

INCORPORATED VILLAGE OF WEST HAMPTON DUNES  
ZONING BOARD OF APPEALS

November 19, 2016

10:00 a.m.

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

1 APPEARANCES:

2 Harvey Gessin - Chairman

3 James Cashin - Member

4 Kenneth Siegel - Member

5 Eric Saretsky - Member

6 Joseph Mizzi - Member

7 Angela Sadeli - Village Clerk

8 Aram Terchunian - Village Wildlife

9 Jim Hulme - Attorney

10 Richard Haefeli - Attorney

11 Kathlene Rollin - Village Resident

12 Robert Terzi - Village Resident

13 Ray Weber - Village Resident

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1           (Whereupon, the meeting was called to  
2 order at 10:06 a.m.)

3           MR. GESSIN: Westhampton Dune Lane, let's  
4 start with the Pledge of Allegiance.

5           (Whereupon, the individuals present stood  
6 up to recite the Pledge of Allegiance.)

7           MR. GESSIN: This is continued from the  
8 last meeting. Since the meeting we've  
9 discovered -- our attorneys discovered that an  
10 additional variance would be required even  
11 though I believe we actually closed the  
12 hearing. Am I correct?

13          MR. TERCHUNIAN: We closed the -- I guess  
14 this is a separate hearing.

15          MR. GESSIN: I was always under the  
16 impression, and I think most of us here at the  
17 board were, that the stairs on the fronts of  
18 all of our houses were permitted -- encroached  
19 in the front yard, but apparently it's not, so  
20 what does that mean to us going forward?

21          MR. TERCHUNIAN: I don't know. We have to  
22 revisit that issue with your attorney and the  
23 village board to see how they want to deal with  
24 it. Okay. For you, we are going to see if we  
25 can get this over with so you can move on. I'd

1           like a little review for Joe because he wasn't  
2           here and he is going to vote and I don't want  
3           him to vote negatively because he doesn't  
4           understand the application.

5           MR. GESSIN: I believe you were here two  
6           meetings ago when we discussed the encroachment  
7           into the side yards with the generator. Were  
8           you here for that?

9           MR. TERZI: I don't think you were here  
10          for the first one.

11          MR. GESSIN: They have since brought  
12          another set of plans in that's been relocated  
13          to the room, so that's no longer an issue, in  
14          theory, for the neighbor and the neighbors were  
15          present last time also. We went over all of  
16          the different -- both the decks and the  
17          cantilever on the second floor in the corner  
18          here, okay. They had to amend their  
19          application because this is an additional  
20          2-foot encroachment in the front yard and the  
21          second floor, we passed that already. We  
22          discussed pretty much the driveway, the parking  
23          area and we have pretty much come to a  
24          conclusion that even though they only have  
25          12 feet to this front deck, they also have the

1 right of way easement that they can park cars,  
2 it's shown here, but it's --

3 MS. ROLLIN: It's 16 1/2 feet there.

4 MR. GESSIN: The corner of the house is  
5 now.

6 MR. MIZZI: Okay.

7 MR. GESSIN: Of course not the deck. We  
8 went over the lighting plan, we thought it was  
9 excessive. We are going to go over that again  
10 today. They have agreed to reduce the amount  
11 of lights and the type of lights and juggle  
12 some things around and go over that today and I  
13 guess vote, hopefully. And, of course, the 2  
14 foot setback on the steps. Joe, do you have  
15 any questions for all of us before we move  
16 forward?

17 MR. MIZZI: No, I came early and I am up  
18 to speed.

19 MR. GESSIN: Okay. Did I leave anything  
20 out so that he can vote, hopefully positively?  
21 We are good?

22 MS. SADELI: Yes.

23 MR. GESSIN: Let's talk about the lights  
24 first. I think Ken has some observations on  
25 the lights.

1           MR. SIEGEL: Sure. What I did, basically,  
2 was count the fixtures in the old plan and just  
3 put the totals per floor and that came out to  
4 58 fixtures the last time. Then I did it for  
5 the new one and the new one is 36.

6           MS. ROLLIN: 14 are required.

7           MR. SIEGEL: It is way less. That was the  
8 first thing I did. And after that I put away  
9 the old one because that's really not going to  
10 be relevant anymore. I started to look at the  
11 new one as to what do we have now. What's the  
12 plan. This is the new plan and it helps to  
13 have that because that's the same from the  
14 other. So the ones that I marked, I only have  
15 a little bit of a question on this one. This  
16 one used to be one of these and now it's a  
17 Downlight over here.

18          MS. ROLLIN: Just so you know, we got rid  
19 of all of these.

20          MR. TERZI: She got rid of all of them  
21 because that's what she understood was required  
22 as of the last meeting, that floodlights were  
23 no longer allowed.

24          MR. SIEGEL: That was a good change. That  
25 was definitely a good change, getting rid of

1           those. I see that there are two of them over  
2           here by the step and this one isn't by the  
3           step, so it's just a matter of where you put  
4           it.

5           MS. ROLLIN: That's to light my garden and  
6           that's to light the dog room.

7           MR. SIEGEL: On this floor here, I wasn't  
8           quite sure why you had these two fixtures off  
9           the side of the house right here.

10          MS. ROLLIN: Gardening.

11          MR. SIEGEL: This is a garden?

12          MS. ROLLIN: Yes.

13          MR. SIEGEL: I live at 732 and I have two  
14          lights like this by my front door and as I am  
15          coming down the road, I know which house is  
16          mine because I'm the only one that has lights  
17          like that. So I kind of was thinking that that  
18          might be an extraneous one, that high hat right  
19          there. And your old plan used to have this and  
20          an A and you got rid of the A.

21          MS. ROLLIN: We just went for the high  
22          hat, yes.

23          MR. SIEGEL: I personally think it should  
24          be switched, but that's just me. Over here you  
25          have a high hat over in this area and --

1 MS. ROLLIN: That's to light the stairs,  
2 under.

3 MR. SIEGEL: Right. Right. I was  
4 thinking that those little stair lights would  
5 be better than lighting a whole area over here.  
6 The yellows are my comments, they are not what  
7 the board thinks, they are just my comments.  
8 On this floor I have no comment at all and at  
9 the top I have no comment at all either, so it  
10 was really just a few here. I didn't know  
11 about the garden in the septic area here. So  
12 that's my entire, you know, analysis of the  
13 new.

14 MS. ROLLIN: There is a reason I did put  
15 this to make these high hats is so that we can  
16 turn on one set -- one switch to be able to get  
17 around to the back of the house without having  
18 to go around and turn on all of these door  
19 lights.

20 MR. TERZI: If someone was leaving at  
21 night.

22 MS. ROLLIN: Or you just wanted to get to  
23 the front of the house. It's easier to turn on  
24 one switch. That's why those are there.

25 MR. SIEGEL: So that means that all of

1           those are controlled from the same -- from one  
2           switch?

3           MS. ROLLIN: Yes, one switch. The only  
4           time they would be on all the time is if we  
5           have company, for when someone is leaving.

6           MR. SIEGEL: But it would not be --

7           MR. TERZI: At least the thinking behind  
8           that is that is not the kind of timed entry  
9           lights or so forth. That's a supplemental for  
10          a specific type of --

11          MS. ROLLIN: They won't be bright.

12          MR. SIEGEL: Also, those -- the  
13          functionality of those lights is going to  
14          depend on no water coming from the top coming  
15          in.

16          MS. ROLLIN: That's an enclosed waterproof  
17          deck.

18          MR. SIEGEL: If that remains, that's fine.  
19          If that goes away for any reason, they won't  
20          work so good. They will just burn out. That's  
21          all I have to say, pretty much.

22          MR. CASHIN: I was a little surprised to  
23          hear that if you need light here, you have to  
24          light all of these lights at the same time.

25          MS. ROLLIN: No, just to get around --

1           MR. CASHIN:  Wouldn't it be smarter to  
2           just have lights -- to either have a switch  
3           where you need them instead of lighting up the  
4           whole place?  To come out of here.

5           MR. TERZI:  There will be -- for the door  
6           switches my understanding is we need a switch  
7           by every door to light the exits.  But then,  
8           you know, we figured in case there's people  
9           over and on those decks and they are going to  
10          leave, that we just want a convenient way of  
11          going or being able to, you know, if they are  
12          on that deck you can just walk around.

13          MS. ROLLIN:  Not only that, say if we are  
14          out at the beach and we are having a bonfire at  
15          night, I don't want them seeing me walk through  
16          my house.

17          MR. SIEGEL:  If that thing with the door  
18          is necessary then you might still need to put  
19          that thing in.

20          MR. GESSIN:  That's right.

21          MR. SIEGEL:  But an A isn't going to kill  
22          anybody, one more A isn't going to hurt it.

23          MR. GESSIN:  Leave that one.  He may want  
24          to have this light controlling from the switch  
25          here, it has to be by the doors.

1           MR. SIEGEL: I get it. So that means this  
2 would be a three-way?

3           MR. GESSIN: Or a four-way, which it  
4 probably really shouldn't be. I am not going  
5 to tell them to switch their lights.

6           MR. SIEGEL: Do you understand what we are  
7 talking about?

8           MR. TERZI: Yes.

9           MS. ROLLIN: Yes. That's really what you  
10 are talking about. I am saying that this might  
11 be, you know, accommodated. This light here is  
12 going to be added to here, you know, there  
13 might be a wall here so it will just reflect  
14 out of that wall. These will just light a  
15 stair, these will be on their own switch when  
16 they are doing this. When you are not there at  
17 night, these will be off.

18          MR. SIEGEL: I don't really garden at  
19 night.

20          MR. TERZI: It's more of a question.

21          MS. ROLLIN: Have you seen my garden, I  
22 forgot to pick this and then I have to go do  
23 it.

24          MR. CASHIN: You do a lot of stuff at  
25 night I noticed.

1           MR. GESSIN: It's really for the deer, so  
2 they know where to eat.

3           MR. SIEGEL: That's what I think.

4           MR. GESSIN: So before we vote, do you  
5 want to make any adjustments or leave it as is?

6           MS. ROLLIN: If you don't think they are  
7 excessive, if it comes to it and we have to  
8 change one of those to something else or switch  
9 it differently --

10          MR. SIEGEL: I think that the part of  
11 lighting that becomes excessive is more that  
12 you can't make a plan for and that would be how  
13 you use your lighting, how close you are with  
14 your neighbors. You can't make a law for it,  
15 you can suggest at night, when it's sleeping  
16 time, that these 36 lights are not on.

17          MR. TERZI: The South Hampton code says  
18 the permitted hours, says that they need to be  
19 off by either 10:00 p.m. or midnight, if I  
20 recall correctly.

21          MR. SIEGEL: We have somebody who lives  
22 there who keeps those lights on all night long.

23          MS. ROLLIN: We turn all our lights off.

24          MR. SIEGEL: Each one of these fixtures is  
25 300 bucks, so if you eliminate five more.

1           MR. TERZI: When we were asked, we studied  
2 the South Hampton requirements and these lights  
3 are all down, even the ones that look like the  
4 traditional wall-mounted door fixtures have a  
5 dark sky cylinder in them to shield the bulb,  
6 to keep the light radiation below 90-degrees.

7           MR. SIEGEL: It sounds like they have done  
8 everything that they have been asked to do.

9           MR. GESSIN: If you are satisfied and you  
10 don't want to make any adjustments, we will  
11 move on. Anybody else have a comment?

12          MR. SARETSKY: Maybe you should discuss  
13 how and why you need this variance?

14          MR. CASHIN: Can you show me?

15          MR. GESSIN: Basically --

16          MR. SIEGEL: Is this called a rear yard  
17 because it's a waterfront property?

18          MS. ROLLIN: Mm-hmm.

19          MR. SIEGEL: What is the required setback?

20          MR. TERCHUNIAN: 70 feet. It's reduced to  
21 30 because they are constrained by wetland.

22          MR. SIEGEL: So the setback requirement is  
23 35 feet and so we are only dealing with the  
24 accessory structure in the set back?

25          MR. TERCHUNIAN: Yes.

1           MR. SIEGEL: So why is it only 2 feet that  
2 we have an issue with?

3           MR. GESSIN: No, it's a variance to 2 feet  
4 from 35 --

5           MR. SIEGEL: Okay. I get it. So yeah, so  
6 basically you were saying --

7           MR. GESSIN: The question is: Could it  
8 have been done another way? Could the setback  
9 variance have been less? Or maybe they  
10 could've gotten around it totally.

11          MS. ROLLIN: Can I make a comment? The  
12 village has had these plans for over a year and  
13 the stairs have been in the same place for over  
14 a year. Bob looked at them, Aram looked at  
15 them. Had we known this a year ago, we may  
16 have made some changes, but now all of a sudden  
17 it is coming up as a required variance where  
18 there was an assumption that it wasn't needed.

19          MR. GESSIN: We agree with you. We  
20 thought that it wasn't required either, but  
21 apparently it is. As you know, Joe mentioned  
22 it at the last meeting but didn't comment on it  
23 until he went back to his office and did the  
24 research on it and that's where it came from.

25          MR. SIEGEL: He left off one person from

1 your list.

2 MS. ROLLIN: When I talked to David Fox,  
3 he said no other village has required variances  
4 for stairs.

5 MR. GESSIN: Apparently this village does  
6 and you're going to be the first guinea pig.  
7 Anybody have any comment on it?

8 MR. CASHIN: I am still confused. How  
9 much of this variance are they looking for?

10 MR. GESSIN: The front yard setback would  
11 be 25, Aram?

12 MR. SIEGEL: Yes. And they want to come  
13 to here, it should've been back here somewhere.

14 MR. CASHIN: So why don't we just talk  
15 about the steps then?

16 MR. TERCHUNIAN: The septic is exempt.

17 MR. SIEGEL: Can I ask why the steps  
18 weren't just associated with the construction  
19 of the house as well, like, why are the steps  
20 being singled out at this time?

21 MR. TERCHUNIAN: If I may, why the steps  
22 are being singled out is going to be an issue  
23 for the village attorney and the village board  
24 the deal with. The issue upon this board is  
25 these people have to get in and out of the

1 house, they proposed a set of steps, is this a  
2 reasonable configuration or not, make your life  
3 simple.

4 MR. SIEGEL: I mean, I don't know whether  
5 we are supposed to be designing it for them or  
6 not.

7 MR. GESSIN: We are not. If we think it's  
8 too close to the property line, we can adjourn  
9 this meeting and go back and let them do an  
10 additional redesign on the stair. I think it's  
11 pretty tough, correct me, Aram, if I am wrong,  
12 to start the house and then deal with the steps  
13 later. But on the flip side of that, as Aram  
14 said, the village is going to have to deal with  
15 this because this is now a village-wide issue  
16 with a lot of houses, am I correct, Aram?

17 MR. TERCHUNIAN: Yes.

18 MR. GESSIN: With all houses?

19 MR. TERCHUNIAN: Yes, the village attorney  
20 is going to advise the village board, hey, this  
21 is my opinion, this is what I think. Here are  
22 your alternatives of dealing with it, how do  
23 you want to deal with it? That's their job,  
24 that's legislation, that's policy. These  
25 people have come to you with a practical

1           problem, they need to get into their house,  
2           they presented a set of stairs that are  
3           associated with a particular house, is that a  
4           reasonable request or not?

5           MR. GESSIN: If you look at the ocean  
6           houses, almost every ocean house as an  
7           encroachment to the front yard to the steps,  
8           most of them ran stairs, I guess you can call  
9           it, parallel to the house, so it wouldn't go  
10          further into this front yard set back. Some of  
11          them raised planters, used planter bags,  
12          similar to what, really, this is and work  
13          through that to get down, so you didn't have  
14          two encroachments.

15          MS. ROLLIN: Believe me, if we could go on  
16          top of that, we would, but we can't.

17          MR. GESSIN: I don't know about that.

18          MR. SIEGEL: Who said that?

19          MS. ROLLIN: Suffolk County.

20          MR. TERCHUNIAN: Department of Health  
21          won't let you do that.

22          MR. SARETSKY: I thought you had a special  
23          top?

24          MR. TERCHUNIAN: If you drive on it you  
25          can get a special covenant which is doable, but

1           it's a pain in the neck. Point is if you are  
2           driving on it. They are concerned about access  
3           to the system for maintenance and  
4           rehabilitation and their policy is you cannot  
5           drive on it unless you get the special  
6           covenant, then you can drive on it but you  
7           still can't build anything over it.

8           MR. SIEGEL: But you are building asphalt.

9           MR. TERCHUNIAN: They want to get to the  
10          caps.

11          MR. SIEGEL: This cap here?

12          MR. TERCHUNIAN: Yes. And each one of  
13          those units, they have a very simplistic view  
14          of the world. They don't want you to build a  
15          structure inside the footprint of the sanitary  
16          system for any reason known to man or God.  
17          That's just the way they are.

18          MR. SIEGEL: That eliminated my redesign  
19          of their stair. I would like to see it come in  
20          this way and that way.

21          MS. ROLLIN: We use our garages if we have  
22          to go over there.

23          MR. GESSIN: It could start going this  
24          way.

25          MS. ROLLIN: We would lose our garage that

1 way.

2 MR. SIEGEL: You don't want to lose the  
3 garage, those poles are specific to hold the  
4 house up and making room for the car.

5 MR. GESSIN: Every house doesn't have to  
6 have a two-car garage.

7 MS. ROLLIN: This is the side where I keep  
8 certain things and don't put them anywhere  
9 else.

10 MR. TERZI: There was an elevation.

11 MR. SIEGEL: Are you suggesting that that  
12 stair go sort of this way and then this way,  
13 like if this came out a little further, maybe  
14 you could be going in this direction until you  
15 platform and then this direction so that you're  
16 down sooner than this so the variance is  
17 supposed to be the least amount of problem.

18 MR. GESSIN: I mean, this deck, the flat  
19 portion of the deck could end right past this  
20 light here and the steps could start working  
21 their way down this way, past the garage.

22 MR. SIEGEL: And it would end about here  
23 so the net result of that, instead of going  
24 from 35 to 2 would be from 35 to 8.

25 MR. GESSIN: 15.

1           MR. SIEGEL: Well, if you work your way  
2 around this octagon here.

3           MR. GESSIN: You are only raising.

4           MR. SIEGEL: Here is seven risers, so if  
5 this was going to be the end, you need seven  
6 more risers from here, so could you get it?  
7 Possibly, if there was a minor redesign to  
8 this, you could probably end here without  
9 effecting the garage at all, which is -- you  
10 don't really want to start getting too low from  
11 here and where is that here? It's about here.  
12 So starting here, this, I have just have one  
13 other minor thing.

14          MR. MIZZI: Do you have an elevation?

15          MR. SIEGEL: Yes, I do.

16          MS. SADELI: I have an extra set of plans.

17          MR. SIEGEL: If this is only 2 feet and  
18 this is 3 or 4 feet, this needs to be a  
19 platform equal in this direction as it is in  
20 this direction. That's New York State code.

21          MR. TERZI: Our architect said it needed  
22 to be 3 feet.

23          MR. SIEGEL: 3 feet is the minimum for the  
24 3 foot wide stair, he's correct on that.

25          MR. TERZI: It needs to be. He didn't

1            seem to think it needed to be squared.

2            MR. SIEGEL:    So if it's a 5-foot square it  
3            needs to be 3 feet?

4            MR. TERZI:    Right.

5            MR. SIEGEL:    I think he might be right.

6            MR. TERZI:    It's listed as two because  
7            it's 2 and 75.

8            MR. SIEGEL:    That's not an issue.    It's  
9            not impossible and that this is -- it's not  
10           impossible to lower it sooner.

11           MS. ROLLIN:    You can only start here with  
12           the steps.

13           MR. SIEGEL:    Well, depending on the design  
14           of the area here.    He's got it sort of  
15           centering on the tower.    It might be -- with  
16           that last post there, it might be super  
17           difficult getting past that.    This is a  
18           problem.

19           MR. GESSIN:    This post also could become a  
20           problem too.    I would eliminate that.

21           MR. SIEGEL:    Some how or another, if this  
22           could be like that, would that be needed?

23           MS. ROLLIN:    There's a walkway above that.

24           MR. SIEGEL:    Oh yeah, it's holding  
25           something above.

1           MR. GESSIN:  If we are finished with the  
2 review, we will vote and the vote will decide  
3 what will happen.

4           MR. SIEGEL:  Okay.

5           MR. CASHIN:  We have to worry about  
6 precedent or is that horse already out of the  
7 barn?

8           MR. TERCHUNIAN:  I think this is a very  
9 unusual lot, you know, if there's three of  
10 these kinds of lots in the village, I'd be  
11 surprised.  It's pie shape on a corner on a  
12 side street, you know, off the top of my head,  
13 you know, you've got Thompson's over here, he's  
14 got a variance over here on Dune Lane, you  
15 know, a similar dimension, he didn't have the  
16 stair issue the way they do.  And then you  
17 have, you know, you don't really have another  
18 lot of this configuration and location  
19 elsewhere in the village, so that is really  
20 what's driving those sites.  Specific things  
21 are driving their request and your decision, so  
22 that's the precedent.

23           MR. GESSIN:  Basically, we are going to  
24 vote on each one of these areas separately so  
25 if this one doesn't pass the way that it is --

1           MR. TERCHUNIAN: They can, and also  
2 because the variances advertise for a variance  
3 2 feet from the -- in place of the requirement,  
4 if they decide right here or now to change it  
5 to a different greater number, they can.

6           MR. GESSIN: Okay.

7           MR. SIEGEL: Don't do that. I would wait  
8 until I had a design before I agreed to a  
9 number.

10          MR. GESSIN: What they are concerned about  
11 now, I believe, is they are going to get their  
12 house, so I am just trying to make it so most  
13 of the variances that they can get going -- and  
14 maybe there is some things that may have to be  
15 revisited by this board down the road. But at  
16 least get them in construction. I am not  
17 trying to not be on board, I am just --

18          MR. SIEGEL: I would totally agree with  
19 that.

20          MS. ROLLIN: Aram was saying there would  
21 be a -- really because there is no other lot  
22 like ours in the village so nobody can say  
23 well, they did it.

24          MR. GESSIN: We could've adjourned that  
25 one variance, let you go back, do the vote on

1 everything else, let you go back to the  
2 architect, decide when you want to change it --

3 JOHANNA: Can you just clarify for me,  
4 what's the variance requesting exactly?

5 MR. GESSIN: Rather than a 35-foot set  
6 back from the road for the stairs they want --

7 MS. ROLLIN: From the property line.

8 MR. MIZZI: You can never build anywhere  
9 along Dune Road. You can't build past the  
10 property lines and we are not asking to --  
11 people have the lighting things and you are  
12 always told on the bay side --

13 MS. ROLLIN: At that point, a 14 foot --

14 MR. TERZI: But we are not asking to, you  
15 know.

16 MS. ROLLIN: It's larger than anybody else  
17 in the village, it averages 8 to 10 feet.

18 MR. SIEGEL: I also think that as far as  
19 that precedent thing goes, it's not always the  
20 shape of the lot or the configuration of the  
21 lot that causes the reason for you being able  
22 to get what you want. If I had a square  
23 property and my stair needed to come to 2 feet,  
24 I would have some other hardship that I would  
25 be able to explain to the board. And if it was

1 truly a hardship and there was precedent for  
2 2 feet, I would think that I had a good chance  
3 of being approved for it. Even though my  
4 property is -- I do think that the stair thing  
5 is maybe precedent, but just because it's --  
6 this might be the first one, but the next ones  
7 might be a lot easier because there's going to  
8 be real code to go by. It's not like this is  
9 going to hurt the future. The future is going  
10 to be changed after this.

11 MR. GESSIN: Do you want to adjourn this  
12 one variance request, let us vote on everything  
13 else to get you guys rolling and then rethink  
14 this with the architect and come back next  
15 month? That's not going to stop your house.

16 MR. SIEGEL: I'll tell you why it's a good  
17 idea to possibly do that, because it sounds  
18 like there's a way to do it not this way and if  
19 this gets voted no, to start over is going to  
20 be harder than to adjourn. Plus, you can  
21 always come back with the same thing and say it  
22 didn't work.

23 MR. TERZI: One of, and I feel it's worth  
24 mentioning, one of the benefits in hugging the  
25 septic is that it hides the septic.

1           MR. SIEGEL: It will still hug it. Just  
2 further back, instead of going, I would say,  
3 like, I wouldn't be looking for something  
4 major, but there might be a way to pull it back  
5 to that corner. We have asked people with the  
6 septic walls to put plans in front of them.  
7 This is not a single -- maybe it's a single  
8 conversation about a stair, but I have a house  
9 on the ocean and I couldn't just continue my  
10 stair, I have to return it and put these little  
11 things on the side. It is not like people have  
12 just ignored it, people have dealt with the  
13 issue of that.

14           MR. CASHIN: Mine goes down the sides as  
15 well.

16           MR. MIZZI: I wouldn't have you doing this  
17 and be uncomfortable. See if there's a better  
18 solution.

19           MS. ROLLIN: We also have to consider  
20 getting appliances up there. I can't hire  
21 somebody all the time when I want to get  
22 something in the house.

23           MR. MIZZI: Good point about the garage,  
24 but this little thing is not helping you get  
25 anything up here. You might find something --

1           now that you got the whole house done and just  
2           this, you might come up with some ideas. And I  
3           don't think anything will be unreasonable, but  
4           it would be nice to not slow you down but to  
5           see something, even if you faxed or emailed  
6           sketches.

7           MR. SIEGEL: When you are done, you are  
8           going to be happier with it. This is really  
9           kind of dicey.

10          MS. ROLLIN: So you are saying it could be  
11          okay by you to widen this up some to get stairs  
12          in here?

13          MR. MIZZI: If you said in lieu of a  
14          longer stair, I want to make it a little wider  
15          here and he asked if it aligned with the tower,  
16          but it doesn't, shift it over so maybe there  
17          are things that make it better, pull this back  
18          a little and make your entrance a little  
19          easier.

20          MS. ROLLIN: Okay.

21          MR. SIEGEL: And whatever you do would be  
22          part of the stair variance only.

23          MR. TERZI: Just so I have parameters,  
24          before this, you are looking to pull it back  
25          some, not --

1 MR. MIZZI: It's not 25 feet.

2 MS. ROLLIN: If we conform to all of the  
3 variances we would have a negative building.

4 MR. SIEGEL: Someone was just saying  
5 something about the flood plan number.

6 MR. SARETSKY: Yes, the elevation.

7 MR. SIEGEL: The house is higher than  
8 this?

9 MR. GESSIN: No.

10 MR. SIEGEL: This amount of risers  
11 incurred the 14 feet. There's no additional --

12 MR. GESSIN: This house was redesigned for  
13 the current codes.

14 MR. SIEGEL: It's not like fix this and  
15 add three more.

16 MR. TERZI: We are going -- we have the  
17 number of risers for the 14 foot elevation  
18 which changed from 12 to 14 after Sandy.

19 MR. SIEGEL: I think that they are going  
20 to end up being happier in the long run.

21 MR. TERZI: Right.

22 MS. ROLLIN: So we are fine-tabling that  
23 one?

24 MR. TERZI: We will go back to the drawing  
25 board on that to see what we can do to pull

1 that in.

2 MR. SIEGEL: If you end up here, it will  
3 be better. It's easier for us to say 2 feet,  
4 are you kidding, this is the best I can do.

5 MR. GESSIN: So the variance request for  
6 the accessory structure for the stairs, we will  
7 put that off for the next meeting and since we  
8 closed the hearing on the other items, we can  
9 go into the vote?

10 MR. SIEGEL: The vote is about the current  
11 plan?

12 MR. GESSIN: We are going to vote on all  
13 these variances independently and make it  
14 current to the current lighting plan. Do you  
15 want to read these one at a time?

16 MR. SIEGEL: Mine is all marked up.

17 MR. GESSIN: We are going to vote on  
18 everything for the house plus the lighting  
19 plan.

20 MR. TERCHUNIAN: You don't vote on the  
21 lighting plan and you don't vote on the  
22 landscape.

23 MR. SIEGEL: Because I wasn't here for any  
24 of this.

25 MR. GESSIN: You were here enough for the

1 last meeting to hear the -- basically the  
2 stuff. If you want to abstain the vote, you  
3 can, on any of the items if you are not clear  
4 on it.

5 MR. MIZZI: That's okay.

6 MR. GESSIN: We will see if we have enough  
7 to make a decision.

8 MS. SADELI: I don't think I have another  
9 copy. Maybe I do.

10 MR. GESSIN: So start with the first one.

11 MS. SADELI: A rear yard setback variance  
12 of 25.5 feet is requested for the primary  
13 structure, a rear yard setback of 17.4 feet,  
14 rear yard setback of 17.4 feet where a primary  
15 structure is requested and a rear yard setback  
16 of 42.9 feet is required by 60-41-0-2. These  
17 are same rear yard setbacks of the primary  
18 structure setback of 20.9 feet.

19 MR. GESSIN: Is there anything you need  
20 explained on this?

21 MR. SIEGEL: No. I am willing to go along  
22 with it.

23 MR. GESSIN: You don't have to go along  
24 with it. It's your vote. You have to make  
25 your own independent vote.

1 MR. MIZZI: Okay.

2 MR. GESSIN: On the first variance, all in  
3 favor?

4 MR. TERCHUNIAN: You need a motion to  
5 approve.

6 MR. GESSIN: I'd like to make a motion to  
7 approve this variance, anybody like to second  
8 it?

9 MR. SARETSKY: Second.

10 MR. GESSIN: All in favor?

11 (Whereupon, the board raises their hands  
12 at this time.)

13 MR. GESSIN: All in favor of this  
14 variance?

15 (Whereupon, the board raises their hands  
16 at this time.)

17 MS. SADELI: A rear yard setback variance  
18 for accessory structure of 7.3 feet where a  
19 rear yard setback of 12.7 feet for an accessory  
20 structure is proposed and a rear yard set back  
21 for an accessory structure of 20 feet is  
22 required by section 560-8.

23 MR. GESSIN: Do I have to make a motion on  
24 this one also, Aram?

25 MR. TERCHUNIAN: Yes, make a motion to

1 approve that one.

2 MR. GESSIN: We'd like to make a motion to  
3 approve the rear yard setback. All in favor?

4 (Whereupon, the board raises their hands  
5 at this time.)

6 MS. SADELI: A rear yard setback of 2 feet  
7 for an accessory structure is perfected where a  
8 setback of 20 feet is required by section  
9 560-8.

10 MR. SARETSKY: Is that the stairs?

11 MR. TERZI: That's that one we are  
12 adjourning.

13 MR. SIEGEL: This is the third one on the  
14 east side? This is an additional one?

15 MR. TERCHUNIAN: That's the subject of a  
16 separate hearing.

17 MR. GESSIN: So that one is going to be  
18 postponed to the next meeting.

19 MR. SARETSKY: Move to adjourn for all  
20 purposes.

21 MR. TERCHUNIAN: You have a motion on the  
22 floor to adjourn for all purposes.

23 MR. GESSIN: What's that?

24 MR. SARETSKY: I move to adjourn for all  
25 purposes.

1           MR. TERCHUNIAN: Who is the second on his  
2 motion?

3           MR. SIEGEL: I second.

4           MR. TERCHUNIAN: I just want to point out  
5 previously -- Joe, had you passed a motion to  
6 accept seeker on this, because you have to do a  
7 seeker as part of all your decisions. I just  
8 want the record to reflect that a decision  
9 accepting lead agency and declaring this as a  
10 Type II action requiring no further review  
11 under seeker was made and approved by this  
12 board at a previous session.

13           MR. GESSIN: We made that motion already.

14           MR. TERCHUNIAN: I thought you did, but if  
15 you haven't --

16           MR. GESSIN: I don't think you did.

17           MR. TERCHUNIAN: I would just reaffirm  
18 that for the record that this board agrees that  
19 they have already done that or they are doing  
20 it.

21           MR. GESSIN: We will do that at the end.  
22 Okay?

23           MR. TERCHUNIAN: You are at the end.

24           MR. GESSIN: No, we are not. We have two  
25 more.

1           MS. SADELI: An east yard setback variance  
2 for an accessory structure of 1.7 feet is  
3 requested where a side yard setback of the east  
4 side of 1.3 feet is proposed and a side yard  
5 setback for an accessory structure of 14 feet  
6 is required by section 550-8 is 12.2 feet.

7           MR. SIEGEL: This is a deck?

8           MR. GESSIN: This is a deck on the side of  
9 the house that, previously to you being here,  
10 we requested them to move the generators. It's  
11 basically just a walkway now around the side  
12 from the front of the house to the rear of the  
13 house.

14          MS. ROLLIN: Actually, this variance is  
15 for this right here (indicating)?

16          MR. GESSIN: Yes.

17          MS. ROLLIN: Which is essentially  
18 sustained.

19          MR. GESSIN: It is really the stairs. I'd  
20 like to make a motion to vote on this variance.

21          MR. SIEGEL: I'll second that as well.

22          MR. GESSIN: I'd like to make a motion to  
23 vote on this, all in favor?

24                 (Whereupon, the board raises their hands  
25 at this time.)

1 MR. GESSIN: This one is approved. Next.

2 MS. SADELI: A front yard setback for an  
3 accessory setback variance of 11.3 feet is  
4 requested where 58.7 feet is requested for a  
5 proposed front yard setback for an accessory  
6 structure, 58.7 feet is proposed where a front  
7 yard setback for an accessory structure 70 feet  
8 is required by section 560-8. Existing  
9 accessory structure setback is 58.5 feet.

10 MS. ROLLIN: That's an existing structure.

11 MR. GESSIN: I'd like to make a motion to  
12 vote on this variance.

13 MR. TERCHUNIAN: A motion to approve with  
14 a second then a vote.

15 MR. SARETSKY: Approve.

16 MR. SIEGEL: I second.

17 MR. GESSIN: All in favor?

18 (Whereupon, the board raises their hands  
19 at this time.)

20 MR. GESSIN: All we have left -- I'd like  
21 to just read it to the record that this  
22 board -- do we have to vote on this?

23 MR. TERCHUNIAN: You should.

24 MR. GESSIN: A motion to accept this  
25 agencies status under S-E-Q-R-R-A and to type

1           this as a Type II action not subject to further  
2           environmental review.

3           MR. SIEGEL: Further than what's already  
4           been?

5           MR. SARETSKY: I'd like to make a motion  
6           to approve.

7           MR. SIEGEL: I second the motion.

8           MR. GESSIN: All in favor of accepting  
9           lead agency status?

10           (Whereupon, the board raises their hands  
11           at this time.)

12           MR. GESSIN: There's been no further  
13           comments on the plan, I don't believe. Aram,  
14           is there a separate vote on the lighting?

15           MR. TERCHUNIAN: No, it's just that your  
16           approvals are conditioned upon whatever you  
17           want to condition. The landscape plan, the  
18           lighting plan or anything else.

19           MR. GESSIN: Do you have some comments on  
20           the lighting plan?

21           MR. MIZZI: No.

22           MR. GESSIN: So basically both your  
23           current lighting plan and your landscape plan,  
24           and I believe the only thing you still have  
25           open is your staircase and I am assuming we are

1 going to put you over to the next meeting and  
2 hopefully we will pick a date before you leave  
3 here and get that over with too and  
4 congratulations. You toughed it out.

5 MR. TERZI: Thank you.

6 MS. ROLLIN: Thank you.

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1           MR. GESSIN: So the next application is  
2 Ray Weber. I believe the address is 846 Dune  
3 Road?

4           MR. HULME: 846 Dune Road, yes. I am here  
5 for the applicant. Good morning, with me is  
6 Mr. Ray Weber, the owner of the property  
7 located at 846 Dune Road. I believe Mr.  
8 Haefeli is here on behalf of a neighbor.

9           MR. HAEFELI: I am here on behalf of 48  
10 Ave Main Street, West Hampton Beach.

11          MR. HULME: So, as you may be familiar,  
12 846 Dune Road is a property owned by Mr. Weber  
13 that contains two single family residences and  
14 what we are seeking to do is to get a  
15 subdivision approved by the village planning  
16 board, allowing the two structures to be on  
17 their own separate lot. The planning board,  
18 the village board and its capacity of the  
19 planning board, except that our application  
20 referred this matter to the zoning board for  
21 purposes of identifying having a hearing about  
22 the variances that will be necessary to achieve  
23 this result. Just one or two -- let's go  
24 quickly through the packet of information of  
25 property.

1           So the first page, or the first two pages,  
2           is just a print out from the town GIS system  
3           identifying the owner of the address. And the  
4           thing I wanted to draw your attention to there  
5           is under the property classification. It's  
6           identified as a multiple residence, the site.  
7           The third page in is a copy of the tax bill  
8           and, again, I am just highlighting the fact  
9           that it is -- according to the town record and  
10          the town tax records that this property is  
11          classified as a multiple residence. If you  
12          flip over one more page, you will see outlined  
13          in orange, the property itself, towards the  
14          top, just to fix the property space for you  
15          all. The next page is another copy of the  
16          survey showing how you choose to subdivide the  
17          property if the necessary variances are granted  
18          and then the next two pages are the  
19          Certificates of Occupancy that the town issued  
20          in June of 2016, one for each of the  
21          residences, identifying each of them as a  
22          single family dwelling under the village code.  
23          I will talk about the COs and how they came to  
24          be issued in a few minutes.

25                 The last page is my attempt, subject to

1 counselor's review of the variances that are --  
2 that may be necessary in order for the  
3 subdivision to be achieved. Looking at this  
4 this morning, I wanted to find out about --  
5 I'll go through them line by line, but the  
6 first, obviously, is the lot area. Throughout  
7 the entire village you require 40,000 square  
8 feet for each lot. These two lots together is  
9 only 27,000 square feet. 28,000 square feet to  
10 begin with and, if successfully divided, we  
11 will have 11,000 and 16,000 square foot lots.  
12 The lot width under the code, the requirement  
13 is 150 feet. Lot 1 on our proposed subdivision  
14 is at 63 feet, so that would require a  
15 variance. Lot 2 is also at 75 feet, which is  
16 also at variance with the requirement; however,  
17 I would point out to you that that dimension is  
18 not the dimension that is being changed as a  
19 result of this application, the lot is 75 feet  
20 wide right now and even in its undivided  
21 conditions. So the question for counselor is  
22 whether or not we actually need a variance for  
23 that particular item. If you looked at the  
24 front yard, the requirement is 60 feet. Lot  
25 number 1 meets that requirement and lot number

1           2 will have the front yard at 44.8.

2           MR. SIEGEL: Is that why there's a blank  
3 there? I didn't mean to cut you off.

4           MR. HULME: Yes.   \*\*\*START PART TWO  
5 HERE\*\*\*

6           MR. SIEGEL: So what is the number?

7           MR. HULME: 117.8.

8           MR. SIEGEL: So that's almost double the  
9 requirement.

10          MR. HULME: Again, the next area that we  
11 are looking at is the rear yard which is a  
12 70-foot requirement. The lot number 1 will  
13 have a 23-foot set back and that setback is  
14 created by the subdivision. Lot number 2 will  
15 have an 88-foot setback, but, again, that's an  
16 existing condition. It is, in fact, greater  
17 than requirements so we don't need that  
18 variance at all.

19          The side yard requirement for each  
20 individual side yard is 20 feet and lot number  
21 1 we have a 6.7-foot setback on one side and a  
22 22-foot setback on the other side, so the  
23 subdivision creates the 6.7-foot setback.

24          MR. SIEGEL: Where is the 22 number?

25          MR. HULME: 22.3 is not on here. Again,

1           it exists. So if you want to look at it this  
2           way, lot number 1 has a subdivider of 6.7 foot  
3           and a 22.3-foot side yard. And lot number 2  
4           has a 20.6-foot side yard and a 16.4-foot side  
5           yard, which totals 37. The 20.6 and the 16.4  
6           on lot number 2 is not created by the  
7           subdivision application. It exists for the  
8           house as it exists right now. If you look at  
9           the totals, the requirement is 60, lot number 1  
10          will have 30 and lot number 2 will have 37 and  
11          once again, number 2 is a number that exists.  
12          So in a nutshell that's the background  
13          information. And if you look at the survey  
14          itself, you'll see the source of the numbers.

15                 MR. SIEGEL: What's that residence zone  
16                 here?

17                 MR. HULME: It is R1. There's only one  
18                 area, as I understand, in the entire village.  
19                 It's my understanding of the village code that  
20                 the entire village -- when the village was  
21                 created, they adopted the zoning from the town  
22                 so the entire building was in the R1 zone.

23                 MR. GESSIN: Aram, is that true?

24                 MR. TERCHUNIAN: Yes.

25                 MR. SIEGEL: That's a lot of --

1           MR. HULME: Correct. And we will talk  
2 about that in a few minutes. The circumstance  
3 that we have now is that we have two legal,  
4 fully usable residences on one lot which is not  
5 a condition that would be equally easy to  
6 create if one wanted to do that. If this were  
7 a vacant lot and we came to the zoning board to  
8 get permission to put two houses, two legally  
9 functioning houses on the lot, it would be  
10 incredibly difficult but not impossible to do  
11 it because it would not be a variance, an area  
12 variance, it would be a use variance and a use  
13 variance has a huge standard to me, having to  
14 do with the economic return that someone could  
15 get based on how to use the property. I would  
16 suspect that if we came to you with this lot as  
17 vacant, it would be virtually impossible to  
18 create what we have. The flip side of that is  
19 we are trying to move one in compliance with  
20 the general spirit of zoning by doing the  
21 subdivision because residential zoning  
22 throughout the village, the town, county, the  
23 state is the concept of one residence per one  
24 lot.

25           That's one of the reasons why it would be

1           so difficult to put two residences on one lot,  
2           so aside from these specific dimensional  
3           variances that we are looking for to break the  
4           subdivision, the overriding thing that we are  
5           doing here is that we are moving closer to  
6           compliance. Right now that's allowed to exist,  
7           but is totally not in compliance with the  
8           overall view of how things should work in a  
9           residential zone. By drawing these imaginary  
10          lines on a piece of paper, we are taking the  
11          entire site into more compliance with the  
12          typical R40 single family residential zoning.  
13          And in order to do that, we are asking to get  
14          certain variances.

15                 Now, the lynch pin to this whole thing is  
16                 the fact that we have a separate CO for each of  
17                 the buildings, which describes each of them as  
18                 single family residences and allows the owner  
19                 of those single family residences to use them  
20                 for his own personal use. To rent them, to  
21                 lease one of them and occupy rent. He is  
22                 entitled to use each of his residences in the  
23                 full gamut of allowable uses based on the fact  
24                 that they are CO'd each as separate single  
25                 family residences.

1           This may have been submitted already to  
2 both of you guys, this is the letter and  
3 application that I made to the village back  
4 earlier this year too. So not to belabor this  
5 too much, but there was a house, I think the  
6 most important thing here is, towards the back.  
7 There's an affidavit and some beautiful  
8 pictures of some young people from Roger  
9 Ormarad (phonetic) who was one of the original  
10 owners of the property, identifying the history  
11 of the property and indicating that since the  
12 50's and early 60's this site has been approved  
13 with two separate residences, both of which had  
14 kitchens, both of which operate in the manner  
15 as just described. The houses that are there  
16 now are not the original houses because the  
17 original houses were destroyed in the perfect  
18 storm back in the 90's and replaced in their  
19 configuration pursuant which allowed  
20 reconstruction of the structures, so that's how  
21 they ended up in a slightly different location  
22 than originally configured. But I didn't want  
23 to make this part of the record because this  
24 comes to how each of these residences back in  
25 the early part of this year.

1           So, Joe had mentioned on the phone that we  
2           need to go through the five factors so I will  
3           go through those quickly. Will this produce an  
4           undesirable change to the character of the  
5           neighborhood? The answer to that is absolutely  
6           not. We have two houses there now. They are  
7           both usable in any capacity that a single  
8           family residence can be used in. As we put  
9           this imaginary line on a piece of paper, we  
10          have two lots. Each lot with one house on it.  
11          We have not increased the impact on the  
12          neighborhood or the village at all. It's still  
13          two houses in this area, still rentable, still  
14          sellable, and still usable in every way  
15          possible, so it's impossible to see how  
16          allowing the subdivision creates an undesirable  
17          change in the neighborhood as a whole.

18                 MR. SIEGEL: You can sell one house and  
19                 not the other.

20                 MR. HULME: Not now. That's the benefit  
21                 of the subdivision is that he could sell one  
22                 house without the other.

23                 MR. SIEGEL: Which is the economic benefit  
24                 gained, which would be similar to that use  
25                 permit you talked about before. If you benefit

1 to do that.

2 MR. HULME: That requirement is so  
3 stringent that that argument on that side of  
4 the coin wouldn't carry the day. In order to  
5 get a use variance and in order to put two  
6 houses on one lot, I need to go through the  
7 permitted uses for that lot and I would have to  
8 go through the permitted uses on that lot and  
9 prove that there was no economic return for  
10 using it in accordance with what is provided.  
11 The standard there would be that I would have  
12 to show you that building, again, assuming this  
13 were a vacant lot, building one house, I would  
14 have to show you that there is no economic  
15 concern whatsoever in putting one house on this  
16 property. And the only way I could get the  
17 proper benefit that I am entitled to is by you  
18 allowing me to put two houses on this lot.  
19 It's a different standard and it's a very high  
20 standard. In most instances, if I came before  
21 this board looking to create this now it would  
22 likely be turned down, but we are not doing  
23 that. We are on the other side of that coin.  
24 We have two legally CO'd single family  
25 residences on this property, as evidence by the

1 documents of the village and West Hampton Dunes  
2 in the form of two different COs, and so now we  
3 need to go through there and it is really a  
4 balancing test between the benefits to the  
5 applicants. And we use these five factors  
6 obviously to help guide us along the way in  
7 doing that balancing test.

8 So, again, as to the undesirable change,  
9 the use to which this property can be put  
10 doesn't change at all if it's subdivided or not  
11 subdivided. Allowing the subdivision would not  
12 produce an undesirable change.

13 MR. SIEGEL: Question. We have that thing  
14 with parking of cars that are allowed to come  
15 to a house and when we call it a house, we call  
16 it a property, would that allow double the  
17 amount of -- you have to assume it's going to  
18 be double the amount of cars.

19 MR. HULME: I think you have a requirement  
20 that says you have to provide adequate parking  
21 for the premises.

22 MR. SIEGEL: So as long as there is, it  
23 should still remain the same.

24 MR. HULME: You know, the one question  
25 that -- you may have many questions, but one

1 question that occurs to me that you might have  
2 is this does produce property lots that are  
3 significantly smaller than the 40,000 square  
4 foot requirement, but that's not unheard of in  
5 the village. If you look at 836 A, B, and C,  
6 and 836, there's four lots there that are in  
7 the 10 to 16,000 square foot range.

8 MR. SIEGEL: Where are they on this  
9 picture?

10 MR. HULME: They are -- can he be --

11 MR. SIEGEL: Are they in this picture?

12 MR. HULME: They are.

13 MR. SARETSKY: You can only see two of  
14 them. I think it is not shown.

15 MR. HULME: It may not be. The photograph  
16 is getting smaller and less detail. Another  
17 area, another well known area in the village,  
18 much smaller lots, so it's 13, 15, 17 Dune Road  
19 which is down here. So these are all 5,000  
20 square foot lots. It's not without precedent  
21 that in the village here if a lot that is  
22 smaller -- there's many lots that are smaller  
23 than the required 40 and it's not unusual that  
24 there are lots that are smaller than the lots  
25 we are attempting to create. So from the

1 perspective of undesired change, I don't think  
2 there is any at all.

3 MR. MIZZI: Can I ask a question?

4 MR. HULME: Sure.

5 MR. MIZZI: When you were reviewing this  
6 sheet, you were speaking about the lots with  
7 relationship to the existing properties and  
8 then you were talking about creating multiple  
9 lots and I assume you are not looking to  
10 restrict the build-ability of either property?

11 MR. HULME: I think your code would  
12 provide ample restriction for that. These  
13 would be developable or renovatable or  
14 expandable subject to the rules and regulations  
15 of the village.

16 MR. MIZZI: Which would apply to these  
17 houses as they currently exist as well.

18 MR. HULME: That was my question: In the  
19 current, there is a CO on both properties?  
20 Whoever has an answer, but if they were to want  
21 to expand these houses currently on the current  
22 property, which is a single property, are there  
23 restrictions to that?

24 MR. GESSIN: They will be back in front of  
25 the board again.

1           MR. MIZZI: Say this didn't come before  
2 us, would they require variances to --

3           MR. GESSIN: I don't know, are there  
4 covenants on this lot?

5           MR. TERCHUNIAN: Just as a point of  
6 information, this board in reviewing and  
7 approving any variance has the right to place  
8 conditions on that variance that are at nexus  
9 with the issues being varied.

10          MR. MIZZI: I guess the question I am  
11 asking myself is by allowing this, are we  
12 potentially creating a condition in which the  
13 existing configuration is likely to change?

14          MR. TERCHUNIAN: Here is my point. You  
15 can place conditions on any future expansion of  
16 this in your decision because that is an issue  
17 at nexus with what they are asking.

18          MR. GESSIN: Sometime in the future. The  
19 future is a long time. I expect that these  
20 things will change. Maybe not in our lifetime,  
21 but they will change.

22          MR. HULME: I suspect that our ability to  
23 do that in the future on a subdivided line is  
24 no different than our ability to do that now.  
25 I guess we can go to the village and get a

1 building permit to put a second floor on one or  
2 both of these now.

3 MR. MIZZI: You are proposing to split it,  
4 but you are not proposing to move or amend the  
5 existing structures?

6 MR. HULME: We are just seeking to draw a  
7 line in between the two of them and give them  
8 different addresses.

9 MR. SIEGEL: I think that one of the  
10 differences is going to be that if this house  
11 decides to put a second story on their variance  
12 or their pyramid, it is going to be more  
13 severe. But just from having looked at what we  
14 just approved a minute ago --

15 MR. GESSIN: That house has a problem  
16 already.

17 MR. SIEGEL: Yes, already. So let's say  
18 this subdivision becomes legal. We would be  
19 more restricted because of this flagpole.

20 MR. MIZZI: Not that I have gotten to the  
21 point of asking for it, but it's within our  
22 rights, considering your application, to have  
23 you move or amend your houses. That's the only  
24 reason I am asking.

25 MR. GESSIN: There needs to be a

1 connection, a nexus between what you ask and  
2 what we are asking you to do and it would seem  
3 to me, in the village's better interest, that  
4 if the houses stay where they are, the  
5 subdivision restricts the ability to renovate  
6 them more.

7 MR. SIEGEL: Are you asking us to accept  
8 your proposal with restrictions on where these  
9 houses stay?

10 MR. HULME: No, I am not saying that at  
11 all.

12 MR. MIZZI: I am trying to tie it all  
13 together. If your condition was to move this  
14 house to a more conforming location, that  
15 actually makes it easier for us, after the  
16 subdivision is approved, to come and add that  
17 second story.

18 MR. GESSIN: Right.

19 MR. HULME: If you leave this house on lot  
20 number 1, exactly where it is right now, this  
21 subdivision actually makes it harder for us to  
22 come and put a second story on. If you can  
23 tell us to come and put this on a better place  
24 in the lot, that makes it easier, but my point  
25 here is the restrictions that apply to that

1 post subdivision development, applied to it  
2 right now. So other than, perhaps, being more  
3 restrictive because of the drawing of the line,  
4 we could apply now for the same things we could  
5 apply for after the subdivision. The analysis  
6 would be the same. We might have to come to  
7 the board, we may not have to come to the  
8 board, depending on what we want to do.

9 There's nothing about granting the subdivision  
10 that makes it easier for us to do any of that.

11 MR. MIZZI: Other than the sale of the  
12 lot.

13 MR. HULME: Right.

14 MR. MIZZI: I am saying as part of -- by  
15 approving this and making the lot salable,  
16 there's certainly -- one can conclude that in  
17 doing so and improving this we've created a  
18 condition that probably promotes the  
19 development of the house.

20 MR. HULME: Exactly.

21 MR. SARETSKY: As two houses.

22 MR. HULME: Exactly. What you have to do  
23 in combination of these two factors is balance  
24 the benefit of us and the benefit to us is  
25 exactly that economic benefit, the ability to

1 sell these two things separately. The  
2 detriment to the village is what you are  
3 talking about, it is the ability to more fully  
4 develop these parcels. What I suggest to you  
5 is that will not be any easier subsequent to  
6 the subdivision, therefor it's not a detriment.

7 MR. MIZZI: Understood, but I think you  
8 are aware in the past we were able to propose  
9 and get acceptance by the lot owner to restrict  
10 the placement and size of the future  
11 development.

12 MR. HULME: I haven't had any other  
13 applications before this board. I am not  
14 disputing your ability to do that, I am just  
15 suggesting that there needs to be a connection.

16 MR. MIZZI: I am asking these questions  
17 because it's all going to become part of the  
18 consideration and it's helpful to understand  
19 your intent.

20 MR. HULME: The second factors of the  
21 other feasible method. You have to look at the  
22 factors and the goal of the applicant. The  
23 goal of the applicant is to create two lots  
24 here. This is the only way. There's not  
25 another way to draw the line here to do that.

1           If you move the division line further to the  
2           north, it would increase a rear yard setback,  
3           but it would decrease an equal amount of the  
4           front yard setback of the lot number 2. There  
5           really isn't any other way to reach the  
6           applicant goal here of having two lots. Each  
7           with a single family residence on it.

8           MR. SARETSKY: Can I ask a question?

9           MR. HULME: Yes.

10          MR. SARETSKY: As far as the other  
11          feasible method, this could become one home and  
12          could provide more value to the owner.

13          MR. HULME: Perhaps, perhaps not, but the  
14          case law on variances indicates that the  
15          variances on other feasible methods has to be  
16          in the context of the goal of the applicant,  
17          not somebody else's goal, not based on what  
18          somebody else may think would be a better idea.  
19          The only way that this applicant can achieve  
20          the goal that he has set is by drawing the line  
21          on the subdivision map. The fact that you can  
22          tear both of these houses down and build a  
23          whole new house there is not material to this  
24          particular factor on these particular facts. I  
25          don't think it bears on that at all.

1           The third factor is the substantial  
2 nature. That's always a hard one and people  
3 sometimes will look at it by percentages. The  
4 overriding thing there is that you need to look  
5 at it in context of what's being proposed.  
6 What is being solved by the subdivision. We  
7 are going from the circumstance where we have  
8 two residences on one lot, but for the  
9 preexisting nature of these structures would be  
10 a complete violation of the spirit of the  
11 single family residential code.

12           MR. MIZZI: What would be that?

13           MR. GESSIN: Putting two houses on one  
14 residential lot.

15           MR. HULME: Which we have only by the  
16 virtue of the factor that they are preexisting.  
17 The goal of zoning is to have one lot, one  
18 residence, and what we are effectively  
19 achieving here by this subdivision is creating  
20 something that is more compliant with  
21 applicable zoning.

22           MR. MIZZI: Where you have one house on  
23 one lot, not two houses on one lot.

24           MR. SARETSKY: The only thing I am trying  
25 to understand is long ago this was always two

1 homes on one lot, the way it is, and now, in  
2 other words, I am just trying to understand why  
3 the village has made accommodations to the  
4 various homes and et cetera. Flag lots,  
5 because they were existing homes that were like  
6 that. The subdivision we had, that we talked  
7 about, was -- it exceeded.

8 MR. GESSIN: You are talking about the one  
9 we had on Dune Lane years ago?

10 MR. SARETSKY: Yes.

11 MR. MIZZI: The one that was really big?

12 MR. SARETSKY: Right. In that aspect we  
13 were not asking for an exception. We were  
14 making the setbacks greater than normal homes  
15 were. It also accommodated people across the  
16 way. I am really thinking out loud.

17 MR. MIZZI: I just have a question. I  
18 understand what this says, but is there a  
19 significance to this legally?

20 MR. HULME: I am just pointing it out.  
21 Every agency that has ever looked at this  
22 parcel had said there are two houses. They are  
23 right. I think if one of them was a house and  
24 the other was an accessory structure, I think  
25 we would have an argument with them.

1           MR. CASHIN: You have the C of O saying a  
2 single family structure.

3           MR. HULME: You have to go through the  
4 whole thing. There was a house there in the  
5 50's. In the packet that's part of the March 3  
6 letter, there are a couple of different COs,  
7 one of them is for a preexisting structure, the  
8 other one is for a new structure. Let me go  
9 through this.

10          MR. CASHIN: That's treating it as a  
11 single family structure.

12          MR. HULME: Well, no. See, that's why the  
13 village gave us two new COs, because that  
14 document was being misinterpreted as saying  
15 that there was only one single family residence  
16 and there was some other kind of accessory  
17 structure on this lot. There was a CO issued  
18 in 1960 which was for a new residence. There  
19 was a CO issued in 1992 for a preexisting  
20 residence. The village building department  
21 came to the understanding that the 1992  
22 preexisting CO was for the building that  
23 existed in the 50's and that the 1960 CO for  
24 new construction was for a house that was built  
25 in 1960.

1 MR. CASHIN: So it's a house and the  
2 storage structure?

3 MR. HULME: Well, I don't know what it was  
4 before we got the CO, but there have always  
5 been two COs for this property identifying two  
6 separate single family residences.

7 MR. CASHIN: Where do you see that?

8 MR. HULME: The 1960 CO is from the new  
9 construction.

10 MR. GESSIN: It doesn't tell you what new  
11 construction.

12 MR. HULME: And the 1992 CO is for the  
13 preexisting.

14 MR. CASHIN: It just says a single family.  
15 Not a new single family. How do you get two?

16 MR. HULME: Because we have two houses  
17 that are both legal. The bottom line is that  
18 presented with this information, the Village of  
19 West Hampton Dunes Building Department came to  
20 the conclusion that there were, in fact, two  
21 legal structures here, both of which were  
22 entitled to a separate CO. And as a result  
23 they issued COs.

24 MR. CASHIN: That was in the spring of  
25 this year?

1           MR. HULME: I didn't mean that was in the  
2           spring of this year, correct. I provide this  
3           information to you inquire behind the COs that  
4           have been properly and legally issued by the  
5           village and the building department.

6           MR. MIZZI: Other than for us, for some  
7           history here.

8           MR. HULME: How the village came to the  
9           conclusion that there were two residences here  
10          and to the extent that Mr. Haefeli's comments  
11          are an attack on that position, I want to be  
12          clear that the village looked at this issue and  
13          the village issued legal documents called  
14          Certificates of Occupancy.

15          MR. MIZZI: What makes you think he's  
16          going to attack?

17          MR. GESSIN: He might be here in support.  
18          We haven't heard him yet.

19          MR. HULME: Sorry. I didn't mean to  
20          anticipate. So moving on with the factors, so  
21          Joe doesn't yell at me that I didn't do all  
22          five of them. Before and after, there's a  
23          piece of land, whether it's two pieces or one  
24          piece, that have two houses on it.  
25          Self-created. Is it self-created or not, I

1 don't know. That in and of itself is not a  
2 determinative factor of what the fact is and I  
3 think all the other factors go in the other  
4 directions so, again, the purpose of all of  
5 this is to balance the detriment to the village  
6 which we would argue it's the same, rentable  
7 rentable, livable, livable, parkable, parkable.  
8 Expandable, not expandable, same thing. The  
9 impact on the village is minimal. The benefit  
10 is that he has two lots, we are not hiding the  
11 fact that that's the benefit that we are  
12 seeking and he is able to exploit these sets,  
13 to use these properties to their full legal  
14 value, but as separate lots. And, again, I  
15 really think the specific dimensional variances  
16 that we seek in comparison, to the fact that we  
17 are moving this entire area into compliance by  
18 making the subdivision, we are bringing the lot  
19 into compliance with what the zoning requires,  
20 one house, one lot. It's really a secondary  
21 issue that we need the few feet here and the  
22 few feet there, but the big benefit, if you  
23 will, to the village is the fact that we are  
24 bringing the laws under compliance in this  
25 matter. Our ability to develop further these

1           lots is not enhanced by that so, you know, I  
2           think it's arguably a win, win for both the  
3           village and the applicant.

4                     Just a few more points. There is some  
5           precedent for doing these subdivisions. 70,  
6           72, 782, 786 Dune Road are all subdivisions  
7           that are necessary variances for which have  
8           been granted by this board and the necessary  
9           approvals by the planning board have been  
10          granted. I will grant you that the lots in  
11          those cases were somewhat larger than the lots  
12          that we are attempting to create. I would also  
13          like you to take into consideration that in  
14          each of those cases there is only one house on  
15          whatever the lot was so those subdivisions,  
16          although created bigger lots, the lot was  
17          filled substandard from an area of requirement  
18          and those subdivisions didn't have the area of  
19          bringing the property more in compliance to the  
20          one house, to the one house, one lot rule.  
21          That's basically all I have to say at this  
22          point.

23                    MR. SIEGEL: Did I not hear once that  
24           there was some kind of incident that this was  
25           supposed to be filed in a certain way?

1           MR. GESSIN: It's in the documents. It's  
2 right here.

3           MR. HULME: That's in a DEC permit. I  
4 believe counsel to the village would tell you  
5 that DEC can't tell the village what they can  
6 and can't do. We do recognize, however, our  
7 obligation to go to the DEC and get a permit  
8 from them which we are going to do. And the  
9 health department as well, which are our next  
10 steps, and we can't have a fully subdivided  
11 property until we have approvals. One of the  
12 things we are going to address in the DEC  
13 application is the particular covenant corner,  
14 which we believed then and we believe now is  
15 incorrect.

16           MR. SIEGEL: As written, you don't believe  
17 this is correct?

18           MR. HULME: We don't feel that the DEC had  
19 authority to require it. We never filed the  
20 covenant and they never did anything about the  
21 fact that they filed a covenant.

22           MR. GESSIN: They may not have issued the  
23 permit if they didn't agree. I wasn't there so  
24 I don't know that.

25           MR. SIEGEL: You told me you worked for

1 the DEC.

2 MR. GESSIN: No, he worked for the DEC.

3 MR. TERCHUNIAN: So is there anything that  
4 you want to know based on his presentation  
5 before Mr. Haefeli gets a crack at it?

6 MR. HULME: We are aware of that. We gave  
7 this to you. One of our goals here is to  
8 correct that.

9 MR. GESSIN: Usually we hear an audience  
10 first before we -- he is the audience.

11 MR. TERCHUNIAN: I moved from there.

12 MR. HAEFELI: I just moved up so I can  
13 hear.

14 MR. HULME: Just one more thought that my  
15 client reminded me of. If this subdivision is  
16 to be granted, the taxes will be greater for  
17 the reason that he has more value, the village  
18 taxes will be greater.

19 MR. MIZZI: I've been told our taxes will  
20 go down every time we build more houses,  
21 haven't seen it yet.

22 MR. GESSIN: Is it all right if we hear  
23 Mr. Haefeli?

24 MR. TERCHUNIAN: Absolutely.

25 MR. HAEFELI: As I said, Richard Haefeli,

1 48 Main Street, on behalf of the neighbor.

2 MR. MIZZI: Which neighbor are you here  
3 for?

4 MR. HAEFELI: 844. The neighbor on the  
5 east.

6 MR. CASHIN: You are that neighbor or you  
7 are representing that neighbor?

8 MR. HAEFELI: I am representing that  
9 neighbor. I am an attorney.

10 The applicant's position is that they have  
11 two valid one family residences which entitles  
12 them to come in for the requested variances for  
13 them to create two lots. There never has been  
14 two valid on the property, the only valid  
15 residence on the property was the one single  
16 family residence at the time, which came into  
17 effect in 1957.

18 First thing, just so we put it in the  
19 record, I will give you copies. Jim, I will  
20 give you a copy although I don't think you will  
21 need it. This is -- for the record, these are  
22 copies of the zoning map that was adopted by  
23 the town. It's a 1993 -- until 1993 this area  
24 was in the jurisdiction of the town of  
25 Southampton. Everything that occurred in 1993

1 was under the jurisdiction of the Town of  
2 Southampton. The zoning code was in effect up  
3 until that point in time. Okay?

4 I am just going to give you a couple of  
5 copies just so you can see the first page shows  
6 the zoning area on Dune Road. The second  
7 document -- and this property was placed in the  
8 C residence district, which requires 15,000  
9 square feet of area. When savings and loaning  
10 came into effect, this particular property here  
11 -- I will just give a couple of copies to the  
12 board. If you want, you can look at it. When  
13 savings and loaning came into effect, it was  
14 one residence for every 15,000 square feet.

15 One piece of property, you can only have a  
16 single residence on. The information submitted  
17 by Jim has a 1950 survey done by shop for this  
18 property and it shows one residence. That  
19 residence in 1950 was preexisting, I am not  
20 questioning that residence whatsoever. If the  
21 1950, you had that particular residence. Now,  
22 in 1960, and this is where we come in on the  
23 issues, if you look at the CO that Jim has  
24 submitted, that he submitted as part of the  
25 application, there's a 1960 CO.

1 MR. CASHIN: Is that this one?

2 MR. HAEFELI: Yes. If you look at that  
3 one, there was a building permit issued in  
4 1960. Look at the bottom. That CO in 1960.  
5 The building permit was issued in April of 1960  
6 and if you look at it, you will see what it  
7 states. It states in addition, so in 1960 the  
8 building permit that was issued was issued for  
9 an addition to the -- if you look at the  
10 Certificate of Occupancy, there's an X next to  
11 the word. It says this is to certify that the  
12 addition, new, was completed. It's an  
13 occupancy for the residence and it makes  
14 reference, in that Certificate of Occupancy,  
15 the building permit that was issued in April of  
16 1960 or building time 17:27.

17 The CO that was issued in 1960 for the  
18 Certificate of Occupancy, not for the new  
19 residence, but for an addition to a new  
20 residence. Okay? There's an affidavit, and I  
21 believe this was submitted by Jim as well, but  
22 I'd like to give you copies of it so you can  
23 look at what I was talking about here. Put  
24 this in this file please. There's that and  
25 that, everything that took place had to take

1 place after 1957, you had to comply.  
2 Mr. Orman's affidavit states that there were  
3 two cottages, both of which were separate  
4 kitchens, from the early 1960's. That doesn't  
5 take us back to 1957. It takes us back to  
6 1960. You had to go back to 1957.

7 MR. MIZZI: Why is that?

8 MR. HAEFELI: Because that's when the code  
9 went into effect. The zoning code went into  
10 effect in 1957. In 1957 all you were entitled  
11 to have on this piece of property was one, one  
12 family residence, not two.

13 MR. SIEGEL: I don't know if that's true.

14 MR. HAEFELI: His affidavit makes  
15 reference to the fact that was in existence in  
16 the early 1960s. Not what's in existence in  
17 1957.

18 MR. MIZZI: It says 1950's.

19 MR. HAEFELI: Both houses had contained a  
20 full kitchen, at least as early as 1966, not  
21 1957. He goes down to the last paragraph on  
22 the last page, the second home.

23 MR. HULME: No, it says 1960.

24 MR. HAEFELI: In paragraph number 4.

25 MR. HULME: Number 2. Number 3 says each

1 has their own separate kitchen, at least as  
2 early at the 60's.

3 MR. SIEGEL: He was on number 4 already.

4 MR. HULME: 1966.

5 MR. HAEFELI: There was never an  
6 additional house. There was only one house.  
7 His last sentence says that the new house was  
8 built pursuant to the building permit 1727.  
9 That was not a building permit for a new house,  
10 that was the building permit for an addition to  
11 an existing residence. I have no argument with  
12 the fact that in 1960 there was a building  
13 permit issued for an addition to that  
14 residence. That was in existence in '57. That  
15 wasn't what was in existence thereafter. We  
16 then come back --

17 MR. CASHIN: So your point is that this is  
18 an incorrect affidavit?

19 MR. HAEFELI: I think it's a mistake when  
20 he says the certificate was for a new  
21 residence. When you look at the building  
22 permit number, that's the building permit you  
23 looked at, that building permit number was for  
24 an addition. It was not for a new residence.

25 MR. CASHIN: Are you saying that there was

1 not two residences?

2 MR. HAEFELI: I am saying two structures.  
3 Structures maybe. We are talking residences.  
4 You can have a residence and you can have a  
5 structure. He, obviously, did put an addition  
6 on it in 1950. You have the building permits  
7 which is for an addition, not for a new  
8 residence. He is talking about this document,  
9 1727.

10 MR. MIZZI: Are these pictures related to  
11 this affidavit?

12 MR. HULME: Yes.

13 MR. MIZZI: Can you just clarify what are  
14 we seeing here?

15 MR. HULME: Those are the two houses in  
16 1966.

17 MR. MIZZI: Where is Dune Road from here?

18 MR. HAEFELI: I didn't mean in 1966 the  
19 houses were -- here, this is a survey from  
20 1979.

21 MR. MIZZI: Is it this sketch?

22 MR. HULME: Yes, the picture is looking  
23 into the deck towards Dune Road.

24 MR. MIZZI: Is it your assertion that this  
25 guy was --

1           MR. HAEFELI:  When I finish -- you can ask  
2 me any questions if you let me finish.

3           MR. MIZZI:  Sorry.

4           MR. HAEFELI:  The next idea you have is a  
5 1992 Certificate of Occupancy.  This is an  
6 original affidavit by Paul Houllihan  
7 (phonetic).  Paul Houllihan is the chief  
8 village inspector of the village of Westhampton  
9 Beach.  In 1992 Paul Houllihan was the building  
10 inspector of the town of Southampton.  The  
11 owner of the property made him request for an  
12 application for a preexisting Certificate of  
13 Occupancy.  Based upon that request, Paul  
14 Houllihan went out on December 14, 1992 to  
15 inspect the premises.  There was an affidavit  
16 by Mr. Omran (phonetic) dated September 17,  
17 1979, which states that the purchase of the  
18 property in 1950 and the structure as shown on  
19 the survey was a completed one family dwelling  
20 and the affidavit was made with the expectation  
21 that the issues of a Certificate of Occupancy  
22 for this dwelling.  Now, please look at that  
23 affidavit because underneath there there are  
24 notes made by Mr. Houllihan at the time he  
25 inspected the premises on December 14, 1992.

1 His notes say it is a single story, single  
2 family wood-framed dwelling and attached is a  
3 storage building.

4 MR. MIZZI: Where is it?

5 MR. SARETSKY: Right there.

6 MR. HAEFELI: That was in the  
7 jurisdiction. As a result of that, also as a  
8 result of that, the Certificate of Occupancy  
9 was issued with a statement on it that it was a  
10 one single family with an attached structure.  
11 As of 1992, there was only one single family  
12 dwelling as inspected by the building inspector  
13 in 1992 on the property. The survey that was  
14 submitted in support of the application, and I  
15 have -- this is a full copy of the survey, but  
16 I want to put that in the record as well. I  
17 don't know if you need a full copy of that,  
18 Jim, there are some notes on the survey. I  
19 only have an extra copy of the full survey.  
20 The top of the survey, this is just a bigger  
21 one so you can see it a little better. If you  
22 look at the survey, you will see there are  
23 notations. On the front it says one story  
24 frame house then it says a house and it has a  
25 deck. Then it says a proposed house and on the

1 right it says proposed house and decking to be  
2 removed. So the survey indicates that the  
3 existing buildings that would be are there to  
4 be removed and is going to be proposed one  
5 family dwelling and any further note on it says  
6 that in October of 1992, the buildings on the  
7 south found to be flooded and fire damaged.  
8 You know, that because of the fire damage, that  
9 the updated Certificate of Occupancy was  
10 issued.

11 The key in this case is the issuance of a  
12 Certificate of Occupancy by the Town of  
13 Southampton in 1992 and the affidavit of the  
14 building inspector at the town of Southampton  
15 at this time, he is now the chief building  
16 inspector of the village of Westhampton, which  
17 states that when he inspected the property in  
18 1992, he found only one single family dwelling  
19 and it was based upon that that the 1992  
20 Certificate of Occupancy was issued. It was  
21 issued for one single family dwelling. So as  
22 of then, you have one one family, not two. The  
23 1960 Certificate of Occupancy was for an  
24 addition. The 1992 Certificate of Occupancy  
25 was a preexisting Certificate of Occupancy for

1           what was on the property and what was on the  
2           property that was found by the building  
3           inspector was only one, one family dwelling  
4           basically goes along with that because he was  
5           asking for a Certificate of Occupancy for the  
6           dwelling. So in 1999, somehow or another, in  
7           1999, the village of Westhampton Dunes issued a  
8           Certificate of Occupancy for this property.

9           You have a copy, but I will give you a copy.

10          Single family structure, two story, additional  
11          one story building. That has the same language  
12          in it, basically, that the 1992 Certificate of  
13          Occupancy that was issued by the town of  
14          Southampton has. The application here is for  
15          the subdivision of the property based upon two  
16          legal residences. How the COs came into  
17          existence in 2016 I can't answer that question,  
18          but you don't go that far.

19                 I understand what the court order was, we  
20          have had an existence at the time of the  
21          flooding, you were entitled to keep. In this  
22          case you have to go back in time to, one, what  
23          was in existence from 1957 and thereafter. In  
24          1957 it was one one family dwelling, it was not  
25          two. There were not two one family dwellings.

1 And as a result, all this gentlemen has is one  
2 one family dwelling, he does not have two, and  
3 under those circumstances, even based upon  
4 Jim's own testimony, he is not entitled to have  
5 variances to permit two, substantially since he  
6 doesn't have two valid one family homes.

7 That's basically what my argument is.

8 And in addition to that, I just wanted to  
9 point out that most of the homes shown on the  
10 photo that Jim had submitted earlier in this  
11 area is one lot and the property goes from Dune  
12 Road to the water, it's not two lots, it's only  
13 one lot.

14 There may be existing properties nearby  
15 that have less than two or three pieces going  
16 down to the water, but they are preexisting  
17 lots. But what we are being requested here to  
18 do is create a brand new subdivision, two lot  
19 substantial, under the cover most lots don't  
20 comply with the code. I am not arguing, but  
21 these don't even substantially comply with what  
22 is in this area. Most of the lots in this area  
23 are roughly a half acre, if you look at that.  
24 He is asking for lots of basically 10 or 12,000  
25 square feet, which isn't even existing here, so

1           it doesn't even meet the basic criteria. It  
2           doesn't comply out of sorts with the character  
3           here.

4           My emphasis is only one lot on this  
5           property at the time zoning came into effect  
6           and there are --

7           MR. MIZZI: I just wanted to understand  
8           the significance, this affidavit that you  
9           submitted is just --

10          MR. HAEFELI: I went into the Town of  
11          Southampton, believe me, trying to find the  
12          file for the Town of Westhampton Beach. And it  
13          was not easy, the only file they actually came  
14          up with was the file from 1992 CO. They had no  
15          file from the 1960 CO, but they finally  
16          administered themselves that the 1960 CO belonged  
17          in the same file. It's from the same piece of  
18          property so the documents that are attached are  
19          the documents and the only documents that are  
20          filed in the Town of Southampton.

21          MR. MIZZI: So my question just is,  
22          Mr. Weber, this preexisting cover sheet  
23          document and then there's an affidavit that's  
24          attached from Harold Omran. There's another  
25          affidavit that we were given. Is that

1 different? It's Roger Omran.

2 MR. HAEFELI: I think that's his son.

3 MR. HULME: I think that's correct.

4 MR. HAEFELI: Harold was the father.

5 MR. MIZZI: What I am asking is when

6 Mr. Weber was applying for this and he got an

7 affidavit from Harold and that's saying what?

8 MR. HAEFELI: That's saying requesting a

9 Certificate of Occupancy for this dwelling. He

10 is requesting a preexisting --

11 MR. MIZZI: And attached this --

12 MR. HAEFELI: That 1979 survey was

13 attached to the application.

14 MR. MIZZI: I get that.

15 MR. HAEFELI: In 1979 -- he never applied

16 in 1979 for the CO.

17 MR. MIZZI: I guess my question is, this

18 is an application with an affidavit of somebody

19 verifying this condition and is this a -- when

20 was this made?

21 MR. HULME: 2008, I think.

22 MR. MIZZI: So this is a subsequent

23 application of the son remembering this?

24 MR. HULME: They are not in disagreement.

25 MR. MIZZI: That's my question. And what

1 I was going ask before, maybe we don't know the  
2 answer, is a possible conclusion that when this  
3 was washed away that somebody thought that --  
4 how did this get to what exists now?

5 MR. HULME: Well, what was there before,  
6 all of the surveys prior to that matched the  
7 configuration.

8 MR. HAEFELI: The issue is not structure,  
9 the issue is residence. You can have a  
10 residence and you can have an attached  
11 structure. In 1992 Certificate of Occupancy  
12 preexisting CO issued by the Town of  
13 Southampton based upon the physical inspection  
14 by the building inspector who put notes on his  
15 file stating that there was only one  
16 residential dwelling, that the other dwelling  
17 was a structure. I am not arguing with a  
18 structure. It was an obvious addition made in  
19 1960.

20 MR. SARETSKY: They call it a storage  
21 building.

22 MR. HAEFELI: 1960. The issue isn't how  
23 many structures, the issue is how many  
24 residences. He currently claims he is entitled  
25 to two legal residential dwellings and I am

1 saying to you in the records from the Town of  
2 Southampton, which applied to this village up  
3 until the time the village was incorporated,  
4 this was only one single family residence on  
5 the property. A second residence, if it got  
6 into existence, would be illegal and could not  
7 have been built.

8 MR. MIZZI: I was just trying to connect  
9 since it's the same owner --

10 MR. HAEFELI: One is the owner and the  
11 other is the son.

12 MR. MIZZI: In 1992 he was saying  
13 something and 2009, or whatever year, he is  
14 saying something and I am just trying to  
15 understand the connection of the two.

16 MR. HAEFELI: Remember, the affidavit was  
17 signed in 1979. The application issued for the  
18 updated Certificate of Occupancy was not made  
19 until 1992. I don't know why, but maybe  
20 because the floods occurred right after that.  
21 Whatever reason. You have a '79 affidavit to  
22 support the existence of a single one family  
23 home and that affidavit specifically says one  
24 dwelling. It does not say two dwellings.

25 MR. GESSIN: Other than the fact that the

1 paperwork doesn't seem to follow all the way  
2 through, what exactly is the objection to that?

3 MR. HAEFELI: Technically they don't  
4 believe there should be a subdivision creating  
5 two lots when they have 22,000 and the other  
6 neighbors have 22,000 and specifically the  
7 basis of the application -- to two -- the basis  
8 is he claims to have two legal residences. And  
9 I am saying it's not there. Based on the  
10 record of the Town of Southampton, if he has  
11 one legal residence.

12 MR. GESSIN: Their objection isn't that  
13 the current use of the 2 houses aren't party  
14 houses and there's cars parked all over?

15 MR. HAEFELI: No, they have raised the  
16 question with me as to whether or not if they  
17 don't have two valid residences, can they rent  
18 two residences out? That's not an issue before  
19 the board. You have your five partest. Five  
20 partest overriding what you have to consider,  
21 even if you had two, is it out of character in  
22 the area. You are asking for a brand new  
23 subdivision with two lots of 10,000 or 11,000  
24 square feet. You may have had preexisting lots  
25 there, but that's brand new. Does that create

1 a precedent for the future? The bottom line is  
2 he doesn't have two valid residences. There's  
3 some miscommunication, or whatever you want to  
4 call it, from the time you went to the Town of  
5 Southampton to the Village of Westhampton  
6 Dunes, and that nature and what I've submitted  
7 to the board is the paperwork clearly is  
8 established based upon the affidavit of the  
9 building inspector who inspected the property  
10 and who, at the time he inspected it, it was  
11 one residence. That was confirmed by  
12 certificate of occupancy issued by the village  
13 of West Hampton Dunes in 1999. So there's a CO  
14 in existence in 1999 for one residence and a  
15 structure. Now we have two residences.

16 MR. CASHIN: I have a question. Putting  
17 aside -- do we have any other lots in the  
18 village that have two other legal residences on  
19 them?

20 MR. TERCHUNIAN: Yes, well, right here on  
21 the corner of Dune Lane, on the southwest  
22 corner. It's a two family. It's not two  
23 residences, but it's a two family.

24 MR. MIZZI: It's two separate houses with  
25 a garage between them?

1 MR. GESSIN: 878, right?

2 MR. MIZZI: 888.

3 MR. SARETSKY: That's an existing home.

4 MR. CASHIN: Do we have two separate  
5 residential structures on one existing lot?

6 JOHANNA: I know 888 because it appears to  
7 be. It has two separate kitchens, like, and  
8 they rent it out separately and different  
9 people stay.

10 MR. HULME: It's two lots, right?

11 MR. TERCHUNIAN: No, it's one lot. I can  
12 double check. I don't know.

13 MR. MIZZI: One can argue that it's one  
14 structure. but the village -- I know that the  
15 people, I live across the street. Different  
16 people rent the two different houses.

17 MR. CASHIN: My question was two clearly  
18 separate questions.

19 MR. TERCHUNIAN: I will research that and  
20 let you know.

21 MR. SARETSKY: The CO can be used as two  
22 different -- it is not two different homes.

23 MR. TERCHUNIAN: It is a two family home.

24 MR. SIEGEL: Two kitchens.

25 MR. MIZZI: It's not similar, it's not the

1 same.

2 MR. HULME: On response granting this  
3 relief, if there's only one other lot in the  
4 entire village, they may gain benefit of his  
5 decision if it's positive. That's not a  
6 floodgate.

7 MR. SARETSKY: I hate to say that, that's  
8 your opinion. To the homes on either side of  
9 it, they might not see it the same way. I  
10 would see it as a wall. I would like to build  
11 a second home in the front.

12 MR. HULME: But you can't and we can't,  
13 that's the point.

14 MR. SARETSKY: If you accept that we have  
15 two legal residences, my belief, right or  
16 wrong, is that this is grandfathered back for  
17 some reason and we can get into the history of  
18 it. We certainly are not getting there today.  
19 It was grandfathered back because there were  
20 allegedly two homes there and it would be a  
21 hardship to Mr. Weber if he didn't have those  
22 two homes to use in that capacity. Now that  
23 you want to subdivide it, you are changing --  
24 what's to say that those two homes don't get  
25 rebuilt? Yes, there can be stipulations to it.

1 But the reality is that if I lived on either  
2 side of that home, I don't know that I would  
3 really want that to happen. I don't live near  
4 it. I am enough homes away that it doesn't  
5 affect me. I am looking at it from the aspect  
6 of the homes on each side of it. You had two  
7 homes at some point. Whether they were two  
8 residences or whether they were -- you had the  
9 ability to rent them and that's what you do  
10 now.

11 MR. HULME: Yes.

12 MR. SARETSKY: It would be a hardship to  
13 say that you can't use both those homes. I sat  
14 through subdivision proposals that we have  
15 actually agreed to. We agreed to them when  
16 they exceeded the neighbors' objections as well  
17 as the parameters for the dimensions of the  
18 subdivision. Is that fair to say, Harvey?

19 MR. GESSIN: I agree.

20 MR. SARETSKY: But the starting point for  
21 your zoning code is the concept of one house on  
22 one lot.

23 MR. HULME: We are completely out of  
24 compliance with that basic tenant of your  
25 zoning code because we have two legal houses on

1           one lot. The relief we are looking for is to  
2           allow us to come more into compliance with the  
3           most compelling aspect of your zoning code.

4           MR. SARETSKY: I think that's your  
5           opinion.

6           MR. HULME: It's not my opinion.

7           MR. SARETSKY: More in compliance -- build  
8           a new home there that would be commenced with  
9           the rest of the neighborhood.

10          MR. HULME: I would have to give up a very  
11          valuable right. I would argue that when you  
12          balance all of these things together, the harm  
13          to the village, Mr Haefeli's client has a house  
14          20.6 feet away from him and 18.7 feet away from  
15          him. After the subdivision there's going to be  
16          a house 20.6 feet away from him and 18.7 feet  
17          away from him. If somebody wants to do  
18          something different, they have to come back to  
19          the building department, and likely the zoning  
20          board, before they can do anything different  
21          than what's there. Anything that you would  
22          want to do here would violate the pyramid law.  
23          Would violate. You can't change these houses  
24          without coming back to you guys.

25          MR. SARETSKY: But I come back to the

1 point. If you do what you want as of right.  
2 You don't come back to this door, but you are  
3 asking to deviate from it and that's why we are  
4 here.

5 MR. HULME: What I am saying is there's no  
6 difference of the impact before and after.

7 MR. SARETSKY: But that is your opinion.

8 MR. HULME: No. I am expressing my  
9 interpretation of your code. What your code  
10 says. It is a fact that if I wanted to put a  
11 second story on lot number 1, I would have to  
12 come back here because it violates your pyramid  
13 law. Either way I'd have to come back here for  
14 that purpose. Either houses -- both houses are  
15 legal, but neither house meets the requirements  
16 of the code. So if I were to come back to do  
17 anything to these houses before or after the  
18 subdivision, either way I have to come back to  
19 you and, in fact, I probably need more relief  
20 to modify these houses than before.

21 MR. SARETSKY: That's not true.

22 MR. HULME: It is true. How is it not  
23 true?

24 MR. SARETSKY: I can look at parts and  
25 pieces that I disagree with what you are

1 saying.

2 MR. TERCHUNIAN: Let me give you a  
3 recommendation. Go ahead. Finish.

4 MR. HULME: The other part I thought about  
5 to put in front of you is Mr. Haefeli has gone  
6 and looked and talking about the person's  
7 opinion. In his opinion, the record that he  
8 reviewed, he comes to a conclusion that there's  
9 only one single family residence. My opinion,  
10 I review the record, I come to a different  
11 conclusion. I believe there are two. Based on  
12 the fact that my client believed that there was  
13 an error in the 1992 CO, we presented the very  
14 same facts to the building inspector, arguably  
15 a neutral party. Somebody who is looking out  
16 for the interest, the interest of the village,  
17 not Mr. Weber's interest, not anyone else's  
18 interest. He took the evidence that's before  
19 you and he concluded that we were entitled to a  
20 CO for two single family residences. I think  
21 that trumps anything that Mr. Haefeli may share  
22 with you, his interpretation or my  
23 interpretation. The village has decided that  
24 there is a CO for each of these buildings as  
25 single family residences and the only other

1           thing that I would point out is in  
2           Mr. Haefeli's analysis is the map that was  
3           submitted, that they supposedly inspected  
4           against, describes one story frame house, one  
5           story frame house. There's two of them. We  
6           can have some antics, he may have issued a CO  
7           that said one story frame house and storage  
8           building, but that's why we went to the village  
9           to change it because that's clearly wrong.  
10          They are the same words, they are two one story  
11          framed houses. They are not a one story framed  
12          house and the one story framed storage  
13          building.

14                 MR. HAEFELI: The building inspector of  
15                 the Town of Southampton, when he inspected the  
16                 property in 1992, put a note on it saying there  
17                 was one one family residence and a structure.  
18                 He not only put the note on it, he dated it and  
19                 he signed it. So in 1992, the building  
20                 inspector -- it doesn't matter what's on the  
21                 survey, it's a physical inspection by the  
22                 administrator of the zoning code of the Town of  
23                 Southampton, came to a finding that it was what  
24                 the people wanted, to put on what the people  
25                 want them to put on. That does not control a

1 CO for what is on the property when it is  
2 inspected by the building inspector.

3 MR. TERCHUNIAN: That's not true.

4 MR. HAEFELI: That survey also states that  
5 that existing buildings were going to be  
6 removed and be replaced by only one building,  
7 but he didn't make his determination based on  
8 that. He made it on that physical inspection,  
9 and if there was only one one family residence  
10 in 1992 and in 1960 and after 1957, that's all  
11 that was there. There's no basis for making an  
12 application for a subdivision based upon two  
13 legal residences.

14 MR. CASHIN: I think we understand that  
15 point.

16 MR. TERCHUNIAN: Let me just make a  
17 recommendation.

18 MR. CASHIN: What was your basis for  
19 telling the board that either they shouldn't or  
20 they are not allowed to consider that covenant?

21 MR. GESSIN: You accepted the permit. You  
22 didn't build the house.

23 MR. HULME: We were seeking a permit to  
24 build a house and we never did it so the permit  
25 never took effect.

1           MR. MIZZI: You wouldn't like this  
2 proposal, but when we had such conditions, we  
3 said to somebody demonstrate that you can get  
4 such an approval. So you are basically telling  
5 us that we are going to approve this and you  
6 are going to get back and get this DEC relief,  
7 one way would be to understand the ruling of  
8 the DEC before we make a ruling.

9           MR. TERCHUNIAN: Before you go any  
10 further, first of all, you just got a whole  
11 bunch of information, you identified  
12 disagreement from the presenter and the  
13 objector and your attorney is not present.

14           MR. GESSIN: Right.

15           MR. MIZZI: Right.

16           MR. TERCHUNIAN: My recommendation to you  
17 at this point is you adjourn this for all  
18 purposes. If you have specific pieces of  
19 information that you want either side to brief  
20 you on, tell them what they are, specific, not  
21 general. Specific, one, two, three, four,  
22 five, six, seven, eight, whatever it is. Very  
23 specific. Number two, that after that you  
24 adjourn this for all purposes and let your  
25 attorney go through these arguments and advise

1           you as to where he thinks this holds water and  
2           where he think it doesn't.

3           MR. MIZZI: I have two things. One is I'd  
4           like to understand, because it doesn't feel  
5           like we should be making a determination on the  
6           current C of O's and what they represent and  
7           what Mr. Haefeli's research represents.

8           MR. GESSIN: I agree.

9           MR. HULME: I think you need counsel to  
10          tell you that.

11          MR. MIZZI: I think in advance of the  
12          meeting it would be nice to understand is this  
13          something we are supposed to even decide upon.

14          MR. CASHIN: Probably not.

15          MR. MIZZI: Should we be making a decision  
16          based upon that or should somebody tell us that  
17          the C of Os are correct or assume that this  
18          matter can be resolved first?

19          MR. TERCHUNIAN: So you have a specific  
20          request to your attorneys to evaluate C of Os  
21          that were issued and what the board should and  
22          should not consider.

23          MR. MIZZI: How we should consider the  
24          request with respect to the existing C of Os?

25          MR. CASHIN: I have a same question.

1           MR. MIZZI: The second part is -- it would  
2 be good to hear, like, to me it's a presumption  
3 from my view that this covenant that's saying  
4 something won't be sold is going to be  
5 corrected and presented at some date.

6           MR. TERCHUNIAN: Let me just give you a  
7 point of that date. Go to the front page of  
8 that permit. Look at the next page in, look at  
9 the expiration date, is it expired?

10          MR. MIZZI: Yes.

11          MR. TERCHUNIAN: All the conditions expire  
12 with it.

13          MR. MIZZI: Can we get that from our  
14 attorney?

15          MR. TERCHUNIAN: Yes, get that from your  
16 attorney.

17          MR. MIZZI: That's -- I am not saying it's  
18 wrong, but it's a legal interpretation.

19          JOHANNA: If we are going to make a  
20 decision based upon that it expired and doesn't  
21 apply, it would be good to know that. Those  
22 are my two things.

23          MR. GESSIN: Let me go through a little  
24 bit of my list. First of all, I understand  
25 that you have two sanitary systems and the rest

1 of the utilities are all combined.

2 MR. WEBER: We have two separate electric  
3 bills for the two houses.

4 MR. GESSIN: Where are the meters?

5 MR. WEBER: I think they are on the  
6 telephone pole. We do get two separate  
7 electric bills.

8 MR. GESSIN: Also, I don't see two water  
9 lines.

10 MR. HULME: Okay.

11 MR. GESSIN: I don't know if this is  
12 something the board should be considering, but  
13 I've never seen a 3-foot right of way across  
14 the property, easement. I don't think I've  
15 ever seen one in the village that narrow.

16 MR. TERCHUNIAN: Yes, there's one on the  
17 old mortgage property. That's where he used to  
18 bus the people in.

19 MR. SIEGEL: What would it normally be?

20 MR. GESSIN: Four or greater.

21 MR. SIEGEL: Why greater?

22 MR. HULME: We can make it greater.

23 MR. GESSIN: When you go to the site.

24 MR. HULME: I don't recall why we meet  
25 3 feet.

1           MR. GESSIN: I will mention it also. That  
2 utility pole at the road.

3           MR. SIEGEL: The pole right here.

4           MR. GESSIN: The utility pole. It's on  
5 the survey. The driveway is going to be right  
6 against the pole in the driveway. The other  
7 issue, parking for lot 2, because there's a  
8 very small that would be the rear yard. It has  
9 a very small rear yard, and one of the issues  
10 that I do know that exists with these tandem  
11 lots is parking and access and I think that  
12 might be one of your client's issues too.

13          MR. SIEGEL: They would have to drive over  
14 the top of the septic, yes.

15          MR. GESSIN: I guess you'll need an  
16 easement because they go down through the  
17 driveway of lot 2.

18          MR. HULME: Yes, easement.

19          MR. GESSIN: The first house, which is now  
20 only 6.7 feet from the property line, does not  
21 comply with the pyramid code. You are going to  
22 have to do the math on that. That might be  
23 another variance you might have to request, I  
24 don't know, but hopefully by the time we get to  
25 this one we will have some clarity on that.

1 THE WITNESS: What's the minimum side yard  
2 of our village?

3 MR. TERCHUNIAN: 8 feet. It's  $3/10$   
4 divided by 2 or 8 feet and there was something.  
5 I am sorry, it's the lesser of. It's either  
6  $3/10$ , but never less than 8 feet. This is  
7 current map.

8 MR. GESSIN: On lot 1 on the rear yard you  
9 are saying it's 23 feet, it's actually 16 feet.

10 MR. HULME: Okay.

11 MR. GESSIN: Because you only have --

12 MR. SIEGEL: That does say 16 feet right  
13 there. This arrow is pointing to something  
14 that's probably a line. There seems to be  
15 something missing here. Normally a line in  
16 that direction would look like that with two  
17 arrows. This arrow is this arrow here which  
18 relates to that there, but what's missing is --

19 MR. GESSIN: You have 23 which should be  
20 24, but it's 16 feet so you have to amend your  
21 request. Okay?

22 MR. HULME: Yes.

23 MR. MIZZI: Can I ask one other question?

24 MR. GESSIN: One more thing. This is just  
25 a comment from myself, not the board. To me,

1           this whole thing of what's going on was to be a  
2           house with a guest house, not two houses, and I  
3           don't know if that's something that our board  
4           should be discussing openly, but I just wanted  
5           to put it on the table.

6           MR. HULME: I think that you are going to  
7           consult with counsel and counsel is going to  
8           speak to you about the fact that the village  
9           has issued two COs in 2016.

10          MR. GESSIN: I am not disputing that.

11          MR. SIEGEL: My argument with him and with  
12          you is that trumps everything. They control  
13          what we have.

14          MR. GESSIN: I don't think everybody is  
15          looking to take that away.

16          MR. MIZZI: I have another question along  
17          those lines --

18          MR. HAEFELI: Wait. With reference to the  
19          guest house, the village's billing permit file,  
20          it was filed in 1999 for this property by Ray  
21          Weber, residence and guest cottage. Put that  
22          in the record, please. So what was proposed  
23          even in 1999 was a guest house.

24          MR. HULME: Well, no, it's a guest cottage  
25          and there's no separate definition for the

1 cottage verses a house and the definition of  
2 the cottage is a residence or being used as  
3 such.

4 MR. HAEFELI: A guest cottage in common  
5 thinking is I own a house so my grandkids come,  
6 they stay back there, but it's one lot and it's  
7 one home.

8 MR. MIZZI: Along those lines and along a  
9 comment made is that I understand the permit  
10 may or may not be applicable, but listening to  
11 your argument, which is when I read this  
12 application from the DEC and the guest cottage  
13 sanitary systems et cetera and by this  
14 applicant, not by another applicant, that that  
15 represents that something there will be a  
16 covenant saying it won't be sold. It feels  
17 like, and again, we will get advice --

18 MR. TERCHUNIAN: I recommend you stop  
19 right there and get advice from counsel.

20 MR. HULME: I am going to ask a separate  
21 thing because I have a whole separate thing.  
22 Not mine, but my partner's challenge for the  
23 DEC. And I am not prepared today to go through  
24 that, but I will be prepared next time to go  
25 through it.

1           MR. MIZZI: Can I make a nonlegal point  
2 about it?

3           MR. HULME: Sure.

4           MR. MIZZI: It does seem that if we are to  
5 ignore it, if we are told to ignore it, we will  
6 accept that, but reading it and then listening  
7 to your presentation, which the entitlement to  
8 have something that you can sell after getting  
9 a permit to do something based on a  
10 representation that you are not going to sell  
11 it, feels like something --

12          MR. TERCHUNIAN: Don't say how it feels,  
13 Joe. I would stop on that.

14          MR. HULME: That's not a representation  
15 of what we sate. It's a indication of a what  
16 the DEC wanted. Don't read into it too much.

17          MR. MIZZI: The presentation that I heard  
18 in the beginning is because we have these --  
19 it's no -- we'd like the ability to sell and  
20 that's the benefit. And how it came about, you  
21 know, to draw that conclusion where you have it  
22 so you can be able to sell it, if we are told  
23 to start there then we will start there. It's  
24 something to think about. That is all I am  
25 saying.

1           MR. GESSIN: What might also be helpful to  
2           you, you may not have picked up on this but  
3           there was an application years ago on Dune  
4           Lane. I do not remember the number. Do you  
5           remember?

6           MR. MIZZI: It's on the south facing,  
7           like -- it is north facing on the south side of  
8           the road. It's not the corner property. If  
9           you go down.

10          MR. TERCHUNIAN: It's 1N. When the road  
11          straightens out.

12          MR. MIZZI: There's one on the corner  
13          that's kind of a funny lot. It's got a big  
14          parking lot next to it.

15          MR. HULME: I'll find it and take a look  
16          at it.

17          MR. GESSIN: Okay. We can adjourn this  
18          until next time. Do we want to pick a date  
19          today?

20          (Whereupon, the hearing was adjourned at  
21          this time.)

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C E R T I F I C A T E

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STATE OF NEW YORK )

) SS:

COUNTY OF SUFFOLK )

I, AMY BOHLEBER, 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 October 29, 2016.

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

IN WITNESS WHEREOF, I have hereunto set my  
Hand this 19th day of November, 2016.

DEANNA HUDSON



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