

January 18, 2024

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, January 18, 2024, at 5:00 p.m. in the Municipal Building, located at 165 Mill Road, Westhampton Beach, New York.

PRESENT: Gerard Piering, Chairman
Joe Musnicki
Jim Badzik
John Wittschen
Daniel Martinsen

Anthony C. Pasca, Esq., Village Attorney

Brad Hammond, Building and Zoning Administrator

Maeghan Mackie, Building Permits Examiner / Board Secretary

ABSENT: Joe Musnicki

DECISIONS:

1. Hunter Millington, 27 Howell Lane (905-015-03-004.06) Applicant requests permit from the Zoning Board of Appeals under §197-29 C(1) to reconstruct a preexisting nonconforming second dwelling use (cottage) on a single-family residential property.

James N. Hulme, Esq., appeared on behalf of the application. Mr. Piering stated 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

Hunter Millington

DETERMINATION

Address: 27 Howell Lane

SCTM #: 905-15-3-4.6

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I. REQUEST FOR RELIEF

The applicant, Hunter Millington, is the owner of a parcel of real property located at 27 Howell Lane. The property is located wholly within the R-1 Zoning District. According to the

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survey drawn by Raynor, Marcks & Carrington, Surveying, dated July 22, 2004 and last revised on September 22, 2023 the parcel is improved with a two story frame residence with a detached garage, slate patios, in ground swimming pool and a detached cottage. The cottage was the subject of a 2005 ZBA determination in which it was noted that the then-owners agreed to limit the use of the cottage to family members and guests (i.e., it would be accessory to the principal house but not rented to a separate family), and a declaration was filed to memorialize that agreement.

The applicant now seeks to do an in-kind, in-place renovation of the detached cottage, as set forth in various building plans submitted to the Board.

Section 197-29(C)(1) of the Code imposes certain rules and regulations regarding non-conforming uses. Specifically Section 197-29(C)(1) provides that a non-conforming use may only be reconstructed or altered by way of a permit from the Zoning Board of Appeals, provided all of the conditions and criteria of that section are met.

Therefore, the applicant seeks a special permit pursuant to Section 197-29(C) (1) of the Village Code in order to reconstruct a nonconforming use consisting of two dwellings on one lot.

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 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

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This application was duly noticed for a public hearing, which was opened on December 21, 2023. The applicants, attorney, James N. Hulme, Esq., appeared on behalf of 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 December 21, 2023, meeting for a determination at the January 18, 2023, meeting.

IV. GOVERNING LAW

With respect to reconstruction of nonconforming uses, the Zoning Board is empowered to grant a special permit pursuant to Section 197-29(C) of the Village Code to authorize such reconstruction, provided all of the conditions and criteria of that section are met. The relevant conditions and criteria include the following:

- a. No enlargement, extension or expansion of the nonconforming use is permitted. See § 197-29(C)(1).
- b. The reconstruction may not increase the degree of nonconformity, increase the height or number of stories, or increase the floor area devoted to the nonconforming use. See § 197-29(C)(2).
- c. The reconstruction shall be located upon the same part of the lot occupied by the nonconforming use and shall be relocated to conforming locations. See § 197-29(C)(3).
- d. If a nonconforming use consists of multiple uses, the area of one cannot be added to the area of another. See § 197-29(C)(4).
- e. The applicant shall demonstrate compliance with off-street parking requirements. See § 197-29(C)(6)(a).

f. The applicant shall demonstrate an absence of change in the nature or character of the nonconforming use(s), except for a reduction in the degree of nonconformity. See § 197-29(C)(6)(b).

g. The applicant shall demonstrate compliance with dimensional requirements other than those that caused all or part of the nonconforming use. See § 197-29(C)(6)(c).

h. Any change shall be beneficial to the general neighborhood. See § 197-29(C)(6)(d).

i. Any change shall be subject to reasonable conditions by the Zoning Board. See § 197-29(C)(6)(e).

j. The applicant must demonstrate that any change will not result in or allow an intensification of the nonconforming use. See § 197-29(C)(6)(f).

V. FINDINGS AND CONCLUSIONS

The Board finds and concludes as follows:

a. The applicant has demonstrated that the proposal will not result in any enlargement, extension or expansion of the nonconforming use [§ 197-29(C)(1)], or increase the degree of nonconformity, increase the height or number of stories, or increase the floor area devoted to the nonconforming use [§ 197-29(C)(2)]. The applicant is reconstructing the cottage in kind, in place, with no increase in floor area.

b. The applicant has demonstrated that the reconstruction is being located upon the same part of the lot occupied by the nonconforming use [§ 197-29(C)(3)]. No exterior changes in the footprint are being proposed.

c. The applicant has demonstrated that the area of one nonconforming use is not being added to the area of another [§ 197-29(C)(4)].

d. The applicant has demonstrated compliance with off-street parking requirements [§ 197-29(C)(6)(a)]. The proposal will not alter the off-street parking requirements.

e. The applicant has demonstrated an absence of change in the nature or character of the nonconforming use(s) [§ 197-29(C)(6)(b)]. The applicant is not proposing any change to the nature of the use.

f. The applicant has demonstrated compliance, to the maximum extent feasible, with dimensional requirements, and no new dimensional nonconformities are being created, [§ 197-29(C)(6)(c)].

g. The applicant has demonstrated that the changes are, if anything, beneficial to the general neighborhood [§ 197-29(C)(6)(d)].

h. The applicant has demonstrated that any changes to the site will not result in or allow an intensification of the nonconforming use [§ 197-29(C)(6)(f)].

The Zoning Board therefore grants the requested special permit to allow the applicant to reconstruct an existing one story cottage on the existing property as shown on the survey and submitted building plans, subject to the following conditions to minimize any adverse impacts from the variance:

VI. CONDITIONS

1. The permit granted herein is limited to the relief set forth in this decision, and pertain only to the plans approved in this decision, and shall not be construed as creating conforming dimensions. There shall be no further extension (horizontally or vertically), increase, alteration or modification to the structure or any other structure located on the property that has non-conforming dimensions, without further approval of the Board.

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2. 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.

3. The special permit granted herein shall terminate unless a building permit and certificate of occupancy are issued within one year from the date hereof.

Dated: January 18, 2024

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Hunter Millington, 27 Howell Lane (905-15-3-4.6)** as written; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

2. Scott & Vanessa Goldstein, 520 Dune Road (905-016-01-004) Applicant requests variance from §197-29.1 to construct a second-story addition on a dwelling with preexisting substandard side (16.92' existing/proposed, 20' required) and rear yard setbacks (15.88' existing/proposed, 75' required) representing a prohibited increase in degree of nonconformity of a nonconforming building.

Nicholas A. Vero, Architect appeared on behalf of the application. Mr. Piering stated there was a determination and the reading was waived.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

-----X

In the Matter of Application of

Scott Goldstein

DETERMINATION

Address: 520 Dune Road

SCTM #: 905-16-1-4

-----X

I. REQUEST FOR RELIEF

The applicant, Scott Goldstein, is the owner of a parcel of real property located at 520 Dune Road. The property is located wholly within the R-3 Zoning District. According to the existing conditions survey of the property drawn by Fehringer Surveying, P.C. dated July 22,

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2019, and last revised on August 3, 2020, the parcel is improved by a two-story frame residence, with wood decks, in ground swimming pool and a hot tub.

As depicted on the Second Floor Plan prepared by Nicholas A. Vero, Architect PC, dated 9/19/23, the applicant seeks to construct a second floor addition over garage, 16.92' from the side lot line and 15.88' from the rear yard setback line.

Section 197-29.1 of the Village Code provides that a nonconforming building or structure lawfully existing on any lot, or a building or structure which lawfully exists on a nonconforming lot, may be enlarged, reconstructed, altered, restored, or repaired, in whole or part, provided that the "degree of nonconformity" is not thereby increased. 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.

The Building Inspector has determined that the second floor addition would constitute an increase in degree of nonconformity with respect to the pre-existing setback nonconformities. The applicant therefore seeks variances from the above section to allow the proposed addition with nonconforming side- and rear-setbacks.

II. SEQRA

The applicant submitted an Environmental Assessment Form Part I pursuant to the State Environmental Quality Review Act (SEQRA). Since this is a request for variances for single family residences 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 further review under SEQRA.

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II. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on December 21, 2023. The applicant's architect, Nicholas A. Vero, Architect appeared on behalf of the application. The hearing was closed for a determination at the January 18, 2024 meeting.

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. The Board is also empowered to impose reasonable conditions to minimize any adverse impacts from the variance.

III. FINDINGS AND CONCLUSIONS

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

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1. *Character of the Neighborhood:* The application will not have a material adverse impact on the character of the neighborhood. The proposed addition is confined to the existing footprint and will not result in any new or increased nonconformities.
2. *Alternatives:* The applicant has demonstrated that there are no feasible alternative locations for the addition that would not require variance relief.
3. *Substantiality:* The rear yard variance, though mathematically substantial, is mitigated by the pre-existing condition of the nonconforming rear yard setback.
4. *Physical/Environmental Impacts:* No physical or environmental impacts have been identified.
5. *Self-Created Difficulty:* The difficulty is self created.
6. *Benefit vs. Detriment:* The benefit to the applicant outweighs the detriment, if any, to the community.
7. *Minimum Variance:* The variance is the minimum necessary to achieve the benefit sought.

The Zoning Board therefore grants the requested area variances from Sections 197-29.1. of the Village Code to construct a second-story addition on a dwelling with a preexisting substandard side yard and rear yard setback as shown on the plans drawn by Nicholas A. Vero, P.C., dated September 19, 2023, (“Final Plans”), subject to the following Conditions:

IV. CONDITIONS

1. The variances granted herein are limited to the relief set forth in this decision, and pertain only to the structures as they are depicted on the Final Plans, and shall not be construed as creating conforming dimensions. There shall be no further extension (horizontally or vertically),

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increase, alteration or modification to the structures located on the property that has non-conforming dimensions, without further approval of the 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. There can be no exterior work performed on weekends from May 1 to September 30 and on weekdays from July 1 to September 10.

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.

Dated: January 18, 2024

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Scott & Vanessa Goldstein, 520 Dune Road (905-16-1-4)** as written; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 1 absent.

HOLDOVERS:

3. 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.

Heather A. Wright, Esq., appeared on behalf of the application. Mr. Badzik recused himself for the hearing. Mr. Piering said they could hold it over because Mr. Musnicki is not present, Ms. Wright said she wanted to proceed. She said this is a corner lot with two front yards and to refresh the Board; the original application requested two variances 197-1 and 197.35.A and there was a public hearing in August and the application was discussed with the Board and listened to the public comment and Board comments and they have met with neighbors and they have modified their application. She wants to go over the proposal; they have eliminated a variance and that's from 197-1 and they only need a variance from 197-35.A. and they have reduced the size to 1,200 square feet and reduced the setback to 22' from the road. The five factors that the Board has to consider are the character of the neighborhood and this is accessory and that is common in the R1 and it would not need a variance but for the fact that it is burdened by two

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front yards. Seafield Lane is their side yard and they understand that there is a difference between its function and what it is and the setback is more restrictive on a road frontage, so they are taking steps to protect the character of the neighborhood and there are 7' privet hedges on the property line on Seafield Lane but they are proposing 12' trees on the inside of the privet; close up the existing gate on Seafield Lane and add trees to the area and close off access and with these mitigations there is an elimination of the negative impact. In the materials submitted there is a rendering and that shows the view from Seafield Lane when we install the 12' trees prior to growth and it won't be visible from Seafield Lane in the future. We've reduced the structure to 1,200 square feet and moved it to 22' and the lowest part of the roof 9.6' is what is closest to Seafield Lane and the trees are 12' so it will not be visible. In terms of an alternative there is not one because of the two front yards; there is 228' on Seafield Lane and that limits the location of the structure without the need for a variance. And meeting the 50' setback puts it behind the house and the center of the property and not ideal for an accessory structure. It is not substantial when you consider the mitigation measures and we will covenant the maintenance of the trees. We are making it FEMA compliant and if this were a true side yard we'd meet the setback. It is a Type II action and complying with the Codes. It is self created, but that's not a reason to deny the application. I think we've made effort to hear the comments from the public and Board and modified the design.

Mr. Piering said he looked at the survey that they have, and I see Sunswyck Lane where the current building is today, if you are lifting and moving and build around it. Why can't you turn it in its location and move it and that puts it in the rear yard and eliminates the variances.

Ms. Wright said there are existing trees and we move it we damage and remove the trees and this is the lowest point on the property so it will be more ideal for FEMA because it's the highest point and it has to comply with FEMA and bring in less fill by its proposed location.

Mr. Piering said the trees are the reason?

Ms. Wright said preserving the trees is important on this lot.

Mr. Pasca asked Mr. Piering to state where he's pointing.

Mr. Piering said where it is now existing, can it be turned 90 degrees and expanded and since you are removing it and rebuilding it and have it lengthwise.

Mr. Pasca asked if there are pictures of the trees?

Ms. Wright said I have a map and an aerial also.

Mr. Piering said that would eliminate the variances completely. We understand it's unique and a corner lot and it still is Seafield lane.

Ms. Wright said that's why we're taking the measures so you can't see it from Seafield Lane.

Mr. Pasca said it goes to the alternatives and that's the big question.

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Ms. Wright said that's just one factor in the balancing test, an the character of the neighborhood is the important one.

Mr. Pasca asked what type of trees they are, can they be moved or are they 100 years old?

Mr. VanTassel said they are 100 years old. I don't know the species of them. They are 60' and have been there for 75-100 years.

Ms. Wright said she an submit full sized photographs for the record.

Mr. Pasca asked if they can locate them on the survey and mark that up and show where they are to correspond with the pictures.

Mr. Piering said it's an important point. I remember in the August hearing it was the point of the trees that was made and we have been there and we have seen it and I wonder why it can't rotate it.

Mr. Pasca said it's not in the record and when we look at this in years to come we should be able to see clearly why this was a reason.

Mr. Piering said the trees were the driving factor, right? I know they are big and beautiful and this is a big project and we have to look at it and I don't know how much more damage would be done doing it this way versus moving it. To turn it and expand it we have to look at it and it's substantial variance and can be achieved another way.

Ms. Wright said yes. Do you want to hold it over to submit the documents to the Board?

Mr. Piering said there are neighbors, and we have the last hearing and I'd like to see if the neighbors have anything to add and then we can come back to you. He asked if there was any public comments or questions.

Michael Nissen, 97 Seafield Lane said he wanted to preface that he has been in touch regularly with the applicant. He said that he opposes this project and the practical difficulty that is claimed and its self imposed and he has determined on his own that he needs to expand and move the structure in violation of the Zoning Code, 197-6, 197-31 and 197-35.A. and I have read the Code. To summarize the Codes 197-31 establishes the corner lot shall have two front yards; 197-35.A is to not locate accessory structures in the front yard; and 197-6.D. is the front yard depth. And he is proposing this 22' from Seafield Lane which is 2' from the original application. There are five factors and 1 is the undesirable change, and the detriment of the variance; whether it is achieved by another method; whether the variance is substantial; whether it will have an adverse impact on the neighborhood; and whether it is self created or not; in terms of undesirable they claim the relocation of the art studio is in keeping with the character of the neighborhood specifically my house, other than my house there is not a similar structure near the street. My house is a carriage house from the 19th Century and predates the zoning code and as mentioned in August the street was built to match his house not the other way around. It was made into a

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residence from a carriage house and to grant this variance it would not be the norm on Seafield Lane and would create a detriment to the structures across the street and trees will not screen it and the new house on the corner would also look directly at it. In terms of benefit to the applicant, he is only thinking of himself despite the objections of his neighbors. He wants to increase the size of his art studio and out of his view and build another small house in his second front yard. The studio can remain and if he wants a better art studio he can achieve it without a variance. The plumbing, enlargement and making it so close is and this is not a justification for a variance in a residential neighborhood. He's significantly increasing the size of the structure and it should be denied. This is the estate section of the Lane and to grant this variance will unnecessarily change the character of the area and there is a brand new house on the North of me and an expansion on the South both of which followed the setback and this proposal to shield the house from the road do not mitigate the inappropriateness of the proposed structure. The two houses from the second floor will look at the structure and it's self created. He knew or should have known the Code and it's out of conformity with the neighborhood and in August he said the trees were limiting his placement and old trees do not justify a variance. If he wants to build it he can take the trees down and I may choose to extend my pool and there is a tree that's 44 years old and I may have to take it down or I don't get to extend my pool and trees are not an excuse to obtain a variance. I have known the applicant for a long time and I want him to have a great art studio, however he has to follow the Code like everyone else. I request that this Board deny the application in its entirety.

Mr. Piering thanked Mr. Nissen.

Donald Steinert, 96 Seafield Lane said he has three areas to cover.

Mr. Piering asked where he's located in relation to the application.

Mr. Steinert said he's South of the applicants property. The structure you are proposing with the 2' setback, it is nothing in terms of making the neighbors happy. And it's too large and I want to say that he appreciates the applicant reaching out to them. In August the neighbors received the packet of the first proposal, wouldn't you do that for a holdover also?

Ms. Mackie said no.

Mr. Piering said this is a continuation and Mr. Badzik was willing to share it.

Mr. Steinert said he thought procedurally you should require a new submission be sent certified mail.

Mr. Pasca said if the variance is more severe or worse, then yes they do. But the changes are not increasing so if they were not interested in the first there is little reason to be interested.

Mr. Steinert said my understanding the art work in the facility is sold, is that correct?

Mr. Piering said I do not know that, I would be speculating.

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Mr. Steinert said this is a commercial use. He asked where it goes when its made?

Mr. Piering said that's not an issue for this Board. What they choose to do with it is up to them.

Mr. Steinert said if that's being proposed and built for profits, does it matter?

Mr. Piering said no it does not have anything to do with this Board.

Mr. Steinert said its too large, and too close to Seafield Lane and the second proposal it might be built on my bedroom.

Mr. Piering said what I proposed doesn't require a variance. So if he does that he can. He asked if there were any more questions or comments.

Peter O'Rourke, 103 Seafield Lane said I attended the meeting in August and I was opposed to the first one and now this one. I do have a question, I am doing work at my house and I have a lot of permits and I am doing the work without a variance and my property is different but I do understand if I build a pool and pool house there is a 200 square foot limit with plumbing, I understand he removed the plumbing request but the motivation behind the 200 square foot limit is that you don't want them so big that people can live in them.

Mr. Piering said that's correct.

Mr. O'Rourke said it's a 1400 square foot accessory building, is it less than 1,300?

Mr. Piering said it is large, and it's 1,299 square feet.

Mr. O'Rourke said it's big enough to be a structure to be inhabited and I'm not saying they are, it's too close t the road and I think it's something the Board should consider is that the residents are considered to the size of their accessory structure and this is 6.5 times the size.

Mr. Piering said the only variance they are requesting is to put it in what is considered a front yard. Not the size and they withdrew the plumbing request, and they will covenant that its not habitable space. There are two front yards, that's the only variance they are requesting, the plumbing and size does not factor into this Boards relief.

Mr. O'Rourke said the new space is not subject to a size limitation?

Mr. Piering said not before this Board.

Mr. O'Rourke asked how a pool house is different?

Mr. Piering said it can be bigger than 200 square feet, you just can't have plumbing in it. There will not be any plumbing in this structure.

Mr. O'Rourke said he's opposed to it this close to the road.

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Mr. Piering said we are here for the front yard variance, but to put your mind at ease they were going to have a bathroom but that's not going to be the case. We have done so with pool houses over 200 square feet we had one two months ago and they had to wall off the plumbing that was over 200 square feet. They are only seeking a variance for this is in the front yard.

Mr. O'Rourke said he is opposed to that structure in the front yard. Will there be water to the building?

Mr. Piering said if they are granted a variance, there is no toilet and water in the studio and it's not an outhouse there is a building with the art studio and attached to it with a wall separating it and separate on the out is a bathroom. It's less than 200 square feet and it's not in the same building. He can put this in a conforming location and construct it without a variance, and Mr. Steinert said that won't be good for him so that's part of the balancing test.

DeeDee Hutt, 89 Seafield Lane said they were not at the August hearing and she's trying to catch up and she hasn't seen a diagram and wanted to see the placement. I understand it's a large building we did follow the Code and didn't obtain variances and I don't understand why the trees are the issue. My question is that I understand the two front yards because we have that, and what is the proposed setback and what's required?

Mr. Wittschen said it is proposed 22' and required 50'.

Ms. Hutt asked for the reason.

Mr. Piering said they think its most suitable for their needs and signature trees that would have to be removed if it was in a conforming location. So he's requesting relief to relocate it and not tear up the trees in the back yard. And this is a hearing and we value the community input.

Ms. Hutt said she'd like to be a good neighbor but I believe that we will look right at this from my front door.

Mr. Piering asked if she faces Seafield Lane?

Ms. Hutt said yes. I would prefer the 50' setback and to be honest, I can't put a gate which has to be 20' back from the property line and its so far I should not have it. I don't understand the issues with the trees and I would prefer a larger setback.

Mrs. Steinert 96 Seafield Lane said the applicant has communicated with them and they did not see the new proposal, and as you all know there is a beautiful property with enough space for it to be setback and we are 85' from the front yard so I would like to have a larger back yard but it is not permitted and it would not go with the area. I'm requesting and I have seen him add to his garden and remove trees and make space so I think there is more flexibility than you think and it should be closer to his home and it's too large, and 325 square feet now and they want to make it almost 1,300 square feet and that's large and I agree with the neighbors it should be according to

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the regulations and if it has to be 50' and attached to his home he should be able to do that. I am opposed to his proposal and I hope for everyone's sake it works out for the neighborhood.

Joy DeVries 107 Seafield Lane and you are on to something about the fact that we are looking at the future and it's a substantial structure and what will it look like in 30 years and how it may evolve. Some homes are as large as this structure, and it's very substantial and there is a variance to put it on the road 20' is very short and very close to the road and when we look at the footage on how close it is that is very substantially close to the road. Trees grow and have to be taken down and they overgrow so I think there is a lot to consider when you look at this structure and appreciate the future of this property and what it will hold for this Lane and it's one of the nicest streets in this Village and there is a certain character to the Lane and that's an important part of this Village and if we look at variances and start over crowding the properties.

Mr. Piering thanked the community for their input and we all live here so we have a high value of what is going on and I don't want this to be personal and we all have the opportunity to request a variance; you can make any request you want to this Board and that's what he is doing and I know he serves on this Board and we do value your input so I want to thank you all for coming out.

Ms. Wright said to clarify for the record; first there was discussion on the use, the use is totally irrelevant so long as it's accessory and meets that definition in the Code so we have agreed to covenant that it will not be habitable and in the plans it is an open one room there are no rooms to it. The size does not matter, and I want that very clear an accessory structure has no size requirement but for the plumbing and pool house requirement. Finally, I want to state it should not be lost, if this was a side yard the setback would be 20' and it would comply and we understand we do need to take mitigation to protect the character of the neighborhood and respect that it's more than a side yard and that's why we're proposing the mitigation measures to shield the structure and preserve the character of the street. And I want to point out, with your proposal if you locate it where it is and shift it it would be more visible than what we are proposing and I'm happy to hold it over and provide the Board with the information about the vegetation on the property and I will mark them on a survey and get pictures.

Mr. Piering said that is an important point to make.

Mr. Pasca said you said things about the size, and it's been brought up. They don't need a size variance, but it doesn't mean it's irrelevant to this Board's review, because it can impact factors this Board has to review. It's not the size of the building that requires a variance, it's legal and the use is legal it doesn't mean it's irrelevant to the five factors this Board has to consider.

Mr. Hammond said it depends that the inside is not being finished, it is rustic and there is no sheetrock and that would call for another variance. They cannot finish an out structure and I don't know that was clearly stated, and we would be talking about the size if it was being finished and you have granted recreational spaces over garages and if this was finished it would be a variance and that is not what is being proposed.

Mr. Piering said he did not have any questions for her. He asked if she had anything else to add.

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Ms. Wright said she did not.

Mr. Nissen said this is not a side lot.

Mr. Piering said he knows it is not, she's making a point that if it was.

Mr. Nissen said it is not. And it is required to have 50' setback.

Mr. Piering said if it were in fact a side lot this would not need a variance, but it is a corner lot with two front yards and that is why they need a variance. He asked if there were more questions or comments.

Mr. Steinert asked where the HVAC will be on the building?

Ms. Wright as its proposed?

Mr. Steinert asked if its on the North, South, East or West?

Ms. Wright said she did not know the answer to that.

Mrs. Steinert said according to FEMA doesn't it have to be a certain height and foundation?

Mr. Piering said it's the FEMA elevation and there is a slope, so his proposal is lessening the impact and if it was left by you it would have to be higher.

Mrs. Steinert thanked the Board.

Ms. DeVries said one of the things she wanted them to look at is that she's next to the two houses on Seafield Lane and she has a small ranch and they are much taller than her and the runoff is terrible and my side yard floods from it and if you are looking at the slope of this it will slope on to Seafield Lane and you should look at it and the drainage for it.

Mr. Piering said the planning board will have to look at that if they are granted the variances.

Ms. DeVries said 20' is not far from the property line with the slope.

Mr. Piering said yes. And he thanked the public again.

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

4. 16 Fanning Holding LLC, Westerly Terminus of Fanning Drive Applicant requests variances from Village Law of NYS §7-734 for proposed walkway/dock catwalk within an existing officially mapped/planned village highway where prohibited and inconsistent with the

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approval of the subdivision map by the Planning Board and filed with the Suffolk County Clerk's Office on July 13, 1967, as Map #4894.

James N. Hulme, Esq., submitted a written request to hold the application over.

Motion was made by Mr. Piering to holdover the application of **16 Fanning Holding LLC, Westerly Terminus of Fanning Drive** to February 15, 2024; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 1 absent.

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

Karen Hoeg, Esq., submitted a written request to holdover the application to March 21, 2024.

Motion was made by Mr. Piering to holdover the application of **Michael Jesselson, 49 Bayfield Lane (905-010-04-033)** to March 21, 2024; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

NEW APPLICATIONS:

6. Court Street Binghamton LLC, 352 Dune Road (905-018-01-008) Applicant requests variances from §197-8 D to construct a new dwelling with proposed side yard setback of 15 feet where the minimum required is 20 feet, with proposed combined side yard of 44.7 feet where the minimum required is 50 feet, also from §197-8 D for a proposed rear yard setback of 72.8 feet where the minimum required is 75 feet, and from §197-35 C for proposed accessory deck setback with 15 feet where minimum required is 20 feet.

James N. Hulme, Esq., appeared on behalf of the application. He said to accommodate neighbor changes and end up with a new home and not add a second story to an existing home the client decided not to proceed with he previously granted variance and are proposing a new dwelling. This application and the application to the East the property is significantly challenged by wetlands and being also very narrow lot and the lot is over 48,000 square feet and only 66' feet wide and there is a small area of opportunity to construct a home and we have essentially proposed to construct a new home in the same footprint and there is a 15' setback on one side and it does step out towards the North to a full 20' and it meets the Code on the other side although the total side yard is deficient. The rear yard is just the South West corner and the shoreline goes further out and you quickly get to a point that is 75' back from the property line and its only the SW corner that's at 72.8'.

Mr. Piering asked if 72.8' is the shortest?

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Mr. Hulme said yes, it gets to 75' as you move East and there is a deck that is 15' instead of 20' and as a result of the challenges the width does not give a lot of room for a deck or home.

Mr. Piering said the footprint will remain the same?

Mr. Hulme said it is 8' or 9' longer than the existing, but the other requirements are what exists today. As do the setbacks. The lot coverage is going from 5% to the same so that's not increasing at all.

Mr. Wittschen said okay.

Mr. Hulme said they do not need a lot coverage variance

Mr. Wittschen asked if they talked to the neighbor.

Mr. Hulme said they did discuss the driveway and that's what was part of the redevelopment. And there will be a new septic system on the North and the existing on the East will be used for containing the drainage off the new structure.

Jeffrey Kent, 352 Dune Road said they are staying within the footprint and extending over the existing deck and the deck is the same. The major change is the addition of the septic and we needed to do because of access to the property. He thanked the Board.

Mr. Piering asked if there were any questions or comments. Mr. Hulme said no.

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

7. Hamptons Landmark LLC, 97 Hazelwood Avenue (905-002-02-020.02) Applicant requests variances from §197-11 A for proposed taxi/limousine establishment use where not permitted, from §197-29 C(4) as proposed additional nonconforming use represents a prohibited alteration of area previously occupied by an existing nonconforming is proposed to be devoted to another nonconforming use, and from §197-29 G for proposed change of one nonconforming use to another nonconforming use where prohibited.

Heather A. Wright, Esq., appeared on behalf of the application, together with George Monsour. Ms. Wright said she understands the Board is familiar with this property, and her client is contract vendee to purchase the lot and the owner is Alyssa Andersen-Kuntz and the Board spent four years on the uses and granted in 2019 an additional use for the Twin Forks Oil. That decision was issued in 2019 and the owner was supposed to go to the Planning Board and finish the site plan and they did not and the property has violations and issues and the variance is expired so the only thing they can do is sell the property and my client is contracted contingent on this variance. Is there a path forward and that's why we're here tonight. The variance is expired and our contract is contingent on that plus my ability to have the clients run their

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business there too. Their business is a transportation company and chauffeuring services in the area and have been searching for office space and it's difficult to find good office space that's not on Main Street or having clients coming and going and it's not Industrial, it's a commercial service with an office and an employee or two to dispatch and take in appointments and storage and to park some of the company vehicles. There is holdover space in Quogue to park vehicles and the fleet varies on the time of year, this time they have five and some are off the road and in the Summer its more. The intention is to have a hub that is West of the canal to run their business and store a few vehicles and it can happen, there is 4,886 square feet of pre existing building. We are not adding any floor area or buildings we are trying to make use of what's there and clean up and implement the site plan requirements the Planning Board will want. We sketched out tenant 1 which is the existing Fuel Oil company; Tenant 2 is the pre existing roofing use; we were thinking to combine a small office with 1 or 2 employees and room for storage on the lot. When you go through the long arduous process you did in 2019 I don't think anything has changed since then except that the owner has not been able to complete the process. We have commercial uses flanking the property; the concrete plant; many commercial businesses in the area; the Town Rec building; you have 91 Old Riverhead Road with 4 or 5 businesses and its zoning but it creates the character of the neighborhood and that's why we can't get a reasonable return with the current zoning. It is currently zoned MF20 and this is what we'd like to do and I wasn't sure how to move this forward and I think it was to appear before this Board and figure out do we renew it or how we include their business within the decision.

Mr. Piering asked if you're proposing a third use?

Ms. Wright said but it's less intense, it's an office and not industrial. I like the HCMC on Old Riverhead Road; it's office but has room for their vehicles.

Mr. Wittschen asked if there were three uses on this?

Mr. Hammond said there were four.

Ms. Wright said originally, there were four and I think the Board determined there was only one preexisting non conforming and you granted one use additional for a contractor tied to a fuel oil business and they have leases through 2028. The HVAC company is still there, which is part of the problem and that lease is with the Oil Company.

Mr. Wittschen said that wasn't authorized?

Mr. Piering said it never changed; when they got the variance they didn't proceed with the Planning Board.

Ms. Wright said we want to straighten the uses out and get the site plan elements installed and the only way we can is to have our business there and the site plan will cost money and it's ideal for this light type of commercial business. You don't need front facing on Main Street and you won' have a house and we can design it to look like a house.

Mr. Piering said that would be nice for the neighborhood.

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Ms. Wright said my client has done a great job cleaning up other properties and intends to do that here.

Mr. Piering asked to talk about the third use. What do we expect with that, is a taxi depot or limousine company.

Ms. Wright said it's high end transportation and a lot of the drivers bring the cars home at night and take out for a long period of time. No one will meet the driver at this site.

Mr. Piering said that's an important point.

Mr. Wittschen said he's okay with this. If they are going to clean this up, I am happy with this,

Mr. Piering said I like the idea of this getting cleaned up and the concrete plant cleaned that site up and I was happy to see that. This can be an advantage to the neighborhood.

Mr. Pasca said I think the key last time was getting the site plan done and that didn't happen and that's what the Village wants to see and a lot of the specifics will come out in that process.

Mr. Piering said this will then go to the Planning Board?

Mr. Pasca said we did coordinate SEQRA then, and it's still valid.

Mr. Hammond said some of the buildings are in rough shape and we should ask the plans for the site. And they may come back to rebuild those structures close to the property line.

Ms. Wright said I think we will and they are in poor shape and we don't have an idea yet, but we think its best to go to the Planning Board first and then if we have to reconstruct it and require a variance we'd have to come back to this Board but its premature to do that right now.

Mr. Pasca said what do you need to close, is it just this variance reinstatement.

Ms. Wright said with the additional use.

Mr. Pasca said then you can go forward and take over the process?

Ms. Wright said yes. And in 2019 the decision was tied to a specific company, is it a general contractor use, when the oil company leaves, it becomes conforming once the variance is granted.

Mr. Pasca said they run with the land, not the occupant. It's a decision to the Building Inspector if they are close enough and if they deviate you may have to go back to this Board but if it's close enough to him to the then existing use that's a call for the Building Inspector.

Mr. Hammond said the fuel oil is more intense than a contractor's office.

Mr. Badzik asked if they have trucks?

Mr. Monsour said one or two.

Ms. Wright said it would be great if the decision could be clear about the use so we can find a similar tenant that doesn't require an appearance.

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Mr. Monsour said we don't want to return to this Board every time a tenant changes.

Mr. Hammond said cleaning the site up is important and if the Board is willing, are they prepared to go to the Planning Board within the year.

Ms. Wright said yes, and my client is prepared to and they know that.

Mr. Pasca said the new use would be tied to them going to the Planning Board.

Mr. Hammond said you cannot occupy it without a CO and that is contingent on the planning board site work completed.

Mr. Monsour and Ms. Wright understood.

Motion was made by Mr. Piering to close the hearing of **Hamptons Landmark, LLC., 97 Hazelwood Avenue (905-2-2-20.2)** for a determination; seconded by Mr. Wittschen and unanimously carried 4 ayes, 0 nays, 1 absent.

Motion was made by Mr. Piering to adjourn the meeting at **6:28 p.m.**; seconded by Mr. Martinsen and unanimously carried 4 ayes, 0 nays, 1 absent.