

November 16, 2023

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, November 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 and Zoning Administrator

Maeghan Mackie, Building Permits Examiner / Board Secretary

DECISIONS:

1. David Weinstein, 7 Meadow Lane (905-010-01-022) Applicant requests variances from §197-1 to legalize an as-built pool cabana with plumbing facilities of 351 square feet where the maximum permitted is 200 square feet.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

-----X

In the Matter of Application of

David Weinstein
Stephanie Oppenheim

DETERMINATION

Address: 7 Meadow Lane
SCTM #: 905-10-1-22

-----X

I. REQUEST FOR RELIEF

The applicants, David Weinstein and Stephanie Oppenheim, are the owners of a parcel of real property located at 7 Meadow Lane. The property is located wholly within the R-1 Zoning District. As depicted on the existing conditions survey prepared by Tomasz Suwala, L.S., dated 4-17-23, last revised 4-18-23, the property is improved by a one-story frame building, detached pool house, and inground swimming pool.

Section 197-1 of the Village Code provides that no accessory building, other than a cabana or pool house of less than 200 square feet in floor area or a valid existing accessory apartment, as defined in this Code, shall contain any bath, shower or plumbing facilities.

The applicants originally sought to legalize the as-built pool cabana, with plumbing facilities, with a total of 351 square feet. During the course of the Zoning Board proceedings, the applicant revised the proposal to modify the existing structure so as to create three separately-accessible spaces within the building: a proposed outdoor shower (19 sf), a proposed storage

November 16, 2023

area (112 sf), and a reduced pool house with bathroom (220.5 sf), all as depicted on the proposed floor plan prepared by Jason M. Ormond, Architect, dated 10/3/23. Although the outdoor shower and storage areas will not be accessible from the pool house and have therefore been deemed conforming accessory structures, the reduced-size pool house will have plumbing/bathroom facilities and, therefore (at 220.5 sf) exceeds the 200 sf size limit for pool houses with plumbing. The applicant has therefore applied to the Zoning Board for a variance from Section 197-1.

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

III. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on July 20, 2023. The applicants' agent, Steve Caputo and presented their application and the revisions thereto, as mentioned above. 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 for a determination at the October 19, 2023 meeting.

IV. GOVERNING LAW

The Zoning Board is empowered to grant area variances pursuant to Section 7-712-b of the N.Y. Village Law and Section 197-75 of the Village Code.

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

The Board is charged to grant only the minimum variance necessary and to preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Finally, the Board is empowered to impose reasonable conditions to minimize any adverse impacts from the variance.

V. FINDINGS AND CONCLUSIONS

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

1. *Character of the Neighborhood:* The applicant demonstrated that the requested relief will not have a material adverse impact on the character of the neighborhood. While the Board expressed concerns over the construction of an illegal pool house without permits and the original proposal to legalize a pool house (with plumbing) that would substantially exceed the 200 sf maximum and thus effectively create a habitable accessory structure, the applicants made changes to address those concerns and reduce the pool house to only 220.5 sf, which is only 20.5 sf in excess of the maximum. The plans clearly depict that the storage area and outdoor shower will not be accessible from within the pool house, and a special condition will be imposed to insure that no alterations are made to the pool house that would result in an expansion thereof.
2. *Alternatives:* The applicant demonstrated that there are no feasible alternatives to achieve the benefits sought without the granting of a variance. The applicant added partitions to the existing buildings to create a storage area and outdoor shower, and to reduce the size of the pool house to 220.5 sf. The pool house could not be reduced to 200 sf without more major exterior renovations, due to the pre-existing location of the doors, which effectively limit where the building partitions could be located.
3. *Substantiality:* Under the circumstances of this application, the requested relief (amounting to 20.5 sf over the 200 sf pool house size limit) is not substantial.
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:* Under the circumstances, the benefits to the applicant outweigh the detriment, if any, to the neighborhood.
7. *Minimum Variance:* The variance is the minimum necessary to achieve the benefits sought.

November 16, 2023

The Zoning Board therefore grants the requested area variance from section 197-1 to allow the applicant to maintain a pool house with plumbing facilities, totaling no more than 220.5 sf., as depicted on the proposed floor plan prepared by Jason M. Ormond, Architect, dated 10/3/23 and survey prepared by Tomasz Suwala, L.S., dated 4-17-23, last revised 4-18-23 (collectively, the “Final Plans”), subject to the following conditions to minimize any adverse impacts from the variance:

VI. CONDITIONS

1. The space depicted on the Final Plans as “Proposed Outdoor Shower” and “Proposed Storage” shall only be accessible from the exterior of the building, and the interior partition walls shown on the Final Plans as dividing the space between the Pool House and the Proposed Storage/Proposed Outdoor Shower areas shall remain at all times, with no doorways allowing interior access between the three spaces.
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.

Dated: November 16, 2023

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the resolution for **David Weinstein, 7 Meadow lane (905-10-1-22)** as written; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

2. Mary & Kenneth McGorry, 350 Dune Road (905-018-01-009) Applicant requests variances from §197-8 D to construct a dwelling with proposed side yard setbacks of 12.6 and

17.5 feet where a minimum of 20 feet is required, with a proposed combined side yard setback of 30.1 feet where a minimum of 50 feet is required, and with a proposed rear yard setback of 52.2 feet where a minimum of 75 feet is required, and from §197-35 C for a proposed accessory deck setback of 13.9 feet where a minimum of 20 feet is required.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

-----X

In the Matter of Application of

Mary McGorry
Kenneth McGorry

DETERMINATION

Address: 350 Dune Road
SCTM #: 905-18-1-9

-----X

VII. REQUEST FOR RELIEF

The applicants, Mary McGorry and Kenneth McGorry, are the owners of a parcel of real property located at 350 Dune Road. The property is located wholly within the R-3 Zoning District. According to the survey of the property drawn by Fox Land Surveying, dated June 5, 2023, and last updated on October 4, 2023, the parcel is improved with a one story frame house, a frame garage and frame building, wood deck, and walkways.

Section 197-8.D. of the Village Code provides that, in the R-3 Zoning District, there shall be two side yards totaling not less than 50 feet, neither of which shall be less than 20 feet, and the rear yard shall not be less than 75 feet.

Section 197-35.C. of the Village Code provides that, in the R-3 Zoning District, accessory buildings, structures, tennis courts and swimming pools cannot be located closer than 20 feet to any lot or boundary line.

The applicant is proposing to construct a new two story frame house with side yard setbacks of 16.5’ and 18.6’, a total side yard setback of 35.1’, and rear yard setback of 52.2’, as well as an accessory setback of 16.5’, all as shown on the survey. The applicant therefore requests relief from Section 197-8.D and 197-35.C to accommodate those setbacks.

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 setback variances for single-family residential and accessory residential structures, the application is classified as a Type II action under 6 NYCRR §

617.5(c)(11), (12), (16) & (17). Accordingly, the application is not subject to further review under SEQRA.

VIII. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on August 17, 2023. The applicant's attorney, James N. Hulme and designer/builder, Rocco J. Lettieri, appeared and presented the application. The original application included variance requests for greater setback relief in some instances, but after hearing some initial concerns raised by the Board, the applicant modified the plans to lessen some of the relief.

The neighboring owners of 352 Dune Road, Mr. and Mrs. Kent, originally appeared in opposition to the application, but withdrew their opposition at the October 19, 2023 meeting.

Eric Weissman, 345 Dune Road submitted a letter in opposition to the application.

Penny Hart, address unknown, submitted a letter in opposition to the application.

No other persons appeared in support or opposition to the application.

The hearing was closed at the October 19, 2023, meeting for a determination.

IX. 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.

X. FINDINGS AND CONCLUSIONS

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

8. *Character of the Neighborhood:* The applicant has demonstrated that the proposal, as modified, will not have a material adverse impact on the character of the neighborhood. Like many other lots on the north side of Dune Road, the subject property is a long and relatively narrow parcel, with a developed area at the bulkheaded waterfront portion of the property to the north, and wetland areas at the middle and southern portions of the property except for the area around the driveway and Dune Road. The property immediately to the west (owned by the Kents) and two properties to immediately to the east are similar in character, with developed areas at the north and wetland areas between the homes and Dune Road to the south. Compared to the existing home's setbacks, the proposed home will be generally in the same location as the existing home, with some adjustments whereby certain setbacks are being substantially improved (such as the accessory setback improving from 0.5' to 16.5', the rear yard setback to the house improving from 44' to 52.2', and the eastern side yard setback improving from 15.1' to 16.5') while some setbacks are decreasing to a smaller extent. As an overall proposal, the project is in keeping with the character of the immediate neighborhood.

9. *Alternatives:* The site is highly constrained by the waterfront to the north, wetlands to the south, and easement rights benefitting the property to the west. There is no other location to achieve the benefits sought without the need for relief.

10. *Substantiality:* While some of the relief is mathematically substantial, it is mitigated by the context of this application, because the setbacks are generally consistent with the existing building area.

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

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

13. *Benefit vs. Detriment:* The benefit to the applicant outweighs the detriment to the community.

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

The Board therefore grants the requested relief from Section 197-8.D. of the Village Code to allow the construction of a new two story dwelling, swimming pool and deck as depicted on the survey of the property drawn by Fox Land Surveying, P.C. dated June 5, 2023 and updated on October 4, 2023, ("Final Plans"), subject to the following additional conditions:

XI. CONDITIONS

1. The variances granted herein are limited to the relief set forth in this decision, and pertain only to the Final 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.

Dated: November 16, 2023

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Mary & Kenneth McGorry, 350 Dune Road (905-18-1-9)** as written; seconded by Mr. Martinsen and unanimously carried 5 ayes, 0 nays, 0 absent.

3. Scott Eichel, 161 Dune Road (905-020-02-025) Applicant requests variances from §197-8 A(2) for proposed habitable space (office over garage) in detached building not deemed to be normal and accessory to principal single-family dwelling use, from §197-8 D to construct a dwelling with proposed side yard setbacks of 18.9 feet where the minimum required is 20 feet, and with a proposed combined side yard setback of 37.8 feet where the minimum required is 50 feet, from §197-8 E for proposed dwelling three stories high where the maximum permitted is two stories, from §197-35 C for a proposed accessory deck with side setbacks of 18.9 feet where the minimum required is 20 feet, and with a proposed rear setback to the crest of dune of 55.5 feet where the minimum required is 75 feet, and also from §197-35 C for a proposed accessory pool with a rear setback to the crest of dune of 61.7 feet where the minimum required is 75 feet.

4. Joy Hepburn, 339 Mill Road (905-008-01-014.03) Applicant requests variance from §197-35 to legalize a patio at-grade constructed in the front yard, where prohibited, in conjunction with the construction of an inground swimming pool where relief was granted by the ZBA for the pool only on June 17, 2022.

5. Thomas & Faith Tilson, 218 Dune Road (905-020-01-002) Applicant requests variances from §197-29.1 A for a proposed second-story addition, representing a prohibited increase in degree of nonconformity of a dwelling with a substandard side yard setback, 17.4 feet existing/proposed where a minimum of 20 feet is required, & substandard combined side yard setback, 44.9 feet existing/proposed where a minimum of 50 feet required.

6. Le Trois LLC, 482 Dune Road (905-016-01-024) Applicant requests variance from §197-8 C to legalize a constructed patio resulting in a building area lot coverage of 20.8% of the total lot area where the maximum permitted is 20% .

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

-----X

In the Matter of Application of

Le Trois, LLC.

DETERMINATION

Address: 482 Dune Road

SCTM #: 905-16-1-24

-----X

XII. REQUEST FOR RELIEF

The applicant, Le Trois, LLC., is the owner of a parcel of real property located at 482 Dune Road. The property is located wholly within the R-3 Zoning District. According to the survey of the property drawn by JM Land Surveying, dated January 22, 2019, and last updated on August 16, 2023 the parcel is improved with a two story frame house with decks and an inground swimming pool with at-grade patio.

Section 197-8.C. of the Village Code provides that, in the R-3 Zoning District, the building area lot coverage shall not exceed 20% of the lot area, exclusive of all areas south of the crest of the northerly dune and all areas designated as tidal wetlands by the New York State Department of Environmental Conservation.

The applicant is proposing to legalize a patio built at grade around the existing in ground swimming pool, with a resulting coverage of 20.8%. Therefore, the applicant requests the required coverage variance from Section 197-8.C. of the Code.

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 an area variance for a single-family residence and accessory residential structures, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(11), (12), and (17). Accordingly, the application is not subject to review under SEQRA.

XIII. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on October 19, 2023. The applicant Amy Motschwiller 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 October 19, 2023, meeting for a determination.

XIV. GOVERNING LAW

The Zoning Board is empowered to grant area variances pursuant to Section 7-712-b of the N.Y. Village Law and Section 197-75 of the Village Code.

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

The Board is charged to grant only the minimum variance necessary and to preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Finally, the Board is empowered to impose reasonable conditions to minimize any adverse impacts from the variance.

XV. FINDINGS AND CONCLUSIONS

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

15. *Character of the Neighborhood:* The applicant demonstrated that the requested relief will not have a material adverse impact on the character of the neighborhood. Although the Board does not look favorably upon applications made after-the-fact, when work was done without a permit, the Board will review the application under the hypothetical premise that it was being made in advance of the work being done, and in that light, the Board does not see any adverse impacts that would detract from the granting of the variance.

16. *Alternatives:* The applicant demonstrated that there are no feasible alternatives to achieve the benefits sought without the granting of a variance.

17. *Substantiality:* Under the circumstances of this application, the requested relief is not substantial.

November 16, 2023

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

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

20. *Benefit vs. Detriment:* Under the circumstances, the benefits to the applicant outweigh the detriment, if any, to the neighborhood.

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

The Board therefore grants the requested relief from Section 197-8.C. of the Village Code to allow a coverage of 20.8% where 20% is permitted, as depicted on the survey of the property drawn by JM Land Surveying, dated January 22, 2019 and last updated on August 16, 2023 (“Final Plans”), subject to the following additional conditions:

XVI. CONDITIONS

1. The variances granted herein are limited to the relief set forth in this decision, and pertain only to the Final 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.

Dated: November 16, 2023

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Le Trois, LLC., 482 Dune Road (905-16-1-24)** as written; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

7. **Robert & Teri Burke, 11 Tuttle Place (905-015-02-020)** Applicant requests variances from §197-6 C for proposed additions resulting in a building lot coverage is 21.98% of the lot area where the maximum permitted is 20%, and from §197-29.1 A as proposed additions represent prohibited increases in gross floor area of a dwelling with preexisting nonconforming side yard setbacks of 25.5 & 26.2 feet where 30’ is required and a corresponding nonconforming combined side yard setback of 51.7 feet where 70’ is required.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

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

Robert Burke
Teri Burke

DETERMINATION

Address: 11 Tuttle Place
SCTM #: 905-15-2-20

-----X

XVII. REQUEST FOR RELIEF

The applicants, Robert Burke and Teri Burke, are the owners of a parcel of real property located at 11 Tuttle Place. The property is located wholly within the R-1 Zoning District. According to the survey of the property drawn by Fox Land Surveying, dated August 6, 2022 and updated on June 2, 2023 the parcel is improved with a one story frame house and garage and wood deck.

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. The code further provides that an increase in the "degree of nonconformity" shall include, among other things, an increase in the amount of a nonconforming building's or structure's gross floor area which is located within a required setback area.

As depicted on the Proposed Site Plan prepared by William Fredric Heine Architect, dated October 18, 2023, the applicant seeks to construct some additions to the existing dwelling, including within the nonconforming side yard setbacks. The additions are proposed to be constructed with a minimum setback of 25.5 feet to the northeasterly side lot line and 26.2 feet to the southwesterly side lot line, where 30 feet is required, and with a combined side yard setback of 51.7 feet where 70 feet is required. Therefore, the applicants request the required variances from Sections 197-29.1.A. of the Village Code.

I. 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 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.

XVIII. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on October 19, 2023.¹ The applicant's attorney Heather A. Wright, Esq., 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 October 19, 2023, meeting for a determination.

XIX. 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.

XX. FINDINGS AND CONCLUSIONS

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

22. *Character of the Neighborhood:* The applicant demonstrated that the requested relief will not have a material adverse impact on the character of the neighborhood. The

¹ The application was originally advertised to include a requested coverage variance to allow 21.98% coverage, but it was later determined that this was a result of an erroneous calculation and the coverage variance request was withdrawn.

proposal is, in effect, one that seeks to work within existing setbacks by “squaring off” three corners of the existing house. The nonconforming additions include three smaller sections that fall within the required side yards, but none of them would protrude further into the side yard than the existing structure.

23. *Alternatives:* The applicant demonstrated that there are no feasible alternatives to achieve the benefits sought without the granting of a variance. The project seeks to achieve additional space but within the constraints of the existing home.

24. *Substantiality:* Under the circumstances of this application, the requested relief is not substantial. The three intrusions into the minimum side yard setback areas are on one story only and total about 90 square feet, 40 square feet, and 20 square feet.

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:* Under the circumstances, the benefits to the applicant outweigh the detriment, if any, to the neighborhood.

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

The Board therefore grants the requested variances to construct an addition to the existing dwelling with nonconforming side yard setbacks of 25.5 feet and 26.2 feet and a combined side yard setback of 51.7 feet., as shown on the Proposed Site Plan prepared by William Fredric Heine Architect, dated October 18, 2023, subject to the following conditions to minimize any adverse impacts from the variance:

XXI. 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,

November 16, 2023

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.

Dated: November 16, 2023

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the resolution of **Robert & Teri Burke, 11 Tuttle Place (905-15-2-20)** as written; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

8. Lee Dubb, 9 Stacy Drive (905-010-05-030) Applicant requests variance from §197-35 A for a proposed tennis court to be located in the front yard where prohibited.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

-----X

In the Matter of Application of

Lee Dubb

DETERMINATION

Address: 9 Stacy Drive
SCTM #: 905-10-5-30

-----X

XXII. REQUEST FOR RELIEF

The applicant, Lee Dubb, is the owner of a parcel of real property located at 9 Stacy Drive. The property is located wholly within the R-1 Zoning District. According to the existing conditions survey of the property prepared by Alexandra Hurley Land Surveying PC, dated 9/27/23, the parcel is improved with a two story frame house, a swimming pool, hot tub, deck, boardwalk, porch, steps, and masonry walk and wall.

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

According to the proposed site plan of the property prepared by Robinson & Muller Engineers, P.C., dated 9/26/2023, last revised 9/28/23, the applicant is proposing to construct a tennis court in the front yard where accessory structures are specifically prohibited. The applicant has therefore requested a variance from Section 197-35.A.

XXIII. SEQRA

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

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

XXIV. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on October 19, 2023. The applicants' attorney Paulina Giampietro, Esq., 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 October 19, 2023, meeting for a determination.

XXV. 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.

XXVI. FINDINGS AND CONCLUSIONS

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

29. *Character of the Neighborhood:* The applicant demonstrated that the requested relief will not have a material adverse impact on the character of the neighborhood. The Board is

familiar with this particular neighborhood, in which there are many tennis courts located in nonconforming front- or side-yard locations. In particular, on the waterfront side of Stacy Drive, there are six other parcels that have front yard tennis courts. No other variances are needed, and the applicant has proposed a reduced size court of 110' x 55' (6,050 sf), compared to the standard size of 120' x 60' (7,200 sf). The proposal is thus in keeping with the prevailing character of the neighborhood.

30. *Alternatives:* The applicant demonstrated that there are no feasible alternatives to achieve the benefits sought without the granting of a variance.

31. *Substantiality:* The requested relief is substantial, but in the context of this unique neighborhood, that impact is mitigated.

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

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

34. *Benefit vs. Detriment:* Under the circumstances, the benefits to the applicant outweigh the detriment, if any, to the neighborhood.

35. *Minimum Variance:* The variance is the minimum necessary to achieve the benefits sought, including by reducing the standard size court.

The Board therefore grants the requested variance to allow the construction of a 6,050 square foot tennis court, in the front yard, as depicted on the proposed site plan of the property prepared by Robinson & Muller Engineers, P.C., dated 9/26/2023, last revised 9/28/23 ("Final Plans"), subject to the following conditions to minimize any adverse impacts from the variance:

XXVII. CONDITIONS

1. The variances granted herein are limited to the relief set forth in this decision, and pertain only to the Final 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.

November 16, 2023

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.

Dated: November 16, 2023

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the resolution of **Lee Dubb, 9 Stacy Drive (905-10-5-30)** as written; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

9. Beach Star Capital Trust, 22 Bayfield Lane (905-010-06-002) Applicant requests variance from §197-1 to maintain the tennis court and detached garage after minor subdivision, which represents a prohibited existence of accessory structures/uses on a lot without a principal single-family use.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

-----X

In the Matter of Application of

Robert Schoenthal
Adam Schacter Beach Star Capital Trust

DETERMINATION

Address: 22 Bayfield Lane
SCTM #: 905-10-6-2

-----X

I. REQUEST FOR RELIEF

The applicants, Robert Schoenthal and Adam Schacter Beach Star Capital Trust, are the owners of a parcel of real property located at 22 Bayfield Lane, Westhampton Beach (the “subject property”). The subject property is located wholly within the R-1 Zoning District. According to the Subdivision Map of Robert Schoenthal, drawn by Fox Land Surveying dated March 21, 2022, the subject parcel is proposed to be subdivided into two separate parcels: Lot 1 will be improved with a two story frame house with an inground swimming pool and slate patios, and Lot 2 will be improved with a one story frame garage and frame shed and a 37.2’ x 120.4’ tennis court.

The applicants have confirmed that they plan on removing the shed but wish to maintain the tennis court and garage – two accessory structures – on Lot 2 even though Lot 2 will no longer have a principal structure.

If the two properties were a single parcel, the existing tennis court and one story frame garage would be conforming as to both use and dimensional regulations and therefore would require no variances. However, since the tennis court and the garage will not (after the subdivision) be located on

the parcel (Lot 1) on which the two-story frame residence is also located, the tennis court and the garage will no longer satisfy the code definition (in Section 197-1 of the Village Code), of accessory buildings, i.e., a use customarily incidental and subordinate to the principal use of a building and property and when located on the same plot with such principal use or building.

The applicant therefore seeks relief from Sections 197-1 of the Village Code to allow the tennis court and garage to remain on Lot 2 after the subdivision is completed. As mitigation, the applicant has offered to condition any variance on the recording of covenants confirming that the tennis court and garage would only remain on the vacant parcel, so long as the two properties remained in the same “beneficial ownership” (i.e., owned by the same shareholder).

II. SEQRA

The applicant submitted an Environmental Assessment Form Part I pursuant to the State Environmental Quality Review Act (SEQRA). Since the application is for accessory residential structures, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(12). Accordingly, the application is not subject to review under SEQRA.

III. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on October 19, 2023. The applicants’ attorney Richard T. Haefeli, Esq., appeared and presented the application. No other persons appeared in support or opposition to the application. The Board did not receive any written submissions from any neighbors in support or opposition to the application. The hearing was closed at the October 19, 2023, meeting for a determination.

IV. GOVERNING LAW

As found in similar prior applications, the application is in the nature of an area variance rather than a use variance.

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:* Subject to the conditions imposed herein, including the recording of covenants necessary to ensure that the two properties are, during the duration of the variance, utilized jointly and owned by the same beneficial owner, the applicant has demonstrated that the granting of the variance will not adversely impact the character of the neighborhood. The tennis court and garage, though technically not on the "same lot" as the single family dwelling, will, subject to the covenants, be functionally dependent and retain the appearance of a fully conforming and accessory tennis court and garage, since there will be no other principal use on the subject property. The covenants will ensure that the variance shall lapse and the tennis court and garage shall be made conforming or be removed in the event of either a change of ownership or the addition of a new single family dwelling use on the subject property.

2. *Alternatives:* The applicant has demonstrated that there are no feasible alternatives to achieve the benefit sought without the granting of a variance.

3. *Substantiality:* The variance is substantial to the extent that it seeks to maintain accessory uses on a lot that has no principal use. However, since the covenants will effectively ensure that the two lots are, for practical purposes, utilized as one lot under the same beneficial ownership, the practical effect is insubstantial.

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:* Subject to the conditions herein, the benefits to the applicant outweigh the detriment, if any, to the community.

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

November 16, 2023

The Zoning Board therefore grants the requested variance from Section 197-1 of the Village Code, to allow an existing tennis court and garage to remain on the subject property (Lot 2) after the subdivision is completed, but to be used as an accessory use to the single family two story frame dwelling on the adjacent lot (Lot 1), subject to the following conditions to minimize any adverse impacts from the variance:

VI. CONDITIONS

1. The variance granted herein shall automatically lapse upon the earlier of the following events: either (i) the subject property and the adjacent property are no longer held in the same ownership or the same beneficial ownership (e.g., held by entities that are owned by the same shareholders in the same proportion), or (ii) the subject property is improved with a new use. Upon the occurrence of either of those events, the tennis court and garage shall either be removed from the subject property or made into a fully conforming tennis court or garage (such as by being put to use to on a lot with a single family dwelling on the subject property).

2. The shed shall be removed from the property prior to completion of the subdivision.

3. Nothing herein shall be construed as authorizing any other deviation from the Village's regulations and requirements relating to tennis courts or garages, other than the "same lot" requirement contained in Section 197-30.D(11).

4. The applicant shall file a declaration of covenants and restrictions, in a form to be approved by the Village Attorneys, reflecting the foregoing conditions. Prior to recording, applicant shall provide a title certification to the Village Attorney identifying all the persons who must sign and consent to the declaration, along with a copy of the proposed final declaration for recording. Upon receipt of approval from the Village Attorney, applicant shall record the declaration, fully executed, with the Suffolk County Clerk, at the applicants' sole cost and expense. A copy of the recorded declaration shall be filed with the building inspector prior to the issuance of any permit for the erection of the tennis court.

Dated: November 16, 2023

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the resolution of **Beach Star Capital Trust, 22 Bayfield Lane (905-10-6-2)** as written; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

HOLDOVERS:

10. Jim Badzik, 27 Sunswyck Lane (905-015-04-003) Applicant requests variances from §197-1 to construct an accessory building with plumbing facilities of 1,399 square feet where the

November 16, 2023

maximum permitted is 200 square feet, and from §197-35 A to construct the accessory building within the front yard (corner lot) where not permitted.

No one appeared on behalf of the application. Mr. Badzik requested a holdover.

Motion was made by Mr. Piering to holdover the application of **Jim Badzik, 27 Sunswyck Lane (905-15-4-3)** to January 18, 2024; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 0 absent, 1 abstain.

11. Lawrence & Donna Francis, 77 Library Ave (905-015-02-028) Applicant requests variances from §197-29.1 A for a proposed unfinished second story over detached garage, representing a prohibited increase in gross floor area of a preexisting nonconforming accessory structure in the front yard.

Paul Sigsimondi, Architect appeared on behalf of the application. Mr. Piering asked if you're looking for storage above the garage? Our concern is that this is non conforming and we don't want a second story and have it become habitable space. Will this be storage only?

Mr. Sigsimondi said yes, and there are two small windows on each end there is no enclosure and it's not built or rated for habitable space.

Mr. Piering said we want to confirm it will not be habitable space.

Mr. Sigsimondi said it will not be.

Mr. Piering said he did not have any questions.

Mr. Musnicki asked if they can build the storage in the rear yard?

Mr. Sigsimondi said no because it will increase the lot coverage and going up over the garage does not increase the lot coverage and we are at the maximum 20% right now.

Mr. Musnicki said it says 11.8% and that's my concern and you can build storage in the rear of the property.

Mr. Sigsimondi said there are wetland setbacks which may be why we cannot. The initial plan is to keep it as cost effective as possible and just add a new roof and walls on the existing garage. It will fill up the backyard and it's the most straight forward to do a second story on the garage and turn that into the storage space.

Mr. Musnicki said he'd prefer he does a little more homework to see if that's possible and if the wetlands are restricting you from doing that you can make that part of the argument. A new elevated structure at the street line is not that attractive.

Mr. Sigsimondi said the hedge row in the front blocks the building and they are friendly with the neighbors and no one really has an issue with it. Cost effective, this is the best location for it.

Mr. Musnicki said that's my take on it.

Mr. Piering asked Mr. Hammond if there is limited storage locations?

Mr. Hammond said with the marshland and sea level the crawl space is limited and it was a modular so there is no attic space and the DEC setback is 100' from fresh water and this is within the DEC jurisdiction and if they build another structure on the West they'll need to go to DEC.

Mr. Sigsimondi said that buffer covers the backyard.

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

Motion was made by Mr. Piering to close the hearing of **Lawrence & Donna Francis, 77 Library Avenue (905-15-2-28)** for a determination; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

12. 16 Fanning Holding LLC, Westerly Terminus of Fanning Drive Applicant requests variances from Village Law of NYS §7-734 for proposed walkway/dock catwalk within an existing officially mapped/planned village highway where prohibited and inconsistent with the approval of the subdivision map by the Planning Board and filed with the Suffolk County Clerk's Office on July 13, 1967, as Map #4894.

James N. Hulme, Esq., requested to hold the application over to December 21, 2023.

Motion was made by Mr. Piering to hold over the application of **16 Fanning Holding LLC, Westerly Terminus of Fanning Drive** to December 21, 2023; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

13. Westhampton Property Management LLC, 141 Montauk Highway (905-005-02-006.01, -006.02, -007 & -009.01) Applicant requests variances from §197-17 for a proposed grocery store with a gross floor area of 6,538 square feet where the maximum permitted is 5,000 square feet, from §197-17.1 for a proposed rear yard setback of 13.3 feet where the minimum required is 50 feet, for a proposed combined side yard setback of 47.6 feet where the minimum required is 50 feet, from §197-29.1 A for a proposed building addition which represents a prohibited increase in gross floor area of a building with a preexisting nonconforming front yard setback (41.5 existing/proposed where the minimum of 50 feet is required, and also from §197-29.1 A for a proposed storage addition which represents a prohibited increase in gross floor area of a building with a preexisting nonconforming side yard (3 feet existing/proposed where the minimum required is 20 feet).

John J. Bennett, Esq., appeared on behalf of the application. His associate Bailey Larken appeared at the October hearing and they added an addition to the South side for the refrigerated storage and we submitted a floor plan showing that. In addition we will merge the lots and we agreed to do so which removes that issue and once they are contiguous the need for lot coverage relief was eliminated and the sideyard variance was reduced and we're before the Planning Board and we are coordinating access for parking and it makes sense to merge the lots and make them one contiguous lot. This is proposed a Citarella Market grocery store and the relief requested is for 41.5' in the front yard and the pre existing building is not going to make anything closer to Montauk highway; the extension is to the East and necessitates relief and we're not coming any closer to Montauk Highway and we're 4' from the required setback. The 41.5' setback is not in consistent with the surrounding development on Montauk Highway and also as part of the overall look we're cleaning up the ingress and egress and the parking at the request of the Planning Board and it's a benefit to the community.

Mr. Wittschen asked the comments from Planning Board?

Mr. Bennett said to coordinate access along the front and we have to finish with this Board and we have work to do with that Board but we're progressing along and I think we have a good path with that Board. It took awhile for me to demonstrate to the applicant to do the sidewalks and improvements that he'd have to do on the East and we've done so and the Planning Board was supportive of that and they did not see the need for continuous access at the rear of the property, but they all feel that it's not needed on the rear of the property from Oak Street to Sunset Avenue for access. We also, a neighbor to the South is concerned about the development and we have double rows of Evergreen plantings and stockade fence to install and whatever else the Planning Board wants.

Mr. Piering said he spoke to the neighbor and it was a concern, but I think your proposal is generous. I read your memorandum and it's in that and I think it's a good solution.

Mr. Bennett said it was a reasonable request and we're not opposed to it. The big issue we have and it's the most important and I don't think it's a stretch but I want 5,000 square feet for retail use and with 1,538 for the refrigerated storage in the rear and we looked at alternatives and we can add to the basement, but that's expensive due to requirements and if we do so it takes away from the floor space above so we'd need more retail relief. The Code says 5,000 square feet and we'll have that for sales area and we're asking for 1,538 extra for refrigeration, and the Citarella in Southampton at 3,500 square feet did not succeed; the one in Southampton is 11,000 square feet with a basement and if you go in to his markets there are a lot of employees and well maintained but to do so you need a decent line of product and 5,000 square feet is the minimum

for sales and we don't think its reasonable to take the refrigerator spaces from the floor area or the basement. It would be between 27% and 30% more expensive to put it in the basement and we'd need relief on the first floor to do so. I understand that you have to be careful of the Code change to allow 5,000 square feet and we thought it would be interesting for the Board to know WHB Development Partners for a new limitation on a convenience store who received a variance for another 1000 square feet and we're asking for 30.8% more. We demonstrated the facts and needs to find an accommodation. I don't know how they came up with the number 5,000 square feet and it is arbitrary and I did review the planning study and I don't see an explanation and I looked at the table of use regulations and this is by comparison. It's to a degree attacking an inconsistency in the law and I don't see limitations but I think if we come to you and demonstrate why it's a reasonable request and you'll be sympathetic to that. I think we've demonstrated why we want this benefit and it's reasonable and won't impact the neighborhood and in terms of what is going on and things we're working out with the Planning Board it will be a thriving business. He's turned around Southampton Village and I think his store has helped that area of Hampton Road and it will do the same here and I don't think there is any detriment.

Mr. Piering said there have been changes, can we go through what variances you need now.

Mr. Bennett said yes.

Mr. Piering said we need to go through them to see what are still needed.

Mr. Bennett said we need 197-17 for the refrigeration unit and storage; the selling area and office is in the 5,000 square feet which is permitted. And that extends to the rear yard setback of 12.8' and the side yard combined setback is now 47.6' and the lot coverage request was removed. And on the side yard 3' where 20' is required and the building maintains the 0' setback to the North. We're seeking an expansion of a non conforming structure so we need relief for that as well and the only request that got larger was the rear yard setback from 13.3' to 12.8'.

Mr. Hammond said it was 15.9' and then it was 13.3' and that was the renofice, so I don't know what the 12.8' is or where it came from. And it has to be renoficed if he needs 12.8'.

Mr. Bennett said we will make it work, it's half of a foot and we can work it out so let's keep it at 13.3'. The survey was at 12.8' so we will figure it out it's not a big deal.

Mr. Hamond said we need to go through them to make sure nothing has to be renoficed.

Mr. Bennett said the lot coverage was removed and the rest all are still needed. Most of the side yard setback is conforming for the total point of view, but at the one jog it is 47.6' and if you are kind of enough to grant the relief we will be making the 13.3' work.

Mr. Hammond said the Village was trying to rush it along, and the plan got changed so we're trying to move it along and not hold it up and we have to agree to a plan and stick to that plan.

Mr. Piering asked if there were any questions or comments. There was no public comment.

Mr. Pasca asked them to submit a revised survey showing the correct setback of 13.3'.

Motion was made by Mr. Piering to adjourn the hearing of **Westhampton Property Management, LLC., 141 Montauk Highway (905-5-2-6.1, 6.2 & 9.1)** seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

NEW APPLICATIONS

14. Kathleen Hay, 69 Beach Road (905-012-02-032) Applicant requests variance from §197-35 A to legalize a patio at-grade constructed in the side yard, where prohibited, and also from §197-35 E(1) as the patio at-grade setback is 9.4 feet where a minimum of 10 feet is required, in conjunction with the construction of an inground swimming pool where relief was granted by the ZBA for the pool with a smaller patio on May 20, 2021.

James N. Hulme, Esq., appeared on behalf of the application. The property is improved by a single family home, pool, jacuzzi and patio around both. The challenge for this lot has been and

November 16, 2023

remains that it is so far back so there is no rear yard; in 2017 I came to this Board for a variance to allow a swimming pool in the side yard; and in 2021 I came back again and sought and was granted a variance to change the pool to gunite and to add a jacuzzi and that was granted. So now a building permit was granted to construct the pool, jacuzzi and patio around both. There is a survey last dated March 19, 2021 and it shows the approval in 2021 and the jacuzzi and pool and the paver patio 4' around the structures and it was not completely clear that we were limiting ourselves to the patio and when we reconstructed the pool and added the jacuzzi and to build the patio it was reflected on the survey October 6, 2023 and it's more squared off and there's more depth and that triggered the need for the variances and we're expanding the structure in the side yard and the patio is 9.4' so it's 7.2' too close and the pool is exactly where it's supposed to be and the jacuzzi is where it was approved and we're trading a little lawn area for a masonry patio so it does not add to the ability to use the area; they can use the grass if they choose to but they want a patio. The other thing I submitted was photographs and it shows the area where it is and it's well screened from the adjacent property owner and you can see it and there is a substantial stockade fence as well.

Mr. Piering said they just really like to ask for variances. He asked if there was any questions or comments. There was no public comment.

Motion was made by Mr. Piering to close the hearing of **Kathleen Hay, 69 Beach Road (905-12-2-32)** for a determination; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

15. John Regler, 71 Lilac Road (905-005-01-009) Applicant requests variances from §197-7 C to construct a two-story addition with a resultant building area coverage of 23.6% of the total lot area where the maximum permitted is 20%, from §197-7 D for proposed front yard setback of 20.3 feet where the minimum required is 50 feet, and also from §197-7 D for proposed side yard setbacks of 11.8 & 13.6 feet where the minimum required is 20 feet, with proposed combined side yard of 25.4 feet where the minimum required is 50 feet.

Leo P, Architect appeared on behalf of the application, together with John Regler. Mr. Piering asked them to take them through the application, there is a lot of variances and relief needed.

Mr. P said we're taking down the front of the main house and rebuilding it; it's a crawl space and two small rooms and rebuild it and a cellar and a second floor; the porch will be coming out the same distance as an existing portico and it's going longer with an attached car port to the North and not enclosed so they can park their cars.

Mr. Piering asked if that's where the driveway is and will it be covered?

Mr. P said yes. We couldn't build over the back it was built with cathedral ceilings and will be significant to add over that and we decided to make it storage so we're going to add a cellar and it will remain unfinished for storage only so it's adding the two bedrooms on top. Going through the variances, we're at 23.6% lot coverage and they have a 500 square foot deck and if we consider it we reduce the lot coverage to 16% but that's what creates the variance for the lot coverage. The front yard setback is 20.3' to the portico and that's not changing; the side yard setbacks are not changing except for the North where we're adding a carport; the South side is remaining the same. A combined side yard is being reduced by the addition of the carport.

Mr. Musnicki said it looks like a first floor addition, is that correct?

Mr. P said yes, we are squaring it off.

Mr. Musnicki said the front part of the house, is it an addition or you taking it down.

Mr. P said we're rebuilding the entire house and going and squaring it up.

Mr. Musnicki said the only thing to remain is the deck in the rear part of the house?

Mr. P said yes.

Mr. Piering asked the size of the lot?

November 16, 2023

Mr. P said 8,333 square feet; we have only five houses on that side of the street and we back up to the high school property. We are staying within the character of the neighborhood and they all back up to the school and we're going straight up where the main house was we're not encroaching any further to the street and adding a small carport.

Mr. Piering said that's where you park now, but it's not covered?

Mr. P said yes.

Mr. Regler said the roofline extends and gives it a nicer look.

Mr. Piering asked if there were any questions or comments. There was no public comment.

Motion was made by Mr. Piering to close the hearing of **John Regler, 71 Lilac Road (905-5-1-9)** for a determination; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

16. Pine West LLC, 451 Dune Road (905-017-05-002) Applicant requests variance from §74-5 C(2) for proposed dwelling within the Coastal Erosion Hazard Area (CEHA) where construction of nonmovable structures within the CEHA is prohibited, from §197-8 D for proposed front yard setback of 50.2 feet where the minimum required is 75 feet, also from §197-8 D for proposed side yard setbacks of 18.3 & 19.7 feet where the minimum required is 20 feet, with a proposed combined side yard setback of 38 feet where the minimum required is 50 feet, also from §197-8 D for proposed rear yard setback to crest of dune of 50.3 feet where the minimum required is 75 feet, from §197-35 C for a proposed front deck side setback of 18.3 feet where the minimum required is 20 feet, also from §197-35 C for proposed rear deck side setback is 19.2 feet where the minimum required is 20 feet, and with a rear setback (to crest of dune) of 51.1 feet where the minimum required is 75 feet, and lastly from §197-35 C for proposed pool rear setback (to crest of dune) or 55.5 feet where the minimum required is 75 feet.

William Schilling appeared on behalf of the application. He said we submitted a Single and Separate search from 1946 so I am allowed to have the side yards with no variance, so I can maintain those side yards so we only need the front yard and the rear yard.

Mr. Hammond said we got a copy today and it looks correct; there is 20,000 square feet and it's single and separate before 1952 so it can be reduced so it eliminates four variances and the deck side yards are not an issue. It's 10% so the 19.2' is not a problem; it's supposed to be 100' and it's 90'.

Mr. Pasca said we have to figure out what variances are needed.

Mr. Schilling said I'm not 100% sure but it would fit in the side yards if it was grandfathered to 1952.

Mr. Piering asked how much will change compared to what's there.

Mr. Schilling said on the survey you will see there is a dotted line which is the existing house and were within the footprint front to back and it's not too far off what was there and off of the back deck that exists now we aren't extending past that. We designed the house to fit the envelope and I have an aerial photo that shows the houses in the area and when it's completed we will be in line with the Sandcastle.

Mr. Piering said the house is there, the deck is there, you're going to add a swimming pool.

Mr. Schilling said yes a 12' x 16' pool.

Mr. Piering said if you don't get relief from the CEHA you can't build a house. In looking at this property it's 546' deep and you can only use a small piece of it and it's a modest house on Dune Road.

Mr. Musnicki asked if he saw the request from the neighbors?

November 16, 2023

Mr. Schilling said yes, we'll put screening up on both sides.

Mr. Musnicki said okay, and that will be part of whatever decision we make.

Mr. Schilling said that was okay.

Mr. Pasca said there are five variances needed and four were eliminated because of the single and separate search; 197-8.D. is eliminated; 197-8.D. is eliminated and the front deck is eliminated and the rear deck is eliminated.

Mr. Schilling said I need the dune and the front yard and CEHA.

Mr. Piering said okay. He asked if there were any questions or comments. There was no public comment.

Motion was made by Mr. Piering to close the hearing of **Pine West, LLC., 451 Dune Road (905-17-5-2)** for a determination; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

17. Michael Jesselson, 49 Bayfield Lane (905-010-04-033) Applicant requests variances from §197-6 A(2) for proposed habitable space (studio) in detached building, which is deemed not to be normal and accessory to principal single-family dwelling use, from §197-35 A for proposed studio building which is located partially in the front yard where prohibited, also from §197-35 A for proposed pool & cabana which are located in the front yard where prohibited, and lastly from §197-35 A for existing tennis court proposed to be maintained in the front yard where prohibited.

Karen A. Hoeg, Esq., appeared on behalf of the application, together with the architect. Ms. Hoeg said we provided a memo of law. And this is in a special flood hazard zone and in 2015 there was a single family two story dwelling; a garage and swimming pool and patios and they received damage during Hurricane Sandy and demolished in 2018 and the garage and tennis court remains and there is bedroom, living room and bathroom in the garage and are proposed to be demolished and was permitted. There were numerous CO's for the garage and accessory uses; the single family dwelling and swimming pool and tennis court and shelter to observe tennis from. The proposal is not an increase in the degrees of non conformity or height and the proposal is 679 square feet and the pre existing garage was 735 square feet and the studio is the same area as the detached garage and conforms to the setback. The tennis court also remains on the property and has been maintained over the years, and we're proposing to keep it in its current location. All of the proposed structures are conforming to lot coverage and gross floor area and no variances are needed for the new single family dwelling. It's burdened by its corner lot location with frontage of Bayfield Lane and Bayfield Court and they propose to place it on the Southern side of the property and its the widest portion of the lot. The pre-existing tennis court has been on the property since 1985 and the surrounding properties are similarly configured and five of them have tennis courts and number in the R1 are corner lots with tennis courts. 1 Stacy Drive received an approval for a tennis court as stated in the 1986 decision and the variance application was approved so long as its surrounded by plantings. As shown on the plans it's enclosed with evergreen plantings and conditions. This Board granted a variance for a pickle ball court at 13 Stacy Drive and there was a variance for a tennis court in the front yard and the decisions state there is no adverse impact to the neighborhood. In July 2022 the property at 5 Michaels Way which has more than one front yard they received a variance for the accessory structures in the front yard. All of the surrounding properties shave pools and screening and that will not detract from the character of the community and we have two letters of support from the neighbors. As discussed it is burdened by the shape of the lot and the building envelope and the applicant has chosen to construct the main house in the location at the Southern portion and because of this all customary accessory structures require variances. We request a variance and it's not substantial there is no adverse effect on the neighborhood and there is no additional disturbance to the property or vegetation and it is all similarly improved.

Mr. Piering said you have a pre exiting tennis court, and a garage with an apartment. We are reviewing this, there was a demolition request to remove the garage on the survey and its still there and the tennis court is still there five years later with no principal residence which is not

November 16, 2023

allowed under the Village Code. So there is a five year span why hasn't the tennis court been removed.

Ms. Hoeg said once the property was destroyed by Hurricane Sandy the applicant engaged with an architect to redesign the property and it was one from Upstate New York and the designs presented were not reasonable to the client so we agreed to hire a new architect and started working on new plans then COVID happened and there was a recent passing of the main architect working on it so it took time to get it back on track and in the meantime we have been maintaining the tennis court as is and we want to maintain it in its current location; so yes it has taken time we are happy to be at this point and I know the neighbors will be happy to see progress.

Mr. Piering asked why was it submitted to take it down, why is it still there?

Ms. Hoeg said because of a change in contractors. There has been shifting on it over the years now they have a new contractor lined up so we will be removing it.

Mr. Piering said there are two front yards, where you define the rear yard.

Ms. Hoeg said it has evolved over the years, and when we first met with Mr. Houlihan and interpreted it differently and we met with Mr. Hammond recently to get his understanding and that he interprets there are two front yards so there are two rear yards and no side yards and everything is located in the front yard.

Mr. Piering said you are saying there are two rear yards?

Ms. Hoeg said yes, and the denial states they are proposed in a front yard. If you look at Bayfield Court as a front yard and Bayfield Lane as a front yard these are being proposed in a front yard and that's how the denial is written up.

Mr. Piering said if it's a rear yard you have 33' and 35' and you need 50' where the house is situated.

Mr. Hammond said the side yard can be the West or South; the side yard is to the South because 30' is required; to the West the detached garage and carport is close to the dwelling, but that is in a conforming location and its in the rear yard and 20' from the property line and in my estimation the rear yard is West of the dwelling proposed within the furthest limits north and south so they can't have accessory structures to the South, but they can the West and everything else is in the front yard. Because the garage is not attached, they do not need a rear yard variance. Only the studio building, pool and tennis court were called out for the front yard and is in what's considered a rear yard.

Mr. Piering said the house designed the way it is, is in a conforming location.

Mr. Hammond said it is wider than 30' and 50' to the East and South and it's much more than 50' to the North.

Mr. Pasca said I was trying to follow along, but on the prior garage is the argument there was living space, and now that living space is being transferred to the studio. What's the calculation for the floor area for the prior living space to show they are the same.

Ms. Hoeg said the prior garage was 735 square feet and that had a playroom on the first floor and servants quarters bedroom bathroom on the second; the proposed studio is 679 square feet.

Mr. Pasca asked to put that in the record. Its important to the Code section, if it's under 197-29.C. to make sure the floor area is not increasing. I'm looking for those numbers in the record.

Ms. Hoeg said yes, she will submit it.

Architect said if you can go to the handout the site on Bayfield Lane and Bayfield Court and the irregularly shaped lot and a tennis court on the North West corner and on page 3 the proposed structures are labeled 1 through 3; 1 is the main house and 2 is the detached garage and 3 is the

November 16, 2023

accessory structure with the studio and swimming pool and we have a swimming pool and tennis court that they want to maintain. On the next page, you will see three structures and two amenities in relation to the setback requirement which is 50' to the North, East and West; and 30' from the south and 20' for the accessory structure. You will see the plot plan measures and they include fill up to 5.5' from existing grade and we also have perimeter French Drain around the site and we're adding French Drain around the tennis court; and we're also proposing sufficient drywells and there are 18 of them throughout the site to manage the storm water. We have an approved sanitary plan from Suffolk County Department of Health Services and in this site plan you will see the proposed septic system. We're planning a heavy site screening using mature tall evergreen specimen trees for privacy for the owners and the neighbors. And you will see views of the site one from the North East corner and you will see the hedges for the site triangle requirement and you don't really see the house. The next view is from the South East corner where plant heights are kept typical around 16' to 18' and the next page has the site plan and the floor plan of the accessory structure with the studio and the pool house and the building elevation and as mentioned, this is a single story building that appears like a cluster of small building volume and not monolithic. You will see an eye level view of the accessory structure and the last page shows the survey.

Mr. Badzik asked him to address the plumbing for the studio and pool house, how large is the structure?

Architect said it is 679 square feet.

Mr. Piering asked if that is the entire studio?

Architect said yes.

Mr. Piering said we need to differentiate the pool house which is not allowed to have plumbing over 200 square feet; how do you differentiate that to this studio that's 679 square feet. We have had cases and one tonight for decision and the pool house was over 200 square feet and they were able to modify it and get it down to a reasonable amount and is that pool house accessible to the studio, is it separate and under 200 square feet?

Ms. Hoeg said it is not accessible and it is separate from the studio.

Mr. Piering said so the studio is separate.

Mr. Musnicki said it is 200 square feet.

Architect said the elevation is different, the pool house is lower than the studio.

Mr. Piering said the whole application with the variance for the front yard variances is all driven by keeping the tennis court?

Ms. Hoeg said yes.

Mr. Piering asked if they thought about moving or removing the tennis court and move the house up it eliminates the variances and it's a vacant parcel.

Ms. Hoeg said no. The applicant wanted to keep the tennis court in its location and the goal was to reduce dimensional variances and setbacks and not have any variances for them which is why the house is where it is and if you shift the house and faces Bayfield Lane it reduces the variances for accessory structures and we're up against the neighbors and would need larger variances. There are similarly situated front yard variances throughout the village including tennis courts on corner lots is why we took this avenue. The tennis court has existed in this location since 1985.

Mr. Musnicki said the site plan shows a tennis court is the new size of the tennis court, 7,200 square feet?

Ms. Hoeg said yes, they are agreeable to making it 7,200 square feet.

November 16, 2023

Mr. Musnicki asked how you'll get there.

Architect said the width was wider.

Mr. Musnicki said okay. I saw some literature about lighting and we assume this will not be a lit tennis court.

Ms. Hoeg said yes, we have to go to the planning board as well and we know there is no lighting allowed.

Mr. Musnicki said there is a lot to look at.

Mr. Piering said we need that information before we can render a decision.

Ms. Hoeg asked if the special permit has to be noticed?

Mr. Pasca said the typical way it's done the accessory building with plumbing is not accessible, so you can remove the plumbing from the studio which takes it out of that particular code issue but that's up to you to decide whether you want to go that route or make a new argument that it's still pre-existing non-conforming to transfer. It would simply be the application to remove the plumbing.

Ms. Hoeg said she will have that discussion with her client.

Mr. Piering asked if there were any questions or comments. There was no public comment.

Motion was made by Mr. Piering to holdover the application of **Michael Jesselson, 49 Bayfield Lane (905-10-4-33)** to December 21, 2023; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

18. Craig & Jaclyn Mischler, 108 Seafield Lane (905-015-04-024) Applicant requests variances from §197-6 C to construct a dwelling & accessory structures with a proposed building area lot coverage of 23.5% of the lot where the maximum permitted is 20%, from §197-6 D for proposed front yard setback (corner lot) of 28.7 feet where the minimum required is 50 feet, and also from §197-6 D for proposed side yard setback of 25.6 feet where the minimum required is 30 feet.

James N. Hulme, Esq., appeared on behalf of the application, together with William Barba Architect. Mr. Hulme said as indicated this is located at 108 Seafield Lane in the R1 Zoning District and is small from the perspective of the general requirements in the R1 and in the neighborhood there are almost no lots in this vicinity that meet the area requirement and it's in the AE 8 Zone and any new construction requires compliance with AE 8 plus 2' of freeboard and as of today there is a one-story frame house with a garage and a covered patio that connects it to the house and the lot coverage is 12.6%. The proposal is to remove that and replace it with a two-story home and elevate it and the pool and patio and as proposed is a detached garage. That results in lot coverage under the Code of 22.5% and the one thing I want to point out is the 1294 square feet of the lot coverage is the pool deck and it could be at grade if this was not an AE 8. The lot coverage minus 1294 is 17.5% lot coverage.

Mr. Musnicki said you say 1,294 square feet is that the deck and patio?

Mr. Hulme said it is just the deck. The pool would count in the coverage regardless.

Mr. Wittschen said the patio is the deck?

Mr. Hulme said yes, because it has to be elevated. This is a corner lot with a front yard on Cox Curve with 28.5' versus the 50' required and the third variance is the rear yard of 25.6' opposite the Cox Curve front yard and the project meets the requirements of zoning and their restrictions and the rear yard variance, it is a side yard. It is adjacent to the property next door.

Mr. Hammond said it is a side yard variance, that's how we noticed it. It's 25' instead of 30' and we agree the East is the rear yard.

November 16, 2023

Mr. Hulme said it's a 4.4' variance for the side yard. To take note, the FEMA requirements the property is impacted with two front yards; it's a smaller lot and the setback off of Cox Curve is 28.5' which is existing at 28.4' so were increasing that setback; the side yard variance is 25.6' which is more than the existing 24.3'. We're in keeping what is there and increasing on the two dimensions.

Mr. Barba said exactly as Mr. Hulme explained we maintained the proper setback to Seafield Lane; as you can see on the site plan the outline shows the existing house and how we retreated inward and on the Northern boundary it was a 1.5' to 2' difference and it's a smaller lot and the patio cannot be at grade and due to the lot configuration. It's a modest house at 3,300 square feet and while maintaining a modest house we have to maintain decking around it for the sun chairs, and loungers and dining area which is the majority of the 1,294 square feet. We're trying to respect the Code and neighborhood and it does fit with the adjacent properties.

Mr. Musnicki asked if its an IA system?

Mr. Barba said yes, it is.

Mr. Musnicki said I am not normally sympathetic to lot coverage at 23% but you made a good argument about elevating it because of FEMA.

Mr. Hammond said in the initial denial there was no roofed over porch, they provided that and I did not notice the projection on the West side of the porch at 48.7' it was 50' and 51' but I did not see that and it would have to be renoticed.

Mr. Hulme asked if we reduced it is that okay for the step.

Mr. Hammond said 50' is needed and there is no step, it's a roofed over porch jog on the West.

Mr. Barba said it's a gable roof dormer in the main roof line.

Mr. Hammond said the survey shows it's a 2' bump.

Mr. Barba said it's the steps.

Mr. Hammond said unroofed steps don't count, but roofed over steps do.

Mr. Hulme said the roofed over area is at 50'.

Mr. Hammond said we do 2' of soffit encroachment. We can't have a survey that shows 48.7' it has to show 50' or get renoticed.

Mr. Hulme said we will fix that.

Mr. Piering said you will fix it and do not require a renotice and it'll be at 50'.

Mr. Hulme said yes.

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

Philip and Nancy Katz, 114 Seafield Lane directly across from this property. We did not have an opportunity to look at the architects drawings and the copies we received were a pdf but it will be great to see a new modern house on the site we are concerned about the proximity to Cox Curve and I believe it's your front yard and you're asking for a variance for half of the required setback for the front yard so we'd like to know it's property screened so it doesn't overwhelm Cox Curve and we would prefer not to be overwhelmed by this dwelling that over powers the street. I believe he talked about a retaining wall, is that visible or not? We have to look at it. There is a problem on Cox Curve with water, any time it rains we get puddles that back in to our driveway. Ms. Katz said the front of the house currently is on Seafield?

Mr. Barba said yes. We're a corner lot we have two front yard setbacks. The front door will be on Seafield Lane as it remains. The driveway will remain as well.

November 16, 2023

Ms. Katz said okay. I think we are excited for it, we just want to make sure the screening is appropriate and how long will it be under construction. We have had damage from trucks on our property and that's with no construction.

Mr. Barba said there is a water main and drainage plan on Seafield Lane.

Mr. Hulme said any damage that we might cause during construction is our responsibility.

Mr. Barba said there is space on the site to park construction vehicles.

Mr. Piering said some get done quick.

Ms. Katz asked how long it will take to finish this.

Mr. Piering said there is no exterior work allowed to be done during the Summer months if we grant the variance and that is a restriction in the variance as a condition. So with that in mind, if they got an approval in December so no matter what all the exterior has to be done before the Summer months and they can't work on weekends May to September and July and August nothing can go on on the outside.

Mr. Barba said our timeline is to start September 2024 and wrap up by May of 2025 and there is a 9 month construction window.

Mr. Katz asked if they can keep the trucks on Seafield Lane and not Cox Curve?

Mr. Piering said that's not in this Board's purview.

Motion was made by Mr. Piering to close the hearing of **Craig & Jaclyn Mischler, 108 Seafield Lane (905-15-4-24)** for a determination; seconded by Mr. Wittschen and unanimously carried 5 ayes, 0 nays, 0 absent.

Motion was made by Mr. Piering to adjourn the meeting at **7:00 p.m.**; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.