

September 21, 2023

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, September 21, 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

Anthony C. Pasca, Esq., Village Attorney

Brad Hammond, Building and Zoning Administrator

Maeghan Mackie, Building Permits Examiner / Board Secretary

ABSENT: Daniel Martinsen

DECISIONS:

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

Kittric Motz, Esq., appeared on behalf of the application. Mr. Piering said there was a determination and the reading was waived.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

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

Westhampton Beach Country Club

DETERMINATION

Address: 35 Potunk Lane
SCTM #: 905-9-3-23.1

-----X

I. REQUEST FOR RELIEF

The applicant, Westhampton Beach Country Club, is the owner of a parcel of real property located at 35 Potunk Lane. The property is located wholly within the R-1 Zoning District. According to the survey of the property drawn by The Raynor Group, P.E., dated June 15, 2021, the parcel is improved with several structures relating to the Club’s facilities, including a clubhouse, pro shop, maintenance building, two-story house, and one-story house.

As depicted on the survey/site plan drawn by The Raynor Group, P.E., dated March 6, 2023, last updated May 2, 2023, and the accompanying architectural plans prepared by Rogers McCagg, dated March 6, 2023, the applicant is proposing to reconstruct a previously demolished staff housing building,

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by building a new staff housing building with a gross floor area of 6,200 square feet, where the previously demolished staff housing building had a gross floor area of 3,330 square feet.¹

Section 197-29.C(1) of the Village Codes provides generally that a nonconforming use may only be reconstructed or altered by way of a permit from the Zoning Board of Appeals, subject to several conditions, including that any enlargement, extension, or expansion of a nonconforming use shall be prohibited.

Section 197-29(C)(5)(f) of the Village Code, adopted as Local Law #9 of 2023 during the pendency of this application, provides a specific allowance for expansion, under certain conditions, of staff housing areas.

This application is therefore deemed to request the require special permit to allow the staff housing building as originally proposed but under the newly-adopted Section 197-29(C)(5)(f).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 approvals to add less than 4,000 sf of non-residential structures, the application is classified as an Type II action under 6 NYCRR § 617.5(c)(9). Accordingly, the application is not subject to further review under SEQRA.

II. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on April 20, 2023. The applicant's attorney, Kittric Motz, Esq. appeared on behalf of the application, together with the applicant's architect, Anthony Panza. No other persons appeared in support or in opposition of the application. The application was adjourned several times.

A question was raised at the initial hearing date as to whether the expansion of the nonconforming use was prohibited by Section 197-29(C) of the code and thus required a use variance in order to proceed.

During the course of the hearing, on August 3, 2023, the Village Board of Trustees adopted Local Law #9 of 2023, as described above, which created a means for the Zoning Board to approve an expansion of staff housing under the specified conditions therein, without the need for a use variance.

¹ In a prior determination, dated September 16, 2021, the Board granted permission for applicant to demolish the prior building but defer reconstruction for up to three years, provided that the pre-existing conditions were deemed to apply to any reconstruction. This application will be considered in the context of the building that existed prior to its demolition.

² The Board is required to apply the law as it exists at the time of the decision, not as it existed at the time of the application. In this case, because the nature of the application was unchanged by the new law, the relief requested is effectively lessened by the new law (i.e., the proposed changes are no longer prohibited by the code), and no persons other than the applicant appeared when the application was first advertised, the Board did not require the application to be re-noticed based solely on the change of law.

The hearing was thereafter closed at the August 17, 2023 meeting for a determination at the next meeting.

III. GOVERNING LAW

The Zoning Board is generally empowered to grant a special permit pursuant to Section 197-29(C) of the Village Code to authorize the reconstruction or alteration of a nonconforming use, but “Any enlargement, extension or expansion of a nonconforming use shall be prohibited.” An exception to this limitation applies to membership golf club, allowing certain limited expansion rights. (§ 197-29(C)(5)).

Under Section 197-29(C)(5)(f) of the Village Code:

(f) Areas devoted to pre-existing staff housing and accommodations may be expanded, rebuilt, extended or enlarged to the extent reasonably necessary to bring the spaces up to modern standards and current code requirements, provided that there is no increase in the number of occupants or staff utilizing the spaces. Such enlargement may not exceed 100% of the areas previously devoted to such use.

Although the applicant has suggested that no special permit should be required because subsection 5 is described as an exemption from 197-29(C)(1), subsection 5 only authorizes certain improvements to membership clubs under limited conditions, which can only be reviewed property within the context of a special permit application. Therefore, the Board has in the past treated applications under subsection 5 as requiring a special permit and will continue to do so in the context of newly-adopted paragraph 5(f).

IV. FINDINGS AND CONCLUSIONS

Under the circumstances of this application, the Board finds that the conditions of Section 197-29(C)(5)(f) are met by this application, in that:

(a) The requested expansion is “reasonably necessary to bring the spaces up to modern standards and current code requirements.” Here, the applicant’s architect testified credibly that the existing accommodations do not meet modern code requirements (building code and ADA accessibility requirements) or current minimum standards for comfortable housing.

(b) There “is no increase in the number of occupants or staff utilizing the spaces.” The applicant presented credible evidence that the prior staff housing accommodated 22 beds/occupants and the proposed building will also accommodate only 22 beds/occupants.

(c) The enlargement does not “exceed 100% of the areas previously devoted to such use.” Here, the prior staff housing building, as determined to be grandfathered by this Board in the 2021 decision, was 3,300 sf, and the proposed building will have 6,200 sf, which amounts to an expansion within the 100% allowance.

The Zoning Board therefore grants the applicant a special permit to allow the reconstruction of the staff housing building, as set forth in the survey/site plan drawn by The Raynor Group, P.E., dated

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March 6, 2023, last updated May 2, 2023, and the accompanying architectural plans prepared by Rogers McCagg, dated March 6, 2023, subject to the following conditions:

V. CONDITIONS

- 1. The permit granted herein is 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 a conforming use or building. There shall be no further expansion, increase, alteration or modification to the structure, without further approval of this Board.
- 2. The occupancy of the staff housing building shall not exceed 22 beds/occupants.
- 3. The permit 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: September 21, 2023

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Westhampton Country Club, 35 Potunk Lane (905-009-03-023.01)** as written; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

2. 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.
Dated: June 12, 2023.

Barry M. Bernstein, appeared on behalf of the application. Mr. Piering stated that there was a determination and the reading was waived.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

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In the Matter of Application of

BMB Enterprises, LLC.

DETERMINATION

Address: 145 Main Street

SCTM #: 905-11-2-29

-----X

VI. REQUEST FOR RELIEF

The applicant, BMB Enterprises, LLC, is the owner of a parcel of real property located at 145 Main Street. The property is located wholly within the B-1 Zoning District. According to the site plan drawn by Nicholas A. Vero, Architect, P.C., dated April 6, 2023, the parcel is improved with a two-story building, used for an office and wet use 16-seat luncheonette on the first floor, and non medical office on the second floor with a dry storage attic area (1,200 sf).

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The applicant proposes to convert the attic area into an apartment that is 1,052 square feet of habitable space, as depicted on the Site Plan (dated 4-6-23) and Apartment Plan (dated 10-18-22), both prepared by Nicholas A. Vero, Architect, PC (collectively, the “Final Plans”).

Section 197-40.1.C of the Village Code provides that, for apartments within the second story of a building in which a business is located in the B-1 District, no dwelling unit shall exceed 850 square feet in habitable area.

Section 197-21 of the Village Code and the attached Schedule of Off-Street Parking Space Requirements provide that apartments up to two bedrooms require two (2) parking spaces. Section 197-24.B of the Village Code also provides that every variance granted by the Board of Zoning Appeals waiving, varying or modifying the requirements for off-street parking spaces in whole or in part, shall be made subject to a condition requiring the payment of a sum of money known as the “off-street parking space fee” to the Village of Westhampton Beach.

The applicant cannot meet the additional parking requirements on-site for the two spaces needed for the apartment and therefore requests relief from Section 197-21 for two parking spaces. The applicant also requests relief from Section 197-40.1.C to allow the additional 202 square feet of habitable space above the 850 sf maximum.

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 conversion of an existing commercial building to a mixed residential and commercial use building, where the residential and commercial uses are permitted uses (including by special use permit), and for dimensional relief for permitted uses, and the building previously underwent SEQRA review when constructed, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(18). Accordingly, the application is not subject to review under SEQRA.

VII. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on June 15, 2023. The applicant Barry M. Bernstein 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 July 26, 2023, meeting for a determination.

III. 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.

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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.

VIII. 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 addition of the proposed apartment within the existing building (by converting attic space to habitable space), despite the lack of additional on-site parking for the required two spaces), will not have an undue adverse impact on the character of the neighborhood, provided the off-street parking space fee is paid as mitigation for the additional burden imposed on the municipal parking facilities. Although the Board would ordinarily be cautious when considering a variance from the 850-sf apartment size limitation, due to the possibility of larger spaces being converted to three bedroom apartments, the applicant has explained that the size is largely dictated by the existing space, and making the apartment smaller would serve no purpose. The Board is satisfied that the apartment, as configured, would not be subject to any unlawful conversion to a three-bedroom apartment solely as a result of the additional 202 sf of habitable space.

2. *Alternatives:* The applicant demonstrated that there were no alternatives to achieve the benefits they seek (i.e., the second floor apartment within the existing space) without a variance for the two parking spaces, which cannot be provided on site, and for the additional 202 sf of habitable space.

3. *Substantiality:* The variances for two parking spaces is not considered substantial under these circumstances, particularly given the fact that the subject property benefits from a cross-easement with the Westhampton Free Library for shared parking with the library property, which is located directly adjacent to the south of the subject property. The variance for the additional square footage is substantial, but it is mitigated by the fact that the space is all pre-existing, albeit as storage space.

4. *Physical/Environmental Impacts:* No adverse physical or environmental impacts were identified.

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5. *Self-Created Difficulty*: The difficulty is self-created, but the Board notes that this factor may not, standing alone, support a denial of the variance.

6. *Benefit vs. Detriment*: Based on an examination of all the circumstances of the application, as guided by the five statutory factors, the Board finds the benefit to the applicant from the grant of zoning variances outweighs the detriment, if any, to the health, safety, and welfare of the community

7. *Minimum Variance*: Under the circumstances of this application, the Board finds that the requested variance is the minimum necessary to achieve the benefit sought by the applicant.

The Zoning Board therefore grants the requested variance for two (2) off-street parking spaces and an additional 202 sf of habitable space, to allow the construction of a 1,052 square foot apartment on the second floor, as shown on the Final Plans, subject to the following conditions to minimize any adverse impacts from the variance:

IX. CONDITIONS

1. Prior to issuance of a building permit, the applicant shall pay the required “off-street parking space fee” for two parking spaces to the Village of Westhampton Beach.
2. Prior to the issuance of a building permit, the applicant shall obtain site plan approval for the development of the subject property from the Planning Board, as well as a special permit for the apartment.
3. 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.
4. The variances granted herein shall terminate unless a building permit is issued within one year from the date hereof and construction completed according to said building permit.
5. There can be no exterior work authorized by this decision performed on weekends from May 1 to September 30 and on weekdays from July 1 to September 10.

Dated: September 21, 2023

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **BMB Enterprises, LLC., 145 Main Street (905-11-2-29)** as written; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 1 absent.

3. Court Street Binghamton LLC, 352 Dune Road (905-018-01-008) Applicant requests variances from §197-8 D to construct a two-story addition with a proposed side yard setback of 15 feet where a minimum on 20 feet is required and with a resultant combined side yard setback of 44.1 feet where a minimum of 50 feet is required.

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ZONING BOARD OF APPEALS

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

Court Street Binghamton, LLC.

DETERMINATION

Address: 352 Dune Road
SCTM #: 905-18-1-8

-----X

X. REQUEST FOR RELIEF

The applicant, Court Street Binghamton, LLC., is the owner of a parcel of real property located at 352 Dune Road. The property is located wholly within the R-3 Zoning District. According to the survey of the property drawn by Michael K. Wicks, P.L.S., dated April 22, 2022 and last updated on December 11, 2022; and the plans drawn by Salvatore Iannone, Jr., Architect P.C., dated June 3, 2023, the parcel is improved with one story residence, a wood deck and raised garden.

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.

The applicant is proposing to construct a first floor renovation and second story addition to an existing one story frame house, with a side yard setback of 15 feet where 20 feet minimum is required, and with a combined side yard setback of 44.1 feet where 50 feet minimum is required. The applicant therefore requests relief from Section 197-8.D.

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 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.

XI. 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, appeared and presented the application.

No other persons appeared in support or opposition to the application, and the Board did not receive any written submissions from any neighbors in support or opposition to the application. The hearing was closed at the August 17, 2023, meeting for a determination.

XII. 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.

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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.

XIII. 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 granting of the requested relief will not cause a material adverse impact on the character of the neighborhood. The second floor additions are modest and designed to fit within the existing footprint, coverage, and setbacks. No new coverage is proposed, nor are any setbacks being reduced.

9. *Alternatives:* The site is highly constrained by wetlands, and there is no other location to achieve the benefits sought without the need for relief.

10. *Substantiality:* The relief is not substantial in the context of this application, because the setbacks are consistent with the existing house and the addition is within the existing footprint.

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 second story addition 15 feet from the side yard, with combined setback of 44.1 feet, as depicted on the survey of the property drawn by Michael K. Wicks, P.L.S., dated April 22, 2022 and updated on December 11, 2022; and the plans drawn by Salvatore Iannone, Jr., Architect P.C., dated June 3, 2023, ("Final Plans"), subject to the following additional conditions:

XIV. 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 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: August 17, 2023

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Court Street Binghamton, LLC., 352 Dune Road (905-18-1-8)** as written; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 1 absent.

HOLDOVERS:

4. 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.

No one appeared on behalf of the application. Mr. Piering asked Ms. Mackie to send the applicant a notice requesting an update at the October 19 meeting or the Board will withdraw the application without prejudice and the applicant can reapply when they are ready to proceed.

Motion was made by Mr. Piering to holdover the application of **David Weinstein, 7 Meadow Lane (905-10-1-22)** to October 19, 2023; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

5. 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.

James N. Hulme, Esq., appeared on behalf of the application, together with Rocco Lettieri. He said they are talking about the property at 350 Dune Road and only has 30,000 square feet of upland area and wetlands on Dune Road on the bayside. We filed an updated survey 9/14/2023 and that shows the wetlands that extend South of the proposed improvement to Dune Road except for an access driveway to this property and the adjacent parcel. It's a narrow lot and more narrow than what is required by the Code and that has pushed this development to the bay and that has necessitated the rear yard relief and this requires variances for single side yard, total side yard, rear yard and accessory setbacks. Based on the comments at the last meeting we developed

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a new plan showing the overall house side yard was reduced but 5' and moved closer to the center and it has been moved to the water by a few feet and as requested the survey shows the proposed septic system as well as access to the adjacent property. He asked the Board to look at the table he is presenting and as you can see we increased the total side yards by 5' to 35' and that's comparison to the 22.7' that exists on the site today. There were comments made first relative to the neighbor to the East who is concerned about the proximity of the house to her, and we proposed 12' and now it's 16.5' on that side so we have retreated more than what exists and 4' more than the original proposal. The accessory setback on the neighbor to the East is ½' and there is a deck there and we originally proposed 13.9' and we're proposing 16.5' and on the neighbor to the East there is 7.6' to the garage and we proposed 17.5' and now we're proposing 18.6' and that meets the small lot requirement and reduces the variances sought by one less variance. The other thing you asked for is to show the septic system and there was a comment about putting it by the road but that will be impacted by the wetlands. The other thing we showed relative to the septic is the requirements of the easement agreement and that provides for an entry way 185' from the bulkhead and that's 15' in width and that's shown on the survey on the left and that is why the house is moved forward so that requirement can be honored and you can see the proposal is to angle the retaining wall septic system. It is provided in the agreement and on this plan also. I received an email from a neighbor received today which is an Easterly neighbor, and her issue is the proximity to her property and we're moving further away from her than what exists. She made comments about the rules, and her house is there because she sought similar variance relief.

Mr. Musnicki said any of the mechanicals he'd like to see not on the side yard with them being so close to the neighbors.

Mr. Lettieri said it is geothermal and the mechanicals will not be outside and the pool equipment will be inside. On the East side it is 16.5' and that property as it goes towards the street it gets wider so it's 17' and it gets further away from the North East corner.

Mr. Musnicki said okay, and thanked Mr. Lettieri.

Mr. Lettieri said I elevated the house and that's due to the wetlands and the living room on the West is elevated and open air under it, for drainage and tidal water so there is less actual ground levels. It is around 9% of structure touching the ground, and maybe less if you don't count the decks.

Mr. Musnicki asked about the Easterly and Westerly neighbors, will they receive water?

Mr. Lettieri said no, the water will drain out through the surface area. We are only at 13% lot coverage, and the structure on the ground is probably 8% or 9%.

Mr. Musnicki asked about the elevations?

Mr. Lettieri said they are all the same elevations.

Mr. Hulme said we will have to follow the Village Code and accommodate the rain on our property.

Mr. Piering asked about the rear yard setback, is it decreased?

Mr. Hulme said yes, we moved the house forward to move the septic system.

Mr. Piering asked if it has to be readvertised?

Mr. Pasca said yes, if the variance is asking for more then you do need to.

Mr. Piering asked if they can make it 50.2'.

Mr. Pasca said it's 52.2'.

Mr. Lettieri said yes, I can do that. The bulkhead is 15' away and the property line is inbound so we can go to 52.2'.

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Mr. Piering asked if the driveway easement issue is resolved?

Mr. Hulme said the neighbors are here, but what we've done speaks to the easement itself.

Mr. Piering said okay.

Mr. Lettieri said the easement 185' off of the bulkhead, and has 15' in width. I went to 182' to the wall and at that point I put a 45 angle on the wall and the actual starting point is around 179' to 45 to 182' and that gives more access and I left them 10' on the angle to go in. And there's an easy fix for it, they are going to bring up issues for septic and there's is in that area, you can put a traffic bearing dome cover on it and drive over it, I don't know if that exists and you'd assume its there but I don't know if they are. It has to be removed and looked at and its easy enough to take off and then there's 20' of access.

Mr. and Mrs. Kent appeared and asked to see the survey Mr. Lettieri was reviewing with the Village Attorney. The Village Attorney described everything and asked Mr. Lettieri to describe it to them as well. Mr. Lettieri said he's following the easement and give a little room for them.

Mr. Hulme said he had nothing further.

Mr. and Mrs. Kent, 352 Dune Road appeared. They handed out photographs of 345 Dune Road across the street, it's a 5,646 square foot house and the rendering shows the neighboring properties including the ones across the street. The second photo shows 350 Dune Road and there are no neighbors, no wetlands, the septic is on the SW corner on the shared driveway and limits access and it provides for a large front yard and the backyard is exaggerated where the land is eroded in water. The third photo shows the septic on the property line, and there's a covered patio and fireplace accessed by sliding glass doors and it's 881 square feet and my belief it'll be used as habitable space. The next photo shows patios on to the deck and a septic enclosure and the next is a depiction with windows and doors and a covered patio on to the deck. And the next is the renderings from the last meeting and this meeting and they are identical with no change. The next photo of 350 Dune Road is a SE rendering, and it doesn't show 352 or 358 Dune Road where the trees are depicted.

Mr. Piering asked where 358 Dune Road is?

Mr. Kent said 354 is setback, and then it goes to 358 Dune Road there is no 356 Dune Road. The NE is 346 on the left and 358 on the right.

Mr. Piering asked why you didn't portray 346 Dune Road and 358 Dune Road? Who took the pictures?

Mr. Lettieri said we are rendering the house, not the neighbors.

Mr. Kent said the septic retaining wall is on the Western property line; the North rendering doesn't show 342 on the left. The next photo is an example of the property and I chose a Saturday 8/19/23 and there are 6 vehicles and a black SUV at 352 that won't be able to back out. The next photo is panoramic there is a Jeep in front of 350 Dune Road two car garage and the joint driveway access and the driveway between the two properties and it shows 7 cars on their property. There is an aerial view of the shared driveway between 350 and 352 and the plan blocks this access by the septic enclosure. And the last picture is the garbage truck that backs into the area and turns around and they won't be able to do that. He said it is his understanding the pool is unchanged and it is 416 square feet and that changes the total square footage and the house as proposed for the Village is 30 square feet larger than what is proposed for the DEC application. The other issue I have is that the denominators have changed on the surveys. In terms of the upland area it is 56,172 and that's going up and on April 6 it is 28,016 to 28,158 and now it is on the current survey in September 29,782 so I would like to point out that the upland calculation is not covering much that half is the driveway and upland by Dune Road which is not being utilized. You may have seen on the plan the square footage of the house, so the math is 4,958 square feet and there's a basement, and the swimming pool, and a deck which is increasing and that started out a 589 square feet and is now 713 square feet; so it's 8,009 square feet and doesn't include the covered patio area not shown on the plan under the living room and first floor

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deck. The neighboring houses are being expanded from the existing 1463 square feet to 2,766 and this house is going to be 4,958 square feet. 342 Dune Road is 2,566 square feet; 344 is only 953 square feet; 346 Dune Road is 2,772 square feet and further to the West is 354 Dune Road at 1,752 square feet and 358 Dune Road is 2,225 square feet. This is proposed more than 2,000 square feet larger than the East and West neighbor; the average size is 2,139 square feet and 350 Dune Road will be 680 square feet more than double the average size house on both sides.

Mr. Piering said you may good points about the size of the house; but w3e're talking about specific variance requests and we need to focus on those. The size of th3e house, if its allowed under the Code that's the size of the house. We need to focus on the variances they are requesting.

Mr. Kent said the next renderings are done by Mr. Lettieri and the current driveway will be eliminated and it has had access since 1977 when 352 Dune Road was constructed and on this it shows 15' that they have carved out and I believe 12.5' square feet in the corner to help us get through that and I have another photograph that shows a 10' access across the property line and the existing driveway. This was presented to me by the purchasers of 350 Dune Road. The surveys have changed considerably since April and the current owners had David Fox survey it on April 6, 2023 and that was the first survey; they had a survey done last year when we bought 352 Dune Road and he indicated the garage is 1.3' and the survey April 6 done by David Fox shows the garage 3.2' and I thought maybe the overhang changed the measurement, but another survey was done May 19 and now the garage is 7.6' from the property line and if they are moving it seems may be its moving closer to my house.

Mr. Piering asked how this can be if its done by a licensed surveyor. Have you talked to the surveyor?

Mr. Pasca said there are two different numbers. They plotted a different course, and it may be a typo but it's a different course they used.

Mr. Kent said it makes me concerned and maybe the property line is being moved. And I printed a detail because on the April 6 survey the wetlands were mapped by Chuck Bowman and on the follow up survey on September 6 it notes that Aram Terchunian mapped the wetlands again which confirmed most of the wetlands lines and the ones now in the footprint of the house are omitted so that's concerning. I understand that some of what I presented isn't really relevant but the size of the house dictates the septic tank and that's 1' from the property line in what I believe to be our right of way, but it has been used for 46' years and ample documentation.

Mr. Piering said the septic is in that area where you have been driving?

Mr. Kent said yes. There were people on our property on August 8 to draw lines on the ground for the easement and its location, and he drove his truck in and he had to park on my property and take the truck out of the space and he backs into the retaining wall and he won't make it in one turn and has to turn around and back into the retaining wall.

Mr. Piering asked how that will change with or without a retaining wall?

Mr. Kent said I was told that this is an impossibility in terms of splitting the septic system and having the tank by the house and a leaching field by the road. This is 55 Alden Lane in Quogue and it depicts an "L" shape parcel with a swimming pool, house and tennis court and a garage and Lombardo Associates designed a septic system where the waste is produced in the house but it's pumped to a tank and fields next to the road between the road and garage next to the tennis court so I did call, and I spoke with someone from Lombardo and he assures me that its done and municipal systems pump them for miles and they can design a septic system to do so. So I would encourage the applicant to contact them. He asked if there were any questions or comments.

Mr. Piering asked him to summarize what they would like to see? You want the septic system moved? Is that what you would like to see so the easement for the driveway access to remain and maintain?

Mr. Kent said yes. Mrs. Kent said I want to have respect for the surveys the property line should not change and I would like them to consider especially with wetlands.

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Mr. Pasca said he suspects he knows what happened, but he'd like to know from David Fox and have it corrected. He should explain how it changed and how the second survey is accurate as opposed to the first version.

Mr. Musnicki said it shows 15' on this proposed survey for access, what do you feel your access should be?

Mr. Kent said it was from 1977 before 350 Dune Road was constructed and I think what happened was they owned both parcels decided to sell both, so the same day they sold 352 Dune Road they formulated the easement and that this would provide adequate access. It has been used over the years and I have surveys from 1992 showing this driveway and the access and the two car garage that's existed for many years.

Mr. Wittschen asked if we have a copy of the easement?

Mr. Hulme and Mr. Lettieri said yes.

Mr. Kent said the driveway is supposed to be 15' and that's written in the easement, and the problem is that 352 Dune Road was designed with the septic there because it's the driest area of the parcel and there are wetlands to the South and West and the bay to the North so it's in a logical place and worked for both parties and is an issue because of the retaining wall.

Mr. Musnicki asked why? It seems like it's the problem for 352 that the septic system is in the way of the easement.

Mr. Kent said we cannot construct a driveway on our property which is 500' from Dune Road and if we could park on the wetlands we would; but they are narrow lots. 350 Dune Road is being shown with a two car garage on the South and we don't have the South and we park on the East between 350 and 352 Dune Road and there is around 29' or 30' which is enough to park a car but not turn around, especially emergency vehicles. There needs to be a turn around and keep the cars there. It's a shared driveway beyond the scope of this Board.

Mr. Pasca asked the height of the retaining wall?

Mr. Lettieri said it's about 4.5' and driven by the Health Department.

Mr. Kent said separation should be 3' and the BOH gave 2' and I don't know how large the leeching gullies are.

Mr. Lettieri asked if you want him to answer the questions, they don't understand the Code so they are confused. I don't need to rehash the square footages. The right of way and the use of the property is the right of way, 350 Dune Road goes into their garage on to their property and we surveyed it and we have to pull in to the garage and they go across 352 Dune Road into their garage and that's the set up 350 Dune Road has a Western facing garage and they pull into the garage, back into 352 Dune Road and leave; the hardship was created but their septic system might have traffic bearing domes and it may not be a big deal. 371 Dune Road has 24' to back up and it works and it happens all of the time on Dune Road the side yard setbacks are small. This house I have no choice but a front facing garage, but there is 29' and they have plenty of room compared to other properties on Dune Road; I don't see the easement issue and we're following the deed and I'm giving more and I'm at 178' and I'm being considerate to their needs and I've consulted with them; we can't put the septic system in the wetlands and it can't be pumped out and we're improving the road and the utilities will be improved, it'll be a benefit to them and we're creating extra space for the cars to get in and back out. There's a "U" shape to get around the retaining wall and circumvent that the overall size of the house is what it is; the licensed surveyors are what I follow and the deeds; I'm at 13% lot coverage and the size is exaggerated and a lot is upper deck areas because there is no yard and a lot of the structure is outdoor spaces. There is a lot of ways to resolve their problems without using their property; even if I could put the septic system out by the road I would still put a hedgerow, good fences make good neighbors.

Mr. Pasca said they do have a claim, and it's not this Board's jurisdiction to decide it.

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Mr. Lettieri said if anyone's doing anything wrong its not us, we're taking the house out of the wetlands and being good.

Mr. Pasca said this is not the forum to make that claim.

Mr. Lettieri said there is a risk to them too.

Mr. Kent said this system can go on the East side of the property, but they are choosing not to put it there, there is a system at 346 Dune Road.

Mr. Lettieri said there's an easement and we can't get access to it.

Mr. Kent said also I'm not proposing it be in the wetlands, it can be pumped and if they are redoing the driveway they can pump the leeching materials to gallies by Dune Road.

Mr. Lettieri said you don't understand how to engineer a septic system.

Mr. Pasca said he'd like to see an explanation of two courses on the Fox Survey 4/6 and 5/19 that changed, and I want to see an explanation of those; he'd like a letter explaining the change and how it came about and why.

Mr. Hammond said if we have to renote anything I need it by next week.

Mr. Lettieri said we will modify it.

Mr. Hulme said the width hasn't changed.

Mr. Pasca said it looks like it has.

Mr. Piering said we need that resolved.

Mr. Hulme we will get to it and send that to the Board.

Mr. Lettieri asked if there is anything the Board needs him to explain. There was a lot said about lot area and house size, a lot of things were not based on reality of the Village Zoning.

Mr. Piering said we have to go through the survey information.

Mr. Lettieri said he made modifications and he will do so again to accommodate the Boards concerns or needs and I would like to know if we can.

Mr. Pasca asked how cars will turn around, and to not block the easement on the West you have to use the East for parking.

Mr. Lettieri said they have 29' and they will back in and do a 3 point turn to get out. I have to drive over the easement and I am allowed to.

Mr. Pasca said it looks very tight.

Mr. Lettieri said I can't change the sanitary size, if I move it its the same it makes it more of a problem because of the 6' easement.

Mr. Piering said they made the point to move it up but the wetlands prevent that?

Mr. Lettieri said I'm not going to be allowed to do that. No matter what there will be a separation.

Motion was made by Mr. Piering to holdover the application of **Mary & Kenneth McGorry, 350 Dune Road (905-18-1-9)** to October 19, 2023; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.

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6. 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 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 to hold the application over to October 19, 2023.

Motion was made by Mr. Piering to holdover the application of **Jim Badzik, 27 Sunswyck Lane (905-015-04-003)** to October 19, 2023; seconded by Mr. Wittschen and unanimously carried 3 ayes, 0 nays, 1 absent; 1 abstain

NEW APPLICATIONS:

7. 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 18.7 feet where the minimum required is 20 feet, and with a proposed combined side yard setback of 37.4 feet where the minimum required is 50 feet, from §197-35 C for a proposed accessory deck with side setbacks of 18.7 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.

Heather A. Wright, Esq., submitted a request to hold the application over to October 19, 2023.

Motion was made by Mr. Piering to holdover the application of **Scott Eichel, 161 Dune Road (905-020-02-025)** to October 19, 2023; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 1 absent.

8. 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.

No one appeared on behalf of the application.

Motion was made by Mr. Piering to holdover the application of **Joy Hepburn, 339 Mill Road (905-008-01-014.03)** to be renoticed for the October 19, 2023 meeting; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 1 absent.

9. 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.

No one appeared on behalf of the application. Paul Sigismondi requested to hold the application over to October 19, 2023.

Motion was made by Mr. Piering to holdover the application of **Lawrence & Donna Francis, 77 Library Ave (905-015-02-028)** to October 19, 2023; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.

10. 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.

William Lemaire appeared on behalf of the application.

Mr. Piering said he did not see lot coverage on the survey.

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Mr. Lemarie said you might be looking at the site plan.

Mr. Musnicki said it is not on the survey.

MR. Piering said we can go ahead with the hearing, but we can't close it for a decision without that.

Mr. Lemarie said the existing house has a CO from 1978 and they want to maintain the existing non conforming side yard setbacks and the total side yard setbacks so what the application is for a proposed second story over the existing foot print.

Mr. Piering asked if anything is increasing?

Mr. Lemarie said we are not; it'll stay the same.

Mr. Musnicki asked if they can conform to the setbacks.

Mr. Lemarie said we'd have to modify the structure; we want to keep the existing setbacks.

Mr. Musnicki said can you not construct a second story and abide by the setbacks?

Mr. Lemarie said he would have to talk to the architect and he looked at the sub structure and based on that it would have to be substantially changed.

Mr. Musnicki said okay, that's something we look for if there is way to meet the requirements that's a direction you can go in and there is a way.

Mr. Lemarie said the current is 1800 square feet and to add a second story it's under 3600 square feet and that's smaller than the neighboring properties.

Mr. Musnicki said you'd have to talk to an engineer.

Mr. Lemarie said yes. It's an existing structure and won't impact the neighbors negatively or create a hardship.

Mr. Piering asked if the change to the neighborhood will be undesirable?

Mr. Lemarie said no.

Mr. Piering said can the benefit be achieved if you reduce the size of the second floor?

Mr. Pasca said that changes the benefit. The benefit they are seeking, its not the same thing to say reduce the size then the benefit is no longer.

Mr. LeMarie said the idea is to work within the footprint and not expand on it; it's within the existing footprint of the existing home.

Mr. Piering asked if the effect would be adverse and how will it affect the character of the neighborhood?

Mr. Lemarie said it would not; and it would be in keeping with the neighborhood. The house next to it is a recent construction and the size is similar.

Mr. Piering said the survey has to have lot coverage; and I think if you look at the five factors you have to make the case. I don't see the request as too unreasonable, but we have to follow our protocol.

Mr. Lemarie asked if I have to go to the next hearing?

Mr. Piering said yes. We have to have the survey that shows lot coverage.

11. 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 5,844 square feet where the maximum permitted is 5,000 square feet, from §197-17.1 for a proposed building area coverage of 39.4% of the partially combined lot area where the maximum permitted is 20%, for a proposed front yard setback of 41.8 feet where the minimum required is 50 feet, for a proposed (easterly) side yard setback of 10.9 feet

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where the minimum required is 20 feet, with a proposed combined side yard setback of 10.9 feet where the minimum required is 50 feet, and for a proposed rear yard setback of 15.9 feet where the minimum required is 50 feet, and lastly from §197-29.1 A for a proposed storage addition which represents a prohibited increase in gross floor area of a preexisting building with a preexisting nonconforming (westerly) side yard (3 feet proposed where the minimum required is 20 feet).