

Minutes of the **Regular Meeting** of the Zoning Board of Appeals of the Village/Town of Mount Kisco held on **Tuesday, April 20, 2021 at 7:08 pm** via Zoom Teleconference

Members Present: Chairman Harold Boxer  
George Hoyt  
Jacqueline Broth  
Arthur Weise  
Wayne Spector  
Ralph Alfano

Staff Present: Whitney Singleton, Board Counsel  
Peter J. Miley, Building Inspector

Chairman Boxer stated welcome to the April 20, 2021 Zoning Board meeting. The first thing we'll do is just take a quick vote on the minutes that were attached. Minutes of March 18<sup>th</sup>. Anybody have any changes to the minutes?

Mr. Spector stated no.

Chairman Boxer stated okay, then can we get a motion to approve?

**Mr. Spector introduced a motion to approve.**

**Chairman Boxer asked for all in favor. The motion carried by a vote of 5 to 0.**

Chairman Boxer stated now Michelle, we did it! The first case is ZBA 21-4, Angelina Mendes. Is there anybody here for that case...

Mr. Miley stated I'm not sure, the only person I don't recognize is Tina, is Tina here for 121 St. Mark's.

Mr. Ford stated this Allen, my power went out because of the pole coming down, I'm here for Lenox Place.

Mr. Miley stated okay, we'll let you in when your application is up.

Mr. Ford stated okay.

Mr. Miley stated Harold, I don't believe anyone is here for 121 St. Mark's.

Chairman Boxer stated we can hold it for now. Next is the Oakwood Cemetery solar. Is anybody here...

Mr. Miley stated I saw Ms. McKenzie and Rich Williams also.

**1. Nexamp (Oakwood Cemetery Solar)  
304 Lexington Avenue  
Mount Kisco, NY 10549  
(SBL 80.39-1-1)**

**ZBA#21-5  
Area**

Mr. Rich Williams and Ms. Dawn McKenzie of Insite Engineering, were present.

Chairman Boxer stated okay, if you'd like to start, that's fine.

Mr. Williams stated sure, so good evening, for your record my name is Rich Williams, I'm with Insite Engineering, as is my colleague, Ms. Dawn McKenzie. And we are here tonight on behalf on Nexamp, who is under construction with a Tier 3 solar farm at the Oakwood Cemetery which is a 48.7 acre piece of property in the PD Preservation District and Nexamp had received its approval to construct the Tier 3 solar farm back in March 12, 2019 from the Planning Board. And tonight we are before you for an area variance for the height of perimeter fence around the previously approve solar farm. And the reason we are before is, NEC Code Rule 110 A requires a 7 foot fence around the perimeter of a Tier 3 solar farm. Now looking at Mount Kisco's regulations, there's two different sections which are applicable, the first is under 100-33.2 which is the Special Use Permit standards for Tier 3 solar farms, in this section under fencing requirements is says all mechanical equipment, including any structure for storage batteries shall be enclosed and secured as required by NEC and the Planning Board with selk-locking gate to prevent unauthorized access. And we believe this section of the code conflicts with the supplementary development regulations which is section 110-31 F 2, which limits the heights of fencing to 6 ½ feet. At Nexamp, we are proposing both a 7 foot tall fence and a 7 ½ foot tall fence, the reason being fence panels routinely come to the nearest foot in length and where we're allowed to mount the fence directly on the ground we would provide a 7 foot tall fence, as is required by NEC, as well as Mount Kisco's Tier 3 solar far requirements. However, the Planning Board

did want us to raise the fence up 6 inches from the ground in certain sections to allow fauna movement and migration throughout the solar farm. So in those instances, having the ability to buy a 7 foot tall panel, we would lift that 6 inches off the ground, causing the total height of fence to be 7 ½ feet, which is what necessitates the 1 foot variance. Tonight, we see two possible paths to go down, if the Board is open to discussion, the first is an interpretation of the Zoning law to allow the 7 and 7 ½ foot fence to comply for a 7 foot with NEC requirements and second 7 ½ foot, if required by the Planning Board to allow fauna movement. If this Board isn't open to interpreting the Zoning law, then we would ask for the 1 foot area variance for the fence and if we want to go down that path, I would be happy to walk through the principal points for an area variance.

Chairman Boxer stated I think we always prefer an area variance to interpretations, if we can do it.

Mr. Williams stated okay. So, relative to the five points for an area variance, and again the only reason we brought up the interpretation is because there is a direct conflict in the Mount Kisco Code, where one section requires 6 ½ and the other which is for the Tier 3 solar farm, requires NEC compliance. But relative to the five points on the first is whether an undesirable change will be produced in the character neighborhood or a detriment to nearby properties. We first want to point out that the fence is lower in height than the adjacent solar panels, the solar panels are 9.8 feet and the fence at its max height as sought in the variance would be 7 ½. We are 1,100 feet away and at this point, if the Board is okay, I'd like to share my screen, I'll bring up an aerial image.

Chairman Boxer stated okay, thank you.

Mr. Williams stated so you should all be looking at an aerial image of Oakwood Cemetery, it's with its borders shown in black here. You have Lexington Avenue, Moore Avenue and Elm Street and we have the railroad which forms our western boundary in the solar farm and the northwest corner of the site. We are 1,100 feet away from Lexington Avenue and the closest residence is 950 feet away. In our Planning Board approval, the Planning Board had made a determination that the solar farm would not be substantial visible or objectionably visible to the surrounding community and again, that's the solar farm which would sit taller than our adjacent fencing. Therefore, we do believe that the one foot sought, the one foot variance for the fence would not affect the appearance to the neighborhood or change the character or function of the site...

Chairman Boxer stated is any part of the fence going to be right on Lexington?

Mr. Williams stated no, the fence perimeter, it has to follow the solar field.

Chairman Boxer stated okay.

Mr. Williams stated so it would be in this portion of the property.

Chairman Board stated right.

Mr. Williams stated whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance. Based on the NEC Code as well as the Village of Mount Kisco's Code that requires compliance with NEC and the Planning Board, we don't feel there's any other feasible method. The third principal point, whether the requested area variance is substantial, at a one foot variance, we're seeking a 15.38% variance, at its 6 inch, it's 7.69%, again with respect to it being substantial, we're lower in height than the adjacent solar panels and the closest residential structure is 950 feet and the closest street, Lexington is 1100 feet. So at those distances we don't believe you'll even be able to notice the one foot change and specifically it's not the critical element with respect to height, the panels themselves are taller. Whether the proposed variance will have adverse effect or impact on the physical or environmental conditions in the neighborhood, I could reiterate all the points I've been making about our distances and the panels being the taller structure, if the Board would like but I think I've explained that. And whether or not the alleged difficulty was self-created, although this isn't a determining factor, we don't believe it was, it's really the NEC Code and again Village of Mount Kisco Code that's requiring this fence height. That is our presentation and I'm here to answer any questions.

Chairman Boxer stated anybody have any questions?

Mr. Weise stated I do have a question, so you're going to raise the fence by 6 inches, what are the animals that you're going to allow to go under?

Mr. Williams stated so within the solar array, we're using native pollinator seed mix, so all sorts of small fauna such as squirrels, mice, if there are any snakes or any of the sort that might be wanting to pass through or seeking to pass through.

Mr. Spector stated that was a Planning Board requirement to create that opening, is that correct?

Mr. Williams stated correct.

Mr. Spector stated okay.

Mr. Weise stated what are the largest size creators that could fit under six inches? I'm wondering, you know, cats, dogs, are these animals that could go under there or is it too small?

Mr. Williams stated I'm sure a small enough size dog, I have a pug, my dog could absolutely fit under the fence. I'm sure a cat could as well, I'm sure potentially a small fox could.

Mr. Weise stated not a child?

Mr. Williams stated it would have to be a small infant who is mobile to be able to do that.

Mr. Weise stated okay, that's my only question.

Ms. McKenzie stated can point something out relative to that? So the fence is raised, not on the side of the enclosure facing, not on the side of the solar farm facing the cemetery, it's actually the side facing the DEC wetland on the back side of the property and Metro North.

Mr. Weise stated okay, great, thank you.

Mr. Miley stated Chairman, I just want to clarify, the NEC is the National Electrical Safety Code.

Chairman Boxer stated right, we've had it before.

Mr. Miley stated yeah, this is a typical application.

Whitney Singleton stated there's probably one other thing to clarify, the request not only came at the requirement of the Planning but it came at the urging of the Conservation Advisory Council. This was really something being pushed by the Conservation Advisory Council, so as not to disturb habitats of certain animals.

Chairman Boxer stated okay.

Whitney Singleton stated and Rich, I don't know if you were at the time or Scott was handling it or what happened but I don't, wasn't this fence issue addressed at the time of the application before the Planning Board?

Mr. Williams stated that I'm not sure of, Scott was handling this, I know we had the solar consultant, did, was advising us on NEC Codes and things, so I'm not sure how that was handled.

Mr. Miley stated the original site plan indicates six foot proposed on the original approval.

Mr. Weise stated so the half inch or the six inch, raising the fence by six inches, that's currently the case, you're just going to add an additional foot to the top of the fence, is that what you're looking to change here? Was there no...?

Mr. Williams stated so we had the option of buying a six foot tall fence panel or a seven foot tall, so what we're going to do is we bought a six foot tall panel and raised it six inches, we still wouldn't meet that seven foot minimum.

Mr. Weise stated right, okay.

Mr. Williams stated we looked to try and buy a six and a half foot tall fence and they're not readily available.

Mr. Spector stated sure.

Chairman Boxer stated so right now there's not fencing up?

Mr. Williams stated correct.

Chairman Boxer stated okay.

Mr. Williams stated they are still under construction and the farm is not live yet.

Mr. Alfano stated question, I know you said that there's not a manufacturer that would produce a six and a half foot chain link fence, have you looked into post processing the fence to get it down from seven feet to six feet or...?

Mr. Williams stated they would have to field cut all the chain link...

Mr. Alfano stated okay.

Mr. Williams stated they did look at that, after weighing those two options, based on the length along the DEC and the railroad tracks, where the taller fence would be and the fact that it is isolated to those two sections of the property which are actually the most remote, we would ask for the one foot variance.

Mr. Alfano stated okay.

Chairman Boxer stated more questions? Any comment from the public on this? Peter?

Mr. Miley stated there are no raised hands.

Chairman Boxer stated okay.

Mr. Miley stated but I can give the Zoom number before we proceed, if anyone would like to come in and call in at 1-646-558-8656, Village Hall is open and nobody is present that would like to comment on this application. And no comments on Facebook, thank you Michelle.

Chairman Boxer stated okay. And I guess the first thing we'll do is close the public meeting, do I have a motion for that?

**Mr. Weise stated I'll make a motion to close the public meeting.**

**Chairman Boxer stated second?**

**Mr. Alfano stated I'll second.**

**Chairman Boxer asked for all in favor. The motion carried by a vote of 5 to 0.**

Chairman Boxer asked for anyone opposed.

**Chairman Boxer stated okay, I guess the second, our business now is we can take vote on the proposed as submitted. Is anyone opposed? Okay, then let's make it official then, based on the factors enumerated in their presentation, the Board approves the fence change height requirement.**

Whitney Singleton stated I take that as a motion by the Chair.

Chairman Boxer stated that is.

**Mr. Spector stated I'll second it.**

**Chairman Boxer asked for all in favor. The motion carried by a vote of 5 to 0.**

Mr. Williams stated thank you very much. Good night.

Chairman Boxer stated you're welcome. Good night. Next is, is anybody here yet for the Angelina Mendes?

Mr. Miley stated I don't see anyone, Chairman.

Chairman Boxer stated okay. Then, let's go to the case 21-6, 14 Smith Avenue, who is here for that?

**1. Estate of Anna Nyitry c/o Peter Nyitray, Executor  
14 Smith Avenue  
Mount Kisco, NY 10549  
(SBL 80.41-3-8)**

**ZBA#21-6  
Use**

Mr. Kory Salomone, attorney and Mr. Ralph Alfonzetti were present.

Mr. Salomone stated good evening Mr. Chairman, my name is Kory Salomone, here tonight on behalf of the Estate of Anna Nyitray, in connection with the Use Variance application. Here with me this evening, I also have our contract vendee of the property, Ralph Alfonzetti.

Mr. Alfonzetti stated I'm here.

Mr. Salomone stated when appropriate he'll be sharing the screen. So the subject property as you mentioned is located at 14 Smith Street, it's approximately 1/3 of an acre, currently improved with a 2,500 square foot structure and associated parking. It is located in the OD, low density office district and the primary permitted use there are office uses. Dr. Nyitray and his wife, Anna Nyitray, purchased the property back in the '70's and from the 1970's until Dr. Nyitray's death in 2010, it was used as his primary medical office and he had sporadically throughout that time had rented out the second floor sometimes for residential uses, sometimes for offices uses. Again, in 2010, he passed away and from that time until Mrs. Nyitray's death in 2019, she was occasionally able to rent it out, never consistently. Since her death in 2019, they've been trying to, the Estate has been trying to lease or sell the property to no avail, they've lowered the purchase price several times and the only offer they received was from Mr. Alfonzetti but it was contingent upon the second floor being able to be used for residential purposes, hence why we're here before you this evening. As your Board knows, the standard is unnecessary hardship caused by zoning regulations and there's four factors that the applicant has to demonstrate, so I ran through them in depth in my letter, the first one and usually the biggest hurdle for everyone to get over is the no reasonable return. So, as I described, the property has been listed for lease or for sale for two years, they've been unable to sell the property or even receive any offers, that was confirmed in the affidavit submitted by the listing agent and while there was no money coming in, they spend in excess of \$40,000 a year in taxes, maintenance, upkeep, snow removal, that sort of thing. With respect to the hardship, it's not, it is unique and doesn't apply to a substantial portion of the district, the OD District runs along East Main Street, roughly between Moore Avenue and Terrace Avenue it includes 21 properties, 17 of them have frontage on Main Street. There is one property, 15 Moore, obviously has frontage Moore that is a two-story, I believe it's a medical office building and then right behind that is the landlocked parcel that I believe the Department of Health uses for their parking. The other property is on terrace Place and that you know, upon information and belief, is a two family use right now. So this is really the only site that doesn't have frontage on East Main that looks from the outside to be a single-family home and you know, right next door is the OC District, it kind of blends right in with that and that will get me to the next point, the variance won't alter the essential character of the neighborhood, I believe when you drive down the street from a practical standpoint, it looks more like you're part of Smith Avenue and that would be the OC District there which allows light impact office uses, such as what Mr. Alfonzetti is preparing to do, a professional engineering office and it allows a combination of residential with that and the hardship was not self-created, in this case I'm sure we're all aware, for years now the commercial and office market has been going down in Westchester County and so this, so it's not self-created, it's just there's not market anymore for this sort of office space. So again, they've got a contingent deal on the table with Mr. Alfonzetti provided that we can get a use variance for his, so he can residential above to help supplement the site. So with that, I'm more than happy to answer any questions you may have.

Chairman Boxer stated do you have a listing or spreadsheet to show what, to backup the annual expenses?

Mr. Salomone stated I don't have that with me, I can certainly look, my client, the Estate put it in their affidavit but they didn't give the spreadsheet so I can certainly have a spreadsheet with all of their expenses.

Mr. Weise stated can you walk through what the footprint looks like on the first floor and the second floor?

Mr. Salomone stated in terms of square footages or what's going on in each?

Mr. Weise stated in terms of how many rooms, you know, in the case of the second floor bedrooms and bathrooms, I'm just trying to get a sense of you know, what it looks like.

Mr. Salomone stated sure, so the first floor is approximately 1,200 square feet, that will be used for again, professional engineering office. To be honest with you, I'm not entirely sure how many rooms are down there and upstairs, I believe there's one main living room and there's two or three other smaller rooms up there and one bathroom. It's about 800 square feet on the second floor.

Mr. Weise stated and the bathroom is a full bath?

Mr. Salomone stated I believe that will have to be renovated to make it a full bathroom. And actually I just got a text from one of clients, there's no bedrooms upstairs right now, it's just actually an open space, so it would have to be framed out.

Mr. Weise stated okay.

Chairman Boxer stated okay.

Mr. Spector stated if you're going to be supplementing your submission, I think you really need to also have the, like sort of a schedule showing or a pro forma showing what the rents would be for this particular house, what the rate of return, the income on the property, would be net of income, net income on the property as well. And I'm assuming also, from what I understand the house is in somewhat of a state of disrepair, which of course would affect its either rent ability, it's current rent ability or it's sale ability, for that matter in terms of price. So just as far as doing the full analysis on the economic side of this, you know and I don't know the answer as to whether or not, if it, if this building was renovated it would be more marketable and I'm not necessarily saying that that's going to be dispositive but I think it's something to be considered or looked at, you know certainly most of other elements are very difficult for your client, I understand that and I do agree that the office market is very weak right now, particularly in places like these towns. So it's just a question of making sure this is properly document ultimately, if the Board agrees.

Mr. Salomone stated so when you say approved from a rate net income, you're talking about if it was to be, if we received the use variance to have the residential? Or like now...

Mr. Spector stated yeah, the problem is that right now there is no rent coming in at all and I gather part of it is because it's not in a condition to be rented from what I understand, so really isn't, it's very hard to do a comparison. Nonetheless, I think we're kind of supposed to do that type of comparison analysis when we do a use variance application. Now, so I think it's challenging here because of the circumstances and again I'm very sympathetic to what your clients are doing, so this is not coming on a negative, don't take this negatively but I just want to mention that. Only if the Board agrees that additional information is required you know, on this application, that I think we should see that as well.

Mr. Salomone stated with respect to the disrepair, I mean, I understand over the last few years it has gone down a little bit but again when they commenced it, it wasn't, it had been rented for a time I believe in 2017 and 2018 but again, once the Estate took over, you know it's \$33,000 a year in taxes alone, so they haven't been exactly eager you know without a tenant in there or without any prospects to sink a lot of money into a space that they're actually just trying to sell.

Mr. Spector stated yeah, the actuality in this particular case, its actually the contract vendee who wants this to be done, so it's really the contract vendee that should be showing this information and justifying that this is the proper use for this property in this case because your client is going to sell it.

Mr. Salomone stated well but he can only sell it if its contingent right? The contract vendee hasn't, he doesn't have the unnecessary hardship because he doesn't own the property. It's actually my client who's trying to sell...

Mr. Spector stated I understand that you know, it's...

Mr. Salomone stated I hear what you're saying...

Mr. Spector stated and the contract vendee, if he was the applicant, would have a significant self-created issue, so I understand that too.

Mr. Salomone stated correct.

Mr. Spector stated but nonetheless, we do have this economic analysis that we're required to do and I'm not, again, I'm not, I see everything you've, I've read through your submission, I think it's a well put together submission and you make a good case for it. It's just a question of, like I said if anybody else on the Board agrees that maybe more information is required, that's what I would ask for.

Mr. Salomone stated okay.

Chairman Boxer stated does anybody have any thoughts on that? Personally, for myself, I was okay with the submission as it is but if the Board feels that we need more backup besides the spreadsheet for the expenses, let me know. Okay, so then I assume everybody is okay with the submission as it is, subject to the proof of the expenses?

Mr. Alfano stated Kory, I have one question. You mentioned there are 21 properties in this district. When you go through other properties that are similar in style or might be of similar use or intended use, I'll say.

Mr. Salomone stated and I think that was the point of what I was trying to get at, right? 17 of these properties front on East Main Street which is think is an easier sell if you're looking for office space,

you're right on Main Street. And so the only other two that I think or three that would be similarly situated to the 14 Smith property, there's one property I believe it's 16 Terrace Place but it's located on Terrace Place and that again, when I look at it on street view or when I drove by, it looks like its being used as a two-family house, that's already all residential, I don't know how that works, it's probably preexisting, legal nonconforming for all I know, I'm not really sure. And then on Moore Street, right next to the Health Department, there's a two-story office building, it's bring, that doesn't look like a single-family home at all and then behind that is the parking lot for the Health Department, that's going nothing on it. So, again I kind of take out those 17 parcels on East Main because sure some of them look like single-family but they're right on Main Street, more appropriate for the office use. The other three are more comparable and the only other one similarly situated is already residential.

Whitney Singleton stated I think I can just provide a little clarification, 16 Terrace is a mixed use, it is a catering facility and an apartment.

Mr. Spector stated I have one more question, maybe since I don't have the Code in front of me. Are there any other uses that allowed in that district besides office?

Mr. Salomone stated the other principal uses are educational and training facilities, nursery schools, child and adult daycare, and funeral homes.

Mr. Spector stated okay.

Chairman Boxer stated do you know when, what, while it's been on the market, have they been, did they look at everything other than just an office, as you said there are several other uses, were any of those, did anybody come in with any interest with any of those?

Mr. Salomone stated no, in fact if you look at the affidavit from the seller's agent, Karen Heller, she said that they received virtually no offers and the only offer that they have received is this one from Mr. Alfonzetti and again for engineering office on the ground floor and residential above, so that was contingency of the contract.

Mr. Weise stated we were, we have this question often, will there be a separate entrance for the residential unit on the outside? Or is it a staircase inside?

Mr. Salomone stated you know I think if Mr. Alfonzetti gets it, he's going to look at getting, obviously like I said, there's no walls upstairs, so he's looking to do some renovations and let me see if there's a test coming that's going to tell me. So the answer is if Code requires it to be a separate entrance from the outside, that's what we'll do.

Mr. Weise stated but that's not the connection?

Mr. Salomone stated there's, I mean, they'll be separate entrances to the office buildings, I just don't know if it will separate from the outside or separate once you get through the front door.

Mr. Weise stated right, okay.

Chairman Boxer stated Whitney, does the Code require a separate entrance?

Whitney Singleton stated not for this district, no. Not for this district nor the adjoining district.

Chairman Boxer stated okay.

Mr. Spector stated but we could require it as a condition because this is a use variance, if we felt it was, if we felt there was a benefit to it.

Whitney Singleton stated absolutely.

Chairman Boxer stated right now, I don't, if the owner is upstairs and he has the office downstairs, I don't see why he can't just go inside and either go up or go to the office and we can make it a condition that it always has to be occupied by the owner of the business on the first floor.

Mr. Weise stated which would be in line with the primary use of the other buildings on the street.

Chairman Boxer stated yes, most of the other buildings on the street are like this, several of them, they have taken over the whole building for office such as, I don't even know what name they're going by anymore but the grey house the law firm in it... Whitney who...?

Whitney Singleton stated Shamberg Marwell.

Chairman Boxer stated yeah, I think it's still, okay yeah, so that one, I've been in that building and they use all of it as office space. I don't think the other ones are like that, there's an office, a legal office next door but I think it's only on the first floor.

Mr. Salomone stated I certainly know down the, down the block a bit, I know there's an architectural office where that's, it's an architect on the ground floor and he does not occupy the second story. And again I'm not sure if Mr. Alfonzetti's intent is to owner occupy here. He wants the flexibility because again, he doesn't need all the space and so to make it economically viable for him, he has to have the ability to rent out the top as residential.

Mr. Alfano stated Kory, can you answer a question? The building is unoccupied, right now, correct?

Mr. Salomone stated correct.

Mr. Alfano stated how are we spending \$10-13,000 a year on maintenance costs? I mean, I can understand landscaping but utilities?

Mr. Salomone stated they said utilities, snow removal, they have done some upkeep...

Mr. Alfano stated okay.

Mr. Salomone stated they have done some upkeep but again, you asked for the spreadsheet and I will reach out to my client tonight and get that spreadsheet from him. I don't have all those answers at the tip of my tongue.

Mr. Alfano stated okay, no worries, it would be good data to have, thank you.

Mr. Salomone stated yup, absolutely.

Chairman Boxer stated okay, any other comments, questions? Then we can put this over to next month?

Mr. Salomone stated can I just ask two quick questions, if that would be alright, Mr. Chair?

Chairman Boxer stated sure.

Mr. Salomone stated is the Board leaning towards making it a condition of, if you were inclined to approve it, would the Board be leaning towards making it a condition of owner occupancy?

Whitney Singleton stated can I address that on behalf of the Board? I thought, in discussions I had with the representative for the applicant, I was of the belief that they had intended on occupying it, the residence and at least part of the space downstairs for the office.

Mr. Salomone stated yeah, I know that he is certainly going to occupy at least part of the space downstairs for an office. I'm just not sure he intended to live upstairs.

Chairman Boxer stated he's on, why don't we ask him. Hi...

Mr. Alfonzetti stated I'm here.

Chairman Boxer stated so what's the answer to that?

Mr. Alfonzetti stated good evening, how are you guys doing?

Chairman Boxer stated hi.

Mr. Alfonzetti stated I don't want to have a condition of approval just because I don't know what the future will hold. Right now the intention is to move in there but I don't know in a year or two what will happen and if it's tied to that, then it's something I just can't do. Just because financially, I don't know if it will work.

Chairman Boxer stated do you know, if that upstairs was rented, do you know what the rent would be?

Mr. Alfonzetti stated as an apartment?

Chairman Boxer stated does anybody know what the rent would be, can the broker on your submission, can you find out from the broker what they think the rental would be?

Mr. Alfonzetti stated I've spoken to the listing agent and the buyers agent, they said somewhere around \$1,800, maybe \$2,000 depending on what the apartment looked like exactly.

Chairman Boxer stated okay, so Kory, if you can kind of get information for that?

Mr. Salomone stated yup. Okay, so we want information on rental and the spreadsheet for the expenses.

Chairman Boxer stated right.

Mr. Spector stated and I'm just going to say my opinion that I don't agree that there should be a restriction that it be owner occupied, in a typical zone that allows, we're not rezoning a property but this is going to be sort of akin to a mixed use building where there's, you know, typically in a mixed use building, there's no restriction like that, so I don't feel that it's necessary to do that. I think it's...

Mr. Alfano stated I would agree with that.

Mr. Spector stated I'm sorry?

Mr. Alfano stated I would agree with that, I don't think it should be a condition.

Chairman Boxer stated I agree also.

Mr. Weise stated yeah, I do as well, I don't think that makes sense. I think we are in uncharted territories for commercial real estate in this area and having more flexibility makes sense.

Chairman Boxer stated right.

Mr. Salomone stated okay, I thank you all very much for your time, we will get you that information and we will see you at next months meeting.

Chairman Boxer stated okay, thank you very much.

Mr. Salomone stated thanks again, appreciate it.

Mr. Miley stated Chairman?

Chairman Boxer stated yes?

Mr. Miley stated do you want to make a motion to hold it to the next meeting?

Chairman Boxer stated we can do that. **I'll move that we hold it, move this over to the next meeting.**

**Mr. Weise seconded the motion.**

**Chairman Boxer asked for all in favor. The motion carried by a vote of 5 to 0.**

Chairman Boxer asked for any opposed. Okay.

Mr. Miley stated that's to May 18<sup>th</sup>, Chairman.

Chairman Boxer stated okay, thank you.

Mr. Weise stated I think there's a much bigger question looming here, which is about commercial real estate. I mean, we all, it's an obvious question for New York City but it's going to be a question for Mount Kisco as well.

Chairman Boxer stated right. That might have been in the minds of some of the people that were against the Kirby Plaza project because it did include commercial use on the ground floor.

Mr. Weise stated and there's some questions about whether, with the Zoom, you even need to have a place to meet someone face to face for certain professional meetings.

Chairman Boxer stated yup, just need a good internet connection.

Mr. Spector stated most corporations are planning on bringing workers back into the offices in the City, from what I understand but at a reduced basis, I think the Chairman of Chase said that's he anticipating that he's going to need 60 desks for every 100 employees, so that's how they're going to reduce it. There's going to be changes but I guess that's a matter for a comprehensive plan review at some point.

Mr. Weise stated I was looking at the, I think the tax burden is an issue for that, for certain buildings. And that's not a question for this Board but...

Chairman Boxer stated no but did you see the New York Times article on Sunday? About what's going to happen with all the office buildings...

Mr. Weise stated I didn't...

Mr. Spector stated converting to residential, most of them.

Chairman Boxer stated you should take a look at it, they're talking about a lot of them, the way they did in the Financial District, where they had to go in there and they just changed everything. They're talking about that may happen in Midtown now but nobody knows. I know just from personal experience, my son-in-law worked in Manhattan, his firm is in Manhattan and he's being working out of his house since the start of this whole thing and he just finished getting his vaccinations and I know he plans to try to get in there several days a week but also we had a friend come over today that took the train out of Grand Central and at 9 o'clock in the morning, she took a picture at 9 o'clock in the morning in Grand Central, you can count the number of people on one hand.

Ms. Broth stated you can do the same on the train, since I've been commuting in all week and last week but the old converted sewing shops off of 5<sup>th</sup> Avenue, the smaller buildings, those have already converted over to residential...

Chairman Boxer stated okay.

Ms. Broth stated so that's already started.

Chairman Boxer stated right.

Mr. Spector stated I can say that I was down in Brooklyn and DUMBO two weeks ago and the streets were teeming with people, so the City is still a draw for some people.

Chairman Boxer stated well if you listen to the traffic every morning, there's still a lot of people trying to get into the City.

Mr. Spector stated maybe they're on the Saw Mill Parkway backed up in that construction, that's me every day.

Chairman Boxer stated that could all change too if they start, if they pass the law about charging to come into Midtown.

Ms. Broth stated I think the people that are going into the city are driving and stay off of mass transit.

Chairman Boxer stated yeah, I would think so because the MTA cries all the time that nobody's using it.

Ms. Broth stated and they're charging off-peak 24/7.

Chairman Boxer stated oh that's nice.

Mr. Alfano stated that's an idea.

Ms. Broth stated yeah.

Mr. Spector stated and they're spending a fortune, what is that the East Side Access underneath Grand Central for Long Island Railroad too.

Chairman Boxer stated right.

Mr. Spector stated that's amazing.

Chairman Boxer stated it will be interesting to watch the development on the old west side train yards and see how its, it's not even close to what they've proposed for it, so it's a question, you can see where it goes, it will be some kind of indication of where they think the market's going.

Mr. Spector stated alright.

Chairman Boxer stated okay, then next on the agenda are Richard and Mary Scott. I see Mrs. Scott is here...

**2. Richard & Mary Scott  
33 Fairways Drive  
Mount Kisco, NY 10549  
(SBL 80.80-1-23.1)**

**ZBA#21-7  
Area**

Mr. & Mrs. Scott were present.

Mrs. Scott stated I'm here and actually Richard is here too.

Mr. Scott stated I'm here also.

Chairman Boxer stated okay, let me just find your file.

Mrs. Scott stated shall I share the screen? It might be easiest for me to explain that way.

Chairman Boxer stated sure.

*Screen share issue discussion.*

Mrs. Scott stated thank you guys. So let me just go through because I think the easiest way to start is on this view. So we live at 33 Fairways Drive, which is off 128, just around the corner from Mrs. Greens. This is our property...

Chairman Boxer stated we're not seeing what you're seeing.

Mrs. Scott stated oh, okay.

Mr. Weise stated I think you need to change the document view.

Mrs. Scott stated I'm sorry, say that again.

Mr. Weise stated there's a, there should be a, on Zoom you change the document view, you have to highlight document you want us to see.

Mrs. Scott stated is there any way you can put yours on and I can just talk it through.

Mr. Miley stated chairman, we don't have the file with us.

Chairman Boxer stated we have the file in front of us...

Mrs. Scott stated if you have the file in front of you, I can just explain it. If you go to the aerial view, which is down after all the printed pieces.

Chairman Boxer stated okay.

Mrs. Scott stated then you'll see...

Chairman Boxer stated okay.

Mrs. Scott stated um, so you'll see Fairways Drive and our property is highlighted in yellow. So the issue is our house was built in 1930 before current Zoning setbacks. We have a one story sunroom which we would like to put a second story over, we only have one bathroom on the second floor and we'd like to add a bathroom and a closet. So because our house was built before the current zoning, we're 5.9 feet from the property line where 10 feet is required. So we require a 4.1 foot variance. The fact is the distance between our houses my, house and the house next door is over 36 feet because there's a driveway and there's some space on either side which if we were to follow the Zoning, the minimum would be 20 feet, which the houses across the street, if you look across, you'll see those houses are all 20 feet across, 20 feet apart from each other because they have the driveways and the garages in the front. So to add the second floor over

our sunroom, we don't feel would have a major impact, A. because it's farther away from the neighbor than most houses on the street and also because its not going over the existing nonconformity, we're just kind of filling out the second floor. Okay, thank you. So, here's our house and you can see the one story on the right, that's the sunroom and then if you look at the upper right corner, you get a ¾ view, that's the area where we want to build the addition, so it will just be an extension of the second floor and we'll...

Chairman Boxer stated it will have the same roofline as the second floor?

Mrs. Scott stated similar roofline yes, I think there's drawings which show that. And then you can see in that same image on the lower right, the distance between the edge of our sunroom and the house next door. So it is, as they say, it's over 36 feet.

Chairman Boxer stated you have architectural plans?

Mrs. Scott stated yes, so...

Chairman Boxer stated I don't think they were submitted to us.

Mr. Spector stated that's part of the packet.

Mr. Alfano stated yes, they were.

Chairman Boxer stated is it?

Mr. Weise stated is the wall...?

Chairman Boxer stated never mind, its on this side.

Mr. Weise stated is the wall the property line?

Mrs. Scott stated the wall is the property line, yes.

Mr. Weise stated so the tree is your neighbors tree?

Mrs. Scott stated correct.

Mr. Weise stated and would that tree be in the way of your project?

Mrs. Scott stated well we talked to the neighbor, we were going to trim it and we've also said you know, if it didn't see to work, we're happy to replace it. Our neighbors have no problem, they said take the tree down, we don't care. So they don't have a problem with the addition. In terms of architecture, we're repeating all the details, we're trying to make it fit in with our house but also with the neighborhood. We actually have one of the older homes on the street which has some character and we're matching existing siding and details.

Chairman Boxer stated I'm sorry, I do have them. I got a new desk and it's tiny, it has to fit into the house and look good. Okay...

Mrs. Scott stated could you, whoever is putting this up, could you put the front elevation up? There, okay, so there's the existing house, the sunroom is on the lower right and the addition is over it on the right.

Mr. Spector stated the current sunroom is full enclosed right now and part of the interior of the house?

Mrs. Scott stated yeah, its original, it was always a habitable room.

Chairman Boxer stated Peter, do we have anybody who's here for this from the public?

Mr. Miley stated nobody in Town Hall, I'll read the number again in case someone would like to call in. The phone number is 1-646-558-8656, do we have any hands up? Bear with me on second, Chairman.

Chairman Boxer stated sure.

The Secretary stated there are no raised hands in the Zoom.

Mr. Miley stated there are no raised hands and Facebook, no comments.

Chairman Boxer stated okay, so your neighbors like you.

Mrs. Scott stated they do.

Chairman Boxer stated questions anybody? Okay, Mrs. Scott, would you like to go through the points?

Mrs. Scott stated the point, sure.

Chairman Boxer stated yes.

Mrs. Scott stated feel the structure will not produce an undesirable change in the neighborhood. The addition has been designed in keeping with this home, as well as others in the area. The distance between 33 Fairways and the neighbor at 39 Fairways is 36 feet 6 inches. Homes across the street are 20 feet from house to house which is the minimum per code. Number two, the proposed addition in the logical location as it's adjacent to the existing bedroom and there's not another feasible way to expand the second floor space. The variance requested is just over 40% which might be considered substantial but given that it is over an existing first floor and the distance between the two houses is large, the impact is mitigated. The addition will not have an adverse effect on the environmental conditions of the neighborhood as it will not alter the ground level in any way. The construction of a second floor in this location is a self-created difficulty but the nonconformity is original and due to the minimal impact on the neighborhood and the benefit will bring the homeowners, we feel this variance is justified.

Mr. Weise stated I've got one question for you and this may, Peter you may be able to help me with this. It's rare to have a bathroom facing the street, would that be correct?

Mr. Miley stated I have my own bathroom that faces the street...

Mrs. Scott stated yeah, that's not...

Mr. Weise stated so its not uncommon.

Mr. Miley stated I don't, I've never heard that before, honestly.

Mrs. Scott stated that's one of the reasons for the small window.

Mr. Weise stated that was my immediate question but I'm going to guess you're going to have frosted windows and of course curtains.

Mrs. Scott stated well they're small the other thing is, the reason to put it in the front is it goes down through the sunroom, into the utility room and can connect to the sewer, so it's a functional as, you know, on top of other reasons for putting it in the front.

Mr. Weise stated okay.

Chairman Boxer stated any other comments? Peter, nobody from the public has come in?

Mr. Miley stated nobody Chairman, no comments, nobody has called in and no hands raised.

Chairman Boxer stated okay, then we can close the public hearing first, do I have a motion for that?

**Mr. Spector stated so moved.**

**Chairman Boxer seconded the motion.**

**Chairman Boxer asked for all in favor. The motion carried by a vote of 5 to 0.**

Chairman Boxer stated any opposition? Okay. So now I'm, everybody I assume agrees with the submission? Is there any opposition from anybody?

Mr. Alfano stated no.

Chairman Boxer stated okay then, Whitney do you have anything?

Whitney Singleton stated what I was observing during the meeting is that it appears as though we have an application where there's not comments from the public, the application has been presented with plans and that as presented by the applicant, the five points, the principal points, there seems to be no disagreement with what she had proposed. So I have written as notes for myself that incorporate for your findings that statements made in her principal points letter and to put in standard conditions for the approval.

Chairman Boxer stated okay.

Whitney Singleton stated that this is solely for these plans, there shall be not unauthorized encroachment, as-built survey whatever else are standard conditions.

Chairman Boxer stated okay, then I guess we can take a vote on it.

Whitney Singleton stated okay, so we just need a motion, a second and a vote.

Chairman Boxer stated anybody want to make a motion? Want me to make the motion?

**Mr. Weise introduced a motion to approve. Seconded by Mr. Spector.**

**Chairman Boxer asked for all in favor. The motion carried by a vote of 5 to 0.**

Chairman Boxer stated any opposition? No? Okay, it's granted.

Mrs. Scott stated thank you.

Chairman Boxer stated okay, go back again to the first case, anybody here for that yet, Peter?

Mr. Miley stated sorry Chairman, someone was at the door. Please bear with us. They can't come in that way... Chairman, I believe the person marked as Tina is here for 17 Lenox, is that correct?

Mr. Ford stated yes.

**3. Martin Rivera Ramirez  
17 Lenox Place  
Mount Kisco, NY 10549  
(SBL 80.33-2-6)**

**ZBA# 21-3  
Area**

Mr. Miley stated okay, so you're up.

Mr. Ford stated I live behind them. I'm Alan Ford.

Mr. Miley stated so you're not presenting the application for 17 Lenox.

Mr. Ford stated no, I'm here because I got a letter.

Mr. Miley stated so Chairman, we don't have anybody here to make the presentation.

Mr. Ford stated so what does it do, get put off to next month or...?

Mr. Miley stated that's up to the Chairman and the Board.

Chairman Boxer stated we have two applications now that no one is here to present, anybody have an objection...

Mr. Miley stated Chairman, we actually have...

Chairman Boxer stated pardon me?

Mr. Miley stated I actually have Angelina Mendes just arrived at Town Hall, that's the fence application from the initial, if you're willing to entertain the application.

Chairman Boxer stated you have a camera there that we can see her?

Mr. Miley stated I have to set one up, it's going to take me a couple minutes.

Chairman Boxer stated go ahead.

Mr. Miley stated but as far as the Ramirez, the 17 Lenox application, we have nobody here, we have one person that would like to speak on behalf of it. I'm not sure how you'd like to proceed.

Chairman Boxer stated I think they kind of thought that as long as they gave us the pictures, that's all they had to do but...

Mr. Miley stated actually, those are my pictures.

Chairman Boxer stated oh okay.

Mr. Miley stated at the request of your Board, I went out and took some measurements with their, I actually spoke to the gentlemen the day before the meeting, so I'm surprised he's not here.

Mr. Spector stated I wouldn't object to holding in abeyance until next meeting for them, since we already started a public hearing here on this one. Depends on how the rest of the Board feels.

Chairman Boxer stated anybody...

Mr. Weise stated I agree with that.

Chairman Boxer stated okay, I agree. So we'll need a motion to hold it over one month.

Mr. Miley stated the May 18<sup>th</sup> meeting Chairman.

Chairman Boxer stated over to May 18<sup>th</sup>.

Whitney Singleton stated was that Lenox?

Chairman Boxer stated pardon me?

Whitney Singleton stated was that Lenox?

Mr. Spector stated yes.

Mr. Miley stated yes.

**Chairman Boxer stated I'll move that we put it over to the May 18<sup>th</sup> meeting.**

**Mr. Spector seconded the motion.**

**Chairman Boxer asked for all in favor. The motion carried by a vote of 5 to 0.**

Chairman Boxer stated any opposed? Okay, so that's over to the next meeting then.

Mr. Miley stated alright Chairman, I'll contact the owner, I'm not sure why he didn't appear, I just spoke to him yesterday, so hopefully he just forgot.

Chairman Boxer stated okay.

Mr. Miley stated I need to request a break while I set up another method of being able to broadcast. I need a five minute pause...

Whitney Singleton stated is this to go back to 121 St. Mark's...

Mr. Miley stated yes, the applicant. If the Chairman would like to entertain it.

Chairman Boxer stated well it's, unless anybody opposes it, if they're there we can listen to it.

Mr. Spector stated yup.

Chairman Boxer stated we're willing to listen to it.

Mr. Miley stated like I said Chairman, I just need a 5 minutes pause, I need to go down to my office and grab another ipad and set it up.

Chairman Boxer stated okay, that's fine.

Mr. Miley stated thank you.

Whitney Singleton stated do you want to take a quick look, while we're here?

Chairman Boxer stated sure.

Whitney Singleton stated do you have any thoughts to the rest of these conditions of approval?

Chairman Boxer stated on what?

Whitney Singleton stated I want to be somewhat prepared when the use variance comes back. I gleaned that you guys did not want to limit the occupancy upstairs to the tenant downstairs.

Chairman Boxer stated true. Can you make it bigger?

Whitney Singleton stated did you want, what?

Chairman Boxer stated can you make it any bigger?

Whitney Singleton stated sure. Okay...

Chairman Boxer stated okay, great, thanks.

Whitney Singleton stated variance is solely for the plans presented, residential use shall be limited to the upstairs, it shall not be expanded without further approval. If other approvals are required by other Village Boards, said conditions of approval shall be deemed incorporated herein by reference. This one is out. There shall be no change to the downstairs office use to another permitted use requiring greater parking requirements with elimination of the residential use, maybe that's something you don't want to give consideration and what happens if they put a school downstairs, are you still going to want the apartment upstairs? What if they put a church in downstairs? If you want to tie the use to the continuation of the office use?

Chairman Boxer stated I don't know if we should tie it to that, maybe we should make them, can we put something in there that if they are going to change the downstairs use, they have to come back to the Board?

Whitney Singleton stated um, so you take out the elimination, one of the things that didn't come up as a discussion item, is they're only going to need a fraction of the parking.

Mr. Miley stated Chairman, we're ready whenever you're ready.

Chairman Boxer stated okay, do they, we're just going over the Smith Avenue.

Mr. Miley stated just keep in mind that Facebook is still running and whatever you've talked about will be heard.

Whitney Singleton stated alright, so...

Chairman Boxer stated alright, then let's go to Angelina Mendes case 21-4.

**4. Angelina Mendes  
121 St. Marks Place  
Mount Kisco, NY 10549  
(SBL 80.49-2-20)**

**ZBA# 21-4  
Area**

Dr. Mendes was present to represent the application.

Dr. Mendes stated hi, good evening.

Chairman Boxer stated can't have two on at the same time.

Dr. Mendes stated I've been on since 7 o'clock at home watching on TV and posting on Facebook and trying to figure out how to get in and then finally I just decided to get in the car and drive down here, so here I am.

Chairman Boxer stated okay, we're ready. Would you like to make your presentation?

Dr. Mendes stated unfortunately, I don't have my presentation with me because I just drove down to make sure I could make the meeting. However, I did supply everyone with documentation for the property at 121 St. Mark's Place. I have a corner lot property and there were some bushes there for a very long that were not completely filled in and this was a house where there had been a fire so it was unkempt for a really long time. So I decided to tear down the old shed and also pull down the bushes that were about 8 feet high and

just growing erratically and put up a fence. So I put up a 6 foot fence and currently I am also in the process of beautifying the property and putting a deck in the back, replacing the existing deck and the putting on a subdeck and the requirement for the hot tub that is going to be there, is that the fence be over 48 inches high. So there's an existing fence in the back that is 48 inches high, however it's inch or two below level at some points so I decided to replace the fence and I put up the 6 foot fence thinking that there was no issue with that. So apparently there, and I apologize for that and I submitted all the paperwork for that including photographs of the before and after, just to demonstrate that this would actually, I guess I'll just read the response to the five factors, if that's okay?

Chairman Boxer stated well we have some questions first.

Dr. Mendes stated okay.

Chairman Boxer stated Peter, would she have needed a building permit to put the fence up.

Mr. Miley stated that's correct, Chairman.

Dr. Mendes stated I would have needed?

Chairman Boxer stated okay, so the fence is not up there legally then...

Dr. Mendes stated I called the Town and they told me I would not need a permit for a fence.

Mr. Miley stated not for four foot...

Dr. Mendes stated because I did apply for a permit for the deck.

Chairman Boxer stated Peter, you have to mute, there you go...

Mr. Miley stated I'm sorry, the echo is conflicting with the other, did you have a question Chairman?

Chairman Boxer stated yeah, the question, I think you answered. That should would need, that the fence that's there does require a building permit and there is currently no building permit.

Mr. Miley stated it's in excess of four feet.

Dr. Mendes stated I was under the impression you didn't need a permit for a fence.

Mr. Miley stated in excess of four feet, yes.

Dr. Mendes stated I was unaware of that, I'm sorry.

Chairman Boxer stated but you must apply though, have you applied though for the change to your deck?

Dr. Mendes stated of course, yes.

Mr. Miley stated the deck, yes.

Dr. Mendes stated and that's the reason why the existing permit can't be closed out because this older issue with this former fence is what's delaying the existing project. I got an architect, I did everything by the book, I contacted them ad naseum with questions just to make sure I did this right. But unfortunately, the fence that was erected before this project began is the issue to the major project of which I did obtain a permit for, if that makes sense.

Chairman Boxer stated so you're saying that the white fence that's there was put up before you made the application to the deck.

Dr. Mendes stated yes.

Chairman Boxer stated and why did you decide it had to be six feet.

Dr. Mendes stated because I'm new to the area and I knew the front of my house was St. Mark's Place and I assumed that that was not another front but I was told that that's another front to my property because it's a corner lot. Because it's another front, it can't be 6 feet high.

Chairman Boxer stated which would you have found out if you applied for the permit to put the fence up.

Dr. Mendes stated right and as I mentioned and I'm not being disrespectful by any means, I did call the Town and ask if I needed a permit for a fence and I was told that I did not. Sorry, getting the echo. The last part about the, if it were above 4 feet, so I thought I was doing everything correctly and when I did go to complete the deck project, I did apply for a permit.

Chairman Boxer stated so you're partially right, you would not have needed it, if you kept it at four feet.

Mr. Miley stated Chairman, it also has to do with the pool, other than having a pool or a spa.

Chairman Boxer stated right.

Mr. Miley stated under normal circumstances, you do not need a fence permit. You need a zoning variance for the six foot in the front yard.

Chairman Boxer stated okay. So I'm still confused as to why you think you had permission to put up a six foot fence.

Dr. Mendes stated as I mentioned the six foot fence was before the deck project and as I had mentioned, I thought that I was allowed to put up a fence. I didn't know that there was a four foot permission versus a six foot permission for lack of better jargon with all of this and forgive me for that. But I didn't, I called, do you need a permit to put up a fence and they said no...

Chairman Boxer stated okay.

Dr. Mendes stated but I was aware, unless its 6 feet, you know, that part I did not know and I figured because I was replacing bushes that were about 8 feet high that it wasn't, I just replacing what was there with something that was comparable.

Chairman Boxer stated did you put the fence in yourself or did you have a fence company do it?

Dr. Mendes stated I had someone put it in.

Chairman Boxer stated a fence company or an individual?

Dr. Mendes stated I believe he's licensed and insured, somebody local. Not Home Depot.

Chairman Boxer stated so...

Dr. Mendes stated sorry, no Home Depot but and I don't have his information handy right now but somebody local from Mount Kisco who has a company. I don't have any information here with me, sorry.

Chairman Boxer stated he should have told you about the height of the fence when he put it up but I guess he didn't.

Dr. Mendes stated no.

Chairman Boxer stated anybody else have any questions?

Dr. Mendes stated I mean, there is the issue with the, they want something higher than 4 foot in order to have something in the back, so that is going to be a problem moving forward with the other permit, so in retrospect this, I didn't plan to be an issue and then putting up the you know, constructing the other project, I didn't think that that would have been the issue holding up this project because I spent thousands of dollars on an architect to make sure it done right and went through the Town and made several phone calls and sent several e-mails to in order to make sure this is done properly. So if I would have known that that fence were an issue, initially, I probably never and that was the last thing I found out like right when we were about to close, oh I don't think that fence is to Code. And I'm like after all, you know kind of after this whole project, like I never would have gotten this far on the project had I known that that was going to be the issue holding us in the end here.

Chairman Boxer stated no, I understand but there is, I had to be lawyer on you but ignorance of the law is not an excuse.

Dr. Mendes stated I'm sorry?

Chairman Boxer stated ignorance of the law is not an excuse. There were ways beforehand that would you even put down the name of the person at the Town you spoke to?

Dr. Mendes stated I might have a note somewhere but again, I'm not, you know, here to throw anybody under the bus, I called with a simple question. I'm new here, is there do you a need permit to put up a fence, no you don't need a permit.

Mr. Spector stated I think your contractor should have known frankly, if he's licensed or she.

Mr. Miley stated Chairman, let me clarify it.

Chairman Boxer stated sure.

Mr. Miley stated the deck was there first, the fence came later. The trigger requiring a permit is because there's a spa, the spa is large enough to be considered a swimming pool under the State Code, not our local Code. A four foot fence is required for any swimming pool or spa, thereby requiring a permit. Under normal circumstances no pool, no fence permit needed, only a variance for the six foot, in excess of two feet in the front yard.

Chairman Boxer stated okay.

Mr. Miley stated at the time she may have called and didn't indicate that a pool or spa was going in late, and then in that case she's accurate. The trigger is the pool and spa which most people don't understand that it's required because of safety concerns of people, drowning victims. Hopefully that clarified it a little bit.

Chairman Boxer stated yeah, it really was, it's a variance issue and I think the variance, the height of the, the fence height, even if you don't need a building permit, you still have a fence that is too high.

Dr. Mendes stated and I applied for the variance, correct? That's what I was told to do.

Chairman Boxer stated and I feel, we understand that its there but we also have an objection from a neighbor about its effect on the ability to see the street intersection when you come out of the driveway. I don't know whether four or six would make a difference, that's more of a case chain link versus closed but there still is the fact that your fence that put in does not comply with our fence Code. A four foot fence would have been, Peter, a four foot fence would have been fine for the, when she went to get the hot tub in?

Mr. Miley stated yeah, the State requires a 48 inch fence.

Dr. Mendes stated there was an existing 48 inch fence in the back though, that I was told was not good enough. The one in the back that was existing...

Chairman Boxer stated it's not just height, it's the type of fence, you have to have self-closing gates, it's not just the height of the fence.

Dr. Mendes stated right and I realize that and I did get the self-closing gates and even we turned doors around and locks around, I promise you I really tried to comply with every single request but unfortunately for me the fence that was there before we began this project is the issue and if it's a height issue, the bushes that were there for 30, 40 years, really should have been the obstruction, that view. And it was dilapidated, the fence that was there with the bushes on top of it as all, I mean if you look at the before and after pictures, you can clearly see that I wasn't trying to do something to deface the neighborhood, it was to enhance the property, the safety of the neighborhood. Which is really why I'd like to read these points here, just to kind of support my case because obviously, legally, I didn't think I was doing anything wrong because if the fence were the issue initially, I never would have begun a \$30,000 project related to that fence. So just looking up this here and, am I allowed to ask what the neighboring issue is? Is that public, oh, it's in here.

The Secretary stated it's also on the website.

Dr. Mendes stated okay.

Ms. Broth stated Mr. Chairman, I'd like to ask, there's a chain link fence that opposite this new fence, what's the height of that fence? When was that installed? Is that yours or the neighbor's?

Dr. Mendes stated that's the neighbor's fence and that is a 48 inch standard fence but because it dips at certain points, I was told by the Town that it was not acceptable in order to close out the permit for the deck project.

Chairman Boxer stated I don't even know, in order to get a permit, it has to be your fence, not your neighbor's fence. So that fence should never have factored into the planning, am I correct Peter?

Mr. Miley stated she could utilize a neighbor's fence if it meets the requirement. She doesn't have to provide her own fence, it just requires a barrier.

Chairman Boxer stated okay.

Dr. Mendes stated because there's two existing fences there, one is six feet along the neighbor's property line and the other is four feet.

Ms. Broth stated so the neighbor's fence is six feet?

Dr. Mendes stated one is six and one is four.

Chairman Boxer stated where is the neighbor's six foot fence.

Dr. Mendes stated along the, perpendicular to the St. Mark's side, between 119 and 121 St. Mark's.

Chairman Boxer stated I drove by there and I don't recall seeing anything other than that chain link fence.

Mr. Alfano stated Harold, into the four section, the bottom picture on the right side has a six foot chain link fence.

Chairman Boxer stated yeah, I see, okay. Unfortunately fences are an issue because a lot of people do know there is Code when you put a fence in. Anybody have questions? I mean, I don't know which way anybody wants to go with this...

Mr. Weise stated I'm curious if the, if you had a discussion with the neighbor before you put up the fence.

Mr. Spector stated I was just thinking that.

Mr. Weise stated because I would have thought that they would have, your fence makes their obsolete, they could have had the opportunity to get rid of their fence.

Dr. Mendes stated I did speak with them about the back fence, the fence along their property and we even were trying to work together to find a solution to make it work so I wouldn't have to put up the second fence because of the height of the existing fence, so we were in communication. I'm actually just looking at this now, the concern about the blockage, I'm just seeing this for the first time now, so I was unaware of this until now. But if there could be some kind of resolution to that, of course I would create something that would allow safety for the neighborhoods, also be 48 inches or somewhere between 48 and 60, or maybe just at that corner, if there could be some kind of adjustment, I don't know I'm trying to work with everyone here but at the same time, you know I do want to move forward with this project because it's been over a year. I'm just reading the rest of this here...

Mr. Weise stated just to clarify on this before, these three pictures. It looks like the top two are the before and the one below is halfway through putting in the fence, is that correct?

Dr. Mendes stated hold on one second, I'll just go to those pictures. So you're looking at the after photos, correct?

Mr. Weise stated the before, so you have three pictures on the before...

Dr. Mendes stated the larger photo on the base was when the bushes were still there, those tall hedges and the four foot fence that was not good, what not acceptable in order to close out the permit for the hot tub and the project in the backyard, which is why I put up because I wouldn't have put up an additional fence with an existing fence already there, it's kind of waste of money but in order to help move the project forward, that's why I put the six foot fence there.

Mr. Weise stated and so what are the, the two pictures above, were they replaced by this white fence?

Dr. Mendes stated yes.

Mr. Weise stated okay, so the before is the two above...

Dr. Mendes stated yes.

Mr. Weise stated and then midway through your project, you see half of the fence and then you learned that you need to complete that six foot fence in order to...

Dr. Mendes stated close out the...

Mr. Weise stated okay and was your neighbor aware of the original six foot fence? When did you start talking to your neighbor about the fence?

Dr. Mendes stated probably in December when the Inspector was visiting and actually, I forgot his name, I'm so sorry, Bill, who came out into the field. He actually spoke with myself and the neighbor, we were all there together. I just, I thought we were all on the same but again I apologize if we weren't. It was not going to be approved if it was at four, I mean he even, they were so kind to us to try to dig it out, we did that one day...

Mr. Miley stated can you mute for a second?

Dr. Mendes stated sure.

Mr. Miley stated let me clear something up here. When the Inspector went there, the fence measured 46 inches, required was 48 inches, so there was an opportunity to re-grade the property to bring it to 48 inches and that would have been acceptable, I think the alternate [inaudible], there was no request to put a six foot fence. We asked that the existing fence measure 48 inches. I just reviewed some of the notes from my Assistant Building Inspector, I just wanted to clarify that. No one ever indicated to put up a 6 foot fence, just indicated that it needed to be 48 inches minimum.

Chairman Boxer stated well now [inaudible] fact that there's a, the fence, doesn't the Code require certain setbacks for any kind of, anything on a line that's at an intersection.

Mr. Miley stated that's accurate Chairman, on a corner that would apply.

Dr. Mendes stated the fence is not at the intersection.

Chairman Boxer stated what does it have to be at the corner? What's the code on that.

Mr. Miley stated I believe from the line its 50 foot in each direction and connect the triangle. It's far beyond that.

Chairman Boxer stated right. Okay, the, I don't know if, you may have to ask somebody but you may, I would like to know if you can comply with the height and also the view with what your property is now? And I don't think that is something that you know, you'd have to take measurements and that would help us decide whether or not because right now the way the fence is regardless of the height it doesn't comply with the corner requirements for the site lines.

Dr. Mendes stated okay, I don't really know what the solution would be here.

Chairman Boxer stated we've had it before where someone put a fence in that they had to change because of the site line on the corner.

Mr. Miley stated I don't think it goes in that corner, Chairman, I'm trying to assess. I think it's, looking at the survey that's in front of it, its very small, I can confirm for you but I don't believe it goes that far.

Chairman Boxer stated what are you saying? That they won't be able to comply with it or...

Mr. Spector stated Peter, you're muted.

Mr. Miley stated thank you, I can't tell from the survey because its very small, I don't have a full size survey in front of me. I would actually have to go to the site and measure.

Chairman Boxer stated okay but as it is now with the fence on the lines, that does not comply with the Code as far as corners or you have to go look at it, I guess.

Mr. Miley stated I can't answer that right now, I'd have to go there and visually measure, visually see it and then take a measurement from the curb in. If it's really close, I'd have to get a surveyor to substantiate but if it's in excess of 50-something feet, I can demonstrate that it either complies or it doesn't.

Chairman Boxer stated okay, so that's something we're going to need. Can you get that done before the next meeting?

Mr. Miley stated sure.

Chairman Boxer stated alright, that takes care of one thing. I, I don't know what the other Board members think, I guess it's a question of whether we think if it, if we can get it so that it does not obstruct the site lines, the fence as it is, 6 feet would be okay. That's something we're going to have to discuss.

Dr. Mendes stated I'm sorry, I was muted. I'm willing to do what, I just want to know what I have to do to make this correct in order to move forward...

Chairman Boxer stated no, we understand. Peter, someone has to go out from the Building Department and measure it and then we can find out what is required.

Dr. Mendes stated but this is going to be delayed at least another month?

Chairman Boxer stated correct, the next meeting is May 18<sup>th</sup>.

Dr. Mendes stated that means I can't do anything with what's in the backyard right now?

Chairman Boxer stated that's up to Peter, I don't know, Peter what's the answer to that one.

Mr. Miley stated I don't know what she wants to do in the backyard.

Dr. Mendes stated well the hot tub has been sitting for a year, am I allowed to fill it, are we allowed to...?

Mr. Miley stated [inaudible], well you have protection, once you have protection you're allowed to use it. The question, I think this is two totally separate issues.

Dr. Mendes stated right.

Mr. Miley stated the use of the hot tub, I don't think is precluded because you have the six foot fence and you have the buffer barrier but Harold, let me just pause for a second, I have the survey, I might be able to solve the corner issue right now. I just need another second with Angelina.

Chairman Boxer stated okay.

Mr. Miley stated okay Chairman, I was able to resolve one issue. The fence does not extend all the way to the corner of St. Marks and Woodland, it doesn't start until beyond the driveway which is well over 50 feet, so she's fine in that aspect.

Chairman Boxer stated so it's just a question of the height.

Mr. Miley stated it's just a question, variance on height, correct.

Chairman Boxer stated let me ask you a question, the letter that objected, asked if the fence stays, if you would be able to put up one of those convex mirrors so they can see when they come out of their driveway...

Mr. Miley stated that's accurate.

Dr. Mendes stated I would absolutely do that, absolutely.

Mr. Miley stated Chairman, I did speak to the neighbor and she did indicate that she wants something for her safety, whether it's a mirror or some other mechanism.

Chairman Boxer stated okay, so I think she specifically mentioned mirror in her letter.

Dr. Mendes stated I would do that, it is replacing the bushes that were there that were about eight feet but because this a project that I initiated, I would absolutely place the correct, if that's what's needed to move forward then, and the safety of everyone in the neighborhood then yes, I would do that.

Chairman Boxer stated I mean I know the bushes were there, you can see through bushes, you can't see through your fence.

Dr. Mendes stated I would disagree, those bushes because we had the fence on the bottom and then you had the bushes up top. I mean, if you look at the pictures, I'm just saying but again, we don't want to, you know, we want to make this correct, we want to make this better. But if you look at the before pictures, my car is actually parked outside one of the first pictures there, those bushes are really hard to see through, if you would just kindly take a look at those before pictures.

Chairman Boxer stated right.

Dr. Mendes stated the problem is when you took down the dilapidate fence that was there, the base of those bushes was open and people were starting to throw litter in there, which again was in, I didn't get to share my five points but that is where I explained that, that was part of the issue. People could just walk onto the property, they were throwing you know their refuse there, so it, I do feel it helped beautify the neighborhood but again, if it is providing or creating a situation where its unsafe coming out of the driveway, I completely understand that and I would, if that's what's holding up the project, I would replace, not replace that but I would provide what is required as soon as possible.

Chairman Boxer stated how does the Board feel about that?

Mr. Weise stated I'm curious, what was the height of the original fence? The dilapidated fence as you describe it.

Dr. Mendes stated the fence itself looked like it was about three or four feet but if you look at the pictures, I mean, you can see parts of it were just kind of thrown there. You know, it wasn't even like a freestanding fence anymore because I think the fence was probably about 30 or 40 years old and maybe the bushes and trees that grown into it but if you look at these before pictures, the top two, you can see the fence wasn't even a secure fence to protect...

Mr. Weise stated okay, oh I see. This isn't two colors of wood, this is fence with bushes behind it.

Dr. Mendes stated right and you can see those bushes are pretty full.

Mr. Weise stated so the bushes were, you think they were eight feet tall?

Dr. Mendes stated at least, because you can see if that was a four foot fence, that's almost double, right?

Mr. Weise stated okay, so you removed all of the bushes, you removed the fence, you put in the new one. Now at what point did you start talking to your neighbor about this project?

Dr. Mendes stated I probably never spoke to them about the first fence which was before this project started and then I think we just started talking about it when it was about to happen because I replacing wood on an existing deck that was already there and then we were just creating a subdeck there to step down. So, I didn't feel that it was a situation where I had to speak to my neighbor about it because I was working on just beautifying my own property, however when it became an issue about the fence height, having to be 48 inches, at least 48 inches and we didn't meet that requirement even though that was a 48 inch fence. That's when I went to them and said I don't, and like I said Bill was there that day as well and the three of us spoke and we were trying to come up with a solution, so we did, we dug out one day to see if that would, just dig out the couple inches at certain points to make it the 48 inches but it didn't match or meet approval. So then I said okay, then I think I'm going to replace the fence and it did seem a good idea but why would I replace a 48 inch fence with another 48 inch fence, you know. So that's why I put up the 6 foot fence, also to help create privacy, if the 48 inches with was the issue with maybe neighborhood kids coming and jumping into the hot tub and for safety, I really didn't think that a 6 foot division between two properties was an issue.

Chairman Boxer stated now, did, I guess what we're trying to find out is did you let your neighbor, we're talking about the neighbor that's directly next to you...

Dr. Mendes stated right.

Chairman Boxer stated did you let them know the fence was going to be 6 feet high.

Dr. Mendes stated I can't say for sure or not this is going to be a 6 foot fence but I was going to replace the fence with something higher. So whether it was 5 feet or 6 feet or 8 feet, I don't think we ever discussed the exact height of the fence but I knew I had to replace it with something that was going to be higher in order to meet approval. So I don't know the exact height of the fence, I think I maybe even just made that decision at the minute to match the other side, you know, so that it was even and actually all three side in fact then would be 6 feet because the other neighbors height, so it would just be uniform, you know so like the property along the other neighbor, his fence was 6 feet high, the fence along my property was 6 feet high, so I thought about 6 foot fence in order to replace a 4 foot fence that wasn't meeting approval because of the height, I thought a 6 foot fence would have been appropriate. So I don't know if I communicated that exactly to my next door neighbors, if I didn't and you know, they had questions, I apologize for not having been forthcoming about that?

Mr. Weise stated did you give them the opportunity to, did you offer to remove their fence before you put up your 6 foot fence? Because I would say that it would be very difficult for them to do that now.

Dr. Mendes stated I'm sorry? Well they had some plantings there too that were behind, we even tried to not mess up their plantings and to work together. I, would I have had to replace their other fence? Like couldn't both fences exist? Would it have had to have been replaced as well?

Mr. Weise stated well it just, it doesn't, it's not, it doesn't look very good. I would say this is a bit of an eyesore, seeing a 4 foot chain link fence with a 6 foot wood fence behind it.

Dr. Mendes stated okay, I'm sorry, I didn't know that that was my responsibility to replace...

Chairman Boxer stated I have a question for you...

Dr. Mendes stated yes.

Mr. Weise stated but I would imagine that's why your neighbor's responding the way they have.

Dr. Mendes stated I'm actually surprised because we've been, we communicated a lot about what was happening with the fence and height and even they asked, they were speaking with my mother some, as well. They wanted the bushes there, the trees that were, that's why we kept those there on the corner for privacy, they said they wanted those there for privacy, so my mom actually did not remove those in order to provide them with privacy. So that is why I'm a little confused about this as well.

Chairman Boxer stated which bushes are you talking about?

Dr. Mendes stated if you look at the pictures with the, hold on, I think it's in the after, so that pseudo after, no it's in the before. The before, see those bushes in the corner? We had pulled almost everything on our side and we left those bushes there at the edge of the driveway in order to keep that private for them.

Chairman Boxer stated okay, so you're talking about the large bushes...

Dr. Mendes stated yes, so if you're looking at the before picture...

Chairman Boxer stated are they still there? Are those bushes still there?

Dr. Mendes stated they are still there.

Chairman Boxer stated and...

Dr. Mendes stated we pulled everything out.

Chairman Boxer stated okay, so that's between you and your neighbor directly next to you, not behind you.

Dr. Mendes stated yes, right.

Ms. Broth stated the tall bushes were on your side of the property?

Dr. Mendes stated yes.

Ms. Broth stated so there's some shrubs that are under 4 feet high on their side that's left, that's behind this snow bank.

Dr. Mendes stated right.

Chairman Boxer stated no, I see that...

Dr. Mendes stated we wanted to take those out too but we left those there as per their request.

Mr. Weise stated are those yours?

Dr. Mendes stated they're on my property, I'm assuming so.

Mr. Weise stated so where does, tell me if I, we have this after picture that shows two fences...

Dr. Mendes stated okay.

Mr. Weise stated where does your property line end? Does it end where the fence is?

Dr. Mendes stated yes.

Mr. Weise stated so the shrubbery sticking out of the snow bank...

Dr. Mendes stated the remains is on my...

Mr. Weise stated that's their, that's on their property?

Dr. Mendes stated that is sticking out of the snow bank? Which picture?

Mr. Alfano stated directly in front, the after picture, top picture in front of the chain link fence.

Mr. Weise stated that's right, after picture, top...

Dr. Mendes stated oh yeah, those are there, yes. Anything on that side of the chain link, that's all theirs. But the ones that you see on the bottom right hand corner of that, the after, those are on my property but we kept those because they said they wanted some bushes left there for privacy.

Mr. Weise stated yeah.

Chairman Boxer stated you put up the six foot fence first along St. Mark's correct?

Dr. Mendes stated yes, well I'm sorry, that's along Woodland.

Mr. Alfano stated Woodland...

Dr. Mendes stated is along Woodland, running perpendicular to St. Mark's, that one was the first one. So if you're looking at after pictures, it's the one on the right hand side, so you see at the top picture there.

Chairman Boxer stated that's the one that runs perpendicular to the neighbor's driveway, correct?

Dr. Mendes stated right, exactly.

Chairman Boxer stated the question then is, did you let them know and was there any feedback when you put up the fence along Woodland because I would think that would have been an issue for them too for site line.

Dr. Mendes stated I um, I never approached them beforehand, I was kind of new the neighborhood and I was just trying to clean up my property. But we spoke several times after that and it was never mentioned to me that that was sticking out and an obstruction for them, never. Even before this project started. I wish they would have said something to me because I would have corrected this, you know. My phone is dying, sorry.

Chairman Boxer stated what baby is that? Yours?

Dr. Mendes stated yes.

Chairman Boxer stated you're trying to sway us with baby pictures.

Dr. Mendes stated no, I'm not, my phone is dying, unfortunately. And I was watching at home and I couldn't figure out, that's why I just got in the car and drove here. My mother is putting him to bed, right now.

Chairman Boxer stated okay.

Dr. Mendes stated but I honestly, I don't want any bad blood with my neighbors, they're lovely people, and I just, I don't know why we never spoke about this whether it was them initiating the conversation or me initiating the conversation, I because that's been there for a long time, well before this other deck project started.

Chairman Boxer stated I think the neighbor in their letter stated you can take care of the problem with a mirror on the street, so they can see when they come out.

Dr. Mendes stated I will get one tomorrow, if that will rectify the situation and I am not kidding. I don't, the neighbors are lovely, they're really so nice, I just wish I knew about this before we even started the

deck project because I would have corrected that before, you know like when this first fence went up, which I think was like 2 years ago, I would have fixed that. I didn't know this was an issue for them.

Chairman Boxer stated okay, so just to clarify, what's the name of the neighbor that you were speaking with.

Dr. Mendes stated oh, this is so embarrassing, it's like public, Ryan and Megan...

Chairman Boxer stated you got it, you nailed it.

Mr. Weise stated I mean I, I, I think you did not give them the opportunity to remove their chain link fence before you put up the wood fence and now it's probably difficult because they may kill the shrubbery if they were to remove it.

Chairman Boxer stated well I don't think that was part of their objection in their letter.

Dr. Mendes stated I don't think so either, they never mentioned that to me.

Mr. Weise stated okay.

Dr. Mendes stated I mean, we had even putting an addition on to that, you know what I mean, which wouldn't have been so awful and awkward, you know its like maybe throw some barbed wires on there...

Chairman Boxer stated they also had the same problem, and their letter says they spoke to, let's see they spoke to somebody, they called somebody in the Village and they told her there's not height limitations. There's a lot of miscommunication unfortunately and a lot of it is due to the fact that Village Hall, in essence was locked down a lot during your project...

Dr. Mendes stated can you mute for one second?

Mr. Miley stated we've been open all through the pandemic.

Chairman Boxer stated okay, well the question besides the fact, regardless of, it appears we can solve the issue as far as site line. What the issue then becomes is what kind of precedent do we set if you have a six foot fence and then all of a sudden, all the way down the street everybody says we're going to put a six foot fence in because she has a six foot fence.

Dr. Mendes stated and I do understand that concern but I honestly thought that was the back of my house and I didn't because I thought about adding a fence on to the front and I'm not even touching that until this project is well and done and obviously it's not going to be anything high. The front of my house, the fronts of my house as I've been educated on, neither of them have fences around it, like the actual structure of my house, the actual living portion of the property.

Chairman Boxer stated right.

Dr. Mendes stated and I'm just trying to enclose what I thought was my backyard in order to provide privacy and safety and that honestly was my main concern and honestly why I even spent the money because I was completely happy with the two chain link fences that I didn't have to pay for that were already there and the only reason why I replaced one of them was because the height, because I thought it wasn't enough height. And that's the truth. I wouldn't have replaced a 48 inch fence with another 48 you know, in fence. Sorry, I was... replace it with the correct height that would match the other existing structures.

Chairman Boxer stated I understand. Can anybody think of something that makes this property so unique that it's not going to set a precedent?

Mr. Alfano stated I mean, it is front yard and I mean front yard facing the street, so that's a concern.

Chairman Boxer stated right,

Mr. Alfano stated to your point Harold, [inaudible] more about setting a precedent.

Dr. Mendes stated the only argument I have to that is that the house is situated right at the corners of those two fronts...

Chairman Boxer stated we understand.

Dr. Mendes stated I was trying to make a backyard somewhere, you know?

Chairman Boxer stated corner lots always have this little extra variation in the Code.

Dr. Mendes stated I don't know what the backyard would look like otherwise, you know? Am I freezing...

Chairman Boxer stated no, so we just, nobody knows what to do.

Dr. Mendes stated okay.

Ms. Broth stated I mean, I'm thinking that if it wasn't a heavy vinyl fence that makes it look a little like a prison yard and it was some kind of see-thru fence, it would not be as...

Dr. Mendes stated has anybody complained about the structure itself though? Or is it just the visibility issue? Because the visibility issue I will take care of as soon as possible.

Chairman Boxer stated no, I think it's just...

Mr. Spector stated I'm a little surprised that there's nobody else online right now to comment on the physical appearance of it and the border wall type appearance of this because it is [inaudible] enclosure but nobody's complaining but we do have to be concerned about precedent, I do agree with that.

Mr. Alfano stated especially since fences are so common.

Mr. Spector stated and appearance does matter, I mean I think that it's a very solid wall, that's the problem.

Dr. Mendes stated personally, I think it looks so much better than what was there but...

Mr. Spector stated but it may not look as good as what it could look.

Chairman Boxer stated okay, so I didn't go close to, what is the fence constructed of, is it wood or is it?

Ms. Broth stated it's plastic.

Mr. Alfano stated it looks plastic.

Chairman Boxer stated plastic okay, so trying to cut it down and make it look pretty is not doable I assume...

Mr. Spector stated not an option.

Chairman Boxer stated so are we concerned with the fences that front the street for the precedent? I don't know if the, if the neighbor doesn't seem to care other than the fact that it's blocking their view and they're willing to use a mirror, but we need to at least, in my opinion, make sure that the fences on the street comply with the Code.

Mr. Weise stated I'll agree with that.

Whitney Singleton stated let's clarify one thing? Peter, can you confirm that the fence in the front yard, that being 30 feet between the street line and the house, that needs to be a fence of four feet but otherwise it can be 6 feet?

Mr. Miley stated no.

Whitney Singleton stated no, it's not? Okay.

Mr. Miley stated four feet...

Whitney Singleton stated once you go beyond the front yard setback, can it be six feet?

Mr. Miley stated yes, once it goes beyond the, if you have a side yard and rear yard, correct.

Whitney Singleton stated that's what I'm saying.

Mr. Miley stated only here we have two fronts and two sides.

Whitney Singleton stated right.

Mr. Spector stated which does make it unique in a sense but...

Chairman Boxer stated it's unique but every corner is unique like that...

Mr. Spector stated every corner would be unique, that's correct. It's a tough one.

Dr. Mendes stated I have seen some others in the neighborhood, you know nearby and I'm not here to like send pictures or get anybody but I have seen existing structures on other properties that are more than six feet high along a main road, along what would be considered like a corner lot, considered like another front. And I think it looks nice, you can tell which side is supposed to be the front, you know...

Chairman Boxer stated right, I understand...

Dr. Mendes stated like where would I put my backyard, I guess is my question then? Where would I have my backyard with my property configuration, I guess that's a good question too. So I'm not trying to make any exceptions to the rule but I also like, I don't know where, my backyard, that's where I imagined my backyard would be, especially when the front, the address to the front of the house is on St. Mark's, so that's supposed to be the backyard. I do understand now the corner lot with the two fronts aspect but I also think it's a little rigid as well because I do need to have a back somewhere, I need to have a backyard and I will work to be compliant with you know, the neighbors requests but you know if there's no one else here complaining about it, I really do think it has beautified the property and people walk by and comment all the time, my mom is constantly out there gardening, they say to her, this looks great, this looks so nice, it looks so much better, I'm so happy you took down the bushes. Because we even took down the bushes on the St. Mark's side, we didn't put anything else up for there now, for maybe never but I do think it looks a lot nicer than what was there. And I did e-mail, I'm sorry not e-mail mailed all the neighbors twice and I, you know, put two notifications in the paper and you know I really did try to be forth coming about what my intentions were here this evening even though I couldn't find my way here but I did get here. And I just want to move forward and be done with the project and be compliant with the Town and I've been trying for a year to do everything correctly by getting an architect and step by step having them come in and do the inspections and adjusting things and redoing some things and I just want to move on. My phone might die.

Chairman Boxer stated I guess you can see that we have a quandary here, I feel that it is important to comply with the Code as it is. Do you know, so then it's a question of do we just want it on the Woodland/St. Mark's side, let me think. Did you put a new fence on the Woodland side?

Dr. Mendes stated the fence is on the Woodland side, there's nothing on St. Mark's side at all and it's only on the back side of the Woodland part, if that makes sense and then parallel to my neighbors' property like dividing our two properties on Woodland Street. So dividing my yard and his driveway.

Chairman Boxer stated okay.

Dr. Mendes stated that's the only fences I have, that I put up on the property and there was already, like I said, their existing fence and then there was an existing fence dividing the houses on St. Mark's.

Ms. Broth stated the neighbors' six foot chain link fence, where does it extend to?

Dr. Mendes stated it extends out to St. Mark's.

Ms. Broth stated so across the entire length of your property line?

Dr. Mendes stated not all the way to the street, there's like a tiny bit of lawn there. I don't have any pictures of that, I don't think.

Ms. Broth stated and it's at six feet.

Dr. Mendes stated yes.

Mr. Alfano stated it doesn't come out the whole way, it comes out about to the front of the neighbor's house on to St. Mark's.

Dr. Mendes stated I'm sorry?

Ms. Broth stated thank you.

Mr. Alfano stated no, I'm just telling Jacquie, I'm looking at Google Street View. The six foot chain link fence comes out about, maybe ends five or eight feet away from St. Mark's Place.

Chairman Boxer stated if its parallel, Whitney, so if that six foot fence from the site, from the building line back, you can have six feet?

Whitney Singleton stated from the front yard setback, which is 30 feet.

Chairman Boxer stated okay.

Whitney Singleton stated I think it's 30 feet, I'm going...

Dr. Mendes stated so I guess, I'm sorry...

Chairman Boxer stated go ahead.

Dr. Mendes stated so I guess the issue is not that there's a six foot fence dividing my property and their property, the real issue would be the setback from Woodland Street, adjacent to their property, correct? So up to a certain amount of feet, so I guess the variance would just be for that height, right? For that amount of feet, from the street to...

Mr. Weise stated I think the issue is that your neighbor on Woodland has gone from a view of bushes and a small fence to a very large fence and that changes, that does change the neighborhood, I'm going through this Google Street View and I don't see anything that would be similar to the fence that you just put up.

Chairman Boxer stated so what Jacquie said though is that if the fence is four feet up until the setback, and then six feet from there on, that would be okay? Peter or Whitney?

Mr. Miley stated Chairman, I mean you have start with the house is noncomplying, it's in the front yard setback, there's a lot of variables to look at. The objection was the height of the fence in the front yard.

Chairman Boxer stated okay. And the problem is the fence on St. Mark's that...

Dr. Mendes stated there's nothing on St. Mark's. It's on the back part of the Woodland side of the property, past my driveway. So there isn't even a fence in front of the driveway, so its like the house situated on one corner of the property, pretty much my entire front...

Chairman Boxer stated [inaudible].

Dr. Mendes stated like because the house is kind of like the front of the property, so it's really hard. I don't know where the backyard would be...

Mr. Weise stated that was, you knew that when you were buying the house.

Dr. Mendes stated but I didn't know about this two fronts piece, I thought that was my backyard, I did, I'm being honest and maybe you know, I'm uneducated on the laws of [inaudible] or Mount Kisco but I thought that was my backyard. The front of my house is St. Mark's, this is my backyard, that's what I understood it to be.

Mr. Weise stated yeah, I'm just...

Dr. Mendes stated and because there was an existing eight foot, you know, structure there, I really didn't think I was doing any harm in bringing it down to six feet and something that was clean and kempt, I really didn't think I...

Mr. Weise stated bushes are not structures.

Dr. Mendes stated I do understand that but when you're discussing visibility, they do create obstacles.

Mr. Weise stated I don't think that's a question for me, for me it's the sightliness of the structure, on the main street...

Dr. Mendes stated I understand, I, I...

Mr. Weise stated you know, it could be viewed as an eyesore for your neighbor right across there, at I think its 90 Woodland.

Dr. Mendes stated I mean, I mailed everyone in the neighborhood...

Chairman Boxer stated we understand that, it just...

Dr. Mendes stated I thought that that was the process, you know...

Chairman Boxer stated that was the process but unfortunately, the fence, the contractor didn't tell you that you can't have a six foot fence.

Dr. Mendes stated okay.

Mr. Spector stated it is a little confusing to most people, I can understand that with the house on a corner but it doesn't quite solve the issue though.

Ms. Broth stated I'm very uncomfortable with the aesthetics of the fence.

Chairman Boxer stated so there would be no objections from anybody if the fence was brought back down to four feet? And Peter, four feet would still comply with the requirements for the hot tub?

Mr. Miley stated 48 inches is required, yes.

Chairman Boxer stated okay.

Dr. Mendes stated there was a 48 inch fence that was no, it was not approved for the project.

Mr. Miley stated I don't think that's accurate Chairman. I look at the Assistant Building Inspector's notes, it was 46 inches. I believe he tried to come up with a way to solve by digging down and gaining the extra two inches but I think that was unsuccessful.

Chairman Boxer stated it wasn't truly a four foot fence there, then.

Dr. Mendes stated it was four foot but I think a couple inches were below ground, I think that was...

Mr. Miley stated I'm not here to debate you. I'm just giving them the information.

Dr. Mendes stated okay.

Mr. Miley stated Chairman, how about I make a recommendation before you take any action. I can take a walk to the property and look at the fence and see if anyway, perhaps reduce it a foot, if it can be cut. It is a plastic fence but it's a slip rail fence, I believe the slats slide in and out. At least let me look at the fence and see if it can be modified at all, we can start there. In addition, I'd like to go back to the front just take some more pictures, take some more measurements, take a look at the old fence, do a closer assessment of everything that's been installed.

Chairman Boxer stated okay. Again, you can do that prior to the May 18<sup>th</sup> meeting.

Mr. Miley stated yeah, absolutely, I can do it this week or early next week.

Whitney Singleton stated if...

Chairman Boxer stated the other question if though, I think she's worried that she's not using the hot tub. The way it is now, can she use the hot tub?

Mr. Miley stated she can use the hot tub, yes.

Whitney Singleton stated but to be clear Chairman, if the fence is able to be modified with new slats or new caps or new whatever it is, and she comes in with a 48 inch fence in the front yard and along the side yards for the front yard setback. She does not need to come back to you in May.

Mr. Miley stated that's accurate.

Chairman Boxer stated okay, so can you meet with Peter when he goes out, are you able to meet with him, during the week.

Dr. Mendes stated yes, I can. Sorry.

Chairman Boxer stated why don't you make an appointment with Peter, is that okay Peter?

Mr. Miley stated yes, Chairman, absolutely.

Chairman Boxer stated okay, so make an appointment with him, let him go back and take a look at it and you can be with him and he can explain whether or not it can be fixed so you don't have to come back.

Dr. Mendes stated okay.

Chairman Boxer stated so for now what we'll do is I'll make a motion that he put this over to the May 18<sup>th</sup> meeting. Anybody second?

Mr. Weise seconded the motion.

Chairman Boxer asked for all in favor. The motion carried by a vote of 5 to 0.

Chairman Boxer stated okay, so you'll meet with Peter and we'll see what goes from there.

Dr. Mendes stated okay, thank you.

Chairman Boxer stated okay. I think that takes care of...

Mr. Miley stated that was the last one Chairman.

Chairman Boxer stated okay, then I will make a motion that we adjourn the meeting.

Mr. Alfano seconded the motion.

Chairman Boxer asked for all in favor. The motion carried by a vote of 5 to 0.

The meeting adjourned at 9:13 pm.