

July 20, 2023

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, July 20, 2023, at 5:00 p.m. in the Municipal Building, located at 165 Mill Road, Westhampton Beach, New York.

PRESENT: Gerard Piering, Chairman
Joe Musnicki
Jim Badzik
John Wittschen
Daniel Martinsen
Anthony C. Pasca, Esq., Village Attorney

Brad Hammond, Building & Zoning Administrator

Maeghan Mackie, Building Permits Examiner / Board Secretary

HOLDOVERS:

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

James N. Hulme, Esq., appeared on behalf of the application, he said they verified the dune crest line and he showed that to the Building Inspector.

Mr. Hammond said it is flat behind this house and the line is different.

Mr. Hulme said we increased the pool and deck setback and that reduces the lot coverage down to 24.7% and the last question was what if any excavation will be necessary and there is a diagram showing some but it is my understanding that the landward toe of the dune is 25' from the Crest and we're 80' from the crest so we're not excavating in the primary dune. We have reduced the variances.

Mr. Piering said the only relief you need now is lot coverage?

Mr. Hulme said yes.

Mr. Piering asked him to tell him about the excavation.

Mr. Hulme said there is a line that shows the pool and the portion of the pool that has to be dug into the ground but that is far away from the dune crest and outside of the primary dune and not prohibited.

Mr. Musnicki asked if that is true?

Mr. Hulme said it is not in the primary dune.

Mr. Musnicki asked if it's a gunite or fiberglass pool?

Mrs Galperin said it is gunite, they can't drive in piles they are suggesting helical piles and they can only use small equipment to do it. They can't bring in any big equipment, it's not a deep pool maybe 5' deep.

Mr. Musnicki said his concern is the environmental part, this will be substantial excavation and I think there will be retaining walls.

Mr. Hulme said it's standard pool construction in this area of Dune Road and I'm sure they all involved excavation and we'll restore whatever we interfere with, it's a reasonable condition.

MRs. Galperin said its only half excavation we're following the contour of the land.

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Mr. Hulme said it's the minimum amount necessary.

Mr. Musnicki said the dune grade is the same as the deck itself.

Mr. Hilme said the deck is shown several feet above grade and at grade according to the survey, so yes some excavation is necessary but its minimal and not out of the ordinary. It's a modest size pool it is 20' x 10' and not very large and it's going in to a deck. I don't think we're asking to do anything out of the ordinary.

Mr. Piering said he's happy to see it back 75' plus feet; and you're looking to go from 22% lot coverage to 24.7%.

Mr. Hulme said yes. This is the only place they can construct a pool and its minimum in size.

Mrs. Galerpin said Mr. Hulme answered all of the questions.

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

There were no other questions or comments.

Motion was made by Mr. Piering to close the application of Lee & Helena Galperin, 319 Dune Road (905-18-2-21) for a decision; seconded by Mr. Badzik and unanimously carried 5 yes, 0 nays, 0 absent.

2. 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., requested to holdover the application to August.

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

NEW APPLICATIONS:

3. 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, together with Nicholas A. Vero, Architect. Mr. Vero said this was constructed a few years ago with a restaurant and offices on the first floor and there was unfinished attic space on the second floor that he wishes to convert to an apartment they are not going toa dd anything, they just want to finish the space of 1,052 square feet. There's no change to the building or neighborhood and I was easily able to do two bedrooms and it's not intensified and they do have on site parking and one of the few along Main Street with parking, but he needs two additional spaces for the apartment.

Mr. Piering said if it was conforming to the size, he'd still need parking?

Mr. Vero said yes.

Mr. Piering said the apartment will be 200 square feet more than the allowable square footage?

Mr. Vero said yes, it was designed to have an apartment in the future and we are allowed to construct one and it doesn't make sense to cut off 200 square feet and call it storage.

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Mr. Musnicki said what is the reason for the increase, what's the argument for the increase? You can't say it's 850 square feet and you have 1,052 and this is what we want.

Mr. Vero said the point is, the space exists in the roofline and it was proposed for an apartment in the future and it was the nature of the building and we put an unfinished second floor attic and it was designated as that and to get the two story look consistent with Main Street we had that space. Rather than trying to cut it up, we are going to call some unfinished storage it was suggested we ask for a variance for the 200 square feet. Nothing is being intensified, it's still two bedroom apartments and its just a little larger than what is allowed by the Code.

Mr. Musnicki said that's okay, that's not our decision to make that's a Trustee decision. If they wanted 1,000 square feet that would be the Code, and they chose the 800 number and without an argument it makes it difficult. Are the staircases calculated into the plan?

Mr. Vero said no, they are not.

Mr. Musnicki said its 1,052 square feet of habitable space?

Mr. Vero said yes, that vacant space existed. He is not sure when the Code changed for 852 square feet?

Mr. Hammond said he is not sure.

Mr. Piering asked him to clarify what he is talking about was it decreased?

MR. Vero said no, it was not. The space was there and don't try to cut it up and call it something its not and we can do a 200 square foot unheated closet, but do we want that?

Mr. Piering said you can do something with the landing at the top of the stairs.

Mr. Vero said its still finished space.

Mr. Pasca asked if he was speaking for the building inspector?

Mr. Vero said no.

Mr. Hammond said you could have a bigger landing; and what you said is that its too much space and it does make sense.

Mr. Vero said its still the same amount of bedrooms and bathrooms and it's a tenant for a two bedroom apartment we're not adding bedrooms its space that exists and how it was designed years ago and we're asking this Board to utilize that space as finished space.

Mr. Hammond said it was updated in 2005 to include 850 square feet.

Mr. Piering said we are going through this now, and I remember something and we did a variance on this property and I don't remember what it was. That's not filed with this application. You have indicated on your application that no variance was applied for or granted and we need one if it was granted.

Mr. Bernstein said he is not sure, he thinks the variance was for his office, because he needed parking spaces.

Mr. Piering said but its with the land. I remember a variance on this and that's applicable to this hearing.

Mr. Bernstein said he remembers the parking variances for his office.

Mr. Hammond said he needed parking variances for the office, and the parking met the downstairs uses and the upstairs had to be vacant and when he finished that space he needed a parking variance.

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Mr. Piering asked if that changes this?

Mr. Pasca asked if he's seeking a parking variance?

Mr. Piering said yes, for two parking stalls.

Mr. Pasca said nothing in the advertisement changes. The variance must be part of the record, the variance is cumulative. Nothing has to be readvertised, but it has to be part of the record.

Mr. Piering said yes, we will want that submitted.

Mr. Bernstein said there are 13 spaces and 1 is handicapped; and 12 regular. I added two and got a variance for two spaces.

Mr. Pasca asked if there was something with the library and what was that?

Mr. Bernstein said we have an arrangement that we can use their parking and vice versa.

Mr. Hammond said part of his spot is on Library parking and they have a cross parking. He met the downstairs requirement with the Library allowance.

Mr. Bernstein said the size of the partment, when it was contemplated we were not sure of the Code and if it ever came about that I could do this and as it was explained the size is what it is and from a practical standpoint you could leave some unfinished but it wouldn't be practical and the size is what it is. We weren't sure if we were ever able to do it and that's why we're applying today.

Mr. Piering asked if anything is changing at all?

Mr. Vero said no, unfinished wall to unfinished wall.

Mr. Pasca asked the purpose of the size limit?

Mr. Hammond said there is no intent in the Code.

Mr. Bernstein said maybe they wanted to restrict it but now that everyone has sewers they can have apartments.

Mr. Vero said it may be a health department requirement, once you get to a certain size the gallons per day changes and they may have tried to give leeway then not knowing the sewers would be here to limit sizes. You can do a nice one bedroom apartment at 600 square feet and that may be why. When the sewers came in, flow goes out the window and 852 square feet is a nice size apartment but we would have to start chopping up unnecessarily and that doesn't make sense. Maybe 100 square foot landing, yes. But the use won't be intensified; it's one apartment with two bedrooms regardless of the number of square feet.

Mr. Musnicki said we have to protect for future applications. As things change, there will be more applications and they will look to this and this will be a precedent and this could be the new standard. I want an argument that I can work with. You designed it this way and that's why you want it is not an argument in my eyes.

Mr. Vero said we're not adding to the building, the building was designed at that time not knowing the future and we wouldn't be doubling the size but we're just asking for 200 square feet and without cutting the space up it doesn't make much sense. How do you enforce it? The calculation has to be there somehow and we met the zoning requirements and that's the argument. It was designed for esthetics.

Mr. Musnicki said the 852 was in place when it was designed.

Mr. Vero said yes, he was not sure what he was going to use with the space. The sewers are there and the flow is favorable for an apartment and that's our argument.

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Mr. Hammond said in 2005 is when they did the accessory apartment Code and that was the maximum size in that time and they needed more housing, and units over the commercial they deemed 850 as a nice maximum so not to lead to 3 bedrooms and families; more affordable or younger families or end of life housing.

Mr. Pasca said maybe there's a practical way to not set a precedent. Is there any way to carve this differeny to utilize it without a variance?

Mr. Vero said its an interpretation of what the 200 square feet will be called? Is it a landing, how is that calculated it has to be finished; does it become unheated storage and again, we can do that but whats to become and he sells it and it gets finished by a new owner. What do we call the space?

MR. Pasca said my question is, is there a different way to carve it up. Is that an argument to make that it's a space and this is the only practical way to utilize it. Make that argument to this Board.

Mr. Vero said okay.

Mr. Bernstein said its now unfinished attic and turning it into an apartmnet and left 200 square feet unfinished does'nt make sense. There's no place to segregate it we always had the idea to put an apartment and we didn't know what the Code would be today and it was designed and constructed to conform with the neighborhood.

Mr. Vero said we knew at the time we could not get an approval for an office and apartmnet.

Mr. Badzik said there is a lot of creativity in the second floor, can you look at the office and give it to the residential and make two apartments?

Mr. Vero asked if you can have two apartments?

Mr. Hammond said then you would need four parking spaces.

Mr. Vero said then you are increasing the variances.

Mr. Pasca said unless one comes off of the office.

Mr. Hammond said it is 1 per 250 square feet; whether its one bedroom ro two you need two parking stalls. An extra apartmnet is more parking.

Mr Pasca asked the size of the office?

Mr. Vero said a little less than 500 sqaure feet.

Mr. Bernstein said its too hard to take space from one to the other.

Mr. Vero said if we go down that route, youre intensifying the use and non conformity. And increasing the flow for the sewers.

Mr. Wittschen asked if they are hooked up to the sewer?

Mr. Bernstein said yes.

Mr. Vero said the argument is do you want to intensify the use by adding another apartment, we're asking for 200 square feet of additional square feet but wer'e not intensifying the use. Maybe we can cut it up and reduce it and introduce unfinished space but the practicality is the space is there.

Mr. Bernstein said I may rent it; if I use it its easy to leave 200 unfinished square feet but I don't know what will happen in the future.

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Mr. Vero said if people come to this Board and I don't know of many Buildings on Main Street over the square footage and there are larger apartments that exist.

Mr. Piering said that is the number that's in the Code.

Mr. Vero said we are not intensifying the use.

Mr. Bernstein said he would like to hold off on any fee until the parking study is completed.

Mr. Pasca said it's a condition of your permit, they can't give you a variance without a parking fee but you don't have to pull a permit. If you get a parking variance, you can wait to finish the space and you pay the fee when the permit is issued.

Mr. Bernstein said okay.

Mr. Piering asked if there were any other questions or comments. He would like that prior variance submitted as part of the record.

Mr. Musnicki asked if they wanted to rework it or close it as it is?

Mr. Vero said I would like to close it; unless if the Board grants the variance and I understand it is a precedent but we didn't force the issue, the space was there and trying to cut the space up doesn't really make sense. We can't add more space than we need and I don't think a 200 square foot landing is the answer. It's common space, and half goes to the office and half goes to the apartment. The practicality is that the space exists and is under one roof.

Mr. Musnicki said what would you do with a denial on that?

Mr. Vero said then the hand is forced and we'll stay at 852 square feet. I need egress for the bedrooms and living space and the stairs are there now and existing so that won't move. The building as designed dictates the second floor layout.

Mr. Musnicki said okay.

Mr. Piering asked if there were any other questions or comments. There were no further questions or comments.

Motion was made by Mr. Piering to close the hearing of BMB Enterprises, LLC, 145 Main Street (905-11-2-29) for a determination; seconded by Mr. Martinsen; and unanimously carried 5 ayes, 0 nays, 0 absent.

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.

Steve Caputo appeared on behalf of the application. This was built completely not in compliance with the Code. The architect that they hired assured them it was permitted and in the Code and I want the Board to know that as a starting point, they didn't just build it and not care. It was only when we got a denial letter on the generator that they were aware that the pool house had never received permits or applied for. I enclosed in my packet some pictures and it's a unique situation, in that it is a pool house over 200 square feet and there is a 70 foot shed and there is no access from the pool house to the shed and it's 281 square feet and over, but it's 281 and 70 square feet its not one entire structure. I think the issue is that its attached and that causes the problem.

Mr. Hammond said the shed is under 100 square feet and in the rear yard and 10' from the property line and its against the cabana but its okay.

Mr. Caputo said the pool house is 280 square feet.

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Mr. Piering said I have a problem with the application; the present owners purchased the property with the cabana in place and the date is unknown.

Mr. Caputo said I subsequently learned that the homeowners built it and when they finally gave me the plans and they were not stamped or sealed plans. The cabana is 350 square feet. That doesn't have to do with why it's here, it is too large and I want the Board to be aware that it wasn't done asking for forgiveness, they really thought the architect did the right thing.

Mr. Piering asked if we have anything about the architect to show what they got to say it was conforming. Is there a contract?

Mr. Hammond said there were issues with a previous expeditor and I did see old paperwork and there were challenges there but we try not to talk about enforcement because I don't want to prejudice applications. If you build something, you need a permit and the Contractor should know, and the plumber should know and hopefully its hooked up to the sanitary. Its hard to buy an argument that no one knows, and we did issue multiple violations and stop work orders and that was before Mr. Caputo.

Mr. Caputo said I was trying to get the paperwork and none exists, and in their defense, you can't build without permits and the response that the architect and contractor took care of it doesn't mean its okay. Not as an excuse but its my way to explain how they got to this point and they realized they had a problem and we're trying to get it legalized if we can. I know you don't like to seek forgiveness, but its there.

Mr. Piering said it could be 200 square feet without plumbing.

Mr. Caputo said its consistent with the property and not an eye sore and it's a nice pool house, its more than modest but it is a nice one story pool house inline with the one story house.

Mr. Pasca said what everyone is told, when they seek this variance the reason the 200 square foot rule exists is because that's a point of going over that it's easy to put sleeping quarters in there and I have seen this exact variance come up dozens of times and the Board turns them down because that rule exists for a specific reason.

Mr. Piering said there is no question, there is a shed and I see a future bedroom if its attached. It's there, and can be a future bedroom.

Mr. Wittschen said it could be two bedrooms. This was built, in my opinion to rent it out or live there.

Mr. Piering said yes, to live there.

Mr. Wittschen said he doesn't know if they knew the rules but its sleeping quarters.

Mr. Caputo asked if they remove the shed will that help?

Mr. Wittschen said no, the building is still too large. The shed won't make a difference.

Mr. Musnicki said it's not likely we allow it; or this gets modified so the living space is 200 square feet and the balance is storage from a rear entry or take it down; those are really the only three choices.

Mr. Piering said it's a very elaborate building. I think we need to modify it. Looking at it, it's a nice structure and its modest and I see the big screen television and couches but it is not allowed under our Code and to allow it we are rewriting our Code.

Mr. Caputo said a concern of this Board is that it looks like an apartment, is that a concern of this Board that this will be an apartment?

Mr. Wittschen said no. It's too big that's the concern. We don't know how they'll use it, but you can't say its an apartment, we know what they did and its possible that was their intent but we don't know that.

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Mr. Piering said it's 75% oversized.

Mr. Caputo asked to hold it over, and in the interim if I talk to the homeowners we may not have to come back to this Board, I don't see any other option.

Mr. Musnicki would like to see lot coverage on the survey please.

Mr. Hammond said if you have a detached cabana over 200 square feet and they make sure it doesn't commune with other spaces there is a carve out of a potential shed with solid walls or no walls between.

Mr. Caputo asked if they can have a roof?

Mr. Hammond said yes.

MR. Musnicki said the back wall, that would become an entry of sorts for storage that runs the length of the building 5' or so off the back wall and not conditioned and its just a front part.

Mr. Caputo said 200' square feet of habitable space and the rest with no walls for storage, as long as its not conditioned?

Mr. Hammond said yes, you meet the setbacks.

Mr. Pasca said the entrance has to be separate and it cannot have a door to the unit either.

Mr. Caputo said yes. So it's just storage.

Mr. Pasca said yes. You can have the separate spaces, you can't have them commune.

REQUEST FOR EXTENSION:

5. Steven Socol, 5 Michaels Way (905-9-3-17.18) Applicant requests an extension of the Board of Zoning Appeals determination July 21, 2022 which expired on January 21, 2023; the applicant needs a retroactive extension from January 21, 2023 for an additional six (6) months.