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
APPEARANCES:
Harvey Gessin - Chairman
James Cashin - Member
Kenneth Siegel - Member
Eric Saretsky - Member
Joseph Mizzi - Member
Angela Sadeli - Village Clerk
Aram Terchunian - Village Wildlife
Jim Hulme - Attorney
Richard Haefeli - Attorney
Kathlene Rollin - Village Resident
Robert Terzi - Village Resident
Ray Weber - Village Resident
(Whereupon, the meeting was called to order at 10:06 a.m.)

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

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

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

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

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

MR. TERCHUNIAN: I don't know. We have to revisit that issue with your attorney and the village board to see how they want to deal with it. Okay. For you, we are going to see if we can get this over with so you can move on. I'd
like a little review for Joe because he wasn't here and he is going to vote and I don't want him to vote negatively because he doesn't understand the application.

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

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

MR. GESSIN: They have since brought another set of plans in that's been relocated to the room, so that's no longer an issue, in theory, for the neighbor and the neighbors were present last time also. We went over all of the different -- both the decks and the cantilever on the second floor in the corner here, okay. They had to amend their application because this is an additional 2-foot encroachment in the front yard and the second floor, we passed that already. We discussed pretty much the driveway, the parking area and we have pretty much come to a conclusion that even though they only have 12 feet to this front deck, they also have the
right of way easement that they can park cars, it's shown here, but it's --

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

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

MR. MIZZI: Okay.

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

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

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

MS. SADELI: Yes.

MR. GESSIN: Let's talk about the lights first. I think Ken has some observations on the lights.
MR. SIEGEL: Sure. What I did, basically, was count the fixtures in the old plan and just put the totals per floor and that came out to 58 fixtures the last time. Then I did it for the new one and the new one is 36.

MS. ROLLIN: 14 are required.

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

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

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

MR. SIEGEL: That was a good change. That was definitely a good change, getting rid of
those. I see that there are two of them over here by the step and this one isn't by the step, so it's just a matter of where you put it.

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

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

MS. ROLLIN: Gardening.

MR. SIEGEL: This is a garden?

MS. ROLLIN: Yes.

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

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

MR. SIEGEL: I personally think it should be switched, but that's just me. Over here you have a high hat over in this area and --
MS. ROLLIN: That's to light the stairs, under.

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

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

MR. TERZI: If someone was leaving at night.

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

MR. SIEGEL: So that means that all of
those are controlled from the same -- from one switch?

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

MR. SIEGEL: But it would not be --

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

MS. ROLLIN: They won't be bright.

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

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

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

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

MS. ROLLIN: No, just to get around --
MR. CASHIN: Wouldn't it be smarter to just have lights -- to either have a switch where you need them instead of lighting up the whole place? To come out of here.

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

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

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

MR. GESSIN: That's right.

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

MR. GESSIN: Leave that one. He may want to have this light controlling from the switch here, it has to be by the doors.
MR. SIEGEL: I get it. So that means this would be a three-way?

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

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

MR. TERZI: Yes.

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

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

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

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

MR. CASHIN: You do a lot of stuff at night I noticed.
MR. GESSIN: It's really for the deer, so they know where to eat.

MR. SIEGEL: That's what I think.

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

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

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

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

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

MS. ROLLIN: We turn all our lights off.

MR. SIEGEL: Each one of these fixtures is 300 bucks, so if you eliminate five more.
MR. TERZI: When we were asked, we studied the South Hampton requirements and these lights are all down, even the ones that look like the traditional wall-mounted door fixtures have a dark sky cylinder in them to shield the bulb, to keep the light radiation below 90-degrees.

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

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

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

MR. CASHIN: Can you show me?

MR. GESSIN: Basically --

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

MS. ROLLIN: Mm-hmm.

MR. SIEGEL: What is the required setback?

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

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

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

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

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

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

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

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

MR. SIEGEL: He left off one person from
MS. ROLLIN: When I talked to David Fox, he said no other village has required variances for stairs.

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

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

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

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

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

MR. TERCHUNIAN: The septic is exempt.

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

MR. TERCHUNIAN: If I may, why the steps are being singled out is going to be an issue for the village attorney and the village board the deal with. The issue upon this board is these people have to get in and out of the
house, they proposed a set of steps, is this a
reasonable configuration or not, make your life
simple.

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

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

MR. TERCHUNIAN: Yes.

MR. GESSIN: With all houses?

MR. TERCHUNIAN: Yes, the village attorney
is going to advise the village board, hey, this
is my opinion, this is what I think. Here are
your alternatives of dealing with it, how do
you want to deal with it? That's their job,
that's legislation, that's policy. These
people have come to you with a practical
problem, they need to get into their house, they presented a set of stairs that are associated with a particular house, is that a reasonable request or not?

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

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

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

MR. SIEGEL: Who said that?

MS. ROLLIN: Suffolk County.

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

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

MR. TERCHUNIAN: If you drive on it you can get a special covenant which is doable, but
it's a pain in the neck. Point is if you are
driving on it. They are concerned about access
to the system for maintenance and
rehabilitation and their policy is you cannot
drive on it unless you get the special
covenant, then you can drive on it but you
still can't build anything over it.

MR. SIEGEL: But you are building asphalt.

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

MR. SIEGEL: This cap here?

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

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

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

MR. GESSIN: It could start going this
way.

MS. ROLLIN: We would lose our garage that
way.

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

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

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

MR. TERZI: There was an elevation.

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

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

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

MR. GESSIN: 15.
MR. SIEGEL: Well, if you work your way around this octagon here.

MR. GESSIN: You are only raising.

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

MR. MIZZI: Do you have an elevation?

MR. SIEGEL: Yes, I do.

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

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

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

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

MR. TERZI: It needs to be. He didn't
seem to think it needed to be squared.

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

MR. TERZI: Right.

MR. SIEGEL: I think he might be right.

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

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

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

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

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

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

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

MR. SIEGEL: Oh yeah, it's holding something above.
MR. GESSIN: If we are finished with the
review, we will vote and the vote will decide
what will happen.

MR. SIEGEL: Okay.

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

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

MR. GESSIN: Basically, we are going to
vote on each one of these areas separately so
if this one doesn't pass the way that it is --
MR. TERCHUNIAN: They can, and also because the variances advertise for a variance 2 feet from the -- in place of the requirement, if they decide right here or now to change it to a different greater number, they can.

MR. GESSIN: Okay.

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

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

MR. SIEGEL: I would totally agree with that.

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

MR. GESSIN: We could've adjourned that one variance, let you go back, do the vote on
everything else, let you go back to the architect, decide when you want to change it --

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

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

MS. ROLLIN: From the property line.

MR. MIZZI: You can never build anywhere along Dune Road. You can't build past the property lines and we are not asking to --

people have the lighting things and you are always told on the bay side --

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

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

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

MR. SIEGEL: I also think that as far as that precedent thing goes, it's not always the shape of the lot or the configuration of the lot that causes the reason for you being able to get what you want. If I had a square property and my stair needed to come to 2 feet, I would have some other hardship that I would be able to explain to the board. And if it was
truly a hardship and there was precedent for
2 feet, I would think that I had a good chance
of being approved for it. Even though my
property is -- I do think that the stair thing
is maybe precedent, but just because it's --
this might be the first one, but the next ones
might be a lot easier because there's going to
be real code to go by. It's not like this is
going to hurt the future. The future is going
to be changed after this.

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

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

MR. TERZI: One of, and I feel it's worth
mentioning, one of the benefits in hugging the
septic is that it hides the septic.
MR. SIEGEL: It will still hug it. Just further back, instead of going, I would say, like, I wouldn't be looking for something major, but there might be a way to pull it back to that corner. We have asked people with the septic walls to put plans in front of them. This is not a single -- maybe it's a single conversation about a stair, but I have a house on the ocean and I couldn't just continue my stair, I have to return it and put these little things on the side. It is not like people have just ignored it, people have dealt with the issue of that.

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

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

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

MR. MIZZI: Good point about the garage, but this little thing is not helping you get anything up here. You might find something --
now that you got the whole house done and just this, you might come up with some ideas. And I don't think anything will be unreasonable, but it would be nice to not slow you down but to see something, even if you faxed or emailed sketches.

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

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

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

MS. ROLLIN: Okay.

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

MR. TERZI: Just so I have parameters, before this, you are looking to pull it back some, not --
MR. MIZZI: It's not 25 feet.

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

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

MR. SARETSKY: Yes, the elevation.

MR. SIEGEL: The house is higher than this?

MR. GESSIN: No.

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

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

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

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

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

MR. TERZI: Right.

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

MR. TERZI: We will go back to the drawing board on that to see what we can do to pull
MR. SIEGEL: If you end up here, it will be better. It's easier for us to say 2 feet, are you kidding, this is the best I can do.

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

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

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

MR. SIEGEL: Mine is all marked up.

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

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

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

MR. GESSIN: You were here enough for the
last meeting to hear the -- basically the
stuff. If you want to abstain the vote, you
can, on any of the items if you are not clear
on it.

MR. MIZZI: That's okay.

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

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

MR. GESSIN: So start with the first one.

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

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

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

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

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

MR. TERCHUNIAN: You need a motion to approve.

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

MR. SARETSKY: Second.

MR. GESSIN: All in favor?

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

MR. GESSIN: All in favor of this variance?

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

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

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

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

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

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

MR. SARETSKY: Is that the stairs?

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

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

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

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

MR. SARETSKY: Move to adjourn for all purposes.

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

MR. GESSIN: What's that?

MR. SARETSKY: I move to adjourn for all purposes.
MR. TERCHUNIAN: Who is the second on his motion?

MR. SIEGEL: I second.

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

MR. GESSIN: We made that motion already.

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

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

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

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

MR. TERCHUNIAN: You are at the end.

MR. GESSIN: No, we are not. We have two more.
MS. SADELI: An east yard setback variance for an accessory structure of 1.7 feet is requested where a side yard setback of the east side of 1.3 feet is proposed and a side yard setback for an accessory structure of 14 feet is required by section 550-8 is 12.2 feet.

MR. SIEGEL: This is a deck?

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

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

MR. GESSIN: Yes.

MS. ROLLIN: Which is essentially sustained.

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

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

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

(Whereupon, the board raises their hands at this time.)
MR. GESSIN: This one is approved. Next.

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

MS. ROLLIN: That's an existing structure.

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

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

MR. SARETSKY: Approve.

MR. SIEGEL: I second.

MR. GESSIN: All in favor?

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

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

MR. TERCHUNIAN: You should.

MR. GESSIN: A motion to accept this agencies status under S-E-Q-R-R-A and to type
this as a Type II action not subject to further
environmental review.

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

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

MR. SIEGEL: I second the motion.

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

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

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

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

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

MR. MIZZI: No.

MR. GESSIN: So basically both your
current lighting plan and your landscape plan,
and I believe the only thing you still have
open is your staircase and I am assuming we are
going to put you over to the next meeting and

hopefully we will pick a date before you leave

here and get that over with too and

congratulations. You toughed it out.

MR. TERZI: Thank you.

MS. ROLLIN: Thank you.
MR. GESSIN: So the next application is Ray Weber. I believe the address is 846 Dune Road?

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

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

MR. HULME: So, as you may be familiar, 846 Dune Road is a property owned by Mr. Weber that contains two single family residences and what we are seeking to do is to get a subdivision approved by the village planning board, allowing the two structures to be on their own separate lot. The planning board, the village board and its capacity of the planning board, except that our application referred this matter to the zoning board for purposes of identifying having a hearing about the variances that will be necessary to achieve this result. Just one or two -- let's go quickly through the packet of information of property.
So the first page, or the first two pages, is just a print out from the town GIS system identifying the owner of the address. And the thing I wanted to draw your attention to there is under the property classification. It's identified as a multiple residence, the site. The third page in is a copy of the tax bill and, again, I am just highlighting the fact that it is -- according to the town record and the town tax records that this property is classified as a multiple residence. If you flip over one more page, you will see outlined in orange, the property itself, towards the top, just to fix the property space for you all. The next page is another copy of the survey showing how you choose to subdivide the property if the necessary variances are granted and then the next two pages are the Certificates of Occupancy that the town issued in June of 2016, one for each of the residences, identifying each of them as a single family dwelling under the village code. I will talk about the COs and how they came to be issued in a few minutes.

The last page is my attempt, subject to
counselor's review of the variances that are --
that may be necessary in order for the
subdivision to be achieved. Looking at this
this morning, I wanted to find out about --
I'll go through them line by line, but the
first, obviously, is the lot area. Throughout
the entire village you require 40,000 square
feet for each lot. These two lots together is
only 27,000 square feet. 28,000 square feet to
begin with and, if successfully divided, we
will have 11,000 and 16,000 square foot lots.
The lot width under the code, the requirement
is 150 feet. Lot 1 on our proposed subdivision
is at 63 feet, so that would require a
variance. Lot 2 is also at 75 feet, which is
also at variance with the requirement; however,
I would point out to you that that dimension is
not the dimension that is being changed as a
result of this application, the lot is 75 feet
wide right now and even in its undivided
conditions. So the question for counselor is
whether or not we actually need a variance for
that particular item. If you looked at the
front yard, the requirement is 60 feet. Lot
number 1 meets that requirement and lot number
2 will have the front yard at 44.8.

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

MR. HULME: Yes. ***START PART TWO
HERE****

MR. SIEGEL: So what is the number?
MR. HULME: 117.8.

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

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

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

MR. SIEGEL: Where is the 22 number?
MR. HULME: 22.3 is not on here. Again,
it exists. So if you want to look at it this way, lot number 1 has a subdivider of 6.7 foot and a 22.3-foot side yard. And lot number 2 has a 20.6-foot side yard and a 16.4-foot side yard, which totals 37. The 20.6 and the 16.4 on lot number 2 is not created by the subdivision application. It exists for the house as it exists right now. If you look at the totals, the requirement is 60, lot number 1 will have 30 and lot number 2 will have 37 and once again, number 2 is a number that exists. So in a nutshell that's the background information. And if you look at the survey itself, you'll see the source of the numbers.

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

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

MR. GESSIN: Aram, is that true?

MR. TERCHUNIAN: Yes.

MR. SIEGEL: That's a lot of --
MR. HULME: Correct. And we will talk about that in a few minutes. The circumstance that we have now is that we have two legal, fully usable residences on one lot which is not a condition that would be equally easy to create if one wanted to do that. If this were a vacant lot and we came to the zoning board to get permission to put two houses, two legally functioning houses on the lot, it would be incredibly difficult but not impossible to do it because it would not be a variance, an area variance, it would be a use variance and a use variance has a huge standard to me, having to do with the economic return that someone could get based on how to use the property. I would suspect that if we came to you with this lot as vacant, it would be virtually impossible to create what we have. The flip side of that is we are trying to move one in compliance with the general spirit of zoning by doing the subdivision because residential zoning throughout the village, the town, county, the state is the concept of one residence per one lot.

That's one of the reasons why it would be
so difficult to put two residences on one lot, 
so aside from these specific dimensional 
variances that we are looking for to break the 
subdivision, the overriding thing that we are 
doing here is that we are moving closer to 
compliance. Right now that's allowed to exist, 
but is totally not in compliance with the 
overall view of how things should work in a 
residential zone. By drawing these imaginary 
lines on a piece of paper, we are taking the 
entire site into more compliance with the 
typical R40 single family residential zoning. 
And in order to do that, we are asking to get 
certain variances.

    Now, the lynch pin to this whole thing is 
the fact that we have a separate CO for each of 
the buildings, which describes each of them as 
single family residences and allows the owner 
of those single family residences to use them 
for his own personal use. To rent them, to 
lease one of them and occupy rent. He is 
entitled to use each of his residences in the 
full gamut of allowable uses based on the fact 
that they are CO'd each as separate single 
family residences.
This may have been submitted already to both of you guys, this is the letter and application that I made to the village back earlier this year too. So not to belabor this too much, but there was a house, I think the most important thing here is, towards the back. There's an affidavit and some beautiful pictures of some young people from Roger Ormarad (phonetic) who was one of the original owners of the property, identifying the history of the property and indicating that since the 50's and early 60's this site has been approved with two separate residences, both of which had kitchens, both of which operate in the manner as just described. The houses that are there now are not the original houses because the original houses were destroyed in the perfect storm back in the 90's and replaced in their configuration pursuant which allowed reconstruction of the structures, so that's how they ended up in a slightly different location than originally configured. But I didn't want to make this part of the record because this comes to how each of these residences back in the early part of this year.
So, Joe had mentioned on the phone that we need to go through the five factors so I will go through those quickly. Will this produce an undesirable change to the character of the neighborhood? The answer to that is absolutely not. We have two houses there now. They are both usable in any capacity that a single family residence can be used in. As we put this imaginary line on a piece of paper, we have two lots. Each lot with one house on it. We have not increased the impact on the neighborhood or the village at all. It's still two houses in this area, still rentable, still sellable, and still usable in every way possible, so it's impossible to see how allowing the subdivision creates an undesirable change in the neighborhood as a whole.

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

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

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

MR. HULME: That requirement is so stringent that that argument on that side of the coin wouldn't carry the day. In order to get a use variance and in order to put two houses on one lot, I need to go through the permitted uses for that lot and I would have to go through the permitted uses on that lot and prove that there was no economic return for using it in accordance with what is provided. The standard there would be that I would have to show you that building, again, assuming this were a vacant lot, building one house, I would have to show you that there is no economic concern whatsoever in putting one house on this property. And the only way I could get the proper benefit that I am entitled to is by you allowing me to put two houses on this lot. It's a different standard and it's a very high standard. In most instances, if I came before this board looking to create this now it would likely be turned down, but we are not doing that. We are on the other side of that coin. We have two legally CO'd single family residences on this property, as evidence by the
documents of the village and West Hampton Dunes in the form of two different COs, and so now we need to go through there and it is really a balancing test between the benefits to the applicants. And we use these five factors obviously to help guide us along the way in doing that balancing test.

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

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

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

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

MR. HULME: You know, the one question that -- you may have many questions, but one
question that occurs to me that you might have
is this does produce property lots that are
significantly smaller than the 40,000 square
foot requirement, but that's not unheard of in
the village. If you look at 836 A, B, and C,
and 836, there's four lots there that are in
the 10 to 16,000 square foot range.
    MR. SIEGEL: Where are they on this
picture?
    MR. HULME: They are -- can he be --
    MR. SIEGEL: Are they in this picture?
    MR. HULME: They are.
    MR. SARETSKY: You can only see two of
them. I think it is not shown.
    MR. HULME: It may not be. The photograph
is getting smaller and less detail. Another
area, another well known area in the village,
much smaller lots, so it's 13, 15, 17 Dune Road
which is down here. So these are all 5,000
square foot lots. It's not without precedent
that in the village here if a lot that is
smaller -- there's many lots that are smaller
than the required 40 and it's not unusual that
there are lots that are smaller than the lots
we are attempting to create. So from the
perspective of undesired change, I don't think there is any at all.

MR. MIZZI: Can I ask a question?

MR. HULME: Sure.

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

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

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

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

MR. GESSIN: They will be back in front of the board again.
MR. MIZZI: Say this didn't come before us, would they require variances to --

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

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

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

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

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

MR. HULME: I suspect that our ability to do that in the future on a subdivided line is no different than our ability to do that now. I guess we can go to the village and get a
building permit to put a second floor on one or both of these now.

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

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

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

    MR. GESSIN: That house has a problem already.

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

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

    MR. GESSIN: There needs to be a
connection, a nexus between what you ask and
what we are asking you to do and it would seem
to me, in the village's better interest, that
if the houses stay where they are, the
subdivision restricts the ability to renovate
them more.

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

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

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

MR. GESSIN: Right.

MR. HULME: If you leave this house on lot
number 1, exactly where it is right now, this
subdivision actually makes it harder for us to
come and put a second story on. If you can
tell us to come and put this on a better place
in the lot, that makes it easier, but my point
here is the restrictions that apply to that
post subdivision development, applied to it right now. So other than, perhaps, being more restrictive because of the drawing of the line, we could apply now for the same things we could apply for after the subdivision. The analysis would be the same. We might have to come to the board, we may not have to come to the board, depending on what we want to do.

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

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

MR. HULME: Right.

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

MR. HULME: Exactly.

MR. SARETSKY: As two houses.

MR. HULME: Exactly. What you have to do in combination of these two factors is balance the benefit of us and the benefit to us is exactly that economic benefit, the ability to
sell these two things separately. The
detriment to the village is what you are
talking about, it is the ability to more fully
develop these parcels. What I suggest to you
is that will not be any easier subsequent to
the subdivision, therefore it's not a detriment.

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

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

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

MR. HULME: The second factors of the
other feasible method. You have to look at the
factors and the goal of the applicant. The
goal of the applicant is to create two lots
here. This is the only way. There's not
another way to draw the line here to do that.
If you move the division line further to the north, it would increase a rear yard setback, but it would decrease an equal amount of the front yard setback of the lot number 2. There really isn't any other way to reach the applicant goal here of having two lots. Each with a single family residence on it.

MR. SARETSKY: Can I ask a question?

MR. HULME: Yes.

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

MR. HULME: Perhaps, perhaps not, but the case law on variances indicates that the variances on other feasible methods has to be in the context of the goal of the applicant, not somebody else's goal, not based on what somebody else may think would be a better idea. The only way that this applicant can achieve the goal that he has set is by drawing the line on the subdivision map. The fact that you can tear both of these houses down and build a whole new house there is not material to this particular factor on these particular facts. I don't think it bears on that at all.
The third factor is the substantial nature. That's always a hard one and people sometimes will look at it by percentages. The overriding thing there is that you need to look at it in context of what's being proposed. What is being solved by the subdivision. We are going from the circumstance where we have two residences on one lot, but for the preexisting nature of these structures would be a complete violation of the spirit of the single family residential code.

MR. MIZZI: What would be that?

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

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

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

MR. SARETSKY: The only thing I am trying to understand is long ago this was always two
homes on one lot, the way it is, and now, in other words, I am just trying to understand why the village has made accommodations to the various homes and et cetera. Flag lots, because they were existing homes that were like that. The subdivision we had, that we talked about, was -- it exceeded.

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

MR. SARETSKY: Yes.

MR. MIZZI: The one that was really big?

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

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

MR. HULME: I am just pointing it out. Every agency that has ever looked at this parcel had said there are two houses. They are right. I think if one of them was a house and the other was an accessory structure, I think we would have an argument with them.
MR. CASHIN: You have the C of O saying a single family structure.

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

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

MR. HULME: Well, no. See, that's why the village gave us two new COs, because that document was being misinterpreted as saying that there was only one single family residence and there was some other kind of accessory structure on this lot. There was a CO issued in 1960 which was for a new residence. There was a CO issued in 1992 for a preexisting residence. The village building department came to the understanding that the 1992 preexisting CO was for the building that existed in the 50's and that the 1960 CO for new construction was for a house that was built in 1960.
MR. CASHIN: So it's a house and the storage structure?

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

MR. CASHIN: Where do you see that?

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

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

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

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

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

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

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

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

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

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

MR. HULME: Sorry. I didn't mean to anticipate. So moving on with the factors, so Joe doesn't yell at me that I didn't do all five of them. Before and after, there's a piece of land, whether it's two pieces or one piece, that have two houses on it. Self-created. Is it self-created or not, I
don't know. That in and of itself is not a
determinative factor of what the fact is and I
think all the other factors go in the other
directions so, again, the purpose of all of
this is to balance the detriment to the village
which we would argue it's the same, rentable
rentable, livable, livable, parkable, parkable.
Expandable, not expandable, same thing. The
impact on the village is minimal. The benefit
is that he has two lots, we are not hiding the
fact that that's the benefit that we are
seeking and he is able to exploit these sets,
to use these properties to their full legal
value, but as separate lots. And, again, I
really think the specific dimensional variances
that we seek in comparison, to the fact that we
are moving this entire area into compliance by
making the subdivision, we are bringing the lot
into compliance with what the zoning requires,
one house, one lot. It's really a secondary
issue that we need the few feet here and the
few feet there, but the big benefit, if you
will, to the village is the fact that we are
bringing the laws under compliance in this
matter. Our ability to develop further these
lots is not enhanced by that so, you know, I think it's arguably a win, win for both the village and the applicant.

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

MR. SIEGEL:  Did I not hear once that there was some kind of incident that this was supposed to be filed in a certain way?
MR. GESSIN: It's in the documents. It's right here.

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

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

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

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

MR. SIEGEL: You told me you worked for
MR. GESSIN: No, he worked for the DEC.

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

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

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

MR. TERCHUNIAN: I moved from there.

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

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

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

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

MR. TERCHUNIAN: Absolutely.

MR. HAEFELI: As I said, Richard Haefeli,
48 Main Street, on behalf of the neighbor.

MR. MIZZI: Which neighbor are you here for?

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

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

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

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

First thing, just so we put it in the record, I will give you copies. Jim, I will give you a copy although I don't think you will need it. This is -- for the record, these are copies of the zoning map that was adopted by the town. It's a 1993 -- until 1993 this area was in the jurisdiction of the town of Southampton. Everything that occurred in 1993
was under the jurisdiction of the Town of Southampton. The zoning code was in effect up until that point in time. Okay?

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

One piece of property, you can only have a single residence on. The information submitted by Jim has a 1950 survey done by shop for this property and it shows one residence. That residence in 1950 was preexisting, I am not questioning that residence whatsoever. If the 1950, you had that particular residence. Now, in 1960, and this is where we come in on the issues, if you look at the CO that Jim has submitted, that he submitted as part of the application, there's a 1960 CO.
MR. CASHIN: Is that this one?

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

The CO that was issued in 1960 for the Certificate of Occupancy, not for the new residence, but for an addition to a new residence. Okay? There's an affidavit, and I believe this was submitted by Jim as well, but I'd like to give you copies of it so you can look at what I was talking about here. Put this in this file please. There's that and that, everything that took place had to take
place after 1957, you had to comply.

Mr. Orman's affidavit states that there were
two cottages, both of which were separate
kitchens, from the early 1960's. That doesn't
take us back to 1957. It takes us back to 1960. You had to go back to 1957.

    MR. MIZZI: Why is that?

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

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

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

    MR. MIZZI: It says 1950's.

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

    MR. HULME: No, it says 1960.

    MR. HAEFELI: In paragraph number 4.

    MR. HULME: Number 2. Number 3 says each
has their own separate kitchen, at least as early at the 60's.

MR. SIEGEL: He was on number 4 already.


MR. HAEFELI: There was never an additional house. There was only one house.

His last sentence says that the new house was built pursuant to the building permit 1727. That was not a building permit for a new house, that was the building permit for an addition to an existing residence. I have no argument with the fact that in 1960 there was a building permit issued for an addition to that residence. That was in existence in '57. That wasn't what was in existence thereafter. We then come back --

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

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

MR. CASHIN: Are you saying that there was
not two residences?

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

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

MR. HULME: Yes.

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

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

MR. MIZZI: Where is Dune Road from here?

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

MR. MIZZI: Is it this sketch?

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

MR. MIZZI: Is it your assertion that this
guy was --
MR. HAEFELI: When I finish -- you can ask me any questions if you let me finish.

MR. MIZZI: Sorry.

MR. HAEFELI: The next idea you have is a 1992 Certificate of Occupancy. This is an original affidavit by Paul Houllihan (phonetic). Paul Houllihan is the chief village inspector of the village of Westhampton Beach. In 1992 Paul Houllihan was the building inspector of the town of Southampton. The owner of the property made him request for an application for a preexisting Certificate of Occupancy. Based upon that request, Paul Houllihan went out on December 14, 1992 to inspect the premises. There was an affidavit by Mr. Omran (phonetic) dated September 17, 1979, which states that the purchase of the property in 1950 and the structure as shown on the survey was a completed one family dwelling and the affidavit was made with the expectation that the issues of a Certificate of Occupancy for this dwelling. Now, please look at that affidavit because underneath there there are notes made by Mr. Houllihan at the time he inspected the premises on December 14, 1992.
His notes say it is a single story, single family wood-framed dwelling and attached is a storage building.

MR. MIZZI: Where is it?

MR. SARETSKY: Right there.

MR. HAEFELI: That was in the jurisdiction. As a result of that, also as a result of that, the Certificate of Occupancy was issued with a statement on it that it was a one single family with an attached structure. As of 1992, there was only one single family dwelling as inspected by the building inspector in 1992 on the property. The survey that was submitted in support of the application, and I have -- this is a full copy of the survey, but I want to put that in the record as well. I don't know if you need a full copy of that, Jim, there are some notes on the survey. I only have an extra copy of the full survey. The top of the survey, this is just a bigger one so you can see it a little better. If you look at the survey, you will see there are notations. On the front it says one story frame house then it says a house and it has a deck. Then it says a proposed house and on the
right it says proposed house and decking to be removed. So the survey indicates that the existing buildings that would be are there to be removed and is going to be proposed one family dwelling and any further note on it says that in October of 1992, the buildings on the south found to be flooded and fire damaged. You know, that because of the fire damage, that the updated Certificate of Occupancy was issued.

The key in this case is the issuance of a Certificate of Occupancy by the Town of Southampton in 1992 and the affidavit of the building inspector at the town of Southampton at this time, he is now the chief building inspector of the village of Westhampton, which states that when he inspected the property in 1992, he found only one single family dwelling and it was based upon that that the 1992 Certificate of Occupancy was issued. It was issued for one single family dwelling. So as of then, you have one one family, not two. The 1960 Certificate of Occupancy was for an addition. The 1992 Certificate of Occupancy was a preexisting Certificate of Occupancy for
what was on the property and what was on the
property that was found by the building
inspector was only one, one family dwelling
basically goes along with that because he was
asking for a Certificate of Occupancy for the
dwelling. So in 1999, somehow or another, in
1999, the village of Westhampton Dunes issued a
Certificate of Occupancy for this property.
You have a copy, but I will give you a copy.
Single family structure, two story, additional
one story building. That has the same language
in it, basically, that the 1992 Certificate of
Occupancy that was issued by the town of
Southampton has. The application here is for
the subdivision of the property based upon two
legal residences. How the COs came into
existence in 2016 I can't answer that question,
but you don't go that far.

I understand what the court order was, we
have had an existence at the time of the
flooding, you were entitled to keep. In this
case you have to go back in time to, one, what
was in existence from 1957 and thereafter. In
1957 it was one one family dwelling, it was not
two. There were not two one family dwellings.
And as a result, all this gentlemen has is one one family dwelling, he does not have two, and under those circumstances, even based upon Jim's own testimony, he is not entitled to have variances to permit two, substantially since he doesn't have two valid one family homes.

That's basically what my argument is.

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

There may be existing properties nearby that have less than two or three pieces going down to the water, but they are preexisting lots. But what we are being requested here to do is create a brand new subdivision, two lot substantial, under the cover most lots don't comply with the code. I am not arguing, but these don't even substantially comply with what is in this area. Most of the lots in this area are roughly a half acre, if you look at that.

He is asking for lots of basically 10 or 12,000 square feet, which isn't even existing here, so
it doesn't even meet the basic criteria. It doesn't comply out of sorts with the character here.

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

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

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

MR. MIZZI: So my question just is, Mr. Weber, this preexisting cover sheet document and then there's an affidavit that's attached from Harold Omran. There's another affidavit that we were given. Is that
different? It's Roger Omran.

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

MR. HULME: I think that's correct.

MR. HAEFELI: Harold was the father.

MR. MIZZI: What I am asking is when

Mr. Weber was applying for this and he got an
affidavit from Harold and that's saying what?

MR. HAEFELI: That's saying requesting a
Certificate of Occupancy for this dwelling. He
is requesting a preexisting --

MR. MIZZI: And attached this --

MR. HAEFELI: That 1979 survey was
attached to the application.

MR. MIZZI: I get that.

MR. HAEFELI: In 1979 -- he never applied
in 1979 for the CO.

MR. MIZZI: I guess my question is, this
is an application with an affidavit of somebody
verifying this condition and is this a -- when
was this made?


MR. MIZZI: So this is a subsequent
application of the son remembering this?

MR. HULME: They are not in disagreement.

MR. MIZZI: That's my question. And what
I was going ask before, maybe we don't know the answer, is a possible conclusion that when this was washed away that somebody thought that -- how did this get to what exists now?

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

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

MR. SARETSKY: They call it a storage building.

MR. HAEFELI: 1960. The issue isn't how many structures, the issue is how many residences. He currently claims he is entitled to two legal residential dwellings and I am
saying to you in the records from the Town of Southampton, which applied to this village up until the time the village was incorporated, this was only one single family residence on the property. A second residence, if it got into existence, would be illegal and could not have been built.

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

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

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

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

MR. GESSIN: Other than the fact that the
paperwork doesn't seem to follow all the way through, what exactly is the objection to that?

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

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

MR. HAEFELI: No, they have raised the question with me as to whether or not if they don't have two valid residences, can they rent two residences out? That's not an issue before the board. You have your five partest. Five partest overriding what you have to consider, even if you had two, is it out of character in the area. You are asking for a brand new subdivision with two lots of 10,000 or 11,000 square feet. You may have had preexisting lots there, but that's brand new. Does that create
a precedent for the future? The bottom line is he doesn't have two valid residences. There's some miscommunication, or whatever you want to call it, from the time you went to the Town of Southampton to the Village of Westhampton Dunes, and that nature and what I've submitted to the board is the paperwork clearly is established based upon the affidavit of the building inspector who inspected the property and who, at the time he inspected it, it was one residence. That was confirmed by certificate of occupancy issued by the village of West Hampton Dunes in 1999. So there's a CO in existence in 1999 for one residence and a structure. Now we have two residences.

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

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

    MR. MIZZI: It's two separate houses with a garage between them?
MR. GESSIN: 878, right?

MR. MIZZI: 888.

MR. SARETSKY: That's an existing home.

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

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

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

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

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

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

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

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

MR. TERCHUNIAN: It is a two family home.

MR. SIEGEL: Two kitchens.

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

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

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

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

MR. SARETSKY: If you accept that we have two legal residences, my belief, right or wrong, is that this is grandfathered back for some reason and we can get into the history of it. We certainly are not getting there today. It was grandfathered back because there were allegedly two homes there and it would be a hardship to Mr. Weber if he didn't have those two homes to use in that capacity. Now that you want to subdivide it, you are changing -- what's to say that those two homes don't get rebuilt? Yes, there can be stipulations to it.
But the reality is that if I lived on either side of that home, I don't know that I would really want that to happen. I don't live near it. I am enough homes away that it doesn't affect me. I am looking at it from the aspect of the homes on each side of it. You had two homes at some point. Whether they were two residences or whether they were -- you had the ability to rent them and that's what you do now.

MR. HULME: Yes.

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

MR. GESSIN: I agree.

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

MR. HULME: We are completely out of compliance with that basic tenant of your zoning code because we have two legal houses on
one lot. The relief we are looking for is to allow us to come more into compliance with the most compelling aspect of your zoning code.

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

MR. HULME: It's not my opinion.

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

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

MR. SARETSKY: But I come back to the
point. If you do what you want as of right. You don't come back to this door, but you are asking to deviate from it and that's why we are here.

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

MR. SARETSKY: But that is your opinion.

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

MR. SARETSKY: That's not true.

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

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

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

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

Mr. Haefeli's analysis is the map that was
submitted, that they supposedly inspected
against, describes one story frame house, one
story frame house. There's two of them. We
can have some antics, he may have issued a CO
that said one story frame house and storage
building, but that's why we went to the village
to change it because that's clearly wrong.
They are the same words, they are two one story
framed houses. They are not a one story framed
house and the one story framed storage
building.

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

MR. TERCHUNIAN: That's not true.

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

MR. CASHIN: I think we understand that point.

MR. TERCHUNIAN: Let me just make a recommendation.

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

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

MR. HULME: We were seeking a permit to build a house and we never did it so the permit never took effect.
MR. MIZZI: You wouldn't like this proposal, but when we had such conditions, we said to somebody demonstrate that you can get such an approval. So you are basically telling us that we are going to approve this and you are going to get back and get this DEC relief, one way would be to understand the ruling of the DEC before we make a ruling.

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

MR. GESSIN: Right.

MR. MIZZI: Right.

MR. TERCHUNIAN: My recommendation to you at this point is you adjourn this for all purposes. If you have specific pieces of information that you want either side to brief you on, tell them what they are, specific, not general. Specific, one, two, three, four, five, six, seven, eight, whatever it is. Very specific. Number two, that after that you adjourn this for all purposes and let your attorney go through these arguments and advise
you as to where he thinks this holds water and
where he think it doesn't.

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

MR. GESSIN: I agree.

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

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

MR. CASHIN: Probably not.

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

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

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

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

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

MR. MIZZI: Yes.

MR. TERCHUNIAN: All the conditions expire with it.

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

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

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

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

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

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

MR. GESSIN: Where are the meters?

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

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

MR. HULME: Okay.

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

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

MR. SIEGEL: What would it normally be?

MR. GESSIN: Four or greater.

MR. SIEGEL: Why greater?

MR. HULME: We can make it greater.

MR. GESSIN: When you go to the site.

MR. HULME: I don't recall why we meet 3 feet.
MR. GESSIN: I will mention it also. That utility pole at the road.

MR. SIEGEL: The pole right here.

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

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

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

MR. HULME: Yes, easement.

MR. GESSIN: The first house, which is now only 6.7 feet from the property line, does not comply with the pyramid code. You are going to have to do the math on that. That might be another variance you might have to request, I don't know, but hopefully by the time we get to this one we will have some clarity on that.
THE WITNESS: What's the minimum side yard of our village?

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

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

MR. HULME: Okay.

MR. GESSIN: Because you only have --

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

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

MR. HULME: Yes.

MR. MIZZI: Can I ask one other question?

MR. GESSIN: One more thing. This is just a comment from myself, not the board. To me,
this whole thing of what's going on was to be a
house with a guest house, not two houses, and I
don't know if that's something that our board
should be discussing openly, but I just wanted
to put it on the table.

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

MR. GESSIN: I am not disputing that.

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

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

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

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

MR. HULME: Well, no, it's a guest cottage
and there's no separate definition for the
cottage verses a house and the definition of
the cottage is a residence or being used as
such.

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

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

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

MR. HULME: I am going to ask a separate
thing because I have a whole separate thing.
Not mine, but my partner's challenge for the
DEC. And I am not prepared today to go through
that, but I will be prepared next time to go
through it.
MR. MIZZI: Can I make a nonlegal point about it?

MR. HULME: Sure.

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

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

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

MR. MIZZI: The presentation that I heard in the beginning is because we have these -- it's no -- we'd like the ability to sell and that's the benefit. And how it came about, you know, to draw that conclusion where you have it so you can be able to sell it, if we are told to start there then we will start there. It's something to think about. That is all I am saying.
MR. GESSIN: What might also be helpful to you, you may not have picked up on this but there was an application years ago on Dune Lane. I do not remember the number. Do you remember?

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

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

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

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

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

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

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