INCORPORATED VILLAGE OF WEST HAMPTON DUNES

ZONING BOARD OF APPEALS

June 16th, 2018

10:00 AM

Meeting held at

906 Dune Road, West Hampton Dunes, NY

APPEARANCES:

Harvey Gessin, Chairman
Kenneth Siegel, Member
Eric Saretsky, Member
Joseph Mizzi, Member
James Cashen, Member

ALSO PRESENT:

Joseph Prokop, Village Attorney
Angela Sadeli, Village Clerk
Aram Terchunian, Commissioner of Wildlife Protection
APPLICATIONS:

846 Dunes, LLC 3 - 83
SCTM #0907-02-04
846 Dune Road
West Hampton Dunes, NY

Robert and Christina Young 83 - 92
SCTM #0907-02-02-17
812 Dune Road
West Hampton Dunes, NY
(The meeting is called to order after the Pledge of Allegiance at 10:45 a.m.)

CHAIRMAN GESSIN: I'd like to call to order the meeting of our zoning board. Do we need a motion for that, Joe?

MR. PROKOP: Mr. Chairman, pursuant to public notice that the meeting was published and also published on the village website.

CHAIRMAN GESSIN: Thank you. First application that we're going to continue is the Weber Application, or whatever it's called now.

MR. HULME: It's 846 Dunes LLC, is the current owner.

All right. Well, as requested about a week ago, I made a written submission outlining --

MR. PROKOP: A week ago? Do you have an extra copy of that?

MR. HULME: And just real quickly, I've reviewed the relief we're looking at. We reviewed the general requirements of the law that the zoning board has to look at, and we talked in detail and I provided some information from various zoning cases about
what you're called upon to consider and not consider, as when you're going through the five-step balancing test.

MR. PROKOP: Angela, do you know what date this was stamped in?

MS. SADELI: Yes.

MR. HULME: It was a week ago Friday.

MS. SADELI: It was a week ago Friday, and I mailed it out Friday afternoon.

MR. HULME: So hopefully you have read or you will read you will have looked at that.

I just really wanted to cover a couple of key points. The first keyest point -- is that a word? I don't know -- is that we have two houses on this property and it's one lot. And we have a CO for both of those houses to be used as single-family residences. The goal of zoning everywhere, and particularly in West Hampton Dunes in residential zoning, is a single residence on a single lot. What we're trying to do with this application is to get to that point of view. That is a huge step forward under the general rules of zoning. How do we know
that? Because in order to create this situation, we would need a use variance, not an area variance, which is impossible to get.

So the -- although the property is in pre-existing condition and is allowed to legally continue, it is hugely out of step with the zoning requirements. And the main thrust of this subdivision is to put this part of the village into compliance. So I really think that is key to this application, and it certainly makes this application somewhat unique, as there are some, but not a lot of properties in this village that have that condition.

The second key issue is that there are nine variance issues we're looking at. Only two of them, the lot size, is -- are really important here. The other seven are all internal or existing. So by granting those variances, you are allowing conditions to continue that already exist, except in the two cases of two -- the two lot sizes.

The villages don't zone entirely one acre zoning. I would venture to say half,
to three quarters of this village does not meet that requirement. We're seeking to create lots that don't meet that requirement as well, but that's not uncommon in the village to have those lots, and we're just seeking to create an additional two lots that has that status.

Again, one lot -- one house, one lot is where we're headed. And the -- as outlined in my papers, there is a history in this village of creating the zoning board and the Village Planning Board in creating lots that are vest than the area required. I've reviewed a number of them in my papers, there's a map that shows their proximity to our property.

I did want to add two additional properties to the record here, one is 949, 951, 953, 955 Dune Road, which was a four lot -- an eight lot subdivision -- I don't have copies, I'm sorry. All of which are under the one-acre requirement, and all of which were granted by the zoning board and the Planning Board. And also at the --

MR. PROKOP: If I could interrupt you
for a second. The one -- the subdivision
that you just mentioned --

MR. HULME: Yes.

MR. PROKOP: -- what actually happened
is that we created undersize lots, but they
contributed to an environmental organization
-- a charitable organization, a lot that was
oversized and that -- and that's not --
unless you're proposing that --

MR. HULME: I'm not proposing that. I
would argue that was an inappropriate
condition because it was unrelated to the
relief that was being sought there or here.

And as you well know, Joe, any
conditions that you impose on the relief the
Zoning Board gives has to be related to the
relief that you're looking for, I suggested
that.

I don't think he's making a
contribution to any particular charity,
but --

MR. WEBER: Well, it depends on how
much.

(Laughter).

MR. HULME: And then 820 Dune Road was,
I believe, a three-lot subdivision, or a
two-lot subdivision, and had three legal
residences on it. So it was rated an A lot
with one residence and another lot with two
residences.

So there's certainly lots of precedents
in this village within this Zoning Board to
grant the necessary relief to create lots
that were smaller than required. And, in
fact, lots that are smaller than even the
lots that we're proposing. The whole --
again, lots anywhere from 10,000 to 25- or
30,000 square foot, all of which are
substandard from your zoning code, and all
of which were created by the variance relief
that this board has granted in the past.

Just real --

MR. SIEGEL: Subdivision variance or
relief of area?

MR. HULME: Subdivision. These lots --
the lots -- some of the lots that I mention
in my paperwork were granted variances so
that they could be created in the reduced
sizes that they now exist in. So there's a
huge precedent, I would suggest, in this
village. The Zoning Board has cooperated by
the variances that they have granted.

Quickly, again, to go through the
five-part test, which is the test that you
have to balance, whatever else is outside of
that is outside of that, it doesn't have
anything to do with this inquiry.

Character of the neighborhood. The
character of the neighborhood, first and
foremost, is a single-family residence on a
single lot. That is the goal of residential
zoning, that's what we're trying to create
here. We're doing that by creating lots
that are smaller than the code requires, but
there is, as I said, a history in this
village of allowing development on smaller
lots and creating smaller lots by actions of
this Board as well as the Planning Board.

The second factor is other feasible
methods. And as I've said before, and tried
to provide a legal basis for this, you have
to interpret that in the context of what the
application is seeking. Not what you would
like to have happen, but is there another
feasible alternative for the applicant to
achieve the goal that he has set by bringing this application. And I would suggest, in this particular case, there is no other way of doing this, other than with the variances that we're seeking.

The third has to do with the substantial nature of the variance. Again, I provided some legal information about the fact that that has to be judged, not in a vacuum, not necessarily by percentage deviations from code requirements, but in the context of the community in which the property sits. And we've tried to provide you ample information of lots of various sizes, some larger, some smaller, some preexisting, some created by this Zoning Board.

And in that context, and coupled with the fact that most of the variances that we're seeking here are internal to the property, they affect the property itself, they affect the front lot by the back lot, they affect the back lot by the front lot. The relief we're looking for for a side yard setback on the west, does not effectively
change the setback for this property as
compared to the neighbor. All we have done
is extracted the flag pole. As we've
discussed numerous times here, we could have
done this by an easement which would have
reduced or eliminated that particular
variance, but that, from a planning
perspective, doesn't make sense. The
Planning Board, if we ever ever get back
there, is going to tell us that they want
deeded access to this property, not just an
easement, because that always creates an
issue.

The environmental impact? We have two
houses now, we're going to have two houses
later. There's no change in the
environmental impact of the relief that
we're seeking.

Self-created? Not by this particular
client, but that's all by itself. Even if
that were, that, in and of itself, cannot
carry the day as to rejecting the variance.

So if we go back and we take stock as
to which way each of these factors goes:

Character of the neighborhood, we're
moving right into what the character of the neighborhood is, that's in our favor, okay?

   Other feasible method? This is the only way to do it that balances in our favor.

   Substantial nature? We can have a discussion about that, all right? I would think, based on the context in which we're seeking this variance, that tips in our favor, but at worst case, it's neutral.

   Environmental impact? There's none, so it has to tip in the favor of the applicant.

   Self-created? We did not create this situation, we didn't create the circumstances that have led to the need for these variances. That, too, tips in the favor of applicant.

   So my simple score sheet says four-to-one at worst, five-zero in favor of the applicant. If you want to think of it in terms of scoring the balancing that you're supposed to do.

   And that's really all I have to say. I'm happy to try to answer any further questions.
CHAIRMAN GESSIN: One question that this Board does have: Is there a reason why you have the right-of-way to the water on the west side and not the east side? It's right here.

MR. HULME: This right-of-way here?

CHAIRMAN GESSIN: Yeah. As opposed to just extending it down.

MR. HULME: No. No particular reason.

MR. FREEDMAN: To get to the ocean or to the bay?

CHAIRMAN GESSIN: To the bay.

MR. HULME: This is just a proposed easement, correct?

CHAIRMAN GESSIN: Yeah, proposed.

There's no reason why it couldn't be on the other side?

MR. HULME: Yeah. We'd be happy to change that.

CHAIRMAN GESSIN: No issue with that?

MR. HULME: No.

MR. SIEGEL: Who put it there?

MR. FREEDMAN: I have no idea.

CHAIRMAN GESSIN: It could be just a survey.
MR. FREEDMAN: Possibly. Well, there's a path there, so that could be why they did that.

MR. HULME: There might have been an interaction between Mr. Weber and with the surveyor. This particular feature is not something I discussed with Mr. Freedman or Mr. Weber, so I don't think why there's any particular reason it's there.

MR. SIEGEL: It might be there already.

MR. HULME: Could be.

MR. SIEGEL: And everybody's just used to using that.

MR. FREEDMAN: Sure. There's a clear path there, maybe that's the reason.

MR. SIEGEL: Do you have a reason why you would want it on the other side?

CHAIRMAN GESSIN: Well, you know, as we were speaking about it at the last meeting, it would be easier for them to control, if they only have one right-of-way on either side.

MR. HULME: I guess the only question I would have is: This easement is for this property, correct?
CHAIRMAN GESSIN: Correct.

MR. HULME: If we put it over here, then we have to give him access across the driveway to get to the easement, if we're going to put the easement on the edge of the property.

CHAIRMAN GESSIN: Is that a problem?

MR. HULME: No.

CHAIRMAN GESSIN: Oh.

MR. HULME: If it's not a problem for you, it's not a problem for us. I just wanted to put it out there to see if there was an issue with that.

MR. FREEDMAN: Actually the path is on this side --

MS. SADELI: Howard, just, when you speak, if you could just identify yourself for the stenographer.

MR. FREEDMAN: Howard Freedman.

I think the path is actually on this side.

MR. HULME: Okay. So --

CHAIRMAN GESSIN: It exists already.

MR. HULME: Okay. So the bottom line is, if you want us to move the path to the
other side for the easement, we're happy to
do that.

MR. SIEGEL: It's already an easement, it would just be an L-shape easement.

MR. HULME: Right. Well, this is a
proposed easement, so this lot doesn't exist yet. There is no easement, in fact. It was proposed on this, and what we're saying is that if the zoning board would prefer to see the easement on the other side --

MR. SIEGEL: Then the proposed would be an L-shape.

MR. HULME: -- then the proposed -- right. But we would just incorporate the cross-piece as part of the driveway.

CHAIRMAN GESSIN: Right. Also, you know, based on what's happened in the past in this Village, as far as blockages on shared driveways. The Board would like to see, and that I think that's where you were going anyhow, even though it's not on the plan, a separate driveway to this parking area on Lot 1.

MR. HULME: Oh, okay. Yeah, that's fine.
CHAIRMAN GESSIN: You're okay with that?

MR. FREEDMAN: Sure.

CHAIRMAN GESSIN: Okay. We're doing pretty good so far.

One of the other items, do you want to discuss that with the applicant? Or should we close the hearing and vote and make --

MR. PROKOP: Well, this is a public hearing. So did we close the public hearing?

CHAIRMAN GESSIN: We tried to.

MR. PROKOP: Okay. This is a public hearing, so what we can do is, there should be a motion to close the public hearing and then the Board can continue its deliberations.

CHAIRMAN GESSIN: Okay. So don't discuss the other items at this --

MR. PROKOP: You could do that once --

I would close the public hearing and then discuss the other items.

CHAIRMAN GESSIN: Okay. I like to make a motion to close the public hearing. Would someone like to second?
MR. PROKOP: I'm sorry. We should see if there's any comments from the public.

CHAIRMAN GESSIN: Any comments from the audience or the applicant?

MR. FREEDMAN: No.

CHAIRMAN GESSIN: Okay. I like to make a motion to close the public hearing. Would anyone like to second it?

MR. SIEGEL: I'll second it.

CHAIRMAN GESSIN: Okay. All vote?

(Unanimous vote to close public hearing)

MR. PROKOP: So now we go into -- the first thing to discuss is SEQRA. So we could --

CHAIRMAN GESSIN: We did that at the last meeting.

MR. HULME: Completely and definitively.

MR. PROKOP: Yes. But we just got a submission a week ago, and there's more discussion today.

So my recommendation would be that the SEQRA -- any action that you take today would be subject to the adoption of a
written document, a written decision at our next meeting, including the SEQRA decision.

My recommendation would be that you adopt a Lead Agency Status, determine that this is an unlisted action for purposes of SEQRA, and that you adopt a condition negative declaration.

What a condition negative declaration means is that provided certain conditions -- that the application -- the decision will not have a significant negative impact on the environment, provided certain conditions are met. And then you could develop those conditions.

CHAIRMAN GESSIN: Oh, that's the point where we get into the --

MR. PROKOP: Yeah. So if you want, we could have our discussion and then adopt a SEQRA resolution, the final SEQRA resolution. I think that might be advisable before you reach a determination on the application.

CHAIRMAN GESSIN: Okay. Would you like to state for the record --

MR. HULME: I'm happy to let you
proceed in any way counsel provides. I would just point out for the record that there was -- SEQRA was adopted. There was an unconditional neg dec adopted by this Board already. There's been no request for any new or any other form of relief. The document that was submitted was -- if you look back through the voluminous record that we have, which is merely a summary of everything that has already been before this Board. And it was before this Board prior to adopting the unconditional negative dec. Just for the record, I want that to be clear, but I certainly don't object with your proceeding in accordance with --

MR. PROKOP: Thank you.

MR. HULME: -- your attorney.

MR. PROKOP: That would be my recommendation.

CHAIRMAN GESSIN: Okay. Would you like to read into the record what --

MR. PROKOP: Well, I think that it's -- based on the submission at this point and the continuation of the public hearing, which we just concluded, that it's my
recommendation that the Board, having
adopted Lead Agency status in determining --
over the objection of the applicant, that
this is an unlisted action for purposes of
SEQRA, that the Board adopt a condition
negative declaration, meaning that there
will be a negative impact -- there will not
be a negative impact on the environment,
provided certain conditions are met, and
that we develop the conditions in our
discussion then, that the Board develop its
conditions in this discussion.

CHAIRMAN GESSIN: Okay. Is that a
statement that we can now vote on?

MR. PROKOP: Yes.

CHAIRMAN GESSIN: Is that what we have
to do?

MR. PROKOP: Yes.

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

MR. CASHEN: I'll make a motion.

CHAIRMAN GESSIN: Would someone like to
second it?

I'll second it.

Okay. All vote?
(All members vote unanimously).

MR. PROKOP: So it's four for and one against, is that what you're saying?

CHAIRMAN GESSIN: Uh-huh. So unanimous it is.

MR. PROKOP: So now the Board can start with its deliberations.

So what's supposed to happen now is, the Board discusses the application, and the five criteria. You can -- you can discuss the five criteria with respect to the variances individually, or you can discuss them with regard to the application as a whole, it's up to you.

CHAIRMAN GESSIN: I think, pretty much, and I'm speaking for myself, and please, anybody chime in with how you feel specifically. I believe we pretty much hammered this application to death by each one of the requested variances. And unless anybody would like to discuss any one particular one?

MR. CASHEN: We're going to discuss these?

CHAIRMAN GESSIN: Yeah. But what Joe's
talking about is this long list here.

    MR. CASHEN: Okay.

    MR. PROKOP: I would discuss the conditions. If you're contemplating conditions --

    CHAIRMAN GESSIN: Okay.

    MR. PROKOP: -- I would discuss it with the applicant at this time.

    CHAIRMAN GESSIN: Of course, you know, we tried to bake you out of here today, so that's --

    MR. FREEDMAN: That's condition number one.

    (Laughter).

    MR. HULME: Well, we had a previous meeting where it was five degrees below zero, so.

    CHAIRMAN GESSIN: Either way. We're just kind of warming up here.

    We're pretty much struggling with this application and trying to get to something that works for you, the Board, and all the residents of the Village. And this is what we've come up with:

    I would like to impose some conditions
on your approval, basically giving you pretty much everything you want, but we need something also.

MR. HULME: Okay.

CHAIRMAN GESSIN: Okay? We would like you to --

MR. HULME: Howard, come up on up here.

CHAIRMAN GESSIN: Yeah, come closer.

Most of this deals with landscaping and the area around.

MR. FREEDMAN: Okay.

CHAIRMAN GESSIN: We would like you to, in your -- we would like you to develop a landscaping plan. In the landscaping plan, we'd like you to do screening along the entire east and west property line. Now, I know there is some preexisting stuff there, you can use the preexisting, you can amend the preexisting, you don't have to rip everything out.

MR. FREEDMAN: Does that mean, like, trees going all the way down?

CHAIRMAN GESSIN: Trees, shrubs, or whatever between Lot 1 and 2.

MR. FREEDMAN: Okay.
MR. PROKOP: You can get us a landscaping plan.

CHAIRMAN GESSIN: Some foundation planting, a sprinkler system --

MR. CASHEN: For each.

CHAIRMAN GESSIN: Yes, for each.

Screening of the parking areas.

MR. FREEDMAN: What do you mean screening?

CHAIRMAN GESSIN: So that when the cars pull in, they're not visible from the road or from the neighbors.

MR. FREEDMAN: So for both of them or just the front house?

CHAIRMAN GESSIN: Yes. Well, they're individual lots, so it's --

MR. HULME: And you want a separate access --

CHAIRMAN GESSIN: I'll get to that.

MR. HULME: Okay.

CHAIRMAN GESSIN: Screening along the road on Lot 1, a separate driveway for Lot 1. This, we discussed many times, an additional water main for 1 or 2, I don't know which one is missing it.
MR. FREEDMAN: Okay.

CHAIRMAN GESSIN: This is code, which is, parking areas created. We actually didn't deal with the parking areas, or you didn't, actually. That you'll provide parking for one of each bedroom plus one.

MR. SIEGEL: One car per bedroom.

CHAIRMAN GESSIN: Right, plus one. But no parking in the flagpole.

MR. CASHEN: The pole part.

CHAIRMAN GESSIN: Right. So now, when you come down here, I would consider -- once you pass the house, this is not part of that flag pole.

MR. SIEGEL: I would say --

MR. HULME: Well, if this were a rectangular lot, it would come right across there.

CHAIRMAN GESSIN: I would consider this parking and this parking, but all of this not parking.

MR. SIEGEL: Well, you have to get out.

MR. FREEDMAN: But over here you could.

CHAIRMAN GESSIN: Once you're past the house.
MR. SIEGEL: It's only where you're going to put three or four cars.

MR. HULME: Right. We're going to submit a plan, we'll show what we think you're telling us, and you'll tell us whether we got it right or not.

MR. SIEGEL: You'll probably get it right.

CHAIRMAN GESSIN: Okay. Where is -- will someone let me have that sheet? We would like you to maintain and replace old expired plantings with an 85 percent survival rate.

MR. HULME: Do you want a covenant to that effect?

MR. PROKOP: There will probably be a covenant, it will probably be part of the plans.

MR. SIEGEL: It just means the plants can die, just that they can't stay dead.

CHAIRMAN GESSIN: Any future expansion, whether it's height, width --

MR. SIEGEL: Reconstruction.

CHAIRMAN GESSIN: -- or a footprint, the decks, you need to come back to this
MR. HULME: Okay.

CHAIRMAN GESSIN: You okay with that, Aram?

MR. TERCHUNIAN: Yeah. Mr. Chairman, that covers external.

CHAIRMAN GESSIN: Yes. Internal doesn't matter.

MR. FREEDMAN: So for my example, my plan was to put a pool on the house that's on the bay. It's -- I've already been through Bob and discussed it, it's all within the zoning. If it's separate lots I have to still come back to zoning for that?

CHAIRMAN GESSIN: If you're not putting it in that existing deck. If you're putting it in the deck, you're not expanding.

MR. FREEDMAN: No, I'm not expanding the footprint, but I wanted to put a pool and a deck in.

CHAIRMAN GESSIN: You would have to come back to this Board.

MR. TERCHUNIAN: If you go outside the footprint of the existing building.

CHAIRMAN GESSIN: Right. And the deck.
If you go in the deck, it's not an issue.

MR. FREEDMAN: I can't go in the deck. Yeah, I don't think that's -- and that would be subject to -- how would that be determined? If that was different -- if it fell within the building department, how would that be different?

MR. HULME: I think you would have a good case, even in front of these guys, if you met all the other terms on the lot.

MR. SIEGEL: That's a good way to put it.

MR. PROKOP: What's that?

MR. SIEGEL: That's a good way to put it.

MR. PROKOP: Well, we would want to have some discussion about it. We would want to be involved in the discussion, you know, because we would want to talk about screening and things like that. So if you went to Bob, Bob can normally say, yeah, but it needs to be screened. But this way, we want it to come -- it would be subject, you know, I'm sorry. I don't want to say anything else on the record, but basically,
you know, it's a --

MR. FREEDMAN: It's just a little frustrating because I already went through Bob and an architect to just to build --

MR. HULME: What we could do, what we, perhaps, could do if that's going to happen is, we could include a plan that we're going to submit we can show the screening.

CHAIRMAN GESSIN: Can we do that now, or is that --

MR. TERCHUNIAN: That's new hearing.

MR. PROKOP: Yeah.

MR. FREEDMAN: It can't be incorporated in the landscaping, all that?

MR. PROKOP: We would have to start all over again.

MR. HULME: I don't think I don't want to do that.

(Laughter).

MR. HULME: I'm sorry. Anything else?

CHAIRMAN GESSIN: The future answer isn't no, okay?

(Laughter).

MR. FREEDMAN: I understand.

MR. PROKOP: We would want to manage
the impact on neighboring properties.

MR. FREEDMAN: I think what you're doing is great and I would have --

MR. PROKOP: I'm sorry. Review the impact on the neighboring properties.

MR. FREEDMAN: No. I think it's great because I think it's important, and I think it keeps the neighborhood nice. These two houses are an eyesore. I mean, you drive down the road, there are a lot of beautiful houses, there's other eyesores --

CHAIRMAN GESSIN: Right.

MR. FREEDMAN: -- but having these homes nice and landscaped is going to help the community.

CHAIRMAN GESSIN: Yeah. If you do the right thing, it would help tremendously.

MR. HULME: Anything else?

CHAIRMAN GESSIN: I think that's it.

Did I miss anything?

MR. TERCHUNIAN: No.

CHAIRMAN GESSIN: Guys, did I miss anything?

MR. SARETSKY: Nope.

MR. CASHEN: No.
MR. MIZZI: No.

CHAIRMAN GESSIN: No? All right.

MR. SIEGEL: I have a question on something that you said before. You said that there are some other the properties like this.

MR. HULME: Right. In size. And smaller and larger.

MR. SIEGEL: I think you were discussing the fact that there were more than one house on them.

MR. HULME: No. There's a limited number.

MR. SIEGEL: We weren't able to identify it.

MR. HULME: There's not a lot that have should this circumstance. So from the perspective of creating a flood gate, there's not a lot of properties in the Village that have more than one house on one lot.

MR. SIEGEL: We know of one other one for sure, but you said "some" so that just caught my eye.

MR. HULME: Let me withdraw "some."
I'm happy to adopt the one, the idea that
there was only one other.

MR. PROKOP: So now, the Board should
move through the criteria.

CHAIRMAN GESSIN: The five criteria?

MR. PROKOP: Yeah, the five criteria.

This would be for all the variances
together.

CHAIRMAN GESSIN: Angela, can you read
that into the record?

Oh, he's going to read it?

MR. PROKOP: So really what we're
talking about is -- so the first one is,
will not produce an undesirable change in
the character of the neighborhood or
detriment to nearby properties, and that's
if these conditions are -- if the conditions
are included.

CHAIRMAN GESSIN: Yes.

MR. PROKOP: So whether or not we'll do
this if the it application needs -- whether
whether or not it will produce an
undesirable change to the character of the
neighborhood or a detriment to the nearby
properties if these conditions are --
CHAIRMAN GESSIN: Met.

MR. PROKOP: -- included, or met. So how does the Board feel about that?

CHAIRMAN GESSIN: We're going to vote on each one individually?

MR. TERCHUNIAN: No, this is a discussion and then you vote at the end.

MR. PROKOP: I would vote on the global variances. So this is one vote on all of the variances based on this impact. So you're not voting on the variances, you're voting on the impact, but it's the impact of all the variances together.

MR. CHASHEN: Right. You have to weigh them against each other.

MR. PROKOP: Right.

MR. CASHEN: So there's people on this Board that feel it is a detriment to the neighborhood. And, you know, we have discussed that.

MR. TERCHUNIAN: I'm sorry. Joe, are you asking for us to vote on each one of the five factors?

MR. PROKOP: Yes.

MR. TERCHUNIAN: Okay. That's unusual.
Usually, you discuss the factors and then you vote on application in the aggregate of the factors.

MR. PROKOP: I'm sorry. Maybe we're talking about the same thing. What do you think we do? Because I -- excuse me. With the size and the -- my idea -- my recommendation is that we look at the criteria -- we review the criteria, then you view all the variances that are applied for. So this -- so the first one that I just read off would be a discussion based on whether or not it would be an undesirable change in the character of the neighborhood and thereby being a detrimental impact to nearby properties. Are you saying that what you recommend is that we just put on the table all five criteria?

MR. TERCHUNIAN: Well, have a discussion, but you don't vote on Criteria One and Criteria Two, you vote on Criteria One through Five.

MR. SIEGEL: It doesn't necessarily need to be a vote, just a discussion.

MR. PROKOP: A vote on each one.
MR. CASHEN: Yeah. And then if you're against three and four, then you're leading towards yes, like that.

MR. TERCHUNIAN: Yeah, that's just not the way it's usually done.

MR. PROKOP: I disagree with that. And I don't really care -- most respectfully to you, I don't really care. At other Boards that I've represented, this is the way that it's done.

MR. CASHEN: And we've done it like that before.

MR. PROKOP: And this is my recommendation to the Board.

CHAIRMAN GESSIN: Okay. So how do we feel about Number One?

MR. SIEGEL: Which one was that?

MR. GESSIN: We're going to actually make a motion?

MR. SIEGEL: So we're going --

MR. HULME: In the context of the condition, is what you suggested?

MR. GESSIN: Correct.

MR. HULME: Okay.

MR. PROKOP: Will not produce an
undesirable change in the character of the neighborhood or detriment to the nearby properties.

If you look at that decision on the Young application that we circulated, it's on the third page.

MR. SIEGEL: That we do have.

MR. PROKOP: It was circulated this morning.

MR. CASHEN: So if you do think it has a detrimental effect, you would vote no?

MR. PROKOP: No, you vote yes, I do think it would have a detrimental affect.

MR. CASHEN: I vote yes to that particular item.

MR. SARETSKY: Me too.

MR. MIZZI: Me too.

MR. PROKOP: What about with the conditions?

MR. CASHEN: Yeah. I'm assuming everything is always with the conditions, yes.

MR. PROKOP: Okay.

CHAIRMAN GESSIN: So we have to have a firm vote on it?
MR. SARETSKY: We just did, three of us did.

MS. SADELI: There were three.

MR. SIEGEL: So it doesn't matter what the other vote is, right?

MR. CASHEN: Well, you could either abstain or vote yes.

MR. PROKOP: So you're really supposed to discuss it. Is there any discussion about whether or not it will have an impact, with the condition limiting the eight different points we discussed, that are listed. Do you think it will create an undesirable change to the character of the neighborhood or a detriment to nearby properties?

MR. MIZZI: So I personally don't think it changes anything because they can walk out of here and just keep doing what they're doing.

MR. SIEGEL: I mean --

MR. HULME: And, in fact, it mitigated whatever impact there is by all the landscaping.

MS. SADALI: When we're speaking, if we
can just remember, one at a time so our
stenographer can get a clear record.

MR. SARETSKY: I'm saying -- I was
agreeing it was not in keeping with the
houses. The only people affected are the
two neighbors and that's it. For everybody
else, it's the same.

MR. SIEGEL: It's only two lots.

MR. CASHEN: I don't think it changes
the impact.

MR. SIEGEL: I don't think it changes
the neighborhood either.

CHAIRMAN GESSIN: Actually, the
landscaping actually reduces the impact, I
think.

MR. SIEGEL: I don't think it changes.

MR. HULME: The Chairman is correct, it
is a change in the impact, it's not the
impact. It's not an absolute value thing.
You have a certain set of circumstances that
exist right now. And we're asking you to
draw line between these two houses. Will
the drawing of that line change the impact
of these two properties on the neighbors?

CHAIRMAN GESSIN: What's the question?
MR. HULME: The only answer is -- well, I'm not going to tell you what I think the answer it is.

(Laughter).

MR. SARETSKY: It says, is it consistent with prevailing patterns, and I would say it isn't.

MR. HULME: Well, it is. It's one house on one lot, That's the standard.

MR. SARETSKY: Well, that's different. I'm talking about prevailing patterns. To me, the prevailing pattern is that row of houses on Dune Road, which I'm one, have one home on one lot that are those sizes.

MR. HULME: Well --

MR. SARETSKY: I have a smaller lot and all the rest of the homes next to me are larger and bigger. So I don't think it's consistent with it, I think it's different. And I can't really use your comparison of Dune Lane in it, that's just my opinion.

MR. FREEDMAN: You asked a question, am I allowed to talk?

MR. HULME: If they allow it, yes.

CHAIRMAN GESSIN: Sure.
MR. FREEDMAN: I'm a little confused because right now there's two separate houses with nothing. So if I'm not granted these variances, I'll still have two --

CHAIRMAN GESSIN: You'll have exactly what you have now.

MR. FREEDMAN: With a rental house in front, you know, renting it out, and no beautiful landscaping, the values won't go up. I'm just trying to create what many other people have. So I'm a little puzzled as to why it's not that easy to be able to get that, because I'm not asking to reinvent the wheel. And I'm improve the property, you know, it'll be higher real estate taxes, it will be much nicer when you drive down there, you know, I'm going to comply with all your requirements. So I'm a little puzzled as to why this is a negative for the community.

MR. HULME: Again, it's not an absolute value. It's what change will occur. What will change as a result of granting this relief?

MR. SARETSKY: You could make both
those houses nice and you could do exactly what you're saying, you could sell them for more money.

MR. HULME: But those are benefits to the applicant.

MR. TERCHUNIAN: That's not the question before you. The question before you is: If there was an imaginary line drawn and landscaping planted on the property, would that be desirable or desirable, without any change in the exterior of the buildings?

MR. SARETSKY: Let me ask you, I have a question on your question. The landscaping should be there anyway. In every house on that side --

CHAIRMAN GESSIN: But there's no --

MR. SARETSKY: -- has landscaping.

CHAIRMAN GESSIN: -- requirement for landscaping.

MR. SARETSKY: I understand that.

MR. MIZZI: Could you specifically say what the question is? Because I think people have their own questions.

MR. PROKOP: The question is --
MR. MIZZI: It's not about an imaginary line.

MR. PROKOP: -- will granting of the subdivision with the conditions that we discussed, whether that will produce an undesirable change in the character of the neighborhood or a detriment to the nearby properties. And it's the approval of the subdivision with the conditions that we discussed.

MR. SIEGEL: I say it will not change the neighborhood. It might be slightly undesirable to the two people on either side, but that's about it.

CHAIRMAN GESSIN: With the conditions, he's making things better or worse. If he does anything else, he has to come back. So he's mitigating his -- the issue that we all -- that this Board has, that that property has, I think.

MR. SIEGEL: They don't have to win on all five of them, so let's just keep going.

MR. HULME: So that is why --

MR. SIEGEL: That's what we're saying.

MR. HULME: -- you discussed each of
the five points, and then you have a global vote on the entire thing.

MR. SIEGEL:  This was an informal --

MR. PROKOP:  It's against my advice.

MR. HULME:  It's not against advice.

We're just making a record here.

MR. PROKOP:  Nobody asked you to comment.  So let them proceed, please, with the Board's attorney.  Thank you.

MR. HULME:  No problem.

MR. PROKOP:  The second question is, the benefits sought by the applicant in the variances cannot be achieved by the another method.

So whether any -- whether or not there is an application to subdivide the properties, and to create to two separate lots.  Whether that result, the subdivision of the property and two separate lots, can be achieved by some other method.

MR. CASHEN:  I say it cannot.

CHAIRMAN GESSIN:  It can't.

MR. MIZZI:  I agree.

MR. PROKOP:  The next question is whether or not the requested variances are
substantial. And this is the laundry list of variances that are requested.

Now, one of the things about this is that they may be substantial, but they are -- there's existing conditions on the property which are legal.

MR. CASHEN: So you're asking whether or not the four are extensive?

MR. PROKOP: Yeah. So whether the relief that's requested, which will basically separate the two properties, whether that's substantial compared to the existing conditions. The existing conditions are that there's two houses that are legal with certificates of occupancy. The relief that would be granted would be the ability to separate those houses.

MR. CASHEN: Which are the four that are not existing, again?

MR. TERCHUNIAN: Two. There's the lot area.

MR. CASHEN: Where is that again?

CHAIRMAN GESSIN: The second page.

MR. HULME: Lot 1, its Number I; and Lot 2 it's Number I. Those are the lot
sizes. I presume you're talking about Lot 1 to the east, the side yard setback on the east.

MR. CASHEN: Wait, which are the four that are not preexisting?

MR. HULME: Lot 1 size, Lot 2 size --

MR. CASHEN: Where is that?

MR. TERCHUNIAN: Right here.

MR. CASHEN: So you're allowed 11 and you want 40?

MR. HULME: No. You're required 40, and we're looking for 11.

MR. CASHEN: Okay. So that's obviously substantial.

MR. HULME: Yes.

MR. CASHEN: Okay. And then this -- II, is that the -- where's the next one?

MR. MIZZI: Number Four

MR. TERCHUNIAN: On the second lot, size again.

MR. CASHEN: So you're allowed 16, you want 40? I'm sorry. You're allowed 40 and you want 16. So that's obviously substantial.

Then the side yard, single side yard.
MR. HULME: The lot width --

CHAIRMAN GESSIN: What you have here, the single side yard, 6.7 and 20 feet is required.

MR. CASHEN: So that's substantial.

MR. TERCHUNIAN: This one is lot width.

MR. CASHEN: My opinion is those four are substantial.

MR. SARETSKY: I agree.

MR. PROKOP: The next is whether the granting of the variances will have an adverse impact on the fiscal environmental conditions in the neighborhood.

Now, this is the granting of the variances with the conditions that we are discussing imposing. So not just as the division of the lot, but the division of the lot with required landscaping, posted parking, parking areas, parking limitation, et cetera.

MR. CASHEN: Read it one more time.

MR. PROKOP: Whether the granting of the variances will a have an adverse impact on the physical or environmental conditions of the neighborhood.
CHAIRMAN GESSIN: I don't think that they will. I think the Board thinks the answer is no.

MR. SIEGEL: Only to the house on either side, that's it.

MR. PROKOP: The final is whether the alleged difficulties --

MR. CASHEN: I'm sorry. Did we have a vote on that one?

MR. SIEGEL: It was an internal vote. So the internal vote. So the internal vote, I vote that it's not a major and adverse effect.

MR. MIZZI: I abstain from that, I don't know.

MR. PROKOP: Okay. And the last one is whether the difficulty is self-created. So this is -- the difficulty is the inability to subdivide the lot, and then require -- and the variances that are requested. And then coming to us for those variances. The difficulty is not being able to subdivide the lot. Is that right, Aram? Do you agree with that?

MR. TERCHUNIAN: The difficulty is --
yes, subdividing the lot, that's what's being asked.

MR. HULME: And whether this applicant created that difficulty.

MR. TERCHUNIAN: Right.

MR. CASHEN: Well, he certainly bought into it realizing that. That's a tough one.

MR. HULME: The ordinance itself creates the difficulty, not my client's acquisition of the property.

MR. SARETSKY: So, Joe, I have a question. This is -- I understand that it's non-compliant due to the reason Aram went through before. But from the self-created standpoint, it could be corrected in a different way, right? In other words, it doesn't -- I'm trying to understand the definition --

MR. MIZZI: What is the difficulty, exactly?

MR. SARETSKY: The difficulty is that it's that it's non-compliant in its use, right, Aram?

MR. TERCHUNIAN: Well, that's a factor.

The difficult here is that to subdivide the
lot with the variance, the dimensional
variances as requested. The question to the
Board is, did the applicant create this
difficulty by, for example, building a house
without a permit or building too close to a
property line with a permit. Typically, it
needs an action by the owner to create a
difficulty.

MR. CASHEN: Such as buying the
property?

MR. MIZZI: We take the position that
anyone that buys the house is not
self-created because you bought the house?

MR. PROKOP: Yeah. Well, I agree with
that. And there's a principal of law
that --

MR. CASHEN: You agree with what? That
he created --

MR. PROKOP: You can't claim, well, I
bought the house and this is the way it
existed. That's not relevant.

MR. MIZZI: My point is, outside of
this case, that every time we answer a
question, if someone didn't physically -- if
they want a variance, they can say look the
difficulty is not self-created, I just bought a house, you know, it existed this way.

MR. TERCHUNIAN: The fact pattern, Joe -- that's a good point. The fact pattern would need to be, the situation as it exists today was illegal and then the person bought an illegal --

MR. CASHEN: That's what he did.

MR. TERCHUNIAN: No. He bought a property with two COs issued by the Village.

MR. CASHEN: But you're not allowed to have two houses on one lot.

MR. TERCHUNIAN: But that was a condition that preexisted the Village.

MR. CASHEN: Right. That's what we just said, he bought an illegal --

MR. FREEDMAN: There was --

CHAIRMAN GESSIN: Not illegal. Non-conforming, but not illegal.

MR. HULME: They were fully legal.

MR. TERCHUNIAN: Fully legal.

MR. MIZZI: What is the difficulty?

MR. PROKOP: No. They're not -- okay, the houses are not fully legal, that's the
difficulty. It's a preexisting non-conforming use, because it was conforming at one time and it was made non-confirming by our code. It was conforming under the town code as it existed in 1959 or 1960, whatever it was. Now, it's not legal because of our codes, so it's preexisting non-conforming use.

MR. SIEGEL: That's the difficulty?

MR. PROKOP: No. The difficulty is that he can't subdivide it because the property sizes are not -- the property doesn't have enough property, and because dimensionally, he has other dimensional issues that are -- would be in violation, so he can't subdivide because of that.

MR. SARETSKY: And now, Joe, if I'm following what you're saying, isn't that self-created?

MR. HULME: That's created by the change of the rules over time.

MR. TERCHUNIAN: In other words, he didn't -- the Village -- the incorporation of the Village and the adoption of zoning code created the non-conformity, not the
construction of the buildings. They were
constructed legally and they're legally
constructed today, but they're
non-conforming, but they preexist the code.

   MR. PROKOP: Right. It may actually be
a case where it's not self-created. The
self-creation is not supposed to be relevant
to your decision, but you are supposed to
consider it. Its not supposed to be a
controlling aspect, but you are supposed to
consider it. This may actually be a case
where it's not self-created because the
houses were legal at one time. And whether
you look at this owner, whether the owner in
1959, the fact that the law changed a couple
of times since them was not self-creation of
the difficulty.

   MR. CASHEN: And, Joe, we probably
shouldn't say that he self-created it by
buying into that with the knowledge that it
existed?

   MR. PROKOP: Yeah. He didn't
self-create it.

   MR. CASHEN: All right. So we vote on
that one?
MR. PROKOP: So I think it's --

CHAIRMAN GESSIN: It's not self-creating.

MR. PROKOP: So those are the elements that you needed to review in order to consider the decision. So my recommendation would be, if you wanted to take a vote today, it would be, basically, a -- if you wanted to vote on this today, it would basically be subject to written decision that we adopt at the next meeting. So it would be basically an opinion. It would a decision of the Board, but it would be subject to the -- it would be basically an opinion subject to a written document to be adopted at a later time.

MR. MIZZI: I don't really understand.

MR. SIEGEL: Wouldn't that also be contingent on the approval of the landscape plan?

MR. HULME: That's what I was going to say. If we get an indication that subject to these conditions this is going to be approved, my client is going to be --

CHAIRMAN GESSIN: Subject to
conditions.

MR. HULME: -- my client will go out and spend the money to do this landscaping plan and bring it back to you so it can be incorporated in the final decision.

MR. PROKOP: So the Board is free to vote now. You did SEQRA, and you did the five -- you considered the five elements.

CHAIRMAN GESSIN: So are we going to be voting on each and every individual --

MR. CAHSNE: No. You're voting on your opinions on all five at this point, right, Joe?

MR. SIEGEL: He's talking about the nine variance requests.

MR. CASHEN: Oh, the nine variances.

MR. TERCHUNIAN: You can apply all the conditions in one decision, subject to, you know, review of the landscape plan. And I think you wanted a covenant or some type, Joe.

MR. PROKOP: Right, that be would be part of the decision. So if you wanted to take them all together, normally, what I would recommend is that you vote to take
them all together.

CHAIRMAN GESSIN: Okay. Is the Board okay with that, or do you want to vote individually?

MR. CASHEN: Sure.

MR. SIEGEL: I think it's one big package.

MS. SADELI: So does anyone make a motion?

MR. PROKOP: The first motion -- you're not deciding the variances, you're making a motion to consider all the variances in one decision.

CHAIRMAN GESSIN: Okay. I'd like to make a motion to consider all of the variances in one decision. Does anyone make a second?

MR. SIEGEL: Second.

CHAIRMAN GESSIN: All in favor?

Let's do this right. Who said yes?

MR. SARE尔SKY: I said yes.

MR. CASHEN: I said yes.

MR. SARE尔SKY: I said yes.

MR. PROKOP: The second motion --
CHAIRMAN GESSIN: We have 3-1 -- 4-1?

MR. MIZZI: I didn't vote. I abstained.

CHAIRMAN GESSIN: Okay.

MR. PROKOP: All right. Now, the next one is -- do you want to read the conditions? How do you want to handle the conditions?

CHAIRMAN GESSIN: If you want me to read them individually, I can.

MR. PROKOP: I think to get a vote on the Board -- I'm not recommending approval or disapproval, I'm just recommending getting together a motion before the Board that you can vote on.

So my suggestion might be that you -- somebody makes a motion to approve -- either somebody makes a motion to deny or somebody makes a motion to approve with the conditions. If the person makes a motion to approve with the conditions, you should list the -- that you state the conditions as part of the motion.

CHAIRMAN GESSIN: I think we can make a motion to approve all the variances and the
conditions at the same time because whoever doesn't vote or votes negatively --

MR. PROKOP: Right. That's what I'm saying. So you would read the conditions just so they're in the record.

CHAIRMAN GESSIN: I make a motion to approve the one --

MR. CASHEN: Before you do that.

CHAIRMAN GESSIN: Yes.

MR. CASHEN: Can we -- can six and seven be -- can we say no? Can you keep your original language there? Doesn't it do the same thing for us?

MR. SARETSKY: You mean seven and eight?

MR. CASHEN: Seven and eight, yeah.

MR. SARETSKY: What did you write by hand over there?

CHAIRMAN GESSIN: Originally, what it said, which the applicant doesn't know this, we were suggesting no expansion in the footprint of either the house or the decks, and no further expansion of the height of the structures. And we since changed that without -- to no future construction or
expansion without coming back to the Board.

MR. CASHEN: Aren't they both the same thing?

CHAIRMAN GESSIN: No.

MR. CASHEN: Why are they not the same thing?

CHAIRMAN GESSIN: One is much more restrictive.

MR. HULME: One is much more restrictive. One one you told us "no," and one is you told us you would consider it if we come back.

MR. CASHEN: Right. But, even if it says no, can't you come back and ask?

MR. HULME: Well, then you wouldn't hear it because you told us no. And I would argue that that's an inappropriate condition anyway. So we're willing to go as far as we did, but I think that that's a step too far.

MR. CASHEN: I mean, you have to come before the Board, this means nothing.

CHAIRMAN GESSIN: Well, it means we're open-minded and the answer still could be no.

MR. HULME: You reserve the right to
say no. You can't pre-judge. You can't
pre-judge an application by saying we're not
going to consider anything that you bring to
us.

MR. SARETSKY: No, we're saying it's
limited to the footprint and the height of
the existing. I mean, again, you can do do
anything you want with the exterior of the
house in that vein.

MR. HULME: All I'm saying is that the
condition as read is acceptable us if you
approve the other conditions. You don't
need our agreement, you're going to impose
it.

MR. MIZZI: I guess the question is,
we're -- it sounds like we're -- in
considering these questions, if it states
that -- if it states that these are going to
remain the same, or if there's -- if there's
a deck expansion or pool expansion, we're
considering the --

MR. SARETSKY: The exception.

MR. MIZZI: We're considering how it
relates to the neighborhood, because you're
saying it yourself, you're saying, I'm going
to improve it. You're not describing making alterations to the home, you just mentioned one alteration, but it's hard to consider these points --

MR. HULME: Which is why you can't say no.

MR. PROKOP: Excuse me, let him finish, please.

MR. MIZZI: I guess, voting on this, with this -- this original language or something to that effect, it allows everyone, certainly me, to consider what's being asked without hearing -- without trying to interpret what the variance is permitting for the benefit that's being sought, and therefore, the potential impact. So I kind of -- and I think I heard the applicant say that this is what he's planning to do is just put landscaping and a pool.

MR. PROKOP: So you're saying you would like the language of the conditions to be that there should be no further expansions of the footprint or the height, and leave out without application to the ZBA?
MR. MIZZI: Yeah. Unless there's something that's being proposed here that would --

MR. HULME: What is being proposed as a subdivision? We've discussed some conditions that are -- not that it matters -- that are acceptable to my client because he wants to get to the finish line, okay? That's not to be read that we agree that these conditions are even appropriate. And that if you render a decision with more than those conditions that if -- we may feel compelled to bring an Article 78, challenging not just the additional conditions, but the conditions that we have talked about that are acceptable to us, because I think that they are beyond the pale, frankly.

Frankly, I think that if we took this to the court, the court would grant this application -- my opinion, I'm not advising your Board, Joe -- they would grant this application without any of these conditions because of the unique circumstances of the two single-family residences on one lot. I
am confident of that. And because I'm
confident of that, we've gone as far as my
client is willing to do.

MR. SARETSKY: We have been advised by
our attorney.

MR. HULME: I'm sure you have.

MR. TERCHUNIAN: Just let me
understand. Joe, I was confused about what
you were saying, so let me try to understand
it.

In one variation, the Board is saying
no expansion, everything is frozen in place,
you can never come back to us. In the other
iteration you're saying, everything stays
the same unless you come back to us and ask
us for permission. Which one of them do you
favor?

MR. MIZZI: I favor the -- I favor the
prior.

MR. TERCHUNIAN: So you want it frozen
in time forever?

MR. MIZZI: I guess I'm basing this
decision on what's being explained here.

MR. PROKOP: So what is your rationale?

Your rationale is that will reduce the
impact on the neighboring properties?

MR. MIZZI: Yeah. I mean, how can I answer the question, "Will this produce an undesirable change in the neighborhood," without knowing what --

MR. SARETSKY: Without knowing what it's going to be.

MR. MIZZI: -- the benefit is without limitation.

MR. HULME: You can't base this opinion on what's going to be in the future.

MR. PROKOP: Excuse me for a second.

MR. HULME: Yes.

MR. PROKOP: So one of the considerations of the application when you vote on it is that right now, this is developable -- whatever the buildings is on it, it's developable as a -- there are some developing rights that flow out of this property. If it is subdivided into two lots, there's a different set of development rights that flow out of that situation.

So that's part of your consideration, you know, whether or not that step will have a negative impact on -- a detrimental impact
on the neighboring properties.

MR. SARETSKY: You're saying for the subdivision, you agree to keep it the way it is, in footprint and height, unless you come before the ZBA for some reason, like the pool. You're already saying the pool is not going to fit the deck.

MR. FREEDMAN: Can I ask a question? Would it make it simpler -- can I talk?

MR. HULME: Go right ahead.

MR. FREEDMAN: Would it make it simpler if -- the only thing I really want to do is put a pool in and be able to have a big enough -- within the 75 feet -- and I'm not going to touch the footprint of the front house. All I want to do is get a pool, and then I'll do all the landscaping. But if I go through this whole process, and I spent money on landscaping, I spent more in legal fees, and then I come back here and you say, well, we're not going to give you a pool, then I'm just --

MR. MIZZI: Can I speak on that?

MR. PROKOP: Yeah, go ahead.

MR. MIZZI: I'm not against a pool. I
guess my thought is, because I've sat
through enough of these in the past number
of years I've been on this Board, and it's,
like, if you work -- if we just do it the
way it's being proposed to number two,
someone could potentially come back here,
whether it's you or someone that buys the
lot, and we're going to be looking at being
put in a position by answering questions and
being shown properties saying we should
allow something else. And I feel like
it's -- I feel like it would seem to me like
what you're describing sounds very
reasonable. And I would be inclined to,
like, I don't want to -- if someone is
entitled to a bigger deck and a pool and
that's the impact, I'd like to understand
that, but just leaving it open-ended, I just
feel like I know what's going to happen.
Someone's going to say, oh, there's a 10,000
square foot house down the street, and why
can't we build this house, et cetera.

MR. TERCHUNIAN: I'm sorry, I don't
mean to interrupt.

Joe Mizzi, you're saying two different
things. SO that's -- this is the source of my confusion. Your saying --

MR. MIZZI: You may be hearing two different things, I'm not saying two different things.

MR. TERCHUNIAN: Well, you're saying that you favor freezing the development as it exists right now for all time, and then you're also saying that you think the addition of a pool that would comply with zoning and wetlands would be okay.

MR. MIZZI: That's not what I said. I said -- I said I'd be willing to consider -- the gentleman asked a question, he said, could we do this for a pool --

MR. TERCHUNIAN: Okay. In the former, you preclude yourself from making that decision because you're frozen for all time, and then the latter, you give yourself the opportunity to say yes or no to that.

MR. MIZZI: What he's proposing is a third option, which is number one with a pool. So --

MR. PROKOP: So one of things that's happening with the application that's
complicating this is that the prior -- the
application started with somebody who's
clearly -- who's going to sell the property.

Basically, we knew that, and we were
stepping into the unknown. So that was how
the application developed initially.

Now, we have the buyer -- we have the
owner here, Mr. Freedman. I'm not sure what
his intentions are, but he said he has some
intentions, and you actually have reality to
deal with, in terms of the impact of the
property and --

CHAIRMAN GESSIN: And if you look at
what he's doing here and you look at the
area, if he sticks a pool in the back of
this house, it would line up with the pool
with the back of the next house.

MR. MIZZI: I'm not disagreeing.

CHAIRMAN GESSIN: He's not adding
bedrooms, he's not adding cars.

MR. FREEDMAN: My plans are not to
change the footprint of the house. I'm
going to make it square instead of this ugly
shape that it has.

MR. CASHEN: Why are you opposing?
MR. MIZZI: I'm saying, could number -- could number seven or eight say "no expansion to the deck other than a pool."

MR. HULME: You can't deny based on future applications --

MR. FREEDMAN: Could -- I'm sorry.

MR. HULME: -- you have to act on this application and the relief we're looking for here. You have zoning code, you have a building code. You have all kinds of requirements. You guys are here to hear these future applications, that's what you're on the Board for.

CHAIRMAN GESSIN: Leave it the way it is and you get a second shot.

MR. PROKOP: Yeah. So you're suggestion -- my response to your suggestion is that I think it would be difficult to sterilize the development rights of a property. You're just saying that it would not be any development. I think recognizing that the development -- however, recognizing that the development of the property will have an impact on the neighborhood and will have an impact on the neighboring
properties, my recommendation would be that future development, with the agreement of the applicant, future development of this property comes before this Board. I think that that's a reasonable result.

CHAIRMAN GESSIN: And you could deny him at that point.

MR. PROKOP: You don't have to accept that, I'm just saying --

MR. CASHEN: So normally it wouldn't come to our Board? Only if it needed a variance?

MR. PROKOP: Only if it needed a variance, but --

MR. MIZZI: But you're saying something different.

MR. PROKOP: No. I'm saying, even if he didn't need a variance --

CHAIRMAN GESSIN: Anything he needs outside that house he's gotta come back.

MR. PROKOP: We're recognizing, and the applicant is recognizing, jointly together, that development on the property will have an impact on the neighboring houses; and therefore, we're determining, and he's
agreeing that any change in the property
will require -- any change in the footprint
or the height of the property will require
an application to this Board -- review by
this Board. And so that way we're not -- we
don't have to have an iconic court case over
whether or not we can sterilize the
development rights of this property.
Instead, we can review applications, like
the pool.

MR. SARETSKY: So, Joe, can I ask a
question on this? I think I understand what
Joe is for. So what we're saying is that
any change he wants to make to the footprint
of house the house or the height, it's not
going through the building inspector, it's
coming back to the ZBA?

MR. PROKOP: Yes. Well --

MR. SIEGEL: Well, first the building
inspector, then back here.

MR. MIZZI: I can live with that.

MR. SIEGEL: I can live with that, too.

So that's going to be written on --

MR. SIEGEL: Also, what Joe said, that
the property as it exists has additional
development rights. They can make both of these houses bigger today without a variance.

        MR. PROKOP: It's one of the things --
        MR. SARETSKY: That's fine. They can do that, but at the same time --
        MR. SIEGEL: Not after this.
        MR. SARETSKY: I understand. But right now they're asking us to subdivide.
        CHAIRMAN GESSIN: Bringing in conformity.
        MR. SARETSKY: I understand, but for that, there is pain and suffering that goes with it, so to speak.
        MR. TERCHUNIAN: There's plenty of that to go around.
        (Laughter).
        MR. SARETSKY: So all I'm saying is, here we are trying to -- Howard is here trying to get us to the point where we agree with that, in -- for anything higher, anything with a bigger footprint.
        MR. SIEGEL: That's what he's saying.
        MR. MIZZI: Can the -- can the -- the homeowner's intentions be put on the record?
MR. HULME: No. He can't bind himself to the future, he can't bind the future owner. You guys are asking for him to pre-judge the future. That's what you have laws an and rules for.

MR. FREEDMAN: Can we have that same language that was proposed, except to add -- to expand the deck to accommodate a pool only? Because then I won't have to come back.

MR. CASHEN: Just do it -- my opinion, just leave it as any changes of the footprint or the height, you have to come back.

MR. PROKOP: He doesn't have to tell you. You can ask him what his intentions are, he can say no.

CHAIRMAN GESSIN: He can change the footprint after we sign off.

MR. FREEDMAN: Right.

MR. SIEGEL: The house is going to get sold and become something else, and then he has to come to us.

MR. PROKOP: You can ask him, if he says no, he doesn't want to answer it, you
can just assume the worst and make that part
of -- you have to assume --

MR. HULME: You can't assume anything
about his intentions in reaching a decision
on this application. That's immaterial.

MR. MIZZI: Well, it's material to me,
in understanding how it -- it's just on one
vote. I'm just trying to understand how on
I vote on this, and if Mr. Freedman intends
to come back to this Board, and he makes a
statement that his intention is to come back
to the Board to add a deck and a pool, and
he comes back and he -- and he's got some
other very different configurations, not
restricting -- not something that is imposed
on some of these others, but if he comes
back just asking for a pool, I'll be
inclined to want to approve it, and if he
comes back -- and I personally think it
would make sense to know that it was
represented to us when we approved this that
his intentions were to do this, to come back
for a pool.

MR. HULME: That may be what you want
it, but that violates the law.
CHAIRMAN GESSIN: What if he decides to do it tomorrow and didn't tell us today.

MR. TERCHUNIAN: Joe, I appreciate that that's what you want, but quite frankly, that's not what your job is as a Board member. Your job as a board member is to review the facts in front of you. And in this case --

MR. MIZZI: I am.

MR. TERCHUNIAN: -- you've reviewed -- if you reserve judgment on future expansions, and he comes back with something that you think is approvable, great. If you think it's not approvable, then not great, but that should be judged entirely on its own. It should not be judged today.

MR. MIZZI: All I'm saying is that -- it's not this gentleman's fault -- but we got here because someone made a representation on an application that they were, you know, that they weren't going to do something, and then a permit expired, you know, it's been -- I'm just trying to not --

MR. PROKOP: So this will be -- the vote will be subject --
CHAIRMAN GESSIN: With all the variances that he is requesting already, he's pretty boxed in whether it's an east, west, north or south by where the structures are currently.

MR. HULME: Other than this pool --

CHAIRMAN GESSIN: You have --

MR. HULME: Other than this pool, which you know have captured, any change to these properties, especially with the subdivision making it harder, they would -- we don't meet any of the setback requirements, which is why we're willing to agree to come back.

MR. FREEDMAN: I'll tell you my plan, I'm going to square off the house --

MR. HULME: No, no. We're not going to be talking about that.

MR. FREEDMAN: I'm happy to tell him.

MR. HULME: It's not about that.

That's not in front of them. Their job is to look at what's in front of them.

MR. TERCHUNIAN: Let's keep it simple.

MR. FREEDMAN: I understand.

MR. SIEGEL: It's not going to be a pool, it's going to be a remodel and a pool.
MR. FREEDMAN: I'm not changing the footprint, except for the pool.

MR. SIEGEL: But even if it does, it's still before that.

MR. HULME: Then it would be incumbent on me or somebody else who represented him to make the case that this other variance is necessary, but all roads lead back to you guys. Maybe what you want is for us never to come back, but I can't promise that, and that's why you can't say no to future applications.

MR. PROKOP: So the --

CHAIRMAN GESSIN: Let's keep going.

MR. PROKOP: So no change in the footprint without further application to the ZBA?

MR. HULME: That's not the condition we just stated.

MR. SIEGEL: What was stated?

MR. HULME: That's not -- and if it matters, that's not a condition that's acceptable to us.

CHAIRMAN GESSIN: Any future construction or expansion of space, he has
to come back to the board, period.

MR. PROKOP: Okay.

MS. SADELI: Anyone want to make a motion on that, Mr. Chairman?

CHAIRMAN GESSIN: Well, I'm going to read in all of these conditions. So are we ready for that? Are you ready?

MR. HULME: We can do this and all go home, you know that?

(Laughter).

CHAIRMAN GESSIN: Motion that we're attempting to make is the approval of the nine variances -- it's nine, Joe, right?

MR. PROKOP: I'm sorry? I apologize.

CHAIRMAN GESSIN: It's nine variances, right?

MR. HULME: Yes. It's nine variances.

CHAIRMAN GESSIN: Plus this list of conditions that I'm going to read into the record.

MR. PROKOP: Let me summarize it. Here's the -- just to clarify, here's the variances that we're talking about. A minimum lot -- am I okay so far?

MR. SIEGEL: You're good.
MR. PROKOP: A minimum lot variance of 28,688 feet to create a lot that's 11,312 square feet. Lot width variance -- this is to Lot 1 will be 11,312 feet.

Lot 1 is going have a lot width of 63 feet, which is a variance of 87 feet.

Lot 1 is going to have a rear yard of 23 feet, which is a variance of 47 feet.

Lot 1 is going to have a side yard variance of 13.3 feet with a setback of only 6.7 feet.

Lot 1 is going to have a total side yard variance of 30 feet, because it's going to have a total side yard of of only 30 feet -- of 30 feet.

Lot 2 is going to have a minimum -- is going to have a lot area of 16,609 square feet, which is a minimum lot area variance of 23,391 square feet.

MR. HULME: It's actually 16,460 but that's all right.

MR. PROKOP: Well, we can't -- the notice that we did is 16,609.

MR. HULME: Fine. That's fine.

MR. PROKOP: Lot 2 is going to have a
lot width variance -- a lot width variance of 75 feet requiring a lot width variance of 75 feet.

Lot 2 is going to have a front yard variance of 15.2 feet to provide for a front yard of 44.8 feet.

And Lot 2 is also going to have a total side yard of 37 feet requiring a total side yard variance of 23 feet.

And those are the variances.

CHAIRMAN GESSIN: Okay. In addition to that are these conditions:

A landscape plan to include screening along the entire east and west property line, in conjunction with what preexists, the landscaping that preexists.

Screening, which is that would be the front and rear property line, the adjoining property line.

Foundation planting on both houses.

Sprinkler system for both houses.

Screening of the parking areas.

On Lot 2, the parking area does not include -- the parking area includes the area adjacent to the house, which is not
part of the flag pole.
   On Lot 1, screening along the road.
   A separate driveway for Lot 1, so that there is no common driveway between two houses.
   An additional water main for one of the two houses, whichever one is missing one. A parking area, as per code, for each count of one per bedroom plus one. No parking in the flag pole.
   An 85 percent survival rate on the landscaping.
   And any future expansion or new construction of the home or property or decks, must come back to this Board and that's what's in front of us today.
   So if someone would like to make a motion.
   MR. PROKOP: The expansion of the house or any construction?
   CHAIRMAN GESSIN: Yes.
   MR. SIEGEL: Does the motion need to be all the words you just said?
   CHAIRMAN GESSIN: No.
   MR. SIEGEL: I would like to make a
motion that we vote on this application based on what was just read into the record of the allowance of the variances, and with the conditional allowance of the variances and the conditional approval of the landscape plan that's going to be still submitted.

CHAIRMAN GESSIN: Yeah. I left out one thing: The relocation of the right-of-way to the east side.

MR. HULME: Right.

MR. SIEGEL: My motion includes the relocation of the relocation of the right-of-way.

I make a motion that we vote on this.

CHAIRMAN GESSIN: I second that.

And everybody in favor of approving this application as stated?

MR. SIEGEL: Yes.

MR. CASHEN: Yes.

MR. SARETSKY: Yes.

CHAIRMAN GESSIN: All against?

(Negative response).

MR. MIZZI: Abstain.

CHAIRMAN GESSIN: Nobody against?
MR. PROKOP: So that's three votes.

MR. HULME: So the motion carries?

CHAIRMAN GESSIN: The motion carries.

MR. PROKOP: Subject to to written decision.

CHAIRMAN GESSIN: So that's a "yes."

MR. FREEDMAN: Thank you, everyone.

MR. HULME: Thank you, I know it was a very long and complicated thing.

CHAIRMAN GESSIN: Motion to close this hearing?

MR. PROKOP: No, the meeting is still open. Now, we -- the motion is to approve the written decision for Young.

CHAIRMAN GESSIN: Okay. You added the language on the --

MR. PROKOP: Just look -- let's take a minute.

(A brief recess was taken).

MR. PROKOP: Back on the record.

So there's a motion to approve the Young decision. Can I have somebody make that motion, please?

CHAIRMAN GESSIN: I wasn't listening, sorry.
MR. PROKOP: A motion to approve the written decision for Young.

CHAIRMAN GESSIN: Has everyone read the written decision for Young?

MR. SIEGEL: I saw something in an e-mail.

MR. PROKOP: It's revised.

CHAIRMAN GESSIN: The last page, it's Number One. It's been corrected, the landscaping.

MR. SIEGEL: So the one that we had talked about just slightly, because you had a minor concern about that is, would it be better if the landscaping that they put around the pool itself was basically right up against the foundation?

CHAIRMAN GESSIN: Well, that's, you know --

MR. SIEGEL: Instead of the bushes being halfway from the road to the house? I don't think she wanted to do that.

MR. SARETSKY: When we get the plan we can approve it.

CHAIRMAN GESSIN: We didn't get a plan.

MS. SADELI: Yeah, she sent a plan.
MR. SARETSKY: Yeah, I have it right here.

MR. SIEGEL: Here it is.

It was a smaller piece of paper, it wasn't this giant thing.

MR. SARETSKY: That's the pool application.

MR. PROKOP: Do you have a problem with that?

MR. SIEGEL: No. The application to show the landscaping is here.

CHAIRMAN GESSIN: Here it is. Okay. It's a smaller one.

MR. SIEGEL: I got it. So the arbor vitae between the two properties is super appropriate because when I look at it, it looks like you need to have a divider line there, but this other one here is a little wacked, and she was not happy with this. I don't know how --

CHAIRMAN GESSIN: Which one?

MR. SARETSKY: You're talking about up against the cul de sacs?

CHAIRMAN GESSIN: Who wasn't happy?

MR. SIEGEL: The lady who was sitting
here was saying --

MS. SADELI: Tina Young.

MR. SIEGEL: -- I don't want that. I didn't say yes to that.

MR. MIZZI: But she submitted it.

MR. SIEGEL: Exactly. Maybe she changed her mind, but maybe we like it better here and not here.

MR. MIZZI: The only comment I had is -- the only comment I have it because of the property line, the fence is, like, this is not the road, this is --

MR. SIEGEL: Here's the toad.

CHAIRMAN GESSIN: It's in the wrong place.

MR. TERCHUNIAN: That fence is illegal.

MR. SARETSKY: This is the road, right? I see, it's the property line.

CHAIRMAN GESSIN: She's got the fence in the wrong place.

MR. SIEGEL: So if you're standing on the road, this is going to be, like, halfway in between.

CHAIRMAN GESSIN: This fence is he here. Here's the property line.
MR. SIEGEL: What if they just put it here? This fence was because people were walking through here or something.

MR. TERCHUNIAN: It's a typical land graph. The fence has got to be moved out of the right-of-way.

MR. SIEGEL: I agree with that.

MR. PROKOP: Okay. So that's going to be added to the decision. The fence has to be moved from the right-of-way.

MR. TERCHUNIAN: It will look a lot better. Then it would be a fence, and the arbor vitaeas together.

MR. SIEGEL: Saying that the fence has to be removed from the right-of-way doesn't mean that you have to put a fence on your property line.

CHAIRMAN GESSIN: She can do whatever she wants.

MR. SIEGEL: There could be no fence.

MR. MIZZI: I was going to say, but can plantings go in the right-of-way?

MR. SIEGEL: No.

MR. MIZZI: Okay.

MR. TERCHUNIAN: Well, we need it.
MR. SARETSKY: I'm saying, it's nothing, really.

MR. SIEGEL: For the right-of-way?

Yeah, no, we wouldn't.

MR. TERCHUNIAN: This Board can't -- doesn't have the authority to allow that. They would be hard pressed --

MR. SIEGEL: Are we voting on --

CHAIRMAN GESSIN: Your issue is, I think, visually employed from the road?

MR. SIEGEL: What's better for us?

CHAIRMAN GESSIN: How high should the trees be?

MR. SIEGEL: Six feet high arbor vitae.

MR. SARETSKY: You could -- they're going to grow fast.

MR. TERCHUNIAN: They're going to grow real fast.

MR. SIEGEL: I don't really -- who brought it up? Didn't you say something about wanting to see something it blocking --

CHAIRMAN GESSIN: What I said was, if somebody on that block has an issue, the issue would be the pool deck, I don't think
it's the side of the piles that they may
not want to see people bathing and swimming
on their deck; am I correct?

MR. SIEGEL: But that's way up at the
top.

CHAIRMAN GESSIN: That's what I said.

MR. SIEGEL: There's no amount of trees
that are going to block that.

MR. SARETSKY: There are ways to get
around that. People put planters on their
deck. I mean, you can create something.

MR. SIEGEL: Did you do that?

CHAIRMAN GESSIN: What I did on 858, I
extended the rafters past the deck and I put
a two-foot by two-foot fireplace planter and
put six foot trees on there. You can't see
shit. Where do we want the trees to be and
what do we want them to block? It's not
just, let's have landscaping.

MR. TERCHUNIAN: This is community
based. Not -- I mean, traditionally,
everything is on the property line when it
comes to zoning and what's inside the
property is for them to decide. You're
basically -- this is, somebody walking or
driving down the street, what are they going
to see and the fact that the deck is up
high?

CHAIRMAN GESSIN: Bikinis and bare
chested people a above the trees.

MR. SIEGEL: Why did you do that? Did
you do that because there was someone super
close and you thought it would be better?

CHAIRMAN GESSIN: The woman next door
sits out on her deck and suns all the time.

MR. SIEGEL: And she's not appropriate?

CHAIRMAN GESSIN: No, she's 80 years
old.

MR. SIEGEL: I don't know. I don't
think that we can force them to put bushes
up.

CHAIRMAN GESSIN: No. This -- I'm just
bringing it up.

MR. TERCHUNIAN: Okay. Good luck.

(Aram Terchunian leaves the
meeting).

MR. SIEGEL: So what are we doing?

Voting on this landscape plan?

CHAIRMAN GESSIN: If you want. We have
to come back on the other one, we don't have
to belabor this today.

MR. SIEGEL: Can they start building their pool now?

CHAIRMAN GESSIN: They're not having it for the summer.

CHAIRMAN GESSIN: No chance.

MR. PROKOP: She's --

MR. SARETSKY: I don't really have an issue.

MR. CASHEN: Guys, I was going to leave. I was going to abstain anyway, I missed the last meeting. I vote an abstain, one would be no problem.

CHAIRMAN GESSIN: Sure.

MR. CASHEN: Okay. Thanks, guys.

CHAIRMAN GESSIN: Would somebody like to close the hearing?

MR. PROKOP: To adjourn?

MR. CASHEN: Motion to adjourn.

MR. SARETSKY: Second.

MR. PROKOP: Meeting adjourned.

(Meeting was adjourned at 12:22 p.m.)
CERTIFICATE

I, SARA GALANTE, a Notary Public in and for the State of New York, do hereby certify:

THAT the within transcript is a true record of the testimony given by said witness.

I further certify that I am not related either by blood or marriage, to any of the parties in this action; and

THAT I am in no way interested in the outcome of this matter.

SARA GALANTE