

February 15, 2024

Incorporated Village of Westhampton Beach held its Board of Zoning Appeals meeting on Thursday, February 15, 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

Anthony C. Pasca, Esq., Village Attorney

Brad Hammond, Building and Zoning Administrator

Maeghan Mackie, Building Permits Examiner / Board Secretary

ABSENT: Daniel Martinsen

DECISIONS:

1. 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.

Jeffrey Kent appeared on behalf of the application and 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

Court Street Binghamton, LLC.

DETERMINATION

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

I. 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, last updated December 14, 2023. The property benefits from a recent variance determination issued on August 17, 2023 relating to a then-proposed addition.

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

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

In lieu of the approved addition, the applicant is proposing to demolish and reconstruct a new two story residence with decks and a retaining wall as shown on the survey and plans prepared by Design Works Architectural Group VT, dated 12/6/23. The Building Inspector has identified the following sections for which relief is required by the proposal:

- § 197-8.D – proposed side yard setback is 15’ where minimum required is 20’;
- § 197-8.D – proposed combined side yard is 44.7’ where minimum required is 50’;
- § 197-8.D – proposed rear yard setback is 72.8’ where minimum required is 75’; and
- § 197-35.C – proposed accessory deck setback is 15’ where minimum required is 20’.

The applicant therefore requests said relief from Section 197-8.D. and 197-35.C.

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 variances for residential and accessory residential structures, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(11), (12), (16) & (17).

Accordingly, the application is not subject to further review under SEQRA.

II. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened on January 18, 2024. 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 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.

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.

IV. FINDINGS AND CONCLUSIONS

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

1. *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 proposed reconstruction is designed to fit generally within the area of the existing building, without any increase in coverage, and the project will adhere to or improve upon the setbacks approved in the 2023 variance and existing conditions.
2. *Alternatives:* The site is highly constrained by wetlands, and there is no other location to achieve the benefits sought without the need for relief.
3. *Substantiality:* The relief is not substantial in the context of this application, because the setbacks are consistent with the existing house and previously-approved variance.
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 to the community.
7. *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. and 197-35.C. of the Village Code to allow the demolition and construction of a new two story single family dwelling with decks and retaining wall, as depicted on the survey of the property drawn by Michael K. Wicks, P.L.S., dated April 22, 2022 and updated on December 14, 2023, and the plans drawn by Design Works, Architectural Group VT, dated December 6, 2023, (“Final Plans”), subject to the following additional conditions:

V. CONDITIONS

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

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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: February 15, 2024

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. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.

2. 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.

VILLAGE OF WESTHAMPTON BEACH
ZONING BOARD OF APPEALS

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

Alyssa Andersen-Kuntz, and
Hamptons Landmark, LLC

**DETERMINATION ON USE
VARIANCE APPLICATION**

Address: 97 Hazelwood Avenue
SCTM #: 905-17-2-20.2

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VI. REQUEST FOR RELIEF

The applicant, Alyssa Andersen-Kuntz, is the owner of a parcel of real property located at 97 Hazelwood Avenue. The contract vendee, Hamptons Landmark, LLC, joined in this application. Ms. Andersen-Kuntz and Hampton Landmark, LLC shall be hereinafter referred to collectively as the “applicants” except where noted.

The property was previously zoned industrial until 2003 when it was rezoned to MF-20, its current zoning status. According to the survey of the property prepared by David H. Fox, LS, dated November 28, 2023, last updated December 7, 2023, the property is improved with several attached buildings. The last dated certificate of occupancy, an “Existing Use CO” dated January 4, 1977 (hereinafter, “1977 CO”), describes the certified use as a “Lumber Yard, Work Shop, storage.”

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In early 2016, the applicant applied to the Village for an updated Certificate of Occupancy. According to the February 18, 2016 written determination of the Building & Zoning Administrator (hereinafter, “2/18/16 Determination”), a physical inspection of the property on February 17, 2016 revealed the following four uses:

1. A fuel oil delivery company, Twin Fork Fuel;
2. A heating and air conditioning contractor (HVAC), East End Heating and Air Conditioning;
3. A roofing Contractor, Turnbull And Cooper; and
4. A landscaper at the rear of the property.

The 2/8/16 Determination found that a change of use from the uses permitted in the 1977 CO would have required a site plan and building permits, which were never obtained. The 2/18/16 Determination further found that the change in occupancy violated sections 70-10, 197-63, 197-5.A(1), and 197-29.G of the Village Code, and that the original nonconforming use of the property was “Discontinued” under section 197-E of the code.

The applicant at the time, Ms. Andersen-Kuntz, thereafter applied to the ZBA for a zoning interpretation (to determine that the existing uses are pre-existing, nonconforming) or, alternatively, for a use variance to allow such uses to continue. On January 19, 2017, the ZBA issued a determination relating solely to the interpretation appeal and concluded that the subject property is benefitted by only a single pre-existing, nonconforming use, namely, the Turnbull & Cooper Lumber and roofing business, and that all other uses (including the HVAC business, fuel delivery business, and landscaper) are not lawfully preexisting nonconforming. Accordingly, the applicant was directed either to bring the property into compliance or proceed with a use variance application and site plan application, which would allow both the ZBA and Planning Board to determine the impacts.

The applicant elected to proceed with the use variance application. On October 15, 2019 the applicant received an approval from the ZBA to allow the addition of one general contractor use within the existing buildings for a total of two uses, subject to the requirement that the applicant proceed with the site plan application and obtain building permits. The applicant failed to complete the site plan process, and the October 15, 2019 use variance expired on its terms.

The current applicants (Ms. Andersen-Kuntz and the contract vendee Hampton Landmarks, LLC) now seek to renew the use variance and apply it to the contract vendee’s proposed use of a taxi/limousine establishment. In a December 6, 2023 letter, the Building and Zoning Administrator determined that the applicant needed to apply to the ZBA for relief from Sections 197-11.A., 197-29.C(4), and 197-29.G, in order to renew the variance granted in 2019 and add an additional transportation office use for the

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contract vendee's taxi/limousine business. The applicants have therefore applied to this Board for such relief.

VII. SEQRA

The applicants submitted a Short Environmental Assessment Form under the State Environmental Quality Review Act (SEQRA). The Planning Board, conducting coordinated review that included the ZBA, issued a negative declaration on March 28, 2019. The application made herein is consistent with the scope of the original SEQRA review, no material changes in design or circumstances warranting additional SEQRA review have been identified, and thus no further SEQRA review is required.

VIII. ZBA PROCEEDINGS

This application was duly noticed for a public hearing, which was opened January 18, 2024. The applicants' attorney Heather A. Wright, Esq., appeared and presented the application. No neighbors appeared in opposition to the application. The application was closed at the January 18, 2024 meeting for a determination.

IX. GOVERNING LAW

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

X. FINDINGS AND CONCLUSIONS

This application is, in effect, a request to renew and modify the October 15, 2019 use variance granted to applicant.

The Board finds that all of the grounds supporting the original use variance are still applicable, and thus the use variance is hereby renewed for the reasons set forth in the October 15, 2019 determination.

The Board also finds that the proposed modification of the use variance – i.e., to allow the addition of a transportation office use within the existing building space – is a reasonable modification to the use variance for the following reasons:

1. One of the grounds supporting the original use variance was the benefit to be achieved by implementation of a modern, code-compliant site plan, but the current owner, with the existing tenants, has been unable to finance the completion of the site plan process. The contract vendee is committed to financing the completion of that process, and the proposed addition of the contract vendee's transportation office will not be permitted to occur until the site plan process is completed and site plan improvements have been implemented.

2. The Board has considered the proposed use and found it to be a less-intense office use that can (with site plan improvements) be made compatible with the property, without resulting in an intensification of the nonconforming use. Specifically, the contract vendee has proposed to use a portion of the pre-existing buildings for an office for approximately two office employees, whose primary responsibility it to answer phones, handle billing, and schedule pick-ups and drop-offs. Drivers will also access the site at the beginning and ends of their shifts, to pick up and drop off the company's vehicles. Passengers and the public generally will not be accessing the office.

3. The proposed transportation office use, as with the existing uses, will also be subjected to site plan review, during which time the Planning Board will consider and implement all appropriate conditions on the operation of the site generally, and any building improvements necessary for the transportation office specifically. This use variance modification will be specifically conditioned on completion of the site plan process and compliance with the Planning Board's conditions.

The Board therefore grants the request to renew and modify the use variance to allow the addition of one administrative transportation business office use, within the existing buildings, as shown on the survey drawn by Fox Land Surveying, David H. Fox, prepared on November 28, 2023 and last updated on December 7, 2023, subject to the following conditions to minimize any adverse impacts from the variance:

IV. CONDITIONS

1. The variances granted herein are limited to the relief set forth in this decision, and pertain only to the plans approved in this decision. Minor deviations from the existing site plan as depicted on the survey referenced herein may be permitted if approved by the Planning Board as part of the final site plan approval, provided that such deviations will not intensify the uses, add new uses not depicted on the current site plan, increase the area devoted to the nonconforming uses, or decrease the mitigation depicted on the site plan.

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

3. The use variance is conditioned upon the applicants promptly making and diligently pursuing a site plan application with the Village Planning Board to completion, and thereafter complying with all requirements of any site plan approval granted by the Planning Board. Failure (a) to begin the site plan application process within 90 days hereof or (b) to complete the site plan application process within one-year hereof, shall result in the automatic termination of this variance.

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

Dated: February 15, 2024

Village of Westhampton Beach
Zoning Board of Appeals

Motion was made by Mr. Piering to adopt the determination of **Hamptons Landmark, LLC, 97 Hazelwood Avenue (905-2-2-20.2)** 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.

No one appeared on behalf of the application. Heather A. Wright, Esq., submitted a request to hold the application over to March 21, 2024.

Motion was made by Mr. Piering to holdover the application of **Jim Badzik, 27 Sunswyck Lane (905-015-04-003)** to March 21, 2024; seconded by Mr. Wittschen 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 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.

No one appeared on behalf of the application. James N. Hulme, Esq., submitted a request to hold the application over to March 21, 2024.

Motion was made by Mr. Piering to holdover the application of **16 Fanning Holding LLC, Westerly Terminus of Fanning Drive** to March 21, 2024; seconded by Mr. Musnicki 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.

No one appeared on behalf of the application. Karen A. Hoeg, Esq., submitted a request to hold the application over to March 21, 2024 at the February meeting.

NEW APPLICATIONS:

6. Chris & Janet Andolina, 519 Dune Road (905-016-02-005) Applicant requests variances from §197-8 D for a proposed trellis (easterly) over a existing front balcony with a front yard setback (principal) of 53.9 feet where the minimum required is 75 feet, and from §197-29.1 for proposed trellis (westerly) representing a prohibited increase in degree of nonconformity of a dwelling with preexisting substandard front (62.6' proposed, 75' required) and side yard setbacks (17.7' proposed, 20' required).

Jackie Morley, Esq., appeared on behalf of the application, together with the architect. She has visuals provided by the architect and provided them to the Board. She said the first page is the proposed and the second is what is existing. It is for two trellis over balconies on the front of the dwelling. They purchased the property in 2022 and in 2021 they got a variance to legalize the pool by the previous owners. That included a CEHA variance, and we are now landward of that. To go through the standards they are preexisting they are adding two open air trellis' on the top of the two balconies and not going any higher and because of that there are no adverse impacts to the environment. They are not changing the character of the neighborhood or causing any detriments. Because they are existing and its least invasive, they want additional shade and they are trying to open the front of the building and it's a heavy mass of closed space and visually and when they are on the balcony. It is self-created, it is very minimal and not substantial and in line with he property.

Mr. Piering asked what you call a trellis, this looks like cable rails.

Ms. Morley said we are describing it as a trellis but it is also called a pergola.

Mr. Piering thought of a trellis as something plants grow up, but a pergola is more accurate and thanked Ms. Morley for the pictures.

Ms. Morley said the balcony is there, these go on top of it.

Herbert – Architect said the proposed design as shown on pages 2 and 3 there are three balconies and one is the first floor and two are on the second floor and we're proposing to get rid of the low rail and replace it with cable railing. The massing feels heavy and with this proposed cable rail and the pergola it adds as a sunshade device so the balconies are more usable.

Mr. Piering said nothing is increasing at all, none of the non conformities? No new space is being created, you're utilizing the existing space?

Ms. Morley said that's correct, we're adding to what is there already. The Eastern balcony reaches out and the setbacks are not compliant but we're not adding to it.

Mr. Piering said it will look great and he has nothing more to add. There were no other questions or comments.

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Motion was made by Mr. Piering to close the hearing of **Chris & Janet Andolina, 519 Dune Road (905-16-2-5)** for a determination; seconded by Mr. Musnicki and unanimously carried 4 ayes, 0 nays, 1 absent.

8. Marko Issever, 18 Stillwaters Lane (905-010-04-020) Applicant requests variances from §197-6 D to construct an addition with a side yard setback of 20 feet where the minimum required is 30 feet, and with a resultant combined side yard setback of 51.9 feet where the minimum required is 70 feet.

Edward Molter appeared on behalf of the application. He said the applicant would like to add an addition to the existing home and the parcel is non-conforming in the shape of a pie without the required front yard width. The applicants have a large family and they utilize the house on the weekends and want to add 1,400 square feet one story addition to the South and at the closest point we're at 20' where 30' is required. I have a full size set of prints and a smaller set of prints.

Mr. Piering asked if they are going to lift the house?

Mr. Molter said the new addition will be at a higher level; the main center is at the FEMA compliant height and the left side or the North side is two steps up and its two steps up to our addition.

Mr. Piering said they did not have to get relief for the addition in 2000?

Mr. Molter said no.

Mr. Pasca asked the flood zone? It shows the first floor at 6.8 and there's a note that says its in the AE7.

Mr. Piering said that would have to be 9'.

Mr. Hammond said yes; and if the addition is horizontal that addition can be conforming and don't all of it has to be raised but I have to look at that.

Mr. Piering asked if they can put a second story on the house?

Mr. Molter said their parents are old and they'd like to keep it as few as many steps as possible. The owners parents will be in the new addition and every bedroom has an ensuite for them. They have children and grandchildren who will stay in the other part.

Mr. Piering said it looks like the closest point is 20' and goes to 29.16' and you will not meet the 30' anywhere.

Mr. Molter said yes, that's correct. It meets 30' but not the total sideyard setback.

Mr. Piering asked what the total sideyard setback is?

Mr. Molter said it is 70' total that's what is needed, and we have 51.9'.

Mr. Piering said 30' is met on one side and they need relief from the other side?

Mr. Wittschen said yes.

Mr. Musnicki said it's around 25' or 26' and it doesn't seem to impact the neighbor to the right.

Mr. Molter said yes, it's a driveway.

Mr. Musnicki asked about the mechanicals, there is condensers will they be moved?

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Mr. Molter said yes, I think they will be moved.

Mr. Musnicki said I'd like to see them moved to the rear.

Mr. Piering said they cannot be in the side yard, and if you are granted variance relief you cannot have them in the side yard. He thanked Mr. Musnicki for pointing that out.

Motion was made by Mr. Piering to close the hearing of **Mark Issever, 18 Stillwaters Lane (905-10-4-20)** 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 **5:19 p.m.**; seconded by Mr. Badzik and unanimously carried 4 ayes, 0 nays, 1 absent.