INCORPORATED VILLAGE OF WEST HAMPTON DUNES
ZONING BOARD OF APPEALS

October 5, 2019
10:00 a.m.

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

MEMBERS PRESENT:
Eric Saretsky - Acting Chairman
Harvey Gessin - Member
James Cashin - Member
Kenneth W. Siegel - Member

ALSO PRESENT:
Joseph Prokop, 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:
Howard Freedman, Applicant
846 Dune Road, West Hampton Dunes
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(*The meeting was called to order, after the Pledge of Allegiance, at 10:10 a.m.*)

MR. PROKOP: I just wanted to check, at the end of this --

MEMBER CASHIN: What page, Joe?

MR. PROKOP: Yeah, I'll give you the page.

So I included a couple of things beginning on Page 3. The first is we had a discussion about the Three-Tenths versus the Four-Tenths, so I put that in here, that it's supposed to be -- the calculation was supposed to have been done under the Four-Tenths Rule, which ends up with minor encroachment, but that we determined that it was de minimus. It was like six inches, I think, is the way that it came out. So that's the end of the last paragraph on Page 3.

The next one, on Page 4 at the top, I didn't have a lighting plan, so I don't know who did it, but you could just -- we could add that information to the decision later.

And then I included --

MEMBER GESSIN: I'll move up.

(Aram Terchunian Entered the Meeting)

MR. PROKOP: On Page 5 are the conditions.

MEMBER CASHIN: I still don't get No. 5, but
if everybody else does, that's fine.

MR. PROKOP: What's number No. 5?

MEMBER CASHIN: This is 5.

MEMBER SIEGEL: It's parking in this, in this road here, not --

MR. PROKOP: Okay. So let me -- yeah, let me just say, A, since we're -- since the property was never subdivided and it's still subject to the conditions of the June 6th, 2018 --

MEMBER CASHIN: Oh, you just copied them?

MR. PROKOP: Yeah, I just copied them in here.

MEMBER CASHIN: Oh.

MR. PROKOP: So what I could do is I could just say -- so this is exactly the language from the prior decision, so we probably don't want to go through that again. But, if you want, if you want B, on Page 5 near the top could just say that all conditions of the June 6th, 2018 variance approval remain as conditions of this approval. We could just say that and then not list them.

MEMBER CASHIN: That's fine, yeah, okay.

MR. PROKOP: That way we don't have to rehash the whole thing.

MEMBER CASHIN: Yeah, I just don't want all
MEMBER SIEGEL: It has to do with parking in this zone here, not counting as parking like actual spots. This is five spots here and just --
MEMBER CASHIN: I think it just needs to be punctuated or --
MEMBER SIEGEL: These are not the right spots.
MEMBER CASHIN: Okay. And then there's one other one I didn't understand.
MEMBER SIEGEL: Although they can park here.
MR. PROKOP: Yeah, right, it probably needs punctuation, you're right, but that's the way that it came out.
MEMBER CASHIN: And what does No. 2 mean?
MEMBER SIEGEL: "Screening, which is that would be front and rear property lines."
CLERK SADELI: Ken, she can't hear you.
MEMBER SIEGEL: I'm just -- "Screening, which is that would be front and rear property lines," comma, "the adjoining property lines."
What does that mean?
MR. PROKOP: That's the way we picked it up in the other decision. I'm not -- I'm not sure. I'd have to go back and see what the plan was.
ACTING CHAIRMAN SARETSKY: I think that this had something to do with screening along the side.
MEMBER SIEGEL: Yeah, screening here.
ACTING CHAIRMAN SARETSKY: Right, screening here and here.
MEMBER CASHIN: So maybe this says screening is required front and rear property lines and the adjoining property lines. I guess that's what it means.
MR. PROKOP: Okay.
MEMBER SIEGEL: Because that's what it showed.
MEMBER CASHIN: I guess it means it needs an "and" also.
ACTING CHAIRMAN SARETSKY: Right, "and".
MR. PROKOP: Okay. But that's all going to come out.
MEMBER CASHIN: Yeah, yeah, okay, that's fine.
MR. PROKOP: We'll look at that in the other decision.
MEMBER CASHIN: Since we already voted on it the other way, right?
MR. PROKOP: And then -- yeah, that's it.
MEMBER SIEGEL: So if we're -- if we're on
Page 3, where we're at the Four-Tenths instead of 
the Three-Tenths, it comes out that this pool is 
six inches over where we would -- 

MR. PROKOP: I think that's the calculation 
we did the last time, so it's less than a foot. 

MEMBER SIEGEL: That's what we're agreeing 
to now? 

ACTING CHAIRMAN SARETSKY: Well, that's what 
the variance is for, for the extra six inches. 

MS. SADELI: Right. 

MEMBER SIEGEL: This whole entire variance 
that we're here to either -- 

MR. PROKOP: No. The variance is because he 
was -- he was denied because it's an expansion of 
a preexisting nonconforming use and structure, and 
because any changes in the property have to come 
before the ZBA. 

ACTING CHAIRMAN SARETSKY: So the fact that 
it's coming before us we understand. I guess the 
question, though, is if it was six inches 
narrower, it would be theoretically as-of-right? 

MR. PROKOP: Did you do that calculation, 
Aram? 

MR. TERCHUNIAN: Yeah, I did that 
calculation.
MR. PROKOP: It's like six inches, right?

MR. TERCHUNIAN: It's six, yeah.

ACTING CHAIRMAN SARETSKY: So my -- I guess my question is, and I'm not sure if this is what Ken's is, I don't want to speak for him, if it was six inches narrower -- I mean, it's a narrower pool to begin with. If it was six inches narrower, you know, they wouldn't have to be before us for the variance, other than --

MEMBER GESSIN: No.

ACTING CHAIRMAN SARETSKY: Because they'd come before us anyway because of the plots.

MR. PROKOP: No, because it's -- they would be, because it's a preexisting -- it's an expansion of a preexisting nonconforming use and structure. That's --

MR. TERCHUNIAN: To answer your question, they would be before you anyway --

ACTING CHAIRMAN SARETSKY: Okay.

MR. TERCHUNIAN: -- but not for that specific issue.

MEMBER GESSIN: For any issue.

ACTING CHAIRMAN SARETSKY: So --

MR. TERCHUNIAN: But they're before you because they must come before you for anything.
This was part of the list, that six inches.

ACTING CHAIRMAN SARETSKY: Understand.

MR. TERCHUNIAN: And if that -- but that's the only thing that would change.

ACTING CHAIRMAN SARETSKY: But let me ask -- let me ask the question a different way, then. If down the road someone else has a nonconforming lot and wants to do the same thing, or something similar, and they want to use this as a precedent, if it's -- if it was six inches narrower, it would be essentially, in other words --

MEMBER SIEGEL: No precedent.

ACTING CHAIRMAN SARETSKY: There would be no precedent.

MR. TERCHUNIAN: I don't -- no, I don't agree with that, because it all depends on the facts of the case that's before you. You can't just boot-strap something --

ACTING CHAIRMAN SARETSKY: I'm not saying boot-strap it, but --

MR. TERCHUNIAN: -- one to another.

ACTING CHAIRMAN SARETSKY: I'm only -- I'm only trying to say like are we creating a problem for down the road, or no?

MR. TERCHUNIAN: For six inches, you're not
creating a problem.

MEMBER GESSIN: We have plenty of side yard variances.

ACTING CHAIRMAN SARETSKY: Okay.

MEMBER GESSIN: Right?

MR. TERCHUNIAN: You're not -- yeah. You're not creating a -- six inches is not a problem anyway.

MR. PROKOP: I know we -- there's been discussion about this, but I don't think you're creating a problem.

ACTING CHAIRMAN SARETSKY: Okay.

MEMBER CASHIN: Right. But what he's saying and what is right is the next time Jim Hulme comes in here -- Jim Hulme? Jim --

MR. TERCHUNIAN: Yeah.

MS. SADELI: Yeah.

MEMBER CASHIN: -- comes in here, he's going to say, "Well, you did it on" -- "you did it on this one." I mean, that's going to happen.

MR. TERCHUNIAN: And because the fact that this case warranted that decision, and the facts of another case may not warrant that six inches.

MEMBER CASHIN: Understood.

MR. PROKOP: It's more important that we
have the -- to me, my view is it's more important that we have the discussion about the Three-Tenths versus the Four-Tenths, because this gives the Building Inspector a guide about how to -- how to work with future applications. So that's really important language.

ACTING CHAIRMAN SARETSKY: Right. But between you and Aram, you're in agreement that the Four-Tenths is the rule that should be used, right?

MR. PROKOP: Yes.

MR. TERCHUNIANK: Yes.

MEMBER SIEGEL: Because you're going by the main structure, not anything accessory to the main structure?

MR. TERCHUNIANK: Correct.

ACTING CHAIRMAN SARETSKY: So that's -- okay.

MEMBER SIEGEL: So that's the future.

MR. PROKOP: That's something important we can add in the future.

MEMBER SIEGEL: That's the future for The Dune.

MEMBER CASHIN: And that is a precedent that we would be falling back on.
ACTING CHAIRMAN SARETSKY: If you went back to the Three-Tenths, you'd be doing something different.

MEMBER SIEGEL: Correct.

ACTING CHAIRMAN SARETSKY: You wouldn't be following the new rule, basically.

MR. PROKOP: No. Bob knows now in the future that he's supposed to apply the Four-Tenths, not the Three-Tenths.

MEMBER GESSIN: On this applic -- on this property.

MR. TERCHUNIAN: On this property and on the basis of the principal structure.

ACTING CHAIRMAN SARETSKY: Okay.

MR. TERCHUNIAN: Not accessory structure.

MR. PROKOP: This calculation from now on is supposed to be on the main structure, not --

MEMBER SIEGEL: Not the decking.

MR. TERCHUNIAN: Right.

ACTING CHAIRMAN SARETSKY: So, I mean, I guess, then let's go back to -- he has a letter that says this is okay with the neighbor on the west side.

MEMBER CASHIN: Right.

ACTING CHAIRMAN SARETSKY: So if the six
inches is not an issue in your -- Joe and Aram's mind --

MR. PROKOP: It's not an issue.

ACTING CHAIRMAN SARETSKY: Then, I mean, I guess, I don't have a problem either. I mean, I'm not sure about you guys.

MEMBER CASHIN: I'm okay with it.

ACTING CHAIRMAN SARETSKY: So what, then, are we approving, as far as a variance goes, other than that?

MEMBER SIEGEL: So someone should make a motion.

MR. PROKOP: You're approving that -- an expansion of the pre-existing nonconforming use, and you're approving the landscape plan and the lighting plan.

ACTING CHAIRMAN SARETSKY: Right. No, the conditions are all things to help make it --

MR. TERCHUNIAN: So if you're comfortable moving forward, you would make -- someone would make a motion to accept this decision as written and amended.

MR. PROKOP: With these changes.

MR. TERCHUNIAN: With these changes. And then you need a second and then a vote.
ACTING CHAIRMAN SARETSKY: Okay.

MEMBER SIEGEL: Just before we do that, is there a copy of the lighting plan somewhere?

MS. SADELI: Yeah.

MR. PROKOP: I'm going to run to another --

ACTING CHAIRMAN SARETSKY: I see -- I don't think we have anymore questions.

MEMBER CASHIN: Yeah, Joe. Thanks.

ACTING CHAIRMAN SARETSKY: Thanks. Do you want to be here for that?

MR. PROKOP: Yeah, I'm sorry. I was committed to be in two places.

ACTING CHAIRMAN SARETSKY: All right. I like that we got first dibs.

MR. PROKOP: Okay. Thank you.

ACTING CHAIRMAN SARETSKY: Okay. Thank you.

Bye, Joe.

MR. PROKOP: Okay.

MEMBER SIEGEL: Thank you, Joe.

MR. FREEDMAN: Thanks for all your time on this.

MEMBER GESSIN: You have it?

MEMBER SIEGEL: Who just gave me all these papers?

MS. SADELI: It's right here.
MEMBER GESSIN: Me, me. You want that?

MS. SADELI: Is that the lighting plan?

MEMBER GESSIN: Yes.

MS. SADELI: Okay.

MEMBER SIEGEL: That's the rest of it. That's something that we -- that was Harvey's paperwork, and this is, also. So we're approving this lighting plan today as well?

MS. SADELI: The lighting and the landscaping.

MEMBER CASHIN: Yeah, we looked at that last time, didn't we?

ACTING CHAIRMAN SARETSKY: I think so.

MEMBER SIEGEL: Okay. So this goes like this. So you guys looked at this? Everybody was happy with it?

MEMBER GESSIN: Yeah.

ACTING CHAIRMAN SARETSKY: It looked fine.

MEMBER SIEGEL: Thank you, guys. Just wanted to see it. It's all on the house, there's no like ground lighting showing.

ACTING CHAIRMAN SARETSKY: Right. It's all down-lighting.

MR. TERCHUNIANS: It's all down-lighting.

MEMBER CASHIN: I make a motion that we
accept the -- what is it called?

MR. TERCHUNIAN: The decision as written and amended.

MEMBER CASHIN: Decision as written and as amended at this meeting.

MS. SADELI: Seconded by?

MEMBER SIEGEL: Second.

MS. SADELI: Ken.

MR. TERCHUNIAN: Call the question.

ACTING CHAIRMAN SARETSKY: All in favor?

MEMBER CASHIN: Aye.

MEMBER SIEGEL: Aye.

ACTING CHAIRMAN SARETSKY: Aye.

MR. TERCHUNIAN: And any opposed?

ACTING CHAIRMAN SARETSKY: Any opposed?

(No Response)

(Harvey Gessin Recused From Vote)

MR. TERCHUNIAN: Unanimous. Okay. And you'll stamp that file in your office on Monday.

MR. FREEDMAN: Thank you.

ACTING CHAIRMAN SARETSKY: I make a motion to close the meeting. Can I make the motion?

MEMBER GESSIN: Yeah.

MEMBER SIEGEL: I guess I'll second.

MEMBER CASHIN: And what if we don't second,
1 do we have to stay here?
2    MR. TERCHUNIAN: You have to stay all night.
3    MEMBER CASHIN: All right, I'll second.
4    ACTING CHAIRMAN SARETSKY: All right. Thank you.
5
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 October 5, 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 12th day of October, 2019.

Lucia Braaten
Lucia Braaten

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