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Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday March 16, 2023, 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

DECISIONS

- 1. 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.
- 2. Lisa Canty, 443A Dune Road (905-017-05-007)** Applicant requests variances from §197-8 D for a proposed addition with side yard setbacks of 6.8 & 6.9 feet where the minimum required is 20 feet, and with a resultant combined side yard setback of 13.7 feet where the minimum required is 50 feet.
- 3. Frank Calamari & Rosemary Vanacore Revocable Trust, 14 Stillwaters Lane (905-010-04-022)** Applicant requests variance from §197-6 D for proposed a portico with a front yard setback of 45 feet where the minimum required is 50 feet.
- 4. Kerim & Alison Kfuri, 31 Exchange Place (905-015-05-027)** Applicant requests variance from §197-35 C for retain section of attached accessory deck constructed 17 feet from property line where the minimum required is 20 feet.
- 5. 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 13,441 & 14,793 square feet where the minimum required is 20,000 square feet and featuring proposed lot widths of 80 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 D for a proposed rear yard setback for "Lot 1" of 67 feet where the minimum required is 75 feet, and

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also from §197-8 D for proposed combined side yard setbacks for both lots of 40 feet where the minimum required is 50 feet.

HOLDOVERS:

6. Daniella Kahane, 121 Seafield Point (905-015-05-010) Applicant requests variances from §197-6 D for a proposed front yard setback (roofed-over entry) of 45.2 feet where the minimum required is 50 feet, also from §197-6 for a proposed addition with a side yard setback of 26.7 feet where the minimum required is 30 feet, from §197-29.1 A for a proposed addition within a required rear yard setback (28.4' proposed, 50' required) representing a prohibited increase in degree of nonconformity of a dwelling with preexisting nonconforming rear yard setback, from §197-35 C(1) for a residential storage shed erected 4.8 feet from property line where the minimum required is 10 feet, and lastly from §197-43 A(8) for a driveway gate installed with a setback of 14 feet where the minimum required is 20 feet.

7. Michael Cohen, 18 Hazelwood Lane (905-006-01-018) Applicant requests variances from §197-9 C for proposed building area lot coverage of 32.7% where a maximum of 20% is permitted, §197-9 D for a proposed combined side yard of 35.3 feet where in the minimum required is 40 feet, §197-29.1 for proposed conversion of a cabana into an accessory apartment with a nonconforming setback of 8.1 feet where 15 feet is required representing a prohibited increase in degree of nonconformity of a preexisting nonconforming structure, and from §197-35 C to legalize a residential storage shed erected in the side yard with setback of 1 foot where required to be located in the rear yard and with a setback of 10 feet.

8. Charles & Joanne Piluso, 503 Dune Road (905-016-02-013) Applicant requests variances from §74-5 C(2) for a proposed addition to a building within the Coastal Erosion Hazard Area where prohibited, from §197-8 D for a proposed front yard setback of 55.5 feet where the minimum required is 75 feet, from §197-29.1 A for a proposed two-story addition which represents a prohibited increase in the degree of nonconformity of a dwelling with a substandard side yard setback (14.9' provided, 20' required), from §197-35 C for a proposed front deck side yard setback of 14.9 feet where the minimum required is 20 feet, and from §197-35 C to retain portion of rear deck constructed 15.4 feet from the side property line and 31.6 feet from the crest of dune where the minimum required is 20' & 75' respectively.

Nicholas A. Vero, Architect appeared on behalf of the application. He said that at our last hearing we testified that at the suggestion of Mr. Musnicki we are looking to cut back the rear deck equal to the original layout of the deck that protruded and we kept it straight and even with the existing deck, so everything in green is the clarifications you sought. The new deck proposed is to be 140 square feet which is 4 square feet less. And everything in red is what we're subtracting and we have a rear yard setback to the Dune Crest and we're increasing that setback and we were asked to clarify the dimensional setbacks on the Dune Road side to the deck and the proposed conditioned addition. We're showing a 55.5' setback to the proposed deck and a 52' setback to the addition.

Mr. Musnicki asked what the new proposed deck is.

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Mr. Vero said it is less than 20' off of the house. It's a lot smaller than what it was, we're taking off 7.5' and he thanked Mr. Musnicki for the suggestion.

Mr. Piering said he did not have any other questions.

Mr. Wittschen said he did not either.

Mr. Vero said the lot coverage is 16.1% and being decreased.

Mr. Pasca said the only changed variance is the 31.6 feet?

Mr. Hammond said the front yard setback was advertised wrong, and it's now 62' and advertised for 50 something. The 55' was to the deck.

Mr. Pasca asked the correct number?

Mr. Hammond said 62'.

Mr. Piering said you need 62' instead of 75'.

Mr. Pasca said they made it better.

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

There were no other questions or comments.

Motion was made by Mr. Piering to close the hearing of **Charles and Joanne Piluso, 503 Dune Road (905-16-2-13)** for a determination; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

9. New York Cancer & Blood Specialists, 40 Main Street (905-012-03-015) Applicant requests variance from §197-7 A for proposed conversion of counseling building for use as medical offices with exam rooms where not specifically permitted.

James N. Hulme, Esq., appeared on behalf of the application. They were seeking to convert one medical like use for family counseling to a different use for breast cancer treatment. We are seeking the variance under a few theories and the issue being that the property is zoned Residential as opposed to Business. I have done research on the property and the History and Use and we have met with the Planning Board. The issue for them, has to do with the parking on the site and the different uses on the site. In the near past, there is a Church, Offices, Parish Center, a school and the prior use which we are seeking to install this new use in to. You had asked questions about the operation of the center, the hours are Monday through Friday 8 to 5pm and no weekends, and as I indicated to the Planning Board if that's a concern, a condition limiting it would be fine. The staff would be 8 employees for the clinic, there is a foundation through this as well, which they use to meet with people to obtain grants for services and they will have four employees. They have other facilities on Long Island that are larger and treat more people and they think this area is under served and they were looking for a smaller setting

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for this service and when this came to their attention, they thought it would be ideal. In any event, they project 40-50 patients per day, which is 5 or 6 people per hour. I believe the Planning Board was accepting of the concept overall that the time of use for some of the uses is different than this use and others. The Church and their services are in evenings and weekends so their need for parking is met by the parking there. This use and the school take place during the day and their parking occurs at a time different from the other uses and in the past there have been no applications for this property to the ZBA but the planning board has accepted the parking there with the 53 land banked spots is sufficient for the dual uses. I think the question for the Planning Board is whether the cancer center use although may be meeting the same needs and requirements and parking will it be more intense and I think what I'm suggesting by the hours, time and number of people is that it is not the case. The apparent use will not increase in any significant way. To complete the picture, we will be operating at the same time as the school. They operate Monday through Friday 7-4 and it is drop off and pick up and there are three moments of traffic, at 9am and noon and at 2:45 pm when the balance are leaving. Our mandate from the Planning Board is to separate the use and we're looking at that. In our plan during the time that Main Street was renovated a driveway was installed to connect the front parking to the rear so one element was the removal of that driveway to segregate the traffic. We are working on that plan, but there is an entrance off of Potunk and parking in the back and that parking is fenced off and that may be removed.

MR. Piering asked if it's the playground area?

Mr. Hulme said the driveway is gated.

Mr. Piering asked if the land banked parking is a playground?

Mr. Hulme said yes.

Mr. Piering said the land banked parking is not applicable because it can't be used.

Mr. Hulme said the parking on Main Street is where the cancer center will park, and the rear entrance and the rear parking would be where the drop off and pick up is. The cancer center will use the parking on the main street side of the property. In 2002 when the parish center was installed they took credit for 48 parking spaces on the street and there was no discussion, but it was on the map. I suspect it's the spots in front of the Church.

Mr. Piering said there are days when Main Street is full.

Mr. Hulme said yes, that's correct. In any event, the other interesting thing that I wanted to bring to your attention; one stems from the idea that the Church use is preexisting non conforming on the site; that's not correct, if you look at today's zoning code the use of a church and accessory uses are permitted in almost all of the zoning districts in the Village, including residential and business including this one. That was an interesting topic of discussion in the 2002 planning board application and if you consider the history of this, 1946 is when the Church went into place, this building was constructed in 1986 and the 1990's they added parking, and then the last major change came in the site plan of 2002 when the addition behind the church for the offices and Parish Center and the school in the basement were constructed. I want to make a record here,

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which I did with the planning board are the minutes from those meetings. The Church was permitted or non conforming was a discussion and the offices, school and family counseling were pre existing non conforming or un permitted or something else and if you read through this, I believe the conclusion the Church use was the principal permitted use and was entitled to customary accessory uses and the accessory uses in place then which was the school and the family counseling center and the thrift store were all permitted because of the association with the Church. There was no direction to go to the ZBA for the family counseling center.

Mr. Pasca said what's the argument that this is permitted use. The NY Blood Center is accessory to the church?

Mr. Hulme said yes, in the same manner family counseling was. And it was zoned residential then as it is now. It is certainly, that interpretation is part of the application.

Mr. Pasca asked for evidence that is customarily accessory?

Mr. Hulme said it is in the minutes, and none of the churches would be able to do the things they do, blood drives, schools, etc.

Mr. Piering is the family counseling center the accessory use you refer to?

Mr. Hulme said yes, it's a medical use and this use.

MR. Piering said I do not agree with that.

MR. Hulme said in the Code to see what regulations you have to meet, parking, size, etc etc they are the same for the two uses.

Mr. Pasca said how is it accessory if its being rented out and its not operated by the Church. The ability to rent a separate building to a separate use can be deemed accessory. You have to come p with evidence to provide that's customary for churches to do this.

Mr. Hulme said it's a good use variance argument. And this came out of the history of this property. In the churches view, this is a revenue generator, and I'll discuss that impact it's a service to bring to the community and that the church is providing to the community the same way the day care is and the family counseling center was.

Mr. Piering said with the family counseling service, it's one on one sessions for a time period.

Mr. Hulme said in that building at the top floor there are offices and meeting rooms specifically for those services, and there are eight rooms so we're projecting five to six patients per hour as it exists today in the counseling setting it could accommodate 8 or 9 people. The medical services they are getting is different.

Mr. Piering said it's quite different.

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Mr. Hulme said yes, I understand. They are both medical and if this was a business district they'd evaluate it in the same manner.

Mr. Pasca said medical is not permitted in the B1 but a professional office is permitted.

Mr. Hammond said professional offices are; medical is not.

Mr. Hulme said counseling is classified as medical in our Code.

Mr. Piering said if we decide its not accessory we'll go for the use variance?

Mr. Hulme said yes. I submitted materials last time about an analysis to evaluate the viability of the Church to meet the requirement for its property by subdividing and turning it residential and selling it and we demonstrated it was not viable to turn the entire property into residential but if the Church wants to remain as a Church it doesn't appear to be viable to proceed that way. For the Church to continue they need revenue and a source is the people who make donations but the cost of providing that service and others exceeds the ability to support that. And that's why they are looking to rent this out to this tenant and which in the early years will provide 16% of their income and 5 or 6 years out, it will be almost 40% of their income. The Church is not eager to have dollars and cents out there, but they are running at a deficit and this use will not eliminate it but will reduce it significantly and this will help cover the shortfall. Without the use, the prospect is bleaker and the endowment that they have which came from the sale of the cell tower would not be good, it would directly impact their ability to do basic things they offer. We had a few theories we put forth in your papers, one was the use variance and we provided the analysis on that, we have looked at the impact being allowed to do this has benefit to the Church and the second theory is the accessory use theory and I believe the 2002 minutes supports that idea. We talked about whether they align or don't align and I think the other thing we looked at was that our proposed use does not increase the non conformity on the property; our use does increase our parking requirement because we're using the basement and the first and second floor, however it was not used as a basement prior to this. There was a thrift store in the basement and that was replaced by classrooms and if you go now the basement level is still classrooms, and they will be incorporated into the use but therefore they won't be part of the basement of our building only in the Parrish Center. It wasn't a benign impact, but it's a use that contributed to the parking requirement. We submitted a site plan to the Planning Board for the overall property, according to that there are 122 spaces for Church, and 75 spaces required for the classroom plus our use and the site has 135 parking spaces, and 53 are land banked so there are 82 parking spaces so that meets the need of the school and this proposed use. It's slightly less than the Church use but there was a finding by pats Boards there is enough parking and there is the land banked parking and the Planning Board can compel them to use the land banked spots.

Mr. Piering asked if they are used for the schools playground?

Mr. Hulme said yes.

Mr. Pasca said legally the Village can require them to use those spots; you create a land banked space on paper and you can call them in to action and the Planning Board will look at that and their big concern is the parking and making it make sense. Everything is on the table, if its

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required to call those spots into action that may have to be looked at, but that's what it means. It is legally parking spaces, not a playground. Since you're reviewing a variance you want to look at the impacts, can this work with the parking. If you don't think there is enough way to make it work with the existing spots you can look at this as well. It's very complicated.

Mr. Pasca said you brought up the alternative and I think for our purposes we should focus on keeping the Church; let's assume the church will remain. The question I have is there really a feasible subdivision given the parking issues. Could you really subdivide the site off and have enough parking for the Church, and if you couldn't it's not a feasible alternative.

Mr. Hulme said the parking for the Church and offices is 123 spaces; I would have to look if we can build 82 spots.

Mr. Pasca said it may not be feasible and that helps your argument.

Mr. Piering said I would like to get input from the Planning Board.

Mr. Pasca asked if you would like to ask them for comment, it's not unusual. And we didn't discuss SEQRA yet either. If you can get more traction with the Planning Board that will be helpful for this Board.

Mr. Hulme said okay.

Mr. Pasca said it's hard for this Board to review it without knowing whether the site plan works.

Mr. Musnicki said the use, the use of this new tenant, is it examination, treatment, operation?

Mr. Hulme said it's all outpatient, I don't know about operation. There's MRI and Mamograms, and they will be doing radiation treatments but I don't think they'll do surgical procedures. It's for examining and treating, but not invasive.

Mr. Piering said radiation is outpatient, but it's significant treatment still all of it is.

Mr. Musnicki said there are ten exam rooms proposed, that would indicate more than 40-50 patients in one day.

Mr. Hulme said this is their projection based on what they perceive the need to be. But that's an advantage of the land banked parking, if all aspects were satisfied and they could not meet the parking the Planning Board could call for the land banked parking.

Mr. Piering said the traffic will increase too.

Mr. Hulme said yes, that's true. If the planning board finds there is a need there are spaces that can be built in the future if we exceed that number. When family counseling was in full swing the Planning Board didn't sense there was an issue. I argued that the parking requirement is the same but I understand there's a perception this Use has to have more of a demand than the existing use but our goal would be to manage the impact on the neighborhood.

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Mr. Piering said there will be a lot more in and out traffic than the previous use.

Mr. Musnicki said he would like to hear a stronger argument for the correlation between the uses, it's a big jump to go from family counseling to a cancer center. Family Counseling could clearly be part of a house of worship but I think cancer treatment is a far stretch.

Mr. Hulme said he does not think there is a real difference; if you accept church and family counseling I have no issue with church and cancer treatment and you're asking me to prove that and I will.

Mr. Piering said he is interested in the feedback from the Planning Board.

Mr. Badzik said he'd like to hear about the licensing, the health, the things they have to do to operate from the State and the equipment testing etc.

Herbert Isreal, Project Manager said to touch on the few questions; when we design the facilities, I have built seven of the women's centers we look at the footprint and parameters and really the patient experience. Cancer is a dark time for everyone, women's health, men, children whoever it is so this group does a great job with the best technology and finishes to make you feel that its an open programmable space. We show 10 rooms its not their use to use its how the footprint works we don't want to change the outside. When it comes to the different separations the basement is imaging only and there's no radiation emitted or Xray they are non invasive equipment this facility will have MRI and it's only 1.5 Tesla and it's a smaller MRI for breast health and amplifies with contrast what's going on and a mammography machine, ultrasound and bone density machine which is for women's health based on the need in our community. There's no radiation coming off of the machines and a procedure they are not reconstructing or taking things away. The basement you get your procedure done and you go to the exam room and you wait for the image to be read, and then the Doctor and Oncologist who explains the next steps or whatever part of treatment they are at. The appointment may be at 8:00 and then you wait for the next steps and they try to solve everything the same day. Upstairs you go for a biopsy they use imagining equipment and you go back into the same exam room and that's why you need four rooms per equipment so you don't feel like you're being rushed out. There is the aspect of the cancer foundation on the third floor and their services for families in need, yes, family service league who was there with counseling but between those doctors and the foundation its semi similar in all of the help and team on site and off site see the patient. If its more than women's health they go to one of the other locations. It's supposed to be an intimate location on the East End based on their patients needs, their slogan is conquering cancer close to home. Its just for women's health today but that's the mission of this center. It's not for chemotherapy or surgery or invasive procedures.

Mr. Musnicki said he provided a lot of information, where is the closest facility we can look at similar to this?

Mr. Israel said it's Patchogue off of East Main Street. That facility has an oncology center and a radiology oncology center and receive radiation therapy but that has a women's center in it. That's the closest newest. But at the moment, all of their subsidiaries are in Cutchogue, Southampton, Riverhead we have a campus facility there that does oncology radiology and in

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Patchogue and Smithtown and it goes on. Patchogue is the closest one, for the women's center they want it more intimate and welcome and separate the women from men receiving treatment too.

Mr. Hulme said if you look at that center, this is a component of that but some of their uses won't happen here.

Mr. Badzik said radiation is diagnostic not treatment?

Mr. Israel said yes, there is no radiation therapy here or infusions or chemotherapy. Southampton has medical oncology and Riverhead has 22,000 square feet.

Mr. Badzik said the basement is diagnostic only?

Mr. Israel said yes, and the foundation as well.

Motion was made by Mr. Piering to holdover the application of **New York Cancer & Blood Specialists, 40 Main Street (905-12-3-15)** to April 20, 2023; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

NEW APPLICATION:

10. Sheeraz Qureshi, 509 Dune Road (905-016-02-010) Applicant requests variances from §197-8 C for a proposed building area coverage of 25% of the lot area where the maximum permitted is 20%, from §197-35 C for a proposed deck extension with setbacks of 12 feet to the property line and 19.5 feet to the crest of dune where the minimum required is 20 feet & 75 feet respectively, and also from §197-35 C for a proposed pool with setbacks of 12 feet to the property line and 25.5 feet to the crest of dune again where the minimum required is 20 feet & 75 feet respectively.

Michael Macrina Architect. He said his client is proposing a swimming pool to be located in its pre existing deck footprint, and there is an existing deck extended prior and we're looking to maintain that same footprint.

Mr. Piering asked if there's an approval for the deck.

Mr. Macrina said it is a deck, but it was originally the catwalk and part of that and it was raised up, and there was a CO and pre existing but its just 4' of the deck that sticks out. The pool location we positioned to be aligned with the existing house and deck so not to encroach into the side property line.

Mr. Hammond said the generator is not CO'd, but when I was there it was not connected.

Mr. Piering said it should not be there, correct?

Mr. Hammond said yes.

Mr. Martinsen asked if they are removing the plunge pool?

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Mr. Macrina said yes.

Mr. Piering you want to get approval for an as built deck?

Mr. Macrina said it doesn't encroach much further It is 8.8 x 16.6 feet?

Mr. Piering said you are 8 feet closer to the dune crest?

Mr. Macrina said its not parallel. The existing deck and the existing corner and the 8.8 extension is 19.5 so it's 4" more, and we can push it back we are just looking for a walkway around the pool.

Mr. Piering asked the size of the pool?

MR. Macrina said 10' x 8'.

Mr. Piering asked how big the next door neighbors pool is?

Mr. Macrina said the house is further to the Dune than we are and we are in line with that. The neighbor to the West wrote a letter in support.

Mr. Piering said he is sure he did.

Mr. Martinsen asked if they go further in to the Dune further than the neighbor to the East.

Mr. Macrina said it looks like its in the same plane.

Mr. Musnicki asked if the existing deck from the dune crest?

Mr. Macrina said it is 19.9 and the proposed is 19.5 I just need 3' of walkway around the pool.

MR. Piering said the pool will be in the deck where the plunge pool is now?

Mr. Macrina said yes. Does the generator have a permit or a CO?

Mr. Hammond said we talked about this I don't describe setbacks to certain equipment and its not elevated to a certain height, but when I was there last it wasn't connected and I thought id get them to relocate it. I don't normally make them get relief, but if they want to keep it they have to relocate it and make it a height that's conforming. ON the South side of Dune Road we don't want them on the south side of the house.

Mr. Musnicki said he'd like to see the pool equipment moved out of the side yard so it's not so close to the neighbor.

Mr. Hammond said its shown on the map, you can speak to that but it doesn't have to be elevated and it can go under the deck and you can speak to what you'd like to see,

Mr. Musnicki said if you can do something with that, it would be a benefit.

Mr. Macrina said the deck is pretty close to the grade. There is not much room under the deck and I could put it wherever you want.

Mr. Hammond said you can put it on the West side closer to the house.

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Mr. Macrina said if they move the generator and build a platform they will put the pool equipment on there.

Mr. Piering asked how much he can trim the deck back?

Mr. Macrina said 3'

Mr. Piering said the pool is 10' x 28'?

Mr. Macrina said yes. I have to watch the proximity to the house too.

Mr. Piering said okay.

Mr. Macrina said the existing deck I can maintain 20' or if you want more I can do that.

Mr. Piering said I would like to see it shortened as much as you can.

Mr. Macrina said okay.

Motion was made by Mr. Piering to holdover the application of **Sheeraz Qureshi, 509 Dune Road (905-16-2-10)** to April 20, 2023; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

Motion was made by Mr. Piering to adjourn the meeting at **6:30 p.m.**; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.