INCORPORATED VILLAGE OF WEST HAMPTON DUNES
ZONING BOARD OF APPEALS

July 27, 2019
10:00 a.m.

Meeting held at
906 Dune Road, West Hampton Dunes, New York

MEMBERS PRESENT:
Harvey Gessin - Chairman
Eric Saretsky - Acting Chairman
James Cashin - Member
Joseph Mizzi - Member

ALSO PRESENT:
Joseph Prokop, Esq. - Attorney
Representing the Village
John R. Dicioccio, Esq. - Attorney
Representing the Village
Angela Sadeli - Village Clerk
Aram Terchunian - Commissioner of Wildlife
Protection

Flynn Stenography & Transcription Service
(631) 727-1107
A P P E A R A N C E S:

James N. Hulme, Esq.
Representing Applicants
323 Mill Road, Westhampton

Christine Parrottino, Applicant,
21 Dune Lane, West Hampton Dunes

Howard Freedman, Applicant
846 Dune Road, West Hampton Dunes
# INDEX

<table>
<thead>
<tr>
<th>APPLICANT</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Christine Parrottino</td>
<td>4-6</td>
</tr>
<tr>
<td>21 Dune Lane, West Hampton Dunes</td>
<td></td>
</tr>
<tr>
<td>SCTM #0907-01-01-45</td>
<td></td>
</tr>
<tr>
<td>846 Dune Road, LLC</td>
<td>7-68</td>
</tr>
<tr>
<td>SCTM #0907-2-01-04</td>
<td></td>
</tr>
<tr>
<td>Discussion</td>
<td>68-76</td>
</tr>
</tbody>
</table>

*Flynn Stenography & Transcription Service*
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(*The meeting was called to order, after the
Pledge of Allegiance, at 10:11 a.m.*)

CHAIRMAN GESSIN: I'd like to call to order
a meeting of the Westhampton Dunes Zoning Board
for today, whatever today's date is.

MS. SADELI: July 27th.

CHAIRMAN GESSIN: July 20 --

MS. SADELI: Seventh.

CHAIRMAN GESSIN: Seventh.

And the first application we're going to
review is 21 Dune Lane.

MR. HULME: For the applicant, James N.
Hulme, 323 Mill Road, Westhampton Beach. Since we
were -- also present is my client.

Since we were -- the only outstanding issue
it seemed the last time we were here was a
modification to the landscape plan that we had
submitted. And I don't know how the color copies
came through on the ones that we gave you, but I
have some more copies.

MR. DICIOCCIO: Technically, you know, the
public hearing is really closed.

MR. HULME: Okay, that's fine.

MR. DICIOCCIO: I think we've addressed all
the issues with the landscaping plan in the
decision

MR. HULME: Okay

MR. DICI OCCIO: I think there is a certain type of species the Board preferred. We have that --

MR. HULME: Okay.

MR. DICI OCCIO: -- you know, in the decision. And there was a smooth finish on the wall that they --

MR. HULME: I will shut up, then.

MR. DICI OCCIO: All right.

(Laughter)

ACTING CHAIRMAN SARETSKY: All right. So I'll make a motion to --

CHAIRMAN GESSIN: Yeah, you have to take this one.

MR. DICI OCCIO: Yeah.

CHAIRMAN GESSIN: Yeah.

ACTING CHAIRMAN SARETSKY: In accordance to proposed written decision, July 27, '19, I hereby make a motion to approve. Do I have a second?

MEMBER MIZZI: I second the motion.

MR. DICI OCCIO: All right. All in favor?

MS. SADELI: All in favor?

MEMBER MIZZI: Aye.
MEMBER CASHIN: Aye.

ACTING CHAIRMAN SARETSKY: Aye.

MR. DICIOCCIO: And Mr. Gessin recuses himself.

CHAIRMAN GESSIN: Yes.

MR. DICIOCCIO: All right. That's it.

MS. SADELI: That's it.

MR. HULME: Okay.

MS. PARROTTINO: Thank you very much.

MR. HULME: I can get a copy at some point?

MR. DICIOCCIO: Yeah.

MR. HULME: Do you have a --

MR. DICIOCCIO: Yeah. We'll get it stamped in with the Village Clerk.

MR. HULME: Okay. I'll get it from you next week, then.

MS. SADELI: Yes.

MR. HULME: That's fine. All right.

MS. SADELI: And then Eric has to sign it.

MR. DICIOCCIO: Yeah, Eric is going to sign.

CHAIRMAN GESSIN: Why don't you stay?

MR. HULME: Because I got to get another file book.

(Laughter)

MR. HULME: All right. We're done with
that, so.

MR. DICIOCCIO: You'll sign three copies.

CHAIRMAN GESSIN: Okay. The next application is the continuing -- the continuance of 846 Dune Road. Mr. Hulme, would you like to address us?

MR. HULME: Yes. For the applicant, yes. James N. Hulme 323 Mill Road, Westhampton Beach. As we had discussed in the past, the --

MR. DICIOCCIO: All right. Good working with you guys.

CHAIRMAN GESSIN: Thanks. A full switch here.

MR. HULME: The only reason we need relief from the Zoning Board on this -- well, let me take a step back. What we have proposed is a small swimming pool on the west side of the bay side house. I think I got that right. And the only relief we need is a finding, I believe a finding by the Board under 560-52(B)(1), that we meet the criteria there, because of the -- and we have to go through that criteria there because there are two houses, legal houses on this property, so we have some nonconforming structures here. But --

(Cell Phone Sounded)
MEMBER CASHIN: Sorry.

MR. HULME: Are you dancing?

(Laughter)

MR. HULME: But other than that, we don't need any dimensional relief. The pool is located or it meets all of the required setbacks, and things like that, so -- and I think we've discussed pretty much at length the basis for why we believe we meet the criteria of 560-52(B)(1).

There was a list of some materials that the Board would like to have as part of the record here, and I think we've provided everything that you were looking for. I apologize for having done it kind of serially, but I'll go through everything that we believe we've provided you to make sure we have it all.

Let's see. So we submitted an updated landscape plan, which shows additional landscaping between the proposed swimming pool and the adjacent neighbor to the west, so that was one of the things that you were looking at.

You wanted to see a photograph of the proposed skirting for the building, which we submitted.

You had asked for photographs of the
proposed lighting on the west side of the house, and we submitted the photograph with identifying the locations for the lighting and the type of light --

MR. FREEDMAN: Right.

MR. HULME: -- that we propose.

You had asked for an updated survey showing the right-of-way, and the two meters, and the removal of the extended deck on the -- on the roadside house, and that's what we've done here.

You wanted to see photographs of other properties with pool, side yard pools, and we gave you a series of six photographs of various locations throughout the Village of that.

We have a letter from our neighbor to the west saying that he doesn't have any real issue with the swimming pool going in that location.

I had submitted a letter in response, I believe, to Counsel dealing with some of the legal technical issues about what setbacks we were entitled to, and that was a letter dated May 3rd.

We submitted a photograph showing two water vaults, water meter vaults. And we submitted a letter from the Suffolk County Water Authority confirming that each of the houses was -- is
served by a separate vault.

MR. PROKOP: The letter on May 3rd is addressed to Chairman Gessin. He recused himself on this, right?

MR. HULME: He did.

MR. PROKOP: So this is a letter to Counsel that you're talking about?

MR. HULME: Yes, that's correct. I'm sorry, I apologize.

MR. PROKOP: Did you get that?

MEMBER SARETSKY: Yeah, I think I have it.

MR. PROKOP: Okay.

MR. HULME: So, as I indicated, I believe that the only relief we need is under the section of the code that I identified, and I -- in my written submission with the original application, I went through the various criteria that are contained in that code section, and I believe that we meet the requirements of that code section. And with that, I'd be happy to answer any questions.

MEMBER SARETSKY: I have a couple.

MR. HULME: Sure.

MEMBER SARETSKY: In the letter from the person to the west --
MR. HULME: Yeah.

MEMBER SARETSKY: -- they say that it's okay with -- you know, they're saying it's okay, but they want the equipment located on the east side of the house. So do the people on that side know that that's what's being proposed?

MR. FREEDMAN: Well, they have all their pool equipment on that side.

MEMBER SARETSKY: Okay.

MR. FREEDMAN: I didn't call them up and say do you care if they've gotten it.

MEMBER SARETSKY: Okay.

MR. FREEDMAN: But the other issue is because it's a lap pool, you can't put the equipment there anyway, and it makes more sense to be on the other side.

CHAIRMAN GESSIN: And, also, there's a big landscape buffer on that side.

MEMBER SARETSKY: Okay. The other question I had, and maybe to Aram and Joe, I mean, the photographs of these other pools that have homes with pools on the side, you know, they're very different setups in the -- in the setbacks from some of the other homes. And I just don't know that these are -- I guess, I'm -- I have other
reservations, but I'm more worried about a precedent that we set for building pools on the side of homes, when I understand it's easier than dealing with the DEC or the DEP, whoever the agency is that's requiring the setback from the wetlands.

MR. HULME: But you got to remember that the only reason we're here is because we have the second home further up the lot.

MR. PROKOP: So did you have a question for me that I could answer?

MEMBER SARETSKY: I guess -- I guess my question is, is how do these photos -- in other words, I'm looking at the size of these homes and the size of the setbacks between them, and they seem much greater than the setback between these.

MR. HULME: All right. Well --

MR. PROKOP: Well, all those conditions are -- I guess what the applicant is trying to do is show existing conditions, and anything that's depicted in the photograph is an existing condition. So it's the locations of the other pools, how they're sited, and, you know, how high they are, you know, what the coverage -- and, really, anything that's an existing condition.
MR. HULME: And I think these other pools, for the most part, were permitted without Zoning Board approval, because they met the setbacks, and our pool meets those very same setbacks. So we're not asking to put a pool any closer to a property line than anybody else is entitled to under the -- under the Village Code.

The only reason that we're here is because we have this second home, which really is a nonplayer as far as the impact of this, of this structure goes.

These pools are side yard pools, they're much higher in a lot of cases. They're not any closer or any further away than what we're proposing. The pools themselves that have been granted just by building permit are larger than the pools -- the pool that we're proposing.

The photographs that we submitted of these other side yard pools are completely devoid of any landscaping, you know, whereas -- whereas we have proposed very dense landscaping. And the person who is most impacted by this is the neighbor to the -- who has written us a letter, saying he's fine.

The other thing I would point out is if
you're worried about precedent, there's not a lot of properties in West Hampton Dunes that have two houses on them. So, again, the only reason why we're here is because of the presence of these two houses. So by granting this relief to this configuration, you really haven't created any precedential value for any or many other lots in the Village. And people will come and get side yard pools for properties that are improved with one single family residence as per the code, as they have. So you're not really creating any precedence that anybody else, even me, will be able to use to come --

        MR. PROKOP: But we just had -- we have another potential application, right? I mean, I don't think the numerical, the numerical number of related -- similar properties is relevant, the potential for other common -- similar applications.

        MR. HULME: Well, how many? How many -- how many properties in The Village of Westhampton Dunes have two houses on them, two legal houses? Not too many, if any. Everybody else is a separate lot. And they would come in with a side yard pool, and they would either meet the
requirements of the code for setbacks, and the pool would be allowed by the Building Inspector, or they would have to come to this Board to get a variance for that purpose.

And this is a very unique situation, and, you know, most Zoning Boards really like unique situations, because when they give relief in circumstances that are as unique as this, they are not creating precedential -- any precedent. There's nobody up and down the street that can cite to this case, unless they have two legally constituted homes on one property.

MR. FREEDMAN: One thing I'd just like to point out, and maybe you haven't seen this picture, it was 921 Dune Road. And you can see this house was just done, and, in fact, there's no landscaping, and, you know, it's -- the pool is right on top of the other house.

MEMBER MIZZI: That's my house.

MR. FREEDMAN: Is it really?

MEMBER MIZZI: This one.

MR. FREEDMAN: Oh.

MEMBER MIZZI: Next door.

MS. SADELI: Yeah, he's next door.

MR. HULME: And that was -- that was granted
just because the building code allows for pools in 
the side yard.

MEMBER MIZZI: I think --

MR. TERCHUNIAN: Well, I think the salient 
issue -- pardon me, go ahead.

MEMBER MIZZI: I was just going to say, you 
know, from my perspective, they could have built 
their entire house in that location. So it's a 
matter of light and air versus -- like from my 
perspective, as the neighbor to the west, you 
know, first of all, if they -- they went and got 
a -- they didn't come to this Board. They went 
and got approval for a house, and I look at it as, 
you know, it was either going to be blocking light 
and air, or it was going to be a swimming pool 
and --

MEMBER SARETSKY: It's as-of-right.

MEMBER MIZZI: It's as-of-right, yeah. So 
I -- had they -- you know, had they come, had they 
come to the Zoning Board, I probably wouldn't have 
been able to vote, but I would have my -- you 
know, certainly have an opinion on it.

MR. PROKOP: So I just want to mention, 
while I have it on my phone with zoning from the 
internet here, the section that -- does everybody
know the -- they're familiar with the Three-Tenths Rule that --

MEMBER MIZZI:  (Nodded yes)

MR. PROKOP:  Okay. So it does, it does mention main structure being centered. So that's --

MEMBER SARETSKY:  So how does that affect us?

MR. PROKOP:  Because their -- part of their claim is that they don't need to -- they don't need a variance, because the main structure is the house -- excuse me, the deck is part of the main structure, and that, therefore, the centering should be the deck and the house together. I don't know that I agree with that, I think the main structure is the house.

MR. HULME:  I think your Building Inspector agrees with that, though. That has been --

MR. PROKOP:  So do you have anything from him that said that?

MR. HULME:  I don't, but it is --

MR. PROKOP:  Didn't he write a denial that got you here?

MR. HULME:  No.

MR. PROKOP:  Then why are you here?
MR. HULME: Because we need a variance for a pool.

MR. FREEDMAN: That was the reason for his denial, he said, because --

MR. HULME: Oh, yeah, I'm sorry. The reason for the denial is because we have two houses.

MR. FREEDMAN: Because we have two houses.

MR. HULME: Not because we didn't meet any -- we're here --

MEMBER SARETSKY: Just because it was a stipulation.

MR. HULME: In accordance with the Building Inspector, we are here solely because we have two houses, not because we do not meet the setback requirements.

MR. PROKOP: So then in your May 3rd letter, why do you have the section about the --

MR. HULME: Because you asked me. You asked me a question, I wrote a letter answering the question.

MR. PROKOP: Okay.

MR. HULME: That's why, that's why I did it.

MR. FREEDMAN: The Building Inspector said, "Oh, I'll approve this, this is fine, you've met all the requirements. However, you have two
houses." Because he -- we went through with him the setbacks and how each side needs to be to be centered.

MEMBER SARETSKY: But shouldn't mean -- I guess my question is we're here because the stipulation we had approving all the other stuff, right?

CHAIRMAN GESSIN: Yeah.

MEMBER SARETSKY: So now the Building Inspector says, "Oh, you have to go back for any changes," right? So that's why we're here.

MR. HULME: No. We're here -- this application is separate and apart from the other application that we brought before you. That was in anticipation of ultimately doing a subdivision of this property. We're still pursuing that, but that's two or three years out because of all the agencies that we go, and we want to get a pool now, okay? So we applied separate and apart from that whole application. You don't even need to regard that application, because that doesn't have anything to do with this. We put in a separate request to build a pool next to the side yard of this house.

The Building Inspector reviewed our
application and said, "You meet all of the setback requirements," because he centered the house and the deck. "You meet all of the other requirements except for this section."

MEMBER SARETSKY: For the swimming pool?

MR. PROKOP: No. The decision said that any other changes in the property have to come to the ZBA, so that's why you're here.

MEMBER SARETSKY: That's why we're here.

MR. PROKOP: That's why you're here.

MR. HULME: Well, no.

MR. TERCHUNIAN: That's not the only reason.

MR. HULME: No.

MR. TERCHUNIAN: So if you read in the announcement, when you have two houses on a single lot, you cannot do anything else on that lot without coming to this Board, no matter what has ever happened before.

MEMBER SARETSKY: Uh-huh.

MR. TERCHUNIAN: So although this Board --

CHAIRMAN GESSIN: Forever.

MR. TERCHUNIAN: Forever.

CHAIRMAN GESSIN: Right.

MR. TERCHUNIAN: Forever. So, although this Board reviewed and approved an application, and a
condition of that application was if you do anything else, you have to come back, it -- they had to come back anyway, do you understand?

MEMBER SARETSKY: Uh-huh.

MR. TERCHUNIAN: They had to come back anyway. So what Mr. Hulme is saying is they came back, because, A, you asked them, and B -- or you required them, and B, they're required by the -- by the regulations of the Village to come any time they make a change on a lot with two homes.

MR. PROKOP: What regulation is that?

MR. TERCHUNIAN: It's quoted in --

MR. HULME: 560-52(B)(1).

MR. TERCHUNIAN: So the reason -- the variance they're seeking is to expand what's called a nonconforming use, because they have two homes on one lot. That's a nonconforming use.

So what the code says is that the Zoning Board can entertain these applications of a nonconforming use on this lot to expand it a certain percentage, if you desire, if you agree. If the applicant makes a compelling case, you have the authority to expand it, I think it's up to 50% more than what currently exists.

MR. HULME: And I provided the calculation
of that showing that we are not.

MR. TERCHUNIAN: So that's the kernel of the reason as to why they're here, so the Board -- they're here because they must come here under any circumstance. The regulation says to the Board, review the material submitted to you at your discretion. You have the ability, the authority to expand up to 50% more than presently exists.

CHAIRMAN GESSIN: If you go back into the minutes of the original case, basically, what our discussions were about was to assure us that whatever the requirements of that original approval were, were complied with, and we would let them go forward, and that's what they're doing here.

MR. PROKOP: So my -- I think that what is it? Just cite that section again that you think covers it.

MR. HULME: 560-52(B)(1).

MR. PROKOP: I think that they had to come here, but I think it's for a different -- I think it's because of the ZBA decision. I don't know that I agree with what was just said, but I think the result is the same, that they had to come here. I'm not --
MR. HULME: And here we are. And despite my own personal opinion, that the whole ZBA decision on the subdivision has nothing to do with this case, we have, at your request, complied with all of the requests that you made in that decision, and you were not adverse to a pool as a general concept. This is a tiny, little pool directly adjacent to the house, landscaped to the hilt, far more than anybody else is landscaped. And the relief that we're seeking is not relief that anybody else in the Village can come and get.

MEMBER SARETSKY: But I guess my question -- I'll ask it as a question.

CHAIRMAN GESSIN: Go ahead.

MEMBER SARETSKY: I thought that we went through this whole process of the subdivision with these special requirements because it was such an unusual type thing, and we tried to create these conditions to prevent something unusual from happening down the road, like two large homes being built on a single lot.

In this case, I know that, Aram, we talked about it, and maybe you can refresh me, but this pool could be built in the back if they went -- and maybe in the size to fit for the setback for
what -- you know, the wetland, in other words. In other words, like other people have homes that fit, because they can -- they make their deck smaller, they do whatever it takes, right?

MR. TERCHUNIAN: There are other pools that are on the north side of the house, yes.

MEMBER SARETSKY: And in this case, you know, it's been somewhat helpful that the neighbor is saying it's okay. My concern, sort of, is me, personally, is just does this set up a precedent where, again, it just keeps coming, because --

MR. TERCHUNIAN: Okay. So that if you're concerned about the precedent, it is very reasonable. So what you have to ask yourselves, as the Board, is are we allowing them to do -- to put a pool in the side yard when ordinarily under the code they would not be able to put a pool in the side yard? That -- and so the answer to that question is they can put a pool in the side yard by a permit. They don't need a variance to put the pool in the side yard. They only need the variance because they're expanding a nonconforming use.

So the issue of whether the pool is on the north side, the south side, east side or the west
side is irrelevant, it can be on any side of the house.

    MR. HULME: And to put it maybe a simpler way, if we tore down one of the houses, we wouldn't be here. So the precedent that you're concerned about is precedent for what? Somebody with a single family residence --

    MEMBER SARETSKY: But I guess --

    MR. HULME: -- can't come in -- can get a side yard pool, as shown in these photographs, under the code. And if they want a greater setback than the code allows them to have the side yard pool -- side yard pools are permitted in this community, okay, these are all legal.

    MEMBER SARETSKY: But I'm only worried that there's another home that's being subdivided, or is being proposed to be subdivided, just like yours, and it's going to be -- you know, if I were them, I would be looking for a mirror image of the same, the same deal. In other words --

    MR. HULME: But then how many -- how many examples of this are there? None.

    MEMBER SARETSKY: No, no. There's one more we're awaiting right now, right, Joe?

    MR. PROKOP: Yeah.
MR. HULME: So there's two.

MEMBER SARETSKY: I know, but I'm just trying to think.

MR. HULME: So that, to me, that's not a floodgate, that's --

MEMBER SARETSKY: Okay.

MR. HULME: That's a little bitty thing and --

MR. PROKOP: Well, that's for the Board to decide.

MR. HULME: Right. No. Well, I'm just expressing my opinion. You guys know that I'm expressing my opinion.

MR. PROKOP: Aram, if this was -- if this was a single and separate house --

MR. TERCHUNIAN: Yes.

MR. PROKOP: -- this one house in the back, would this -- would they need a variance for this?

MR. TERCHUNIAN: No.

MR. PROKOP: Why?

MR. TERCHUNIAN: Because pools are allowed in the side yard.

CHAIRMAN GESSIN: There's no restriction in the side yard.

MR. HULME: And because your Building
Inspector says so.

MR. PROKOP: Doesn't that say that it -- doesn't the code say that it's not and --

MR. HULME: The code, your code says that you cannot put a pool in a required side yard.

MR. PROKOP: Right. Doesn't it say that you need a -- that's -- so doesn't that mean that you can't have a pool in the yard?

MR. TERCHUNIAN: No, because the required side yard, for example, would be the Three-Tenths Rule. So you would take -- wherever the three-tenths setback would place you, and that distance would be the required yard, the required side yard.

MR. PROKOP: Is the main structure centered?

The main structure, just the house, is that centered?

CHAIRMAN GESSIN: It's almost centered.

MR. TERCHUNIAN: Not exactly.

MR. PROKOP: Okay. So why isn't it the Four-Tenths Rule?

MR. TERCHUNIAN: But it would be with this addition of the deck.

CHAIRMAN GESSIN: The numbers are on this side.
MR. TERCHUNIAN: Oh, okay.
CHAIRMAN GESSIN: I'm sorry. There's an eight here someplace.
CHAIRMAN GESSIN: Oh, that's why. Yeah, he's right. Okay, there's the 8. Where's the 8?
MR. PROKOP: Did you find the notice?
MS. SADELI: I don't have it in here.
CHAIRMAN GESSIN: It's a little bit off center.
MR. TERCHUNIAN: This is 17 and 11. No, 11.5 and 11.5 to the decks. And then to the house is 20 and 24. Here's the 24, right here.
CHAIRMAN GESSIN: Right, right.
MR. TERCHUNIAN: So the side yard setbacks for the house are 20 to the east and 24 to the west.
MEMBER SARETSKY: So, Aram, just explain, if it's not centered, like Joe's saying, does that mean that it falls under the Four-Tenths Rule now, something different?
MR. TERCHUNIAN: I'm just looking it up.
MR. PROKOP: So you think the -- Aram, you think that this -- the reason, it's because they need a -- it's because they have a non -- the house is a nonconforming use, so they, when they
expand it, it's -- what about the house is nonconforming?

MR. TERCHUNIAN: Well, it's not the house, it's the fact that you have two houses on a single family lot makes it nonconforming.

MR. PROKOP: But we granted the subdivision.

MR. TERCHUNIAN: Yes, but the subdivision hasn't come into effect. So, at the moment, it is still nonconforming. Had the subdivision come into effect, and without the condition of this Board on their previous decision, they could have gone and gotten the permit for this pool.

MEMBER SARETSKY: Okay.

MR. TERCHUNIAN: Because you reserved the right.

MEMBER SARETSKY: No, I understand.

MR. TERCHUNIAN: This Board reserved the right and said, "Go get your subdivision. Even after you do a subdivision, if you want to do something on this lot" --

CHAIRMAN GESSIN: He's still coming back.

MR. TERCHUNIAN: -- "you've got to come back to this Board."

MEMBER SARETSKY: But what happens -- because they're still trying to get the
subdivision --

MR. TERCHUNIAN: Right.

MEMBER SARETSKY: -- what happens if we approve it and then they don't get it?

MR. TERCHUNIAN: Then they don't get it.

MR. HULME: Then we can't subdivide.

MR. TERCHUNIAN: Then you can't -- they can't subdivide.

MEMBER SARETSKY: But I'm saying, if it's a nonconforming -- maybe I'm saying this backwards. If it's a nonconforming lot --

MR. TERCHUNIAN: It's not a nonconforming lot. The lot is conforming. It's a parcel of land within the Village. It's how many square feet?

MR. PROKOP: Well, the Board of Trustees never voted on this, right?

MR. TERCHUNIAN: No.

MR. PROKOP: So they don't have a subdivision. So Aram's right, it's a nonconforming -- it's still a nonconforming use, right?

MR. TERCHUNIAN: On a conforming lot. The lot conforms, the land is okay. It's the -- single family residence means there's one house on
one lot. This is two houses on one lot, so
there's a two-family residence. So that's the
nonconformity.

MEMBER SARETSKY: I guess what I'm saying in
a weird way is just why wouldn't we just wait
until that piece gets done? I think --

MR. TERCHUNIAN: Because it's going to take
two or three years and they want to swim in the
pool before that.

MEMBER SARETSKY: I know, but, I mean --

MR. TERCHUNIAN: Well, but that's the
applicant's right to ask, and it's your --

MEMBER SARETSKY: Okay.

MR. TERCHUNIAN: And it's your duty to
evaluate.

MEMBER SARETSKY: I'm just trying to
understand how it affects us and West Hampton
Dunes, not the applicant.

MR. TERCHUNIAN: Yeah.

MEMBER SARETSKY: If we approve something, a
variance, and then it doesn't -- the subdivision
doesn't go through.

MR. TERCHUNIAN: Then they have -- then they
have a pool. I mean, that's --

MR. PROKOP: Are there any pools within five
or eight -- 500 feet of this that are within 11 feet of the property line, side yard?

MR. HULME: I don't know.

MR. PROKOP: I mean, the side --

CHAIRMAN GESSIN: Yeah, next door.

MR. HULME: There are plenty of side yard pools, but --

MR. PROKOP: Pardon me?

CHAIRMAN GESSIN: Next door. 844 is within 11 feet of the property line.

MR. PROKOP: 844?

MEMBER SARETSKY: But that pool is on the back of the house.

CHAIRMAN GESSIN: Yeah, but that's not what he asked.

MEMBER SARETSKY: Okay.

MR. TERCHUNIAN: But, you know, front, back or side --

MEMBER SARETSKY: Okay.

MR. TERCHUNIAN: -- our code doesn't distinguish.

MEMBER SARETSKY: Okay.

CHAIRMAN GESSIN: All right.

MR. FREEDMAN: I mean, what's a little frustrating on my end is when I went in for the
subdivision, I had gotten a sense from the Board that, "We really don't want you to build a McMansion." You know, "We wouldn't have a problem with the pool." And then I waited four or five months, then I spent about $15,000 to get all the things that you wanted to do, I think, and, you know. I'm hopeful that -- you know, the neighbor rents his house out, and he'd like me to start after Labor Day. So I'm hoping to get the piles in, so I can get that done, so it's not disruptive to the -- you know, to the neighbor. So I'm hopeful.

MEMBER SARETSKY: With all due respect, I think we've been -- at least I see myself as being incredibly generous going along with what we've -- all the things we've done. So, again, we're here, and I'm here on my personal time, to try to help accommodate this.

MR. FREEDMAN: No, I appreciate it.

MEMBER SARETSKY: But I appreciate your position, but --

MR. FREEDMAN: I'm not criticizing you, I appreciate it.

MR. HULME: No. Let's go back. Let's put this in its simplest form.
CHAIRMAN GESSIN: Okay.

MR. FREEDMAN: We submitted an application to the Building Inspector. The Building Inspector reviewed the application and came to the conclusion that we met all of the setback requirements in the code, and that the only reason we needed -- well, setting aside that you told us we had to come back, the only reason the Building Inspector is sending us back to the Zoning Board on this particular issue is, as advertised, for the Section 560-52(B)(1), which allows this Board to grant this relief that we're looking for based on certain -- how much we're expanding, the density, etcetera, etcetera, etcetera. We've reviewed all that.

So the -- I think you have to take as fact that the pool meets the setback requirements, because that's the Building Inspector, whose job it is to interpret the code, has ruled that.

And if there were -- again, if there were not a second house on this property, we would not be here. The Building Inspector would have issued us a building permit for this pool and we would have built it. So I don't know how more simply to say it. You're -- we're talking about --
MR. PROKOP: Well, what's important here is to note, when the Board has an application, the -- so the Building -- the Building Inspector ruled on something that got you here.

MR. HULME: Right.

MR. PROKOP: But once you're here, it's up to this Board, it's a de novo review. So it -- whatever he determined in the beginning doesn't really matter, because this Board can --

MR. HULME: With all due respect, I disagree.

MR. TERCHUNIAN: But the code gives this Board guidance. There are four criteria in the code under this section. Do you have the section of the code?

MR. HULME: I have the criteria, but not the section. There is expansion, there's a 50% expansion cap. In this case, we're expanding 21%. There's a change in parking. We're not changing the parking requirement or the parking load on this property. There's a lot coverage limit, that it has to meet the code, which is 20%, and it is 17.3%. And there is a density. Does this application or the granting of this application change the density of the neighborhood? We have
two houses before, we'll have two houses after.

It's exactly the same thing.

So I think on all four legs, we meet the requirements of this code section, that the Building Inspector sent it here to evaluate.

MEMBER SARETSKY: I mean, how do I look at the information from the Building Inspector to confirm what he said?

CHAIRMAN GESSIN: Well, we have to assume he's not an idiot and --

MEMBER SARETSKY: No, I'm assuming --

(Laughter)

MEMBER MIZZI: Assume he's not what?

CHAIRMAN GESSIN: No. No, but seriously, going back to the --

MEMBER MIZZI: Assume he's not what?

MEMBER CASHING: An idiot.

CHAIRMAN GESSIN: -- original approval --

MEMBER MIZZI: Oh, okay.

CHAIRMAN GESSIN: Okay. Going back to the original approval, really, all we were trying to do was prevent someone from getting an approval and not following through with their requirements, and I don't think that's the case here. I think, initially, they may not have, but they currently
are. Okay. And that's really -- that's really all I think our powers are for, is to -- in this case, is to make sure that they do what they promised they would do, because we did what we promised we would do.

MR. HULME: And if we want to flip the precedent, and I know you're concerned about precedent, but the precedent that you set between whatever you decide here and the other Zoning Board application that you approved, is that you're allowed to impose a whole bunch of conditions that we have to meet in order to -- in order to get the relief. So if somebody does come down the road, if there is another one in the pipeline, it is not -- it would not be -- it would be appropriate, in fact, not only not inappropriate, but appropriate for you to impose similar kind of conditions if you would decide to grant them, and I don't know the facts and circumstances of that case, to grant them the same kind of relief.

So I think you're -- if you're creating a precedent, you're creating a precedent that gives you a lot of latitude as to what you can require in return for granting the variance. And I think
in this particular case, the relief that we're looking for meets the requirements of the code section that the Building Inspector identified as the need for relief.

MR. TERCHUNIAN: Eric, if you care to read it for yourself.

MEMBER SARETSKY: No, I believe you.

MR. TERCHUNIAN: No. Well, I mean, it's -- I always like to read it. This is the Village Code. Section 560-52(B) has four sections, and this is the criteria that the Village Board adopted to give this Board the guidance as to how to deal with this type of application.

MEMBER SARETSKY: So let me simplify my question. If you're telling me that what they're asking for is -- doesn't require a variance really in any way, and the only reason that we're required to have a variance is because of the --

CHAIRMAN GESSIN: Well, they're not seeking a variance.

MEMBER SARETSKY: Special permission, whatever we're calling it, I mean, and I'm just -- again, what's your recommendation, Aram?

MR. TERCHUNIAN: Well, I won't make a recommendation, I'll say this. If you're
concerned about a precedent of putting a pool in the side yard, there is -- there is no concern, because the Village Board has already established the precedent that you're allowed to put a pool in the side yard, okay?

If you're concerned that the pool in the side yard is too close to the adjacent buildings, then you would look to the requirement that you can't put an accessory structure in the required side yard. In this case, the required side yard is 11.5 feet. The pool is not going in the required side yard, it's going outside of that.

If you're concerned that the expansion of the pool on the property is too much, it's less than 50%, which you're allowed to authorize up to 50% based upon the specifics of this case in front of you.

So, I mean, those are the way -- that's the way I look at this, I just break it down by the numbers.

MEMBER SARETSKY: Okay.

MEMBER CASHIN: Jim, is there a landscaping plan?

MR. HULME: Yeah, we submitted that. And what we added --
MEMBER CASHIN: Where are the --

MR. HULME: The pool is here, and this is all new proposed.

MEMBER CASHIN: Right. Okay. These are existing, these three?

MR. HULME: Yeah.

MEMBER SARETSKY: So while he's looking at that, just to go back to the question I asked earlier, if for some reason or other the Board of Trustees doesn't vote on this subdivision, or whatever it is, and it doesn't happen, and this group authorizes them to have a pool, it wouldn't really matter, because the pool would be --

MR. PROKOP: So, yeah. So what I think is happening here is -- right. So what I think is happening here is you have an application for a variance to put a pool in a side yard. I think it should be -- I think it should have been used -- the Fourth-Tenths Rule should have been used, not the Three-Tenths Rule. But I think that there's enough description in the public notice that was used that the Board has jurisdiction to grant the setback relief that's necessary.

With regard to Aram's comment, that they're not looking for a variance because it's an
expansion of a nonconforming use, that is -- that
is a variance. And the section that Mr. Hulme and
Aram are relying on actually says specific
variances as this had. So I think it is a
variance that they're looking for.
So it's a variance, and it's also -- it's
something that the Board can consider today.
Because it's something that the Board can consider
today, I think what you should do is to go through
the -- he may abandon the subdivision, right?
So -- or it may -- it many not be approved or he
may abandon it.

I think that there is a precedent here for
not only the other one or two two-house properties
that are going to be before you, but also on other
properties in the Village, and -- but that's
something that you need to take into -- and that's
something you should take into consideration.

But I think because you have the
jurisdiction to look at it, I don't think it has
anything to do with what the Building Inspector
did. He got it here, and then his job is over,
basically, so you shouldn't take that into
consideration.

You should go through the five criteria with
regard to the application, and that's my recommendation, being, you know, the impacts on neighbors, and things like that.

One thing which is relevant is that you have -- it has been mentioned to me by the Village that there's a problem with the landscaping that was provided in the last pool application that we did. There's some kind of issue now that's arising, so we just have to be careful with what --

MEMBER SARETSKY: This is the one on Cove Lane?

MR. PROKOP: -- happens.

CHAIRMAN GESSIN: What's the issue?

MR. PROKOP: There's -- we have to -- we have to -- I think there are signs that have been put on the property, and things like that.

CHAIRMAN GESSIN: Oh.

MR. TERCHUNIAN: Not anymore.

(Mlaughter)

MR. PROKOP: So you might just mention that.

CHAIRMAN GESSIN: That's good to know.

MR. HULME: Before you do that, if it gives you any comfort at all, and Joe is correct, we may
abandon -- we don't plan to abandon the
subdivision, but it could be denied. We have no
difficulty with the conditions that were imposed
there becoming the conditions that are imposed
here, if you choose to grant this relief. And, in
fact, the materials that we provided you I think
are in satisfaction of really those conditions,
and I think we have satisfied all those
conditions. But we have no difficulty at all in
retaining the condition -- the requirement that
those conditions being met as part of any relief
that you might grant here. So that in case this
subdivision is abandoned, you've still protected
yourselves and your Village in the way that you
intend.

MR. FREEDMAN: And, also, you had requested,
even though it doesn't affect this, that I go
ahead and get a separate water meter, because
that's what I had planned -- I needed to do for
the subdivision. So even though it doesn't affect
the pool, I went and, you know, did it and
committed to that. If I get turned down by -- at
this point, by the DEC or by the Trustees, I've
now gotten a second water meter that I wouldn't
have needed. But I went and did it, because, as a
requirement of the zoning, they said, "We want to see that you are, you know, moving forward and doing things," so I went and did that as well.

MR. PROKOP: The proposed -- that condition on the other side, is that part of this application, too?

MR. FREEDMAN: I was asked to remove it.

MR. PROKOP: Okay. And you need --

MR. HULME: I think you have an earlier version of it.

MR. PROKOP: And you need a lighting plan and a landscape plan.

MR. HULME: Well, we submitted the light --

MR. FREEDMAN: We did that.

MR. HULME: -- a photograph of the light location.

MR. PROKOP: You have a picture of the house with an arrow that says --

MR. HULME: And we showed the lights as well.

MR. PROKOP: Oh, you did. Okay, great.

MR. HULME: We showed the type of light.

MEMBER CASHIN: Who enforces the landscaping plan once we approve it? Who makes sure that --

MR. PROKOP: The Building Inspector.
MEMBER CASHIN: He gets this and makes sure they cover it?

MR. PROKOP: He's supposed to.

MR. KRASNOW: Can I ask a question, comment?

CHAIRMAN GESSIN: Sure.

MR. KRASNOW: If Mr. --

MEMBER CASHIN: Can you identify yourself for the --

MR. KRASNOW: Sure. Irwin Krasnow. I live at 929 Dune Road.

If Mr. Freedman was further ahead with his, quote, subdivision, or if he had his subdivision granted, he could have his pool without coming to this Board, correct, from what I understand?

MR. PROKOP: No, he'd have to -- it would be -- if it had been approved.

MR. KRASNOW: If his subdivision was approved, he can have the pool without coming to the Board; is that correct, based upon what --

MR. PROKOP: I don't think so.

MR. HULME: Based on the code itself, yes.

MR. KRASNOW: Right. That's --

MR. HULME: But based on the decision that this Zoning Board made in granting us the relief that we needed for the subdivision, they
conditioned that relief on our returning to them if we made any changes.

MR. PROKOP: So the Village --

MR. KRASNOW: It was my understanding that any house that has a pool on it --

MR. PROKOP: The Village Attorney's position is that no. I stated that before. The applicant's position is that you just heard, whatever that was. My position is that he would need a variance.

MR. KRASNOW: Even if the houses were a subdivision?

MR. PROKOP: Even if it was a --

MR. KRASNOW: Separate lot?

MR. PROKOP: Yeah, because I think the Four-Tenths Rule applies, not the Three-Tenths Rule.

MR. HULME: Well, all these photographs suggest that side yard pools as a general --

CHAIRMAN GESSIN: That's not -- that's not what he said.

MR. PROKOP: Do you have the lighting plan?

MR. HULME: What did he say?

CHAIRMAN GESSIN: He's talking about the Four-Tenths Rule now.
MR. HULME: Right. Oh, true.

MR. PROKOP: To have a picture of the side of the house, that says "Proposal"?

MR. FREEDMAN: I also attached the lights.

There are just four lights on the side of the house. That's all that I'm doing, and we're already there. I have a picture of it.

MR. HULME: This is what we were asked to produce, and this is what we produced.

MR. PROKOP: Aram, don't they usually -- don't people usually have the -- isn't there a lighting person that you're supposed to go to to get -- a lighting consultant to show -- I think I've seen it before, somebody comes with a picture of the house and it has the lights on it.

MR. TERCHUNIAN: We don't -- the Village doesn't have a specific lighting code. It's --

MR. PROKOP: Yeah, we do.

MR. TERCHUNIAN: Do we?

MEMBER SARETSKY: I thought it was the Town of Southampton's code or something.

MS. SADELI: We adopted it.

MR. TERCHUNIAN: Oh.

MEMBER SARETSKY: We adopted it.

MR. TERCHUNIAN: I stand corrected.
MR. FREEDMAN: I was just putting in four lights on the side of the house, so it's not -- and here's a picture, an example of the light, because I thought -- my thinking was that you would want minimal lighting so it didn't disturb the neighbors, so that's why it's just enough --

MR. PROKOP: It's supposed to serve as shielding and the scope --

MR. FREEDMAN: Right.

MR. HULME: Well, for the record, we can say that whatever lighting we do install, we'll comply with the recently adopted code.

MR. TERCHUNIAN: But when you put in your building permit, you're going to have to provide them --

MR. HULME: Right.

MR. TERCHUNIAN: -- with the specific fixtures and demonstrate compliance.

MR. FREEDMAN: Right.

MR. HULME: We were -- the request to us was to show us where you're going to put the lights and what light fixture you're going to put, and that's why we submitted what we submitted. We understand that when -- if we get to the point where we're going to get a building permit,
we'll have to prove compliance with the Village Code for lighting. And what I am saying for the record is that we are not seeking a variance from that section of the code. Whatever that code says is what we're committing to do.

MEMBER CASHIN: Did you have a question that you wanted to ask?

MR. KRASNOW: No. I just was trying to understand, since the issue kept being that they have two houses on the lot is why they're here, as opposed to if they had one house. One house on the lot would be as-of-right, and he talked about subdividing. It seems like, eventually, if a subdivision is approved, he would be getting this anyway, without having to go to the Board for the pool. And, you know, why -- and, again, I'm not his -- I just met him today. Like why make him wait a couple of years to do that if it's kind of an as-of-right customary and similar use in the rest of the Village?

You know, I'm a couple of doors down from like 921, like he said, and they put this beautiful pool on the side, and I didn't think it was an issue. I mean, I'm not the direct neighbor, but they do overlook my house, but I
didn't see that as a big deal. I thought it was -- they did a beautiful job building the house that he mentioned, Joe mentioned.

   MEMBER CASHIN: Thank you.
   MR. PROKOP: It was a condition, right?
   MEMBER SARETSKY: It was a condition of what this Board came up with, so that's why they're here.

   MR. HULME: Right. Well --
   MR. PROKOP: One way or the other, they were going to come back.
   MR. TERCHUNIAN: One way, one way or the other.
   MR. HULME: One way or the other, we were coming here.

   (Laughter)
   MR. PROKOP: We may disagree, but here they are.

   MR. HULME: If we tore down the house and abandoned the subdivision, we wouldn't be here.
   CHAIRMAN GESSIN: That's right.
   MR. HULME: And how do we know that?

   Because --
   MR. PROKOP: Is there any chance of that?
   MR. HULME: Huh? No, there's no chances of
that at all, although.

(Laughter)

MR. PROKOP: We'll name the -- we'll name, you know, something after you, the Freedman Memorial.

MR. FREEDMAN: Oh, my gosh.

MR. HULME: No, no memorials. He's still alive, he's going to be living for a long time.

MEMBER CASHIN: The Freedman Precedence.

MR. HULME: The Freedman Syndrome.

(Laughter)

MR. TERCHUNIAN: I think -- you know, Jim, talk about the four criteria that are in 560-52(B), but there are still are the five criteria of any variance. So maybe you want to just put that on the record for the Board.

MR. HULME: All right. Well, in my written submission it was covered, but I will talk about it.

Undesirable change in the character of the neighborhood. This Village is full of houses with pools. We're not effectively changing any, any character of the neighborhood by adding --

MR. PROKOP: I'm not, I'm not challenging you. And not disrespectfully, but do you know, do
you know the properties that have pools in the
side yard?

MR. HULME: We've listed six of them and
gave you addresses.

MR. PROKOP: You listed six of them. Okay,
pardon me.

MR. HULME: We gave photographs with six
pictures and six addresses.

MR. PROKOP: Okay. Thank you.

MR. HULME: And so they are merely
representative of the fact that there are side
yard pools.

Adding this pool -- the character of this
neighborhood is really influenced by the fact that
we have two legal houses, and won't be at all
affected, I don't think, by the addition of a
pool. We haven't changed the degree of
nonconformity. A pool is a permitted accessory
structure throughout the Village, subject,
Obviously, to setback requirements and code
requirements. But the addition of this pool
wouldn't produce an undesirable change.

And then, also, under that section, I
reviewed the criteria of 560-52(B)(1), which
talked about the expansion of the parking lot
coverage and the density, which is the code
section that deals with the expansion of a
nonconforming use, which is one of the other
reasons that we're here, and as I've discussed, we
meet all of those.

Other feasible methods, we don't believe
there is any other method, taking into
consideration all of the regulatory agencies that
have jurisdiction over this, other than the
location that we have placed the pool.

The substantial nature of the variance, we
have a discussion or a disagreement whether the
Four-Tenths Rule or the Three-Tenths Rule applies.
But in the case of the Three-Tenths Rule applying,
it's not -- I would suggest that it's not
substantial, because we meet the requirement of
the code for the setback. Even if the Four-Tenths
Rule applies, we're talking about --

MR. TERCHUNIAN: Twelve feet.

MR. HULME: Twelve feet is the setback.

MR. TERCHUNIAN: (Nodded yes)

MR. HULME: So we're talking about a foot,
or half less than a foot.

MR. TERCHUNIAN: Half a foot.

MR. HULME: Point-four feet, actually,
because we're at 11.6.

MR. PROKOP: If the Four-Tenths -- that's a good point.

MR. HULME: If the Four-Tenths apply, we're talking about .4 feet of variance, which I would suggest --

MEMBER SARETSKY: Can I ask a question?

MR. HULME: -- is de minimus.

MEMBER SARETSKY: Does that help us with the fact that if it was to use the Four-Tenths Rule, that -- in other words, how do we decide which is which, in other words, which is the one that --

MR. TERCHUNIAN: Well, I think that you go by the guidance of the Building Inspector. And if you're talking about, well, four-tenths of a foot, that's within the discretion of the Building Inspector to grant.

MEMBER SARETSKY: Okay.

MR. PROKOP: So I think that one of the -- when somebody's looking for an expansion of a nonconformity, one of the things that is taken in consideration is whether -- how much relief that would be compared to if it was complying with the law. So the fact -- if he's right, somebody should confirm it --
MR. TERCHUNIAN: I checked it.

MR. PROKOP: Checked what?

MR. TERCHUNIAN: The four-tenths, I did the numbers.

MR. PROKOP: It's at half a foot?

CHAIRMAN GESSIN: Yeah.

MR. PROKOP: So one of the things about the application is he's --

CHAIRMAN GESSIN: Point four.

MR. HULME: It's .4 feet, actually. Let's beat that.

(Laughter)

MR. PROKOP: If you follow that, if it was just the regular houses, the question I asked a while ago is if it was just a stand-alone house, single and separate on the lot, what would the -- what would -- how would the zoning impact it. So he would be here for less than a foot variance, apparently.

MR. HULME: Yes, 4.8 inches.

MR. PROKOP: And that includes the deck and everything else?

MR. HULME: Yes.

MR. PROKOP: There's no catwalk or anything?

MR. HULME: No.
MR. PROKOP: So there's conditions. If you start to consider this, there's conditions that you can impose regarding location of the equipment, the buffering, and fencing, and things like that. And I would require a lighting plan, and a proper lighting plan that conforms with our code, and also a landscape plan, before the decision takes effect.

MR. HULME: We submitted the landscaping plan already, but --

MEMBER MIZZI: Can I ask a question? So the house is centered or not?

MR. PROKOP: The house is not centered.

MEMBER MIZZI: So the decks are centered, but the house is not centered?

MR. PROKOP: The main -- our code refers to main structure.

MEMBER MIZZI: Right.

MR. PROKOP: It's my opinion that the main structure is the same as --

MEMBER MIZZI: I understand. I'm just trying to get -- because this is 20.6 to the house from the one property line. I'm just trying to understand what's the dimension from the other property line.
MR. PROKOP: It's 20 feet and 24 feet for the house. Somebody looked at that before.
CHAIRMAN GESSIN: He's .4 feet off.
MR. PROKOP: So it's 20.4? It's 20 and 20.4, or is it 20 and 24?
CHAIRMAN GESSIN: Twenty and --
MR. TERCHUNIAN: It's 20.6 on one side, and 24.4 on the other.
MR. PROKOP: Okay.
MEMBER MIZZI: That was my question. Oh, yeah, 16.4 and 8, I see it.
MR. TERCHUNIAN: Uh-huh. That's cheating, Joe, not using glasses. You say you don't need glasses, and you're using your phone as a magnifying glass?
(Laughter)
MEMBER MIZZI: Yeah, I had to. This thing is so small.
MEMBER SARETSKY: I can't see it with -- I can't see it with glasses.
MEMBER MIZZI: It looked centered to me.
(Laughter)
MEMBER CASHIN: It's 16.4 and 9, not 8, right?
MEMBER MIZZI: Eight.
MR. HULME: Well, we would certainly encourage you to conclude that it is centered. But if you conclude that the Four-Tenths Rule applies, rather than the Three-Tenths Rule, then we need a --

MR. PROKOP: Joe, do you have something to say?

MR. HULME: We need a variance for 4.8 inches --

MR. PROKOP: Did you have something else?

MR. HULME: -- to meet that requirement

MEMBER MIZZI: That was my question.

MR. HULME: Is there anything else we can --

MR. PROKOP: So this is a public hearing, and you sent the notices to the --

MR. HULME: Yup.

MR. PROKOP: -- neighbors, right?

MR. HULME: Yup.

MR. PROKOP: So can you just give copies to Angela at some point?

MR. HULME: We just filed an Affidavit of Service earlier this week.

MR. PROKOP: And so your options now are to close the public hearing, or adjourn the public hearing, keep it open. And then, if you choose to
1 close it, then you can reserve decision or make a
2 decision, it's up to you.
3
4 MEMBER SARETSKY: What were the items that
5 you wanted? They provided a landscape plan. You
6 said they should have a lighting plan?
7
8 MR. PROKOP: We need a lighting plan to --
9
10 MEMBER SARETSKY: What was -- there was
11 something else.
12
13 MR. PROKOP: That's it, landscaping and
14 lighting.
15
16 MR. FREEDMAN: Is there any way I could --
17 if you're ready to make a decision, potentially,
18 just be subject to getting approval from the
19 Building Department for a lighting plan, so I
20 don't have to have, you know, have another meeting
21 and go through the process that really --
22
23 MR. TERCHUNIAN: Well, just from a
24 procedural point of view, it's much cleaner if the
25 Board gives the Attorney the direction --
26
27 MR. FREEDMAN: Oh, I'm sorry.
28
29 MR. TERCHUNIAN: -- to write a decision,
30 which is going to take some time to do, and that
31 provides you the opportunity to submit a lighting
32 plan.
33
34 MR. PROKOP: I'm kind of backed up. I'm
working on decisions from 2017.

(Laughter)

MR. HULME: I'll write the decision for you, Joe.

(Laughter)

MR. PROKOP: Okay. I think this is -- this will -- well, we need a decision before we do it.

MR. HULME: I would ask that, unless there's any other questions, that the Board at least close the hearing today. We will -- as a condition of a decision, we will provide a lighting plan in the interim.

MR. TERCHUNIAN: You can -- you can close the hearing today and leave the record open for 15 or 30 days for the opportunity, the sole purpose of them submitting a lighting plan, and, also, at the same time, instruct your attorney to provide you a written decision.

MEMBER SARETSKY: You guys agree, that's best?

MEMBER CASHIN: I think so.

MEMBER MIZZI: (Nodded yes)

MEMBER SARETSKY: Okay.

MR. PROKOP: Yeah, I think that's good enough.
MR. TERCHUNIAN: You need a motion and a second and a vote.

MEMBER SARETSKY: So could I get a motion to --

MR. PROKOP: Close the hearing.

MEMBER SARETSKY: Close the hearing?

MEMBER CASHIN: Motion to close the hearing.

MR. PROKOP: We need a second.

MEMBER MIZZI: (Raised hand)

MR. PROKOP: And then all in favor?

MR. TERCHUNIAN: So Joe. So Joe Mizzi. You have Jim Cashin, Joe Mizzi.

MR. PROKOP: All in favor of closing the hearing?

MEMBER CASHIN: (Raised hand)

MEMBER MIZZI: (Raised hand)

MEMBER SARETSKY: (Raised hand)

MR. TERCHUNIAN: Unanimous.

MR. PROKOP: And --

MEMBER CASHIN: He's recusing.

MR. PROKOP: Yeah, Harvey recused himself. And then -- okay. So the next -- the motion that Aram and I recommend is that we -- the Board reserve decision and -- the Board reserve decision and instruct the Village Attorney to start working
on a decision that will be presented to the Board for consideration at its next meeting.

MEMBER CASHIN: I so move.
MEMBER SARETSKY: Second.
MS. SADELI: All in favor?
MEMBER SARETSKY: Aye.
MEMBER MIZZI: (Raised hand)
MEMBER CASHIN: (Raised hand)
MR. TERCHUNIAN: Okay. Let's go to the beach.

(Laughter)

MR. HULME: You want a lighting plan.
MR. PROKOP: Excuse me for one second. If you have anything that you want, since we're here in open session, if -- we're still here in open session, meaning if had anything you want to discuss about the impacts, because we still have those five impacts to consider, is there anybody that wants to say anything about those, because it's important that those are in.

MEMBER CASHIN: Okay. No. Just as a reminder, though, there's -- the way I understand our decision-making process, we can disagree with one of those, but if the total of the criteria outweigh the one we disagree with, then we can --
MR. PROKOP: It's a balance.
MEMBER CASHIN: We can vote accordingly
MR. PROKOP: Yes, it's a balance on -- you could disagree with two of them.
MEMBER CASHIN: Right.
MEMBER SARETSKY: Okay.
MEMBER MIZZI: Is it too late for me to comment on something?
MR. PROKOP: No.
MEMBER MIZZI: I think the logic is sound relative to, you know, equipment. Like I -- but I do feel a little uncomfortable that we're receiving a letter from one neighbor saying, "I'll approve it if you put a" -- you know, if you put the equipment next to the other neighbor, because it feels like someone could go back later in the records and say, you know, the Zoning Board got involved in approving equipment someplace. And, you know, I'd rather not be a party to that, to be honest with you, because if my neighbor got relief from the Zoning Board to move equipment to my side of the house, and I read it back later, I would be upset with the Zoning Board.
MR. PROKOP: Well, my recommendation normally is that the equipment have a buffering.
MEMBER MIZZI: Right.

MR. PROKOP: It could be buffered with some kind of, you know -- you know, I hate to say wall, but some kind of a configuration to buffer. Normally, we --

MR. HULME: We could even -- we could even --

MEMBER MIZZI: I guess what I'm saying is I would be --

MR. HULME: You could dig a hole and put it below.

MEMBER MIZZI: I almost feel like we should --

MS. SADELI: Just one at a time. She can't -- she can't take that.

MEMBER MIZZI: I'm sorry. I guess what -- I feel like maybe we should go on record in saying we are not party to any, you know, like --

MR. PROKOP: You're on the record.

MEMBER MIZZI: Okay. But what I'm saying is, you know, I guess I meant in our response, that we're not party to any of these agreements between, you know, the homeowner and these neighbors, because it feels to me like we've presented -- we've been presented with something
that's a provisional approval, as long as we allow equipment to go on the other side of someone else's house, and I would prefer that that's not something I'm involved in.

CHAIRMAN GESSIN: Yeah, but the letter didn't say that, did it?

MEMBER MIZZI: That's what it says.

CHAIRMAN GESSIN: It says that the equipment had to be on the other side?

MEMBER SARETSKY: Yeah, it says here.

CHAIRMAN GESSIN: Oh, I missed that.

MR. FREEDMAN: We probably can get the neighbor to say he doesn't care about that.

MEMBER SARETSKY: Well, that may be more helpful to our --

MR. HULME: We can probably get a letter to that effect.

MR. FREEDMAN: The neighbor, we're very close. They have their own equipment there. I don't think he'll care, but I was afraid to like offer it and --

MEMBER MIZZI: No.

MR. FREEDMAN: If you think that I should --

MEMBER MIZZI: I guess --

MR. HULME: And the other thing that should
give you comfort is that that neighbor has been
invited to every hearing that we've held.

MEMBER MIZZI: No. One thing is --
MR. HULME: Personally invited.
MEMBER MIZZI: Understood.
CHAIRMAN GESSIN: And that neighbor has
their equipment mounted on the west side.
MR. HULME: Right.
MR. FREEDMAN: On the side next to my house.
MEMBER MIZZI: I'm just saying, is that I
just -- like I just would prefer not to be party
to this horse trading.
MR. PROKOP: Yeah.
MR. HULME: And you're not subject to
that -- that's a letter that we got to try to give
you some comfort, but the Board is certainly not
subject to whatever is characterized in there.
You're going to -- if you're going to approve this
and you're going to render a decision, I'm sure
that there's going to be a condition in what Joe
prepares as to what, where and how we can put
the --
MEMBER MIZZI: That's my point.
MR. HULME: The machinery.
MEMBER CASHIN: But there's no requirement
in the Village not to have the equipment in the side yard.

MEMBER MIZZI: No. Yeah. I'm not saying that, I guess. I guess, is I just wouldn't want the appearance that 846 was, you know -- was supporting this because we were agreeing to move equipment to the other side next to someone else's house.

MR. PROKOP: Yeah. So I -- that's a -- I think the Building Inspector has -- yeah, I don't want to say anything about that in public, actually, about the equipment, but it could be part of your decision.

MR. HULME: Tell us to put it wherever you want and we'll put it there, that's your purview. Okay? Thank you. Thank you very much.

MR. FREEDMAN: Thank you for your time, I appreciate it.

MR. HULME: Thank you. This is an interesting situation, and a difficult deliberation. I really appreciate your attention.

MR. FREEDMAN: Thank you.

MR. HULME: Joe, thank you.

MR. PROKOP: Okay. Thank you. Good job.

MR. FREEDMAN: Thank you for taking your
MEMBER MIZZI: Thank you.
MR. FREEDMAN: I know it's not where you want to be.
MEMBER SARETSKY: No problem.
MR. PROKOP: So is there anything you want to discuss? We're still in, I mean --
MEMBER CASHIN: Do you have any other matters before the Board?
MS. SADELI: That was it.
MR. PROKOP: I guess we resolved the matter with the other pool.
CHAIRMAN GESSIN: What other pool?
MEMBER SARETSKY: This was the one on Cove Lane?
MR. PROKOP: Yeah, Cove Lane.
MEMBER SARETSKY: I didn't even know there was an issue, but that was the last one we did.
MR. PROKOP: Aram, the issues with the Cove Lane, is there -- the Cove Lane pool that was approved, is there anything that has to do with this Board?
MR. TERCHUNIAN: No. It was a Building Department sign issue. They put up a series of "No Trespassing" signs, which are not allowed in
the Village, so they were removed.

The landscaping in -- and they put -- you know, they did a 4-foot fence, and they did landscaping. They wanted to be very private, it's their right. But "No Trespassing" signs, gone.

MR. PROKOP: Okay.

CHAIRMAN GESSIN: So you want to close the hearing?

MR. PROKOP: The hearing's closed, the meeting's open.

Does anybody -- does anybody want to say anything about any of the five criteria, impacts on the environment, impacts on the neighborhood, impacts on the surrounding properties, the scope of the relief granted, and whether or not the impacts were self-created?

MEMBER SARETSKY: Well, I guess the impacts are self-created.

MEMBER CASHIN: The impacts are self-created, yeah.

MEMBER SARETSKY: It's definitely self-created.

MEMBER CASHIN: Almost all of them are that come before us.

MR. PROKOP: What about impacts on
neighboring properties?

MEMBER SARETSKY: There's definitely an impact, but it seems as if the person impacted is okay with it, right?

MEMBER CASHIN: Yeah. I'm not sure that's what the -- what the criteria say, but yeah.

MEMBER SARETSKY: No. I'm just trying to --

MEMBER CASHIN: Yeah.

MR. PROKOP: We'll have to do something with the equipment, that's all, see what they propose. And what about the changes and conditions in the neighborhood?

MEMBER SARETSKY: Go back to the equipment for a second. Why can't the equipment be in the middle?

CHAIRMAN GESSIN: In the back.

MEMBER SARETSKY: In the back, right?

CHAIRMAN GESSIN: I don't remember what their setbacks were.

MEMBER SARETSKY: No. But I'm saying, under their deck.

CHAIRMAN GESSIN: You can't go under, it has to go above, FEMA plus two.

MEMBER MIZZI: It's got to have air.

MEMBER SARETSKY: Exposed?
1 CHAIRMAN GESSIN: No, FEMA plus two.
2 MR. TERCHUNIAN: It has to be elevated above
3 the flood level.
4 MEMBER SARETSKY: Right, but the ones that
5 I've seen are under, under people's decks.
6 MEMBER MIZZI: They're not supposed to.
7 CHAIRMAN GESSIN: Those are the older ones.
8 MEMBER SARETSKY: Oh, okay.
9 CHAIRMAN GESSIN: We can't do that anymore.
10 MEMBER SARETSKY: The new ones have to be
11 exposed, okay.
12 MEMBER MIZZI: And they have to have air
13 around them circulating.
14 MR. TERCHUNIAN: Yeah, and --
15 MEMBER MIZZI: You can't put them underneath
16 anything.
17 MR. TERCHUNIAN: Yeah, and rained on,
18 because otherwise they rot.
19 MEMBER MIZZI: Right, you want the fresh air
20 around it.
21 MR. TERCHUNIAN: Either that, or you got to
22 sprinkle them.
23 MEMBER SARETSKY: I'm sorry. Go ahead, Joe.
24 MR. PROKOP: No. It's up to you. I'm just
25 trying to stimulate a discussion.
MEMBER CASHIN: My feeling is that the -- in my only personal opinion, is that the ones -- I think it would be four to one in favor on the criteria, in my mind, as I think through the criteria.

MR. PROKOP: Okay. All right. So I'll try to draft a decision, keeping that in mind, and you can -- we'll circulate it in common time.

MEMBER MIZZI: And I don't know if you guys agree with it.

MEMBER SARETSKY: Yeah. I mean --

MEMBER MIZZI: There's a couple of those that --

MEMBER SARETSKY: Listen, if between Aram and Joe, the answer is this is essentially as-of-right, and the issues that are related to it, there's no issue from the neighbor on the other side, I mean, it really just goes back to the fact that, to me, that it's not -- the subdivision isn't done yet, and this does have special conditions. And if it doesn't create a problem that we're approving the pool, whether he gets the subdivision or not, then I guess it's a moot point. I mean, is that fair to say? Or maybe not.
MR. PROKOP: I think the way to look at the application is the fact that to impose the Four-Tenths Rule, and see what -- you know, how everybody else would be impacted. See how it would be impacted if it was a stand-alone, one house on the property.

MEMBER MIZZI: How wide? How wide is the lot?

MR. TERCHUNIAN: Seventy-three feet.

MEMBER SARETSKY: I mean, if --

MEMBER MIZZI: So four-tenths versus three-tenths.

MEMBER SARETSKY: What were the inches you said?

MR. PROKOP: Is 7 feet.

CHAIRMAN GESSIN: Seven-five.

MEMBER MIZZI: Seven feet.

MEMBER SARETSKY: But are we saying that it's 4.8? In other words, if you use --

MEMBER MIZZI: So Three-Tenth -- yeah, the Three-Tenths Rule is you get -- it's versus Four-Tenths.

MR. PROKOP: Combined is three-tenths. So it would be 21 feet versus 28 feet, and you have to divide the two. So it would be --
MR. TERCHUNIAN: No. Four-Tenths is weird, because it's four-tenths of the lot width, and four-tenths of that number is the minimum, and four-tenths of that number is 12.

MR. PROKOP: Right.

MEMBER MIZZI: Say that again.

MR. TERCHUNIAN: So the Four-Tenths Rule is different, because it's four-tenths of the 75. So .4 times 75 is 30, and then four-tenths of 30 is 12. That's the minimum on the Four-Tenths Rule.

MEMBER SARETSKY: And you were saying that he's at 11?

MR. TERCHUNIAN: He's at 11-5 something.

MEMBER SARETSKY: So 4.8.

MEMBER MIZZI: So what's the Four-Tenths Rule? Four-tenths of the width of the property.

MR. TERCHUNIAN: And the minimum, that's -- the total side yard has to be four-tenths of the wetlands.

MEMBER SARETSKY: Both sides.

MR. TERCHUNIAN: Both sides. And then the minimum side yard is four-tenths of the total.

MR. PROKOP: So if we were the strictest that we could possibly be, it would still only
be -- we're talking about six inches or so.

CHAIRMAN GESSIN: Less than six inches.

MR. PROKOP: You know, if you disregarded --

MEMBER SARETSKY: It's 4.8, yeah.

MR. PROKOP: -- and listen to me, then it would be, whatever, six inches or four inches.

MR. TERCHUNIAN: Yeah, less than six inches.

MR. PROKOP: That's how I would view it.

MR. TERCHUNIAN: Yeah, which is -- you know, the Building Inspector is authorized under New York State Building Code to grant six inches of relief.

MEMBER SARETSKY: So wouldn't it behoove us to stay with the Four-Tenths Rule and let the Building Inspector do his thing?

MR. TERCHUNIAN: No. I think, you know, this is a superior Board, you have the most authority.

MR. PROKOP: I would probably put that in the decision, that the Four-Tenths Rule applies, but it's de minimus.

MEMBER SARETSKY: Right.

MR. TERCHUNIAN: So I agree.

MR. PROKOP: So that gives us guidance for the future.
MEMBER SARETSKY: If this just like comes up again, we did it by the book.

MR. TERCHUNIAN: You know it, yeah.

MEMBER SARETSKY: I mean, that would be sort of my position --

MEMBER CASHIN: I agree.

MEMBER SARETSKY: -- to do it.

MEMBER CASHIN: Move to close the hearing.

MR. TERCHUNIAN: Meeting.

MEMBER SARETSKY: Aye.

MEMBER CASHIN: Second.

MEMBER MIZZI: (Raised hand)

MEMBER CASHIN: All in favor?

MEMBER SARETSKY: Aye.

MEMBER CASHIN: Aye.

(Time Noted: 11:15 a.m.)
CERTIFICATION

STATE OF NEW YORK )
SS:
COUNTY OF SUFFOLK )

I, LUCIA BRAATEN, 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 July 27, 2019.

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 8th day of July, 2019.

__________________________
Lucia Braaten

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