimize any adverse impacts from the variance:

VI. CONDITIONS

1. The wall sign to be erected, as shown on the sign plan, both as to square footage and height, shall be the only sign permitted on the building and any additional sign on the building shall be prohibited.
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 signs that have non-conforming dimensions.
3. All conditions of the July 18, 2019 decision (issued to Metro Storage) pertaining to the ground signs on this property continue in full force and effect.

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Dated: September 15, 2022

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **WHB Development Partners, LLC., 107 Old Riverhead Road (905-22-2-21)** as written; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

2. Athanasios Polydor, 40 Library Avenue (905-011-03-020.03) Applicant requests variances from §197-11 D(1) to construct an addition with a proposed front yard setback of 20.4 feet where the minimum required is 40 feet.

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

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

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In the Matter of Application of

Athanasios Polydor

DETERMINATION

Address: 40 Library Avenue
SCTM #: 905-11-3-20.3

-----X

VII. REQUEST FOR RELIEF

The applicant, Athanasios Polydor, is the owner of a parcel of real property located at 40 Library Avenue. The property is located in the MF-20 Zoning District, and is improved by a two story frame house, wood deck, swimming pool, and two detached frame sheds as shown on the survey drawn by Fox Land Surveying, David H. Fox, dated October 22, 2014, and updated on June 15, 2022. The applicant is seeking to construct an addition with a proposed front yard setback of 20.4 feet, as depicted on the survey and on the architectural plans prepared by Barba Architectural Design, PLLC last revised on 6/1/22.

Section 197-11.D(1) of the Village Code provides that, in the MF-20 Zoning District, one-family and two-family detached dwellings and accessory buildings and structures shall have the same yards, stories and heights as required in the Residential District 4 pursuant to §197-9D and E, which, among other things, provide for a front yard depth of not less than 40 feet.

The applicant therefore seeks a variance to construct the two-story addition (garage and living space above), 20.4 feet from the front yard.

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 area variances for the construction/expansion of a single-family residence and accessory residential structures, the

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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.

VIII. ZBA PROCEEDINGS

The applicant's attorney, James N. Hulme, Esq., appeared and presented the application. The Board did not receive any written submissions from any neighbors in support or opposition to the application. Based on concerns raised about a second floor window, the applicant's representatives offered to remove the window to the bathroom on the northwestern side of the addition. The hearing was closed at the August 18, 2022, meeting for a determination.

IX. GOVERNING LAW

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

X. FINDINGS AND CONCLUSIONS

With respect to the statutory requirements for a variance, when viewed under the standards applicable to educational institutions, the Board finds as follows:

8. *Character of the Neighborhood:* The applicant demonstrated that the requested variances will not have a material adverse impact on the character of the neighborhood. The property is a uniquely-shaped flag lot, where the designated front yard is the northern portion of the property, where the addition is to be located. The proposed addition is a modest one designed to allow a single-car garage with some additional storage space at the ground level, plus some living space above it. Concerns were raised at the hearing about the visibility from the second floor window (which leads to a bathroom), so the applicant offered to remove the window to avoid that adverse impact.

9. *Alternatives:* There are no alternatives to achieve the benefit sought without the requested variance.

10. *Substantiality:* The requested variance is substantial.

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

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

13. *Benefit vs. Detriment:* On balance, the Board finds that the benefit to the applicant outweighs the detriment to the community, if any, subject to the mitigative condition offered by the applicant.

14. *Minimum Variance:* The Board finds that the variances requested are the minimum necessary to achieve the benefit sought by the applicant.

The Board therefore grants the requested area variances to allow the applicant to construct a second story addition, as shown on the survey drawn by Fox Land Surveying, David H. Fox, dated October 22, 2014, and updated on June 15, 2022, and on the architectural plans prepared by Barba Architectural Design, PLLC last revised on 6/1/22, subject to the following conditions to minimize any adverse impacts from the variance.:

XI. CONDITIONS

1. Prior to issuance of a building permit, the plans submitted to the Village shall be modified to eliminate the window proposed in the architectural plans for the bathroom on the northwesterly side of the addition.

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, without further approval of this 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, without further approval of the Board.

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

5. 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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Dated: September 15, 2022

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the resolution of **Athanasios Polydor, 40 Library Avenue (905-11-3-20.3)** as written; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

3. Shirley Tong, 29 Maple Street (905-005-01-033) Applicant requests variance from §197-29.1 A for a proposed addition located partially within the required side yard (13.9' proposed, 15' required), representing a prohibited increase in the degree of nonconformity of a dwelling with preexisting nonconforming side yard setback.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

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

Shirley Tong

DETERMINATION

Address: 29 Maple Street
SCTM #: 905-5-1-24

-----X

XII. REQUEST FOR RELIEF

The applicant, Christopher Cordella, is the owner of a parcel of real property located at 25 Maple Street. The property is located wholly within the R-4 Zoning District. According to the survey of the property drawn by Seccafico Land Surveying, P.C., dated September 20, 2021, and updated on July 19, 2022, the parcel is improved with an existing one-story frame dwelling, and inground swimming pool, and detached hot tub. Pursuant to the survey and Proposed Site Plan drawn by William Fredric Heine Architect dated July 21, 2022, the applicant seeks to construct a proposed one story addition within 13.9' of the northerly side yard.

Section 197-29.1.A. of the Village Code provides that a nonconforming building or structure lawfully existing on any lot, or a building or structure which lawfully exists on a nonconforming lot, may be enlarged, reconstructed, altered, restored, or repaired, in whole or part, provided that the "degree of nonconformity" is not thereby increased. For the purposes of this subsection, an increase in the "degree of nonconformity" shall include an increase in the amount of a nonconforming building's or structure's gross floor area which is located within a required setback area, an increase in excess of the allowable building area lot coverage.

The Building Inspector determined that the proposed addition would constitute a prohibited increase in the degree of nonconformity, as it would include an addition within 13.9' of the side yard where 15' is required. Therefore, the applicants request the required variances from Sections 197-29.1.A

XIII. SEQRA

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

Since this is a request for area variances (setback variances) for a single family residence, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(11), (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 August 18, 2022. The applicant's architect, William Heine 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 August 18, 2022, meeting for a determination.

XV. GOVERNING LAW

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.

XVI. 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 requested variances will not have a material adverse impact on the character of the neighborhood. The proposed addition is a modest one-story addition of 20' x 14.71', located over an area that presently is occupied by a deck and part of a pergola. The total nonconforming area is minimal –

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about 1.1' x 20', with the rest of the addition being located in a conforming area. The setback of 13.9' will simply continue the setback that exists along the northern side yard of the property.

16. *Alternatives:* There are no alternatives to achieve the benefit sought without the requested variance.

17. *Substantiality:* The requested variance is not substantial and represents only a 1.1' side yard encroachment over a 20-foot span of the one-story addition.

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

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

20. *Benefit vs. Detriment:* On balance, the Board finds that the benefit to the applicant outweighs the detriment to the community, if any.

21. *Minimum Variance:* The Board finds that the variances requested are the minimum necessary to achieve the benefit sought by the applicant.

The Board therefore grants the requested area variances to construct the one-story addition, as depicted on the survey prepared by Seccafico Land Surveying, P.C., dated September 20, 2021, and updated on July 19, 2022, and the Proposed Site Plan drawn by William Fredric Heine Architect dated July 21, 2022, with a setback of 13.9' to the northerly side yard, subject to the following conditions to minimize any adverse impacts from the variance:

XVII. CONDITIONS

1. The variances granted herein are limited to the relief set forth in this decision, and pertain only to the plans approved in this decision, and shall not be construed as creating conforming dimensions. There shall be no further extension (horizontally or vertically), increase, alteration or modification to the structure or any other structure located on the property that has non-conforming dimensions, without further approval of this 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. The variances granted herein shall terminate unless a building permit is issued within one year from the date hereof.

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

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Dated: September 15, 2022

Village of Westhampton Beach
Zoning Board of Appeals

No one 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 **Shirley Tong, 29 Maple Street (905-5-1-33)** as written; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

4. 85 & 105 Montauk LLC, 85, 105 Montauk Hwy & 105 Oak St (905-005-01-012, -053.01 & -052.02) Applicant requests variances from §197-17.1 to reconstruct a restaurant with proposed front yard setbacks of 10.5 & 20.2 feet (corner lot) where the minimum required is 50 feet, and from §197-63 B for proposed transitional front yard of 10.5 feet to the building and 10.8, 12 & 24 feet to the parking areas where the minimum required is 30 feet.

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

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

-----X

In the Matter of Application of

85 & 105 Montauk Highway, LLC.

DETERMINATION

Address: 85 Montauk Highway
105 Montauk Highway
105 Oak Street

SCTM #: 905-5-1-12
905-5-1-53.1
905-5-1-52.2

-----X

XVIII. BACKGROUND AND REQUEST FOR RELIEF

The applicant, 85 & 105 Montauk Highway, LLC., is the owner of a parcel of real property located at 85 Montauk Highway, 105 Montauk Highway and 105 Oak Street. The property is located wholly within the B-2 Zoning District. According to the site plan of the property drawn by Nicholas A. Vero, Architect, P.C., dated October 11, 2019, and updated on June 3, 2021, the parcel is improved with an existing one and one half story frame store and apartment, an existing one and of half story frame building, and an existing single family dwelling.

The current application is one step in an approval process that would result in the reconstruction of the “corner restaurant” as a new building with front yard setbacks of 10.5 and 20.2 feet (on a corner lot with two front yards), as well as a new overall site plan for the combined (to be merged) property that would include the corner restaurant property and the

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adjacent restaurant (currently “Boom Burger”) and apartment property. The new site plan would incorporate a proposed transitional front yard of 10.5 feet to the building, and 10.8 feet, 12 feet and 24 feet to the parking area, all as depicted on the Site Plan and Landscape Plan prepared by Nicholas A. Vero, Architect, PC, last revised 5/6/22 (hereinafter collectively “the Plans”).

The Building and Zoning Administrator has determined that the proposal would require relief from the following zoning code provisions:

(1) Section 197-17.1 of the Village Code provides that, in the B-2 Zoning District, business districts are subject to the Table of Dimensional Regulations included at the end of the chapter. This table sets forth by district the dimensional regulations for each of the districts. The Building and Zoning Administrator determined that relief was required because the proposed front yard setbacks for the new corner restaurant building would be 10.5’ and 20.2’ on a corner lot where the minimum required front yard is 50 feet.

(2) Section 197-63.G (11) (B). of the Village Code provides that in the B-2 Zoning District, the minimum transitional yard shall be 30 feet. The Building and Zoning Administrator determined that relief was required because the applicant is proposing a transitional yard that would be 10.5’ to the building and, at different points, 10.8’ and 12’ and 24’ feet to the parking areas.

The applicant has now applied to the ZBA for relief from those sections of the Zoning Code.

XIX. SEQRA

The applicant submitted an Environmental Assessment Form Part I pursuant to the State Environmental Quality Review Act (SEQRA). The application is a “Type II” action under 6 NYCRR 617.5(c)(9) (nonresidential use under 4,000 sf), and no further review is required.

XX. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on August 18, 2022. The applicant’s architect, Nicholas A. Vero, appeared on behalf of the application. No other persons appeared in support or in opposition of the application. The hearing was closed at the August 18, 2022, meeting.

XXI. 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.

XXII. FINDINGS AND CONCLUSIONS

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

22. *Character of the Neighborhood:* The applicant has demonstrated that the proposed variances will not have a material adverse impact on the character of the neighborhood. The subject property is, at present, a constrained site with an inefficient layout and a lack of ordinary site plan elements, such as properly engineered parking, a transitional yard, and a conforming lighting plan. The purpose of the project is to renovate the site and bring it up to modern standards. While variances are necessary because a new building is proposed to replace the old one, and a new parking lot is proposed, the existing site nonconformities are more severe and impactful on the character of the neighborhood. Stated differently, the proposed changes will have a beneficial impact on the character of the neighborhood, despite being unable to achieve full conformity to the dimensional requirements of the code.

23. *Alternatives:* The applicant has demonstrated that the benefits sought cannot be achieved without the granting of the requested variances. The site is severely constrained and various concepts were reviewed by the Planning Board in order to achieve the benefits sought by the applicant, before arriving at the current proposal.

24. *Substantiality:* The variances are mathematically substantial. In the context of the existing conditions, the variances are an improvement over the present nonconformities.

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

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

27. *Benefit vs. Detriment:* The Board finds that the benefits to the applicant outweigh the detriments, if any, to the community.

28. *Minimum Variance:* The variances are the minimum necessary to achieve the benefits sought.

The Zoning Board therefore grants the requested variances to allow the applicant to reconstruct a restaurant with a proposed front yard setback of 10.5' and 20.2' feet on a corner lot where the minimum required is 50 feet and for a proposed transitional front yard of 10.5 feet to the building and 10.8 feet, and 12 feet and 24 feet to the parking areas, as shown on the plans prepared by Nicholas A. Vero, Architect, P.C., dated October 11, 2019, and updated on June 3, 2021.

XXIII. CONDITIONS

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

2. The variances granted herein shall terminate unless a building permit and certificate of occupancy are issued within one year from the date hereof.

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.

Dated: September 15, 2022

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **85 & 105 Montauk, LLC., 85 and 105 Montauk Highway and 105 Oak Street (905-5-1-12, 53.1, and 52.2)** as written; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

HOLDOVERS:

5. 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.

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Richard T. Hafeli, Esq., appeared on behalf of the application.

Mr. Piering said you are only seeking a combined side yard setback?

Mr. Hafeli said yes. I have submitted everything to this Board and I want to point out that this is a small lot as defined under the Code and the way it was in 1953 and we're entitled to 10' and in 1953 we needed a variance for 10' and today we need total side yard and there was a period of time 1966- 2002 we could have constructed without a variance so I have submitted all of that to you and I don't think we have to go over it and we received the plans and I submitted them to the Building Department yesterday and unless you have questions I don't have anything to add.

Mr. Piering said he did not.

Mr. Badzik asked if the plans are the updated survey as well?

Mr. Hafeli said yes, it was submitted two days ago.

Mr. Badzik said okay.

Mr. Musnicki said in previous hearings, I've made comments and the only one I have today is on the small lot provision, I see that you're requesting 10' on each side but it also speaks to the combined side yards from 52' to 37'? Generally speaking, with that small lot provision it was put in to place for small lots and that was a variance of sorts it was a gift for small lots and now you want a 50% reduction of that down to 20 for the total side yards.

Mr. Haefeli from 20 to 37' and I'm saying the special condition applies. But let me point out that the Court of Appeals says the lot isn't small from a variance, the Village adopted the Code and did not have to put a provision in regarding small lots they elected to and the Court of Appeals said you can so it's not a variance.

Mr. Musnicki said it's relief.

Mr. Haefeli said it's what the Trustees thought the Village wanted to do, I can't mee the total side yard requirement.

Mr. Musnicki said the relief was given to the small lot and now you're asking for further relief down to 20'.

Mr. Hammond said since the plan for the house came in, there's a roof deck not permitted in the R3 and not identified earlier.

Mr. Haefeli said if it's not permitted that's fine, we're looking for a variance for the building.

Mr. Pasca said it can only be no or yes without the roof deck included; it's new and not permitted.

Mr. Hafeli said I don't have a problem taking out the roof deck for purposes of the variance.

Mr. Pasca said it's not permitted, so it would need another variance.

Mr. Hafeli said if it's not permitted, we're not asking for a variance.

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

There were no further questions or comments.

Motion was made by Mr. Piering to close the hearing of **Egret Dune Corporation, 95 Dune Road (905-21-4-2)**

for a determination; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

6. 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 Michael Levy and Mr. Hulme said last week they submitted an updated set of plans moving the project from the crest of the dune and it's 50' from the crest of the dune and we think that represents a nice balance between the clients needs and the Villages needs. It requires a variance, but it is reduced and unlike a lot of applications we're not looking for a lot of variances, we're looking for coastal erosion relief and another form of area variance relief and this is measured from the crest of the dune not the rear yard and it is none the less an area variance and subject to those standards and not other standards despite the desire to protect the dune and the initial approach was made with that in mind, and we're seeking to relocate the house back a little bit. We've located it back to where it is because it's in keeping with the neighborhood and we'd be looking at the back door if we move it and its not unheard of in this area along Dune Road and those factors are taken in to consideration and we don't want to be on the road when everyone else has preserved their ocean view. Two doors down there is a house under construction that has received additional relief from the rear yard setback relief we're seeking and we line up the ocean side of this house with that new construction and in the realm of relief this Village has granted. We're not as far back as the house next door to the West but we are as far back as the house to the East and this is a nice balance between the Village desires and our clients needs. I want to remind this Board one compelling factor in other applications where they were not required to move back is that there are two dunes in this section of the Village and there is the landward dune and another and the area is well protected and we're moving from the inside dune and that will remain protected.

Mr. Piering asked if the house is in that dune?

Mr. Hulme said yes, the deck and we're moving it out of the dune we're trying to preserve the deck and its location, but the house itself will be new construction and not in the dune.

Mr. Piering asked if its new construction now?

Mr. Hulme said yes. Its not a huge house as proposed, and were not looking for a lot of relief only this and we've tried to give back enough for the balance.

Mr. Pasca said it is going from 38.5' to 50', the current versus the proposed?

Mr. Hulme said yes.

Mr. Piering said you moved it back 11.5'? You mention there is a house that has more relief than this, which house is that?

Mr. Hulme said the Compton House, the house at 211 and that relief when granted we moved back from the dune and it lines up with the proposed front of this house. The distance is comparable based on relief that was granted this year.

Mr. Piering said there is a lot of room to move this up.

Mr. Hulme said yes, then we're looking at our neighbors, there is value to preserve here and based on my clients experience with storms, it is more at risk if we move it closer to the road. In its current location it was untouched, but their rear yard was touched significantly and if the house was there it would impact the house.

Mr. Piering asked how much room is from the house to the ocean?

Mr. Hulme said it is substantial. We don't measure that because it's not a place we measure from. The lot is 700' deep and I would say 2/3 of that is between the house and the ocean and that's not recorded by the surveyor. I think the real issue is that we have a view both directions

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and every foot we move it impacts that view and we picked the distance we chose so we're not being overly impacted and not impacting our neighbors while still respecting the dune.

Mr. Piering asked how he lines up to the Westerly house?

Mr. Hulme said it's further back. The House to the East we are behind, and the Westerly we're ahead of and the brand-new house we're equivalent to, and they received a variance for. I think it's 211 Dune Road.

Mr. Hammond said it is 213 Dune Road.

Mr. Hulme said if I didn't, I will resubmit it.

Mr. Piering said that could impact this, and I would like to see that decision.

Ms. Mackie said she will email it to the Board tomorrow.

Mr. Piering said it isn't a tremendous hardship.

Mr. Hulme said going further back it is and part of the value is derived from the views.

Mr. Piering said that's part of our consideration and our history with the dune crest and you're making an argument that we granted relief and I don't have a recollection of it. I don't remember that variance. I don't think we want to close the hearing and then have questions. We are on the right path, but I'm not sure that we're all the way there. Are there any questions or comments?

Mr. Musnicki said the last few meetings the argument was driven by the foundation and you did not want to move it so is that abandon? And in addition to that, your concern and you were telling us it's the good thing to have the house and deck in the dune because it preserves the dune?

Mr. Hulme said yes, so we have retreated.

Mr. Musnicki asked him to tell him about the deck, is that going into the same location?

Mr. Hulme said yes.

Mr. Musnicki asked where it is in reference to the dune crest?

Mr. Hulme said it is about more than 10' it is closer to 20'.

Mr. Musnicki said it's still a dune crest issue for the deck

Mr. Hulme said a deck is different than a house, and we may actually be able to use some of the infrastructure too.

Mr. Musnicki said it still stands with the crest of the dune. This is clearly new construction, and I don't know what the addresses are but the houses just East of swordfish they are new construction and they met the dune crest setbacks and in your argument, it is about the view.

Mr. Hulme said two doors down you granted a variance to allow a house that's comparable close to the dune.

Mr. Musnicki asked if its new construction?

Mr. Hulme said yes, it's new construction a brand new house.

Mr. Musnicki said I don't recall this much relief.

Mr. Hulme said 119 Dune Road we moved back and were similarly situated and we moved the house 5'.

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Mr. Piering said you moved it and the argument was the uniqueness and the historic value.

Mr. Hulme said we're looking for one area of relief.

Mr. Piering said on new construction.

Mr. Hulme said yes, because you didn't want us to reuse the foundation. There is a house that is 15' from the dune crest and we want at least some credit for the existing conditions and we want to get to a place of value and address the concerns over the dune crest but that's why I made the point there are two dunes.

Mr. Piering said that's why we use the Northerly dune.

Mr. Hulme said the idea is protecting the shoreline and there are two dunes to do that and 50' from the dune crest the inner dune is not going to be harmed and still protected. There is an argument that the inner dune is substantial because the houses' current location, we're willing not to stay there but the idea that you have is the preservation of the shoreline and it's well preserved and will continue to be. You don't want a house between the two dunes you want the house on the inside. I'm not asking to change the rule, I'm asking for a lesser variance to preserve the value on this property and I'm suggesting that we moved back far enough that the inner dune is not at risk. This is, I know the dune is special feature to all of us but the setback requirement is an area variance its' not judged by a superior environmental standard and it comes down to the balancing test and my argument is that every foot is a detriment and we have moved back far enough so its not a detriment and in the scheme of things it has to be measured with the five part balancing test; it's an area variance not more.

Mr. Piering said okay, he has on other questions.

Motion was made by Mr. Piering to holdover the application of **Michael & Elizabeth Levy, 205 Dune Road (905-20-2-8) to October 20, 2022**; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

7. First Dunes Development 496 LLC, 496 Dune Road (905-016-01-019) Applicant requests variances from §197-8 B for a two-lot subdivision with proposed lot areas of 13,211 & 15,022 square feet where the minimum required is 20,000 square feet and featuring proposed lot widths of 80.47 & 79.53 feet where the minimum required is 100 feet. Applicant also requests variances associated with proposed single-family development of the two potential lots from §197-8 C for proposed building area coverage of 23.4% for "Lot 1" and 22.6% for "Lot 2" where the maximum permitted is 20%, from §197-8 D for proposed side yard setbacks of 10 & 15 feet for both lots where the minimum required is 20 feet with proposed combined side yard setbacks of 25 feet where minimum required is 50 feet, from §197-35 C for proposed deck setbacks of 10 & 15 feet for both lots where the minimum required is 20 feet, and also from §197-35 C for a proposed pool setback for of 15 feet for "Lot 1" where the minimum required is 20 feet and for a proposed pool setback of 10 feet for "Lot 2" where the minimum required is 20 feet.

James N. Hulme, Esq., appeared on behalf of the application, together with Harvey Gessin.

Mr. Piering said we requested some information from you and you submitted that

Mr. Hulme said yes, we submitted a new site plan and on page 3 we have increased the outer side yard setbacks to 20' which is compliant and we submitted a typical house that would be constructed. As you recall, there are two sets of variances required; one is the variance necessary for the two lots and the other is the variances for what we characterize as the building envelope and we provided a building to go there. I put together a chart that reviews the requirements of what was proposed and what the changes are that are resulted in and that hasn't affected the subdivision itself but as you can see by changing that side yard the one side yard to 20' we have eliminated some of the variances and reduced others. We need relief for lot sizes and widths; as to the lot coverage it is still a change, we're looking for 27% on one lot and 21.6% on the other and if you compare that to the existing lot coverage we're close and right now with the 8 cottages the coverage is 24% and our proposal is slightly more than that. We've increased the side yards so the total is 25' instead of 30' but not 50' and the single is 20' and 10' and on one side its met.

Mr. Hammond said the new plan is 30' and 20'.

Mr. Hulme said the 10' is the internal line so it doesn't impact the neighbors. The pool setback is now compliant and it's at 20' from the side. The total side yard should be blue on my chart and I'll redo that and resubmit it. In terms of the area for the overall subdivision the lot widths in the area and there are three or four lots on other side and across the street, and the average lot width which is a variance we're seeking on the bay side is 76.13 feet and we're seeking 80' for each lot. If we look at the lots on the ocean side, their average width is 76.63' so the lots that were creating are in keeping with the lot widths of the neighborhood. The ocean side lots are much deeper than the bay side lots, and the ones to the immediate side of us are 12,000 square feet to up to less than 20,000 square feet and they are not compliant, but we're seeking to create what is in keeping with the character of the neighborhood. The benefit of granting the variances to allow this and the first is a preexisting non-conforming use and if we are granted variances for the subdivision, we will have a conforming use with no non conforming dimensions and that's the goal of Zoning. I would suggest that because the nature of getting a use variance is so much greater, the step of going from a non conforming use to a conforming use is huge and that's a big impact. The other thing I wanted to talk about is what is motivating my client to do this, and there is an economic motivation and they looked at a single house versus two houses but the important distinction has to be balanced against continuing the non conforming use that's there now. If it were greater than continuing what they're doing that's what they'd do but that's not the case and the fact we could get two houses instead of one or we'd continue to keep the 8 cottages or perhaps look at a co-op situation of what's there to memorialize the use forever. To the extent that there's value to this Board and community by ending up with conforming uses despite the area variance, that's a benefit of granting the relief. We fully understand you can't granted relief and I think we have to do some more work on the submitted house because I'm not sure it fits in the envelope and we will propose one that does fit. I think at the end of the day we're ending up with lots that are smaller than required by in keeping with the width and area of the other lots in the vicinity and the lot width is the same. In lot coverage, we're proposing a slight increase it's like 95 square feet as compared to the existing coverage, and I think the use proposed is substantially more beneficial to the community and neighborhood. Although people have indicated they don't want to see two houses, they also indicate d that they'd like to see the bungalows go away.

Mr. Piering said yes, that's true.

Mr. Hulme said I think we end up with a comparable circumstance.

Mr. Piering said granting the relief without having plans is very different.

Mr. Hulme said yes, we tried and there are issues that we have to look at and return to this Board with more detail. We didn't want to spend the time and effort on the drawings without a sense that there's somewhere to go.

Mr. Piering said there is no doubt this is a better circumstance but to grant a variance without knowing what we're putting there we are not comfortable with. We are moving in a great direction, and this is a positive application.

Mr. Hulme thanked Mr. Piering.

Mr. Piering asked if there were any questions.

Mr. Musnicki said you did a good presentation on the subdivision; on the build outs my concern is that there are a lot of variances its new construction with a blank canvas and I'm concerned there are a lot of them.

Mr. Hulme said assuming you grant the subdivision relief, I think if we had to ask for variances for the house this is the relief we'd seek.

Mr. Musnicki said he understands.

Mr. Pasca confirmed you're seeking that now? You could just seek a subdivision, but you started out by saying you need both or you may not do it at all.

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Mr. Hulme said yes, the benefit for you; if the variances are approved for what we show they'd have to apply for new variances.

Mr. Musnicki asked if they'd present something similar to their submission?

Mr. Hulme said based on what we're hearing we may want to go further into the design but the reality is that what we submitted won't fit.

Mr. Musnicki said okay.

Mr. Pasca said you can give feedback, there's nothing wrong with that it's a give and take and he's going to the architect if you have thoughts about what they've presented.

Mr. Martinsen asked if the architect and builder fit two homes with no variances?

Mr. Hulme said no, they would be small because of the setbacks and they'd be the size of the existing bungalows as opposed to the houses on either side of us with similarly sized lots. I'll look at the size of the houses on either side of us and see if that helps. These are not large houses.

Mr. Musnicki said they are very large.

Mr. Piering said the side yard setbacks, the case you make only impact each other but they aren't always going to have family buying it and people will buy it knowing the situation, but we like to have the minimum adhered to.

Mr. Hulme said this is a special case because we're doing it to ourselves.

Mr. Piering said we appreciate it but you know how we feel.

Mr. Hulme said yes, I understand this is a variation though.

Sybil Cohen, Immediate neighbor to the West; clearly two houses would be better than 8 cottages which are rented to unknown people with no regard to the environment. However, this applicant clearly is looking for profit otherwise they wouldn't do it. This is detrimental to the community when we ignore required setbacks and placements and we're not respecting the kind of community we'd like to have. This applicant is not really showing homes that would conform to my house which meets the requirements and I would like to see what these houses will possibly look like; I'd like to see them conform to the requirements not requesting all of the setback variances. I'd like those respected.

Mr. Piering said you heard us address that.

Ms. Cohen suggested smaller houses which would fit better and be able to conform to the Code.

Mr. Musnicki said that's a possibility and we strive to minimize the variances, and there are always variances needed and these plans are available to you at the Village Office you can see what we're reviewing and you're welcome to come to these meetings. But if you have heard through the meeting you will see how we're handling it.

Ms. Cohen said it could improve the initial request?

Mr. Musnicki said they are going to go back and to look at the lot sizes and fine tune the structure to be on it; he'll be seeking relief and it's our job to review it and balance that.

Ms. Cohen thanked the Board.

Mr. Hulme said he would just like to point out that she is a reason that we went to 20' and she's getting the required 20' setback from her property.

There were no other questions or comments.

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Motion was made by Mr. Piering to holdover the application of **First Dunes Development, LLC., 496 Dune Road (905-16-1-19)** to October 20, 2022; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

NEW APPLICATION:

8. Frances Kweller, 143 Beach Road (905-007-02-011) Applicant requests variances from §197-43 A(1) to legalize a fence erected in the front yard (corner lot) of 6 feet in height where the maximum permitted is 4 feet, and from §197-35 C to legalize a freestanding sauna erected with a setback of 9.5 feet where the minimum required is 20 feet.

Susanna Hermann, EN Consultants appeared on behalf of the application. She has packets with photographs and there are five copies of everything. The property is located at 134 Beach Road and its on a corner with two front yards, it's a 27,840 square foot lot in the R20 Zoning District. There are two structures built with no building permit and they require variances; the first is a 6' stockade fence that goes into the front yard on the Mortimer Street side; they did not realize it was a front yard because they use it as a side yard and there are two front yards because it's a corner lot. The other issue is a sauna, and in the photographs the sauna is shown in figure 10, it's a prefabricated self-contained structure 7.5' x 7' and that is 9' from the property line where 20' is required. The fence is partially located in the front yard and goes around the rear yard and encompasses the rear yard as well. They did not realize they needed a permit because there are other 6' fences near the property. Figure 1 and 2 show the view along Mortimer Street, they installed the fence after they installed a swimming pool in 2020 with permits and they realized they needed additional privacy from Mortimer Street. Another 6' fence is located at 3 Mortimer Street at the opposite end of the block. That fence was done with a permit and has a Certificate of Compliance. At 325 Montauk Highway there is a 6' high fence which was approved through site plan and that is apartments on the corner of Montauk Highway and Aspatuck Road. Directly across from this is a property that is Multi Residence and Restaurant and adjacent to that is apartments and because of that and because it's open in that area they felt their privacy required a 6' high fence. They are one block off of Montauk Highway so noise is a factor as well, so to enjoy their yard they would like to keep the 6' high fence in place.

Mr. Piering said the only part of the fence that needs the variance is the front yard?

Mr. Hammond said yes, it's only permitted 4' on the two front yards the rest of the house can have a 6 fence?

Mr. Badzik asked about the Southern border.

Mr. Hammond said yes.

Ms. Hermann said there is an aerial view that shows the subject property and directly across the street there is a restaurant and residences / cottages on that as well and then caddy corner opposite is an apartment complex that wraps around to Montauk Highway and that property has a newly installed 6' fence along Montauk Highway and the side street; it's not out of character and the value for their enjoyment and privacy is very important to them. There is no detriment to the adjacent properties and as it goes along the driveway.

Mr. Piering we went to the site and saw it all.

Ms. Hermann said the sauna is small and self contained and well screened by the fence and vegetation and if it were a shed it would be okay 10' from the property line; if we relocate it to 20' it would be in the middle of the yard and would serve no purpose and it's expensive. It's self contained and not noisy and very small.

Mr. Piering said you're looking for relief from the Mortimer Street side for the fence?

Ms. Hermann said yes, and the sauna is only 9' where 20' is required.

Mr. Musnicki asked if the sauna is new or was it constructed by them?

Ms. Hermann said its pre fabricated they didn't know they needed a permit.

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Mr. Musnicki asked the cost to move it?

Ms. Hermann said I don't know; it's anchored to the concrete slab and it would be expensive to move it.

Mr. Musnicki said the value of the sauna is probably less than the cost of moving it.

Ms. Hermann said yes that is correct.

Mr. Piering said they didn't know they needed a permit for the fence?

Ms. Hermann said yes, that's correct they used a fence company and they saw other fences and didn't realize it was a front yard and we're trying to legalize everything on the property.

Mr. Piering said it's a beautiful piece of property and they planted a lot of trees that will be higher than the fence soon.

Ms. Hermann said yes, and that's what happened on 3 Mortimer Street which was approved awhile ago.

Mr. Hammond asked if she's talking about the apartments?

Ms. Hermann said no, the house. It was approved in 2001 and the ARB discussed it and then a building permit was issued. And a Certificate of Occupancy was issued recently as well and its in compliance.

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

Motion was made by Mr. Piering to close the application of **Frances Kweller, 143 Beach Road (905-7-2-11)** for a determination; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

9. Michael Cavanagh, 28 Halsey Ave (905-009-02-014) Applicant requests variance from §197-35 C for proposed accessory structures located in the side yard where not permitted.

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

Mr. Piering said the Building Inspector pointed out that the new survey has part of the deck and pool in the front yard which would require a new variance to be advertised or go back to the old one.

Mr. Hulme said we should hold it over to next month.

Mr. Piering said okay, do you see what I'm talking about?

Mr. Hulme said yes, I suspect we'll move it back. The architect and surveyor invented a side yard lot coverage calculation.

Mr. Piering said that is new and I saw that; you have to decide about the deck and pool.

Mr. Hulme said okay.

Motion was made by Mr. Piering to holdover the application of **Michael Cavanagh, 38 Halsey Avenue (905-9-2-14)** to October 20, 2022; seconded by Mr. Martinsen and unanimously carried 5 ayes, 0 nays, 0 absent.

10. Lee & Carolyn Renzin (905-008-08-003) Applicant requests variances from §197-7 C to construct a swimming pool that will result in a building area lot coverage of 21.7% where the maximum permitted is 20%.

William Shapiro, Esq., appeared on behalf of the application. They are seeking an area variance to build a swimming pool. The survey that was submitted with the application shows at the top the difference between the two amounts, it's 300 square feet; without a variance a pool could be constructed at 600 square feet and we'd like to build a 900 square foot pool. It's an undersized lot and if the lot were 20,000 square feet we would be able to build a larger pool with no variance so I don't think the instant request is egregious. We are asking for an area variance, but no setback variance and it will be the same distance from the neighbors and will not change the character of the neighborhood. There will be no vegetation removed and the way the property lays today there is room for the pool. We are asking for narrow relief, and the bare minimum needed to accomplish this variance. This is a family home, not a rental property, and they are a family of swimmers where they can swim and do laps in the pool and additionally, they want to enjoy the pool in totality. In sum, there are no undesirable changes to the neighborhood and the setbacks are the same and there is no clearing of vegetation and the neighborhood shows that this will not stand out it will fit in with the neighborhood pools. We can only reduce the footprint of other improvements to accomplish this, so the only way to accomplish it is by variance. 1.7% is not substantial and we're not asking for extra lot coverage for a pool house or a spa, we are only seeking the swimming pool; there's no adverse affect on the neighborhood. I would mention, I represented the clients when they purchased this house it's not self-created, the application and pool is what they want but the hardship is created by the undersized lot.

Mr. Piering said to point out, you do buy an undersized lot and you can make the pool fit, you are arguing they want a larger pool with a 1.7% increase in lot coverage, and not having to change the setbacks it is good. I would like to point out that right now it is a family, next year it could be sold and the circumstances are different and the variances go with the property not the family and its important to consider. I think overall, you want a pool and you have the room and setbacks for it and that's important.

Mr. Musnicki said these variances come to this Board in a lot of ways, some where they want to add a pool to an existing property and structures and the lot coverage or setbacks are sought; and in this case there's a lot of construction and the pool is part of that. Could you describe what's being done on the property?

Mr. Shapiro said I don't have that exact information, I don't know what's new or existing and I could provide that.

Mr. Musnicki said if it's a blank canvas I look at it differently than an existing structure and they are installing a swimming pool.

Mr. Shapiro said he understands. Would the board like a list of what's being constructed?

Mr. Piering said he's confused about what Mr. Musnicki is asking for.

Mr. Musnicki said the existing front of the house is staying, and the rest is new construction and if that can be tightened up and we can lose the lot coverage that might be possible but I don't know.

Mr. Shapiro said are you suggesting other structures being built as of right be decreased to build the pool and eliminate the lot coverage variance?

Mr. Hammond said I have been working on this with the architect for about a year; the whole project came in to get something conforming and we were ready to issue a permit on the rear addition; some back patio work; walkways; a second story addition and they are making additions. If they came in at once with the pool it would have been encompassing and we had a permit and they wanted to enlarged the pool so I wrote the denial for the pool so it wouldn't affect the previous variance and they could make the addition or portico smaller but I didn't do a denial for that fashion because I understood they were going to go with the original approval and amend the pool

Mr. Pasca said coverage is coverage and you advertised the coverage, so it wouldn't change the relief requested.

Mr. Hammond said I did say to construct a swimming pool.

Mr. Pasca said if its changed un other areas it doesn't need to be readvertised.

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Mr. Musnicki said it would help me to be more clear on this.

Mr. Shapiro said he understands Mr. Musnicki's request.

Mr. Piering asked if Mr. Musnicki wants to hold it over?

Mr.. Musnicki said yes, he'd like to see a submission about what's being done on the property.

Mr. Shapiro said you want to know what all of the additions are being built?

Mr. Piering asked if that's in the building department?

Mr. Hammond said yes.

Mr. Pasca said Mr. Musnicki wants to evaluate the package because something else might be able to be lessened.

Mr. Piering suggested we hold it over.

Mr. Shapiro said yes, he understands what the Board is seeking.

Motion was made by Mr. Piering to holdover the application of **Lee & Carolyn Renzen, 2 Lilac Road (905-8-8-3)** to October 20, 2022; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

Motion was made by Mr. Piering to adjourn the public hearing at **6:21 p.m.**; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.