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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

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1 (The meeting is called to order after
2 the Pledge of Allegiance at 10:45 a.m.)

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

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

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

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

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

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

20 MR. HULME: And just real quickly, I've
21 reviewed the relief we're looking at. We
22 reviewed the general requirements of the law
23 that the zoning board has to look at, and we
24 talked in detail and I provided some
25 information from various zoning cases about

1 what you're called upon to consider and not
2 consider, as when you're going through the
3 five-step balancing test.

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

6 MS. SADELI: Yes.

7 MR. HULME: It was a week ago Friday.

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

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

13 I just really wanted to cover a couple
14 of key points. The first keyest point -- is
15 that a word? I don't know -- is that we
16 have two houses on this property and it's
17 one lot. And we have a CO for both of those
18 houses to be used as single-family
19 residences. The goal of zoning everywhere,
20 and particularly in West Hampton Dunes in
21 residential zoning, is a single residence on
22 a single lot. What we're trying to do with
23 this application is to get to that point of
24 view. That is a huge step forward under the
25 general rules of zoning. How do we know

1 that? Because in order to create this
2 situation, we would need a use variance, not
3 an area variance, which is impossible to
4 get.

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

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

24 The villages don't zone entirely one
25 acre zoning. I would venture to say half,

1 to three quarters of this village does not
2 meet that requirement. We're seeking to
3 create lots that don't meet that requirement
4 as well, but that's not uncommon in the
5 village to have those lots, and we're just
6 seeking to create an additional two lots
7 that has that status.

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

17 I did want to add two additional
18 properties to the record here, one is 949,
19 951, 953, 955 Dune Road, which was a four
20 lot -- an eight lot subdivision -- I don't
21 have copies, I'm sorry. All of which are
22 under the one-acre requirement, and all of
23 which were granted by the zoning board and
24 the Planning Board. And also at the --

25 MR. PROKOP: If I could interrupt you

1 for a second. The one -- the subdivision
2 that you just mentioned --

3 MR. HULME: Yes.

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

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

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

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

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

24 (Laughter).

25 MR. HULME: And then 820 Dune Road was,

1 I believe, a three-lot subdivision, or a
2 two-lot subdivision, and had three legal
3 residences on it. So it was rated an A lot
4 with one residence and another lot with two
5 residences.

6 So there's certainly lots of precedents
7 in this village within this Zoning Board to
8 grant the necessary relief to create lots
9 that were smaller than required. And, in
10 fact, lots that are smaller than even the
11 lots that we're proposing. The whole --
12 again, lots anywhere from 10,000 to 25- or
13 30,000 square foot, all of which are
14 substandard from your zoning code, and all
15 of which were created by the variance relief
16 that this board has granted in the past.

17 Just real --

18 MR. SIEGEL: Subdivision variance or
19 relief of area?

20 MR. HULME: Subdivision. These lots --
21 the lots -- some of the lots that I mention
22 in my paperwork were granted variances so
23 that they could be created in the reduced
24 sizes that they now exist in. So there's a
25 huge precedent, I would suggest, in this

1 village. The Zoning Board has cooperated by
2 the variances that they have granted.

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

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

19 The second factor is other feasible
20 methods. And as I've said before, and tried
21 to provide a legal basis for this, you have
22 to interpret that in the context of what the
23 application is seeking. Not what you would
24 like to have happen, but is there another
25 feasible alternative for the applicant to

1 achieve the goal that he has set by bringing
2 this application. And I would suggest, in
3 this particular case, there is no other way
4 of doing this, other than with the variances
5 that we're seeking.

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

18 And in that context, and coupled with
19 the fact that most of the variances that
20 we're seeking here are internal to the
21 property, they affect the property itself,
22 they affect the front lot by the back lot,
23 they affect the back lot by the front lot.
24 The relief we're looking for for a side yard
25 setback on the west, does not effectively

1 change the setback for this property as
2 compared to the neighbor. All we have done
3 is extracted the flag pole. As we've
4 discussed numerous times here, we could have
5 done this by an easement which would have
6 reduced or eliminated that particular
7 variance, but that, from a planning
8 perspective, doesn't make sense. The
9 Planning Board, if we ever ever get back
10 there, is going to tell us that they want
11 deeded access to this property, not just an
12 easement, because that always creates an
13 issue.

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

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

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

25 Character of the neighborhood, we're

1 moving right into what the character of the
2 neighborhood is, that's in our favor, okay?

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

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

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

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

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

23 And that's really all I have to say.
24 I'm happy to try to answer any further
25 questions.

1 CHAIRMAN GESSIN: One question that
2 this Board does have: Is there a reason why
3 you have the right-of-way to the water on
4 the west side and not the east side? It's
5 right here.

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

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

9 MR. HULME: No. No particular reason.

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

12 CHAIRMAN GESSIN: To the bay.

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

15 CHAIRMAN GESSIN: Yeah, proposed.
16 There's no reason why it couldn't be on the
17 other side?

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

20 CHAIRMAN GESSIN: No issue with that?

21 MR. HULME: No.

22 MR. SIEGEL: Who put it there?

23 MR. FREEDMAN: I have no idea.

24 CHAIRMAN GESSIN: It could be just a
25 survey.

1 MR. FREEDMAN: Possibly. Well, there's
2 a path there, so that could be why they did
3 that.

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

10 MR. SIEGEL: It might be there already.

11 MR. HULME: Could be.

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

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

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

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

23 MR. HULME: I guess the only question I
24 would have is: This easement is for this
25 property, correct?

1 CHAIRMAN GESSIN: Correct.

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

7 CHAIRMAN GESSIN: Is that a problem?

8 MR. HULME: No.

9 CHAIRMAN GESSIN: Oh.

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

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

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

19 MR. FREEDMAN: Howard Freedman.

20 I think the path is actually on this
21 side.

22 MR. HULME: Okay. So --

23 CHAIRMAN GESSIN: It exists already.

24 MR. HULME: Okay. So the bottom line
25 is, if you want us to move the path to the

1 other side for the easement, we're happy to
2 do that.

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

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

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

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

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

24 MR. HULME: Oh, okay. Yeah, that's
25 fine.

1 CHAIRMAN GESSIN: You're okay with
2 that?

3 MR. FREEDMAN: Sure.

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

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

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

12 CHAIRMAN GESSIN: We tried to.

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

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

20 MR. PROKOP: You could do that once --
21 I would close the public hearing and then
22 discuss the other items.

23 CHAIRMAN GESSIN: Okay. I like to make
24 a motion to close the public hearing. Would
25 someone like to second?

1 MR. PROKOP: I'm sorry. We should see
2 if there's any comments from the public.

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

5 MR. FREEDMAN: No.

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

9 MR. SIEGEL: I'll second it.

10 CHAIRMAN GESSIN: Okay. All vote?

11 (Unanimous vote to close public
12 hearing)

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

16 CHAIRMAN GESSIN: We did that at the
17 last meeting.

18 MR. HULME: Completely and
19 definitively.

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

23 So my recommendation would be that the
24 SEQRA -- any action that you take today
25 would be subject to the adoption of a

1 written document, a written decision at our
2 next meeting, including the SEQRA decision.

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

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

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

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

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

25 MR. HULME: I'm happy to let you

1 proceed in any way counsel provides. I
2 would just point out for the record that
3 there was -- SEQRA was adopted. There was
4 an unconditional neg dec adopted by this
5 Board already. There's been no request for
6 any new or any other form of relief. The
7 document that was submitted was -- if you
8 look back through the voluminous record that
9 we have, which is merely a summary of
10 everything that has already been before this
11 Board. And it was before this Board prior
12 to adopting the unconditional negative dec.

13 Just for the record, I want that to be
14 clear, but I certainly don't object with
15 your proceeding in accordance with --

16 MR. PROKOP: Thank you.

17 MR. HULME: -- your attorney.

18 MR. PROKOP: That would be my
19 recommendation.

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

22 MR. PROKOP: Well, I think that it's --
23 based on the submission at this point and
24 the continuation of the public hearing,
25 which we just concluded, that it's my

1 recommendation that the Board, having
2 adopted Lead Agency status in determining --
3 over the objection of the applicant, that
4 this is an unlisted action for purposes of
5 SEQRA, that the Board adopt a condition
6 negative declaration, meaning that there
7 will be a negative impact -- there will not
8 be a negative impact on the environment,
9 provided certain conditions are met, and
10 that we develop the conditions in our
11 discussion then, that the Board develop its
12 conditions in this discussion.

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

15 MR. PROKOP: Yes.

16 CHAIRMAN GESSIN: Is that what we have
17 to do?

18 MR. PROKOP: Yes.

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

21 MR. CASHEN: I'll make a motion.

22 CHAIRMAN GESSIN: Would someone like to
23 second it?

24 I'll second it.

25 Okay. All vote?

1 (All members vote unanimously).

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

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

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

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

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

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

25 CHAIRMAN GESSIN: Yeah. But what Joe's

1 talking about is this long list here.

2 MR. CASHEN: Okay.

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

6 CHAIRMAN GESSIN: Okay.

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

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

12 MR. FREEDMAN: That's condition number
13 one.

14 (Laughter).

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

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

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

25 I would like to impose some conditions

1 on your approval, basically giving you
2 pretty much everything you want, but we need
3 something also.

4 MR. HULME: Okay.

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

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

8 CHAIRMAN GESSIN: Yeah, come closer.

9 Most of this deals with landscaping and
10 the area around.

11 MR. FREEDMAN: Okay.

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

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

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

25 MR. FREEDMAN: Okay.

1 MR. PROKOP: You can get us a
2 landscaping plan.

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

5 MR. CASHEN: For each.

6 CHAIRMAN GESSIN: Yes, for each.
7 Screening of the parking areas.

8 MR. FREEDMAN: What do you mean
9 screening?

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

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

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

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

19 CHAIRMAN GESSIN: I'll get to that.

20 MR. HULME: Okay.

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

1 MR. FREEDMAN: Okay.

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

7 MR. SIEGEL: One car per bedroom.

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

10 MR. CASHEN: The pole part.

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

15 MR. SIEGEL: I would say --

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

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

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

23 MR. FREEDMAN: But over here you could.

24 CHAIRMAN GESSIN: Once you're past the
25 house.

1 MR. SIEGEL: It's only where you're
2 going to put three or four cars.

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

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

9 CHAIRMAN GESSIN: Okay. Where is --
10 will someone let me have that sheet?

11 We would like you to maintain and
12 replace old expired plantings with an 85
13 percent survival rate.

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

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

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

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

23 MR. SIEGEL: Reconstruction.

24 CHAIRMAN GESSIN: -- or a footprint,
25 the decks, you need to come back to this

1 Board.

2 MR. HULME: Okay.

3 CHAIRMAN GESSIN: You okay with that,
4 Aram?

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

7 CHAIRMAN GESSIN: Yes. Internal
8 doesn't matter.

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

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

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

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

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

25 CHAIRMAN GESSIN: Right. And the deck.

1 If you go in the deck, it's not an issue.

2 MR. FREEDMAN: I can't go in the deck.

3 Yeah, I don't think that's -- and that would

4 be subject to -- how would that be

5 determined? If that was different -- if it

6 fell within the building department, how

7 would that be different?

8 MR. HULME: I think you would have a

9 good case, even in front of these guys, if

10 you met all the other terms on the lot.

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

12 it.

13 MR. PROKOP: What's that?

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

15 it.

16 MR. PROKOP: Well, we would want to

17 have some discussion about it. We would

18 want to be involved in the discussion, you

19 know, because we would want to talk about

20 screening and things like that. So if you

21 went to Bob, Bob can normally say, yeah, but

22 it needs to be screened. But this way, we

23 want it to come -- it would be subject, you

24 know, I'm sorry. I don't want to say

25 anything else on the record, but basically,

1 you know, it's a --

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

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

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

11 MR. TERCHUNIAN: That's new hearing.

12 MR. PROKOP: Yeah.

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

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

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

19 (Laughter).

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

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

23 (Laughter).

24 MR. FREEDMAN: I understand.

25 MR. PROKOP: We would want to manage

1 the impact on neighboring properties.

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

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

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

12 CHAIRMAN GESSIN: Right.

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

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

18 MR. HULME: Anything else?

19 CHAIRMAN GESSIN: I think that's it.

20 Did I miss anything?

21 MR. TERCHUNIAN: No.

22 CHAIRMAN GESSIN: Guys, did I miss
23 anything?

24 MR. SARETSKY: Nope.

25 MR. CASHEN: No.

1 MR. MIZZI: No.

2 CHAIRMAN GESSIN: No? All right.

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

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

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

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

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

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

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

25 MR. HULME: Let me withdraw "some."

1 I'm happy to adopt the one, the idea that
2 there was only one other.

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

5 CHAIRMAN GESSIN: The five criteria?

6 MR. PROKOP: Yeah, the five criteria.
7 This would be for all the variances
8 together.

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

11 Oh, he's going to read it?

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

19 CHAIRMAN GESSIN: Yes.

20 MR. PROKOP: So whether or not we'll do
21 this if the it application needs -- whether
22 whether or not it will produce an
23 undesirable change to the character of the
24 neighborhood or a detriment to the nearby
25 properties if these conditions are --

1 CHAIRMAN GESSIN: Met.

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

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

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

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

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

16 MR. PROKOP: Right.

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

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

24 MR. PROKOP: Yes.

25 MR. TERCHUNIAN: Okay. That's unusual.

1 Usually, you discuss the factors and then
2 you vote on application in the aggregate of
3 the factors.

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

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

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

25 MR. PROKOP: A vote on each one.

1 MR. CASHEN: Yeah. And then if you're
2 against three and four, then you're leading
3 towards yes, like that.

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

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

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

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

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

17 MR. SIEGEL: Which one was that?

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

20 MR. SIEGEL: So we're going --

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

23 MR. GESSIN: Correct.

24 MR. HULME: Okay.

25 MR. PROKOP: Will not produce an

1 undesirable change in the character of the
2 neighborhood or detriment to the nearby
3 properties.

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

7 MR. SIEGEL: That we do have.

8 MR. PROKOP: It was circulated this
9 morning.

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

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

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

16 MR. SARETSKY: Me too.

17 MR. MIZZI: Me too.

18 MR. PROKOP: What about with the
19 conditions?

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

23 MR. PROKOP: Okay.

24 CHAIRMAN GESSIN: So we have to have a
25 firm vote on it?

1 MR. SARETSKY: We just did, three of us
2 did.

3 MS. SADELI: There were three.

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

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

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

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

21 MR. SIEGEL: I mean --

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

25 MS. SADALI: When we're speaking, if we

1 can just remember, one at a time so our
2 stenographer can get a clear record.

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

8 MR. SIEGEL: It's only two lots.

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

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

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

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

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

25 CHAIRMAN GESSIN: What's the question?

1 MR. HULME: The only answer is -- well,
2 I'm not going to tell you what I think the
3 answer it is.

4 (Laughter).

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

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

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

15 MR. HULME: Well --

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

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

24 MR. HULME: If they allow it, yes.

25 CHAIRMAN GESSIN: Sure.

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

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

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

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

25 MR. SARETSKY: You could make both

1 those houses nice and you could do exactly
2 what you're saying, you could sell them for
3 more money.

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

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

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

17 CHAIRMAN GESSIN: But there's no --

18 MR. SARETSKY: -- has landscaping.

19 CHAIRMAN GESSIN: -- requirement for
20 landscaping.

21 MR. SARETSKY: I understand that.

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

25 MR. PROKOP: The question is --

1 MR. MIZZI: It's not about an imaginary
2 line.

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

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

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

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

23 MR. HULME: So that is why --

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

25 MR. HULME: -- you discussed each of

1 the five points, and then you have a global
2 vote on the entire thing.

3 MR. SIEGEL: This was an informal --

4 MR. PROKOP: It's against my advice.

5 MR. HULME: It's not against advice.

6 We're just making a record here.

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

10 MR. HULME: No problem.

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

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

21 MR. CASHEN: I say it cannot.

22 CHAIRMAN GESSIN: It can't.

23 MR. MIZZI: I agree.

24 MR. PROKOP: The next question is
25 whether or not the requested variances are

1 substantial. And this is the laundry list
2 of variances that are requested.

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

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

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

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

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

22 MR. CASHEN: Where is that again?

23 CHAIRMAN GESSIN: The second page.

24 MR. HULME: Lot 1, its Number I; and
25 Lot 2 it's Number I. Those are the lot

1 sizes. I presume you're talking about Lot 1
2 to the east, the side yard setback on the
3 east.

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

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

7 MR. CASHEN: Where is that?

8 MR. TERCHUNIAN: Right here.

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

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

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

15 MR. HULME: Yes.

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

18 MR. MIZZI: Number Four

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

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

25 Then the side yard, single side yard.

1 MR. HULME: The lot width --

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

5 MR. CASHEN: So that's substantial.

6 MR. TERCHUNIAN: This one is lot width.

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

9 MR. SARETSKY: I agree.

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

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

21 MR. CASHEN: Read it one more time.

22 MR. PROKOP: Whether the granting of
23 the variances will a have an adverse impact
24 on the physical or environmental conditions
25 of the neighborhood.

1 CHAIRMAN GESSIN: I don't think that
2 they will. I think the Board thinks the
3 answer is no.

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

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

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

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

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

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

25 MR. TERCHUNIAN: The difficulty is --

1 yes, subdividing the lot, that's what's
2 being asked.

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

5 MR. TERCHUNIAN: Right.

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

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

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

19 MR. MIZZI: What is the difficulty,
20 exactly?

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

24 MR. TERCHUNIAN: Well, that's a factor.
25 The difficult here is that to subdivide the

1 lot with the variance, the dimensional
2 variances as requested. The question to the
3 Board is, did the applicant create this
4 difficulty by, for example, building a house
5 without a permit or building too close to a
6 property line with a permit. Typically, it
7 needs an action by the owner to create a
8 difficulty.

9 MR. CASHEN: Such as buying the
10 property?

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

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

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

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

22 MR. MIZZI: My point is, outside of
23 this case, that every time we answer a
24 question, if someone didn't physically -- if
25 they want a variance, they can say look the

1 difficulty is not self-created, I just
2 bought a house, you know, it existed this
3 way.

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

9 MR. CASHEN: That's what he did.

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

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

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

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

18 MR. FREEDMAN: There was --

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

21 MR. HULME: They were fully legal.

22 MR. TERCHUNIAN: Fully legal.

23 MR. MIZZI: What is the difficulty?

24 MR. PROKOP: No. They're not -- okay,
25 the houses are not fully legal, that's the

1 difficulty. It's a preexisting
2 non-conforming use, because it was
3 conforming at one time and it was made
4 non-conforming by our code. It was
5 conforming under the town code as it existed
6 in 1959 or 1960, whatever it was. Now, it's
7 not legal because of our codes, so it's
8 preexisting non-conforming use.

9 MR. SIEGEL: That's the difficulty?

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

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

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

22 MR. TERCHUNIAN: In other words, he
23 didn't -- the Village -- the incorporation
24 of the Village and the adoption of zoning
25 code created the non-conformity, not the

1 construction of the buildings. They were
2 constructed legally and they're legally
3 constructed today, but they're
4 non-conforming, but they preexist the code.

5 MR. PROKOP: Right. It may actually be
6 a case where it's not self-created. The
7 self-creation is not supposed to be relevant
8 to your decision, but you are supposed to
9 consider it. Its not supposed to be a
10 controlling aspect, but you are supposed to
11 consider it. This may actually be a case
12 where it's not self-created because the
13 houses were legal at one time. And whether
14 you look at this owner, whether the owner in
15 1959, the fact that the law changed a couple
16 of times since them was not self-creation of
17 the difficulty.

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

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

24 MR. CASHEN: All right. So we vote on
25 that one?

1 MR. PROKOP: So I think it's --

2 CHAIRMAN GESSIN: It's not
3 self-creating.

4 MR. PROKOP: So those are the elements
5 that you needed to review in order to
6 consider the decision. So my recommendation
7 would be, if you wanted to take a vote
8 today, it would be, basically, a -- if you
9 wanted to vote on this today, it would
10 basically be subject to written decision
11 that we adopt at the next meeting. So it
12 would be basically an opinion. It would a
13 decision of the Board, but it would be
14 subject to the -- it would be basically an
15 opinion subject to a written document to be
16 adopted at a later time.

17 MR. MIZZI: I don't really understand.

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

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

25 CHAIRMAN GESSIN: Subject to

1 conditions.

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

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

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

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

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

16 MR. CASHEN: Oh, the nine variances.

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

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

1 them all together.

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

5 MR. CASHEN: Sure.

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

8 MS. SADELI: So does anyone make a
9 motion?

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

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

18 MR. SIEGEL: Second.

19 CHAIRMAN GESSIN: All in favor?
20 Let's do this right. Who said
21 yes?

22 MR. SARETSKY: I said yes.

23 MR. CASHEN: I said yes.

24 MR. SARETSKY: I said yes.

25 MR. PROKOP: The second motion --

1 CHAIRMAN GESSIN: We have 3-1 -- 4-1?

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

4 CHAIRMAN GESSIN: Okay.

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

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

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

16 So my suggestion might be that you --
17 somebody makes a motion to approve -- either
18 somebody makes a motion to deny or somebody
19 makes a motion to approve with the
20 conditions. If the person makes a motion to
21 approve with the conditions, you should list
22 the -- that you state the conditions as part
23 of the motion.

24 CHAIRMAN GESSIN: I think we can make a
25 motion to approve all the variances and the

1 conditions at the same time because whoever
2 doesn't vote or votes negatively --

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

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

8 MR. CASHEN: Before you do that.

9 CHAIRMAN GESSIN: Yes.

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

14 MR. SARETSKY: You mean seven and
15 eight?

16 MR. CASHEN: Seven and eight, yeah.

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

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

1 expansion without coming back to the Board.

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

4 CHAIRMAN GESSIN: No.

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

7 CHAIRMAN GESSIN: One is much more
8 restrictive.

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

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

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

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

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

25 MR. HULME: You reserve the right to

1 say no. You can't pre-judge. You can't
2 pre-judge an application by saying we're not
3 going to consider anything that you bring to
4 us.

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

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

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

22 MR. SARETSKY: The exception.

23 MR. MIZZI: We're considering how it
24 relates to the neighborhood, because you're
25 saying it yourself, you're saying, I'm going

1 to improve it. You're not describing making
2 alterations to the home, you just mentioned
3 one alteration, but it's hard to consider
4 these points --

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

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

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

21 MR. PROKOP: So you're saying you would
22 like the language of the conditions to be
23 that there should be no further expansions
24 of the footprint or the height, and leave
25 out without application to the ZBA?

1 MR. MIZZI: Yeah. Unless there's
2 something that's being proposed here that
3 would --

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

19 Frankly, I think that if we took this
20 to the court, the court would grant this
21 application -- my opinion, I'm not advising
22 your Board, Joe -- they would grant this
23 application without any of these conditions
24 because of the unique circumstances of the
25 two single-family residences on one lot. I

1 am confident of that. And because I'm
2 confident of that, we've gone as far as my
3 client is willing to do.

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

6 MR. HULME: I'm sure you have.

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

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

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

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

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

24 MR. PROKOP: So what is your rationale?
25 Your rationale is that will reduce the

1 impact on the neighboring properties?

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

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

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

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

12 MR. PROKOP: Excuse me for a second.

13 MR. HULME: Yes.

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

23 So that's part of your consideration,
24 you know, whether or not that step will have
25 a negative impact on -- a detrimental impact

1 on the neighboring properties.

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

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

10 MR. HULME: Go right ahead.

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

23 MR. MIZZI: Can I speak on that?

24 MR. PROKOP: Yeah, go ahead.

25 MR. MIZZI: I'm not against a pool. I

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

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

25 Joe Mizzi, you're saying two different

1 things. SO that's -- this is the source of
2 my confusion. Your saying --

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

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

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

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

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

24 MR. PROKOP: So one of things that's
25 happening with the application that's

1 complicating this is that the prior -- the
2 application started with somebody who's
3 clearly -- who's going to sell the property.
4 Basically, we knew that, and we were
5 stepping into the unknown. So that was how
6 the application developed initially.

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

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

18 MR. MIZZI: I'm not disagreeing.

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

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

25 MR. CASHEN: Why are you opposing?

1 MR. MIZZI: I'm saying, could number --
2 could number seven or eight say "no
3 expansion to the deck other than a pool."

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

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

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

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

16 MR. PROKOP: Yeah. So you're
17 suggestion -- my response to your suggestion
18 is that I think it would be difficult to
19 sterilize the development rights of a
20 property. You're just saying that it would
21 not be any development. I think recognizing
22 that the development -- however, recognizing
23 that the development of the property will
24 have an impact on the neighborhood and will
25 have an impact on the neighboring

1 properties, my recommendation would be that
2 future development, with the agreement of
3 the applicant, future development of this
4 property comes before this Board. I think
5 that that's a reasonable result.

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

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

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

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

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

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

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

21 MR. PROKOP: We're recognizing, and the
22 applicant is recognizing, jointly together,
23 that development on the property will have
24 an impact on the neighboring houses; and
25 therefore, we're determining, and he's

1 agreeing that any change in the property
2 will require -- any change in the footprint
3 or the height of the property will require
4 an application to this Board -- review by
5 this Board. And so that way we're not -- we
6 don't have to have an iconic court case over
7 whether or not we can sterilize the
8 development rights of this property.
9 Instead, we can review applications, like
10 the pool.

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

18 MR. PROKOP: Yes. Well --

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

21 MR. MIZZI: I can live with that.

22 MR. SIEGEL: I can live with that, too.
23 So that's going to be written on --

24 MR. SIEGEL: Also, what Joe said, that
25 the property as it exists has additional

1 development rights. They can make both of
2 these houses bigger today without a
3 variance.

4 MR. PROKOP: It's one of the things --

5 MR. SARETSKY: That's fine. They can
6 do that, but at the same time --

7 MR. SIEGEL: Not after this.

8 MR. SARETSKY: I understand. But right
9 now they're asking us to subdivide.

10 CHAIRMAN GESSIN: Bringing in
11 conformity.

12 MR. SARETSKY: I understand, but for
13 that, there is pain and suffering that goes
14 with it, so to speak.

15 MR. TERCHUNIAN: There's plenty of that
16 to go around.

17 (Laughter).

18 MR. SARETSKY: So all I'm saying is,
19 here we are trying to -- Howard is here
20 trying to get us to the point where we agree
21 with that, in -- for anything higher,
22 anything with a bigger footprint.

23 MR. SIEGEL: That's what he's saying.

24 MR. MIZZI: Can the -- can the -- the
25 homeowner's intentions be put on the record?

1 MR. HULME: No. He can't bind himself
2 to the future, he can't bind the future
3 owner. You guys are asking for him to
4 pre-judge the future. That's what you have
5 laws and rules for.

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

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

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

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

20 MR. FREEDMAN: Right.

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

24 MR. PROKOP: You can ask him, if he
25 says no, he doesn't want to answer it, you

1 can just assume the worst and make that part
2 of -- you have to assume --

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

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

24 MR. HULME: That may be what you want
25 it, but that violates the law.

1 CHAIRMAN GESSIN: What if he decides to
2 do it tomorrow and didn't tell us today.

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

9 MR. MIZZI: I am.

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

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

24 MR. PROKOP: So this will be -- the
25 vote will be subject --

1 CHAIRMAN GESSIN: With all the
2 variances that he is requesting already,
3 he's pretty boxed in whether it's an east,
4 west, north or south by where the structures
5 are currently.

6 MR. HULME: Other than this pool --

7 CHAIRMAN GESSIN: You have --

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

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

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

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

19 MR. HULME: It's not about that.
20 That's not in front of them. Their job is
21 to look at what's in front of them.

22 MR. TERCHUNIAN: Let's keep it simple.

23 MR. FREEDMAN: I understand.

24 MR. SIEGEL: It's not going to be a
25 pool, it's going to be a remodel and a pool.

1 MR. FREEDMAN: I'm not changing the
2 footprint, except for the pool.

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

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

13 MR. PROKOP: So the --

14 CHAIRMAN GESSIN: Let's keep going.

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

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

20 MR. SIEGEL: What was stated?

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

24 CHAIRMAN GESSIN: Any future
25 construction or expansion of space, he has

1 to come back to the board, period.

2 MR. PROKOP: Okay.

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

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

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

10 (Laughter).

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

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

15 CHAIRMAN GESSIN: It's nine variances,
16 right?

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

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

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

25 MR. SIEGEL: You're good.

1 MR. PROKOP: A minimum lot variance of
2 28,688 feet to create a lot that's 11,312
3 square feet. Lot width variance -- this is
4 to Lot 1 will be 11,312 feet.

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

7 Lot 1 is going to have a rear yard of
8 23 feet, which is a variance of 47 feet.

9 Lot 1 is going to have a side yard
10 variance of 13.3 feet with a setback of only
11 6.7 feet.

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

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

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

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

24 MR. HULME: Fine. That's fine.

25 MR. PROKOP: Lot 2 is going to have a

1 lot width variance -- a lot width variance
2 of 75 feet requiring a lot width variance of
3 75 feet.

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

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

10 And those are the variances.

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

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

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

20 Foundation planting on both houses.

21 Sprinkler system for both houses.

22 Screening of the parking areas.

23 On Lot 2, the parking area does not
24 include -- the parking area includes the
25 area adjacent to the house, which is not

1 part of the flag pole.

2 On Lot 1, screening along the road.

3 A separate driveway for Lot 1, so that
4 there is no common driveway between two
5 houses.

6 An additional water main for one of the
7 two houses, whichever one is missing one. A
8 parking area, as per code, for each count of
9 one per bedroom plus one. No parking in the
10 flag pole.

11 An 85 percent survival rate on the
12 landscaping.

13 And any future expansion or new
14 construction of the home or property or
15 decks, must come back to this Board and
16 that's what's in front of us today.

17 So if someone would like to make a
18 motion.

19 MR. PROKOP: The expansion of the house
20 or any construction?

21 CHAIRMAN GESSIN: Yes.

22 MR. SIEGEL: Does the motion need to be
23 all the words you just said?

24 CHAIRMAN GESSIN: No.

25 MR. SIEGEL: I would like to make a

1 motion that we vote on this application
2 based on what was just read into the record
3 of the allowance of the variances, and with
4 the conditional allowance of the variances
5 and the conditional approval of the
6 landscape plan that's going to be still
7 submitted.

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

11 MR. HULME: Right.

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

15 I make a motion that we vote on this.

16 CHAIRMAN GESSIN: I second that.

17 And everybody in favor of approving
18 this application as stated?

19 MR. SIEGEL: Yes.

20 MR. CASHEN: Yes.

21 MR. SARETSKY: Yes.

22 CHAIRMAN GESSIN: All against?

23 (Negative response).

24 MR. MIZZI: Abstain.

25 CHAIRMAN GESSIN: Nobody against?

1 MR. PROKOP: So that's three votes.

2 MR. HULME: So the motion carries?

3 CHAIRMAN GESSIN: The motion carries.

4 MR. PROKOP: Subject to to written
5 decision.

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

7 MR. FREEDMAN: Thank you, everyone.

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

10 CHAIRMAN GESSIN: Motion to close this
11 hearing?

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

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

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

19 (A brief recess was taken).

20 MR. PROKOP: Back on the record.

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

24 CHAIRMAN GESSIN: I wasn't listening,
25 sorry.

1 MR. PROKOP: A motion to approve the
2 written decision for Young.

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

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

7 MR. PROKOP: It's revised.

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

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

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

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

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

24 CHAIRMAN GESSIN: We didn't get a plan.

25 MS. SADELI: Yeah, she sent a plan.

1 MR. SARETSKY: Yeah, I have it right
2 here.

3 MR. SIEGEL: Here it is.

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

6 MR. SARETSKY: That's the pool
7 application.

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

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

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

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

21 CHAIRMAN GESSIN: Which one?

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

24 CHAIRMAN GESSIN: Who wasn't happy?

25 MR. SIEGEL: The lady who was sitting

1 here was saying --

2 MS. SADELI: Tina Young.

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

5 MR. MIZZI: But she submitted it.

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

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

13 MR. SIEGEL: Here's the toad.

14 CHAIRMAN GESSIN: It's in the wrong
15 place.

16 MR. TERCHUNIAN: That fence is illegal.

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

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

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

24 CHAIRMAN GESSIN: This fence is he
25 here. Here's the property line.

1 MR. SIEGEL: What if they just put it
2 here? This fence was because people were
3 walking through here or something.

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

7 MR. SIEGEL: I agree with that.

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

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

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

18 CHAIRMAN GESSIN: She can do whatever
19 she wants.

20 MR. SIEGEL: There could be no fence.

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

23 MR. SIEGEL: No.

24 MR. MIZZI: Okay.

25 MR. TERCHUNIAN: Well, we need it.

1 MR. SARETSKY: I'm saying, it's
2 nothing, really.

3 MR. SIEGEL: For the right-of-way?
4 Yeah, no, we wouldn't.

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

8 MR. SIEGEL: Are we voting on --

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

11 MR. SIEGEL: What's better for us?

12 CHAIRMAN GESSIN: How high should the
13 trees be?

14 MR. SIEGEL: Six feet high arbor vitae.

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

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

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

23 CHAIRMAN GESSIN: What I said was, if
24 somebody on that block has an issue, the
25 issue would be the pool deck, I don't think

1 it's the side of the piles that the they may
2 not want to see people bathing and swimming
3 on their deck; am I correct?

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

6 CHAIRMAN GESSIN: That's what I said.

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

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

12 MR. SIEGEL: Did you do that?

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

20 MR. TERCHUNIAN: This is community
21 based. Not -- I mean, traditionally,
22 everything is on the property line when it
23 comes to zoning and what's inside the
24 property is for them to decide. You're
25 basically -- this is, somebody walking or

1 driving down the street, what are they going
2 to see and the fact that the deck is up
3 high?

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

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

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

11 MR. SIEGEL: And she's not appropriate?

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

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

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

19 MR. TERCHUNIAN: Okay. Good luck.

20 (Aram Terchunian leaves the
21 meeting).

22 MR. SIEGEL: So what are we doing?
23 Voting on this landscape plan?

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

1 to belabor this today.

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

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

6 CHAIRMAN GESSIN: No chance.

7 MR. PROKOP: She's --

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

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

14 CHAIRMAN GESSIN: Sure.

15 MR. CASHEN: Okay. Thanks, guys.

16 CHAIRMAN GESSIN: Would somebody like
17 to close the hearing?

18 MR. PROKOP: To adjourn?

19 MR. CASHEN: Motion to adjourn.

20 MR. SARETSKY: Second.

21 MR. PROKOP: Meeting adjourned.

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

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C E R T I F I C A T E

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