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Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday April 20, 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

Motion was made by Mr. Piering to adopt the minutes from the **January 19, 2023** meeting as written; seconded by Mr. Badzik and unanimously carried

Motion was made by Mr. Piering to adopt the minutes from the **February 16, 2023** meeting as written; seconded by Mr. Badzik and unanimously carried

Motion was made by Mr. Piering to adopt the minutes from the **March 16, 2023** meeting as written; seconded by Mr. Badzik and unanimously carried

DECISIONS

1. 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.

Heather A. Wright, Esq., appeared on behalf of the application. Mr. Piering said the Board had a determination and Ms. Wright agreed to waive the reading.

Motion was made by Mr. Piering to adopt the determination of **Lisa Canty, 443A Dune Road (905-017-05-007)** as written; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

2. 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. Mr. Piering stated there was a determination, and Mr. Vero agreed to waive the reading.

Motion was made by Mr. Piering to adopt the determination of **Charles & Joanne Piluso, 503 Dune Road (905-016-02-013)** as written; seconded by Mr. Martinsen and unanimously carried 5 ayes, 0 nays, 0 absent.

HOLDOVERS:

3. 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

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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.

Steve Caputo, The Permit Guy appeared on behalf of the application. The sticking point was the gates at the last hearing, and they agreed to move them or move them to a compliant location with a Building Permit.

Mr. Piering thanked Mr. Caputo, the Board does not like to issue variances for driveway gates that are not 20' back.

Mr. Caputo said they talked about the other areas and his understanding is that the Board did not have issues with that.

Mr. Piering asked about the storage shed?

Mr. Caputo said it's in the backyard but it's a unique property and wherever they put it would require a variance.

Mr. Piering said its well screened and not visible from the street. He said there is no opposition and asked if there were any questions or comments.

Mr. Pasca asked him to affirm that they are withdrawing any requests for gates.

Mr. Caputo said they are withdrawing any requests for gates.

Mr. Piering thanked Mr. Caputo for appearing and working with the Board.

Motion was made by Mr. Piering to close the hearing of **Daniella Kahane, 121 Seafield Point (905-15-5-10)** for a determination; seconded by Mr. Martinsen and unanimously carried 5 ayes, 0 nays, 0 absent.

4. 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.

Anthony Portillo, Architect appeared on behalf of the application. They removed the shed, and after the discussion with the Board in February the existing home has a rear deck, so we agree to remove the deck and create a patio on grade to reduce the lot coverage down to 29.7% which is under 30% and the main focus is the tennis court, it was existing prior towards it counting towards lot coverage, and the tennis court creates 17.1% lot coverage which leaves 2.9% so just alone with what's there it's a pre existing non conforming; if you remove the tennis court you'd be at 12.6% lot coverage and that's important t consider the owners want these amenities, like a pool and garage that they don't have. It creates the lot coverage issue driven by the tennis court. I tried to find a few properties to compare it to and I found two (2); there is one at 5 Hampton Avenue and 7 Hampton Avenue with similar characteristics. The one at 5 Hampton Avenue has 24% lto coverage; and 7 Hampton Avenue has 26% lot coverage.

Mr. Piering asked if they were given variances?

Mr. Portillo said I did not find any; but they are in this zoning district. To conclude I don't think the addition on the home is asking a lot for the size of the property; it's lacking a master suite and there is no garage parking. The owners love the deck and aren't happy about losing it but it was our only bargaining chip, plus the shed.

Mr. Piering said the shed was also 1' off the neighbors property.

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Mr. Portillo said the side yard variance is an existing variance.

Mr. Piering said the tennis cabana has a bathroom in it.

Mr. Portillo said they want to legalize that and make it an accessory apartment, and its for their live in laws.

Mr. Piering asked if they plan to rent it. If its approved it'll be a recorded covenant that they can't rent it.

Mr. Portillo said they will not rent it.

Mr. Piering said this is across from his house.

Mr. Portillo said it's for their in laws and there is a reason behind the request. They want the swimming pool as an amenity that's what people in this area want and giving up the deck makes up for the pool in regards to lot coverage and they are similar in size.

Mr. Piering said when they bought the house the tennis court was an attraction? It's a long time tennis court.

Mr. Portillo said yes. It's a through lot, and a large parcel.

Mr. Piering said it abuts a restaurant right?

Mr. Portillo said yes. They are the last resident on that street, and across the street from them is the Ambulance barn so it's a mixed use scenario. There are no rear neighbors, there's only one adjacent residential neighbor.

Mr. Musnicki said thank you for the tennis court argument; thank you for removing the shed. In the context of minimizing the variances is there a reason we can't take the cabana project and bring it within the 15' side yard?

Mr. Portillo said the plan was not to touch the existing structure, it's to add on to it and to meet the 15' side yard setback we have to demolish and reconstruct.

Mr. Musnicki asked what's there?

Mr. Portillo said 400 square feet.

Mr. Musnicki said that' the direction he's going in.

Mr. Portillo said it's adjacent to the commercial lot. It's not a residential neighbor, I don't think the commercial lot has a concern to it.

Mr. Musnicki said he thinks it would be better.

Mr. Portillo said the design as created and proposed works well with the addition and that just adds living space; I can't answer that question, I have to talk to my clients about it. But I don't think it affects anyone that close to the side yard due to the fact it's not that close to any residential lot.

Steve Frano, 10 Pine Street said the tennis cabana was constructed and they want to expand so it would cost too much to move it.

Mr. Piering said we are aware it was done without permits.

Mr. Frano said the shed can stay that doesn't bother me. There's enough foliage, it's the lot coverage, they took the deck and made it a patio but in appearance you won't see it the use is the same a deck is used to congregate like a patio. It's a lot on the parcel and done the construction on the inside without permits and I want to reiterate that. I don't know how, the tennis court has been there for 38 years and that's a long time and that's what is creating the problem.

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Mr. Piering said without it, there wouldn't be an issue.

Mr. Frano said it's a large ask, what precedent will it set.

Mr. Piering said that's our concern too we know what's coming. There is a pre existing tennis court, and the lot is large, there are undersized lots and we're watching it closely.

Mr. Frano said I don't know how they can condense it.

Mr. Piering said if this gets approved, it wont set a precedent and I put that on the record for 25 and 27 Hazelwood Avenue, this is a small lot and they need to build accordingly and the same was on the record for the subdivision recently approved.

Mr. Frano said that's my concern, the precedent we're setting.

Mr. Piering said there is a case for uniqueness.

Mr. Frano said the house is very old, and it has to be updated.

Mr. Hammond said they are applying for an accessory apartments and we get asked for cottages and tehR2 and R4 district you can have accessory apartments, and that would have to exist prior to 2004 so that's why it has to be built off of this. There's a condition they cannot summer rent an apartment and any permit add and convert the cabana into an accessory apartment there is an application for that as well.

Mr. Pasca said its legal?

Mr. Hammond said yes, it's just that its not 50' from the property line.

Mr. Pasca said its an area variance, not a use variance.

Mr. Hammond said yes.

Mr. Pasca said the condition is built into the Code.

Mr. Hammond said yes, it's in the accessory apartment code and its an annual inspection we do as well. It's renewed every year and if the conditions change it can be removed, if there are covenants they'd have to come back to this Board. But the summer rental is in the Code.

Mr. Portillo said that we did apply to the department of health for an IA system and moving it from its current location from the rear yard to the front yard, and I think we have an approval we are just waiting on a decision from this Board. I think they are trying to legalize everything and have the proper sanitary system too.

Mr. Piering asked if there were any questions or comments. He also said there are limits to construction in the Summer?

Mr. Portillo said yes, he's aware.

Motion was made by Mr. Piering to close the hearing of **Michael Cohen, 18 Hazelwood Avenue (905-6-1-18)** for a determination; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

5. 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 together with Herbert Israel. They have had extensive discussions and at their last appearance they asked for a referral to the Planning Board and they have had two meetings with the Planning Board. They are looking to convert the building from medical counseling to a different form of medical facility. The Church although, permitted in a residential zone is residential and they are seeking variances to allow this non residential change. We had a few different theories whether its accessory or a

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continuation of a pre existing use and the hardest is a use variance for this use at this location. As it pertains to the Planning Board and with them, the issue has to do with the parking and whether this can be absorbed by this use. The first meeting with the Planning Board, and I know the Chairman attended that and to get this Board up to speed the big issue was the parking and the interaction between the various entities that operate on the site. As you recall there are 52 land banked spaces we have agreed to construct 25 of the 52 land banked spaces and what this shows is the various areas that will handle the parking. There is a lot of uses on the property; one is the Church and their offices, most of the activities outside their operating hours and the only use we are competing with is the school that operates there. One reason for the land banked parking as it relates to the school, when it was contemplated the nursery school anticipation was that it would grow. It was mandated to isolate the parking from this parking and this parking scheme that they seem to accept accomplishes that and that's the build out of the 25 spaces in the back and that provides 37 parking spaces and there are 21 teachers in the school so there is enough parking for that, and the students do not drive. The purple in the front is the Code required parking for the facility use so we were able to demonstrate there were 23 ancillary spaces in addition to the uses on a daily basis. The other change is in order to reduce the concern about the increase of parking is we reduced the exam rooms from 9 to 6.

Mr. Wittshen asked if its ADA accessible?

Mr. Hulme said yes. After two sessions with the Planning Board they were satisfied to offer no objection to the use variance.

Mr. Piering said they did not endorse it. They had no objection to the use variance.

Mr. Hulme said they feel if the ZBA saw fit to grant the variances, in general this plan as proposed would work. The theory we have with traction is a use variance, and we provided detailed information about how the property could be used residentially and numbers with that. I gave four different scenarios and the Church wants to continue at its location and with financial help they can do. In that vein, the Pastor at the Church provided a letter to the Planning Board which I thought may be of value to this Board and since they are choosing to continue, the economic scenarios that would apply provide negative economic consequences and I would highlight if you divide the property in half, half remains the church and the school and offices, and the other half is devoted to residential use and you still need parking for the Church and its uses and I would suggest if you look there is no place to put the parking on the divided lot. If you go through the site plan you would see the uses require 150 parking spaces and there are only 135 spaces now including the land banked spaces so if you divide it in in half it's unlikely you can provide the parking for the Church half. Another reason why this development as described would have difficulty so there are several categories to look at. The reasonable return is not one to the Church in developing the property as zoned. It only makes sense if the Church goes away completely. The second category is the unique hardship, this is a Church with multiple developments that zoned Residential adjacent to the business district. Its across the street from a preserved parcel, and the Country Club, and it is only to the North where there is other residential zoned parcels. From a planning perspective they can be protected with landscaping from any impact. The land banked parking is a safety valve and approved and ready to use. There is no change to the existing character, we will be left with the arrangement that has existed for many years. The last is the minimum necessary for the relief, we're not changing the size of the buildings that exist on the property.

Mr. Musnicki said that we do not get a lot of use variances, and this case the use variance is a lot easier to achieve than the area variance. It's the R2 which allows residential and educational.

Mr. Hulme said I don't know if it's permitted in the R2.

Mr. Musnicki said it's religious and education, how do you make the case for what this is and the medical use.

Mr. Hulme said that falls out of the five steps, this is the manner as indicated in the letter from the Pastor, they wish to continue to offering their services to the community and one service has been a medical facility in one sense we're continuing that use that existed. As also pointed out, Churches are struggling and are seeking ways to support themselves and to offer services as they have in the past and the Pastor's letter speaks to that issue. They have a building with a tenant

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in the past providing service to the community and they have identified through their efforts someone new who would like to occupy the premises and its an appropriate analysis.

Mr. Musnicki said he's sympathetic to the cause, but what differs this use from a real estate office. You are correlating family counseling to medical use.

Mr. Hulme said that's an easier leap, family counseling to real estate. I think if you look at the Code they are the same use, the same parking; the same category whether its family counseling or this use. I think the real issue and challenge is not that we are going from one use to a different use, the leap is the practical impact of the family counseling use which I think the planning board viewed as more benign in terms of traffic and in order to meet the need we demonstrated to them with additional parking we can correct that concern and if they accept we have done that the leap from use to another is not that great.

Mr. Musnicki said today, there were 60 cars in the parking lot.

Mr. Piering said I have been there several times, during the vacation week the lot was empty and today it was full. I was trying to figure out if it's a Church function or the daycare, and the only people I could talk to were women leaving with kids. The place was full today.

Mr. Hulme said we can endeavor to find that out.

Mr. Piering said it's always crowded. When we talk about the use variance, we are talking about dollars and cents and that's specific in the Code.

Mr. Hulme said that's where my analysis come in.

Mr. Piering said they can't rent this out to someone else? Is this the only tenant they can get?

Mr. Hulme said this is the tenant that they got, and to put the burden on them to find a new tenant; this use is related to the use its replacing to find an office, or a law office, or something else might be a bigger leap in some sense.

Mr. Piering said he does not agree with that. The idea of cancer treatment center with people coming and going all day is different from a law office or real estate office and this volume will be intense.

Mr. Hulme said that's why parking is a big impact. I think the planning board is at a place, that what we've suggested will work. The Planning Board has accepted the concept that a plan with the parking will work and that's their biggest concern.

Mr. Piering asked how they figure they will run out of money by 2027?

Mr. Hulme said you will have to ask them, I'm not authorized to disclose them.

Mr. Piering said speculating on real estate transfers is not the same as that.

Mr. Hulme said based on what I've seen what the Pastor has said is true; the congregation is dwindling, they lost family counseling; they got permission to install a cell tower that generated income and they sold that right going forward to receive a lump sum of money for repairs to the facility. They have done projections and the Pastors conclusion is based on those projections.

Mr. Pasca asked if the Church would be open to at least, it's not appropriate to ask for endowments and longevity, but a budget that they can show what their income is, and what the family counseling generated and what this will something to put the numbers to show it's a necessity to them.

Mr. Hulme said I did not see the letter until today so this is something he did on his own. I'm surmising that if he's willing to share this information he'd be willing to share additional information.

Mr. Pasca said the Board's not trying to pry but that's the analysis, dollars and cents and that makes it hard to ask them to vote on a use variance.

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Mr. Hulme said he will ask the Pastor.

Mr. Piering said the use variance says that actual dollars and cents proof must be submitted.

Mr. Wittschen asked if the nursery school is separate entity? Do they get income from it?

Mr. Hulme said the Church operates it and they do not get a lot of income, but they do. Family Counseling didn't just serve the church it served the community.

Mr. Musnicki asked with the intensification of the use did they provide the planning board with the number of people?

Mr. Hulme said we provided an analysis.

Mr. Musnicki asked him to provide that to the ZBA.

Mr. Pasca asked if he's given thought to whether healthcare and religious use have an inter relationship. There are religious institutions that run hospitals, there may be an argument to make so that this doesn't open the door to the highest bidder for this space.

Mr. Hulme said he will look into that. The planning board commenced SEQRA and expressed lead agency on that.

Mr. Hammond said yes.

Mr. Pasca said we don't have to coordinate the review, and since you're not closing the hearing I think instead of coordinating the review, let the Planning Board start it and its more simple. Otherwise we have to do a waiting period and notify the agencies and wait it out.

Mr. Piering asked if they are going to make a decision on the parking?

Mr. Hulme said I presume its on the parking.

Mr. Pasca said no, they did not want to have an objection to the use. There is no settlement on a site plan.

Mr. Piering said okay.

Motion was made by Mr. Piering to holdover the application of **New York Cancer & Blood Specialists, 40 Main Street (905-12-3-15)** to May 18, 2023; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

6. 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 appeared on behalf of the application. We discussed the distance of the deck extension to the dune crest, and we resubmitted updated site plans to the Board a week after the hearing and we increased the setback to 21' and we relocated the pool equipment to a conforming location on the side of the house and relocated a generator all elevated to meet the FEMA requirement and we included a drywell for the pool backwash.

Mr. Piering said we were going to take off part of the deck, did you do that?

Mr. Macrina said we took off 1.5 feet; it was 19.5' and we increased it to 21' and the walkway is 4' around the pool. The existing deck to the West is 19.5' so we are further from the dune crest than the existing deck. We discussed the 1.5' The updated site plan is dated March 21, 2023.

Mr. Badzik said 1.5'?

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Mr. Macrina said yes.

Mr. Piering said the pool is going into the existing deck? You had to shorten the deck, right?

Mr. Macrina said yes, that's correct and the deck has been shortened and the pool is in the deck.

Mr. Piering said okay, and asked if there were any questions or comments.

There were no questions or comments.

Motion was made by Mr. Piering to close the application of **Sheeraz Qureshi, 509 Dune Road (905-016-02-010)** for a determination; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

NEW APPLICATIONS:

7. Amy Kothari, 282 Main Street (905-013-03-008) Applicant requests variances from §197-6 D for to construct a roof over an existing attached deck resulting in a front yard setback of 36.8 feet where the minimum required is 50 feet.

Eric Perterlier, they are proposing a roof over a deck porch which is part of the existing CO and it's on the corner and one part is 36.8' from Griffing Avenue and the main house is setback from Main Street 60.6' and the proposed porch is 385 square feet and putting a porch over it is an enhancement and typical with Main Street residences and when the client came to me to design it, it looked like it needed a porch. It fits in and its an enhancement to the property and Main Street. There is no change in lot coverage, and the existing cover is 18% and the roof will not change anything because its over the existing deck and porch.

Mr. Piering said this is a porch over an existing deck?

Mr. Perterlier said yes, it's 34' and staying with the deck.

Mr. Badzik said it's a roof over an existing porch?

Mr. Perterlier said yes.

Mr. Badzik said okay.

Mr. Piering asked if there were comments or questions.

There were no comments or questions.

Steve Frano, 10 Pine Street said this house is very old and that porch the previous owners wanted to cover it and never did it, but it would enhance everything and it won't affect anyone.

Motion was made by Mr. Piering to close the hearing of **Amy Kothari, 282 Main Street (905-13-3-8)** for a determination; seconded by Mr. Martinsen and unanimously carried 5 ayes, 0 nays, 0 absent.

8. Bryan Zaslow, 21 Stacy Drive (905-010-05-024) Applicant requests variances from §197-29.1 for proposed second-story additions representing a prohibited increase in the degree of nonconformity of a dwelling with nonconforming side yard setbacks of 24.9 & 21.4 feet where the minimum required is 30 feet, and with a combined side yard setback of 46.3 feet where the minimum required is 70 feet.

James N. Hulme, Esq., appeared on behalf of the application, together with Sal Iannone, Architect. We are proposing a small addition to the first floor, a larger second floor addition and internal renovations as indicated in the notice, we're looking for side yard and total side yard relief. The relief matches the setbacks that exist now and the second floor was only built over part of the first floor and the second floor to the limits of the first floor so it's a true two story residence so I think it's straightforward so at the time it was built, I think there was an addition in 1981. The law was different in the Village, it allowed horizontal and vertical extensions of setbacks and subsequent to the construction of this house and that law was eliminated to allow the ZBA to look at the

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changes on a case by case basis. The bottom line is that there will be a two story house with the same setbacks as the existing house.

Mr. Musnicki asked him to repeat what he just said.

Mr. Hulme said there was an ordinance that said you could laterally or vertically extend an exiting non conforming setback, and we could do that with just a building permit.

Mr. Iannone said in 1981 we expanded the foot print and in the 90's we expanded the second floor with a permit.

Mr. Hulme said they changed the Code for the ZBA to have a case by case look at these plans. If you look at the aerial, by comparison you can compare the setbacks and they appear similar to ours which are below the 30' required and they are full second floors so without our increase we will not create a circumstance out of character with the neighborhood.

Mr. Musnicki said this was one of the first houses built in Stillwaters, and I would think that the Village when they made that change would be thinking about the massing of extensions and filling in gaps.

Mr. Hulme said we're not expanding the footprint, and that would have allowed us to build an addition off the back extending further down the property line and making it more impactful. The other thing, is there is well established and mature landscaping between the properties I would be surprised if the neighbors could see it or be impacted by it.

Mr. Piering said you mentioned expansion on the first floor?

Mr. Iannone said we're pushing out the front.

Mr. Hulme said that's not a subject of this variance it meets the requirements.

Mr. Piering did not have any questions or comments.

There were no other comments or questions.

Motion was made by Mr. Piering to close the hearing of **Bryan Zaslow, 21 Stacy Drive (905-10-5-24)** for a determination; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

9. Lee & Helena Galperine, 319 Dune Road (905-018-02-021) Applicant requests variances from §197-8 C for proposed lot coverage of 26.9% of the total lot area where the maximum permitted is 20%, from §197-35 C for proposed rear deck with setback to the crest of dune of 64.5 feet where the minimum required is 75 feet, and also from §197-35 C for proposed pool with setback to the crest of dune of 66.6 feet where the minimum required is 75 feet.

James N. Hulme, Esq., appeared on behalf of the application. This is a 45,000 square foot lot but only 20,732 square feet are upland; its got a well developed series of dunes and its improved with a home, a deck, a garage and a pool constructed over the top of the garage which turned out to be a bad idea. It's having detrimental effects on the structure

Mr. Piering asked if you're removing the pool?

Mr. Hulme said we want to eliminate this pool in its entirety and to construct a deck and swimming pool in the deck as shown on the plans on the ocean side of the house. This is the only location for the pool, and it would be costly to repair it so they want to remove it and reconstruct it in a new location. As indicated, there's a well developed dune and the house to the East and West won't be extended and its not internal space its external and it's a unique set of circumstances where the pool is now.

Mr. Piering said there is a lot of deck, and the pool is a modest pool but you can shorten the deck and increase the distance to the crest of the dune.

Mr. Hulme said he can talk to his client.

Mr. Piering said that's a good solution and would decrease the variances requested. That's a large deck, there's a second story deck and a deck on top.

Mr. Musnicki asked if there's an existing survey.

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Mr. Hulme said he provided a survey that shows the proposed. The deck and pool are proposed in a location not occupied by a structure.

Mr. Musnicki said proposed deck and pool has nothing in its place now. How do you propose to construct that pool its' a the toe of the dune?

Mr. Hulme said the deck will be elevated. It's not at grade.

Mr. Musnicki said the deck is at the first floor level. And that first floor is below the dune.

Mr. Hulme said it's below the dune not below the grade. I will ask my client.

Mr. Piering said he's not clear on Mr. Musnicki's question.

Mr. Hulme said he's asking how we'll construct it.

Mr. Pasca said you can do a cross section.

Mr. Musnicki said he'd like to see, since the dune crest marking is 17 years old I'd like the building inspector to look at that.

Mr. Hulme said he will have that done.

Mr. Musnicki said he's more concerned about how the construction can be done in the dune.

Mr. Hulme said they will lay that out.

Motion was made by Mr. Piering to holdover the application of **Lee & Helena Galperin, 319 Dune Road (905-18-2-21)** to May 18, 2023; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

10. Westhampton Country Club, 35 Potunk Lane (905-009-03-023.01) Applicant requests permit from the Zoning Board of Appeals under §197-29 C(1) for proposed reconstruction of a staff housing building for a preexisting nonconforming membership golf club, and variance from §197-29 C(2)(c) for proposed staff housing building with a gross floor area of 6,200 SF, representing a prohibited increase in floor area of the previously demolished staff housing building with a gross floor area of 3,330 SF.

Kittric Motz, Esq., appeared on behalf of the application. They are seeking a special permit to reconstruct the staff housing, the club provides housing for 50 employees some years it is more or less; and it's a seasonal basis and its important to have appropriate housing for professional adults, golfers, tennis pros, cooks, chefs and many don't have cars and they leave on the premises and walk to and from work. The prior house had 22 beds in 8 bedrooms with 4 bathrooms; 3 kitchens and two living rooms. We aren't increasing it, we're seeking 22 beds but for reasons for insurance, liability, privacy and Code we're seeking the number of bedrooms are private. It was 6 bedrooms with 3 people and the others had two. At that time, we didn't have codes and concerns for privacy and insurance and club exposure and also it has been mentioned, because of COVID people want more space.

Mr. Piering said this is for adults?

Ms. Motz said yes.

Mr. Wittschen asked how many bathrooms are they proposing?

Ms. Motz said there were four bathrooms and now they are ADA on the first floor and there are 9 total. It's two stories still and a basement for mechanicals and storage and a laundry room and in the new location is conforming to the street and the increase is not due to an increase in beds it's not increasing the intensity of the use.

Mr. Piering said it will be sprinklered and better and Code compliant and much safer.

Ms. Motz said yes. We have supplied the square footage of every room of what existed versus what they are proposing and the bathroom count that was pre existing and the bathrooms that are proposed. You can see the comparison to show it is not an increase in intensity. The Code states you can't exceed 70 square feet, we're trying not to build to the minimums. The bathrooms are accessible so they are larger and we have to have 5' clearance in many areas, the first floor is designed for male and female and when you have staff housing because who you can bring in can

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change, so the second floor is a flex space and have no partition and you are in a separate room. We use that to be able to deal with the flows of the genders. She said we are sticking with 22 bedrooms and not increasing the height or stories; the floor area is increasing due to Code and ADA requirements; the location will be in the same area of the former house was and its not exact where it was taken down it's moved North more but will be next to the existing staff house. The parking is not changing, there were 22 beds before there are now; the character of the use remains the same; the modern construction and sanitary is a plus and there is no intensification to the zoning. It's not an undesirable change, there's no feasible alternative and it's driven by the Code and need to upgrade and it's not self created.

Mr. Piering said we went over this when you demolished it, so this application is not a surprise to us the case was made strongly that when you demolish the old building you would have to return.

Mr. Pasca aid we have to deal with precedent, and this Board in 9 years the increase in floor area is a difficult issue all of the time. It's considered a use variance in the past, with an exception that the Board has looked at Code upgrades differently. You can make a compelling case that ADA and building code necessitate the increase in floor area.

Ms. Motz said was it done for sandpiper?

Mr. Pasca said yes and the old Grassmere Inn and the calculations were very specific and it was related to the Code upgrades. So you have to look at that and do those calculations and see how the math works out.

Ms. Motz said the stairwells are part of the reason why they have to increase it, there were single narrow stairwells and now they have long corridors.

Mr. Pasca said that's a Code upgrade and I can see that.

Tony Panza Architect said the reason for the excel document was that we do feel its for Code reasons. When we talk about the change from 3 beds in a room they were around 200 square feet and by Code that square footage increases and as that increases we have made the change to go to individual rooms, that's not by Code by designing to Code isn't right. To have everyone In a big room, that's how it was in the past but there will be a stretch to a group bedrooms aren't the best but once we go to single we're forced to add more square footage for the rooms and a longer building and hallway. The hallways were small and narrow with one egress. There is a center corridor with two means of egress. We have to have them 5' on the first floor for ADA compliance and the old bathrooms did not have to be ADA compliant like they do now. It's not the easiest thing to quantify the exact square footage assigned to ADA but I can tell you the building is as small as we can make it for 22 people with ADA compliance. With the exception of the creating of two spaces on the first floor with their own bathrooms. But we can try to give a better flow of what was there versus what we're proposing. They don't want a larger building, we're just trying to fit 22 people in the building.

Mr. Musnicki said you don't have to account for every foot, but you can make the case ADA wise and the type of living and the accommodations you need to provide will go a long way.

Mr. Pasca said when you do it, think about how the Board has alot of other non conforming uses that we're looking at and whether it will set a precedent for that. You have to think about that and try to make that argument so it doesn't become an open door to undo 29-C and that was written for a reason, and the clubs use was given leeway and it was done for this Use years ago.

Mr. Panza said is this not customary and accessory?

Mr. Pasca said the club is the non confirming use and when the expansion was done the Code was tweaked to increase the allowance given to them and we have done that and we have to be mindful that this will set a precedent.

Mr. Panza asked if its for an 18 hole golf course in the Village.

Mr. Pasca said if you're another similar use they will make the same argument that its for the staff only and that's what we have to be mindful of.

Ms. Motz asked if this Board needs an explanation?

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Mr. Pasca said yes, think about the parameters and trying to make the case its not an expansion of the floor area. We're cutting the same number of people, that covers one of the boxes there is clearly a floor area provision that has been up to this time that has been tightly interpreted.

Ms. Motz said it wasn't clear whether that one provision in 197-29.C.5 where you get 25% grace, does that only apply to the main building, or does it apply to this? It wasn't clear whether it's the clubhouse only?

Mr. Hammond said there is the main building and they can expand up to 25% and I think they do matter, I can't and don't want to interpret that the staff housing is normal accessory to a bath, beach or tennis club so then it makes it okay for them to erect that. I am not saying they didn't and shouldn't have it I don't want to say it's accessory and falls into the 100% criteria or the main use to fit the 25%.

Mr. Pasca asked have they counted the numbers, in 2004 is when they redid the big building but I don't remember where the numbers came out in terms of whether its been used up or not. You could argue that golf club could be different than other clubs.

Mr. Hammond said I don't want to say its accessory.

Ms. Motz said that the Town of Southampton put in their Code staff housing is accessory to a golf club.

Mr. Pasca said that's an argument you can make, but you should look at that as an alternative to limit the precedential scope.

Ms. Motz said okay.

Motion was made by Mr. Piering to holdover the application of **Westhampton Country Club, 35 Potunk Lane (905-9-3-23.1)** to May 18, 2023; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

11. Tara Schmitt, 309 Dune Road (905-018-02-026) Applicant requests variances from §197-8 C for proposed lot coverage of 21.7% of the lot area where the maximum permitted is 20%, from §197-8 D for proposed two-story addition with a side yard setback of 19.75 feet where the minimum required is 20 feet, with proposed combined side yard of 35.9 feet where the minimum required is 50 feet, from §197-8 E for proposed building height of 34 feet above grade where the maximum permitted is 32 feet, from §197-35 C for proposed detached rear deck with setback to the crest of dune of 27.3 feet where the minimum required is 75 feet, and also from §197-35 C for proposed attached rear deck with setback to the crest of dune of 72 feet where the minimum required is 75 feet and with a side yard setback of 16.25 feet where the minimum required is 20 feet.

Paul Rice, Architect appeared on behalf of the application, together with Kevin Natalie Laurel Group. The applicants bought this house within the last year, and they are on an undersize lot by only 74' wide. They were planning on not requiring variances but they expanded the house to add an elevator and make it more livable for the clients and it's a fairly small house and by enlarging the living area and master bedroom upstairs and the master bathroom would improve the house. It's remaining four bedroom and we're adding 6' x 29' into the west side of the property, and that accounts for the single side yard and combined side yard and the overage in lot coverage is due to the width. The big variance, is the extension of the deck off of the house, it's 4' to expand over to 12' 11" and not having to use a ramp. The extension is over existing patio or undisturbed soil. The rooflines are changing, and the inside is destroyed by flood and the pitch is 7.5' and that's a few feet over the maximum allowed height. It will be a shingle style gable roof and another part of the variance is what Mr. Natalie can discuss.

Mr. Natalie said as they developed the project the clients needs changed, there is a pool and patio that was deteriorated and we're renovating that. During that we decided to create an area to exit the house and out on to the main deck and a ramp down to the pool and patio area that exist today. One other measure we need relief for is the space they can congregate on and enjoy the yard no different from the neighbors. The intention was not to go further into the dunes and recognizing the Code and develop quality of life spaces.

Mr. Piering asked if it's a second story deck?

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Mr. Natalie said no, it's 12" off grade. They were trying to get a small space slightly elevated and utilize the deck and its not out of character with the other neighbors.

Mr. Piering said not to disrespect your clients conditions; she just bought this house and variances go with the property and if she decides to sell it any special provisions made for her health someone else will be there. We are reluctant to give the southern deck, it's a real speed bump. I don't mean to disrespect her condition but that Southern deck is a reach.

Mr. Natalie said even though the neighbor has it?

MR. Piering said it was a pre existing deck that precedes zoning; I researched it today it was before zoning and they reused pilings we would not allow new construction and I'm only concerned with the Southern deck and the height. Where are you proposing the 34'.

Mr. Rice said that is the top peak, that's the only portion of the house that is above the height. One thing we did to mitigate that is that the walls and eaves are the same height as they exist, it will be a 6' wall in her bedroom and to try to keep the scale down and reduce the height it would put them more tight and we're trying to keep the focus to not make it look too large. They are different style houses and if it's a problem I have to talk to my client.

Mr. Piering said we don't give height variances.

Mr. Hammond said it's not in 100 year flood plain, I would think and look at that number relative to the sea level when comparing to neighboring properties in the flood plain. The neighbors are most likely in flood plains.

Mr. Musnicki said it's a good argument they should think about it. You may want to check with the building inspector on the Southern deck whether the hardscape is allowed.

Mr. Hammond said we don't do at grade patios on the South side of dune road. I leave that to this Board for dune road.

Mr. Natalie said its not as of right to do at grade?

Mr. Hammond said the walkways and ramps are not in the setback, but the deck south of the pool patio that's for this Board.

Mr. Natalie said whether it's a deck or area at grade? If there's a suggestion we're open and amenable to that.

Mr. Pasca said I would ask, there is a medical condition at play here? And is it a necessity driving the design features?

Mr. Rice said yes. But in this case, I felt what we were adding was something a future owner could take advantage of. It's not over 3,000 square feet and our ask is fairly reasonable. On the Southern deck, part of it is existing there's 6' extending into it. Right now its 5' deck.

Mr. Natalie said the pool is at a ground level with a stone terrace and deteriorated and its being renovated and to have a space for the homeowner to come out and into and if the Board says there's another measure we're open to it.

Mr. Pasca said part of where I'm going is the Chairman is right, that in general zoning law runs with the land; there's one exception there's a Federal Law that is the Fair Housing Act and under that Act there are some requirements that municipalities make reasonable accommodations for people with disabilities to allow them to enjoy their homes and that allows consideration after the disability is gone so there can be accommodations made that is removed once the occupant with the disability no longer resides in the house. In the case of major improvements and structures its unrealistic there may be an alternative that could be removed and allow her to enjoy her dwelling which is what the Federal Law requires but not have it become something that runs with the land.

Mr. Natalie said the patio that exists and the Northern deck attached to the house its within right and we're making egress and giving space to come out and contingent up in the disability or changing the residence we would remove the deck. We would consider it.

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Mr. Rice said when we were part of the design, and wanted to get to the pool based on the Code we could not go straight out and wrap the deck around it's the best aesthetic and safety wise to not go to a ramp.

Mr. Natalie said if that has to be a condition we are amenable to that.

Mr. Musnicki asked the condition.

Mr. Rice said spinal melanoma.

Mr. Natalie said she is now in a wheel chair.

Mr. Piering asked if the pool is being redone?

Mr. Natalie said yes, it's being refurbished in kind.

Mr. Piering asked how big the patio between the pool and house is?

Mr. Natalie said a 6' landing.

Mr. Rice said it's a 4' path around the pool, and a 13 x 11 deck.

Mr. Natalie said we're offsetting the deck to the pool is about 14' and we're reversing and making a walkway around the pool to get into the pool and expand the deck over the patio.

Mr. Piering asked how big the Southerly patio is?

Mr. Natalie said its about 14' and shallower than the width of the pool, so 14 x 25 and for enough space to entertain.

Mr. Pasca said before you offer, talk to her to see if she is willing to go on record as a temporary deck that will be removed.

Mr. Hammond said make sure its ADA accessible too.

Mr. Piering said it looks like you have some stuff to work on and come back in May.

Mr. Rice asked the process?

Mr. Piering said we will hold it over and revisit the application next month.

Mr. Musnicki said you can submit it with time to review it.

Motion was made by Mr. Piering to holdover the application of **Tara Schmitt, 309 Dune Road (905-18-2-26)** to May 18, 2023; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

Motion was made by Mr. Piering to adjourn the meeting at **7:17 p.m.**; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.