INCORPORATED VILLAGE OF WESTHAMPTON DUNES
ZONING BOARD OF APPEALS

February 4, 2017
10:00 a.m.

Meeting held at 906 Dune Road,
Westhampton Dunes, New York.

APPARENCIES:

Harvey Gessin - Chairman
James Cashin - Member
Kenneth W. Siegel - Member
Eric Saretsky - Member
Joseph Mizzi - Member

Joseph Prokop - Village Attorney
Arom Terchunian - Environmental Consultant
(Whereupon, the meeting was
called to order at 10:16 a.m.)

CHAIRMAN GESSIN: I'd like to call this
meeting to order. This is the Westhampton
Dunes Zoning Board. Today's date is
February 4th.

I would like to start by doing the Pledge
of Allegiance.

(Whereupon, all stood and recited the
Pledge of Allegiance.)

MR. TERCHUNIAN: Mr. Chairman,
your first advertised hearing is in the
matter of 13 Dune Lane, LLC. The Suffolk
County tax map number 907-01-01-48. 13
Dune Lane, Westhampton Dunes, New York.

A front yard setback variance of 16 feet
for a primary structure where a front yard
setback of 60 feet is required and the
proposed front yard setback is 44 feet.

A front yard setback variance of 16 feet
for the front stairs where a front yard
setback for stairs is 50 feet is required
and the proposed front yard setback for
the stairs is 34 feet.
A rear yard setback variance of 15 for the primary structure where a rear yard setback of 30 feet is required under the 3/10 reduction in the required rear yard rule (560-41(D)(2) and the proposed rear yard setback is 15 feet.

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

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

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

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

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

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

MR. PROKOP: Was there ever
anything here?

MR. HULME: I have not been able
to discover anything here. It's been
vacant for as long as anybody can
In terms of the context of the neighborhood, the other thing I submitted -- hopefully, you have a copy of that -- is somebody very nicely on a different variance application had done a nice analysis of this neighborhood. The deviations from the village code that have transpired with all of the other developed lots. I think this is the lost lot in need of being developed. I think the analysis you have and the averages that that analysis achieved includes lots of various sizes. I'll talk in a minute about what the averages for this entire neighborhood was. I think it's educational to look at the house just to the right and the left, the east and the west, of the subject property in terms of what parameters they've established. Obviously, those are the lots most affected. They are also lots including one, two doors to the west that are exactly the same size, 50 by 100. Some
other lots included in the averages are much larger lots.

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

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

In the rear yard, we are looking for 15
feet. Next door is 19 and a half feet and 16.8 feet. They're a little larger. The neighborhood average is quite a bit larger. That takes into account some rear yard setbacks of some lots that are a little bit larger than our lot.

Lastly is the coverage. We're looking for 25.3. The average in the overall neighborhood is 23.5 but if you look at the properties to the east and west, their lot coverage is actually 31% and 35%, respectively.

In summary, the point of all this is that what we're proposing, I think, is very comparable to what has already been allowed there and what is the character of the neighborhood. That's one of the first factors, obviously, that needs to be looked at in deciding. I think if you're looking at the balancing test, which is the standard by which you need to decide to whether we are entitled to these variances or not, the first factor is --
MR. CASHIN: Jim, excuse me.

Can you go over the lot coverage averages again?

MR. HULME: Sure. Ours is 25.3. I would point out that the house itself is only 22.02. The rest of the coverage is the staircase. The neighbor just to the west is 31% coverage. The neighbor to the east is 35% coverage.

MR. SIEGEL: Do those include the stairs too?

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

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

MR. CASHIN: Thank you.

MR. HULME: Sure.

So, undesirable change in the character of the neighborhood, I think we're building a two-story single-family dwelling that's very much in keeping with the size and shape and location of the other houses certainly directly on either side of us and in general of this particular
neighborhood. If these variances are granted, I don't expect that this would produce an undesirable change in the neighborhood.

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

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

Whether the proposed variances will
adversely affect or impact the physical
environmental conditions of the
neighborhood, this is a single-family
residential neighborhood. We are
proposing a single-family residence. The
land is going to be used in exactly the
manner that the land provides for. We're
proposing, with these variances, to be
allowed to use the land in a way very
similar with similar setbacks and similar
coverages to other houses in the
neighborhood that this lot sits in.
So, therefore, I don't expect that there
would be any adverse physical
environmental impacts with a single-family
residence.
The last one is whether or not the
difficulty is self-created. We didn't
create the lot, the size of the lot. We
didn't create the rules. We didn't take
any affirmative steps to cause this lot.
We are in need of these variances, so I
would suggest, first of all, that the
difficulty we're experiencing here, the
overlaying of the village code on top of a smaller lot which produces a negative building envelope is not from our personal doing, therefore, it's not self-created. In any event, even if you disagree, that factor by itself is not sufficient to the denial of the variances that we're seeking.

At the end of the day, these factors that you are obligated by law to consider are really factors that you need to take into consideration when you are doing the balancing test, which the law actually requires you to do, to balance the benefits to the applicant. The benefit to the applicant, I think, is very obvious. We have a vacant lot that we would like to build a house on. Granting these variances will allow us to build that house. Again, even without any variances, we couldn't build any house. The determent to the neighborhood, not really. I mean, everybody in this neighborhood only has the right to expect
that a house may some day be built on this separate, unidentified lot.
The balancing test as well as the analysis of the factors themselves seem to tip the balance in the favor of the applicant and, therefore, the variances that we're seeking.

CHAIRMAN GESSIN: Thank you.

Anybody have any questions?

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

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

MR. SIEGEL: Do you know when
WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

those were approved? With variance or
without variance?

CHAIRMAN GESSIN: Nothing since
I was on the Board.

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

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

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

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

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

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

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

MR. HULME: You have to talk
ccharacter.
MR. SIEGEL: Character is fine.

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

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

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

MR. HULME: Our architect sat down and designed this house in keeping with the neighborhood and keeping with the character of the neighborhood and to create living spaces that are appropriate for the neighborhood that someone would want to live in and this is the design that came in. These bedrooms are not overly large. Again, however the character of the neighborhood became the character of the neighborhood, it is the character of the neighborhood. There is no factor that says, "We never gave this" or "We never gave that before." There is a factor that says, "What is the character of the neighborhood?"
WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

character of the neighbor is lot coverages
that are, on average, 23.5% but extend as
high as 31%.

MR. SARETSKY: Not in front of
this Board.

MR. CASHIN: Joe, are we not
allowed to consider precedent?

MR. PROKOP: You are allowed to
consider precedent.

MR. HULME: But one of the
single biggest factors here is the
character of the neighborhood.

MR. SARETSKY: Isn't that
something subjective? I mean, we're
talking about the size of the bedroom
being a foot smaller. The character of
the neighborhood to you versus to Joe
could be two different things.

MR. HULME: Well, the character
of the neighborhood is lot coverages
ranging from 23% to 35%. We're talking
about coverage; the character of this
neighborhood as it pertains to coverage.

Whether those lot coverage limits were
there based on prior variances or
preexisting conditions or something else,
all of these houses are legally
constructed and legally there with those
coverages there by creating the lot
coverage in this neighborhood.
Granting the relief here doesn't allow
somebody two and a half miles away from
arguing just this neighborhood and saying,
"Well, they have 35% there; I want 35%
here." This is a very different
circumstance.

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

MR. HULME: You have to compare
and contrast like-situated -- This is a
5,000 square foot lot. This is a 5,000
square foot lot. This is a 5,000 square
foot lot. This is a 5,000 square foot
lot. And these two are as well. They
all, I believe, have averages that are
larger than the overall, which makes perfect sense because these are larger lots. The relief that we're looking for is not out of scale for the neighborhood, however you want to define it.

MR. PROKOP: My comment is that the relief that is being requested, the Board should look at the scale of the house, which is the elevation in the plans which is good the applicant shows us. This house has a second-floor deck and two third-floor decks which are all in the -- The first floor, the second floor, and two third-floor decks which are all in the areas where relief is being requested. We have gone over this with other people in the past. The large deck is actually -- The third floor deck -- One is in the front yard where relief is being requested and the other is in the back rear yard where relief is being requested. We've gone through this with other applicants about the impact of that. Why wouldn't this be a pyramid variance?
MR. HULME: Because the building inspector, in reviewing our analysis here, indicated that the penetrations that are seen through the pyramid line are permitted.

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

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

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

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

MR. HULME: All I can tell you --

MR. SIEGEL: You're talking about this little square right here? And
WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

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

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

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

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

MR. SIEGEL: Oh, the distances?

MR. HULME: Yes.

MR. SIEGEL: It's the same
slope.

MR. TERCHUNIAN: Yes, all 60
degrees.

MR. SIEGEL: The house doesn't
seem really much bigger than anything
that's there already. It just seems like
an awful lot of requests. When you go for
variances -- I'm an architect. So when I
go in front of the Board, I always ask for
a little more than I know I'm going to get so I'm willing to pull it in a little so that I make everyone happy. I can't imagine that they didn't do that as well. In any case, if this was to be made just a tiny, little bit thinner, not only would it fit -- it would be a little bit better for not needing the area variances that was above anything that's ever given by the Board. It would mitigate some of these other little questions that are probably nothing any way. As far as side yards, there's nothing here that says side yards.

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

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

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

MR. PROKOP: That can't be
considered the first floor.

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

MR. HULME: Yes.

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

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

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

MR. HULME: Right.

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

MR. HULME: I agree with you.

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

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

CHAIRMAN GESSIN: The two issues
that I see is the 25.3 and the 19 feet on the rear yard is the problems I see. None of the other houses along that whole strip are 19 feet.

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

CHAIRMAN GESSIN: 15 feet, sorry.

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

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

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

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

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

MR. SIEGEL: Do you know if
there's a -- where the first row of tanks against the street, are they allowed to go any closer to the street? There's no dimension there.

CHAIRMAN GESSIN: I think there's a ten-feet setback.

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

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

MR. HULME: The septic?

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

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

MR. SIEGEL: These are all rectangulars.

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

MR. HULME: There's a proposed
septic system detail below.

CHAIRMAN GESSIN: Is this raised or no?

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

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

MR. MIZZI: Depends on the elevation.

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

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

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

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

MR. CASHIN: All new construction has to be.

MR. HULME: The septic system is the septic system. If we have to make it
a concrete wall rather than a wooden wall, obviously, we have to do that. None of that allows us to relocate the septic system from where it is. The septic system is where the septic system is.

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

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

CHAIRMAN GESSIN: What percentages are the steps?

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

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

CHAIRMAN GESSIN: What this Board has accepted in the past are pervious steps so you'll be under 23.2.
MR. HULME: So if we make the steps pervious, we're at 22.02. We adopt that.

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

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

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

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

CHAIRMAN GESSIN: They're at 19.

MR. SIEGEL: It looks pretty easy.

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

MR. PROKOP: They're have to be setback. We have a meeting on the 15th,
and we'll probably set a public hearing
for the March meeting on a local law. I
don't know what will happen.

CHAIRMAN GESSIN: Do you know
what's proposed?

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

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

MR. BURNER: Across from this?

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

MR. TERCHUNIAN: Yes.

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

MR. BURNER: It's being proposed
here?

CHAIRMAN GESSIN: Correct.

We decided on their application to approve
everything except their request on the
steps. We adjourned that until the new
WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

law comes into effect. Are you okay with that?

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

CHAIRMAN GESSIN: Before your house is done.

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

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

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

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

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

MR. TERCHUNIAN: Only the stair part.

CHAIRMAN GESSIN: You may not even need variances, that's true, depending on what the standard is.
MR. BURNER: Yes, I guess.

Sure.

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

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

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

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

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

CHAIRMAN GESSIN: Correct.

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

MR. GESSIN: Correct.

MR. HULME: A lot coverage of 22.02% with a pervious staircase not counting. And taking our request for the stair variances off the table until --
CHAIRMAN GESSIN: We'll leave it open.

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

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

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

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

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

MR. PROKOP: That would be my suggestion.

MR. HULME: That's fine.

CHAIRMAN GESSIN: Okay. What
are we voting on, Joe? Are we voting today or does he have to amend his application first?

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

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

MR. HULME: Everybody got noticed so everybody can come. We're looking for front yard relief and rear yard relief. The nature of the relief we are looking for, the dimension has changed. We're not adding a height variance; that was not advertised at all. We're not adding a fourth-story variance.

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

CHAIRMAN GESSIN: What do you want us to do?
MR. PROKOP: We should amend the notice for the next meeting.

CHAIRMAN GESSIN: And vote next time?

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

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

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

MR. SIEGEL: 100 percent.

MR. HULME: Do you know your next meeting?

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

CHAIRMAN GESSIN: Look at a year calendar. Make sure it doesn't fall on New Year's or Christmas. We're trying to go to a regular schedule. If there's nothing on the agenda, we'll cancel the meeting. For some reason, we don't have
WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

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

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

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

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

MR. PROKOP: I'm good for that.

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

MR. TERCHUNIAN: Second.

CHAIRMAN GESSIN: Okay. Matter adjourned.

MR. TERCHUNIAN: Mr. Chairman, next hearing for today is in the matter of Ray Weber. Suffolk County Tax Map number 907-02-01-04. 846 Dune Road, Westhampton Dunes, New York. The applicant proposes to subdivide a conforming lot into two substandard lots, Lot 1 and Lot 2, requiring the following variances:
Lot 1 Variance, a minimum lot area variance of 28,688 square feet where a minimum lot area of 40,000 square feet is required and a lot area of 11,312 square feet is proposed.

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

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

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

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

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

A lot width variance of 75 feet where a
lot width of 150 feet is required and a
lot width of 75 feet is proposed.
A front yard variance of 15.2 feet where a
front yard of 60 feet is required and a
front yard of 44.8 feet is proposed.
A total side yard variance of 23 feet
where a total side yard of 60 feet is
required and a total side yard of 37 feet
is proposed.
Such other matters as may properly come
before the Zoning Board of Appeals.
MR. HULME:  For the applicant,
James N. Hulme, 323 Mill Road, Westhampton
Beach, New York.
Good morning.  I'm here on behalf of the
applicant, Ray Weber, the owner of 846
Dune Road as was described in the notice
for this hearing.
My client is seeking to subdivide a
property that he currently owns that
contained two single-family residences on
one lot.  A total area of about 28,000
square feet; a 75-foot width at the road
and 370-feet in depth.
This application is here, I think, as a referral from the trustees acting as the planning board as we are seeking a subdivision, and these are the variances necessary to the trustees acting in the capacity as the planning board to seek to finalize the subdivision from the perspective of the village code.

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

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

Just by way of summary, I created a chart, which I believe reflects exactly what was announced as the variances. I've
indicated for you the various dimensional requirements of the village code, what the current circumstances are relative to those requirements, what would result as relative to those dimensional requirements for Lot 1 and Lot 2. I have tried to highlight in yellow the areas we're seeking variances to allow the creation of those two separate lots.

We touched on this a little bit last time; I wanted to touch on it again. I believe Mr. Haefeli is here for one of the neighbors, and I'm sure he will address both of these issues from his own perspective at the appropriate time. The first thing we discussed last time was the certificate of occupancy for this property. This property has two houses on it. The building inspector reviewed a lot of materials that I provided him as well as anything else that was appropriate for him to review which accompanied my request to reissue certificates of occupancy for the premises here.
Upon his review, the building inspector concluded that there were, in fact, two separate single-family residences located on his property. He issued certificates of occupancy.

MR. PROKOP: What's the date?

MR. HULME: The certificates?

MR. PROKOP: Yes.

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

MR. WEBER: I have them (handing).

MR. SIEGEL: He is allowed to do that?

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

Upon his grant, I guess any other neighbor at that time would've had recourse to do something about that. I think for the perspective of this Board, the building inspector has acted and has determined
that there are two single-family residences on that property. I think it's part of the application that you can inquire beyond that.

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

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

MR. HULME: I think he issued two brand new COs. It describes two different residences. Having a certificate of occupancy as a residence allows somebody to use it as a residence. That's what we have. We have two residences on one property. It can be rented. He can live in one and rent out the other. He can rent out both of them.
He can do anything anybody else can do.

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

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

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

MR. HULME: No, I did not. I received information from the village attorney's office as to what were the necessary variances. If there's a pyramid issue, we can address that. That's part of my point here. We're just drawing lines on a piece of paper. We're not affecting or impacting the community in any way different right now.

Anyway, that's my comment on the CO issue. Counsel will advise you as to his position on that. The other issue --
The DEC restriction, what is the date on that, the DEC approval?

CHAIRMAN GESSIN: October of '98.

MR. HULME: The building inspection was in receipt of that document. That's one of the documents that he considered prior to his issuing the CO. I would suggest a couple of things about the DEC permit. One, it has no bearing on this proceeding. The DEC regulates environmental regulations that they are responsible for regulating. You guys are here to interpret the zoning code and to grant variances as necessary or as appropriate as you deem appropriate going forward. The fact that the DEC may or may not have taken a position in the past relative to their permit shouldn't have any bearing on yours. Their regulations are completely different than yours. They don't tell you how to do zoning; you don't tell them how to do environmental
WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

regulations.

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

MR. MIZZI: It was provided to us?

MR. HULME: I gave it to you.

MR. MIZZI: That's my point.

Considering what's being asked of us, in reviewing the material, we were given something that represented that the owner would covenant the deed saying it would not be sold. It appears that the next step for allowing this would to potentially allow something to be sold.

Is that something we should be
WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

considering?

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

CHAIRMAN GESSIN: To rebuild the two houses.

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

MR. HULME: My final position relative to that, it has no bearing on this proceeding. Counsel will advise you what he believes the law is. We'll see if we agree or don't agree.

Our purpose before you is to seek variances from your --

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

MR. HULME: Same as it is today as reflected in the certificate of
WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

 occupancy.

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

 MR. HULME: Yes.

 MR. SIEGEL: Were they ever closer together?

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

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

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

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

 MR. HULME: That's the case that we made to your building inspector through
affidavits and prior documents and such. That's the conclusion he came to, yes. He didn't give us anything new. He agreed with us that it was two single-family residence and that we were entitled to keep and rebuild two single-family residence pursuant to the applicable rules and laws.

MR. SARETSKY: I don't mean to repeat myself. What he did was, he gave two certificates of occupancy of two buildings, not necessarily saying they were separate properties in the sense --

MR. HULME: He didn't say two separate properties.

MR. SARETSKY: That's what I am getting at. These are two structures that can be used as residences but not necessarily by multiple owners.

MR. HULME: Not yet. That's what we're here for. I'm establishing a baseline --

MR. SARETSKY: I understand.

MR. HULME: -- that will
WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

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

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

MR. HULME: (Handing).

MR. PROKOP: Thank you.

MR. HULME: Those are the
preliminary matters.

Now, I wanted to get to the crux of the
matter from our perspective to look at the
variances that we're actually seeking and
why we may be entitled to them. I use
this document all the time because he
keeps me focussed on what we are asking.

This is really a recitation of the state
village law that determines how we're
supposed to go about looking at these
variances. The law is really in two
parts.

The first part is said that the obligation
is to do a balancing test. The balancing
test is to look at the benefit for the
WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

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

The five factors you're obligated to
evaluate but they are to assist you in
doing the balancing. They are not the
be-all and the end-all by themselves. At
the end of the day, after we talk about
each of these five factors and you
consider them, what you really need to do
is do this balance. What I hope to be
able to demonstrate to you is that there's
benefit for the applicant, an obvious
benefit, in allowing this to go forward.
Furthermore, I hope to be able to
demonstrate to you that there's little or
no negative impact on the community. In
fact, I think there's benefit to the community in granting this variance. I just want to outline in general what it is.

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

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

The first factor is an undesirable change in the neighborhood. We're seeking to draw an imaginary line that provides some flexibility to the owner as to how he manages and handles this property. It has no impact on the neighborhood. There are two houses there right now. Both of those houses can be occupied. Both of those houses can be rented. The entire property can be sold. After the subdivision, there are two houses. I don't see any connection with drawing this line and subdividing the property and a change in the character of the neighborhood.

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

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

Whether the requested area of variances is substantial, again, I suggest to you that that's the relative term. The actual dimensions and the actual impacts that those dimensions create is exactly the same before as after. Whether this imaginary subdivision line is drawn or not, these houses are exactly where they are. They are exactly the same distance from the neighbor. They're exactly the same way to access these properties.

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

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

MR. HULME: In absolute scale,
yes.

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

MR. HULME: Yes, to mitigate
that a little bit. These are not -- Even
after the subdivision were granted, these
are not the smallest lots in the
neighborhood. Down the road in one
direction, you are in the Dune Lane area,
which we talked about in the prior hearing
today as well as in the prior hearing
before. There are pockets in the village
where they are smaller lots. If you go
down the street the other way, 836, you
find smaller lots. If you go down even
further, 826, there are lots of little
pockets within the Village of Westhampton
Dunes that these lots, when created, are
comparably sized. These would not be the
smallest or the first small lots that were
created in this village, which is the
point I wanted to make with the aerial.
Again, there's much more detail about Dune
Lane on prior applicants. I think there's
at least one record in this file. Let the
record reflect that it's a record.

MR. TERCHUNIAN: It so reflects.

MR. HULME: Again, the next
factor is the adverse environmental or
physical impact. We are just drawing an
imaginary line. There's no impact that
derives from drawing that line on the
community as a whole.
MR. CASHIN: You have to draw for access driveways as well, right?

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

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

MR. HULME: Oh, yeah.

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

MR. HULME: In the front yard somewhere. It is going to be where it is right now. The parking for the rear is going to be where the parking is right now for the rear. That's my point.

These houses, lots, separately will not be used any differently than it's used now.

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

MR. HULME: Any changes to that would require further relief from the village and likely this Board, in the same matter as if we wanted to add a second
story to the front house, we have to come
to get building relief.
If the property is divided and we want to
add a second story to the front house, we
have to come here for the same relief,
perhaps even more relief.
By granting the subdivision, you're
perhaps, in a strange sort of way, further
restricting the development of this lot.
My point is, on either side of this grant,
there's the same thing.

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

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

MR. SIEGEL: If the imaginary
line was there?

MR. HULME: If the imaginary
line was here and we came in to put a
second story on Lot 1, we probably need
pyramid relief then and we probably
wouldn't need it now.
WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

CHAIRMAN GESSIN: I think you need it now.

MR. HULME: Perhaps.

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

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

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

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

MR. SARETSKY: The only
difference is, if those two lots are sold
and somebody is coming back for variances,
you could come back in some shape or form
in a hardship. Right now, the way you
have it is the way it has been set up and
there is no hardship.

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

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

MR. HULME: You can rely on the history of this lot that it got it to this place.
MR. SARETSKY: If I go by the history, there's some question to some of it.

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

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

MR. HULME: But you are.

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

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

MR. SARETSKY: That's your opinion.

MR. HULME: Let me explain.
There are things that we can do now with a building permit that we may not be able to do after the subdivision. By getting this relief -- and the pyramid law is one of them that attaches -- by your granting this, you're restricting this further than what we can do right now. That's part of the benefit to the community.

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

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

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

MR. HULME: That's not the
application before you. You have to act and react --

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

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

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

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

MR. SIEGEL: And no one else does.

MR. HULME: That's the crux of this application. That's why I believe we're entitled to the variances we're
WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

looking for.

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

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

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

MR. PROKOP: We're losing sight what the Board should be thinking about.

One of the things I would like to ask you, from a legal standpoint, what conditions would you be willing to offer the Board as conditions of an approval if you were to get one knowing what the concerns are?

MR. HULME: I'm not sure I understand completely well enough what the concerns are. People have said that they have this visceral issue, problem with this. I don't know what would be
reasonable conditions.
I would certainly be subject to the zoning code going forward. If that requires us to come back to the Board for some relief to do something with one of these houses, we would have to do that.
If there is something under the village code that we can do just with the building permit, then --

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

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

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

MR. PROKOP: I have to research.

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

MR. TERCHUNIAN: The general rule is that a nonconforming use can't be
WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

expanded by more than 50%.

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

MR. HULME: We can do that now.

If this became a single lot, I'm not sure
we could get away with that.

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

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

MR. TERCHUNIAN: Let me give you
some parameters. Let's just take Lot 1,
the road lot. It's approximately 11,312
square feet, so under lot coverage of 20%,
you can build a footprint of 2,262 square
feet. Take off decks and stuff like that
and add a second story --

MR. SARETSKY: What's there now?

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

CHAIRMAN GESSIN: That's with
the decks?

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

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

MR. SARETSKY: So plus 700 feet?

MR. TERCHUNIAN: So your front
yard would be 60 feet. Your side yards
combined would be 18. And your rear yard
would be 3/10 of 180. Let's do the math.
You got 54 feet on the rear yard plus 60
feet on the front yard. That's 114 feet
overall. So the house is about 40 feet
deep. Remember, coverage and setbacks
don't have to add up. They're independently calculated. The house would be able to be 40-feet deep and that's going to be 45 feet, so it's approximately 40- by 45-foot house.

Under strict application of zoning, buildable envelope is 1,800 square feet. Lot coverage allowance is 2,260 square feet. Presently has about 1,500 square feet.

MR. SARETSKY: So plus 700 square feet?

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

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

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

MR. MIZZI: My question is a
little different. Can this house be move
now?

MR. TERCHUNIAN: Sure.

MR. HULME: If it violated

any --

MR. MIZZI: This configuration

has no limitations on it?

MR. HULME: The zoning code

limits it.

MR. TERCHUNIAN: You can move it
closer --

MR. MIZZI: You can knock these

houses and put one here and one here.

MR. TERCHUNIAN: You have to get

a variance for that.

MR. MIZZI: Why?

MR. TERCHUNIAN: You're knocking

it down and get two new ones.

MR. MIZZI: My question is: A

simple example, right now I own this. Can

I move this here and this one here?

MR. TERCHUNIAN: If you just

moved them and didn't change them, yes.

MR. MIZZI: Okay.
MR. TERCHUNIAN: As long as they comply with zoning.

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

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

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

MR. TERCHUNIAN: The proposed lot.

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

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

MR. MIZZI: All of us have
MR. SARETSKY: You can maximize that lot is what he's saying.

MR. TERCHUNIAN: Right.

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

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

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

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

MR. SARETSKY: Combined or each home?

MR. TERCHUNIAN: Combined.

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

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

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

MR. SARETSKY: Let me ask you this question. Can house in the back get bigger as long as it complies and the
house in the front is in some way geometrically challenged and get skinnier or whatever it does --

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

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

MR. SIEGEL: Very close.

MR. HULME: The correct comparison is not what can we do after subdivided. The correct comparison is what we can do after the subdivision versus what we can do now. Your point is more we are more restricted after the subdivision.

MR. SARETSKY: In the front.

MR. HULME: Obviously, as a sum total, we can do less on this property
WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

after the subdivision than we can do now.
That's a benefit to the community and a
detriment to the applicant.

MR. SARETSKY: Right now, the
way it's set up, if you sell this
property, it's likely the person will
build one home.

MR. HULME: That has nothing to
do with that analysis.

MR. TERCHUNIAN: You can't make
that assumption.

MR. HULME: You can't consider
that. I think after all --

MR. SARETSKY: We're talking
about the character of the neighborhood.
We are talking various things that are
somewhat subjective in opinions. We have
to look at what could happen.

MR. TERCHUNIAN: Your attorney
will advise you. Having appeared in front
of dozens of Boards, conjecturing what
somebody may do with the property is a
dangerous place to go.

MR. SARETSKY: We're choosing
that they're going to make the house the exact same size. They are not going to come with a variance to try to do some of the things that --

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

MR. TERCHUNIAN: Let me go back and visit Mr. Prokop's question because I think it's important. In consideration of everything that's in front of the Board and that you are asking the Board to grant relief on, what future restrictions --
MR. PROKOP: Let me talk for a second. Let me know when the time starts that I can say something.

MR. TERCHUNIAN: Right now.

MR. PROKOP: There's a couple things that's before the Board here. Arom, who is the environmental wildlife commissioner, has pointed out that these may be considered a preexisting nonconforming use because it's two single-family residences on a lot that owns one-single family residence. I don't know that I agree with that or not, but it's something to consider. If that's the case, because there is a limitation on the development, I would point out to the Board though that what's protected by the rap case and also the principle and New York State law is that the footprint is not protected and then you go straight up when you expand these things, it's the footprint and what then what exists above the footprint. Anything else isn't automatic. If you have a footprint which
encroaches which is nonconforming or
something the way that we are talking
about, you don't get the go straight up
four stories. That's a couple of the
things we need to talk about. Unravelling
this into two lots may take away some of
the limitations that we have now. Then
we're taking something nonconforming and
making it conforming. That may take away
some of the limitations that Arom is
talking about. I have to do a legal
analysis of that and advise you. I can
give you a verbal opinion today but it
wouldn't be helpful to you. Probably
Mr. Hulme would like to know what it is
before he makes his final presentation to
the Board as would the neighbors. Those
are the kinds of things we are talking
about. I think that's on the table with
an application like this. There's
probably things that the applicant could
do that they should limit as conditions to
the Board, if we were to consider this
relief. I don't think it's enough to say,
"If you split it up, we should be -- they'll come back." There should be conditions that are considered. I think you might hear from the -- It seems Mr. Hulme would want to go again after Mr. Haefeli speaks. I think we should maybe listen to Mr. Haefeli for a few minutes.

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

MR. HULME: Which lot?

CHAIRMAN GESSIN: Lot 1, rear yard.

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

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

MR. HULME: If I could finish my own presentation. I have a few more
things to add.

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

MR. CASHIN: Can I ask a question?

MR. PROKOP: Yes, sir.

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

MR. PROKOP: Actually, it
depends on our code. There's a case in the Town of Southold in which the court said -- and it was upheld and appealed -- that if a property is on a single-family residence, a second single-family residence is not a nonconforming use on the property. It depends on how your code is written. I'm going to have to look at the code before I can advise the Board.

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

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

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

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

MR. SARETSKY: Isn't that your
opinion?

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

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

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

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

MR. HULME: The use and the balancing test.

MR. MIZZI: I'm trying say, see, where's the one that would benefit the
MR. HULME: Well, the primary thing that you're doing is balancing the benefit to the applicant against the detriment of the community. That's what you're doing. That's what the law requires you to do. You're looking at these factors to help you do that. In a global sense, you have to look at the benefit of the applicant in granting the variance.

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

MR. HULME: That's what zoning is.

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

MR. TERCHUNIAN: When you read
the zoning code, everything needs to move
to conform with the zoning code. That's
the first line in the zoning code.

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

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

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

MR. SARETSKY: And maybe to the
community.

MR. HULME: To move the house?

MR. SARETSKY: To subdivide it.

It's possible.

MR. HULME: No. We'll continue
to talk about it. We have not been able
to find yet a thing that we can do after
that we can't already do. That's the
comparison you have to do. If there's
something, I'm happy to discuss. These properties are even more restricted by the zoning code after they are divided than before they are divided.

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

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

MR. SARETSKY: That sounds like your opinion.

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

MR. PROKOP: We'll discuss that.

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

MR. PROKOP: Let me just say that there are several things that are subject to discussion. I will give you my
WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

opinion.

MR. SIEGEL: In private?

MR. PROKOP: We'll discuss it.

CHAIRMAN GESSIN: He wanted to review it first.

MR. HULME: I don't want to express I'm unwilling to agree to conditions. I would like Mr. Prokop to do his analysis. In the context of that analysis, I'm sure we can develop a series of conditions that would be appropriate for us and that would satisfy some of the concerns of the Board as a whole.

The other thing we will definitely look at between now and the next time is that we'll do a pyramid analysis of what's there now and how that's implicated going forward.

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

MR. HAEFELI: Richard T. Haefeli, 48F Main Street, Westhampton Beach. I represent the Packs, the adjacent property to the east.
The first question I have is, you re-advertised this, so I'm not sure what the status of the hearing was in November. Is this part of that? Is this a new hearing? I introduced information at that hearing.

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

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

MR. PROKOP: Yes.

MR. HAEFELI: I just want to give everybody a copy of the memorandum of the Board that I prepared. The issues that I'm raising which I raised the last time was basically that this application is based upon the fact that he has two valid certificates of occupancy, and my position is he does not have two valid certificates of occupancy. At the most, all there is is a single valid certificate of occupancy, which is the 1992 CO, which
was issued by the building inspector. I submitted all of that information at the last time.

The building inspector inspected the property in December 1992. During that inspection, he wrote in the inspection exactly what he saw. He saw a one-family residence with an additional building.

Your building inspector in 1998 issued a certificate of occupancy for a single-family residence, the same that was issued in 1992 by the Town of Southampton.

My position is the building inspector in 2016 did not have the authority to issue the certificate of occupancy that he had.

There were existing COs in existence. If the applicant at any point in time felt that the COs that were issued in '92 or '98 were incorrect, the applicant had an absolute right to contest that by bringing a proceeding before the Zoning Board of Appeals. In '92 it would have been the town; in '98 it would have been the village.
THE building inspector can't come in and reject prior COs on their own. We have the right to raise it in this proceeding. The village law says that a person can raise an objection based upon a determination by the building inspector. The issuance of the COs in June of 2016 was a determination by the building inspector. We only found out about that when this proceeding was brought. We have entered into this proceeding and raised all the issues with reference to the certificate of occupancy before this Board. This Board has the authority, has the jurisdiction to consider whether or not there was a valid CO for two residences or a valid CO for only one residence. His application, based upon the facts, says, "I have two existing preexisting residences; therefore, I can subdivide it." If he doesn't have two preexisting residence, he would then only have one residence. His whole basis for asking for
relief would not be there.

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

MR. HAEFELI: One building plus an accessory building.

MR. SARETSKY: Is this it?

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

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

MR. HAEFELI: The certificate of occupancy in 1992 -- I think I gave copies of this to the Board at the last hearing -- is a single-story, single-family wood-frame building, attached deck and storage building. That's the same language in 1998. Going back to 1960 was for addition; the
CO was for addition. There were two affidavits. One was in 1978 when Harold issued it and signed an affidavit that was used to get the 1992 certificate of occupancy. He made reference to the single building he had when he purchased the properties in 1950.

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

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

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

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

MR. HAEFELI: The objection is, you have a single piece of property now. All the other properties -- I'm not going to put in any more photos. All the photos indicate everything in this area is one lot from Dune Road to -- he's creating something new and different which are two lots. If he has one valid house, how can he subdivide the property into two? My client bought the property next door. It's a piece of property. It's not a piece of property; it's going to be two pieces of property. It allows people to come in to do whatever they want to do. Each owner can come back into the zoning board and ask for whatever relief that they want to ask for which could increase the degrees of nonconforming. I mean, you have the five elements. Adverse impact of the character of the
neighborhood; if you are going to make a
two-lot subdivision in an area where
everything else is a single lot, in my
opinion, that automatically indicates that
it adversely impacts the character of the
area.

Is it self-created? Yes. He has what he
has. He's asking for something new.
Are the variances substantial? They are
substantial. Those are the three. It's
not like I'm asking for two front yard
side yards. He's asking for substantial
variances if the relief would be granted
by the Board.

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

If the Board wants to say he has two
houses, I don't believe that. It's two
houses on one piece of property. Not two
houses on two separate pieces. It
decreases the value of the adjacent
properties. My client has a piece of
property that is a single piece of
property. The property next door was a
single piece of property up until 2017 and
now it's two. Does that increase or
decrease the value of my client's property
or the properties on the other side? I
think it decreases the property.
If it's a single residence, single owner,
it's still just one piece of property.
When people go looking at it on a tax map
or Google, there's two lots next to
everything else that's one lot.
These are 11,000 square foot lots versus
22,000 square foot lot. 22,000 square
foot lot is a substantially larger lot.
If this remains a single lot and somebody
bought it, the owner of that property
could put up on that lot the other homes.
All the houses that are adjacent to this
particular piece of property have been
rebuilt over the last eight, ten years are
substantial. These are very small little
homes that are there. It remains as a
single property and a person comes in and
buys it and says, "I want the same square
footage but I want to put in a single
house." That a single house would be more
conformity to the other lots in the area
than two small little houses.
The character of the area, the
substantiality, self-imposed. All three
of those, in my opinion, this particular
application doesn't meet those standards
and should be denied.

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

MR. HAEFELI: Single-family
structure, two stories, additional
one-story building. That's essentially
the same that we set forth in 1992.
MR. CASHIN: '92 said "storage building."

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

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

CHAIRMAN GESSIN: What was the purpose of the 2016 CO?
MR. HAEFELI: I don't believe the building inspector had the right to issue the CO in 2016. He had the prior CO.

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

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

MR. HULME: To the extent that there was any ambiguity into the history
of this property and to the extent that my client believed that the COs reflected an error in the conclusions, we had a right to request that the building inspector review the history. Everything that Mr. Haefeli talked about, except for Mr. Houlihan's 30-year-late affidavit, was before the building inspector. He's entitled to make that determination.

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

MR. HULME: Yes.

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

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

MR. SARETSKY: I have to dumb this down. In 1998 you got a certificate
of occupancy for rebuilding these two homes, correct? Now, for some reason or another -- I'm not sure that I understand -- 17 years later, something must have been done to the house. You just filed a certificate of occupancy just because you wanted to --

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

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

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

MR. MIZZI: The question I have, if I went to the building inspector and got it amended and I tried to do something, does the Zoning Board have authority to address that?
MR. CASHIN: He's going to let us know.

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

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

MR. PROKOP: There's a couple different principles. One in which is mentioned Mr. Haefeli's memo, the Parkview Associate's case. The Parkview Associate's case is a building in New York City. The building permit was issued incorrectly. It allowed
the building to be built to 700 feet or whatever the limitation was of the building height. It allowed 76 stories which was six stories over the number of stories. This is more or less the details. It allowed six stories too many to the building. They had a building permit but they did not have a CO. The people who were against the building -- The people against the building noticed that even though the height was the right height, it was six stories too high and they made Parkview Associates take off the top six or ten stories of the building. That building did not have a CO. In this case, COs that are issued for improvements, if the CO is issued in error, if the improvements are done, normally, that would be considered that there's some vesting because the improvements are done or the possibility for mutinous, even if the CO was issued in error.

However, in this case, there looks like
there may not have been significant change
in the building between 1999 and 2016.
There may not have been a right that
vested in any change that was done in
error or approved in error. These are the
kind of things --

MR. MIZZI: You're saying, if I understand correctly, if Mr. Haefeli was saying that there was something wrong with the building that should be modified, based on the old CO versus this CO might be a different argument.

If he's saying the house is built too large, even though there is a CO now, you might say, "It was approved back then. Therefore, you can't challenge today."

MR. PROKOP: Yeah. I mean, I think these things are definitely reviewable by this Board because we have the application of relief and the use of the building is part of the relief. One of the things that I would point out to you is that the 1999 CO might be incorrect. It could be that the 1999 CO
should've said, "two single-family houses."

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

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

MR. MIZZI: We can review both.

MR. PROKOP: Right.

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

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

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

MR. MIZZI: It's an important point to know whether we should just be accepting that because the building
WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

inspector said this, then accept it or not.

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

MR. CASHIN: Joe will tell us.

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

MR. MIZZI: We would have to understand that.

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

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

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

CHAIRMAN GESSIN: Jim, I know you said you're not going to do anything with this property. They definitely need some separating. What separating are they
going to do? Are they going to modify the electric so they are separate?

MR. HULME: Well, my client assures me that there's two meters.

MR. MIZZI: Bring in two bills for the water and the electric.

MR. MIZZI: Do utilities go through one property to the other?

MR. HULME: Since we own both parts, we can easily manage with an easement. If one of the conditions of the grant here is that we relocate some of the services, that's not a problem at all.

CHAIRMAN GESSIN: Also driveways.

MR. HULME: I think those are reasonable requests. If the Board conditions their approval on those kind of things, we don't have any issues with that. We don't have issues at all. Thank you.

MR. MIZZI: Any other comments?

MR. SARETSKY: We can go home.

CHAIRMAN GESSIN: I would like
WESTHAMPTON DUNES - ZONING BOARD OF APPEALS

to make a motion to adjourn this meeting.

Would someone like to second it?

MR. SARETSKY: Second it.

CHAIRMAN GESSIN: Meeting is

adjourned.

(Whereupon, the meeting was adjourned at

12:14 p.m.)
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