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2 INCORPORATED VILLAGE OF WESTHAMPTON DUNES

3 ZONING BOARD OF APPEALS

4 -----X

5

6 February 4, 2017

7 10:00 a.m.

8

9 Meeting held at 906 Dune Road,

10 Westhampton Dunes, New York.

11

12

13 A P P E A R A N C E S:

14

15 Harvey Gessin - Chairman

16 James Cashin - Member

17 Kenneth W. Siegel - Member

18 Eric Saretsky - Member

19 Joseph Mizzi - Member

20

21 Joseph Prokop - Village Attorney

22 Arom Terchunian - Environmental Consultant

23

24

25



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(Whereupon, the meeting was

3

called to order at 10:16 a.m.)

4

CHAIRMAN GESSIN: I'd like to call this

5

meeting to order. This is the Westhampton

6

Dunes Zoning Board. Today's date is

7

February 4th.

8

I would like to start by doing the Pledge

9

of Allegiance.

10

(Whereupon, all stood and recited the

11

Pledge of Allegiance.)

12

MR. TERCHUNIAN: Mr. Chairman,

13

your first advertised hearing is in the

14

matter of 13 Dune Lane, LLC. The Suffolk

15

County tax map number 907-01-01-48. 13

16

Dune Lane, Westhampton Dunes, New York.

17

A front yard setback variance of 16 feet

18

for a primary structure where a front yard

19

setback of 60 feet is required and the

20

proposed front yard setback is 44 feet.

21

A front yard setback variance of 16 feet

22

for the front stairs where a front yard

23

setback for stairs is 50 feet is required

24

and the proposed front yard setback for

25

the stairs is 34 feet.

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2 A rear yard setback variance of 15 for the  
3 primary structure where a rear yard  
4 setback of 30 feet is required under the  
5 3/10 reduction in the required rear yard  
6 rule (560-41(D)(2) and the proposed rear  
7 yard setback is 15 feet.

8 A maximum lot coverage variance of 5.3%  
9 (2.02% for the main structure), where a  
10 maximum lot coverage of 20% is permitted  
11 and the proposed lot coverage is 25.3%.

12 MR. HULME: Jim N. Hulme of  
13 Kelly & Hulme, P.C., 323 Mill Road,  
14 Westhampton Beach. I'm here for the  
15 applicant, 13 Dune Lane, LLC, for the  
16 recent owners for a property located at 13  
17 Dune Lane, which is 5,000 square feet; 50  
18 feet on the road and 100 feet in depth.  
19 We are seeking the necessary variances to  
20 construct a two-story single-family  
21 residence as the main use under the  
22 village code. I believe in the file you  
23 should have a copy of the house that we  
24 proposed. The clerk has identified for  
25 you the four variances that what we need

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2 in order to construct a house that has  
3 been designed for this location.

4 I think, in general terms, the house we  
5 designed here is very much in keeping with  
6 the neighborhood as a whole and relative  
7 to the properties which are directly  
8 adjacent to this property.

9 If we were to apply the zoning code for  
10 the Village of Westhampton Dunes for this  
11 lot, I believe we would end up with a  
12 negative number. Obviously, we need some  
13 level of variances in order to achieve the  
14 end that we're looking to construct the  
15 house that we proposed.

16 Just to give you an idea of space and time  
17 where this house is: It's a vacant lot.  
18 It's the one outlined in orange. As you  
19 can see, there are similarly-sized lots on  
20 either side of it.

21 MR. PROKOP: Was there ever  
22 anything here?

23 MR. HULME: I have not been able  
24 to discover anything here. It's been  
25 vacant for as long as anybody can

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2 remember.

3 In terms of the context of the  
4 neighborhood, the other thing I submitted  
5 -- hopefully, you have a copy of that --  
6 is somebody very nicely on a different  
7 variance application had done a nice  
8 analysis of this neighborhood. The  
9 deviations from the village code that have  
10 transpired with all of the other developed  
11 lots. I think this is the lost lot in  
12 need of being developed.

13 I think the analysis you have and the  
14 averages that that analysis achieved  
15 includes lots of various sizes. I'll talk  
16 in a minute about what the averages for  
17 this entire neighborhood was. I think  
18 it's educational to look at the house just  
19 to the right and the left, the east and  
20 the west, of the subject property in terms  
21 of what parameters they've established.  
22 Obviously, those are the lots most  
23 affected. They are also lots including  
24 one, two doors to the west that are  
25 exactly the same size, 50 by 100. Some

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2 other lots included in the averages are  
3 much larger lots.

4 If you look in the context of the variance  
5 that we are seeking, first of all, the  
6 front yard variance for the principle  
7 structure at 44 feet, the house to the  
8 west has a front yard setback of 44 feet,  
9 the house to the east has a setback of  
10 43.5 feet. The average for the whole  
11 neighborhood is about 40.1 feet. We're  
12 right there with everybody else in that  
13 neighborhood.

14 The front yard setback for the  
15 staircase -- which is one of the variances  
16 we've been advised by counsel is a  
17 necessary component of this -- we are  
18 looking for 34 and a half feet. The west  
19 and the east are a little bit larger than  
20 that. They also do not have the kind of  
21 staircase that we've proposed for the  
22 subject property. Interestingly, the  
23 neighborhood average is actually less than  
24 what we're seeking.

25 In the rear yard, we are looking for 15

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2 feet. Next door is 19 and a half feet and

3 16.8 feet. They're a little larger. The

4 neighborhood average is quite a bit

5 larger. That takes into account some rear

6 yard setbacks of some lots that are a

7 little bit larger than our lot.

8 Lastly is the coverage. We're looking for

9 25.3. The average in the overall

10 neighborhood is 23.5 but if you look at

11 the properties to the east and west, their

12 lot coverage is actually 31% and 35%,

13 respectively.

14 In summary, the point of all this is that

15 what we're proposing, I think, is very

16 comparable to what has already been

17 allowed there and what is the character of

18 the neighborhood. That's one of the first

19 factors, obviously, that needs to be

20 looked at in deciding.

21 I think if you're looking at the balancing

22 test, which is the standard by which you

23 need to decide to whether we are entitled

24 to these variances or not, the first

25 factor is --



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2 MR. CASHIN: Jim, excuse me.

3 Can you go over the lot coverage averages  
4 again?

5 MR. HULME: Sure. Ours is 25.3.

6 I would point out that the house itself is  
7 only 22.02. The rest of the coverage is  
8 the staircase. The neighbor just to the  
9 west is 31% coverage. The neighbor to the  
10 east is 35% coverage.

11 MR. SIEGEL: Do those include  
12 the stairs too?

13 MR. HULME: Yes, they do, to the  
14 extent they have stairs.

15 The overall average is 23 and a half for  
16 the entire neighborhood.

17 MR. CASHIN: Thank you.

18 MR. HULME: Sure.

19 So, undesirable change in the character of  
20 the neighborhood, I think we're building a  
21 two-story single-family dwelling that's  
22 very much in keeping with the size and  
23 shape and location of the other houses  
24 certainly directly on either side of us  
25 and in general of this particular

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2 neighborhood. If these variances are  
3 granted, I don't expect that this would  
4 produce an undesirable change in the  
5 neighborhood.

6 Whether the benefit may be sought by any  
7 other method, as I indicated, this lot,  
8 because of its size, had a negative  
9 building envelope. I would suggest to you  
10 that the level of the variances that we  
11 should receive should be comparable to  
12 what the neighborhood reflects. I think  
13 that we, for the most part, reflected  
14 that.

15 Whether the requested area variance is  
16 substantial, that's always difficult. I  
17 think you have to look at that in the  
18 context of what's here and whether or not  
19 the variances for the relief that we're  
20 looking for would create setbacks and  
21 coverages that are out of scale with the  
22 rest of the neighborhood. I hope you will  
23 agree that based on the analysis here that  
24 that's not the case.

25 Whether the proposed variances will

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2 adversely affect or impact the physical  
3 environmental conditions of the  
4 neighborhood, this is a single-family  
5 residential neighborhood. We are  
6 proposing a single-family residence. The  
7 land is going to be used in exactly the  
8 manner that the land provides for. We're  
9 proposing, with these variances, to be  
10 allowed to use the land in a way very  
11 similar with similar setbacks and similar  
12 coverages to other houses in the  
13 neighborhood that this lot sits in.  
14 So, therefore, I don't expect that there  
15 would be any adverse physical  
16 environmental impacts with a single-family  
17 residence.  
18 The last one is whether or not the  
19 difficulty is self-created. We didn't  
20 create the lot, the size of the lot. We  
21 didn't create the rules. We didn't take  
22 any affirmative steps to cause this lot.  
23 We are in need of these variances, so I  
24 would suggest, first of all, that the  
25 difficulty we're experiencing here, the

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2 overlaying of the village code on top of a  
3 smaller lot which produces a negative  
4 building envelope is not from our personal  
5 doing, therefore, it's not self-created.  
6 In any event, even if you disagree, that  
7 factor by itself is not sufficient to the  
8 denial of the variances that we're  
9 seeking.

10 At the end of the day, these factors that  
11 you are obligated by law to consider are  
12 really factors that you need to take into  
13 consideration when you are doing the  
14 balancing test, which the law actually  
15 requires you to do, to balance the  
16 benefits to the applicant.

17 The benefit to the applicant, I think, is  
18 very obvious. We have a vacant lot that  
19 we would like to build a house on.

20 Granting these variances will allow us to  
21 build that house. Again, even without any  
22 variances, we couldn't build any house.

23 The deterrent to the neighborhood, not  
24 really. I mean, everybody in this  
25 neighborhood only has the right to expect

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS  
2 that a house may some day be built on this  
3 separate, unidentified lot.  
4 The balancing test as well as the analysis  
5 of the factors themselves seem to tip the  
6 balance in the favor of the applicant and,  
7 therefore, the variances that we're  
8 seeking.

9 CHAIRMAN GESSIN: Thank you.  
10 Anybody have any questions?

11 MR. SIEGEL: We talked about  
12 averages. Nothing was really ever said  
13 about what has been approved for this.  
14 When you ask for lot coverage that's  
15 higher than what's ever been granted  
16 before, it sort of opens the door for  
17 additional lot coverage in the future. It  
18 seems to me that it wouldn't be that  
19 difficult to bring it back to what has  
20 been approved before.

21 MR. HULME: Well, what is there,  
22 whether they were achieved with variances  
23 or not, this neighborhood has lot  
24 coverages that average as high as 35%.

25 MR. SIEGEL: Do you know when

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 those were approved? With variance or  
3 without variance?

4 CHAIRMAN GESSIN: Nothing since  
5 I was on the Board.

6 MR. SIEGEL: What is the highest  
7 the Board ever allowed that was greater  
8 than what was allowable?

9 CHAIRMAN GESSIN: I believe it  
10 was 23 and a half.

11 MR. SIEGEL: And this one is  
12 asking 25%? They are only 2% off and they  
13 are pretty close to being --

14 MR. HULME: So we will take the  
15 stairs down but then we can't get in the  
16 house.

17 MR. SIEGEL: Well, if this moves  
18 in one foot and that's 40 feet, that would  
19 be 80 foot.

20 MR. HULME: The building itself  
21 is not out of character.

22 MR. SIEGEL: I'm not talking  
23 about the character.

24 MR. HULME: You have to talk  
25 character.

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2 MR. SIEGEL: Character is fine.

3 MR. PROKOP: How tall is the two  
4 buildings --

5 MR. SARETSKY: You have ten by  
6 fourteen versus ten by thirteen. I don't  
7 know that that's out of character.

8 MR. SIEGEL: And then you're  
9 back into percentage.

10 MR. HULME: Our architect sat  
11 down and designed this house in keeping  
12 with the neighborhood and keeping with the  
13 character of the neighborhood and to  
14 create living spaces that are appropriate  
15 for the neighborhood that someone would  
16 want to live in and this is the design  
17 that came in. These bedrooms are not  
18 overly large. Again, however the  
19 character of the neighborhood became the  
20 character of the neighborhood, it is the  
21 character of the neighborhood.  
22 There is no factor that says, "We never  
23 gave this" or "We never gave that before."  
24 There is a factor that says, "What is the  
25 character of the neighborhood?" The

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 character of the neighbor is lot coverages

3 that are, on average, 23.5% but extend as

4 high as 31%.

5 MR. SARETSKY: Not in front of

6 this Board.

7 MR. CASHIN: Joe, are we not

8 allowed to consider precedent?

9 MR. PROKOP: You are allowed to

10 consider precedent.

11 MR. HULME: But one of the

12 single biggest factors here is the

13 character of the neighborhood.

14 MR. SARETSKY: Isn't that

15 something subjective? I mean, we're

16 talking about the size of the bedroom

17 being a foot smaller. The character of

18 the neighborhood to you versus to Joe

19 could be two different things.

20 MR. HULME: Well, the character

21 of the neighborhood is lot coverages

22 ranging from 23% to 35%. We're talking

23 about coverage; the character of this

24 neighborhood as it pertains to coverage.

25 Whether those lot coverage limits were



1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 there based on prior variances or  
3 preexisting conditions or something else,  
4 all of these houses are legally  
5 constructed and legally there with those  
6 coverages there by creating the lot  
7 coverage in this neighborhood.

8 Granting the relief here doesn't allow  
9 somebody two and a half miles away from  
10 arguing just this neighborhood and saying,  
11 "Well, they have 35% there; I want 35%  
12 here." This is a very different  
13 circumstance.

14 MR. MIZZI: Two houses does not  
15 prevent someone from arguing four houses  
16 away, two houses away, or six houses away.  
17 Neighborhood doesn't mean the adjacent  
18 houses only.

19 MR. HULME: You have to compare  
20 and contrast like-situated -- This is a  
21 5,000 square foot lot. This is a 5,000  
22 square foot lot. This is a 5,000 square  
23 foot lot. This is a 5,000 square foot  
24 lot. And these two are as well. They  
25 all, I believe, have averages that are

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 larger than the overall, which makes  
3 perfect sense because these are larger  
4 lots. The relief that we're looking for  
5 is not out of scale for the neighborhood,  
6 however you want to define it.

7 MR. PROKOP: My comment is  
8 that the relief that is being requested,  
9 the Board should look at the scale of the  
10 house, which is the elevation in the plans  
11 which is good the applicant shows us.

12 This house has a second-floor deck and two  
13 third-floor decks which are all in the --  
14 The first floor, the second floor, and two  
15 third-floor decks which are all in the  
16 areas where relief is being requested. We  
17 have gone over this with other people in  
18 the past. The large deck is actually --  
19 The third floor deck -- One is in the  
20 front yard where relief is being requested  
21 and the other is in the back rear yard  
22 where relief is being requested. We've  
23 gone through this with other applicants  
24 about the impact of that.

25 Why wouldn't this be a pyramid variance?

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2 MR. HULME: Because the building  
3 inspector, in reviewing our analysis here,  
4 indicated that the penetrations that are  
5 seen through the pyramid line are  
6 permitted.

7 MR. SIEGEL: You're talking  
8 about a front-yard and rear-yard pyramid?

9 CHAIRMAN GESSIN: I see side  
10 yard. It actually looks like it's below  
11 the top light, not above the top light.

12 MR. HULME: We submitted it to  
13 building inspector, as required by your  
14 code. He determined what was and what was  
15 not necessary for relief. We specifically  
16 pointed out to him these penetrations  
17 including the chimney which was  
18 specifically exempt from --

19 CHAIRMAN GESSIN: This is  
20 allowed to penetrate here but not  
21 above the --

22 MR. HULME: All I can tell  
23 you --

24 MR. SIEGEL: You're talking  
25 about this little square right here? And

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 this little thing here and maybe the  
3 see-through railing?

4 MR. HULME: That's exempt. Your  
5 code specifically says the chimneys and  
6 railings are exempt.

7 MR. SIEGEL: Do we have  
8 front-yard pyramids?

9 MR. HULME: It complies. It was  
10 so clear. The side yards are half to a  
11 third the front and rear yards. If the  
12 side yards comply, there's no way the  
13 front and the rear don't comply.

14 MR. SIEGEL: Oh, the distances?

15 MR. HULME: Yes.

16 MR. SIEGEL: It's the same  
17 slope.

18 MR. TERCHUNIAN: Yes, all 60  
19 degrees.

20 MR. SIEGEL: The house doesn't  
21 seem really much bigger than anything  
22 that's there already. It just seems like  
23 an awful lot of requests. When you go for  
24 variances -- I'm an architect. So when I  
25 go in front of the Board, I always ask for

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 a little more than I know I'm going to get  
3 so I'm willing to pull it in a little so  
4 that I make everyone happy. I can't  
5 imagine that they didn't do that as well.  
6 In any case, if this was to be made just a  
7 tiny, little bit thinner, not only would  
8 it fit -- it would be a little bit better  
9 for not needing the area variances that  
10 was above anything that's ever given by  
11 the Board. It would mitigate some of  
12 these other little questions that are  
13 probably nothing any way.

14 As far as side yards, there's nothing here  
15 that says side yards.

16 MR. HULME: There's no side yard  
17 relief.

18 CHAIRMAN GESSIN: On the pyramid  
19 code, isn't it supposed to be taken from  
20 the top of the first floor not the bottom  
21 of the first floor?

22 MR. HULME: Which is where we  
23 did it. We submitted one map and then we  
24 submitted another map.

25 MR. PROKOP: That can't be

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 considered the first floor.

3 CHAIRMAN GESSIN: That makes it  
4 better. Okay. You raised it.

5 MR. HULME: Yes.

6 CHAIRMAN GESSIN: What I'm  
7 looking at doesn't look that way.

8 MR. HULME: When the architect  
9 originally did the -- This is --

10 MR. SIEGEL: The only way to  
11 mitigate any of these front or rear yard  
12 setbacks is to make the house less deep;  
13 not less wide.

14 MR. HULME: Right.

15 MR. SIEGEL: I don't know if  
16 that's going to be workable. I mean,  
17 because --

18 MR. HULME: I agree with you.

19 MR. SIEGEL: The 14s might be  
20 able to be 13s. The 10s, when you move to  
21 9s, that makes them bad. I wouldn't know  
22 what to do with that.

23 MR. HULME: That's the basis for  
24 the relief we're seeking.

25 CHAIRMAN GESSIN: The two issues

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS  
2 that I see is the 25.3 and the 19 feet on  
3 the rear yard is the problems I see. None  
4 of the other houses along that whole strip  
5 are 19 feet.

6 MR. HULME: If we were to go  
7 strictly from the averages --

8 CHAIRMAN GESSIN: 15 feet,  
9 sorry.

10 MR. HULME: The average is 40  
11 feet; we are at 44. If we move the house  
12 forward four feet, that would increase  
13 that variance but it would also decrease  
14 the rear yard variance.

15 CHAIRMAN GESSIN: Maybe that  
16 works. Let's take a look.

17 MR. HULME: I don't know if we  
18 can do it relative to the septic system.

19 MR. SIEGEL: Yes, it looks like  
20 the septic system is pretty tucked in  
21 there.

22 MR. HULME: I believe we have to  
23 maintain the ten foot setback from any  
24 structure to the septic.

25 MR. SIEGEL: Do you know if

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS  
2 there's a -- where the first row of tanks  
3 against the street, are they allowed to go  
4 any closer to the street? There's no  
5 dimension there.

6 CHAIRMAN GESSIN: I think  
7 there's a ten-foot setback.

8 MR. HULME: The septic system  
9 can't move. It is where it is. The rest  
10 of the house --

11 MR. SIEGEL: Is this house going  
12 to get a wall around it also in the front.

13 MR. HULME: The septic?

14 MR. SIEGEL: Yes, to raise it so  
15 the tops of the tanks are higher? It has  
16 to.

17 CHAIRMAN GESSIN: You can move  
18 the septic forward, move with the  
19 rectangles.

20 MR. SIEGEL: These are all  
21 rectangulars.

22 MR. SARETSKY: On the drawing,  
23 it's showing rectangles. It's not  
24 concrete.

25 MR. HULME: There's a proposed



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2 septic system detail below.

3 CHAIRMAN GESSIN: Is this raised  
4 or no?

5 MR. SIEGEL: It doesn't look  
6 like it.

7 MR. CASHIN: I thought you had  
8 to do the concrete on new construction.

9 MR. MIZZI: Depends on the  
10 elevation.

11 MR. SARETSKY: The house on the  
12 bay side in front of it -- I guess it's  
13 worse on the bay side.

14 MR. TERCHUNIAN: This is  
15 definitely going to need a wall.

16 MR. SIEGEL: The septic diagram  
17 on the bottom corner there shows  
18 everything on grade.

19 MR. TERCHUNIAN: They can slope  
20 some of that. They have to be concrete.  
21 They have to be waterproof.

22 MR. CASHIN: All new  
23 construction has to be.

24 MR. HULME: The septic system is  
25 the septic system. If we have to make it

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS  
2 a concrete wall rather than a wooden wall,  
3 obviously, we have to do that. None of  
4 that allows us to relocate the septic  
5 system from where it is. The septic  
6 system is where the septic system is.

7 MR. SIEGEL: We talked about it  
8 as far as mitigating the variances. I  
9 don't see a lot of what you can do.

10 MR. HULME: We tried to be very  
11 sensitive to what we could reasonably  
12 expect to do.

13 CHAIRMAN GESSIN: What  
14 percentages are the steps?

15 MR. HULME: 3.2. The house  
16 footprint is 23.02.

17 MR. SIEGEL: It almost seems  
18 that the steps are going in the wrong  
19 direction. It's on the wrong side of the  
20 driveway. Not that I'm getting involved  
21 with the design of the house.

22 CHAIRMAN GESSIN: What this  
23 Board has accepted in the past  
24 are pervious steps so you'll be under  
25 23.2.

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2 MR. HULME: So if we make the  
3 steps pervious, we're at 22.02. We adopt  
4 that.

5 CHAIRMAN GESSIN: Do you want to  
6 try to bump the house forward a little  
7 bit?

8 MR. SIEGEL: If they can get a  
9 foot, would we be happy?

10 CHAIRMAN GESSIN: This can slide  
11 up. His concern is here.

12 MR. SIEGEL: This could be  
13 remodelled to not be any problem at all.  
14 This can easily be something different.  
15 This can slide forward and that will be  
16 fine. That would make this dimension  
17 closer to 19 at least. It would also line  
18 up with this other house a little better.

19 CHAIRMAN GESSIN: They're at 19.

20 MR. SIEGEL: It looks pretty  
21 easy.

22 CHAIRMAN GESSIN: Where are we  
23 now with this whole front steps setback?

24 MR. PROKOP: They're have to be  
25 setback. We have a meeting on the 15th,

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2 and we'll probably set a public hearing  
3 for the March meeting on a local law. I  
4 don't know what will happen.

5 CHAIRMAN GESSIN: Do you know  
6 what's proposed?

7 MR. PROKOP: Nothing is proposed  
8 right now. We'll find out on the 15th.  
9 Probably some minor encroachment.

10 CHAIRMAN GESSIN: Mike, we've  
11 had an issue with the house across the  
12 street.

13 MR. BURNER: Across from this?

14 CHAIRMAN GESSIN: Yes. What's  
15 the number, 12?

16 MR. TERCHUNIAN: Yes.

17 CHAIRMAN GESSIN: They had a  
18 bunch of variances also. They're much  
19 closer to the road than you are.

20 MR. BURNER: It's being proposed  
21 here?

22 CHAIRMAN GESSIN: Correct.  
23 We decided on their application to approve  
24 everything except their request on the  
25 steps. We adjourned that until the new

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 law comes into effect.

3 Are you okay with that?

4 MR. BURNER: When do you think  
5 that's going to happen?

6 CHAIRMAN GESSIN: Before your  
7 house is done.

8 We've been pushing Gary for  
9 months to get it on the calendar. I think  
10 Joe said it's on the calendar.

11 MR. PROKOP: On the 15th we'll  
12 vote to have a hearing in March.

13 MR. TERCHUNIAN: Otherwise, you  
14 have to increase the variances on the  
15 stairs by four feet beyond what's  
16 advertised.

17 MR. SIEGEL: By removing the  
18 house and the stairs forward four feet.

19 MR. BURNER: Which means we're  
20 going to get to do this all over again?

21 MR. TERCHUNIAN: Only the stair  
22 part.

23 CHAIRMAN GESSIN: You may not  
24 even need variances, that's true,  
25 depending on what the standard is.

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2 MR. BURNER: Yes, I guess.

3 Sure.

4 CHAIRMAN GESSIN: I think you're  
5 okay. This way we'll vote on the other  
6 stuff. If that gets through, you'll be  
7 able to build the house.

8 MR. BURNER: We'll build a house  
9 without a staircase and then come for  
10 relief on how to get in the house.

11 CHAIRMAN GESSIN: Either you'll  
12 need a variance --

13 MR. BURNER: It wouldn't be  
14 self-imposed because you guys did it.

15 MR. HULME: We are amending our  
16 application to seek a 40-foot setback for  
17 the house?

18 CHAIRMAN GESSIN: Correct.

19 MR. HULME: A 19-foot rear yard  
20 setback?

21 MR. GESSIN: Correct.

22 MR. HULME: A lot coverage of  
23 22.02% with a pervious staircase not  
24 counting. And taking our request for the  
25 stair variances off the table until --

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2 CHAIRMAN GESSIN: We'll leave it  
3 open.

4 MR. TERCHUNIAN: We'll take it  
5 off, close it. Either file a new case or  
6 we won't need it.

7 MR. SARETSKY: That's not what  
8 we did with --

9 MR. TERCHUNIAN: I know, but  
10 that might be cleaner. Ask Joe.

11 MR. PROKOP: Well, no. If this  
12 is the public hearing, then we would have  
13 to make a decision within 60 days of the  
14 close of the public hearing, otherwise  
15 it's a new application. I would just make  
16 a new application. We don't know what the  
17 application is going to be depending on  
18 what the Board does.

19 MR. HULME: If we get to that,  
20 we can request in writing that you re-open  
21 at that point.

22 MR. PROKOP: That would be my  
23 suggestion.

24 MR. HULME: That's fine.

25 CHAIRMAN GESSIN: Okay. What

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2 are we voting on, Joe? Are we voting  
3 today or does he have to amend his  
4 application first?

5 MR. TERCHUNIAN: It's okay  
6 because it's less than what was  
7 advertised.

8 MR. PROKOP: Yes -- Well, no.  
9 In the rear it is more than what's  
10 advertised. We're talking the same house  
11 and we are moving it. One way or the  
12 other, it's more.

13 MR. HULME: Everybody got  
14 noticed so everybody can come.

15 We're looking for front yard  
16 relief and rear yard relief. The nature  
17 of the relief we are looking for, the  
18 dimension has changed. We're not adding a  
19 height variance; that was not advertised  
20 at all. We're not adding a fourth-story  
21 variance.

22 MR. PROKOP: I don't think that  
23 does it, that language.

24 CHAIRMAN GESSIN: What do you  
25 want us to do?



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2 MR. PROKOP: We should amend the  
3 notice for the next meeting.

4 CHAIRMAN GESSIN: And vote next  
5 time?

6 MR. PROKOP: I'm sorry to say  
7 that, but I think that's what you need to  
8 do.

9 MR. HULME: We're all on the  
10 same page?

11 CHAIRMAN GESSIN: I think we're  
12 all on the same page.  
13 Does the Board feel that way?

14 MR. SIEGEL: 100 percent.

15 MR. HULME: Do you know your  
16 next meeting?

17 MR. PROKOP: We are going to  
18 vote on a regular meeting. I was going to  
19 suggest the first Saturday of the month.

20 CHAIRMAN GESSIN: Look at a year  
21 calendar. Make sure it doesn't fall on  
22 New Year's or Christmas. We're trying to  
23 go to a regular schedule. If there's  
24 nothing on the agenda, we'll cancel the  
25 meeting. For some reason, we don't have

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2 anything, it'll be pushed off to the next  
3 month.

4 MR. SIEGEL: It seems like it's  
5 been seven weeks or so since the last  
6 meeting. It's tough for people waiting  
7 seven weeks.

8 CHAIRMAN GESSIN: And they don't  
9 have a target date for paperwork.

10 MR. CASHIN: Our next first  
11 Saturday is March 4th.

12 MR. PROKOP: I'm good for that.

13 CHAIRMAN GESSIN: Motion to  
14 adjourn the application until March 4th.

15 MR. TERCHUNIAN: Second.

16 CHAIRMAN GESSIN: Okay. Matter  
17 adjourned.

18 MR. TERCHUNIAN: Mr. Chairman,  
19 next hearing for today is in the matter of  
20 Ray Weber. Suffolk County Tax Map number  
21 907-02-01-04. 846 Dune Road, Westhampton  
22 Dunes, New York. The applicant proposes  
23 to subdivide a conforming lot into two  
24 substandard lots, Lot 1 and Lot 2,  
25 requiring the following variances:

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2 Lot 1 Variance, a minimum lot area  
3 variance of 28,688 square feet where a  
4 minimum lot area of 40,000 square feet is  
5 required and a lot area of 11,312 square  
6 feet is proposed.

7 A lot width variance of 87 feet where a  
8 lot width of 150 feet is required and a  
9 lot width of 63 feet is proposed.

10 A rear yard variance of 47 feet where a  
11 rear yard of 70 feet is required and a  
12 rear yard of 23 feet is proposed.

13 A side yard variance of 13.30 feet where a  
14 side yard of 20 feet is required and a  
15 side yard of 6.70 feet is proposed.

16 A total side yard variance of 30 feet  
17 where a total side yard of 60 feet is  
18 required and a total side yard of 30 feet  
19 is proposed.

20 Lot 2 variances, a minimum lot variance of  
21 23,391 square feet where a minimum lot  
22 area of 40,000 square feet is required and  
23 a lot area of 16,609 square feet is  
24 proposed.

25 A lot width variance of 75 feet where a

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2 lot width of 150 feet is required and a  
3 lot width of 75 feet is proposed.

4 A front yard variance of 15.2 feet where a  
5 front yard of 60 feet is required and a  
6 front yard of 44.8 feet is proposed.

7 A total side yard variance of 23 feet  
8 where a total side yard of 60 feet is  
9 required and a total side yard of 37 feet  
10 is proposed.

11 Such other matters as may properly come  
12 before the Zoning Board of Appeals.

13 MR. HULME: For the applicant,  
14 James N. Hulme, 323 Mill Road, Westhampton  
15 Beach, New York.

16 Good morning. I'm here on behalf of the  
17 applicant, Ray Weber, the owner of 846  
18 Dune Road as was described in the notice  
19 for this hearing.

20 My client is seeking to subdivide a  
21 property that he currently owns that  
22 contained two single-family residences on  
23 one lot. A total area of about 28,000  
24 square feet; a 75-foot width at the road  
25 and 370-feet in depth.

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2 This application is here, I think, as a  
3 referral from the trustees acting as the  
4 planning board as we are seeking a  
5 subdivision, and these are the variances  
6 necessary to the trustees acting in the  
7 capacity as the planning board to seek to  
8 finalize the subdivision from the  
9 perspective of the village code.

10 Essentially, we're just looking to put an  
11 imaginary line across the middle of his  
12 property. We're not seeking to build  
13 anything new, we are not seeking to change  
14 any of the uses that are permitted on this  
15 property.

16 For all outward appearances, assuming the  
17 relief is granted to allow this imaginary  
18 line to be drawn, the impact on the  
19 community -- and we will discuss this in  
20 more detail -- will be no different than  
21 the current impact. I'll explain more a  
22 little later.

23 Just by way of summary, I created a chart,  
24 which I believe reflects exactly what was  
25 announced as the variances. I've

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2 indicated for you the various dimensional  
3 requirements of the village code, what the  
4 current circumstances are relative to  
5 those requirements, what would result as  
6 relative to those dimensional requirements  
7 for Lot 1 and Lot 2. I have tried to  
8 highlight in yellow the areas we're  
9 seeking variances to allow the creation of  
10 those two separate lots.

11 We touched on this a little bit last time;  
12 I wanted to touch on it again. I believe  
13 Mr. Haefeli is here for one of the  
14 neighbors, and I'm sure he will address  
15 both of these issues from his own  
16 perspective at the appropriate time. The  
17 first thing we discussed last time was the  
18 certificate of occupancy for this  
19 property. This property has two houses on  
20 it. The building inspector reviewed a lot  
21 of materials that I provided him as well  
22 as anything else that was appropriate for  
23 him to review which accompanied my request  
24 to reissue certificates of occupancy for  
25 the premises here.

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2 Upon his review, the building inspector  
3 concluded that there were, in fact, two  
4 separate single-family residences located  
5 on his property. He issued certificates  
6 of occupancy.

7 MR. PROKOP: What's the date?

8 MR. HULME: The certificates?

9 MR. PROKOP: Yes.

10 MR. HULME: It was sometime last  
11 year. I don't have them with me.

12 MR. WEBER: I have them  
13 (handing).

14 MR. SIEGEL: He is allowed to do  
15 that?

16 MR. HULME: That is, in fact,  
17 his job. If, in fact, he decided  
18 otherwise, we would have recourse against  
19 him and the village to have that examined  
20 further.

21 Upon his grant, I guess any other neighbor  
22 at that time would've had recourse to do  
23 something about that. I think for the  
24 perspective of this Board, the building  
25 inspector has acted and has determined

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2 that there are two single-family  
3 residences on that property. I think it's  
4 part of the application that you can  
5 inquire beyond that.

6 MR. SARETSKY: The certificate  
7 of occupancy, it doesn't mean something is  
8 two separate private homes. It means that  
9 it can be occupied in such a way as it's  
10 outlined in the certificate, right? What  
11 does a certificate of occupancy actually  
12 mean? It tells you it's a structure  
13 somebody can live in.

14 MR. PROKOP: Whatever the use is  
15 that's mentioned in the certificate of  
16 occupancy, that's what it covers.

17 MR. HULME: I think he issued  
18 two brand new COs. It describes two  
19 different residences. Having a  
20 certificate of occupancy as a residence  
21 allows somebody to use it as a residence.  
22 That's what we have. We have two  
23 residences on one property. It can be  
24 rented. He can live in one and rent out  
25 the other. He can rent out both of them.



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2 He can do anything anybody else can do.

3 It allows it to be occupied as a  
4 single-family residence without further  
5 restriction. At the end of the day, with  
6 those two documents, we have two  
7 single-family residences located on one  
8 lot.

9 MR. PROKOP: I'll advise the  
10 Board, that's your argument.

11 CHAIRMAN GESSIN: I don't know  
12 if you've checked it. Have you checked  
13 out the pyramid code on Lot 1?

14 MR. HULME: No, I did not. I  
15 received information from the village  
16 attorney's office as to what were the  
17 necessary variances. If there's a pyramid  
18 issue, we can address that. That's part  
19 of my point here. We're just drawing  
20 lines on a piece of paper. We're not  
21 affecting or impacting the community in  
22 any way different right now.  
23 Anyway, that's my comment on the CO issue.  
24 Counsel will advise you as to his position  
25 on that. The other issue --

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2 MR. PROKOP: I have a question.  
3 The DEC restriction, what is the date on  
4 that, the DEC approval?

5 CHAIRMAN GESSIN: October of  
6 '98.

7 MR. HULME: The building  
8 inspection was in receipt of that  
9 document. That's one of the documents  
10 that he considered prior to his issuing  
11 the CO. I would suggest a couple of  
12 things about the DEC permit. One, it has  
13 no bearing on this proceeding. The DEC  
14 regulates environmental regulations that  
15 they are responsible for regulating. You  
16 guys are here to interpret the zoning code  
17 and to grant variances as necessary or as  
18 appropriate as you deem appropriate going  
19 forward. The fact that the DEC may or may  
20 not have taken a position in the past  
21 relative to their permit shouldn't have  
22 any bearing on yours. Their regulations  
23 are completely different than yours. They  
24 don't tell you how to do zoning; you don't  
25 tell them how to do environmental

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2 regulations.

3 We fully recognize that if and  
4 when we get through the local processes on  
5 these, we have to go back to the DEC and  
6 we need to address that error in form of  
7 the subdivision application. This was a  
8 permit to reconstruct homes. From the  
9 local perspective, the building inspector  
10 reviewed that material and issued COs that  
11 were unlimited in the way DEC, we believe,  
12 inappropriately was attempting to limit  
13 the property.

14 MR. MIZZI: It was provided to  
15 us?

16 MR. HULME: I gave it to you.

17 MR. MIZZI: That's my point.  
18 Considering what's being asked of us, in  
19 reviewing the material, we were given  
20 something that represented that the owner  
21 would covenant the deed saying it would  
22 not be sold. It appears that the next  
23 step for allowing this would to  
24 potentially allow something to be sold.  
25 Is that something we should be

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2 considering?

3 MR. PROKOP: I have to look into  
4 it more. It won't be resolved at this  
5 meeting. What was this for?

6 CHAIRMAN GESSIN: To rebuild the  
7 two houses.

8 MR. TERCHUNIAN: Joe, that was a  
9 permit issued in the late '90s when the  
10 village was in the initial stages of  
11 reconstructing following the '92 storm and  
12 the '97 rebuild of the beach and dune  
13 system. Mr. Weber came in to rebuild  
14 those two structures.

15 MR. HULME: My final position  
16 relative to that, it has no bearing on  
17 this proceeding. Counsel will advise you  
18 what he believes the law is. We'll see if  
19 we agree or don't agree.  
20 Our purpose before you is to seek  
21 variances from your --

22 MR. PROKOP: Can I ask you, what  
23 was the use in '92 of the two houses?

24 MR. HULME: Same as it is today  
25 as reflected in the certificate of

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 occupancy.

3 MR. PROKOP: Were the two houses  
4 lost in the storm?

5 MR. HULME: Yes.

6 MR. SIEGEL: Were they ever  
7 closer together?

8 MR. PROKOP: Were they rebuilt?  
9 Did they disappear or were they rebuilt?

10 MR. WEBER: The village required  
11 me to tear them down. I said that if I  
12 was to tear them down, I would need to  
13 rebuild them and I was granted permission  
14 to rebuild them at that time.

15 MR. TERCHUNIAN: Also, just FYI,  
16 the permission that the village granted  
17 was consistent with the stipulation and  
18 court order that gave everyone who had a  
19 building or home prior to the storm of '92  
20 the right to rebuild in similar size,  
21 shape, what have you.

22 MR. SIEGEL: Was that the way it  
23 was before the storm?

24 MR. HULME: That's the case that  
25 we made to your building inspector through

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 affidavits and prior documents and such.

3 That's the conclusion he came to, yes. He

4 didn't gave us anything new. He agreed

5 with us that it was two single-family

6 residence and that we were entitled to

7 keep and rebuild two single-family

8 residence pursuant to the applicable rules

9 and laws.

10 MR. SARETSKY: I don't mean to

11 repeat myself. What he did was, he gave

12 two certificates of occupancy of two

13 buildings, not necessarily saying they

14 were separate properties in the sense --

15 MR. HULME: He didn't say two

16 separate properties.

17 MR. SARETSKY: That's what I am

18 getting at. These are two structures that

19 can be used as residences but not

20 necessarily by multiple owners.

21 MR. HULME: Not yet. That's

22 what we're here for. I'm establishing a

23 baseline --

24 MR. SARETSKY: I understand.

25 MR. HULME: -- that will

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 hopefully lead you to the conclusion I  
3 would like you to come to that we should  
4 be able to subdivide the property.

5 MR. PROKOP: Do you have a  
6 survey that I can look at of what you're  
7 proposing?

8 MR. HULME: (Handing).

9 MR. PROKOP: Thank you.

10 MR. HULME: Those are the  
11 preliminary matters.

12 Now, I wanted to get to the crux of the  
13 matter from our perspective to look at the  
14 variances that we're actually seeking and  
15 why we may be entitled to them. I use  
16 this document all the time because he  
17 keeps me focussed on what we are asking.  
18 This is really a recitation of the state  
19 village law that determines how we're  
20 supposed to go about looking at these  
21 variances. The law is really in two  
22 parts.

23 The first part is said that the obligation  
24 is to do a balancing test. The balancing  
25 test is to look at the benefit for the

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2 applicant in granting the relief sought  
3 versus the detriment of the health,  
4 safety, and welfare of the neighborhood if  
5 the variance is granted. If that balance  
6 comes out in favor of the applicant, your  
7 obligation under the law is to issue the  
8 variances. If that balance comes out more  
9 in the detriment of the community, of the  
10 neighborhood, you're well within your  
11 bounds to deny that variance.

12 The five factors you're obligated to  
13 evaluate but they are to assist you in  
14 doing the balancing. They are not the  
15 be-all and the end-all by themselves. At  
16 the end of the day, after we talk about  
17 each of these five factors and you  
18 consider them, what you really need to do  
19 is do this balance. What I hope to be  
20 able to demonstrate to you is that there's  
21 benefit for the applicant, an obvious  
22 benefit, in allowing this to go forward.  
23 Furthermore, I hope to be able to  
24 demonstrate to you that there's little or  
25 no negative impact on the community. In



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2 fact, I think there's benefit to the  
3 community in granting this variance. I  
4 just want to outline in general what it  
5 is.

6 MR. SIEGEL: Give examples of  
7 the benefits of the community.

8 MR. HULME: I'll get to that in  
9 a minute. I wanted to go through the  
10 factors first.

11 The first factor is an undesirable change  
12 in the neighborhood. We're seeking to  
13 draw an imaginary line that provides some  
14 flexibility to the owner as to how he  
15 manages and handles this property. It has  
16 no impact on the neighborhood. There are  
17 two houses there right now. Both of those  
18 houses can be occupied. Both of those  
19 houses can be rented. The entire property  
20 can be sold. After the subdivision, there  
21 are two houses. I don't see any  
22 connection with drawing this line and  
23 subdividing the property and a change in  
24 the character of the neighborhood.  
25 There's still going to be the same number

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2 of people allowed next door. There are  
3 still going to be the same number of cars  
4 allowed next door. There are no lesser or  
5 greater impact on the village because of  
6 the fact that we have COs for two houses  
7 already.

8 Whether the benefit sought by the  
9 applicant can be achieved by some other  
10 feasible method, the only way to create  
11 two lots here is to get the variances that  
12 we are seeking to create two lots. There  
13 is really no other way.

14 Whether the requested area of variances is  
15 substantial, again, I suggest to you that  
16 that's the relative term. The actual  
17 dimensions and the actual impacts that  
18 those dimensions create is exactly the  
19 same before as after. Whether this  
20 imaginary subdivision line is drawn or  
21 not, these houses are exactly where they  
22 are. They are exactly the same distance  
23 from the neighbor. They're exactly the  
24 same way to access these properties.  
25 While they are technical deviations from

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2 the requirements of the village code, at  
3 the end of the day, the impact is exactly  
4 the same. We're not looking to build a  
5 bigger house. We are not looking to move  
6 these house. We are just looking to draw  
7 a line in between them so that they could  
8 be sold independently. The ability to  
9 sell them independently has no impact on  
10 the neighborhood. You're still left with  
11 two houses in this space. It can be used  
12 and explored in any way the law allows  
13 them.

14 MR. CASHIN: Number three is  
15 substantial, you have to say that.

16 MR. HULME: In absolute scale,  
17 yes.

18 MR. CASHIN: To mitigate, I know  
19 we have to balance these.

20 MR. HULME: Yes, to mitigate  
21 that a little bit. These are not -- Even  
22 after the subdivision were granted, these  
23 are not the smallest lots in the  
24 neighborhood. Down the road in one  
25 direction, you are in the Dune Lane area,

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2 which we talked about in the prior hearing  
3 today as well as in the prior hearing  
4 before. There are pockets in the village  
5 where they are smaller lots. If you go  
6 down the street the other way, 836, you  
7 find smaller lots. If you go down even  
8 further, 826, there are lots of little  
9 pockets within the Village of Westhampton  
10 Dunes that these lots, when created, are  
11 comparably sized. These would not be the  
12 smallest or the first small lots that were  
13 created in this village, which is the  
14 point I wanted to make with the aerial.  
15 Again, there's much more detail about Dune  
16 Lane on prior applicants. I think there's  
17 at least one record in this file. Let the  
18 record reflect that it's a record.

19 MR. TERCHUNIAN: It so reflects.

20 MR. HULME: Again, the next  
21 factor is the adverse environmental or  
22 physical impact. We are just drawing an  
23 imaginary line. There's no impact that  
24 derives from drawing that line on the  
25 community as a whole.

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2 MR. CASHIN: You have to draw  
3 for access driveways as well, right?

4 MR. HULME: We have access to  
5 both of these houses now. We've created a  
6 flag pole.

7 MR. CASHIN: There's more than  
8 one line.

9 MR. HULME: Oh, yeah.

10 MR. PROKOP: Where's the parking  
11 going to be?

12 MR. HULME: In the front yard  
13 somewhere. It is going to be where it is  
14 right now. The parking for the rear is  
15 going to be where the parking is right now  
16 for the rear. That's my point.  
17 These houses, lots, separately will not be  
18 used any differently than it's used now.

19 MR. SARETSKY: So they stay the  
20 exact same size and nothing adds or grows  
21 on them?

22 MR. HULME: Any changes to that  
23 would require further relief from the  
24 village and likely this Board, in the same  
25 matter as if we wanted to add a second

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2 story to the front house, we have to come  
3 to get building relief.

4 If the property is divided and we want to  
5 add a second story to the front house, we  
6 have to come here for the same relief,  
7 perhaps even more relief.

8 By granting the subdivision, you're  
9 perhaps, in a strange sort of way, further  
10 restricting the development of this lot.  
11 My point is, on either side of this grant,  
12 there's the same thing.

13 MR. SIEGEL: What made you think  
14 that it was going to be harder now than  
15 prior?

16 MR. HULME: There's a lot line  
17 now in between the two houses that there  
18 might be a pyramid issue.

19 MR. SIEGEL: If the imaginary  
20 line was there?

21 MR. HULME: If the imaginary  
22 line was here and we came in to put a  
23 second story on Lot 1, we probably need  
24 pyramid relief then and we probably  
25 wouldn't need it now.

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2 CHAIRMAN GESSIN: I think you  
3 need it now.

4 MR. HULME: Perhaps.

5 MR. SIEGEL: Without the  
6 subdivision, it would be easier to put a  
7 second story now?

8 MR. HULME: You asked for an  
9 example, that's an example. I don't want  
10 to conceive that now.

11 MR. SIEGEL: The flag line is  
12 not created so already that --

13 MR. HULME: Right. This is a  
14 one-story building. It may or may not  
15 implicate pyramid now. We may need to  
16 look at that and perhaps re-advertise for  
17 that. Certainly, if this line is granted  
18 and we were to put a second story on this  
19 property, we would have to come back to  
20 this Board. Either way, we got to come to  
21 this Board, I believe, for most of the --  
22 we got to come back to the Village in some  
23 fashion and in the same fashion whether it  
24 is subdivided or not.

25 MR. SARETSKY: The only

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2 difference is, if those two lots are sold  
3 and somebody is coming back for variances,  
4 they can come back in some shape or form  
5 in a hardship. Right now, the way you  
6 have it is the way it has been set up and  
7 there is no hardship.

8 MR. HULME: Then we don't get  
9 variances.

10 MR. SARETSKY: I'm looking at it  
11 with these five rules, and I'm looking at  
12 it objectively as I can. Right now, when  
13 it gets divided and these two guys own  
14 that lot, let's just say they have septic  
15 issues, pyramid issue, and all these  
16 things we don't have now. All of a  
17 sudden, some Board, me or somebody else,  
18 is put in a position to say, "How do I  
19 deny this guy so he can build something  
20 legitimate that's comparable to the guy  
21 next door?" I'm telling you the  
22 predicament sitting here today.

23 MR. HULME: You can rely on the  
24 history of this lot that it got it to this  
25 place.



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2 MR. SARETSKY: If I go by the  
3 history, there's some question to some of  
4 it.

5 MR. HULME: No, there is not a  
6 question to it. We have a CO. Your  
7 building inspector has indicated -- That  
8 question is not before you. The building  
9 inspector, by operation of the law --

10 MR. SARETSKY: I'm not  
11 questioning the certificate of occupancy.

12 MR. HULME: But you are.

13 MR. SARETSKY: I understand the  
14 certificate of occupancy that they have,  
15 it can to be rented or you can sell the  
16 properties and you can continue to use the  
17 two houses. The problem is, once we  
18 subdivide it and two different owners can  
19 own it. It seems that I'm opening  
20 Pandora's box.

21 MR. HULME: I think you're  
22 closing Pandora's box.

23 MR. SARETSKY: That's your  
24 opinion.

25 MR. HULME: Let me explain.

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2 There are things that we can do now with a  
3 building permit that we may not be able to  
4 do after the subdivision. By getting this  
5 relief -- and the pyramid law is one of  
6 them that attaches -- by your granting  
7 this, you're restricting this further than  
8 what we can do right now. That's part of  
9 the benefit to the community.

10 MR. SARETSKY: What about the  
11 precedent setting of what we're doing now?

12 MR. HULME: The overriding goal  
13 of zoning for residential property is one  
14 house on one lot. Dividing this property  
15 in half puts us more in compliance,  
16 significantly more, with zoning.

17 MR. SARETSKY: Your point then  
18 is, when this lot is sold the way it is  
19 now, chances are, the applicant will build  
20 one house. He will take down those two  
21 houses or combine the two houses in some  
22 shape or form and build one home. Someone  
23 might say that that's a benefit to this  
24 neighborhood by having one house.

25 MR. HULME: That's not the

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 application before you. You have to act  
3 and react --

4 MR. MIZZI: What is the benefit?  
5 To sell the property independently?

6 MR. HULME: That's one of them.  
7 If he wants to give one house to his wife,  
8 the other house to his kids, he can do  
9 that. He can't do that now. If he wants  
10 to sell one of them and keep the other and  
11 extract some of the economic benefit of  
12 owning this property, he can do that.

13 MR. SARETSKY: How do I tell the  
14 person next door that lives in the house  
15 to the east or the west of that that they  
16 want to do the same thing?

17 MR. HULME: They don't legally  
18 have two houses. That's critical to this  
19 application. I have two legal residences  
20 on one lot.

21 MR. SIEGEL: And no one else  
22 does.

23 MR. HULME: That's the crux of  
24 this application. That's why I believe  
25 we're entitled to the variances we're

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 looking for.

3 MR. PROKOP: I think we're going  
4 backwards here by you keep pounding the  
5 Board that that's what you have. I kind  
6 of stayed out of it. I'll give them that  
7 opinion. We're not covering the guts of  
8 the application.

9 As far as one residence on two properties,  
10 I think that's what the DEC was trying to  
11 say.

12 MR. HULME: The DEC has nothing  
13 to do with the deliberations --

14 MR. PROKOP: We're losing sight  
15 what the Board should be thinking about.  
16 One of the things I would like to ask you,  
17 from a legal standpoint, what conditions  
18 would you be willing to offer the Board as  
19 conditions of an approval if you were to  
20 get one knowing what the concerns are?

21 MR. HULME: I'm not sure I  
22 understand completely well enough what the  
23 concerns are. People have said that they  
24 have this visceral issue, problem with  
25 this. I don't know what would be

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 reasonable conditions.

3 I would certainly be subject to the zoning  
4 code going forward. If that requires us  
5 to come back to the Board for some relief  
6 to do something with one of these houses,  
7 we would have to do that.

8 If there is something under the village  
9 code that we can do just with the building  
10 permit, then --

11 MR. PROKOP: I don't think it  
12 really matters -- That's the concerns,  
13 what could be done under the village code.

14 MR. HULME: I think you have to  
15 tell them that. I don't think that's for  
16 me to tell them.

17 MR. MIZZI: I have a question.  
18 The current structures that exist, what  
19 can and can't be done currently?

20 MR. PROKOP: I have to research.

21 MR. MIZZI: Could this be  
22 modified? Could it be moved? Could it be  
23 expanded?

24 MR. TERCHUNIAN: The general  
25 rule is that a nonconforming use can't be

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 expanded by more than 50%.

3 MR. MIZZI: I guess what I'm try  
4 to understand is --

5 MR. HULME: We can do that now.  
6 If this became a single lot, I'm not sure  
7 we could get away with that.

8 MR. MIZZI: I guess what I'm  
9 trying to understand is, if the benefit is  
10 to separate them and potentially sell them  
11 independently, it would be nice to  
12 understand what could be done now, what  
13 can be done later, whether later would  
14 have an impact on the neighborhood  
15 adversely, and whether to understand the  
16 limitations of number five. It seems that  
17 this condition was created based upon  
18 what's been presented. This was not the  
19 configuration --

20 MR. PROKOP: What you saw on the  
21 last application, that's what we're  
22 looking at.

23 MR. TERCHUNIAN: Let me give you  
24 some parameters. Let's just take Lot 1,  
25 the road lot. It's approximately 11,312

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2 square feet, so under lot coverage of 20%,  
3 you can build a footprint of 2,262 square  
4 feet. Take off decks and stuff like that  
5 and add a second story --

6 MR. SARETSKY: What's there now?

7 MR. TERCHUNIAN: What's there  
8 now is, let's see, 45 by 34. Right now,  
9 about --

10 CHAIRMAN GESSIN: That's with  
11 the decks?

12 MR. TERCHUNIAN: Yes, that's the  
13 area.

14 With the decks, it's about 1,530 square  
15 feet. That's 1,530. That lot, as  
16 presently proposed, would support 2,200.

17 MR. SARETSKY: So plus 700 feet?

18 MR. TERCHUNIAN: So your front  
19 yard would be 60 feet. Your side yards  
20 combined would be 18. And your rear yard  
21 would be 3/10 of 180. Let's do the math.  
22 You got 54 feet on the rear yard plus 60  
23 feet on the front yard. That's 114 feet  
24 overall. So the house is about 40 feet  
25 deep. Remember, coverage and setbacks

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2 don't have to add up. They're  
3 independently calculated. The house would  
4 be able to be 40-feet deep and that's  
5 going to be 45 feet, so it's approximately  
6 40- by 45-foot house.  
7 Under strict application of zoning,  
8 buildable envelope is 1,800 square feet.  
9 Lot coverage allowance is 2,260 square  
10 feet. Presently has about 1,500 square  
11 feet.

12 MR. SARETSKY: So plus 700  
13 square feet?

14 MR. TERCHUNIAN: No, it's plus  
15 300.

16 MR. HULME: We can do that now.  
17 It's no different.

18 MR. TERCHUNIAN: Let's just add  
19 the two buildings together, which is 59 by  
20 38. That's 2,200 square feet plus the  
21 front is 1,500 square feet. Right now,  
22 they're at about 3,750 square feet of  
23 coverage. They can cover about 5,600  
24 square feet without --

25 MR. MIZZI: My question is a



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2 little different. Can this house be move  
3 now?

4 MR. TERCHUNIAN: Sure.

5 MR. HULME: If it violated  
6 any --

7 MR. MIZZI: This configuration  
8 has no limitations on it?

9 MR. HULME: The zoning code  
10 limits it.

11 MR. TERCHUNIAN: You can move it  
12 closer --

13 MR. MIZZI: You can knock these  
14 houses and put one here and one here.

15 MR. TERCHUNIAN: You have to get  
16 a variance for that.

17 MR. MIZZI: Why?

18 MR. TERCHUNIAN: You're knocking  
19 it down and get two new ones.

20 MR. MIZZI: My question is: A  
21 simple example, right now I own this. Can  
22 I move this here and this one here?

23 MR. TERCHUNIAN: If you just  
24 moved them and didn't change them, yes.

25 MR. MIZZI: Okay.

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2 MR. TERCHUNIAN: As long as they  
3 comply with zoning.

4 MR. MIZZI: Then my question is:  
5 If it's a subsequent lot and I purchase  
6 this back lot or front lot, I can do  
7 whatever I want within the --

8 MR. TERCHUNIAN: You can move  
9 it, enlarge it, tear it down, and build a  
10 new one within confines of zoning. If you  
11 took Lot 1, as proposed, right now you  
12 would be limited to a 1,800 square foot  
13 footprint without getting a variance.

14 MR. MIZZI: If zoning  
15 restrictions is what it is based on the  
16 size of the lot.

17 MR. TERCHUNIAN: The proposed  
18 lot.

19 MR. MIZZI: Yes. Subsequent to  
20 this variance being approved, you buy the  
21 back lot, you can do whatever you want  
22 with it provided that you --

23 MR. TERCHUNIAN: Well, you can't  
24 do whatever you want.

25 MR. MIZZI: All of us have

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 homes --

3 MR. SARETSKY: You can maximize  
4 that lot is what he's saying.

5 MR. TERCHUNIAN: Right.

6 MR. MIZZI: You can go to the  
7 zoning board; you could not go to the  
8 zoning board.

9 MR. HULME: I don't think  
10 divided you would end up with a bigger  
11 house.

12 MR. MIZZI: That's not my  
13 question. I guess I am just trying to  
14 understand, right now, modifying this  
15 configuration, are there restrictions  
16 other than what the zoning permits are?

17 MR. TERCHUNIAN: The zoning on  
18 the site would allow you to move those  
19 houses to any conforming location and  
20 enlarge the overall use by 50%. That's  
21 what the existing zoning allows you to do.

22 MR. SARETSKY: Combined or each  
23 home?

24 MR. TERCHUNIAN: Combined.

25 MR. MIZZI: Unless they are

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 subdivided.

3 MR. TERCHUNIAN: If they are  
4 subdivided, then you can only have one  
5 house per; you can build to the 20% lot  
6 coverage and to the setbacks and to the  
7 pyramid, which is calculable for every  
8 lot.

9 MR. SIEGEL: It seems that once  
10 the subdivision occurs, the restrictions  
11 are tighter specifically for the front lot  
12 because it has lesser side yard. It's  
13 more to be a pyramid violation when they  
14 come back to enlarge that house. After  
15 the subdivision, it's harder for Lot 1 to  
16 be enlarged.

17 Lot 2 will have maybe some front yard  
18 issues but the sides and the back don't  
19 change at all. Maybe the total areas  
20 would have something to do with it. The  
21 restrictions get worse on the front lot  
22 after the subdivision.

23 MR. SARETSKY: Let me ask you  
24 this question. Can house in the back get  
25 bigger as long as it complies and the

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 house in the front is in some way  
3 geometrically challenged and get skinnier  
4 or whatever it does --

5 MR. SIEGEL: It could get bigger  
6 in this direction.

7 MR. TERCHUNIAN: It's going to  
8 be, roughly speaking, the same size. The  
9 setback building envelope on the front lot  
10 as proposed would result in the house  
11 about 45-feet wide and 40-feet deep. The  
12 present house is about, total everything,  
13 about 40 by 45. The present house is 34  
14 by 45.

15 MR. SIEGEL: Very close.

16 MR. HULME: The correct  
17 comparison is not what can we do after  
18 subdivided. The correct comparison is  
19 what we can do after the subdivision  
20 versus what we can do now. Your point is  
21 more we are more restricted after the  
22 subdivision.

23 MR. SARETSKY: In the front.

24 MR. HULME: Obviously, as a sum  
25 total, we can do less on this property

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 after the subdivision than we can do now.

3 That's a benefit to the community and a

4 detriment to the applicant.

5 MR. SARETSKY: Right now, the

6 way it's set up, if you sell this

7 property, it's likely the person will

8 build one home.

9 MR. HULME: That has nothing to

10 do with that analysis.

11 MR. TERCHUNIAN: You can't make

12 that assumption.

13 MR. HULME: You can't consider

14 that. I think after all --

15 MR. SARETSKY: We're talking

16 about the character of the neighborhood.

17 We are talking various things that are

18 somewhat subjective in opinions. We have

19 to look at what could happen.

20 MR. TERCHUNIAN: Your attorney

21 will advise you. Having appeared in front

22 of dozens of Boards, conjecturing what

23 somebody may do with the property is a

24 dangerous place to go.

25 MR. SARETSKY: We're choosing

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 that they're going to make the house the  
3 exact same size. They are not going to  
4 come with a variance to try to do some of  
5 the things that --

6 MR. HULME: You guys have the  
7 right to tell them no. That's what you're  
8 here for. In that history you can take  
9 into considerations. I'm arguing my  
10 client's point. That's exactly what you  
11 need to look at. Anybody who wants to do  
12 that has to come here. You may decide  
13 that you're giving substantial relief here  
14 to allow us to do this. You can take that  
15 into consideration because that actually  
16 happened. You can take that into  
17 consideration and decide whether you're  
18 going to give variances to that subsequent  
19 application.

20 MR. TERCHUNIAN: Let me go back  
21 and visit Mr. Prokop's question because I  
22 think it's important. In consideration of  
23 everything that's in front of the Board  
24 and that you are asking the Board to grant  
25 relief on, what future restrictions --

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2 MR. PROKOP: Let me talk for a  
3 second. Let me know when the time starts  
4 that I can say something.

5 MR. TERCHUNIAN: Right now.

6 MR. PROKOP: There's a couple  
7 things that's before the Board here.  
8 Arom, who is the environmental wildlife  
9 commissioner, has pointed out that these  
10 may be considered a preexisting  
11 nonconforming use because it's two  
12 single-family residences on a lot that  
13 owns one-single family residence. I don't  
14 know that I agree with that or not, but  
15 it's something to consider. If that's the  
16 case, because there is a limitation on the  
17 development, I would point out to the  
18 Board though that what's protected by the  
19 rap case and also the principle and New  
20 York State law is that the footprint is  
21 not protected and then you go straight up  
22 when you expand these things, it's the  
23 footprint and what then what exists above  
24 the footprint. Anything else isn't  
25 automatic. If you have a footprint which



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2 encroaches which is nonconforming or  
3 something the way that we are talking  
4 about, you don't get the go straight up  
5 four stories. That's a couple of the  
6 things we need to talk about. Unravelling  
7 this into two lots may take away some of  
8 the limitations that we have now. Then  
9 we're taking something nonconforming and  
10 making it conforming. That may take away  
11 some of the limitations that Arom is  
12 talking about. I have to do a legal  
13 analysis of that and advise you. I can  
14 give you a verbal opinion today but it  
15 wouldn't be helpful to you. Probably  
16 Mr. Hulme would like to know what it is  
17 before he makes his final presentation to  
18 the Board as would the neighbors. Those  
19 are the kinds of things we are talking  
20 about. I think that's on the table with  
21 an application like this. There's  
22 probably things that the applicant could  
23 do that they should limit as conditions to  
24 the Board, if we were to consider this  
25 relief. I don't think it's enough to say,

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2 "If you split it up, we should be --  
3 they'll come back." There should be  
4 conditions that are considered. I think  
5 you might hear from the -- It seems  
6 Mr. Hulme would want to go again after  
7 Mr. Haefeli speaks. I think we should  
8 maybe listen to Mr. Haefeli for a few  
9 minutes.

10 CHAIRMAN GESSIN: Let me just  
11 make one comment. I noticed sitting here  
12 that I believe the rear lot on Lot 1 is  
13 misstated. The setback is really only 16  
14 feet not 23. It's 16 feet to the deck.  
15 It's 20 to the house but it's 16 to the  
16 deck.

17 MR. HULME: Which lot?

18 CHAIRMAN GESSIN: Lot 1, rear  
19 yard.

20 MR. CASHIN: You're saying 23 is  
21 16?

22 CHAIRMAN GESSIN: Yes. They  
23 just picked up the wrong number.

24 MR. HULME: If I could finish my  
25 own presentation. I have a few more

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2 things to add.

3 Along the lines of what Mr. Prokop just  
4 indicated, I think it's critical to this  
5 application, we're going to a preexisting  
6 nonconforming. If you grant this relief,  
7 we're going to be conforming. That's  
8 substantial. That's a huge benefit to the  
9 community. The way to understand how huge  
10 a benefit that is is to look at if we have  
11 a vacant lot that we want to put two  
12 houses on now, what would we have to do to  
13 do that? We would have to come and get a  
14 use variance. A use variance is virtually  
15 impossible in these settings. The fact  
16 that we're going from something that is so  
17 nonconforming that we could never, ever  
18 get it recreated on a new lot and we're  
19 going to conforming, that's huge.

20 MR. CASHIN: Can I ask a  
21 question?

22 MR. PROKOP: Yes, sir.

23 MR. CASHIN: By granting the  
24 COs, did we create a nonconforming lot?

25 MR. PROKOP: Actually, it

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2 depends on our code. There's a case in  
3 the Town of Southold in which the court  
4 said -- and it was upheld and appealed --  
5 that if a property is on a single-family  
6 residence, a second single-family  
7 residence is not a nonconforming use on  
8 the property. It depends on how your code  
9 is written. I'm going to have to look at  
10 the code before I can advise the Board.

11 MR. MIZZI: How is that a huge  
12 benefit to the community?

13 MR. HULME: Your zoning code  
14 says that you get one use per lot. Before  
15 you even start talking about dimensional  
16 relief, you get one house per lot. That's  
17 what your code says.

18 MR. MIZZI: You said that's huge  
19 to the community.

20 MR. HULME: That's the goal of  
21 your zoning code. To come into more  
22 compliance with your zoning code is a  
23 benefit to your community. Otherwise, why  
24 do you have a zoning code?

25 MR. SARETSKY: Isn't that your

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 opinion?

3 MR. HULME: It's a legal  
4 benefit. That's what we're talking about.  
5 You may not see as a practical benefit.

6 MR. MIZZI: It doesn't sound  
7 like a tangible benefit.

8 MR. HULME: If we're running  
9 legal briefs on this issue, that's one of  
10 the benefits the court would hang its hat  
11 as legal a matter. Your community has  
12 zoning. The goal of zoning is to push  
13 people to comply with whatever your zoning  
14 code is. If an applicant is proposing to  
15 do something, it puts you more in  
16 compliance with the zoning code; that's a  
17 benefit to your community. That's  
18 directly in support of the goal that you  
19 have zoning to beginning with.

20 MR. MIZZI: Which one of those  
21 would that be?

22 MR. HULME: The use and the  
23 balancing test.

24 MR. MIZZI: I'm trying say, see,  
25 where's the one that would benefit the

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 community?

3 MR. HULME: Well, the primary  
4 thing that you're doing is balancing the  
5 benefit to the applicant against the  
6 detriment of the community. That's what  
7 you're doing. That's what the law  
8 requires you to do. You're looking at  
9 these factors to help you do that. In a  
10 global sense, you have to look at the  
11 benefit of the applicant in granting the  
12 variance.

13 MR. MIZZI: It says to the  
14 detriment of the health, safety, and  
15 welfare of the neighborhood. It doesn't  
16 talk about the zoning benefits.

17 MR. HULME: That's what zoning  
18 is.

19 MR. MIZZI: I'm having trouble  
20 making the connection that the benefit  
21 that you're describing is leading away  
22 from the detriment of the health, safety,  
23 and welfare of the neighborhood simply  
24 because it's compliance.

25 MR. TERCHUNIAN: When you read

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 the zoning code, everything needs to move  
3 to conform with the zoning code. That's  
4 the first line in the zoning code.

5 MR. MIZZI: It doesn't tell us  
6 that our goal is to prove this conforms to  
7 the zoning code. I don't see the  
8 connection there.

9 MR. PROKOP: One of the  
10 principles of a nonconforming situations  
11 is to move towards conformance. One way  
12 would be to remove the house. They chose  
13 to subdivide.

14 MR. HULME: That would be a  
15 detriment to the applicant.

16 MR. SARETSKY: And maybe to the  
17 community.

18 MR. HULME: To move the house?

19 MR. SARETSKY: To subdivide it.  
20 It's possible.

21 MR. HULME: No. We'll continue  
22 to talk about it. We have not been able  
23 to find yet a thing that we can do after  
24 that we can't already do. That's the  
25 comparison you have to do. If there's

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS  
2 something, I'm happy to discuss. These  
3 properties are even more restricted by the  
4 zoning code after they are divided than  
5 before they are divided.

6 MR. SARETSKY: I heard the house  
7 on the front was more restricted --

8 MR. HULME: You have to look at  
9 the whole lot. I can do a whole series of  
10 things now on this property. After the  
11 property is divided, the sum total of the  
12 things I can do is the same or less.  
13 There cannot be any detriment by the  
14 community by granting that relief.

15 MR. SARETSKY: That sounds like  
16 your opinion.

17 MR. HULME: It's a matter of  
18 law.

19 MR. PROKOP: We'll discuss that.

20 MR. SIEGEL: Was there something  
21 you wanted to tell us that only we can  
22 hear?

23 MR. PROKOP: Let me just say  
24 that there are several things that are  
25 subject to discussion. I will give you my



1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 opinion.

3 MR. SIEGEL: In private?

4 MR. PROKOP: We'll discuss it.

5 CHAIRMAN GESSIN: He wanted to  
6 review it first.

7 MR. HULME: I don't want to  
8 express I'm unwilling to agree to  
9 conditions. I would like Mr. Prokop to do  
10 his analysis. In the context of that  
11 analysis, I'm sure we can develop a series  
12 of conditions that would be appropriate  
13 for us and that would satisfy some of the  
14 concerns of the Board as a whole.  
15 The other thing we will definitely look at  
16 between now and the next time is that  
17 we'll do a pyramid analysis of what's  
18 there now and how that's implicated going  
19 forward.

20 Subject to what Mr. Haefeli will say,  
21 that's all I'll say.

22 MR. HAEFELI: Richard T.  
23 Haefeli, 48F Main Street, Westhampton  
24 Beach. I represent the Packs, the  
25 adjacent property to the east.

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2 The first question I have is, you  
3 re-advertised this, so I'm not sure what  
4 the status of the hearing was in November.  
5 Is this part of that? Is this a new  
6 hearing? I introduced information at that  
7 hearing.

8 MR. PROKOP: The hearing  
9 continued over. We just decided to  
10 re-advertise it. It was open.

11 MR. HAEFELI: So that's part of  
12 it. Anything that was introduced in  
13 November is being considered by the Board?

14 MR. PROKOP: Yes.

15 MR. HAEFELI: I just want to  
16 give everybody a copy of the memorandum of  
17 the Board that I prepared. The issues  
18 that I'm raising which I raised the last  
19 time was basically that this application  
20 is based upon the fact that he has two  
21 valid certificates of occupancy, and my  
22 position is he does not have two valid  
23 certificates of occupancy. At the most,  
24 all there is is a single valid certificate  
25 of occupancy, which is the 1992 CO, which

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS  
2 was issued by the building inspector. I  
3 submitted all of that information at the  
4 last time.  
5 The building inspector inspected the  
6 property in December 1992. During that  
7 inspection, he wrote in the inspection  
8 exactly what he saw. He saw a one-family  
9 residence with an additional building.  
10 Your building inspector in 1998 issued a  
11 certificate of occupancy for a  
12 single-family residence, the same that was  
13 issued in 1992 by the Town of Southampton.  
14 My position is the building inspector in  
15 2016 did not have the authority to issue  
16 the certificate of occupancy that he had.  
17 There were existing COs in existence. If  
18 the applicant at any point in time felt  
19 that the COs that were issued in '92 or  
20 '98 were incorrect, the applicant had a  
21 absolute right to contest that by bringing  
22 a proceeding before the Zoning Board of  
23 Appeals. In '92 it would have been the  
24 town; in '98 it would have been the  
25 village.

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS  
2 The building inspector can't come in and  
3 reject prior COs on their own. We have  
4 the right to raise it in this proceeding.  
5 The village law says that a person can  
6 raise an objection based upon a  
7 determination by the building inspector.  
8 The issuance of the COs in June of 2016  
9 was a determination by the building  
10 inspector. We only found out about that  
11 when this proceeding was brought. We have  
12 entered into this proceeding and raised  
13 all the issues with reference to the  
14 certificate of occupancy before this  
15 Board. This Board has the authority, has  
16 the jurisdiction to consider whether or  
17 not there was a valid CO for two  
18 residences or a valid CO for only one  
19 residence.  
20 His application, based upon the facts,  
21 says, "I have two existing preexisting  
22 residences; therefore, I can subdivide  
23 it." If he doesn't have two preexisting  
24 residence, he would then only have one  
25 residence. His whole basis for asking for

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 relief would not be there.

3 MR. CASHIN: What was the  
4 language on the other COs that you said?

5 MR. HAEFELI: One building plus  
6 an accessory building.

7 MR. SARETSKY: Is this it?

8 MR. HAEFELI: Yes. That's  
9 basically the CO that was issued in '92.  
10 Remember, in 1992, this area was still  
11 part of the Town of Southampton. That was  
12 the CO that was issued in 1992 by the  
13 building inspector of the Town of  
14 Southampton. This certificate of  
15 occupancy in 1991 --

16 MR. CASHIN: Joe is going to  
17 tell us whether we can consider that.

18 MR. HAEFELI: The certificate of  
19 occupancy in 1992 -- I think I gave copies  
20 of this to the Board at the last  
21 hearing -- is a single-story,  
22 single-family wood-frame building,  
23 attached deck and storage building.  
24 That's the same language in 1998.  
25 Going back to 1960 was for addition; the

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 CO was for addition. There were two  
3 affidavits. One was in 1978 when Harold  
4 issued it and signed an affidavit that was  
5 used to get the 1992 certificate of  
6 occupancy. He made reference to the  
7 single building he had when he purchased  
8 the properties in 1950.

9 In 1998 there was an affidavit by, I  
10 believe, the son of Mr. Ormerod. I think  
11 that was used for purposes of going before  
12 the DEC.

13 2008, he states that, "The second home on  
14 the premises was built by my father in  
15 1950." I said the zoning came into effect  
16 in the Town of Southampton in 1957. When  
17 it came into effect, it required and  
18 permitted only one one-family residence  
19 with that zoning district. That's exactly  
20 what was in effect at the time the code  
21 came into effect. The second -- There  
22 could've never been a second building put  
23 on the property. It would have been a  
24 violation of the zoning code.

25 MR. CASHIN: Joe is going to

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 tell us whether we can consider that.

3 MR. MIZZI: What's your client's  
4 objection to the subdivision other than  
5 paperwork?

6 MR. HAEFELI: The objection is,  
7 you have a single piece of property now.  
8 All the other properties -- I'm not going  
9 to put in any more photos. All the photos  
10 indicate everything in this area is one  
11 lot from Dune Road to -- he's creating  
12 something new and different which are two  
13 lots. If he has one valid house, how can  
14 he subdivide the property into two? My  
15 client bought the property next door.  
16 It's a piece of property. It's not a  
17 piece of property; it's going to be two  
18 pieces of property. It allows people to  
19 come in to do whatever they want to do.  
20 Each owner can come back into the zoning  
21 board and ask for whatever relief that  
22 they want to ask for which could increase  
23 the degrees of nonconforming.  
24 I mean, you have the five elements.  
25 Adverse impact of the character of the

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 neighborhood; if you are going to make a  
3 two-lot subdivision in an area where  
4 everything else is a single lot, in my  
5 opinion, that automatically indicates that  
6 it adversely impacts the character of the  
7 area.

8 Is it self-created? Yes. He has what he  
9 has. He's asking for something new.

10 Are the variances substantial? They are  
11 substantial. Those are the three. It's  
12 not like I'm asking for two front yard  
13 side yards. He's asking for substantial  
14 variances if the relief would be granted  
15 by the Board.

16 When you take all of the factors into  
17 consideration, the character, the  
18 substantiality of it, if it's  
19 self-created, would tend to mitigate  
20 against granting of any relief. If the  
21 Board denied the relief, I believe it  
22 would be upheld because there were  
23 substantial reasons for denying the  
24 relief.

25 If the Board wants to say he has two



1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 houses, I don't believe that. It's two  
3 houses on one piece of property. Not two  
4 houses on two separate pieces. It  
5 decreases the value of the adjacent  
6 properties. My client has a piece of  
7 property that is a single piece of  
8 property. The property next door was a  
9 single piece of property up until 2017 and  
10 now it's two. Does that increase or  
11 decrease the value of my client's property  
12 or the properties on the other side? I  
13 think it decreases the property.  
14 If it's a single residence, single owner,  
15 it's still just one piece of property.  
16 When people go looking at it on a tax map  
17 or Google, there's two lots next to  
18 everything else that's one lot.  
19 These are 11,000 square foot lots versus  
20 22,000 square foot lot. 22,000 square  
21 foot lot is a substantially larger lot.  
22 If this remains a single lot and somebody  
23 bought it, the owner of that property  
24 could put up on that lot the other homes.  
25 All the houses that are adjacent to this

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 particular piece of property have been  
3 rebuilt over the last eight, ten years are  
4 substantial. These are very small little  
5 homes that are there. It remains as a  
6 single property and a person comes in and  
7 buys it and says, "I want the same square  
8 footage but I want to put in a single  
9 house." That a single house would be more  
10 conformity to the other lots in the area  
11 than two small little houses.  
12 The character of the area, the  
13 substantiality, self-imposed. All three  
14 of those, in my opinion, this particular  
15 application doesn't meet those standards  
16 and should be denied.

17 MR. MIZZI: Question for you.  
18 You were saying -- I understood what you  
19 said relative to the 1992 CO. What's the  
20 wording on this on the '99 that makes it  
21 different from 2016?

22 MR. HAEFELI: Single-family  
23 structure, two stories, additional  
24 one-story building. That's essentially  
25 the same that we set forth in 1992.

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 MR. CASHIN: '92 said "storage  
3 building."

4 MR. HAEFELI: All right. He  
5 says an "additional one-story building."  
6 It doesn't say "additional one-family  
7 residence."

8 The 2016, the building inspector issued  
9 two separate and distinct certificates of  
10 occupancy. This CO is a CO for one  
11 one-family building with an accessory  
12 building. The 1992 CO indicates one  
13 one-family building with an accessory.  
14 The key is in 1992, the affidavit from Mr.  
15 Houlihan, when he inspected the property  
16 in December 1992, he stated in that in  
17 writing what he inspected, what he saw,  
18 and he dated it that day. Obviously, I  
19 asked him, "Do you remember what happened  
20 in 1992?" He's been a building inspector  
21 for years; he doesn't remember. That was  
22 his process. He would go out and make a  
23 written notice.

24 CHAIRMAN GESSIN: What was the  
25 purpose of the 2016 CO?

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 MR. HAEFELI: I don't believe  
3 the building inspector had the right to  
4 issue the CO in 2016. He had the prior  
5 CO.

6 If an applicant says, "Those COs are no  
7 good," first of all, he should've  
8 challenged it within 60 days of the date  
9 of decision by the building inspector in  
10 1992 or 1998. That's what the village law  
11 says. He didn't do that.

12 He said, "Well, I looked at two COs in  
13 2016." The building inspector should have  
14 said, "I have a CO here for a  
15 single-family dwelling issued by the  
16 Village of Westhampton Dunes and the  
17 Village of Westhampton Beach. If you  
18 think you do, you have to go to the Zoning  
19 Board of Appeals. Let the Zoning Board  
20 determine whether or not." I don't think  
21 he had authority or jurisdiction to issue  
22 that CO when there's a valid CO in  
23 existence.

24 MR. HULME: To the extent that  
25 there was any ambiguity into the history

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS  
2 of this property and to the extent that my  
3 client believed that the COs reflected an  
4 error in the conclusions, we had a right  
5 to request that the building inspector  
6 review the history. Everything that Mr.  
7 Haefeli talked about, except for  
8 Mr. Houlihan's 30-year-late affidavit, was  
9 before the building inspector. He's  
10 entitled to make that determination.

11 MR. MIZZI: When were those  
12 homes built? After '99?

13 MR. HULME: Yes.

14 MR. MIZZI: So in 1999, the  
15 house was built and this was issued and  
16 then nothing was changed but the homeowner  
17 went back and got these?

18 MR. HULME: Right. We believe  
19 what he had prior was an error. If it's a  
20 mistake, we have a right at any time to go  
21 back and request it. Mr. Haefeli points  
22 out a 60-day time frame which applies to  
23 him too. I believe there is no standing.

24 MR. SARETSKY: I have to dumb  
25 this down. In 1998 you got a certificate

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS  
2 of occupancy for rebuilding these two  
3 homes, correct? Now, for some reason or  
4 another -- I'm not sure that I  
5 understand -- 17 years later, something  
6 must have been done to the house. You  
7 just filed a certificate of occupancy just  
8 because you wanted to --

9 MR. HULME: No. We were coming  
10 here. I wanted that issue to be clear.  
11 We believed all along that we had two  
12 single-family residences on this property.  
13 We believe the record taken in its  
14 entirety supports that. We wanted to  
15 avoid this particular issue in front of  
16 you.

17 CHAIRMAN GESSIN: I don't think  
18 it matters one way or the other.

19 MR. HULME: We asked the  
20 building inspector to look at it.

21 MR. MIZZI: The question I have,  
22 if I went to the building inspector and  
23 got it amended and I tried to do  
24 something, does the Zoning Board have  
25 authority to address that?

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 MR. CASHIN: He's going to let  
3 us know.

4 MR. PROKOP: I think it does. I  
5 need to check with the law.

6 MR. MIZZI: If we don't have  
7 authority, we don't have authority. If we  
8 have authority, we have to understand it.  
9 I don't think anyone is arguing that's  
10 what appears to have happened.  
11 You went separately and you got a judgment  
12 from somebody and you're saying we should  
13 consider it and you're saying we shouldn't  
14 consider it. We need to know, should we  
15 consider this? You can't tell us. You  
16 can't tell us. Joe is going to tell us.  
17 That would determine how to consider this  
18 information.

19 MR. PROKOP: There's a couple  
20 different principles. One in which is  
21 mentioned Mr. Haefeli's memo, the Parkview  
22 Associate's case.  
23 The Parkview Associate's case is a  
24 building in New York City. The building  
25 permit was issued incorrectly. It allowed

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 the building to be built to 700 feet or  
3 whatever the limitation was of the  
4 building height. It allowed 76 stories  
5 which was six stories over the number of  
6 stories. This is more or less the  
7 details. It allowed six stories too many  
8 to the building. They had a building  
9 permit but they did not have a CO. The  
10 people who were against the building --  
11 The people against the building noticed  
12 that even though the height was the right  
13 height, it was six stories too high and  
14 they made Parkview Associates take off the  
15 top six or ten stories of the building.  
16 That building did not have a CO. In this  
17 case, COs that are issued for  
18 improvements, if the CO is issued in  
19 error, if the improvements are done,  
20 normally, that would be considered that  
21 there's some vesting because the  
22 improvements are done or the possibility  
23 for mutinous, even if the CO was issued in  
24 error.  
25 However, in this case, there looks like



1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS  
2 there may not have been significant change  
3 in the building between 1999 and 2016.  
4 There may not have been a right that  
5 vested in any change that was done in  
6 error or approved in error. These are the  
7 kind of things --

8 MR. MIZZI: You're saying, if I  
9 understand correctly, if Mr. Haefeli was  
10 saying that there was something wrong with  
11 the building that should be modified,  
12 based on the old CO versus this CO might  
13 be a different argument.  
14 If he's saying the house is built too  
15 large, even though there is a CO now, you  
16 might say, "It was approved back then.  
17 Therefore, you can't challenge today."

18 MR. PROKOP: Yeah. I mean, I  
19 think these things are definitely  
20 reviewable by this Board because we have  
21 the application of relief and the use of  
22 the building is part of the relief.  
23 One of the things that I would point out  
24 to you is that the 1999 CO might be  
25 incorrect. It could be that the 1999 CO

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 should've said, "two single-family  
3 houses."

4 MR. MIZZI: You're going to tell  
5 us if we can consider that?

6 MR. PROKOP: It's not really  
7 fair to come to the Board and say,  
8 "Listen, you can review a CO but you have  
9 to rely on the '99 CO." If we can't  
10 review a CO --

11 MR. MIZZI: We can review both.

12 MR. PROKOP: Right.

13 MR. SIEGEL: The example that it  
14 was too large, it would be so much easier  
15 just to compare to what the truth is. The  
16 truth is that that building was either a  
17 storage building or --

18 MR. CASHIN: They built it up  
19 into a house over the years.

20 MR. SIEGEL: That now have  
21 bedrooms and bathrooms. That's the  
22 change.

23 MR. MIZZI: It's an important  
24 point to know whether we should just be  
25 accepting that because the building

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 inspector said this, then accept it or  
3 not.

4 MR. SIEGEL: Why accept this one  
5 and not this?

6 MR. CASHIN: Joe will tell us.

7 MR. HULME: I would ask, based  
8 on what Joe tells you, if he says that we  
9 can inquire, I would definitely like to  
10 come and present what I've already  
11 presented to the building inspector that  
12 led him to the conclusion that he said.  
13 If not, I won't need to do that.

14 MR. MIZZI: We would have to  
15 understand that.

16 MR. HULME: If Joe can tell you  
17 as well as us so we can come prepared.

18 MR. HAEFELI: I'm not going to  
19 be able to make the March meeting.

20 MR. PROKOP: We'll let you know  
21 in advance.

22 CHAIRMAN GESSIN: Jim, I know  
23 you said you're not going to do anything  
24 with this property. They definitely need  
25 some separating. What separating are they

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS  
2 going to do? Are they going to modify the  
3 electric so they are separate?  
4 MR. HULME: Well, my client  
5 assures me that there's two meters.  
6 MR. MIZZI: Bring in two bills  
7 for the water and the electric.  
8 MR. MIZZI: Do utilities go  
9 through one property to the other?  
10 MR. HULME: Since we own both  
11 parts, we can easily manage with an  
12 easement. If one of the conditions of the  
13 grant here is that we relocate some of the  
14 services, that's not a problem at all.  
15 CHAIRMAN GESSIN: Also  
16 driveways.  
17 MR. HULME: I think those are  
18 reasonable requests. If the Board  
19 conditions their approval on those kind of  
20 things, we don't have any issues with  
21 that. We don't have issues at all. Thank  
22 you.  
23 MR. MIZZI: Any other comments?  
24 MR. SARETSKY: We can go home.  
25 CHAIRMAN GESSIN: I would like

1 WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

2 to make a motion to adjourn this meeting.

3 Would someone like to second it?

4 MR. SARETSKY: Second it.

5 CHAIRMAN GESSIN: Meeting is

6 adjourned.

7 (Whereupon, the meeting was adjourned at

8 12:14 p.m.)

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

I, JESSICA SEYLER, 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 February 4, 2017.

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 on this 15th day of February, 2017.

\_\_\_\_\_  
JESSICA SEYLER