INCORPORATED VILLAGE OF WESTHAMPTON DUNES
ZONING BOARD OF APPEALS

March 7, 2015
10:00 a.m.

Meeting held at
914 Dune Road, Westhampton Dunes, New York

APPEARANCES:
Harvey Gessin - Chairman
Barry Goldfeder - Member
Joseph Mizzi - Member
Eric Saretsky - Member

Joseph Prokop - Village Attorney
Aram Terchunian - Commissioner of Wildlife Protection
Laura Dalessandro - Zoning Clerk
(Whereupon, the meeting was called to order at 10:25 a.m.)

CHAIRMAN GESSIN: I will call this meeting of the Zoning Board to order with a Pledge of Allegiance, the American Flag that's way out there.

(Whereupon, all stood for the Pledge of Allegiance.)

MR. SERGEANT: Harvey, if I could speak for a minute.

CHAIRMAN GESSIN: Yes.

SERGEANT HENNIG: So this is a public hearing. Everybody here is going to be afforded an opportunity to speak. When the Board tells them that's the appropriate time to speak, if you have questions, you could wait until that time. If anyone's disruptive, I'm going to ask you to leave the meeting, plain and simple. If anyone has any problems with that, leave now. Thank you, Harvey, you can start.

CHAIRMAN GESSIN: No problem. Okay. The first thing we're going to do is clean up some old business from the last meeting, which is two cases that we closed the hearings on, which is Gregory Panayis, which is 782 Dune Road, would be the first one, and Michelle and Perry Herson, which is 836A Dune Road, which we closed the hearing on that also.

Does anybody have any questions on the 782 Dune Road
subdivision before we take that to a vote?

MEMBER GOLDFEDER: No, I don't.

MR. PROKOP: I just have a comment. In the --
before the Chairperson gets into it.

So the question -- the comment is that there have
been approvals in the area of this subdivision in the past
by this Board, and in those prior approvals, we had
covenants and restrictions that were required as a
condition.

CHAIRMAN GESSIN: Yes.

MR. PROKOP: And my recommendation would be that we
carry over the same covenants and restrictions that we had
on those two prior properties.

CHAIRMAN GESSIN: I think that's appropriate, yes.

MR. PROKOP: And the other comment was I just wanted
to make sure we went through the conditions at the prior
meeting, the five conditions. I'm not -- I think that we
did, but I'm not 100% sure.

CHAIRMAN GESSIN: We did.

MR. PROKOP: We did. Oh, okay.

CHAIRMAN GESSIN: We did.

MR. PROKOP: As long as we're okay -- as long as we
did them, we're okay.

MEMBER GOLDFEDER: Yes.

MR. PROKOP: That's fine.
CHAIRMAN GESSIN: Okay. Would anybody like to make
a motion for a vote here?

MEMBER SARETSKY: Motion to approve.

MEMBER GOLDFEDER: Second the motion.

CHAIRMAN GESSIN: Everybody ready to vote? In
favor?

(All Said Aye)

CHAIRMAN GESSIN: Approve, Joe?

MEMBER MIZZI: Yes, approve.

MR. PROKOP: That's it. We voted as a group to
approve and with those conditions.

CHAIRMAN GESSIN: Yes.

MR. PROKOP: The same conditions that we had in
the --

CHAIRMAN GESSIN: Yes.

MR. TERCHUNIAN: Joe, do you want to pass a SEQRA
resolution?

MR. PROKOP: Yeah. I think -- okay. We covered --
let the record show that the Board voted to adopt Lead
Agency status for purposes of SEQRA. Because these are
area variances, it's a Type II -- it's a Type II -- a Type
II Action for purposes of SEQRA. So can we just have a
vote on that also, please? That's the motion. So would
you make a motion?

MEMBER GOLDFEDER: Motion.
MR. PROKOP: This is a motion to adopt Lead Agency status and determine that this is a Type II Action for purposes of SEQRA. Thank you. So we have a motion. We need a second on the vote.

MEMBER MIZZI: Second.

MEMBER SARETSKY: Second and third.

CHAIRMAN GESSIN: Goldfeder and Mizzi.

(All Said Aye.)

MR. PROKOP: Thank you.

CHAIRMAN GESSIN: Okay. We're on to 836A. We have five -- we have seven variances that are being requested. I know we have issue with at least one of them, and I think we should group them together. Do you think that's appropriate?

MEMBER MIZZI: (Nodded yes.)

CHAIRMAN GESSIN: Well, let's group the first one, because this will be the one -- seems to be the one that the Board seems to be sticking on first.

The applicant requests a variance of 4.9% to allow a proposed lot coverage of 24.9, with a lot coverage allowed by the Zoning Board -- by the Zoning Code as 20%. Would someone like to make a motion on that?

MEMBER GOLDFEDER: I'll make a motion.

CHAIRMAN GESSIN: Would anybody like to vote in favor of that?
MR. TERCHUNIAN: Well, what's the motion for?
CHAIRMAN GESSIN: The motion is to approve that one for that variance or deny that variance.
MR. TERCHUNIAN: All right. So it's got to be one or the other. Is the motion to approve it or deny it?
CHAIRMAN GESSIN: The motion is to deny that vote.
MR. PROKOP: No. It's a motion to what?
MEMBER GOLDFEDER: To deny the 4.9%.
MR. PROKOP: Okay. So the -- and the reasons for that is -- no. It has to be -- the reasons have to be stated in the motion. It's a benefit to the applicant if the variance is granted as weighted against the detriment to the health, safety and welfare of the neighborhood; whether it will create an undesirable change in the character of the neighborhood; whether the benefit sought by the applicant can be achieved by some other method; whether the requested variance is substantial; whether the proposed variance will have an adverse effect or impact on the physical conditions of the neighborhood, and whether the alleged difficulty was self-created.

So the motion should state one of those, one or two of those. If it's a motion to a deny, it really should state a couple of those reasons in the motion, if you feel that it's going to have a negative impact.
CHAIRMAN GESSIN: Well, it actually -- I actually

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think it should state all of those.

MR. PROKOP: Okay. So the motion would be, if I'm
correct, that the motion to -- the motion is to deny the
request for a variance. This is number one, which is at
4.9%?

CHAIRMAN GESSIN: Yes.

MR. PROKOP: I got that right?

CHAIRMAN GESSIN: Correct.

MR. PROKOP: Lot coverage. And because the benefit
to the applicant, when weighed to the -- I guess the
detriment, because of the -- there's not significant
benefit to the applicant weighed against the detriment to
the health, safety and welfare of the Village, the
neighborhood, there isn't -- and it may create an
undesirable change in the character of the neighborhood.
The benefit sought by the applicant can be achieved by
some other method. The requested area variance is
substantial. The proposed variance will have an adverse
impact on the -- or effect on the neighborhood. And the
proposed variance is self-created. So that that's the
motion.

CHAIRMAN GESSIN: Correct. Would someone like to
make a motion?

MEMBER GOLDFEDER: Yeah, I make a motion.

MR. TERCHUNIAN: Do you have a second. That's
Goldfeder. Do you have a second?

MEMBER MIZZI: What's the motion?

MR. PROKOP: To deny.

MEMBER GOLDFEDER: To deny the 4.9% coverage based on the above criteria.

MEMBER SARETSKY: Yeah. Are you good, Joe?

MEMBER MIZZI: Yeah.

MEMBER SARETSKY: Okay. I'm good, too. Second.

CHAIRMAN GESSIN: Me, too.

MEMBER MIZZI: (Raised hand).

CHAIRMAN GESSIN: So basically, they're grandfathered at 23.9; is that correct?

MR. PROKOP: They're grandfathered at 23.9, right.

Their existing --

CHAIRMAN GESSIN: They have what they have.

MR. PROKOP: Yeah. Their existing footprint is 23.9. So they don't -- in other words, they can build out -- so they have the right to come in with a building permit to go to 23.9. They don't have to come back to us for --

CHAIRMAN GESSIN: Correct.

MR. PROKOP: For that 3.9. They can go to 3.9.

CHAIRMAN GESSIN: They can go to 23.9.

MR. PROKOP: Right. They just can't go to -- no, they can't got to 4.9.
CHAIRMAN GESSIN: Right.

MR. PROKOP: Okay.

CHAIRMAN GESSIN: Okay. Now the balances of Variances 2 through 7, I think we can vote on them as a group, okay? And I think we're of the mind set to see if we can vote to approve those. Would somebody like to make a motion to vote on Variances 2 through 7?

MEMBER SARETSKY: Move to approve.

CHAIRMAN GESSIN: Would anyone like to make a second?

MEMBER GOLDFEDER: I'll second 2 through 7.

MR. PROKOP: Okay. So I just want to say that the resolution -- the motion to approve will be a resolution to approve the variances. The Board, in their resolution, will adopt Lead Agency status, and determine that it's a Type II Action for purposes of SEQRA. The Board is determining that these variances have -- excuse me.

The motion is to approve and determine that the approval will not create an undesirable change in the character of the neighborhood, that the benefit sought by the applicant cannot be achieved by some other method, the requested area variances are not substantial, the proposed variances will not have an adverse effect or impact on the conditions of the neighborhood, and the requested variances are self-created, but that is not relevant to
the decision of the Board of Appeals. And it's a motion
to grant with -- based on what I just read.

CHAIRMAN GESSIN: Okay.

MR. TERCHUNIAN: Okay. Call the vote. All in
favor?

CHAIRMAN GESSIN: All in favor?

(All Said Aye.)

CHAIRMAN GESSIN: Okay, it's closed.

MS. HEROLD: Thank you.

CHAIRMAN GESSIN: Yes.

MS. PETINO: May I ask a question. There's
something I didn't understand. Carol Petino. The part I
don't understand is you are holding them to their
grandfathered amount, okay? You passed that, yes. But
now you're approving all of the variances that are based
on the higher lot coverage. Isn't that in conflict?

CHAIRMAN GESSIN: No. They just can't build greater
than 23.9.

MS. PETINO: But you just said that they could.

CHAIRMAN GESSIN: They'll have to mush their plan
around until they get to 23.9.

MEMBER MIZZI: They'll have to find 100 square feet
without affecting any of the perimeters.

MS. PETINO: Okay.

CHAIRMAN GESSIN: They have a very creative
architect and she'll figure it out.

(Laughter)

MEMBER GOLDFEDER: So they have to take it from someplace else.

MEMBER MIZZI: And if they can't, they would need to come back.

MS. HEROLD: Absolutely.

MEMBER MIZZI: Like say 500 square feet --

MS. HEROLD: Actually, though, the setbacks are not relevant to the square footage.

MR. MERRELL: If it changes in angle, then they have to come back.

MEMBER MIZZI: Yeah, if it would --

MR. MERRELL: A Setback or something changes.

MEMBER MIZZI: Yes, for a variance, yes.

MR. TERCHUNIAN: If it would decrease the setback. If they go --

MEMBER MIZZI: Right.

MR. TERCHUNIAN: -- farther away, they're okay.

Are you ready to move on to our hearings?

CHAIRMAN GESSIN: Yeah. Okay. Let's go on to new applications. Okay. The next one we're going to hear is Kronberg.

MR. BATCHELLER: Yeah. I'm here representing the Kronbergs. Okay. So --
MR. TERCHUNIAN: I'm sorry to interrupt you, Ed.

MR. BATCHELLER: Go ahead.

MR. TERCHUNIAN: Joe, you've reviewed the notices, and the Board has jurisdiction on this matter?

MR. PROKOP: Yes. There's been an application of -- I've reviewed the notices, and application of mailing and posting submitted, and we're making a copy of it as a record -- as a record of the file, it's Document #1. And the Board can proceed, we have jurisdiction.

MR. BATCHELLER: Okay. We're good?

CHAIRMAN GESSIN: Yeah.

MR. BATCHELLER: All right, thanks. Okay. So, you know, we discussed this off the record last meeting. My client, Sandra, wants to simply add onto her second floor, existing second story deck towards the front, towards the front yard, and we're asking for relief from some front yard setback, and also because of the increase in the lot coverage. And so we're officially bringing the front yard deck, the deck to 39.3 feet. That's the new setback.

One of the things that we talked about a little bit last week are there other properties in the area that have similar conditions, and there are actually quite a few. I printed out a couple if them, if you want to take a look. You can see that some decks, like there's a deck there that's at 17 feet, that's on Dune Lane.
And then this house has from -- it's a corner lot, really where the road radius is, 25 foot. It's at 25 foot from the front yard, approximately. From the road, it's actually closer, because there's an easement there, but I have that for you, if anyone else wants to see anything else.

So I think that the deck that we're talking about building is very much in keeping with the nature of the neighborhood, which is basically a lot of outdoor second-story living, so people can get the water views, and we're making a six-foot increase into the existing deck. I think it's a modest request.

The lot coverage goes up because it's a 5,000 square foot lot. It's so small that I think if you sneeze, you need to get a variance over there.

CHAIRMAN GESSIN: Right, yeah. That's the problem where we've been struggling there.

MR. BATCHELLER: It's just a nonconforming lot. It's an R-40 zone or something.

CHAIRMAN GESSIN: You don't know what the coverage is on either one of those two lots, do you?

MR. BATCHELLER: No, I don't, because I don't have that. Really, I don't have that survey. I could guesstimate it, but I don't see that --

MEMBER GOLDFEDER: And the extension of the top, is
it a wetland issue?

MR. BATCHELLER: No.

MEMBER GOLDFEDER: There's no wetland beneath it or --

MR. BATCHELLER: No, no, no, no.

MEMBER GOLDFEDER: -- where it extends out?

MR. BATCHELLER: Oh, we're not increasing the roof, by the way, of the existing deck, we're just -- there's a roof over the existing deck and we're just pushing the deck out, an open design.

MR. TERCHUNIAN: Just FYI, they have a Letter of No Jurisdiction from the DEC.

MEMBER GOLDFEDER: Thank you.

CHAIRMAN GESSIN: But, Aram, that's still covered, right?

MR. TERCHUNIAN: Oh, yeah, those are good, unless there's a change in condition.

CHAIRMAN GESSIN: Right. Now I had an issue with the DEC on the decks and platforms.

MEMBER MIZZI: This is an example of another one, or this is yours?

MR. BATCHELLER: No that's another -- another property.

CHAIRMAN GESSIN: The way they interpreted or -- I think that's the wrong word. The way they did not
interpret coverage was if you use the -- that plastic
decking --

MR. BATCHELLER: Open.

CHAIRMAN GESSIN: -- that's 40% open, they did not
consider that covered.

MR. TERCHUNIAN: Right, for walkways, for walkways
and --

CHAIRMAN GESSIN: And they're actually allowing us
to do that for both the platforms, steps, and portions of
decks.

MR. TERCHUNIAN: Okay. That's interesting. Well,
they're --

CHAIRMAN GESSIN: Because you're letting light and
air through it.

MR. TERCHUNIAN: Yeah. The DEC standard is
impermeable surface.

CHAIRMAN GESSIN: Right.

MR. TERCHUNIAN: So they have a different standard
than we do.

CHAIRMAN GESSIN: Than we do.

MR. BATCHELLER: They don't want shading underneath
it.

CHAIRMAN GESSIN: They're in a different world than
we are.

MR. BATCHELLER: Yeah. God bless them. So, I mean,
that's basically, you know, what we want to do over there. She wants to make a more comfortable experience out there. It's very tight. The existing deck is like five feet. You can hardly get around a chair. She feels a little bit unsafe. Just widening it and, you know --

CHAIRMAN GESSIN: Right. And I went over there and I took some pictures prior to the last meeting.

MR. BATCHELLER: Yeah.

CHAIRMAN GESSIN: I mean, personally, I have no issue with your application, except for the lot coverage.

MR. BATCHELLER: Right.

CHAIRMAN GESSIN: You know, and I don't know how --

MR. BATCHELLER: There's not much way around that one.

CHAIRMAN GESSIN: I mean, you can't tell from this picture, but he's way back from this house, from his neighbor.

MR. BATCHELLER: Yeah.

CHAIRMAN GESSIN: And even when he comes forward, he's still back.

MR. BATCHELLER: Right.

CHAIRMAN GESSIN: So, I mean, it really doesn't seem to have an impact, but it's -- other than the 30%. Can you see it?

MEMBER SARETSKY: Yeah.

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MR. BATCHELLER: Again, you know, it's a small, like, 5,000 square feet lot.

MEMBER SARETSKY: The issue is only the lot coverage.

CHAIRMAN GESSIN: It's the lot coverage.

MEMBER SARETSKY: I mean, are there any precedences like that?

MR. BATCHELLER: Many of those lots in that area are -- most of the lots in that area are about 5,000. You know, they're small lots, so they would all have extraordinarily tight --

CHAIRMAN GESSIN: Can't buy some land from your neighbor?

MS. AUDET: I have a half-acre for sale.

(Laughter)

MEMBER GOLDFEDER: And there is no objection from the neighbors.

CHAIRMAN GESSIN: We have not received any.

MEMBER GOLDFEDER: The Board has not received any.

CHAIRMAN GESSIN: I don't think there's any house in the Village that has this lot coverage.

MR. TERCHUNIAN: No.

CHAIRMAN GESSIN: That's the problem.

MR. TERCHUNIAN: These lots -- and just some historical perspective for the Board. You know, Dune Lane
is its own little neighborhood where you have basically 5,000 and 10,000 square foot lots. And if you -- when this house was originally built, it came in for a variance, because it needed a variance for the rear yard and the side yards, as well as the front yard. So it got all of the -- and lot coverage. This lot already got a variance just for this building to get built, because it doesn't meet any of the zoning criteria. But the rationale that the Board used at the time, and if you review that decision, was they wanted to give them, you know, an adequate, you know, interior -- basically, the Board said, "We're going to give you this much lot coverage, you guys decide how you want to use the exterior and interior space." And the person who built the house laid it out the way that they laid it out, with the interior and exterior space. And they desired, clearly, more interior than exterior, and they're obviously at a lot coverage of 24.6%.

MR. BATCHELLER: That was a prior owner.
MR. TERCHUNIAN: That was a prior owner.
MR. BATCHELLER: The guy who built the house.
MR. TERCHUNIAN: The rationale of the Board was the rationale of the Board. There aren't any other lots on Dune Lane or anywhere else in the Village at 30% lot coverage.
CHAIRMAN GESSIN: Yes.

MR. TERCHUNIAN: There's a few other lots that are close to this in lot coverage, but I don't think there are any that are more.

MR. BATCHELLER: Coverage is coverage.

MR. TERCHUNIAN: Yeah, coverage is coverage.

MR. BATCHELLER: But it is a deck. I mean, it's not like a major impact. I mean, yes, it's square foot coverage, but it's not like they're increasing the building, it's just a deck. And the down -- the first floor deck is staying -- is not being increased, it's just the second floor.

MEMBER SARETSKY: And the concept of having it with perforated material, that --

MR. TERCHUNIAN: Well, that doesn't speak to our code.

MEMBER SARETSKY: Right.

MR. TERCHUNIAN: The DEC's code is a natural resource-based code. Our code is a zoning based, different standards.

MEMBER MIZZI: Sir, could I ask a question just for --

MR. BATCHELLER: Yeah.

MEMBER MIZZI: I just want to make sure I understand what you're asking.
MR. BATCHELLER: Okay.
MEMBER MIZZI: You have the picture there.
MR. BATCHELLER: Yeah.
MEMBER MIZZI: Come forward.
MR. BATCHELLER: So, okay. So this is an existing house, correct?
CHAIRMAN GESSIN: Yeah.
MEMBER MIZZI: Just answer a question.
MR. BATCHELLER: All right.
MEMBER MIZZI: So this deck is coming forward?
MR. BATCHELLER: This deck is coming forward.
MEMBER MIZZI: By this amount?
CHAIRMAN GESSIN: And turning around the corner.
MR. BATCHELLER: Exactly. And it's tying in. This deck, the first floor deck --
MEMBER MIZZI: Yes.
MR. BATCHELLER: -- goes out on the side.
MEMBER MIZZI: Right.
MR. BATCHELLER: Okay, here. See, that's the walkway that's how it connects, so we're just filling in that area.
MEMBER MIZZI: And what's below this right now?
MR. BATCHELLER: It's just land. Actually, the oil tank is below that, the fuel tank.
MEMBER MIZZI: So this is a deck, first floor.
MR. BATCHELLER: Yeah.
MEMBER MIZZI: The deck becomes --
MR. BATCHELLER: What happens is this current
existing deck goes like this (indicating).
MEMBER MIZZI: Right.
MR. BATCHELLER: And so this -- so we're filling in
this area and we're increasing this area.
MEMBER MIZZI: But in terms of lot coverage, this is
not affected by lot coverage.
MR. BATCHELLER: Correct.
MEMBER MIZZI: There's already a deck there.
MR. BATCHELLER: Right.
MEMBER MIZZI: So it's this sliver?
MR. BATCHELLER: Yeah. Which is --
CHAIRMAN GESSIN: Six by whatever.
MR. BATCHELLER: Six by -- what's the dimension, 34
or --
CHAIRMAN GESSIN: 34.06.
MR. BATCHELLER: Yeah, yeah.

CHAIRMAN GESSIN: 6.17 by 34.06.
MR. BATCHELLER: So it's 204 square feet.
MEMBER MIZZI: Which you're asking for 270.
MR. BATCHELLER: Well, that's because of -- yeah,
I'm including that, but that should be deducted from the

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MEMBER MIZZI: Yeah. And then, I don't know, is this -- in the current lot coverage, is this stair computed?

MR. BATCHELLER: The stair is --

MEMBER MIZZI: Like if you were to take the existing 20 -- 1228 square feet, was this stair calculated in that?

MR. BATCHELLER: No, because the stairs don't count.

MEMBER MIZZI: Okay.

MR. BATCHELLER: So 204, so that would be 4%, as opposed to 5.4, actually.

CHAIRMAN GESSIN: And where does this walkway go, is this an elevated walkway?

MR. BATCHELLER: It's on the first floor. Yes, it's in line with the first floor. It's hard to see on this plan, but it's --

CHAIRMAN GESSIN: That's okay. Well, where does it actually go?

MR. BATCHELLER: It just goes to the stairs to the back of the house there, and I think there's a door.

MEMBER MIZZI: Do these stairs go down?

MR. BATCHELLER: Yes, to grade.

MEMBER MIZZI: From grade to basically this?

MR. BATCHELLER: Yes, essentially like that on the side.
MEMBER SARETSKY: Those stairs are counted in the coverage and the walkway?

CHAIRMAN GESSIN: Does that -- that walkway counts in your coverage, right?

MR. BATCHELLER: This walkway is from the original footprint, yes.

CHAIRMAN GESSIN: Yeah, I know, but it counts in your coverage.

MEMBER MIZZI: It's 1228 square feet.

MR. BATCHELLER: Yeah.

MR. PROKOP: Excuse me. We have to -- this is a public hearing. We can only -- I'm sorry.

MR. BATCHELLER: I don't know, I'd have to ask the client.

MR. PROKOP: We just have to -- we have to have one conversation. I'm sorry.

CHAIRMAN GESSIN: Are you the client?

MR. PENNESSI: No.

CHAIRMAN GESSIN: Oh, I thought you were the client.

Okay.

MR. BATCHELLER: No.

MEMBER MIZZI: Who is this guy? We keep seeing him every week.

(Laughter)

CHAIRMAN GESSIN: We're trying to make it work for
you.

MR. BATCHELLER: I understand. Well, actually, so, if we take that section out, that is -- that drops us down to 4% increase. So now we're at 28% lot coverage. I believe there's a door on the side here, I'm not certain.

MEMBER MIZZI: Would there be a -- I'm just asking -- a consideration for adding lot coverage over a stair? Because you're really not affecting like --

CHAIRMAN GESSIN: No, no. If he's stacking, he's not increasing lot coverage.

MEMBER MIZZI: Right, but yeah. I'm just saying, is like if this exists as-of-right, like adding a stair, adding this section over a stair is really --

CHAIRMAN GESSIN: No.

MEMBER MIZZI: Yeah, you're not --

MR. BATCHELLER: Right.

MEMBER MIZZI: You're not affecting anything relative to --

MR. BATCHELLER: If we take that out, it's another 1%.

MEMBER MIZZI: Yeah. It's like I think, personally, looking at the photo -- so this is going to come out further?

MR. BATCHELLER: Over in line with the existing.

MEMBER MIZZI: Yeah. So it would seem to me like if it came out without going over, it might --
CHAIRMAN GESSIN: You're saying this he really has already, so now we're down to this?

MEMBER MIZZI: Right.

CHAIRMAN GESSIN: So, if we can get rid of some of this --

MEMBER MIZZI: Yeah.

CHAIRMAN GESSIN: -- and substitute it for this, he may not even need a variance.

MEMBER MIZZI: Right.

MR. BATCHELLER: So you're suggesting maybe cut this back.

CHAIRMAN GESSIN: Yeah. I think --

MR. BATCHELLER: We're not counting these stairs, but we're cutting back this deck a little bit?

CHAIRMAN GESSIN: Well, this is part of your coverage.

MR. BATCHELLER: Yeah.

CHAIRMAN GESSIN: So, if you can move this, the more you remove here, the less of a variance. Maybe you don't even need a variance.

MR. BATCHELLER: Now, one thing to tell you, but I don't know if this makes any difference, the reason for this is there's going to be a stair built in here to connect the first floor.

CHAIRMAN GESSIN: Doesn't matter, you have that.
You have that already.

MR. BATCHELLER: Right, okay. I mean, I don't know if we can pick up maybe 1%.

MEMBER MIZZI: He says there's no deck below here, this piece.

MR. BATCHELLER: No, there is a deck here.

CHAIRMAN GESSIN: No, there's a deck there.

MEMBER MIZZI: Oh, there. I'm sorry. Got it, got it, got it.

CHAIRMAN GESSIN: So this shouldn't count. This shouldn't count, this shouldn't count.

MEMBER MIZZI: Right.

CHAIRMAN GESSIN: And whatever he can give back here, he doesn't have to ask for there.

MEMBER MIZZI: I agree.

CHAIRMAN GESSIN: Right?

MEMBER MIZZI: And this is -- yeah. This is access down there, you could play with this. Maybe leave the stairs drop sooner and then --

CHAIRMAN GESSIN: Where is that door? Where is the door you're talking about?

MR. BATCHELLER: I'm not certain, I'd have to look.

There's a side door there.

MR. TERCHUNIAN: And what you're hearing from the Board is --
MR. BATCHELLER: They want to see if we could --

CHAIRMAN GESSIN: Thirty percent is a problem.

MR. TERCHUNIAN: This lot's already been granted substantial relief in order to build what's there, and the builder made a choice, that's the way they wanted to do it, and this person bought it in that condition, and we want to accommodate them to the extent that we can.

MR. BATCHELLER: Right.

MR. TERCHUNIAN: But, clearly, whatever we give to you, everybody on that street who's got a 5,000 square foot lot is going to want the exact same thing, and they're not going to care that it's a deck or a house when it comes to coverage.

MR. BATCHELLER: I understand.

MR. TERCHUNIAN: You're treated the same under the code.

MR. BATCHELLER: So I think that what's important to the client is this deck in front.

CHAIRMAN GESSIN: Right.

MR. BATCHELLER: So it seems to me that we could talk to her about --

MEMBER SARETSKY: Changing the side.

MR. BATCHELLER: -- you know, modifying. You know, even if there is a door there, just put a stair to the door and a platform, and that's it.
CHAIRMAN GESSIN: I think you have enough to give
back that you could probably accomplish it without a
variance.
MR. BATCHELLER: Yeah, okay. So --
MR. TERCHUNIAN: You still need the front yard
variance.
CHAIRMAN GESSIN: Yes.
MEMBER MIZZI: I'm just saying this is -- this still
wouldn't be forward of the adjacent neighbor.
MR. TERCHUNIAN: Right.
MEMBER SARETSKY: No, it would still be back.
MR. TERCHUNIAN: So that's not really the issue.
CHAIRMAN GESSIN: Yeah. We don't have a problem
with the forwardness of the deck.
MR. TERCHUNIAN: Well, before you go there, you
haven't really showed us what's going on on either side of
this. I mean, you gave us the example of the guys that
are closer.
MR. BATCHELLER: Right.
MR. TERCHUNIAN: But you really need to tell us
what's going on in this neighborhood. You know, you
cherry-picked, you know, three or four examples, but we
need to know really what's happening right around it.
MEMBER MIZZI: If you could just have a plan of
like -- of your property and the adjacent property,
because these sheets you're passing around, it's kind of confusing.

MR. BATCHELLER: Okay. Hold on a second. Maybe this will help.

MR. TERCHUNIAN: We can't review that.

MEMBER MIZZI: Yeah.

MR. TERCHUNIAN: Can't review that here. You really need to put it on a site plan.

CHAIRMAN GESSIN: We need an area site plan with three or four houses down the road.

MR. BATCHELLER: That's the Google map, Google Earth.

MR. TERCHUNIAN: That's not a site plan.

MR. BATCHELLER: No.

MEMBER MIZZI: Just for -- out of curiosity, which is yours?

MR. BATCHELLER: Actually, I have to think about that. It's like a -- it's an old Google Earth. That one right there.

MEMBER MIZZI: Right. If you were to make a drawing that just showed these and, you know --

MR. BATCHELLER: So you want a site plan with setbacks?

MR. TERCHUNIAN: If you go -- if you FOIL the Village files on the previous applications, you're going
to see all the information is already there.

MR. BATCHELLER: Yeah, okay.

MR. TERCHUNIAN: This Zoning Board has done a lot of work on Dune Lane.

MR. BATCHELLER: Okay, yeah.

MR. TERCHUNIAN: There's a lot of information in those files.

MR. BATCHELLER: Okay. So what's the next step, then, folks?

CHAIRMAN GESSIN: I would see how much you could take off the rest of the house.

MR. BATCHELLER: Okay.

CHAIRMAN GESSIN: Then do the area site plan.

MR. BATCHELLER: Okay.

CHAIRMAN GESSIN: And come back at the next meeting.

MR. BATCHELLER: Okay. So present a site plan or a modified --

MR. TERCHUNIAN: Yeah.

MR. BATCHELLER: A site plan of what we could do as far as recalculate the lot coverage.

MR. TERCHUNIAN: You've got us focus in on the house, and you've got to do some cleanups on that.

MR. BATCHELLER: Okay.

MR. TERCHUNIAN: But now we got to take a step back and we've got to look at the bigger picture. If you come
in and FOIL the files, you're going to find this has been
done before.

MR. BATCHELLER: Right, right.

MR. TERCHUNIAN: So take a look at what they did.

MR. BATCHELLER: Okay. All right, no problem. All
right. Very good.

CHAIRMAN GESSIN: Because I think you should be able
to do --

MR. BATCHELLER: Yes.

CHAIRMAN GESSIN: The issue here is going to be the
coverage.

MR. BATCHELLER: Okay.

CHAIRMAN GESSIN: If you can get the coverage down
to neutral, to where you are now currently.

MR. BATCHELLER: To the same coverage?

CHAIRMAN GESSIN: Right. And then you're only back
here for a front yard --

MEMBER SARETSKY: Front yard.

CHAIRMAN GESSIN: -- variance.

MR. BATCHELLER: Okay.

CHAIRMAN GESSIN: Then you'll be -- you know, then
we'll --

MR. BATCHELLER: What if we come within a couple
percent?

CHAIRMAN GESSIN: You're really high.
MR. TERCHUNIAN: We just denied one.

MR. BATCHELLER: Okay.

MR. TERCHUNIAN: You heard the first decision of the day, didn't you?

MR. BATCHELLER: Yeah.

MR. TERCHUNIAN: Just checking.

MR. BATCHELLER: Things didn't look so bad after that.

CHAIRMAN GESSIN: And maybe you'll be five feet rather than four feet, you know.

MEMBER MIZZI: And it's existing deck, so you've added a certain amount. But maybe the existing deck adds a certain amount. It's not the amount you're asking for, so --

MR. BATCHELLER: Right.

CHAIRMAN GESSIN: Five rather than four, maybe, you know.

MR. BATCHELLER: All right. Let me work on it.

CHAIRMAN GESSIN: Yeah. You have to get creative with a chainsaw, that's all.

MR. BATCHELLER: At this point, the virtual chainsaw.

MR. TERCHUNIAN: Well, that's way better than an actual one.

(Laughter)
MR. BATCHELLER: All right. So we're going to revisit next meeting?

CHAIRMAN GESSIN: Yeah.

MR. BATCHELLER: Okay.

MR. BATCHELLER: Get it together quick. We'll schedule another meeting, and maybe we'll get done next time.

MR. BATCHELLER: All right. Do I need to set another --

MR. TERCHUNIAN: No.

CHAIRMAN GESSIN: No. We're going to put you over to the next meeting.

MR. BATCHELLER: Thank you very much.

CHAIRMAN GESSIN: Thank you.

MEMBER MIZZI: Thank you.

MR. TERCHUNIAN: Make a motion to adjourn for all purposes.

CHAIRMAN GESSIN: This application. So we're going to adjourn this application to the next meeting.

MR. BATCHELLER: Okay.

MEMBER GOLDFEDER: I'll second it.

MR. TERCHUNIAN: For all purposes.

CHAIRMAN GESSIN: For all purposes. Okay.

MR. BATCHELLER: All right. Thank you very much.

MR. TERCHUNIAN: Thank you.
CHAIRMAN GESSIN: Do you want this back?

MR. TERCHUNIAN: No. We should have one set in the file.

CHAIRMAN GESSIN: Okay. Laura you want to keep them?

MS. AUDET: I have a question. When do you get to ask a question, after --

MR. PROKOP: He'll ask for any comments.

MS. AUDET: Oh, okay.

MR. PROKOP: So what we'll do is we'll have the presentation by the applicant, right, and then we'll have any comments. Generally, the comments are organized by comments in favor of the application, but it really doesn't matter. But the order would be to have a presentation by the applicant or the representative, and then comments, and everybody -- everybody that would like to speak can speak.

CHAIRMAN GESSIN: Okay. The next application is --

MR. PROKOP: Or if I could bother you for a second, just we have the postings on this, right?

MS. DALESSANDRO: Yes. This is the one I showed you before.

MR. PROKOP: Okay. So in this one, we have a -- I'd like to state that we have record of the mailings. We also have an affidavit that the -- the affidavit of
mailing and posting, as required by the Village Code. Therefore, I'm recommending that it would be determined that we have the jurisdiction to proceed with the public hearing, and that the affidavit be accepted as Document Number 1 for the record.

CHAIRMAN GESSIN: Okay.

MR. MERRELL: I have a question. Pursuant to Code, Section 560-49(H) of the Village Code, we were not notified.

MR. PROKOP: What section is that?

MR. MERRELL: Section 560-49(H) of the Village Code. The parcels abating and directly opposite of the applicant property are subject to proof and we have not been sent anything with proper notice to --

MS. PETINO: We weren't notified.

MR. MERRELL: We weren't notified, so we could schedule our objections to the proposed application.

MR. PROKOP: Okay. So the way we need to work this is the first time that you comment, we need to have you say your name and address for the record.

MR. MERRELL: James Merrell, I said it once.

MR. PROKOP: If you don't want to say it again, you don't have to, but then you won't be allowed to speak. So the rule is that if you want to speak for the first time, please, sir, if you could just give your name and address
for the record.

MR. MERRELL: My Name is James Merrell.

MR. PROKOP: And what is your address, please, in the Village?

MR. MERRELL: In the Village, 834 Dune Road.

MR. PROKOP: Okay, thank you.

MS. PETINO: A.

MR. MERRELL: A.

MR. PROKOP: I'm sorry, but we just need it to create a record. So 834A?

MR. MERRELL: A.

MS. PETINO: Yes.

MR. PROKOP: Okay. And you're speaking also? Are you -- do you want to comment on the record as to this point?

MS. PETINO: I'm just adding the A, so you have the proper address.

MR. PROKOP: Okay. Thank you.

MR. MERRELL: She's reminding me.

MS. PETINO: Carol Patina.

MR. MERRELL: Okay. Pursuant to the Village Code, Section 560-49(H), parcels abating and directly opposite the property must be served. We were not served and there is no notice.

MR. PROKOP: Okay. So where does your property fall
within -- with regard to 836? You're 834, right, 834A?

MR. MERRELL: Yup.

MR. PROKOP: So what, are you adjoining?

MR. MERRELL: No, we're not adjoining. According to Google Maps, we're opposite.

MS. PETINO: Here we are.

MR. MERRELL: We're opposite, with Daisey Lane in between us.

MS. PETINO: We're his neighbor here.

MR. MERRELL: With Daisey Lane in between us.

MR. PROKOP: Aram, do you have a comment about this?

MR. TERCHUNIAN: Yeah. Notice is proper on this. We examined that issue when the applicant came to us, and the opposite refers to across the street.

MR. MERRELL: We are across the street.

MR. TERCHUNIAN: Daisey Lane is not a street.

MR. MERRELL: It is recognized by Google Maps.

SERGEANT HENNIG: It's not recognized by the Village of Westhampton Dunes.

MR. MERRELL: So It is a legitimate street. It's a private street, but it's still a street.

MS. PETINO: It's still a street.

MR. MERRELL: A Street is a street.

MR. TERCHUNIAN: It is a private parcel, not a street.
MR. MERRELL: Well, you're creating a -- to appeal anything done by the Board.

SERGEANT HENNIG: That's according to Google Maps, that's not according to the Village. I've been here 17 years. That's not been a street in this Village. It's a private easement, that somewhere along the line, somebody --

MR. MERRELL: It is a private street, we're not arguing that.

MR. PROKOP: You didn't receive --

MS. AUDET: I don't know. I haven't been home, so I don't know if I got one or not.

MR. PROKOP: Okay.

MR. MERRELL: Okay. The other question is --

MR. PROKOP: One second.

MR. MERRELL: -- across the street --

MR. PROKOP: Just wait a second.

MR. MERRELL: Okay.

MR. PROKOP: Please. We got to get the first thing taken care of. But the problem is there's other properties between you.

MS. PETINO: There are no properties between -- Patina.

MEMBER GOLDFEDER: They're here.

MR. TERCHUNIAN: Joe, you're correct, there is
actually a separate parcel. There's a flag portion.

MEMBER MIZZI: A flag lot, yeah.

MR. TERCHUNIAN: A separate parcel. It abuts 836 directly, and then so-called Daisey Lane, which is a private piece of land.

CHAIRMAN GESSIN: Okay.

MR. PROKOP: I know that there's -- so there's a couple -- there's a couple -- and I'm speaking to the Board now. So we have somebody here who's claiming that they didn't get notice. And there's a couple problems, and I think it's going to raise another point. So we're just talking about we do have a requirement that adjoining properties have to get notice, okay? So I believe -- the first thing is that I believe that this is not an adjoining property. And, I'm sorry, I think his claim is that he's across the street from -- opposite, opposite the subject property, and that there's a street. But I think it's not a street, I think it's actually a property.

But the other thing, though, legally, if somebody raises an objection to notice and they're present at the hearing, the objection is waived. If he didn't appear and he found out about this, and then, you know, a couple of months later, a couple of weeks later, objected --

MR. MERRELL: My name is James Merrell. I believe you're wrong with that. There is a five-day period, so
that you could establish your information to appeal
something, which was not given.

MR. PROKOP: Okay.

MR. MERRELL: So, actually, and according to my
attorney, you are wrong.

MR. PROKOP: Okay. Well, I'm sorry. Were you going
to make a second objection? Was there a second thing?

MR. MERRELL: Yes, there is a second objection. Has
Suffolk County been notified?

MS. DALESSANDRO: Yes, they have.

MR. PROKOP: Yes.

MR. MERRELL: Wait. They're Certified?

MS. DALESSANDRO: Yes. They're always notified.

MR. PROKOP: And did we get back --

MS. DALESSANDRO: We did not got anything back yet.

They have five days.

MR. PROKOP: Okay. What was the date that they were
notified?

MS. DALESSANDRO: The 23rd of February.

MR. MERRELL: I do feel that an issue that we have
driven up, the substantial increase of his property in the
past at other meetings, that the fact that he failed to
notify us shows a willful disregard of the spirit of the
law.

MS. PETINO: In the spirit of neighbors in

Flynn Stenography & Transcription Service
(631) 727-1107
proximity. Petino.

MR. MERRELL: Which is true.

MR. PROKOP: Okay. So the two objections that we have so far, the first one is -- as I said, I don't think that the -- that this gentleman was required to get notice, because I don't believe that he's either opposite or adjacent to the property. And the second -- the second -- if you want, would you like to make that -- since you have an objection and a comment, would you like to make that part of the record or the file? I mean, you can do that.

MS. PETINO: Yes.

MR. MERRELL: Yes.

MR. PROKOP: Okay. Could you just write your name on there and then --

MS. PETINO: Sure.

MR. PROKOP: Then we'll include it as part of the record. So that's the first point. I think that we can proceed.

And the second -- and following that, I would like to say that it's my understanding that if the person -- if somebody doesn't have notice or objects to notice, that their appearance waives the lack of notice, but he has -- Mr. Merrell respectfully has an answer to that.

The second point about the notification to Suffolk
County, so the notification to Suffolk County is required, which we did, in the time period. It used to be 30 days. It's been increased. It's either 45 or 60 days, but it's -- we're not -- whatever it is, we're not -- we're still within the notice period, we haven't gone beyond it yet, and we don't have a response.

So what that affects is that we can have a public hearing, but we can't take any action. What the -- Section 239-L, M and N of the General Municipal Law, of which governs this notice requirement, and also the Suffolk County Charter, required the notice to be given, but the notice -- the notification and the notice period are -- precede action by the Board, not the public hearing. So we're allowed to have a public hearing on this application, we just can't take any action on it.

CHAIRMAN GESSIN: Can't vote.
MR. PROKOP: Can't vote, right.
CHAIRMAN GESSIN: Okay.
MR. PROKOP: Are you in agreement with that, Aram?
MR. TERCHUNIAN: Yes, completely.
MS. AUDET: So can we ask questions now, or you're waiting for --
MR. TERCHUNIAN: We still have a -- if you have an objection --
MR. PROKOP: We're not going to get there until
about two o'clock.

MS. AUDET: Okay.

(Laughter)

MR. TERCHUNIAN: Just to set the table, we had -- the Attorney advised the Board they have jurisdiction to hear the case. If you have a question about jurisdiction, we can talk about that now. If you have a question about the case, we need to let the applicant tell us what their case is.

MS. AUDET: Great.

MR. TERCHUNIAN: And that's where we are now, I think, Mr. Chairman.

CHAIRMAN GESSIN: Okay. So can we start?

MR. PROKOP: So we can start the public hearing, and the objection is preserved. You know, if there was an objection, I'm recommending that you start the public hearing, and we just can't take any action. The public hearing should be adjourned as open when we get to that point.

CHAIRMAN GESSIN: Okay. Ready to start the hearing?

MR. NELSON: Okay. My presentation is that several weeks ago, I was informed that I needed a variance for my front yard setbacks.

My name is Yale Nelson, Y-A-L-E, N-E-L-S-O-N, 836 Dune Road.
I am not asking for any additional lot coverage. The setbacks that I am asking are very similar to the ones you approved earlier today. I put together the numbers, with a lot of help, as best I could, and applied for my permit in good faith, initially, not realizing that I needed the setbacks, the variance for the setbacks. So, hopefully, I could answer whatever questions you have. If it's technical, I'll have to defer to others that are more knowledgeable than I.

MR. TERCHUNIAN: Well, Yale, why don't you tell the Board the specific relief that you asked for your in your application.

MR. NELSON: The specific relief?

MR. TERCHUNIAN: Yeah. You asked for some very particular things. Why don't you just tell them what they are.

MR. NELSON: Okay. So I'm asking for a lot coverage variance of 3.6% to maintain my existing lot coverage of 23.6%. Okay. I'm asking for a front yard variance of 20.4 feet, for a front yard setback of 39.6 feet to the house, when 60 feet is the minimum front yard setback. I'm asking for a front yard variance of 33.9 feet, for a front yard setback of 36.1 to the deck, when 70 feet minimum front yard setback is required. I'm asking for a front yard variance of 20.4 feet to allow a front yard
setback of 39.6 feet for a proposed second floor deck, when 70 feet minimum is required. And I'm asking for a front yard variance of 33.9 feet to allow a front yard setback of 36.1 feet to a proposed second floor balcony, when 70 feet minimum front yard setback is required. Again, it is all very similar to what you approved this morning.

MR. TERCHUNIAN: So, just for the Board's information, there's no request for a rear yard variance or for side yard variances. This application appears to be consistent with those requirements.

MEMBER GOLDFEDER: Well, there is an easement on the west side.

MR. TERCHUNIAN: Yes.

MEMBER GOLDFEDER: And there is a driveway on the right side.

MR. TERCHUNIAN: That's right. But neither one of them affect the setback distances.

MEMBER GOLDFEDER: Exactly.

MR. PROKOP: So, by way of creating a record for the Board, what I'd like to say as a Village Attorney is that I wanted to be -- to state on the record, yeah, I think it's public knowledge, but I would like to state on the record that the -- there was an existing house at this property. The lot coverage of the existing house was
preserved as-of-right under the action of Rapf vs. The United States, and which was a Federal lawsuit that the property owners in the Village were involved in at one point in time.

The Village granted a building permit to the applicant, which is still existing, to build out the -- and, actually, the structure that is contemplated is under construction at the site, and is at some stage of that construction, I'm not sure exactly what the stage is. And I just ask Aram, is there anything that I said that's correct -- I mean, excuse me, that is incorrect or that you would like to comment on?

MR. TERCHUNIAN: You're correct.

MEMBER GOLDFEDER: And with an approved building permit?

MR. TERCHUNIAN: Yeah, a permit. A building permit was applied for. A building permit was granted for lot coverage no greater than what previously existed. The Village is bound by the Federal Court order to grandfather the lot coverage of any preexisting structure. And it wasn't until after the fact that the Building Department realized that the -- that there was an issue with the front yard. Even with the preexisting house, it was nonconforming. And, at that point, we contacted Mr. and Mrs. Nelson and they made the application that's in front
of you today.

MR. PROKOP: It essentially has to do with the raising of the house and the height structure of the new house. That's basically what we're dealing with. The issue is created by it.

CHAIRMAN GESSIN: So the issue is because he built the new house, is that the issue?

MR. TERCHUNIAN: Yeah. The issue is, built it and a second story.

CHAIRMAN GESSIN: Oh, the second story.

MR. TERCHUNIAN: In other words, you know, the first story is grandfathered, but the second story is new construction within the required front yard setback.

CHAIRMAN GESSIN: I got it, okay. So it's purely just the second story. Yeah, okay.

MEMBER MIZZI: I just have one question. Was it determined that this -- I don't have anything but the plan, but this section that sticks out is a second story cantilever. That does not apply to the side yard setback? I'm seeing that we're using the dimension of 17.4 and I see this thing.

MR. TERCHUNIAN: Those access decks around side, this runs from the front to the back, all the way to the back.

MEMBER MIZZI: Right.
MR. TERCHUNIAN: So that's an access deck, and that's not typically included in the side yard setback, because it's for access only.

MEMBER MIZZI: It's permissible?

MR. TERCHUNIAN: Yeah.

MEMBER MIZZI: On both sides?

CHAIRMAN GESSIN: In walk-around decks.

MEMBER SARETSKY: Depends on what that is.

MR. TERCHUNIAN: Four feet or less.

MEMBER SARETSKY: Four feet or less.

CHAIRMAN GESSIN: What Joe says, he thought that normally walk-around decks are one side only.

MR. TERCHUNIAN: I'd have to ask Joe on that.

MR. PROKOP: Walk-around deck was -- I don't know what a walk-around deck is. You're allowed a walkway to get from the front to the back on one side, and it has to be four feet or less. I mean, that's what my understanding is. Obviously, I'm not the Building Inspector.

MEMBER MIZZI: I don't know how that affects the side yard, but just -- like I don't know what the minimum permissible --

MR. TERCHUNIAN: But then that's calculated in the side yard, anyway, right, the setback is to the deck, yes?

MEMBER MIZZI: I'm not sure. I'm just -- I'm not
MR. TERCHUNIAN: Yeah.

MEMBER MIZZI: Yeah.

MR. TERCHUNIAN: Is that here?

MEMBER MIZZI: So it's 13 and 17.

MR. TERCHUNIAN: And 13. This 17 is to the building. It's actually 13 to the deck, and that complies.

MEMBER MIZZI: Got it.

CHAIRMAN GESSIN: From this picture, you can see he's clearly further back than 836A, which is the one we approved this morning. This is 836A.

MEMBER MIZZI: Right.

CHAIRMAN GESSIN: And that's -- you can see him pushed back, pushed all the way back.

MEMBER MIZZI: Oh, yeah. I was just asking about the side yard setbacks.

CHAIRMAN GESSIN: Oh, side, okay. I guess I moved on that one, huh?

MEMBER MIZZI: Yeah, thanks.

CHAIRMAN GESSIN: Do you want to see it?

MEMBER SARETSKY: No, I saw it before.

CHAIRMAN GESSIN: You want to see any of these?

MEMBER GOLDFEDER: No, thank you. Sorry.

MR. TERCHUNIAN: So I don't know if the Board has
any questions, but just to summarize what I hear has been presented is that the side yards and the rear yards are in compliance, the front yard is a request for a variance, and the request for the variances on the front yard are less than what was approved at the next door neighbor earlier in the meeting, and that the lot coverage is going to stay the same as it is.

CHAIRMAN GESSIN: At 23.6, right?

MR. TERCHUNIAN: 23.6.

CHAIRMAN GESSIN: Right.

MEMBER SARETSKY: I mean, Aram, should we talk about the fact that these two lots are sort of unique and --

MR. PROKOP: Well, no. It would take -- excuse me for a second. That would be really -- anyway, what I would do is like open up the -- excuse me, I'm sorry.

CHAIRMAN GESSIN: Okay.

MR. PROKOP: Open up to other comments.

MEMBER SARETSKY: Sure, okay.

CHAIRMAN GESSIN: You mean, from the --

MR. PROKOP: From the public.

CHAIRMAN GESSIN: From the public. Does anybody have any comments?

MS. AUDET: I have a question.

CHAIRMAN GESSIN: Sure.

MS. AUDET: I'm just confused about --
MR. TERCHUNIAN: Would you just say your name, please?

MS. AUDET: Oh, sorry. Liz Audet, 836B Dune Road. I'm just confused as to why we're here now. Is it because the Building Department made a mistake and didn't realize he needed a variance?

MR. PROKOP: Yeah, that's basically it, right.

MS. AUDET: Because the house is already built. Really, it's all framed out, so --

MR. PROKOP: Yeah. This is something that --

MS. AUDET: -- it's not like you can really complain about it now, right, because it's already done?

CHAIRMAN GESSIN: Well, it's not done, it's being constructed, right.

MS. AUDET: Well, I mean -- but I don't think you're probably in a position to start -- and I don't really care. I think people should be allowed to build what they want to build within what the Town allows, so I don't have a problem with that. It's just that I was confused to get -- you know, to find out that after the house is already framed and done, now there's a meeting about it, so -- and then I noticed on the initial survey versus the one now, you know, some of the measurements have changed.

CHAIRMAN GESSIN: I only have what's in front of me, I don't know.
MS. AUDET: From the previous, you know, stuff. I got this from the FOIL in the --

MR. TERCHUNIAN: Mr. Chairman, what Ms. Audet is showing you is the previously existing structure on the lot.

CHAIRMAN GESSIN: Oh.

MR. TERCHUNIAN: Which was of different dimensions, but the same lot area.

CHAIRMAN GESSIN: I got it, okay.

MS. AUDET: Well, it says like the back of the -- where the house ended used to be -- wait a minute -- 50.2 feet from my property line, and now it's 49.7, not that, you know --

CHAIRMAN GESSIN: Almost the same.

MS. AUDET: That really doesn't matter so much to me, it's just that I'm on wondering now, are these right, the new dimensions? Like who --

MR. TERCHUNIAN: Ms. Audet, if I could answer your question.

MS. AUDET: Sure.

MR. TERCHUNIAN: What you're holding in your right hand --

MS. AUDET: Yes.

MR. TERCHUNIAN: -- is what's proposed to be approved at this hearing.
MS. AUDET: Okay.

MR. TERCHUNIAN: What you're holding in your left hand was the house that preexisted that was knocked down.

MS. AUDET: Oh, okay. So -- but was this one in the left, was this submitted for the first --

MR. TERCHUNIAN: No.

MS. AUDET: That he got approved for?

MR. TERCHUNIAN: That was what existed on the site.

MS. AUDET: Okay.

MR. TERCHUNIAN: That was the building that was there.

MS. AUDET: Okay.

CHAIRMAN GESSIN: The preexisting --

MEMBER MIZZI: The house that was knocked down.

CHAIRMAN GESSIN: The preexisting house.

MS. AUDET: Right, no. I remember, yeah, and they took down the house and now this is what we have.

MR. TERCHUNIAN: Right. They actually only -- they left the foundation. They just --

MS. AUDET: The pilings.

MR. TERCHUNIAN: Yeah, the pilings, that's right.

MR. MERRELL: My question is, this is being considered new construction? James Merrell.

MR. PROKOP: So, anyway, Ms. Audet's question is that -- I mean, you know, this is something that happens
fairly often in municipalities where there's a -- you
know, an approval is given, then you realize afterwards
that a variance might have been needed, or something else,
you know. So that -- and that's what happened here, and
that's basically why we're here.

The Village and the Building Inspector are
protected. There's -- but we have to go back. You know,
we sort of have to back up now and go back through to the
approval that was necessary from the ZBA. And the ZBA is
-- the ZBA is starting from zero. You're consideration
also is --

CHAIRMAN GESSIN: As if nothing is there.

MR. PROKOP: Yeah. Although, to some extent, it is
relevant as a hardship. The fact that the applicant could
make the statement that, you know, that there is some
hardship, because he was allowed to build, but I'm not --
neither Aram nor I are speaking on behalf of the applicant
or making comments on the record for their testimony.

CHAIRMAN GESSIN: Right.

MR. PROKOP: I'm just -- you know, just wanted to
answer that question, since it's being raised. But that's
why -- that's basically why we're here.

So the fact is that -- and I put down on record
before we started, I wanted to put on the record that
there is a house under -- that was under construction.
I'm not sure if it's ongoing, or stopped, or whatever, but the -- that's known.

CHAIRMAN GESSIN: Okay.

MR. TERCHUNIAN: Mr. Merrell, you had a question?

MR. MERRELL: Yes, I have a number of questions.

MS. PETINO: I have one question. Is it new construction?

MR. MERRELL: Is this house considered new construction or existing construction?

CHAIRMAN GESSIN: I have no idea.

MR. MERRELL: The house, is it new or existing?

MR. TERCHUNIAN: It's my opinion that this is reconstruction and addition, because the foundation was preserved and that preserves the right of the owner.

MR. MERRELL: Okay. Under the Village Codes, and this is very clear, Section -- Section 560-8, he must have applied for a variance before he started on any construction, whether it's existing or not, of 20%. Now, there's also a question about his 23%. It is the original house.

MR. PROKOP: I'm sorry, could I -- I know you're --

MR. MERRELL: Section 560-8.

MR. PROKOP: I know, but what's your point?

MR. MERRELL: Okay. The point is it clearly states, before any building permit should be issued for any
construction, whether existing, or approval, or new, of
20% must go through the Zoning Board first before a
building permit is issued. There is no ifs, ands or buts
about it. Okay. Now, it does have a provision for
grandfathering, but the problem is you're using the
lawsuit as a grandfather thing. But he has no -- the
house was not built, rebuilt with the proper -- proper
variances with the decks after the hurricane. And there
is a survey showing, after the hurricane, the house
existing with different decks.

So the 23% is incorrect. He has less than 23%. He
has to apply for that 3.8%, because he had no previous
variances. And on the previous application, you did talk
about the variances in the record. There is no variances
on this, period.

Second of all, the mismeasurements of the house are
impossible to figure out. And under the Village Code
itself, it says that any layman should be able to read the
plans. Now we have had people say, "Oh, only experts,"
blah, blah, blah. We have figured out the square footage
of the house, and even from just the scaling of the house,
he's applying for 25.6. But, if you add up some of the
measurements on the house, the drawings are not precisely
to scale. The one side measures 62 feet by scale, but
when you measure it using his measurements off his plans,

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it's 64-feet-point-six, which is a 1% increase just right there with one mistaken measurement.

So I'm proposing that all the drawings have to have accurate measurements that could be interpreted.

Second, he must apply for the 6 or 7% increase that he is really trying to go. And all of this hardship is being created by him because not following the Village Codes.

MR. TERCHUNIAN: Let me see if I can summarize what you said. Your first point is that he needed to apply for a variance before he applied for a permit?

MR. MERRELL: Yes.

MR. TERCHUNIAN: And your second point is that the plans that you've reviewed, that you've measured, don't add up to the information that we've been given?

MR. MERRELL: Correct.

MR. TERCHUNIAN: Is there a third point?

MR. MERRELL: There is a third point. The 23% that he's alleging, he never had a variance for that extra 3%. And in the previous application, you did talk about the variances on record. Now, there is no variances on record. And using the -- using the lawsuit as a free-for-all to say that it was there doesn't include the fact that the house was rebuilt much further after the hurricane, because it was still there during the

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hurricane, and the decks were there, and the survey is
after the hurricane.

MR. PROKOP: Just so that --

MR. MERRELL: So there is a survey from 1995, that's
after the hurricane.

MR. PROKOP: Okay.

MR. MERRELL: That's why he has to -- that's what he
has to build to, unless he has preexisting variances, and
there is none in the building records. In fact, when we
looked at the file, there was two pages on his thing the
first time.

MR. PROKOP: So I guess what he's saying, if I
understand him correctly, is that the -- there's a
question about what is as-of-right here, because the -- I
think he's saying that the -- there's a survey, the survey
before -- the pre-lawsuit survey and the post-lawsuit
survey, or the pre-washout survey and the post-washout
survey are different.

MR. MERRELL: No, it was bad, for the record. There
are three surveys after the washout. The one in 1995 is
after the washout. It does not show the decks that he's
proposing as the same house, as this preexisting. Now, if
he has not gone through increase of the zoning -- of the
lot coverage for that, that is not as-of-right, because
what you're saying by approving that is that if somebody
had build 100% of their lot with deck and had no -- just
because it was after the hurricane, they could build 100%
of their deck, 100% of their lot.

You're setting a very bad precedent, that stuff that was improperly built without the proper Zoning Commission is considered pre -- as a grandfathered situation that could be built on. And all of this hardship has been created by Mr. Nelson, because he didn't follow the Village Codes, which clearly states that 20 -- that anything over 20% should go through the Zoning Board first. And the first thing the Building Department should have said, which denied us and kept saying, until we dug it out of the record, that all construction of anything -- and you just heard that little deck that wanted to go a few feet has to go through here. And if this is not done, it changes the whole nature of the dune. And, also, there is real safety issues with future floods and washouts with maximum coverage.

CHAIRMAN GESSIN: Okay. How did you measure the footage of this house?

MR. MERRELL: I measured it two ways. One, on the plans, I measured -- I added up the side measurements of the plans. Second of all, I went to the Building Department and used the scale and scaled it.

CHAIRMAN GESSIN: Okay.
MR. MERRELL: And I've also had 40 years of building experience.

CHAIRMAN GESSIN: This was done by computer by the surveyor.

MR. MERRELL: That Doesn't matter what the survey says, it's not --

CHAIRMAN GESSIN: This footprint was done by the computer.

MR. TERCHUNIAN: Right.

CHAIRMAN GESSIN: It says 23. --

MR. MERRELL: No, he doesn't even have 23. The 23 is established on a house that was there -- that was built improperly after, after --

MR. TERCHUNIAN: Mr. Merrell, can I address your points? You've made your points.

MR. MERRELL: Okay.

MR. TERCHUNIAN: You have three points, so they deserve to be addressed.

MR. MERRELL: Okay.

MR. TERCHUNIAN: So let's address them.

CHAIRMAN GESSIN: I measure all the time, I do this for a living. I can't compete with a computer. I'll never come out with the same number.

MR. TERCHUNIAN: So your first point is that he needed to apply to the Zoning Board.
MR. MERRELL: Right.

MR. TERCHUNIAN: Okay. So let me explain the procedure in this Village, and all Villages, is that your first stop is always to the Building Department and you make your application there. And if the Building Inspector deems that he could issue a permit, then he does. And if he deems or she deems that they can issue a permit, or they cannot issue a permit, then they will tell you the reasons why and refer you to the Zoning Board.

MR. MERRELL: Right.

MR. TERCHUNIAN: In this particular case, the sequence appears to have been that the Nelsons arrived, they applied for a building permit, and the Building Department made an error, and they issued a building permit when they should have referred it to the Zoning Board.

MR. MERRELL: Correct.

MR. TERCHUNIAN: So the Nelsons didn't do anything improperly.

MR. MERRELL: I didn't say that, I said the Village.

MR. TERCHUNIAN: Now's the time where I'm responding to you.

MR. MERRELL: Okay.

MR. TERCHUNIAN: So, number one, the sequence is Building Department first always, not Zoning Board first,
that's number one. Number two, well, number two, you say that you have scaled the plans that were submitted.

MR. MERRELL: Right.

MR. TERCHUNIAN: And you have arrived at different numbers.

MR. MERRELL: Correct.

MR. TERCHUNIAN: This Village and all Villages require that building plans and surveys be submitted by licensed professionals who carry air ozone emissions policies who have to back up what they submit to us with those policies and their professional licenses. We need to not substitute our judgment against a professional who's licensed by the State of New York to practice that field.

And so, whereas I appreciate -- I have gone through many of the same things you have. The fact of the matter is if the Village is presented with a document by a licensed professional who's licensed by New York State Education Department, that is presumptive as being accurate. And we'll, obviously, be happy to take a look at it again, but that is the procedure that is followed universally throughout New York State.

Your third point was that you dispute the fact that the preexisting, the legal preexisting coverage is 23.6%, and you're pointing out to the Board that if they want to
consider the 23.6%, it's not necessarily grandfathered.

    MR. MERRELL: Correct.

    MR. TERCHUNIAN: And I would point out to you, thank you for that information, we'll review it, but, in fact, the applicant has requested the proper relief, which is 23.6% or 23.6 overall.

    So the thing that's in front of the Board is, in fact, the thing that they're asking for. The Board can consider all of the facts in the case, including the grandfathering and the Rapf, et. al., and the application on its merits absent those things.

    MR. MERRELL: Yes, but in the building code --

    MS. PETINO: May I talk?

    MR. MERRELL: Go ahead.

    MS. PETINO: Okay. All right. I think we're going to need a backup of the surveys, because -- oh, Carol Petino. I did an overlay on the computer --

    CHAIRMAN GESSIN: Sure.

    MS. PETINO: -- where the houses really do overlay, they all match. Look at this.

    MEMBER MIZZI: Which houses are you referring to?

    MS. PETINO: Here we are in 1995.

    MEMBER SARETSKY: Existing.

    MR. MERRELL: That's the only thing he has a right to build to.
MS. PETINO: Now we're in '14. The house matches right up. This is the house. Here's the deck without the variance. And now let's go to the new house. It goes right top again. Line it up from the septic tanks. These lines, I don't know what happened, it seems to be stretched or something, because it does not line up.

MEMBER MIZZI: Which lines?

MS. PETINO: The easement.

MEMBER MIZZI: Okay.

MS. PETINO: But the rest of it all seems to line up. But the strange part is --

MEMBER GOLDFEDER: The west side of the easement.

MS. PETINO: Yes.

MEMBER MIZZI: You're saying -- you're saying this one, aside from the easement lines, lines up with the prior survey?

MS. PETINO: Oh, yeah. You'll see everything goes right on top over there.

MR. TERCHUNIAN: Ma'am, are you submitting this for the record?

MS. PETINO: I'm going to have to do another one, because this is the only one I have. I'll get you better paper.

MR. TERCHUNIAN: The Board can't consider it until it's given to them.
MS. PETINO: Well, then I can put this in the record. They can certainly look at it now. I could submit it tomorrow.

MR. TERCHUNIAN: You can submit it tomorrow?

MS. PETINO: Perhaps if I'd had a little bit more notice --

MR. TERCHUNIAN: As long as we have a copy for our file.

MS. PETINO: Yes, you will. You finish, and then I want to say something.

MEMBER MIZZI: So you're presenting that the current house, pretty much with the exception of some corners, overlays to the house that existed recently, which is this one with the decks, but not with the one from some time ago?

MS. PETINO: Well, the house matches up. And this --

MEMBER MIZZI: What I said, we're talking about lot coverage.

MS. PETINO: Right, we're talking about lot, yeah.

MEMBER MIZZI: So the decks and the house.

MS. PETINO: Yeah. But, see, these were never provided with a variance.

MEMBER MIZZI: Okay.

MS. PETINO: So --
MEMBER MIZZI: But I'm just asking a factual question.

MS. PETINO: Okay.

MEMBER MIZZI: This -- if someone were to say the house that was taken down and was replaced with the new structure that's going up, it pretty much aligns with the structure that was there.

MS. PETINO: Yeah.

MEMBER MIZZI: Okay. And do you agree that that's 23.4?

MS. PETINO: No, I can't. I cannot agree to that.

MEMBER MIZZI: Okay.

MS. PETINO: Because the point where it's very kind of difficult to read all of these numbers --

MEMBER MIZZI: Right.

MS. PETINO: -- the number of the --

MR. PROKOP: Laura, do you have building plans in the file?

MS. DALESSANDRO: (Nodded yes.)

MS. PETINO: Of the side yard --

MR. PROKOP: Can I see?

MS. PETINO: Of the side yard setbacks --

MEMBER MIZZI: Right.

MS. PETINO: -- even though these all match up --

MEMBER MIZZI: Yeah.
MS. PETINO: -- it's different on every survey.

MEMBER MIZZI: Okay.

MS. PETINO: So something's wrong. I don't know what's wrong, but something's wrong.

MEMBER MIZZI: But I would say --

MS. PETINO: And these should be all the same. If this is 11 feet, this should be 11 feet, and this should be 11 feet, but they're not, so something's wrong.

MEMBER MIZZI: Right.

MS. PETINO: Now there I'm not a trained professional.

MEMBER MIZZI: Right.

MS. PETINO: But I am a professional when it comes to doing the layout.

MEMBER MIZZI: What I'm going to say, you know, what's going to happen, if this surveyor is saying this is 13, and this is 13, and this is 17.4, this is just a -- it's not an as-built survey, it's a survey that provides laying out the house. It has to be submitted at the end of the project. And at that point --

MS. PETINO: Oh.

MEMBER MIZZI: No, no, listen.

MS. PETINO: Okay.

MEMBER MIZZI: The licensed surveyor has to by law -- they would lose their license by not telling you
the actual, the actual number from the property line to
the house.

MS. PETINO: See, but I'm not very -- I'm not so
concerned about that. What I'm concerned about --

MEMBER MIZZI: Right.

MS. PETINO: -- is the square footage here.

MEMBER MIZZI: Right.

MS. PETINO: And that's -- so you're building on a
house of cards with a horse before the cart, if we
can't -- if we can't tell what's really here? We have to
wait until after? I mean, the poor deck guy can't build
his deck. And what does he mind? He wants like a little,
tiny deck. This is an entire house that you're going to
wait until after it's constructed?

CHAIRMAN GESSIN: Well, he won't get a CO if it's
not correct.

MS. PETINO: I don't care whether he gets a C of O.

MEMBER MIZZI: But that's the process. I mean,
we --

MS. PETINO: I thought the process was lot coverage.

MR. TERCHUNIAN: Well, ma'am may I ask you a couple
of questions about these documents?

MS. PETINO: Uh-huh.

MR. TERCHUNIAN: You prepared these documents?

MS. PETINO: Yes, I did.
MR. TERCHUNIAN: Okay. Are you an engineer?
MS. PETINO: No, I'm not an engineer.
MR. TERCHUNIAN: Are you an architect?
MS. PETINO: No, I'm not an architect.
MR. TERCHUNIAN: All right.
MS. PETINO: It was prepared with a graphic designer.
MR. TERCHUNIAN: Okay. I just need to --
MS. PETINO: And off of your surveys from your Village --
MR. MERRELL: So one survey --
MS. PETINO: -- that was submitted by everyone involved.
MEMBER GOLDFEDER: Can I ask a quick question now?
MR. TERCHUNIAN: Sure.
MEMBER GOLDFEDER: As surveyors go, is Nabdanum (phonetic) used by one and not by others?
MR. TERCHUNIAN: No, it's universal.
MEMBER GOLDFEDER: So it's universal. So the concept used is universal for all surveyors, not different types of techniques?
MR. TERCHUNIAN: Correct.
MEMBER GOLDFEDER: Thank you.
MR. TERCHUNIAN: But ma'am, all I'm trying to do is to provide on the record how these documents were created.
and who created them.

MS. PETINO: Okay.

MR. TERCHUNIAN: Okay.

MS. PETINO: They were created with myself and my partner. We scanned the surveys that exist in the public record and that are up on this application, and then we put them to scale.

MR. MERRELL: On top of each other?

MS. PETINO: On top of each other.

MR. MERRELL: So the scaling is the same.

MS. PETINO: As a graphic designer who --

MR. MERRELL: Does this.

MS. PETINO: Does this. No, he's not an architect.

MR. TERCHUNIAN: Was there anyone involved in this process who's a licensed professional by New York State Education Department?

MS. PETINO: Would he be licensed? I'm not sure about that. I'd have to get back to you.

MR. MERRELL: Under the Village Code, it says all plans should be able to be read by a layperson. And you keep saying that a layperson can't saying anything, only a licensed architect.

MEMBER SARETSKY: I don't think that's what he's saying.

MR. TERCHUNIAN: No, sir, I never said that.
MR. MERRELL: Okay.

MR. TERCHUNIAN: And she did a very, I thought, impressive job of describing the materials. It's important that we understand how these materials were prepared.

MR. MERRELL: Well, my question is the licensed architect should be at this meeting.

MR. PROKOP: Hold on. Hold on for a second.

MR. MERRELL: So the questions about the square footage could be asked.

MR. PROKOP: We have to do one thing at a time. I'm sorry. You don't have to worry about being cross -- we're not -- you don't have to worry about being cross-examined, you're allowed to submit things to the Board, and you could submit whatever you like. Okay. It doesn't have -- what you submit doesn't have to be stamped or sealed by anybody.

There is a problem, however, because you pointed -- you're pointing to something that you apparently spent a lot of time creating, but we don't have it. Okay. The fact that you have it and showed it to us doesn't -- we don't have it. So if you'd like us to have it for part of the -- for the record, you need to give us a copy.

The meeting, what's going to happen at the end of today's meeting, it's going to be adjourned. Your
comments are on the record. You could make the comments
again at the next hearing, if you'd like to and the
Chairman allows you to. But if you'd like those documents
to be considered by the Board, they have to be in the
record, please, in whatever format you'd like to.

With respect to Mr. Merrell's comment that he made
some time ago, I'd just like to point out to the Board,
and I'm not -- this is just a legal comment, I'm sorry, I
apologize, I don't mean to be -- pretend to be a surveyor
or a building plan generator, but there's no -- there's no
rear yard setbacks shown on the property -- on the survey.
I think what he's -- I don't want to --

CHAIRMAN GESSIN: Sure, there is.
MR. PROKOP: It's to the deck, it's not to the
house, right?
CHAIRMAN GESSIN: To the --
MS. AUDET: Oh, you're right.
MR. PROKOP: Okay. The second thing is that the
dimension -- I think what Mr. Merrell is indicating -- and
I'm making this comment on behalf of the Village, not on
behalf of Mr. Merrell. I'm just trying to straighten this
out, so we could straighten out our records, if it needs
to be. There's no -- the building dimensions are not
shown on the survey. What's actually -- what's shown on
the survey is the setbacks. You could deduce the building
dimensions by subtraction from the survey, but I think what he's saying -- and, again, Mr. Merrell, with all due respect, please correct me if I'm wrong. What he's saying is that he did that, he went in and looked at the building plans and they don't match up with what -- that subtraction doesn't match up, apparently.

    MR. MERRELL: Right. He's calling the --

    MR. PROKOP: So somebody has to figure that out. Like, in other words, if you subtracted this, you could figure out that the house is whatever it is, 49 feet or something, or 50 feet, or 20 feet, whatever it is, but, apparently, there's a comment that it's not.

    MR. MERRELL: Right. He's saying that the house and deck together is basically 2500 square feet, 24 --

    MR. TERCHUNIAN: Respectfully --

    MR. MERRELL: 2,496, but it doesn't at up.

    MR. PROKOP: But this has to be -- we have a question that just has to be --

    MR. TERCHUNIAN: But, respectfully, whether it's house or deck, you know, that's an issue for the Building Inspector to determine. The Zoning Board is looking at what the setbacks are and what the coverage is. Those are the things that are being requested of us.

    MR. MERRELL: But the house and deck is the coverage. The house -- the Square footage of the house is
the coverage. That's the most crucial point.

CHAIRMAN GESSIN: But it's on the plan.

SERGEANT HENNIG: You've got to lower your voice.

Lower your voice. Thank you.

CHAIRMAN GESSIN: That's on the plan.

MR. TERCHUNIAN: But what's on the plan is by a licensed surveyor that describes the area of all of the different features, and it provides minimum setback distances to the identified features. That is the thing that's within the jurisdiction of the Zoning Board.

MS. PETINO: Not lot coverage?

MR. TERCHUNIAN: And lot coverage is also provided.

MR. MERRELL: No, it's not. I respectfully disagree.

MR. TERCHUNIAN: It's right on the survey.

MR. MERRELL: But it's not -- but it's inaccurate.

MS. PETINO: But it's not -- you cannot document it.

It's not --

MEMBER MIZZI: May I speak?

MR. TERCHUNIAN: Yeah. You're on the Board, you get to talk any time.

MEMBER MIZZI: No. I think -- I just want to say for the record, my observations, from the paperwork that was shown, are that it appears that the house as drawn on this piece of paper is very, very close, except for some
changes in angles, to the survey that preceded it, that --
and I'm using the drawing that was presented to us.

I think, for me, if the question is -- if the
question is someone is challenging that -- so what's shown
here seems to be replacing what existed, based upon two
separate surveys taken some time ago. If the question is,
does that represent 23.6% for 2,490 square feet, my only
point was it's not a matter of waiting until the end in
deciding, it's when you build a house and a surveyor tells
you this is where the house would be laid out, and then
the builder builds the house, at the end of the day,
someone has to measure the house and say that's accurate.
You're asking a different question, which is for someone
to demonstrate to you that this represents 24 -- 2490
square feet of lot coverage.

You're saying it should be properly be able to be
read on the plans. We're looking at a survey. Usually
one looks at, you know, a grouping of plans.

MR. MERRELL: Right.

MEMBER MIZZI: I don't know if those exist, but
someone asked if those plans were here. But, for me,
if -- when I'm looking at number one, which is -- so is it
23.6? We're being told by a surveyor it is. If there's a
question about it, I think this is something that has to
be clarified. It appears to be exactly what was on the

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last submission that's on file. Whether that received a variance or not, we're still being requested to review a variance of 3.6%, more than 20%.

And we're allowed to consider the fact that the man who had a house there laid a new house out on what, even using you're drawing, on almost exactly what was there. So, for me, I have a couple of questions, but we're not -- we're concluding, I think, that what you're saying, that this matches the last -- what was there before the house was removed is accurate. Whether that's -- if that's 2490 square feet or more, then it affects us, because we're considering it to be 3.6%, not -- or the request to be 3.6%, not more.

MS. PETINO: How would you figure that out now?

MEMBER MIZZI: Well, it could be -- it's math. I mean, it's on a --

MEMBER SARETSKY: I think what Joe is saying is the architect who worked off of this used a CAD program electronically that is calculating this number. Now we could certainly ask him to check it or look at the architectural drawings.

MS. PETINO: I think it should be in the file.

MEMBER SARETSKY: Sure.

MR. TERCHUNIAN: But I think --

MR. MERRELL: I mean, the file should be here.
because this is a variance hearing where lot coverage is questioned, and the licensed architect is not here.

MR. TERCHUNIAN: Sir, yes.

MEMBER MIZZI: But with all respect --

MR. TERCHUNIAN: That is a licensed document. That is presumptive evidence.

MEMBER MIZZI: And with all respect, you know, if the group agreed that there was -- it warranted -- we've often sent people back to provide information. So we -- it doesn't -- it has nothing to do with who comes, it's the information we require. So we --

MR. MERRELL: The only survey --

CHAIRMAN GESSIN: And, truthfully, whether he -- whether he had exactly 3.6 or not, he's asking for 3.6.

MR. MERRELL: No, but he's not asking for 3.6.

CHAIRMAN GESSIN: He's asking for 3.6.

MR. MERRELL: He's not asking for 3.6. He's asking for 25.6. And just because the line-ups, the one drawing is showing 62 feet, another drawing is showing 64 feet 6 inches, you know, it's like the loosey goosey numbers of this.

CHAIRMAN GESSIN: You're not listening to me, we're not approving 25. We're going to approve what he -- approve or deny what he's asking for. We're not going to approve --
MR. MERRELL: And I have to say something about the architect. The architect --

CHAIRMAN GESSIN: I don't care about the architect. We're not reviewing -- we're not voting on the architect.

MS. PETINO: But this is like -- this is like, well, there's a house being built with no approval yet, and you're approving 23.6%.

CHAIRMAN GESSIN: We didn't approve anything.

MEMBER MIZZI: We didn't approve anything.

CHAIRMAN GESSIN: We're just listening.

MR. TERCHUNIAN: Ma'am, there is a valid building permit issued by this Village that's in force.

MR. MERRELL: No, no. We question whether that's valid. Under the code, it is not valid. You keep saying "valid", it's not valid. And you guys have the right to --

SERGEANT HENNIG: You got to stop raising your voice, please. Just speak -- we're in a small room here, there's no reason to speak that loud.

MR. MERRELL: Okay.

MEMBER MIZZI: Mr. Merrell, the point that the Chairman was making is if we approve 23.6, nothing can be built more than 23.6. It could be built illegally, and he'd find himself back here, and you'd have a pretty strong case to say, "I made my" -- "I told you guys it was
23.6," or "It was 25 and you approved 23.6." The man left
the room, did what he wanted, came back, and at the end of
the day, we're going to rely on the as-built survey to
tell us whether it's 23.6, not drawings, not tape
measures, a licensed survey.

And I would say, I'm in the building industry as
well, I build commercial buildings in New York City. I've
never heard of a surveyor, except one that made a
mistake -- they use electronic equipment now. At the end
of the day, he's going to establish these points, which
are the property lines, the lot area of the lot. He's
going to be required just to submit -- just to get flood
insurance, this information has to be all done. At the
end of the day, he's -- the guy from Fox Surveying in
Westhampton Beach is not going to, you know --

MS. AUDET: Jeopardize his --

MEMBER MIZZI: He's not going to make it become 25
on a plan to help Yale to your detriment, to our benefit,
to anything. I mean, sometimes they measure and there's a
rule, like if it's -- if it's four foot, it's supposed to
be a four-foot walkway and it's four foot and a half of an
inch, or a fraction of an inch, the guy will do that. But
they're not -- they're not going to change a lot coverage.
I mean, we have to rely that if we approve 23.6, that
Mr. Nelson is going to build something to 23.6, that --
and if it's not, then I would say you have a -- you're going to it be -- have a very strong argument as a neighbor to say, "I raised the flag loud and clear, I made my case, you didn't listened to me, the Board listened, Mr. Nelson didn't listen," and then we'd have to have another hearing. It would have to come before the Zoning. He wouldn't be able to get a permit.

CHAIRMAN GESSIN: He won't get a CO.

MS. PETINO: So what happens, then? Let's just go to the future and the house is built, it's 25%.

MEMBER MIZZI: He'd be taking decks down.

MEMBER SARETSKY: Right. He'd have to reduce it to make it comply.

MEMBER MIZZI: He'd be taking decks down.

MS. PETINO: Or he wouldn't get a C of O.

MEMBER MIZZI: Correct, right.

MS. PETINO: Or flood insurance.

MEMBER GOLDFEDER: He wouldn't be able to sell the house.

MS. PETINO: Or sell the house.

MEMBER SARETSKY: He wouldn't be able to sell the house.

MEMBER MIZZI: He wouldn't be able to get title insurance.

MEMBER SARETSKY: Title insurance.
MS. PETINO: Title insurance. Okay.
MR. MERRELL: See, we disagree with the 23%.
MEMBER MIZZI: We haven't proved that yet. That's a different argument. We haven't even talked about that yet. We're just saying he's --
CHAIRMAN GESSIN: Let us do our job.
MEMBER MIZZI: He's asking --
MS. PETINO: We'll be quiet for a while.
MEMBER MIZZI: He's asking us to approve 23.6%, and we're going to hear that. We're going to make the determination, but we have -- and you're allowed -- but he's allowed to tell us why he doesn't agree with 23.6%.
CHAIRMAN GESSIN: You can tell us whatever you want, that's what the hearing is, but we've heard it.
MEMBER MIZZI: No. What I'm saying is we didn't say we agree with it, we're just saying is that's what we're basing our -- the request on and the information we're using. Thanks.
CHAIRMAN GESSIN: Okay. Yes.
MR. PENNESSI: Hi. Dan Pennessi from 836C Dune Road. I'm making a suggestion. Having been here at the last meeting, and something that the Board had asked a prior applicant, was to show both the setbacks and the coverage of the existing improvements and the proposed.
CHAIRMAN GESSIN: Right.
MR. PENNESSI: And I think that that may reconcile -- I think that what Carol is saying is that she's having trouble reconciling the setbacks, if it is, in fact, that the existing improvements have the same lot coverage as the proposed improvements. So perhaps one way to do it is to try to reconcile those two surveys by licensed professionals.

MEMBER MIZZI: The only thing I'd say is I think they're consistent between the two drawings that she prepared. And this survey is -- those are old surveys, those are hand-drawn surveys. This is the current survey. It's going to be -- this is how the house was laid out. If -- possibly, if it was laid out improperly relative to the property line, that's going to be -- it's going to come back to us, I mean, if there's a missing dimension here. But I think we consider a survey from Fox Surveying to be -- this is telling us these are the locations to which the house will be built. And so I don't think there's any question. Whether it's being done properly, he's building it. Builders might make mistakes, but this is what -- we have to approve what we're being told will be built.

MEMBER GOLDFEDER: What -- do you have an objection to the setback?

MR. PENNESSI: No. I'm just making the comment to
suggest that I think that what's been raised is that there were varying setback distances noted on two separate surveys, one of the existing improvements, and one on the survey for the proposed improvements, and perhaps it it's just a reconciliation of the two.

MEMBER MIZZI: I don't know that's relevant, because this -- these setbacks comply, certainly on the side yards. I did some calculations myself with more than 40%. And, again, it's easy. Like we're approving this. If we approve it, they'll need our approval for the side yard setbacks. They have to prove to the Building Code with an as-built survey that the house is 17.4 feet, and 16.7 feet, and 13 feet, and they'll do that. That's not even part of it of us. They're not even asking for our approval on it, they don't need it.

And similar to the lot coverage, if we approve a variance for a front yard setback, we're going to approve what's shown and requested here, and then they're going to have to build it to that. If they don't, they're going to find themselves here with a Sawzall cutting a deck. But it's -- that's what I -- my view, personally.

CHAIRMAN GESSIN: Any other questions? Any other comments from the Board?

(No response.)

CHAIRMAN GESSIN: Joe, do we close the hearing, or
we just --

MR. PROKOP: No. It has to be adjourned.

CHAIRMAN GESSIN: Okay.

MR. PROKOP: Keep it open, adjourn.

CHAIRMAN GESSIN: Now, when are we going to hear back from Suffolk County?

MS. DALESSANDRO: Forty-five days, which would be the 8th of April.

CHAIRMAN GESSIN: Okay. So we want to set a date for the next hearing?

MR. PROKOP: Well, we can ask him for a Letter of Nonjurisdiction. Normally -- I mean, Local Determination. I wasn't aware that we didn't get it before today. So, otherwise, I would have called and gotten it. But the -- you know, I don't know if it's -- if you have to wait the 45 days, is, I guess, what I'm saying. I mean, it's possible to call them and just ask for the letter.

MR. TERCHUNIAN: Yeah.

MR. PROKOP: Or you could wait the 45 days.

MR. TERCHUNIAN: They do -- they try to help out, but they're very slow in that office.

MR. PROKOP: So the answer is, if you want to play it safe, it has to go 45 days.

CHAIRMAN GESSIN: When would that be?

MEMBER SARETSKY: April

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MR. TERCHUNIAN: April 6th.

CHAIRMAN GESSIN: A month.

MS. DALESSANDRO: The 8th.

MR. NELSON: What is that waiting for?

MR. TERCHUNIAN: Suffolk County Department of Planning sends a comment. They had a comment letter.

MR. PROKOP: Do you have something?

MS. AUDET: No. I just wanted to know why we were here after the fact, that's all, but it was answered for me that someone made a mistake. So I just hope when I come, then nobody is going to be complaining.

(Laughter)

MS. PETINO: May I clarify one -- are you done? I'm sorry.

MS. AUDET: Yes.

MR. PROKOP: Well, I think we're done.

MS. PETINO: I need one thing clarified so I can sleep tonight.

MEMBER MIZZI: We want you to sleep tonight.

MS. PETINO: You do want me to sleep tonight.

MR. PROKOP: Do we have a date? So, did we come up with a date? What's the 45 days, when does that run out?

MS. DALESSANDRO: Forty-five days was April 8th.

CHAIRMAN GESSIN: That would mean --

MR. PROKOP: So that's when we can act on -- is
April 8th, is what, a Wednesday?

MS. DALESSANDRO: It's a Wednesday.

CHAIRMAN GESSIN: So it would be the 11th.

MR. PROKOP: Yeah. That's okay with me.

CHAIRMAN GESSIN: Is that an okay date?

MS. DALESSANDRO: Is that an okay date?

CHAIRMAN GESSIN: Guys?

MEMBER MIZZI: What date would that be?

CHAIRMAN GESSIN: April 11th.

MEMBER MIZZI: I'm going to be out of town. I'm going to be out of the country.

MEMBER GOLDFEDER: When do you get back?

MEMBER MIZZI: Actually, the 12th.

CHAIRMAN GESSIN: You'll be out on the 12th or you --

MEMBER MIZZI: I won't be out on the 12th, I'll be back in the country.

MR. TERCHUNIAN: Jim will be back.

MEMBER MIZZI: But Jim could do it, I'm fine.

MEMBER GOLDFEDER: How's the 18th?

MEMBER MIZZI: I'm free the 18th, if it needs to be the 18th

MR. PROKOP: I won't be here the 18th.

CHAIRMAN GESSIN: Okay. Let's pencil it in for the 12th, and we'd have to see if he's --

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MEMBER MIZZI: Eleventh.

CHAIRMAN GESSIN: Eleventh, rather, okay? If he's good, we'll do it for the 11th.

MR. PROKOP: So I would make a motion -- the motion is to adjourn to the --

CHAIRMAN GESSIN: Adjourn to --

MEMBER MIZZI: She wants to ask a question.

MR. PROKOP: Oh, I'm sorry.

MS. PETINO: Thanks. I just had it in my head that you needed a public hearing for any kind of construction over 20% before you could get a building permit; is that true or false?

MR. PROKOP: I'll take a look at that.

MEMBER MIZZI: Yeah.

MR. PROKOP: I'm not familiar, you know --

MEMBER MIZZI: Yeah. Just from my personal perspective, I'm a homeowner, I'm volunteering on the committee here doing this. If -- I'm not giving anyone a free pass, but if somebody applied to the Building Department and wasn't told they needed a variance, and, therefore, a variance didn't get submitted to us, we get it in the mail at our homes and we come into the meeting and we hear the variance, so I can't really answer whether --

MS. PETINO: That part of it.
MEMBER MIZZI: Right. We certainly know today that a variance is necessary, and we're starting the process of considering whether or not -- how we vote on the variance individually. That's -- you know, so it's really not -- you know, you're speaking to us, but we're residents, you know.

MS. PETINO: So who would I speak to?

MR. TERCHUNIAN: The Village Attorney will answer your question.

MS. PETINO: Whom would I speak to?

MR. TERCHUNIAN: He'll answer your question, he'll respond.

MR. PROKOP: Well, that's something you could -- well, actually, I respond to the Board.

MR. TERCHUNIAN: Oh, I'm sorry, I apologize.

MR. PROKOP: But that's -- so I'll respond to the Board. And then that's -- if you have a question -- a question like that is really something to ask at a Trustees meeting.

MEMBER MIZZI: Yeah, I think it's more appropriate.

MR. PROKOP: Yeah, that's a broader policy issue -- question. I'm not saying it's an issue, I'm saying if you have a question like that.

MR. TERCHUNIAN: Ma'am, if I understand your question, you're asking, if somebody wants to build more
than 20% on their lot, do they have to get a variance, is that your question?

MS. PETINO: No. My question is, I was on the understanding that when you applied for a building permit, if it was over 20%, a public hearing was required. Now, maybe --

MR. TERCHUNIAN: Let me answer your question. It's a very simple question, okay? The Village has a Zoning Code. The Zoning Code sets -- identifies setbacks from front yard, side yard, rear yard, it identifies elevations that the structure has to be, identifies the height it has to be, and it identifies the lot coverage, okay? If somebody can't comply with those zoning setbacks, they are free to apply to the Zoning Board of Appeals for a variance from those zoning codes.

MS. PETINO: But how would I get --

MR. TERCHUNIAN: And then the Zoning Board will hold a public hearing on whatever application is put in front of them exactly what has taken place today.

MS. PETINO: But how -- okay. So I think I want to go. What do I have to do to get a building permit?

MR. TERCHUNIAN: You have to fill out a building permit application, provide the appropriate fee, a set of plans, a series of insurances, etcetera. It's all spelled out.
MS. PETINO: And in that it said anything over 20% had to be brought to a public hearing.

MR. TERCHUNIAN: I'm going to repeat myself, okay? It's not just the 20%. The 20% lot coverage is one aspect of zoning. There are other aspects of zoning, front yard setbacks, side yard setbacks, rear yard setbacks, FEMA elevation, height of the building. All of those need to be complied with, otherwise, you have to go -- you have the opportunity to apply to the Zoning Board of Appeals that requests that the Village vary those codes on a case-by-case basis. That's what happening here today.

MS. PETINO: Okay.

MR. TERCHUNIAN: That is the public hearing.

MR. PROKOP: I have two motions I need from the Board.

CHAIRMAN GESSIN: Okay.

MR. PROKOP: So did we do the motion to set the hearing, or was there a motion to adjourn the hearing to --

CHAIRMAN GESSIN: We got lost.

MR. PROKOP: You got lost.

CHAIRMAN GESSIN: The other thing we didn't deal with was the fees.

MR. PROKOP: I'm going to take care of that in a second.
CHAIRMAN GESSIN: Okay.

MR. PROKOP: I'm sorry. Thanks for reminding me.

So the question is -- the motion is to adjourn the public hearing, open until April 11th.

MEMBER SARETSKY: Moved.

CHAIRMAN GESSIN: Would someone like to make a motion to adjourn this hearing to --

MEMBER SARETSKY: I would be glad to.

CHAIRMAN GESSIN: Would someone like to second?

MEMBER GOLDFEDER: I'll second it.

MEMBER MIZZI: I vote yes.

CHAIRMAN GESSIN: Okay. Adjourn it to April 11th.

MR. PROKOP: We have two resolutions we need to do. The first is, with regard to the fees, we have --

MEMBER MIZZI: What fees?

MR. PROKOP: So the fees are the --

CHAIRMAN GESSIN: The fees for the stenographer, for Aram.

MR. PROKOP: For professional and consultants.

CHAIRMAN GESSIN: And the Village Attorney.

MR. PROKOP: So the fees regarding -- the fees for professionals, consultants and the stenographer should have been a condition on the two approvals that we did first, Panayis and Herson. So I'm making --

MEMBER MIZZI: Put it all on Yale's.
(Laughter)

MR. PROKOP: I'm making a recommendation -- the first is that the Board approves a motion to add those fees pro rata to Panayis and Herson, those approvals.

MEMBER SARETSKY: Yeah, I move.

MEMBER GOLDFEDER: I second.

CHAIRMAN GESSIN: Would someone like to make a motion? You'll make the motion.

MEMBER SARETSKY: Yes.

CHAIRMAN GESSIN: Yes.

MR. PROKOP: The second is that I think as a policy, you should set the Board's policy that in the future all applicants will be responsible for the stenographer, the pro rata cost for a stenographer, professional and consultant fees that are attributed to their application and hearing.

CHAIRMAN GESSIN: Yes.

MEMBER SARETSKY: I make a motion to move it.

MEMBER GOLDFEDER: On an annual basis, or an individual basis?

MEMBER SARETSKY: Individual.

CHAIRMAN GESSIN: Individual basis.

MEMBER GOLDFEDER: Because, in the aggregate, if you come forward and you're the only one coming forward, then you are penalized for the --
MEMBER SARETSKY: Paying it all.

CHAIRMAN GESSIN: Yeah. If there's one person at that hearing, they'll pay the whole thing. If there's two, they'll split it. And if there's three --

MEMBER MIZZI: Frankly, if that was their biggest concern, you can wait until those, you know --

CHAIRMAN GESSIN: Yeah, right, just wait.

MR. PROKOP: So that's approved. Okay. I would just like to add the stenographer, since these aren't depositions, could you set up the pages so there's more words on each page? We could do smaller margins, that would be okay. Thank you.

CHAIRMAN GESSIN: Is that it?

MR. PROKOP: I just asked her to reduce the cost of this.

(Laughter)

CHAIRMAN GESSIN: I make a motion to adjourn this hearing.

(Whereupon, the meeting was adjourned at 12:04 p.m.)
CERTIFICATION

STATE OF NEW YORK )
) SS:
COUNTY OF SUFFOLK )

I, LUCIA BRAATEN, a Court Reporter and Notary Public for and within the State of New York, do hereby certify:

THAT, the above and foregoing contains a true and correct transcription of the proceedings taken on March 7, 2015.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of March, 2015.

_________________________________
Lucia Braaten

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