

June 15, 2023

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

Brad Hammond, Building & Zoning Administrator

Maeghan Mackie, Building Permits Examiner / Board Secretary

ABSENT: John Wittschen
Anthony C. Pasca, Esq., Village Attorney

DECISIONS

1. 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. Mr. Piering stated that the Board has decided to grant the variances requested, and Mr. Hulme waived the reading.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

-----X

In the Matter of Application of

New York Cancer & Blood
Specialists

**DETERMINATION ON USE
VARIANCE APPLICATION**

Address: 40 Main Street
SCTM #: 905-12-3-15

-----X

I. REQUEST FOR RELIEF

The applicant, New York Cancer & Blood Specialists, is the prospective tenant of a parcel of real property located at 40 Main Street, owned by the St. Mark’s Church, which has provided its consent to the making of the application. According to the survey of the property prepared by Howard W. Young, dated January 12, 2023, the property is improved with several attached buildings used as a Church and Rectory and preschool, a detached one-story frame / masonry building previously used for family counseling services, and a playground.

The applicant seeks to convert the family counseling building for a use as medical offices with exam rooms. No expansion of floor area in the building is proposed, but because the property is located in the R-2 Residential Zoning District, the proposed use is not a permitted use. Accordingly, the applicant has applied to the Zoning Board for a use variance to allow the conversion, while at the same time it has applied to the Planning Board for site plan approval. Over the course of the site plan review

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process, final proposed plans, both of the building conversion and site changes, have been developed and submitted to the Zoning Board for its review. Those final plans are as depicted on the building plans prepared by Combined Resources Consulting and Design, Inc. dated October 31, 2022, as revised on January 9, 2023 and the final site plan and associated drainage/details/lighting plans prepared by Phroneses Engineering, dated 1/25/23 and last revised on 5/17/23.

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 a use variance, the application is classified as an unlisted action under SEQRA. The Village's Planning Consultant, on behalf of the Zoning Board and Planning Board, has prepared the Environmental Assessment Form Part II and III, in which it is determined that the proposed action will not have a significant impact on the environment.

The Zoning Board hereby adopts a negative declaration of significance and authorizes the chairman to sign the EAF on behalf of the Board.

IV. GOVERNING LAW

The Zoning Board is empowered to grant use variances under Section 7-712-b(2) of the N.Y. Village Law. In order to obtain a use variance, an applicant must demonstrate that the applicable zoning regulations have caused unnecessary hardship. In order to prove unnecessary hardship, the applicant must demonstrate that for each and every permitted use under the zoning code, (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; (2) the alleged hardship relating to the property is unique, and does not apply to a substantial portion of the district or neighborhood; (3) the requested use variance, if granted, will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self-created. Furthermore, if the ZBA grants a use variance, it can only grant the minimum variance necessary and adequate to address the unnecessary hardship while at the same time preserving the character of the neighborhood and welfare of the community. The ZBA is also entitled to impose reasonable conditions on the grant of any use variance.

The foregoing standards, which apply to all use variance applications, must in this case be considered in the context of the owner's status as a religious institution, which is entitled under New York law to special treatment and certain accommodations, based on the recognition that "religious institutions are presumed to have a beneficial effect on the community...." *Pine Knolls All. Church v. Zoning Bd. of Appeals*, 5 N.Y.3d 407, 412-13 (2005). Under those standards, a municipality may only deny a religious use that actually detracts from the public's health, safety, welfare or morals, but the municipality must,

through the land-review process, seek to accommodate the use if the adverse impacts can be ameliorated through mitigative conditions. In this case, the use at issue (the medical use) is not a per se religious use, and the use will not be operated by the church but by a private institution, and therefore the application of the religious accommodation rules is less clear. Nonetheless, because the church has made a compelling case that it is depending on the proceeds of the proposed use for its literal survival as a religious institution, the Board will take this unique circumstance into account when evaluating the use variance factors.

V. FINDINGS AND CONCLUSIONS

With respect to the statutory requirements for a variance, the Board finds that the applicant has demonstrated unnecessary hardship to the extent that the failure to allow a business use within the existing building at the property would result in an unnecessary hardship to this religious institution. The Board finds that the current application presents truly unique circumstances, namely, that the applicant is a religious institution, has a pre-existing, nonconforming building on its property that has been used for income generating purposes (previously, family counseling), and is seeking to substitute a more modern use for the prior one, which has vacated the property. The Board's conclusion is supported by the following factors:

a. Reasonable Return: The applicant demonstrated that it cannot realize a reasonable return from the property for any conforming use, as supported by competent financial evidence. The property's viability as a residential use (for which it is zoned) is limited due to the fact that it is sandwiched between the Village's downtown business district (which is immediately to the east of the subject property) and the religious use to the west, on the same parcel. A subdivision analysis presented by the applicant demonstrated that there is no viable way to set off the subject building onto its own parcel so as to generate a reasonable return as a stand-alone residence. The former family counseling business has vacated the premises and no substitute business has appeared to take its place. In short, there is no means to generate a reasonable return from the subject building without the granting of a use variance to authorize the change from the former family counseling use to another business use.

b. Unique Hardship: The Board finds that alleged hardship relating to the property is unique, and does not apply to a substantial portion of the district or neighborhood. The subject building's location adjacent to the business district and a religious use, and its history as a lawful income-producing business collectively create a unique combination of circumstances that form the hardship at issue. No evidence was presented that any other properties would share such a combination of hardships.

c. Character of the Neighborhood: The Board finds that requested use variance, if granted, will not alter the essential character of the neighborhood, based on several factors. First, the mitigation

measures being imposed as a result of the concurrent site plan review process (including an expansion and reconfiguration of the parking and circulation on site) will result in beneficial changes to the property, including conditions that would limit impacts. Second, the proposed use will not be open during peak church uses of the same property. Third, the proposed business use is located immediately adjacent to the Village's business district. Fourth, the building was previously occupied by a business use lawfully commenced, and the change of use from family counseling to medical offices is not a drastic change of use. Fifth, the Board has heard detailed testimony about the nature of the particular use, which is a dedicated womens' cancer treatment facility, and the community benefits that would result from having a facility like this in the community. Sixth, the community, including the Chamber of Commerce, has come out in support of the proposal, both for the benefit of the Church and the need for the facility and the benefits to the Main Street area. Finally, because religious uses are presumptively compatible with the character of the community, and because is not unprecedented for religious uses and medical uses to be affiliated (as illustrated by many hospitals that are overseen by religious institutions), there is a logical reason to associate the proposed use of a medical building with the existing church grounds. Therefore, due to the unique combination circumstances of this property and proposed use, the Board finds that the change of use would not have an adverse impact on the character of the neighborhood, or the residential district in which the property is situated.

d. Self-Created Hardship: The Board finds that the alleged hardship has not been self-created. As noted above, the hardship developed over time as a result of the changes of occupancy within the building, and a result of changing circumstances affecting the religious use of the property.

e. Minimum Variance Necessary: The Board finds that the variance is the minimum variance necessary and adequate to address the unnecessary hardship while at the same time preserving the character of the neighborhood and welfare of the community. The Board is only authorizing the change of one use on the property, from a family counseling business to a medical office. No new buildings or floor areas for nonconforming uses are being created.

The Board therefore grants the request for a use variance to allow the proposed change of use from family counseling office for use as a medical offices/exam rooms, within the existing buildings (to be renovated), as shown on the building plans prepared by Combined Resources Consulting and Design, Inc. dated October 31, 2022, as revised on January 9, 2023 and the final site plan and associated drainage/details/lighting plans prepared by Phroneses Engineering, dated 1/25/23 and last revised on 5/17/23., subject to the following conditions to minimize any adverse impacts from the variance:

VI. CONDITIONS

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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. Minor deviations from the existing site plan may be permitted if approved by the Planning Board as part of the final site plan approval, provided that such deviations will not intensify the uses, add new uses not depicted on the current site plan, increase the area devoted to the nonconforming uses, or decrease the mitigation depicted on the site plan.

2. The variance granted herein shall also be limited to the particular use proposed. Any substantial deviation from the proposed use shall require further review and approval by the Board.

3. The variance shall not be construed as creating conforming uses. The uses shall be deemed pre-existing, nonconforming uses, subject to all code regulations applicable to such pre-existing, nonconforming uses, including those set forth in Section 197-29 of the Village Code. All alterations, other than those approved herein, shall be subject to the special permit requirements of Section 197-29(c) of the Code.

4. The variance granted herein shall terminate unless a building permit is issued within one year from the date of the final site plan approval by the Planning Board, and construction is completed according to said building permit.

Dated: June 15, 2023

Motion was made by Mr. Piering to adopt the determination granting the variances for **New York Cancer & Blood Specialists, 40 Main Street, (905-12-3-15)** as written; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

2. 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.

No one appeared on behalf of the application. Mr. Piering stated that the Board has decided to grant the variances requested, and the reading was waived.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

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

Tara Schmitt

DETERMINATION

Address: 309 Dune Road
SCTM #: 905-18-2-7

-----X

II. REQUEST FOR RELIEF

The applicant, Tara Schmitt is the owner of a parcel of real property located at 309 Dune Road. The property is located wholly within the R-3 Zoning District. According to the survey of the property drawn by Island Wide Land Surveyors, dated December 28, 2021 and updated on January 31, 2023, the parcel is improved with a two story stucco frame dwelling, a detached stucco garage, and in ground swimming pool.

The applicant, who has a demonstrated medical disability, seeks to renovate and make improvements to the home and property in order to be able to use and enjoy it more fully. The renovations include a additions to the house, the addition of ADA compliant ramps to provide access to the house, decks, renovated pool, and pool terrace, and the addition of a “floating deck”¹ to the south of the pool, all as depicted on the site plan and elevations prepared by Paul Rice Architecture, dated March 23, 2023 and last revised on May 4, 2023, and the Landscape Plan prepared by Kevin J. Natalie, RLA, dated March 20, 2023 and last revised May 5, 2023, collectively, the “Final Plans.”

The applicant requires relief from the following code provisions:

- 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. According to the Final Plans, the proposed lot coverage is 21.7% with the floating deck, 19.2% without it.
- 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. According to the Final Plans, the addition will result in a westerly side yard setback of 19.75 feet and a total side yard of 35.9’.
- Section 197-35.C. of the Village Code provides that, in the R-3 Zoning District, on lots lying on the South side of Dune Road, accessory buildings, structures, tennis courts and swimming pools cannot be located closer than the 75 feet from the crest of the dune and 20 feet from a side or front boundary line. The proposed floating deck is 32.77 feet to the

¹ The “floating deck” is the applicant’s term for a deck that has been designed so that it could be more easily removed by the owner without doing harm to any other structures.

crest of dune and the attached rear deck is 72 feet to the crest of dune and 16.25 feet to the easterly side lot line.

Therefore, the applicant requests the required variances from Sections 197-8.C., 197-8.D., and 197-35.C.²

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 a setback variance for residential and accessory residential structures, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(11), (12), (16) and (17). Accordingly, the application is not subject to review under SEQRA.

III. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on June 15, 2023. The applicant's architect, Paul Rice together with Kevin J. Natalie, RLA from the Laurel Group, Landscape Architect appeared and presented the application.

During the course of the hearing, the applicant's representatives discussed the medical need generating some of the requests for variance relief, including specifically the "floating deck" that is designed to allow her to enjoy the property notwithstanding the disability. Because of the unique situation, the representatives offered, on the record, that the floating deck portion of the project could be conditioned on it being removed if/as/when the disability is no longer applicable to the property, such as if the condition no longer exists or there is a sale to an owner without the disability.

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 May 18, 2023, meeting for a determination.

IV. GOVERNING LAW

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

In considering applications for area variances, the Board is required to weigh the benefit to the applicant against the detriment to the health, safety and welfare of the community, while

² The application originally requested a height variance, but that request was eliminated during the course of the proceedings.

considering the following five factors: (1) whether the variance will cause an undesirable change in the character of the neighborhood or a detriment to nearby properties; (2) whether the benefit can be achieved by a feasible alternative; (3) whether the variance is substantial; (4) whether the variance will have any adverse physical or environmental impacts; and (5) whether the alleged difficulty was self-created (which shall be relevant but shall not necessarily preclude the variance).

The Board is charged to grant only the minimum variance necessary and to preserve and protect the character of the neighborhood and the health, safety and welfare of the community. The Board is empowered to impose reasonable conditions to minimize any adverse impacts from the variance.

This application, though governed primarily by the New York State law standards applicable to area variances, also implicates Federal law because the applicant has raised a medical disability that requires the Board to consider whether it is necessary to make a “reasonable accommodation” under the United States Fair Housing Amendment Act (FHAA) and/or Americans with Disabilities Act (ADA). A summary of those requirements has been set forth by the Second Circuit Court of Appeals as follows:

The Fair Housing Amendments Act ("FHAA"), in an amendment of the Fair Housing Act, 42 U.S.C. § 3601 et seq., provides that it is unlawful "[t]o discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap." Id. § 3604(f)(1). Discrimination includes "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a handicapped] person equal opportunity to use and enjoy a dwelling." Id. § 3604(f)(3)(B). HN5 The Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq., prohibits discrimination by public entities based on disability, providing that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Like the FHAA, the ADA requires entities to make reasonable accommodations for the disabled. Both statutes are applicable to municipal zoning decisions. "To establish discrimination under either the FHAA or the ADA, plaintiffs have three available theories: (1) intentional discrimination (disparate treatment); (2) disparate impact; and (3) failure to make a reasonable accommodation."

* * * *

"A municipality discriminates in violation of the FHA[A] [or] the ADA . . . if it refuses to make changes to 'traditional rules or practices if necessary to permit a person with handicaps an equal opportunity to use and enjoy a dwelling.'" In order to prove a reasonable accommodation claim under these statutes, a plaintiff must show that he will likely be denied an equal opportunity to enjoy the housing of his choice absent the accommodation.... "A defendant must incur reasonable costs and take modest, affirmative steps to accommodate the handicapped as long as the accommodations sought do not pose an undue hardship or a substantial burden."

Quad Enters. Co., LLC v. Town of Southold, 369 F. App'x 202, 205, 207 (2d Cir. 2010) (case citations omitted)

The personal nature of the applicant's disability raises the possibility of conditioning variances on the disability remaining. Under New York law, "it is a fundamental principle of zoning that a zoning board is charged with the regulation of land use and not with the person who owns or occupies it...." *Dexter v. Town Bd. of Gates*, 36 N.Y.2d 102, 105, 365 N.Y.S.2d 506, 507, 324 N.E.2d 870, 871 (1975). But under the Federal FHAA/ADA regulations relied upon by the applicant, the "reasonable accommodation" standards only apply where a person with a protected disability seeks an equal opportunity to live in the home in question. As a result, under Federal law, a "restoration" provision may sometimes be used, as long as it is not unreasonable, to require the owner to restore the property to a conforming status after the disability that gave rise to the accommodation is gone. *Austin v. Town of Farmington*, 826 F.3d 622, 629 (2d Cir. 2016). Some New York zoning boards have also imposed restoration conditions requiring the removal of the nonconformity when the personal circumstance no longer exists. *E.g., Matter of Calapai v. Zoning Bd. of Appeals of Vill. of Babylon*, 57 A.D.3d 987, 988 (2nd Dept. 2008) (ZBA granted variance to allow applicant to convert one-car garage into a bedroom and bathroom to accommodate the special needs of her severely-disabled, paraplegic son, "upon the condition that, inter alia, the petitioner restore the property to its original use as a garage should any change in circumstances occur"); *Baskin v. Zoning Bd. of Appeals*, 40 N.Y.2d 942, 390 N.Y.S.2d 412, 358 N.E.2d 1037 (1976), *reversing on opinion of Shapiro, J.* at 48 A.D.2d 667, 667, 367 N.Y.S.2d 829, 831 (2nd Dept. 1975) (upholding area variance to allow second kitchen in house to serve daughter-in-law who required a kosher kitchen, where the applicant "agreed to remove the second kitchen when it was no longer required for his personal use").

V. FINDINGS AND CONCLUSIONS

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

1. *Character of the Neighborhood:* The Board finds that the requested variances, subject to the conditions herein, will not cause a deleterious adverse impact on the character of the neighborhood. The side yard relief is largely consistent with the pre-existing building dimensions and designed carefully so as to minimize the impacts of the nonconformities. With respect to the dune crest setback for the floating deck and the coverage variance, both of those

conditions are temporary because the applicant has offered to condition the floating deck on its removal in the event the disability of the occupant no longer exists.

2. *Alternatives:* The applicant has demonstrated that no alternatives exist to achieve the benefit sought without the need for a variance.

3. *Substantiality:* Although the dune crest setback relief for the floating deck is substantial, this condition is temporary and is reasonably necessary to allow the owner to enjoy her home.

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

5. *Self-Created Difficulty:* The difficulty is, to an extent, not self-created, since it arises from a medical condition that is by no means voluntary.

6. *Reasonable Accommodation:* The Board finds that the applicant has demonstrated a medical condition that requires reasonable accommodation to enable her to enjoy her dwelling within the meaning of the FHAA/ADA, and also that the house modifications, including the floating deck, has been reasonably designed so as to be considered reasonable accommodations, particularly in light of the applicant's offer to remove the floating deck when the disability no longer affects the subject premises.

7. *Benefit vs. Detriment:* Under the unique circumstances, which include consideration of the Federal Law requirements and offered restoration condition, the benefit to the applicant outweigh the detriment to the community.

8. *Minimum Variance:* The variances are the minimum necessary to achieve the benefit sought.

The Board therefore **grants** the relief requested as depicted on the Final Plans, subject to the following additional conditions:

VI. CONDITIONS

1. **Restoration condition:** Per the offer of the applicant, the variances herein are conditioned on the requirement that the "floating deck" portion of the renovations shall be removed if, as and when the owner's disability is not longer relevant to the subject property, whether by virtue of a transfer of ownership to someone other than the applicant or a beneficial change in medical circumstances of the applicant.

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2. 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.

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: June 15, 2023

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination granting the variances for **Tara Schmitt, 309 Dune Road (905-18-2-26)** as written; seconded by Mr. Musnicki and unanimously carried 5 ayes, 0 nays, 0 absent.

3. 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. Mr. Piering stated that the Board has decided to grant the variances requested, and the reading was waived.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

-----X

In the Matter of Application of

DETERMINATION

Bryan Zaslow

Address: 21 Stacy Drive
SCTM #: 905-10-5-24

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VII. REQUEST FOR RELIEF

The applicant, Bryan Zaslow, is the owner of a parcel of real property located at 21 Stacy Drive. The property is located wholly within the R-1 Zoning District. According to the survey

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of the property prepared by Fox Land Surveying, dated December 7, 2022 and last updated March 7, 2023, the parcel is improved with a two story frame house and garage, with wood deck, pool and pool house.

Section 197-29.1.A of the Village Code provides that, in the R-1 Zoning District, Expansion of nonconforming structures generally. 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, and for the purposes of this subsection, an increase in the "degree of nonconformity" shall include an increase in the amount of a nonconforming building's or structure's gross floor area which is located within a required setback area, an increase in excess of the allowable building area lot coverage, or an increase in any portion of a building or structure located above the maximum height or stories permitted.

As depicted on the survey and the submitted architectural plans, the applicant is proposing to construct second story additions and renovate the pool, pool house, and wood deck. The second story additions have been determined by the building inspector to represent an increase in the degree of nonconformity of a dwelling with nonconforming side yard setbacks of 24.9 and 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. Accordingly, the applicant requests relief from Section 197-29.1.A.

VIII. 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 single family residence, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(12), (16) and (17). Accordingly, the application is not subject to review under SEQRA.

IX. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on April 20, 2023. The applicants' attorney James N. Hulme appeared and presented the application.

No other persons appeared in support or opposition to the application. The hearing was closed at the April 20, 2023, meeting for a determination. Thereafter, Richard T. Hafeli, Esq., submitted a written request to reopen the hearing on behalf of Suzanne Turkewitz, 19 Stacy

Drive. The Board, by a unanimous vote of all Members present, voted to reopen the hearing to the extent of allowing Ms. Turkewitz a ten (10) day written comment period, followed by a reply period for the applicant. Such submissions were thereafter received.

X. 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.

XI. FINDINGS AND CONCLUSIONS

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

9. *Character of the Neighborhood:* The Board finds that the requested relief will not cause a material adverse impact on the character of the neighborhood. While the proposal does require a variance because it represents an increase in the degree of nonconformity, the Board has traditionally looked favorably on applications where second floor additions adhere strictly to the existing first floor footprint, no additional new nonconformities are created, and no other adverse impacts are identified. Here, that is the case. The neighbor's opposition to the application correctly notes that a variance is required because the setbacks are nonconforming, but the neighbor does not explain how the second story additions will cause any material adverse impact, other than by pointing to the fact that a variance is needed and other homes are conforming. The pre-existing footprint is lawful and is not being increased and is part of the existing character of the neighborhood. The only increase is vertically, within the existing

footprint. The fact that other homes are conforming does not change the fact that this pre-existing nonconformity is lawful.

10. *Alternatives:* The applicant has demonstrated that there are no alternatives to achieve the benefits sought (the additional living space within the same footprint) without the granting of the variance.

11. *Substantiality:* The relief requested is not substantial in the context of the existing property, which already has the same first floor setbacks being utilized for the second floor additions.

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

13. *Self-Created Difficulty:* The difficulty is self-created. This factor alone does not justify the denial of the requested variance.

14. *Benefit vs. Detriment:* The benefits to the applicant outweigh the detriment, if any, to the character of the neighborhood.

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

The Board therefore grants the requested variance to allow the construction of a second story addition, as shown on the survey of the property prepared by Fox Land Surveying, dated December 7, 2022 and last updated March 7, 2023, and the building plans prepared by Salvatore Iannone, Jr., Architect P.C., subject to the following conditions to minimize any adverse impacts from the variance:

XII. 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.

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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: June 15, 2023

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination granting the variances of **Bryan Zaslow, 21 Stacy Drive (905-10-5-24)** as written; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

HOLDOVERS:

4. 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 and requested to hold the application over.

Motion was made by Mr. Piering to holdover the application of **Lee & Helena Galperine, 319 Dune Road (905-018-02-021)** seconded by Mr. Martinsen and unanimously carried 5 ayes, 0 nays, 0 absent.

5. 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., submitted a request to holdover the application to July 20, 2023.

Motion was made by Mr. Piering to holdover the application of **Westhampton Country Club, 35 Potunk Lane (905-009-03-023.01)** to July 20, 2023; seconded by Mr. Badzik and unanimously carried 5 ayes, 0 nays, 0 absent.

NEW APPLICATIONS:

6. BMB Enterprises, LLC., 145 Main Street (905-11-2-29) Applicant requests variances from §197-40.1.C. to construct a proposed apartment that has 1,052 square feet of habitable space where the maximum permitted is 850 square feet, and from §197-21 for the proposed apartment use which requires two additional parking stalls, requiring relief pursuant to §197-27.

No one appeared on behalf of the application. Ms. Mackie said that the applicant did not send out his mailings, therefore there Board does not have jurisdiction and it will be readvertised for the July 20, 2023 meeting.

Motion was made Mr. Piering to adjourn the meeting at **5:05 p.m.**; seconded by Mr. Martinsen and unanimously carried 5 ayes, 0 nays, 0 absent.