

Minutes of the **Regular Meeting** of the Zoning Board of Appeals of the Village/Town of Mount Kisco held on **Tuesday, January 16, 2018 at 7:31 pm** in the Frank J. DiMicco Board Room, Village Hall, 104 Main Street, Mount Kisco, New York

Members Present: Chairman Harold Boxer
Donald Rose
Linda Greenberg
Barbara Richards
Nancy Coyne

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

Chairman Boxer stated we have a change of plan, we're taking 100 South Bedford Road first and is anyone here for that?

Mr. Diamond stated yes.

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| 1. 100 South Bedford Road LLC c/o Diamond Properties | Case# 17-9 |
| 100 South Bedford Road | Area Variance |
| Mount Kisco, NY 10549 | |
| (SBL) 69.73-2-1 | |

Mr. Jim Diamond of Diamond Properties was present.

Chairman Boxer stated you're on, before you start, state your name and spell it for the Secretary.

Mr. Diamond stated Jim Diamond, Diamond Properties.

Chairman Boxer stated okay.

Mr. Diamond stated so 100 South Bedford Road is part of the three building park along with 90 and 110 South Bedford Road. 90 and 110 fully occupied by CareMount Medical Group and our building 100 South Bedford Road has no medical in it because there was a Planning Board resolution back from 1995, when Mount Kisco Medical Group was approved that prohibited medical in our building but now CareMount, as everybody knows I think, continuing to expand and they've got some medical uses within the existing building that are expanding, getting larger, built too small when they were originally built, not enough storage room, not enough room around equipment, so they're looking to expand and move into building 100. So the reason we're in front of the ZBA is because the parking ratio for standard office space is 1 per 250 square feet, the parking ratio for medical office is 1 parking space per 150 square feet. We are proposing that we be allowed to convert 16,000 square feet, up to 16,000 square feet of the building from professional office to medical office, that shift in parking ratio would require a parking variance of 48 parking spaces.

Chairman Boxer stated 48.

Mr. Diamond stated 48 total.

Chairman Boxer stated you have the measurements and everything on that?

Mr. Diamond stated the measurements in terms of?

Chairman Boxer stated it sounds like it should be more.

Whitney Singleton stated it's a deficiency of 255 spaces but he's seeking a variance for 48.

Chairman Boxer stated because there is already a variance.

Ms. Richards stated there's a variance for the others, is that what you're saying?

Mr. Diamond stated 255 is...?

Whitney Singleton stated if you calculate the site, I mean its up to the Building Inspector to calculate the site but if you calculate the site based upon the uses of today's parking requirement, you're required to have 255 more parking spaces than you currently have.

Mr. Diamond stated well if...

Mr. Miley stated Chairman, the calculation for the parking was based on extracting the 16,000 square feet from an already approved site plan. That calculation deficiency came up with 48 spaces, which doesn't affect the space, excuse me, the entire site plan.

Chairman Boxer stated okay, thanks.

Mr. Diamond stated basically the 16,000 divided by 250 versus 150. For context there are currently 877 parking spaces at the property plus there were originally 34 parking spaces that were land banked by the Planning Board at the time, back in 1995, those are the parking spaces along the main entry way coming into the property that could theoretically be constructed but which, I think everybody feels would be a back idea at this point because that entryway is heavily traffic and those people would be backing out in the driveway there but if you include those 34 spaces, there's 911 existing and banked spaces. The current parking ratio of the entire property, 3 buildings, 207,960 square feet is one parking space per 237 square feet which would drop to one parking spaces per 228 square feet with the land banked spaces. In order to support our application, what we did is in early December we took counts at the parking lot and I think that this information was submitted to your Board with our amended application but we counted parking spaces at 9 am and 2 pm and then we went back a day or two later and counted them at 4 pm as well because the Town Planner suggested that 4 pm would be a good time to count the spaces. The counts were relatively consistent over those three time periods ranging from 170 vacant spaces to 189 vacant spaces in the parking lot, with approximately 2/3 of them being surrounding our building, which is building 100, which is logical because currently 29,600 square feet of our building is vacant. Of the 29,000, 16,000 would be used for medical space. So because of the vacancy, there's a number of empty parking spaces in the parking lot. On average over those 4 time periods that we counted, there are 181 vacant parking spaces in the lot.

Chairman Boxer stated really? I've never seen that.

Mr. Diamond stated well again, most of them are on, more than half of those are building 100 on the east side of the building. So right now there are signs up there saying not medical parking because we've reserved that parking for building 100, which signs we would be taking down as part of this application because there would be medical within our building. So that was I believe 92 or 93 of the total of the spaces and then there were a number of spaces on the west side of our building as well but again, south of the building is 90 and 110, so more than two thirds of those vacant spaces were simply surrounding our building.

Chairman Boxer stated have you taken a count of how many cars use the valet parking.

Mr. Diamond stated we did not.

Chairman Boxer stated can you do that? Because that will show whether or not the spaces that are being used to their maximum right now and then we can just figure out what it will be with the other spaces you're proposing.

Mr. Diamond stated well what's interesting about the vacant spaces that we have now is that 20.6% of the parking spaces in the lot are vacant on average and the only vacant space at the property is the vacant space within our building which is 29,602 square feet which equals 14.2% of the overall site. More, a higher percentage of building, it's in the mid-thirties, since our building is less than half the property, it's only 14% of the of the overall site. So you've got a little more than 20% of the parking spaces open again, mostly around our building and only 14% of the square footage open within the building. I think there's, the reason we need this variance because there's this strange, well I don't want to call it strange, this different parking ratio between office and medical in Mount Kisco, which many towns do not have, Bedford does not have this different parking ratio, Chappaqua does not have it as well. CareMount, Northern Westchester Hospital have both located facilities in Chappaqua, they occupy a lot of square footage at Chappaqua Crossings, CareMount occupies space across the street from our building at 103-105 South Bedford, just leases more space recently of one of the requirements that they were considering for our building but they couldn't delay the use any longer. So in Bedford, it's the same one space per 250 square feet, and if that was the case in Mount Kisco, we would not need a parking variance at all.

Chairman Boxer stated you want to move the whole place to Bedford? We'll move the line for you, we moved it once, we can move it back.

Mr. Diamond stated I think the taxes are a little higher in Bedford, same school taxes...

Ms. Richards stated Whitney, if given this variance, we can say there can be no more than 16,000 square feet of medical in that building, is that correct?

Whitney Singleton stated yes the...

Ms. Richards stated because my concern is you have this big building which right now you said there's 29,000 square feet and if 29,000 square feet becomes medical, then its going to become a problem.

Whitney Singleton stated there's 29,000 square feet vacant.

Mr. Diamond stated correct.

Ms. Richards stated oh, vacant, sorry.

Whitney Singleton stated the building is much bigger.

Ms. Richards stated right but if we limited it to just that space, because then if the entire building becomes medical, it's going to be a bigger concern.

Mr. Diamond stated we're only applying for 16,000 square feet of medical space which is that 48 parking space variance, so if we wanted to do any other medical use beyond that we'd have to come back to this Board and ask for an additional variance.

Whitney Singleton stated you have medical now, right? It's prohibited now but you actually have medical in the building, correct?

Mr. Diamond stated no.

Whitney Singleton stated where do people get their shots? Their flu shots?

Mr. Diamond stated well that was a temporary winter use.

Whitney Singleton stated and you don't have other space in there for medical?

Mr. Diamond stated CareMount was using vacant space for flu shots but that was just a...

Whitney Singleton stated but that was in violation of their site plan approval, so as far as them coming back to you, theoretically they're required to come back to you.

Ms. Richards stated theoretically, that was my question.

Mr. Rose stated I'd like to know more about the vacancies, I believe the Chairman mentioned and I would second that its very frequently so crowded that you have to drive around and then in the end give up and use valet parking, my wife has reported the same thing. Another, I think major factor is a lot of that parking area is striped according to some old thinking that everyone is going to be going to compact cars, those compact spaces are too small for the suburbans and other large vehicles that people have instead gone to over the last 20 years. So in a count of vacant spaces I'd like to know how many of them are actually vacant because the remaining space after a large car comes in, occupying two of them seemingly leaves a space but it's only big enough for a motorcycle.

Mr. Diamond stated right. Well...

Whitney Singleton stated 200, there's 200 compact spaces.

Mr. Rose stated that's a lot.

Ms. Richards stated which means that the calculation is really not correct because there's 200 compact spaces and there may not be 200 compact cars.

Mr. Miley stated well the last site plan approval permitted the compact spaces, that's part of the last site plan approval.

Chairman Rose stated okay.

Mr. Rose stated which was...?

Mr. Miley stated 1995.

Chairman Boxer stated during the gas crisis.

Mr. Miley stated excuse me, '98.

Mr. Rose stated 20 years ago.

Chairman Boxer stated I just saw in the Wall Street Journal this morning that they're going to up manufacturing in trucks and SUV's and cutting back on cars, except for GM says will have a self-driving car ready next year that they're going to give to some fleet or something.

Mr. Diamond stated well I don't want to get too far off the subject but I'm convinced after watching some stuff online in terms of self-driving cars, that the accelerating curve of adoption, I'm convinced that within a decade most of the parking lots in all of our buildings will be $\frac{3}{4}$ empty but that's according to this one scientist it's about 5-7 years away. But as a comparison for our site, because again these are just to some extent their arbitrary ratios, there was not always a distinction in the Mount Kisco Code between medical office and professional office and I believe that there really is, while the parking lot may be tight, I don't think there's any practical distinction between the number of parking spaces that medical office and professional office require, in an abstract sense, in other words, in any one medical and any one professional office may be different depending on how many people are in the office but what's happened in the last 10 years or so is that medical office space is expanding, individual, in other words equipment is getting bigger, there's more clearance area around equipment, so the same number of visits are happening in a bigger area, while on the flip side, as I'm sure everybody is aware, office square feet per person in professional office has been shrinking, cubicles are getting smaller, private offices are disappearing, you have open floor plans and part of the reason for that is get more people into each office. We own 666 Lexington Avenue in Mount Kisco, where Mrs. Greens is which is almost entirely medical office and the supermarket, that building has one parking space per 300 square feet of building area, the ratio again for retail there for the supermarket and the medical office is also 1 per 150, we only have available half the number of spots at 1 per 300 and anyone who has shopped there before, gone to doctors there before, I'm sure knows that that lot is also on the tight side but there's always parking spaces available any time you go to 666 Lexington Avenue.

Ms. Richards stated I don't know if I agree with that.

Mr. Diamond stated I've never been not able to parking.

Ms. Richards stated I've been there plenty of times, trying to go to Mrs. Greens and not been able to park my car...

Mr. Diamond stated not been able to park directly in front or anywhere in the lot.

Ms. Richards stated okay, maybe far away.

Mr. Diamond stated so that's 1 per 300, 90-100-110 is 1 parking space per 237. So we already have a much better ratio than that building and we're still proposing right now to maintain 80% of our building for professional office space. Really, and zooming out a little at what we're proposing here. CareMount already occupies all of the building at 90 and 110, they are expanding somewhere in the market, they can expand in Bedford, they can expand in Chappaqua, but what really makes the most sense, or they can expand elsewhere in Mount Kisco, I guess. But what really makes the most sense is for them to expand within the existing park that they already occupy more than half the space in. There is just fundamental logic in the medical group being largely contained within one three building campus. There's this, as I said before there's this difference where Bedford has a medical office requirement of 1 per 250, Mount Kisco is 1 per 150, so Mount Kisco is basically encouraging medical tenants to locate in Bedford for a better parking ratio or Chappaqua. The irony is that Mount Kisco hosts Northern Westchester Hospital which is what makes Mount Kisco such a desirable center of medicine but Mount Kisco is carrying the load effectively of having a nonprofit hospital that doesn't pay real estate taxes and is getting the benefit of having that hospital providing top, world-class medical care but then is incentivizing tax paying medical practices to, because of a parking ratio, to locate outside of Mount Kisco, as CareMount just did and their headquarters are in Chappaqua now, expanding more and more in Chappaqua and Bedford. There's just, I think there's fundamental logic in them expanding within our park, the three buildings and the data supports that with 20% of the parking spaces available and only 14% of the space in the three building campus available, it will work.

Mr. Rose stated but your statement really underscores the concern raised earlier that 16,000 square feet now is on the table for consideration but it makes sense for them to take over that whole building, as they have taken over the other remaining other pieces of the 90 and 110 buildings.

Mr. Diamond stated well its over the next few years it certainly may but I think the thing is that depending on whether or not and I don't have any insight into the future plans or growth or practices but I think the thing is that we have 29,000 square feet vacant now, they were proposing 16,000 square feet be used for medical, the idea is that that 16,000 square feet would be put in operation, we currently have 181 vacant parking spaces on average, more than enough to support that use and if there's parking demand, if there's additional medical requirements that come up a year from now or whatever it is, we would have the data of them, we would have the actual results of them being in the building and see how many parking spaces are available at that point and whether or not there'd be capacity for them to expand or whether or not we even have any space available in the building. I think what's driving this for us as well, the economic reality that, the reason we have 29,600 square feet available, close to 40% of our building, is because 40% of all the office space in Northern Westchester right now is vacant, so whereas this building was 100% occupied for a number of years and we've owned this building for 22 years now, we were fully occupied for a period of time, for many years in fact but the Northern Westchester office market has completely collapsed, 40% of the space, over 40% of the space, I think its like 42 or 43% Northern Westchester is vacant now, the numbers are heavily skewed because of PepsiCo and IBM Somers but even without those campuses, it's something like 28% of the market is vacant.

Ms. Richards stated why is that?

Mr. Diamond stated because Northern Westchester is not doing well and there's nothing on the horizon that indicates its going to change, except for medical, medical is the only thing that's doing well but I mean, it's for a lot of reason but we don't have a lot of population density here, people who commute to the City want to be closer to White Plains, it's a 65 minute train ride here to Manhattan, so companies view that as a long commuting distance. Companies locating here a lot of employees still go back and forth and it's a lot further than if you're getting on in White Plains. It's also a factor of real estate taxes, companies locate where they're employees can afford to live and our surrounding community is, it's a problem throughout Westchester but Northern Westchester is certainly expansive as well. So the office vacancy rate in Southern Westchester is under 10% because of the population density and there's a lot of demand down there but Northern Westchester is getting crushed. The assessed value of this building was reduced by the Tax Assessor in Mount Kisco this year and our property taxes are going down and that was before some of our more recent vacancy in the building arose. Morgan Stanley shut their office in the building, they were here, they or predecessor entities were here for, when we bought the building they were here, Smith Barney, Morgan Stanley were in the building forever and then they merged and Morgan Stanley just left and even they left and just went back down to their headquarters in Purchase. The reality is, if we can't put some medical office in this building, this space is likely going to remain vacant forever, not all of it but we're, it's a longshot that we'll ever fill up the building again with standard office.

Chairman Boxer stated where do you propose to put the spaces?

Mr. Diamond stated there's a space on the ground floor...

Chairman Boxer stated no, not the tenant, the parking spaces.

Mr. Diamond stated they're already there.

Ms. Richards stated they're already there.

Mr. Diamond stated we don't need to construct any parking spaces, they're already in the site.

Chairman Boxer stated have you considered a parking garage.

Mr. Diamond stated not seriously, CareMount did look at the feasibility of a parking garage about 5 or 6 years ago, maybe a little bit longer. And they did a financial analysis and they had preliminary schematic developed and it turned out it was going to be an extremely expensive garage. The water table is very high there, they're going to have to drive 250 pilings, it was just not economically feasible. We recently looked at it within the last year, it would not be financially supportable by this project at all, I mean by just order of magnitude it was a 9 to 10 million dollar project, so extremely expensive. But I believe that within the next decade, the number of cars that are in the road is going to decline dramatically and the problem of parking throughout Mount Kisco everywhere is going to be greatly reduced, so I'd feel very foolish even entertaining constructing a parking garage on the tail end of what may be a currently world demand for parking.

Mr. Rose stated just a question related to that. Why would the demand for parking decrease just because the cars a self-driving.

Mr. Diamond stated and I'm really getting off subject but there's a great scientist by the name of Tony Seba and he's got about an hour YouTube video talking about this. And is really, I recommend just google Seba and it will pop up, but it's mind blowing in terms of, he studies in disruption in terms of color television, smart phones and has shown that it's an accelerating rate of disruption where an old technology is replaced with a new one so the reason is because cars now are used less than 10% of the time and with, he believes that the era of individually owned automobiles is coming to an end and that there will be shared automobiles that will be used 40% of the time. Electric vehicles will last one million miles with close to not maintenance, gasoline engines are 100 or 200,000 miles.

Ms. Richards stated I was thinking my self-driving car would drop me off, go home and I would call it on my smart phone and it would come and get me.

Chairman Boxer stated you could do that.

Ms. Richards stated I mean, seriously, and then parking lots are not as critical.

Mr. Diamond stated his argument, which is pretty compelling if you watch the video, is that the cost of transportation as a service is going to be so low that no one will want to pay the cost to own their own vehicle because once these shared vehicles being used 40% of the time, the cost per mile or per hour will just be so tiny, that it's a compelling argument and he feels that it's going to happen between 2022 and 2025.

Ms. Richards stated and I have one more question, the land banked spaces, if you opened the other entrance or exit that you were talking about, would it make it more realistic to use any of the land banked spaces?

Mr. Diamond stated it make, we think, I think its possible to use the land banked spaces and if it was determined that we absolutely needed them and those land banked spaces which do not currently exist, obviously are 34 out of the 48 space parking variance that we're asking for here. I mean the two numbers are not...

Whitney Singleton stated those are together.

Mr. Diamond stated no, I understand, the two numbers not, what I mean is the 48 is, they're not directly related but what I mean is we're asking for a technical, you know, for a variance based on a parking deficiency and technically we could create 34 spaces which don't currently exist. Those spaces are factored in to the 911 spaces that are...

Ms. Richards stated but the reason you're not creating them is because it's a safety concern because of where they're located?

Mr. Diamond stated no one has ever felt that they're really required. The lot has always been tight but it's always functioned. The Shop Rite parking lot is tight in Bedford, right, there's a lot of parking lots that are tight but they function. CareMount does not get complaints, it's not affecting their business, they would say we don't want to put anymore medical in this park. An important thing to consider about our site is that it's completely self-contained property, there are no issues with anyone parking on the neighbor's property or along the road or anything like that. If there's a parking problem where people need to circle, it's within our lot and it's functioned adequately for 22 years now.

Ms. Richards stated but if we said "well you have to use the land banked spaces", would you?

Whitney Singleton stated you can't, that determination pursuant to the Code is solely vested with the Planning Board.

Ms. Richards stated so we couldn't make that a...

Whitney Singleton stated even the applicant can't, it's solely determined by the Planning Board.

Mr. Diamond stated if we wanted them, we would have to go back to the Planning Board and ask them.

Ms. Richards stated I mean I, there has to be a condition that there can never be more than 16,000 square feet of medical but how do we police that.

Mr. Miley stated they'd have to come back to the Board, it's an approval, you police yourselves.

Ms. Richards stated we wouldn't know if they add 5,000 square feet of medical.

Mr. Miley stated well you can't anticipate a violation, it would be my job to review the site to see if there's additional square footage created.

Ms. Richards stated I would have to have that condition, at a minimum.

Mr. Miley stated it's already set, you're issuing the variance on 16,000 square feet, if you so choose to issue a variance. That sets the parameters that deficiency is based on the 16,000 for medical.

Ms. Richards stated thoughts?

Chairman Boxer stated I'm okay.

Ms. Richards stated I'm okay, under that condition.

Chairman Boxer stated but I would like you to do a small environmental review, here's what effect the cars coming and going overall and also you need in your papers to discuss the 5 points that we're required to review in order to grant the variance and that's always prepared by the applicant.

Mr. Diamond stated did we not already do that?

Mr. Rose stated there was something in that letter.

Mr. Diamond stated I think we did include that within the...

Mr. Rose stated they weren't enumerated per se but there was...

Whitney Singleton stated you have a letter going to Chairman Eisenberg that does not address the 5 statutory factors.

Mr. Diamond stated is that the second, we submitted an original package and...

Whitney Singleton stated this says revised.

Mr. Diamond stated it says revised.

Whitney Singleton stated did you submit the EAF?

Mr. Diamond stated I did.

Whitney Singleton stated they don't have it. They can't vote without an EAF, did you get one?

Ms. Richards stated I don't see any 5 points, anywhere.

Mr. Diamond stated we didn't, I didn't think we enumerated them but I thought we covered them in the text of what we were writing in that.

Whitney Singleton stated we need the affidavit of mailing, the EAF and the 5 principal points.

Chairman Boxer stated that's just the requirement, I don't think it will have much effect on anything.

Whitney Singleton stated but you can't take action without an EAF, the resolution is already done, assuming that you're going to put in conditions.

Mr. Miley stated I think Michelle is going to check that there was an EAF form delivered.

Ms. Richards stated are there any other conditions?

Chairman Boxer stated are you considering increasing your handicap spaces, they're quite scarce right now.

Mr. Diamond stated they do meet the...

Chairman Boxer stated I'm sure they meet the ADA.

Mr. Diamond stated well yeah because we just went through the lot the just entirely re-paved and re-striped and I know we went through a review of the, CareMount managed that on their side but I know we went through a review of the number of spaces and location and sizes and all that.

Chairman Boxer stated I just thought they might want to be nice since they are a medical practice and people have problems.

Ms. Richards stated does valet answer that though?

Chairman Boxer stated only if you're going to 90, oh, they have one at the other too, they have a lot of valet's all over.

Whitney Singleton stated Jim, speaking of, just I'm actually anticipating the next level of review with the Planning Board. Is there a proposal to increase the size of the spaces to be compliant?

Mr. Diamond stated no.

Whitney Singleton stated because some of those spaces are like 6 feet wide.

Mr. Diamond stated well I don't think that's, I mean I'm sure they're 8 ½ feet, if they were 6 feet, then no car would ever...

Whitney Singleton stated I think that was Don's point.

Mr. Rose stated effectively 6 feet because there's no indication anywhere of what spaces are narrow and which aren't but if there's an empty spot anywhere, someone driving whatever it is, a truck or a mini, is going to take it, if it's a truck then it takes two spaces, there's a lot of that every time.

Mr. Diamond stated I mean in a perfect world, if you're doing a new lot from scratch, you'd go with and I'm not sure if Mount Kisco Code is 9, 9 ½, or 10 and I'm not sure what our lot is, it might be 8 ½ feet, which was typical a number of years ago. But if we increase the size of all the spaces then all we would be doing is ending up with less spaces anyway and exacerbating the problem which isn't that different...

Mr. Rose stated maybe, maybe not, certainly the narrower spaces cause a lot of extra driving around. I just don't agree with the thought that you checked the availability and came up with such a large number because it is frequently difficult in a reasonable time to find a space.

Mr. Diamond stated but you're probably not looking next to our building because we have signs saying don't park there.

Mr. Rose stated yes, we are looking at it and we don't park there because of the signs.

Mr. Diamond stated right so those are the spaces, that's more than half the spaces that are available and that's where these medical uses will be going, so...

Mr. Rose stated but for the remainder of the building, presumably you have reserve spaces for those other tenants or future tenants.

Mr. Diamond stated well yes, the overall lot, we counted an average of 181 spaces and there's 29,000 square feet vacant, 29,604, and if you just divide the 181 by the vacancy, it actually comes to one space per 164 square feet, so it's really not, we're only proposing 16,000 out of the 29,600 to be medical, so for the remainder of the spaces, that ratio of medical space and professional office space, in terms of what's available its actually fits right into the code given the vacant spaces there.

Ms. Richards stated but is it still going to say "no medical parking" in some of them?

Mr. Diamond stated no, we would be removing that entirely.

Mr. Miley stated Chairman, there was a submission with the Planning Board application.

Whitney Singleton stated let's back up, we agreed at the Planning Board meeting that there would be uncoordinated review with the Zoning Board, and that the Zoning Board would be receiving a separate EAF application and that would be for the whole site. The one that submitted to the Planning Board was just for 100 [South Bedford Road] and listed it at 4.85 acres.

Mr. Miley stated I don't recall that language.

Mr. Diamond stated the parking variance is only for our site.

Whitney Singleton stated no, no, it's for the whole site.

Mr. Diamond stated I thought the only reason the other two sites were included was because of that one entrance.

Whitney Singleton stated no because your parking is shared through the whole property, that's why you're not supposed to have any signs on your property saying no parking. There is an agreement that 4 properties, technically, are going to share all the parking.

Mr. Diamond stated okay.

Whitney Singleton stated there was the entry property, which you own, there was the back property, which you own and then there's the two properties owned by the Medical Group and there's an agreement to share all the parking, so that's why we needed the consent of the Medical Group to allow for your parking on their property.

Mr. Diamond stated so if there's any way for the Board to vote tonight, it would be incredibly helpful to us because the issue that we have is that Mount Kisco, CareMount, I always go back to Mount Kisco Medical Group, is under time pressure, we applied to the Planning Board back in November, we were already a little bit behind the 8-ball there, there were 3 uses that they wanted to move to our building and because of time pressure, one use already went to Bedford. We lost time because of the December meetings with the holidays and everything, so neither the Planning Board or the Zoning Board of Appeals had meetings, both the meeting agendas we were on got cancelled, at least. We are under tremendous time pressure, they're under tremendous time pressure and if we lose another month because this Board only meets once a month, we just may lose the remaining two, because after this Board, we still have to go to the Planning Board, which is where we were last week.

Mr. Rose stated let me just check one thing on the arithmetic here. The 48 number comes from the difference in requirements 16,000 square feet between office and medical.

Mr. Diamond stated correct.

Mr. Rose stated so 16,000 for medical would require 107 spaces...

Mr. Diamond stated okay.

Mr. Rose stated 16,000 for office would require 64 spaces...

Mr. Miley stated Chairman, those are my calculations, let me ask you, can we take a short recess, we probably should have had a pre-meeting before we even started discussing this case, so you understand where these calculations came from, the prior site plan approval, if that's a possibility that you can call a recess, so we can discuss this prior to taking any action.

Chairman Boxer stated we can go into executive session. Anybody want to...

Ms. Richards made a motion to go enter into executive session. Mr. Rose seconded the motion.

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

The Zoning Board of Appeals entered into executive session at 7:42 p.m.

The Zoning Board of Appeals returned from executive session at 8:05 p.m.

Ms. Richards made a motion to continue the regular meeting. Mr. Rose seconded the motion.

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

Chairman Boxer stated we're going to put together some conditions, nothing that's going to be hard to fit with but we need to take the extra time before the next meeting to get the conditions together for you.

Mr. Diamond stated okay.

Whitney Singleton stated you need to change your EAF and put the right numbers in your EAF, you have 43 in there, not 48. You need to reflect the Zoning Board as being the permitting authority and you need to get us an affidavit of mailing.

Mr. Diamond stated so there's no way to take action tonight?

Whitney Singleton stated they're going to take action, subject to a final resolution being drafted.

Mr. Diamond stated oh, okay.

Ms. Richards stated so we're going to vote but it's...

Whitney Singleton stated let me rephrase that, I believe that's what they're going to do.

Ms. Richards stated that's what we're going to do, right.

Chairman Boxer stated yes.

Mr. Diamond stated 43 verse 48, the mailing, and Zoning Board being the permitting authority.

Whitney Singleton stated you can just reference the Zoning [inaudible], that's fine.

Mr. Diamond stated I'm sorry?

Whitney Singleton stated just submit it to the Zoning Board, its fine.

Chairman Boxer stated I hope you did your mailing.

Mr. Diamond stated the mailing is done, the ad was placed in the paper.

The Secretary stated the affidavit of mailing is in the packet.

Chairman Boxer stated it is?

Whitney Singleton stated it is?

The Secretary stated absolutely.

Whitney Singleton stated the affidavit of publication or the affidavit of mailing?

The Secretary stated affidavit of publication and the affidavit of mailing should both be in there.

Mr. Miley stated yes, they're both here.

Mr. Diamond stated I'll cross that one off.

Mr. Miley stated if you don't have it, we'll make a copy for you.

Chairman Boxer stated we're also going to restrict the medical use to what you propose for now. So if you need more, you'll have to come back and at that point you'll have no spaces to use and then you'll have to think of something.

Whitney Singleton stated I'm sorry, I do have it. My mistake.

Ms. Richards stated that means if you have any intention of the building ending up medical, you're going to have to figure what you're going to do because you're going to have nowhere else to put any spaces.

Mr. Diamond stated right, I understand. Like I said, I really do believe the differentiation between medical and office is a theoretical one, that the Mount Kisco Code differentiates between but that in reality there's no difference and that the uses are actually very similar.

Ms. Richards stated that may be true in some cases, probably not in this property because it's such a big property with so much medical and theoretically that probably is true but it's probably not true on this property.

Chairman Boxer stated it will be better when they can cut down on the waits. You don't know what the new uses they're going to put in there, do you?

Mr. Diamond stated there was radiology, ophthalmology and the one that was going to be there that is no longer is physical rehab.

Chairman Boxer stated okay.

Mr. Diamond stated that's the one that's going across the street. One thing, I just wanted to emphasize again which I did mention before but I think this goes to the conversation of where we'll be with parking a year from now, these are not, this is not all new patients coming to the park. In other words what they are doing is enlarging spaces that they already have, one of the problems they have for example, that the Building Department is aware of, they don't have a lot of storage rooms, closets, things like that in existing buildings, they really use every square foot so to speak for the medical practices, so part of what they're doing is, the requirements today are more strenuous than they were 10 or 20 years ago, part of what they're doing is they refurb and rebuild their spaces and bringing them to current standards which means that everything is getting bigger, there's more storage space, there's more clearances around...

Chairman Boxer stated that PT and now the space there, its podiatry and orthopedics only and they have a huge waiting room and it's not near the door like it used to be.

Whitney Singleton stated they put the waiting rooms in the hallways now.

Chairman Boxer stated there's a new one in 90, it's not in a hallway, its [inaudible] space.

Ms. Richards stated go to Somers Orthopedic.

Chairman Boxer stated I do that, they did my knees.

Mr. Diamond stated but that's an example and I'm not even familiar with that but if the ophthalmology waiting room is currently in a hallway, part of what they're doing here is just enlarging these suites, having real waiting rooms, having storage closets, equipment rooms, things like that. So it's not like a one for one...

Whitney Singleton stated Jim...

Ms. Richards stated it doesn't matter.

Whitney Singleton stated that's because the storage closets have become offices.

Ms. Richards stated it doesn't matter, let's move on. Alright, you want a motion.

Chairman Boxer stated I'm not going to propose it.

Ms. Richards stated no, I said do you want one?

Chairman Boxer stated no, we can ask for a motion.

Ms. Richards stated I make a motion on ZBA Case #17-9, to grant the area variance for 48 parking spaces based on conditions to be itemized in the resolution, pending any...

Whitney Singleton stated subject to a draft resolution being prepared to your satisfaction.

Ms. Richards stated yes, that too, also pending any paperwork that's required to be submitted by you.

Whitney Singleton stated updated.

Chairman Boxer stated you know what's next, come on.

Mr. Rose stated is there a second?

Ms. Richards stated is there a second?

Whitney Singleton stated come on Nancy.

Ms. Coyne stated I will second, sure.

Chairman Boxer asked for all in favor. The motion carried by a vote of 4 to 1.

Chairman Boxer stated any one opposed. Don is voting no.

Mr. Rose stated you've won.

Mr. Diamond stated Mount Kisco won, it's good for Mount Kisco.

Off-topic conversation

**2. Lexington Properties
46 Maple Avenue
Mount Kisco, NY 10549
(SBL) 69.80-4-16**

**Case# ZBA16-12
Area Variance/Parking**

Mr. Dan Patrick of Silverberg Zalantis was present.

Chairman Boxer stated case ZBA 16-12, 46 Maple Avenue.

Mr. Patrick stated good evening. My name is Dan Patrick, I'm with Silverberg Zalantis in Tarrytown.

Chairman Boxer stated I didn't know they hired you.

Mr. Patrick stated oh yeah, I've been there almost a year now.

Ms. Richards stated you were at a previous meeting, weren't you?

Mr. Patrick stated yes, I've been here a few times. So for a little bit of background because I know I haven't been here in a while, and I think there's new members. The property here was built in the early 1800's as a one family dwelling, in the 1980's there is a permit granted to convert it to a two-family dwelling, the construction was done, sometime in between then it was expanded to a three-family dwelling. In May 2016 the Building Department issued a Notice of Failed Inspection, claiming that the three-family which was in operation was not permitted and that the 1980 building permit was issued erroneously because it lacked the sufficient parking at the time. So we submitted some letters back in, the first one was July 2016, appealing the determination that the three-family dwelling was not permitted, and we later amended that appeal to strictly appeal from the determination that the building permit was issued erroneously and in the alternative, seek a variance for any parking that the Board did find lacking. At the Board's request, we have been working with the Building Department to kind of come to an agreement to try to settle this more amicably and less litigiously. So, the alternative approach that we've come up with that works for our client, myself and I believe the Building Department, is that we are seeking that our interpretation be adjourned and in abeyance until we, until further approvals are accepted and we are going to seek an alternative variance, seeking a variance for one parking spot and if we get that variance for one parking spot, we are going to go get site plan approval for switching the dwelling back to two-family from three-family, which is currently in the condition of, you know subject to getting site plan approval and any other approvals that way we come back and we would drop the appeal of the interpretation that would be held in abeyance until that time.

Chairman Boxer stated okay.

Ms. Richards stated so you're going to make it the three-family back to the two-family...

Mr. Patrick stated correct.

Ms. Richards stated but you need one parking spaces.

Mr. Patrick stated correct.

Ms. Richards stated okay, got it.

Chairman Boxer stated do you have a proposal where it's going?

Mr. Patrick stated pardon?

Chairman Boxer stated do you have a proposal where the space is going?

Mr. Patrick stated we do not, no.

Mr. Miley stated it's a variance for lack of, it's a variance for one parking space.

Chairman Boxer stated okay...

Mr. Patrick stated we wish we could find a spot for it but it's not...

Chairman Boxer stated build a garage.

Ms. Richards stated I have question, you know that parking lot that says Maple Avenue Community Center, you know that little parking lot that's kind of across, do you know what I mean Peter?

Mr. Miley stated yeah, I do, there's a couple lots there.

Ms. Richards stated what is that for?

Mr. Miley stated the Village owns one of the parcels you're talking about, it would be great to convert it, there's no proposal in the works for it but yeah, it's a great idea.

Ms. Richards stated I mean I know, didn't they used to park some security cars there in one of them but they don't park there anymore.

Mr. Miley stated I think it would be a great proposal for Dan to bring back to the landowner, however with this particular property, we've been in discussion with Ms. Zalantis and Dan, one of Ms. Zalantis' associate and if you recall we were trying to work with some of these properties owned by Lexington Properties. This one in particular is a pretty benign application in my eyes because we're taking an entire apartment off the third floor which is unlawful and unsafe in the Building Department's eyes and they were issued a building permit in 1980 and at that time the parking requirement was 1 per unit. They were issued a building permit, obviously I wasn't going to issue a Certificate of Occupancy until we remedied the situation. It's not our agreement, it would be the Board's agreement to either grant or not grant, if they don't grant a variance for one parking space, my assumption is that they are going to request an interpretation and your Board would be put back to work and they would try to maintain that three-family use.

Mr. Patrick stated that is correct. So...

Mr. Miley stated I'm done, I think it's a win for the Village, restoring a two-family and that's the zoning of it currently but it's up to your Board whether you want to grant a one space parking variance.

Mr. Patrick stated in the December 28, 2016 letter that we submitted, which was our second letter, amending the first appeal, we went through the 5 prong analysis of the area variance that we were seeking, just for the record, I put together a brief summary of what was contained in that letter, that I am happy to go over right now briefly. So, the first factor which is *whether or not granting a variance will create an undesirable change in the neighborhood or cause a detriment to nearby properties*: it is our position that it will not because there has never been off-street parking there, the building has existing for over 100 years not without the off-street parking. We're reducing the need, as Peter said, from a three-family to a two-family, so we'd be reducing the need for any off-street parking which currently there is none, so one less family is one less person parking, off the street. It is common place in the area, there are several properties on the block that do not have off-street parking that operate the same, like two-family units. On to the second factor, *whether or not the benefit sought by the applicant can be achieved by some other feasible method*: We are of the position that it is not feasible to provide off-street parking because of the topography and the shape and size of the lot, with the existing structure, there is nowhere to put one parking spot or two there. It would require grading and possibly even taking out the whole structure and rebuilding it. *Whether or not the variance is substantial*: It is our opinion that it is not substantial because what we've been saying, there has never been off-street parking there, we're reducing the need for it. The fourth factor, *whether or not the proposed variance will have an adverse effect or impact on the physical environmental conditions in the neighborhood*: Again, there's never been parking there, to put parking there it would require grading, probably tearing down the building, more site disturbance than what I think would be necessary for one parking spot. And the last, the fifth factor, *whether or not the alleged difficulty was self-created*: Again, the building was constructed in the early 1800's, there was no need for off-street parking back then, it's existing on the same lot since. So that is the breakdown of the 5 factor test, like I said there is more information in the December 28, 2016 letter, if you'd like it. So unless you guys have any questions...

Mr. Rose stated let me just ask Peter Miley, disregarding all of the other issues that came up, what would the Code require for parking?

Mr. Miley stated today, the Code requires 4...

Mr. Rose stated 2 per unit?

Mr. Miley stated 2 per unit, correct, for a two-family dwelling.

Mr. Rose stated and do I understand there are zero?

Mr. Patrick stated there are zero.

Mr. Rose stated so why is there only a variance of one?

Mr. Miley stated originally the permit was applied for at a time when the parking code was different. Essentially, we're granting deference to the permit that was obtained however never closed, which required one space per unit.

Mr. Rose stated but there's zero.

Mr. Miley stated there's zero, there's no room, the site is landlocked.

Mr. Rose stated so isn't that a variance of two?

Mr. Miley stated no, it is a variance of one because when the house was constructed in 1890, there was no requirement for parking.

Mr. Rose stated it was a single family house.

Mr. Miley stated so you'd only seek a variance for a Change of Use.

Mr. Rose stated it seems generous but okay.

Mr. Miley stated there's a lot of those, unfortunately.

Ms. Richards stated at least in this one, they are reducing some of the parking need by taking away the third apartment, so at least that's a reasonable compromise because actually, is there a tenant in the third apartment, are they leaving, or is it empty?

Mr. Patrick stated currently, the owner is saying its vacant.

Mr. Miley stated yeah, we are working with the landowner with all of these properties, you've seen a couple of them come before this Board. The solution, not the solution but the Board has instructed us to sit down and work something out, this is one of the properties that this is the only solution that we can apply to this property because there is nowhere to put parking, you can't create a space. However, the reduction of the unit significantly assists us with the lack of parking.

Chairman Boxer stated will they have to become compliant with the current Fire and Building Code?

Mr. Miley stated absolutely, yes, that's one of the conditions and which will be part of a Board, we believe, I don't want to speak on behalf of the Board but there's if's, and's or but's, the space has to be Code compliant with regard to Building and Fire Code, in addition they will seek Planning Board approval.

Ms. Richards stated right, you said that in the beginning.

Mr. Rose stated I have a question, maybe for Les. It seems to have changed from the original application to one now just requiring a parking variance. Does that need to be advertised...?

Mr. Maron stated well I actually I reviewed it, I was only informed late last week that they'd be back on the agenda and the original notice that they published or not the original, a notice that was published and also mailed to the neighbors, indicated that they were seeking an interpretation or in the alternative, a parking variance. So folks, someone who would have been concerned about it, was already put on notice about it. If they were looking for something else in addition, I might suggest advertising again but considering they're looking for what they asked for probably last May, I think, I'm okay with the notices.

Mr. Rose stated I just wanted to make sure that the Town isn't in jeopardy.

Mr. Maron stated now, I do have a slight concern, as long as you've raised concerns. I don't have the complete file here today but I assume that there was, was there a survey or site plan submitted to this Board in connection with the application?

Mr. Patrick stated not to knowledge, no.

Mr. Maron stated because I would be concerned, I would hate to have this Board be considering and possibility granting a variance and then you finding out its physically not possible to do it...

Ms. Richards stated to do what?

Mr. Maron stated to put a parking space on the lot.

Ms. Richards stated they're not putting a parking space on the lot. They're asking for a variance not to put a parking space.

Mr. Maron stated oh, because they don't have one at all. Okay, fine...

Chairman Boxer stated this is the lawyer...

Ms. Richards stated yeah, I don't understand.

Chairman Boxer stated we're too literal.

Ms. Richards stated that's the whole point.

Mr. Maron stated okay, it's late, early.

Mr. Patrick stated we have [inaudible].

Chairman Boxer stated okay.

Mr. Maron stated so the site plan won't really be necessary for this Board, for this Board.

Mr. Patrick stated not for this Board.

Ms. Richards stated it would be conditioned on, obviously Planning Board approval and on all required Codes being met.

Mr. Patrick stated the clients architect has been drafting plans...

Mr. Miley stated yeah, we met him last week.

Chairman Boxer stated that's the way the new Board is going, I spoke to the Mayor about it.

Mr. Maron stated now, with that in mind I would just suggest similar to what Whitney had suggested for your last application, that if you're inclined to vote this evening, which legally you can because there was a notice and this was a carryover, that your vote be subject to review of a final resolution, that you can discuss and review at the next meeting because there are a number of conditions and I'd want to make sure that basically you folks are satisfied with the conditions. I think Peter, while he doesn't get to approve it, I'd certainly want to make sure its something that works for him...

Ms. Richards stated so we cover everything.

Mr. Miley stated yup.

Mr. Maron stated so that if you're inclined to disapprove it, fine but it's one thing if you're inclined to approve. So I wouldn't object to you voting this evening, if you wanted to, directing me to write a decision, which you could do final review and approval at your next meeting, this way at least they have some sense of where you're going. Or you can hold the whole thing over and continue it to your next meeting, if you're not sure this evening.

Ms. Richards stated I'm okay with, I think it's a good compromise.

Chairman Boxer stated I agree. Now you have at least three. We haven't had a full Board in a long time.

Ms. Richards stated you make the resolution, I did one, your turn.

Mr. Rose stated I move that we grant the requested variance of one parking space where ordinarily two would be required but due to the fact that zero were required at the time the original building was built, the Board agrees to waive that updating, so instead of requiring two, one is sufficient and the Board reserves the right to make its final vote subject to agreement and review of the draft resolution and conditions that should be imposed.

Ms. Richard seconded the motion.

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

Mr. Patrick stated thank you very much.

Chairman Boxer stated okay.

Mr. Rose stated we probably want to approve the minutes if people are here.

Ms. Richards stated come on Harold, just do it.

Chairman Boxer stated there are two minutes to approve. September, everybody here that was there and November the same thing, different three people, anybody want to make motions?

Ms. Richards stated I make a motion we approve the minutes of Tuesday, September 19, 2017 and Tuesday, October 17, 2017.

Mr. Rose seconded the motion.

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

Chairman Boxer stated now do your favorite motion.

Ms. Richards made a motion to adjourn. Mr. Rose seconded the motion.

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

The meeting adjourned at 8:07 p.m.