

Minutes of the **Regular Meeting** of the Zoning Board of Appeals of the Village/Town of Mount Kisco held on **Tuesday, March 20, 2018 at 7:01 pm** in the Frank J. DiMicco Board Room, Village Hall, 104 Main Street, Mount Kisco, New York

Members Present: Donald Rose
Linda Greenberg
Barbara Richards
Nancy Coyne

Members Absent: Chairman Harold Boxer

Staff Present: Leslie Maron, Special Counsel
Peter J. Miley, Building Inspector
Michelle Russo, Secretary

Staff Absent: Whitney Singleton, Board Counsel

Chairman Rose stated this is the March 20, 2018 meeting of the Zoning Board of Appeals, Mount Kisco and the first item on the agenda is the approval of the minutes, December 19th, we will have to wait.

Ms. Richards stated January and February, we can do.

Chairman Rose stated January we have three members present, so we can vote on this.

Ms. Richards stated right.

Chairman Rose stated does anyone have any changes, notifications?

Ms. Richards stated nope.

Chairman Rose stated if not, we'll entertain a motion to...

Ms. Richards stated motion. Ms. Greenberg seconded the motion.

Chairman Rose asked for all in favor. The motion carried by a vote of 3 to 0.

Ms. Richards stated that's one.

Chairman Rose stated Lexington...

Ms. Richards stated February we can do to.

Chairman Rose stated February we can do, yes.

Ms. Richards stated yeah.

Chairman Rose stated February, similarly, are there any changes?

Ms. Richards stated not from me. Motion to approve the minutes from February 20, 2018.

Chairman Rose stated is there a second?

Ms. Greenberg seconded the motion.

Chairman Rose asked for all in favor. The motion carried by a vote of 3 to 0.

Ms. Richards stated that's rid of two anyway.

Chairman Rose stated December will have to wait until Harold is here.

Ms. Richards stated Harold isn't here.

Chairman Rose stated our returning case is 46 Maple Avenue is just review of the resolution that was prepared by the counsel.

Ms. Coyne stated I'm sorry I'm late.

Chairman Rose stated let's just pause temporarily.

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

Case# ZBA16-12
Area Variance/Parking

Chairman Rose stated the resolution has been distributed and unless someone has a change or comment...

Ms. Richards stated no, it's fine.

Chairman Rose stated I think that we can just accept it and ask the Chairman to sign the resolution when he available.

Mr. Maron stated that would be fine Mr. Chairman or Mr. Acting Chairman. The Board had on January 16th, had approved the variance but they said that it was subject to review of the draft resolution conditions that would be imposed and they are reflected on the draft that you see there.

Ms. Richards stated yeah, they're fine.

Chairman Rose stated yes, thank you for the amplification with that. The case that's on the agenda 474 Lex has...

2. 474 Lex, LLC
474 Lexington Avenue
Mount Kisco, NY 10549
(SBL) 80.64-1-5

Case# ZBA17-10
Area Variance

The Secretary stated they have formally withdrawn their application.

Chairman Rose stated formally withdrawn, so that is no longer available to be on any...

Ms. Richards stated do we have to close anything?

The Secretary stated no, well they withdrew, so I don't think you have to close the public hearing.

Ms. Richards stated okay.

3. 38 St Mark's Place Corp.
38 St Marks Place
Mount Kisco, NY 10549
(SBL) 80.57-2-3

Case# ZBA17-3
Interpretation

Mr. Robert Gaudio of Snyder & Snyder; Mr. Enrico Mareschi, principal of 38 St. Mark's Place Corp.; Mr. Lou Demasi of Demasi Architects were present.

Chairman Rose stated the new case has a very old number, ZBA17-3, 38 St Marks Place, which has been on the, not on the agenda but on the table for almost a year at this point. Are there representatives here to present the case?

Mr. Gaudio stated good evening, Mr. Acting Chairman.

Chairman Rose stated will the recording hear from that distance, or should he come forward?

The Secretary stated you can come up to the table, unfortunately we are not amplified at Zoning Board, you can come up on the dais please.

Chairman Rose stated and if you will...

Mr. Maron stated and if you want a chair, we can get you a chair.

Mr. Gaudio stated its okay, if I get wobbly, I'll reach back.

Chairman Rose stated if you will also state and spell your name for the record.

Mr. Gaudioso stated yes, good evening, thank you Mr. Acting Chairman and members of the Board. Robert Gaudioso, G-A-U-D-I-O-S-O, partner with the law firm, Synder & Snyder on behalf of the applicant, 38 St Mark's Place Corporation. I am joined by the principal of the corporation, Mr. Enrico Mareschi, who is in the front row and the architect on the plans that you have before you, Mr. Lou Demasi.

Ms. Richards stated I don't have any plans, there are no plans in here.

Chairman Rose stated ah yes.

Mr. Gaudioso stated they were attached to my letter, they were small sized sets.

Ms. Richards stated oh, maybe they're in here.

Mr. Gaudioso stated they were 11 by 17's.

Ms. Richards stated you have it?

Chairman Rose stated yup.

Ms. Richards stated hold on, maybe it's back here.

Mr. Maron stated it's folded.

Ms. Richards stated got it. You're going to open one? Oh, it's little.

Mr. Gaudioso stated if I may?

Ms. Richards stated yes.

Mr. Gaudioso stated so this is an application that has two components. The first component is an appeal of the Building Inspector's determination which was issued as a Notice of Revocation of the Certificate of Occupancy. And the Notice of Revocation was dated April 12, 2017 by the Village Building Inspector and in the alternative, we're requesting a Use variance for the existing two-family residence at 38 St. Marks Place. I think this is a very simple application, the premises, the residence, the house was built in the late 1870's and the only information in the Village's files based on a FOIL request that I made that talks about whether the house was a two-family residence prior to Zoning coming into existence, which was in 1929. There is an affidavit from a former resident of that property. But let me walk you through the history a little bit because I think it's important. From the late 1870's until approximately 1960, the property was allegedly used by the Hall Family as a two-family or multifamily residence. In approximately 1960, it was sold to a different family, the Fava Family, as I'll refer to them and ultimately they sold the property in the past few years to my client, 38 St Marks Place Corp. The records that we obtained from the Village show that consistently the property was a prior legal, non-conforming two-family residence. Nevertheless the Building Inspector took it upon himself to revoke the existing Certificate of Occupancy that was in place when my client bought the property, let me talk about that a little bit. When my client bought the property, there was a Certificate of Occupancy from 1990 that was in the Village's records, showing that it was a two-family residence and the Building Inspector made a determination that that Certificate of Occupancy from 1990 was somehow issued in error but it wasn't proper for the Building Inspector to make that determination for a very simple reason. This Zoning Board made a previous determination that it was a legal, nonconforming two-family residence and the Building Inspector simply cannot overrule the Zoning Board and let me talk about why that's the case. Back in 1974, a Notice of Violation and Appearance Ticket was issued for this property, Stephen and Mary Fava at 38 St Marks Place and it referred to a disorderly conduct violation for violating a one-family residence in the "R-1" zone. And apparently it went to the Village Justice Court and I'd like to make this a copy of the record with your permission, Mr. Acting Chair and I have an extra copy for the file as well.

The Secretary stated thank you.

Mr. Gaudioso stated and there's no record based on my FOIL request of how this Notice of Violation was disposed of but I believe it was disposed of because if there was a violation that was upheld, the property would have been forced back into a one-family residence but there's no evidence of that. In fact, the evidence is just the opposite, what the Village also provided to me from the Village's records, is an affidavit, again dated 1974 from a Mr. Harry Hall, and again Mr. Chairman, if I may, make that a part of the record. And what Mr. Hall attests to under oath, signed by a notary in 1974, in the Village's official records, that he had personal knowledge of the fact that this property was in his family, that he had lived at this property and that his relatives had operated this property for prior to the enactment of Zoning in 1929 as a multi-family residence. So if this was a legal, nonconforming two-family residence prior to Zoning

coming into place, it maintains that authority, it maintains that as a legal, nonconforming use. But there's much more than that, in fact this Zoning Board, in an official resolution filed with the Village Clerk and obtained by my office pursuant to a FOIL request, I have a copy of this. In a resolution with respect to a Zoning application that the Board denied and what the Zoning application was for is that the prior owner of the property had apparently done some work on the roof and the front façade and they closed in a porch and there was a violation. And he came to this Board because he expanded an existing legal, nonconforming two-family residence, he needed a variance for that under the Village Code. And what the Board found, specifically, on page two, as item number three, the use of said presence, premises as a two-family residence is a legal, nonconforming use. This Zoning Board made that determination in an official document. They went on therefore they made a determination that a variance was required and they denied the variance, okay. So we have an Appearance Ticket that there's no resolution that it was upheld as a violation, it was actually brought to Justice Court. We have an affidavit, the only affidavit by the only person in the record that actually had personal knowledge whether this building, this residence was a legal, nonconforming use prior to Zoning, we have this Zoning Board's own prior determination that the premises was a legal, nonconforming use but we have more. We have the Certificate of Occupancy from 1990 that clearly states and I make this part of the record, that the property is a legal, nonconforming use. This is the Certificate of Occupancy that the Building Inspector's determination was based on and that was revoked. We have more, we have the Village's property cards that I would like to make part of the record. And what I highlighted, the property throughout the property cards, has been detailed as an item number 220, which I also attached to that document, a copy of the State's handbook that shows that 220 means that it's a two-family house.

Ms. Richards stated what is 230?

Mr. Gaudioso stated we have more back in 1976, a different Building Inspector...

Chairman Rose stated may I just intervene at one point here, that how long have you been the counsel for this client, on this case?

Mr. Gaudioso stated approximately a year.

Chairman Rose stated and I assume this material has been available for some time.

Mr. Gaudioso stated not all of it, no, it has not. Not all of it.

Chairman Rose stated but some of it?

Mr. Gaudioso stated some of it, yes, absolutely.

Chairman Rose stated but is there any reason why so many months after that this case should have been heard, we're only getting this information on the night of hearing?

Mr. Gaudioso stated I think for two reasons. Number one, we have every right under the law to present it verbally at the meeting and provide it to you and I think that actually explaining it and answering questions is the most effective way for my client to be able to present their case. So I think good legal advocacy, by standing in front of you and explaining these details and answering any questions you have, certainly outweighs the benefit of writing a letter and trying to explain it that way. And secondly, it's no secret that the Village has, up until very recently as well, been discussing different policies and changes in the Code that would resolve some of these issues without having to go through this laborious, time consuming, and quite frankly expensive process for my client for who bought a property, searched the record, found the Certificate of Occupancy, bought it based on a two-family residence and be able to make a reasonable return on it. And the Village has, to my understanding, no enacted any of these policies that have been discussed but had these policies been enacted, we would have been able to avoid this process and possibly other processes. So that is the reason why I think this has gone on for some time.

Ms. Richards stated but why wasn't any of this provided to us prior to this meeting? We get a package of information, this is a piece of it.

Mr. Gaudioso stated sure.

Chairman Rose stated we can hardly have questions on this information when it's presented in single quantity to a Board, the night of the meeting.

Mr. Gaudioso stated I apologize for that inconvenience then, not my understanding, I practice in front of many Boards and it is fairly customary in this area that you do make an oral presentation. But if I understand that now, in the future I'd be happy to submit things in advance.

Chairman Rose stated oral presentations are made but there's also a request that a submission of...

Ms. Richards stated relevant documents...

Mr. Gaudioso stated if you want to put this over to next month, we'd have no objection to that but I only have a few more documents to go through.

Ms. Richards stated but they are documents that we don't have here, that we're not going to have time to look at, is that right?

Mr. Gaudioso stated they're documents that I'm handing you right now, correct.

Ms. Richards stated right, should have been part of the submission so that we would have had a chance to look at them.

Mr. Gaudioso stated yeah, again, I apologize, no one had informed of that previous to tonight as I said it's, you know, it is...

Chairman Rose stated in any case, let's move on.

Mr. Gaudioso stated there's another Building Inspector's review of the property, it's actually from the Building Inspector, I'm sorry from the Housing Inspector to the Building Inspector from 1976 that again finds that the premises is a legal, nonconforming two-family dwelling and I would like to make that a part of the record. So the Building Inspector's determination was based on, the way I understand it at least and if I'm wrong, I'm sure he'll correct me, it was based on two points. The first point was that there was a court ordered stipulation that when Mr. Stephen Fava died or sold the house that it would lose its legal, nonconforming status and it would revert to a one-family residence. And that document, I think is problematic, not necessarily problematic, actually it really supports our case. That Stipulation of Settlement, which I have a copy of, actually confirms in a court document signed by the Village Attorney and the Village Trustees at the time, that the premises is a legal, nonconforming residence. Now, the Stipulation of Settlement is void on its face for two main reasons, one the case and you can it right in the heading, including the Zoning Board of Appeals, however the Stipulation of Settlement was only signed by the Village Attorney and the Village Trustees. The Zoning Board was not a part to this stipulation and it's black letter law that a Village Board cannot bind a Zoning Board in an Article 78 proceeding and just one example of a case *Commco verse Amelkin 62N.Y.2D 260 (1984)*. The second problem with the stipulation is that Mr. Stephen Fava was not the owner of the property, so he made a commitment on a piece of property that he didn't own, so I guess two folks, two parties sold the Brooklyn Bridge, the gentleman that signed the settlement didn't own the property and the Village Board and the Village Attorney couldn't bind the Zoning Board of Appeals. So this Stipulation of Settlement has no legal authority but it is interesting in the fact that the Village agreed in a document filed with County, settling a lawsuit that that property was a legal, nonconforming residence. The second basis of the Building Inspector's interpretation and his decision to revoke a C of O that was over 25 years old and was relied on in good faith by my client was on the basis that the property was not used as a residence prior to Zoning as a two-family residence and therefore not a legal, nonconforming use. But there was nothing in the documents that I received from the Village, there was nothing in the Building Inspector's determination to support that position. When in fact you have the affidavit of a prior resident and part of the family of that property, that's an affidavit that was sworn to, that's the only affidavit from anyone with personal knowledge. I certainly don't have personal knowledge, my client certainly doesn't have personal knowledge prior to 1929, and I'd submit to you the Zoning, that the Building Inspector doesn't have personal knowledge prior to 1929 either. In addition to all...

Mr. Miley stated excuse me...

Mr. Gaudioso stated if I may finish my presentation, I'll be glad to stand down...

Mr. Miley stated if I can correct two statements that he made, so if you don't mind...

Mr. Gaudioso stated yeah, as soon as I finish my presentation, I'll be glad to secede the floor.

Mr. Miley stated well I'll let the Chairman decide that, Chairman?

Chairman Rose stated it's customary if there's some factual thing, let's clear that for the record.

Mr. Miley stated alright, there were two statements that were made, one that I based my determination on the death of Stephen Fava and the stipulation contained inside and in the package presented that none of

you have had the opportunity to review. The second was the basis on whether the parcel or property was a legal, nonconforming use prior to the Certificate of Occupancy being issued. The reason for the revocation quite frankly was based on an extensive review by outside counsel, not by my determination. This application was sent to an outside counsel, outside attorney to review the file in totality and came up with the recommendation. I was not privy to the original documentation before I started, there was some, a number of violations that were issued indicating, one that the property was in violation for utilizing a two-family, three-family home, excuse me, in a one-family zone which it is today. And second, by another of my predecessor who issued a violation indicating the same exact thing. Thereafter, we reviewed the entire documentation based on the sale, based on a complaint from the original owner. So rather than me not being part of the original review, sent all documentation to outside counsel, their determination was to revoke it and its based on a lot more facts than two items. Which you're going to get a package, but its my understanding that this is simply a request for an interpretation of the revocation of the Code, not incomplete...

Chairman Rose stated well let's let him finish his presentation.

Mr. Gaudioso stated I think this is shocking information, if the Building Inspector is the interpreter of the Code, not outside counsel. And if what you're telling me that there's a memorandum of law and specifically FOIL'd every document related to this matter and we haven't been provided that document. So there is no way...

Mr. Maron stated if I may, the FOIL request saw indicated that your office wanted to review the record, there was a response from the Building Department Secretary that you were welcome to review the records...

Mr. Gaudioso stated I have it, I have them in my file.

Mr. Maron stated so the Village didn't provide you with copies, you or someone from your office came in to look at the, whatever files there were. So there's no issue of things being held back, you came in and looked at whatever they had.

Mr. Gaudioso stated well this memorandum, I can tell you for a fact this memorandum that's being referred to, has not been provided, and was not made available to us. So if the Building Inspector's determination is made by some unnamed party, third party counsel that has a record that you don't even have, that we haven't been provided, I think that's clearly a violation of our due process. Now the Building Inspector's determination to revoke a C of O is limited to the four corners of the Building Inspector's determination and this Board's review of that determination is limited to the administrative record. So if there is something that the Building Inspector just conceded is outside the administrative record, it's not before this Board tonight and the applicant has no way of being able to review that. That's a matter of common due process.

Mr. Maron stated I think the problem is and the Acting Chairman already pointed out, the problem that they're dealing with tonight is the application itself indicates at item C that a typewritten, you can tell how old this form is, that a typewritten statement of the principal points, facts, and circumstances, I base my application with the description of the proposed work. Can, you hopefully got a copy of the letter today because you were CC'd on it. McCarthy Fingar is the counsel to the Building Inspector for certain matters...

Mr. Gaudioso stated I think...

Mr. Maron stated and it was there, could you let me finish please?

Mr. Gaudioso stated I'm sorry.

Mr. Maron stated it was their position that the Board shouldn't even hear this because the application wasn't complete. I've suggested that they should certainly let you get started but then you have to be given an opportunity, rather than have this Board sit here and decide is your application complete or not, should you come back, let you get started and then I am going to recommend to the Acting Chairman of the Board that they give you an opportunity to complete the application and provide all the information that's normally requested in the application, to be presented in a timely basis in accordance with the regular schedule for the next meeting. At which time, you can include all the documents with the descriptions, obviously they can take it tonight and its part of the record but your submission should be all the information that's relevant to your application and you can attach all of those and describe what they, this way they'll have a whole record. And like the Board members said, they can look at things on their own, ahead of time, so they can then be prepared for what they may have to decide. I don't think we should get into a back and forth this evening over who made the decision or what Mr. Miley may have relied on.

You're here appealing his determination, let's just stick with that tonight. If something else does come up and McCarty Fingar has requested that you file in a timely basis, so whatever term and Michelle, if you don't know it off hand, how long before the next meeting should a submission be in?

The Secretary stated I mean, all submissions to the Board are due in a 21 day lead time, so the deadline for ZBA is actually next Tuesday, the 27th. It's up to the Chairman or Acting Chairman, if they chose to shorten that lead time. I stick to the deadline, 21 days is when I accept paperwork.

Mr. Maron stated okay, so as of now, she's telling you it's 21 days which is next Tuesday. You can ask the Chairman if you can have a little more time...

Mr. Gaudioso stated sure.

Mr. Maron stated and it's his choice what he's going to do but also they wanted an opportunity to then respond to that, if possible before the next meeting. Which they would certainly provide back to you before the meeting.

Mr. Gaudioso stated yeah, as long as we have an opportunity to respond to them.

Mr. Maron stated absolutely.

Mr. Gaudioso stated and look, let me, everything you just said makes perfect sense. The part that I find fascinating is that we filed a year ago and I explained why it's taken this long because quite frankly, we were hoping to avoid this. We were hoping that the Village would come up with a policy and we would be able to avoid this confrontation but counsel for the Building Inspector, I think she probably knows my phone number, if she wanted the documents in advance, she certainly could have reached out to me. To chastise me for not submitting the documents and then to hear that there is an actual memorandum that the Building Inspector's determination is based on and hasn't been provided to us, I find shocking, so...

Mr. Maron stated I'm not even certain, I'm not going to make any kind of ruling or judgment or anything. In the first place, it was their position and their recommendation that the application be deemed not complete, it's up to the Chairman or Acting Chairman of what he wants to say this evening. I've just recommended you be given an opportunity to make it complete before the next meeting...

Mr. Gaudioso stated and that makes perfect sense.

Mr. Maron stated as far as any documents that the outside counsel or the Building Department's counsel may have provided, I'm not going to make a any judgment or pass judgment on that now. There may be attorney/client privilege issues, there may be confidential issues, we'll see what happens and we'll let them decide how they're going to approach that. I'm not the arbiter, I'm counsel to the Zoning Board.

Mr. Gaudioso stated no, and I agree with you, I agree with what you said before, right now the Building Inspector's determination is in front of you, I attached it to my application, copied the Building Inspector, it's based on two positions. One, this prior stipulation, and I have explained to you why the stipulation is void and I can certainly put some additional details on that. And number two that is was not a prior legal, nonconforming use prior to zoning and in fact I have submitted documents that I think shows otherwise and I'm comfortable to submit that formally to you and rest on that position with respect to the determination. Secondly, the Use variance, which is somewhat variance, the Use variance standard...

Mr. Maron stated if I may...

Mr. Gaudioso stated sure.

Mr. Maron stated there were, I think there were, when you were interrupted by Mr. Miley, there might have been one or two other items you wanted to produce first. Not that I'm making your case...

Mr. Gaudioso stated no, I appreciate that, I believe I produced the 1976 Housing Inspector's report.

Ms. Richards stated yeah, it's in there.

Mr. Gaudioso stated so I believe I've submitted the documents that...

Mr. Maron stated okay.

Mr. Gaudioso stated that are relevant to this. I'm not aware of any other complaints in the file, I'm not aware of any other documents in the file. We've appealed the Building Inspector's determination dated

April 12, 2017 on its face and we'll reserve the right if any other documents come in, to supplement accordingly and we'll put this writing to you. I am travelling later this week, tomorrow is a snow day, I'm traveling Thursday and Friday, if it would be possible to shorten the date for the submission of these materials, I would respectfully request that at your convenience.

Chairman Rose stated does the Secretary of the Board have an issue if they're, let's see three extra days given.

The Secretary stated I don't see if as an issue as long as it comes in potentially in the morning so it can go over to counsel and everybody review and have enough time to review it.

Mr. Maron stated well also it's going to be a submission to the Board, so obviously it can go out to the Board, also.

The Secretary stated it would go out to the Board in packets.

Mr. Maron stated yeah, I might recommend that, I mean we had this in the past with a different case, if Mr. Gaudio is going to get his submission in by the, it sounds like the 23rd, am I looking at the right week.

The Secretary stated no.

Mr. Maron stated no, I'm sorry the 30th because it would have been...

Ms. Richards stated is that next Friday?

The Secretary stated that's a week from Friday.

Mr. Maron stated because originally he would have had to have it in by the 27th, you're saying.

The Secretary stated which is Tuesday, a week from today.

Mr. Maron stated so if the Board is willing to give him until the 30th, the next meeting is the 17th, I would then ask if Ms. Georgiou response, that she respond the...

The Secretary stated she would have to respond by the 12th in order for me to get in packets for the meeting.

Mr. Maron stated okay but I also, he's already mentioned that he may want to reply, I don't want to get into a pissing battle back and forth.

The Secretary stated I understand that completely.

Mr. Maron stated but we may want to, if you don't mind, if we could ask her by the 17th and then he could have until the...I'm sorry. Ask her to do it by the 10th instead of 12th and he could have it into you by the 12th or 13th.

The Secretary stated I would need it the 12th.

Mr. Maron stated pardon me.

The Secretary stated I would need it the 12th.

Mr. Maron stated okay, so we can give her until the 10th, and any reply he would have, would have to be by the 12th and you could...

The Secretary stated okay, so the 30th, the 10th and the 12th.

Mr. Gaudio stated I will certainly try by the 12th but I'm going to have to respectfully reserve my right that I heard there is a giant file that I apparently don't have and other information so it depends on the volume that comes back. If it's something short and easy, I'll be happy to make it by the 12th.

Mr. Maron stated and you can make your request to the Chairman at that time.

Chairman Rose stated I would say, as the Secretary pointed out, the 30th if that could be done before noon on the 30th, does that give you some time to...

The Secretary stated yes.

Chairman Rose stated to process it.

Mr. Miley stated Chairman, are you referring to, and I speak to counsel, are you referring to the memorandum, the private, privileged, confidential memorandum to me? Or another file? Be clear.

Mr. Gaudioso stated I'm going to be clear that whatever is submitted by the Building Inspector and his counsel to the Board, I'm reserving my right to look at and respond to...

Mr. Miley stated you might not be able to look at it.

Mr. Gaudioso stated I'm not going to tell you what to submit or not submit, this is an administrative record, that's your choice.

Mr. Miley stated correct, honestly. But I will correct the record, the choice to revoke the permit, excuse me, the C.O., was my choice. Based on information, privileged communication by counsel that included a review of the file. I just want to make sure that's clear.

Mr. Gaudioso stated again it's the...

Mr. Miley stated whether he's privileged to review that file, it was attorney/client privilege indicated as a privileged and confidential, that's something for the attorney to review and answer.

Mr. Gaudioso stated yeah, again, you're limited to the administrative record in front of you, you have a letter dated April 17th of last year and April 27th I should say and the basis for the revocation is set forth in that letter. If other documents come in, that's part of the record, we'll certainly respond accordingly. I think we've fairly responded to what's been already submitted.

Ms. Richards stated I have one question, it says here in 1960 there was a permit issue for like a bathroom, in a single-family residence.

Mr. Gaudioso stated I don't know what's based on because I can find, I can find numerous documents that show that the building permit application or other documents such as that, say two-family residence, so...

Ms. Richards stated do we have a copy of this?

Mr. Gaudioso stated I do actually, and if you want to take a look at that...

Mr. Miley stated do I have a copy?

Mr. Gaudioso stated I'd like to make that a part of the record.

Ms. Richards stated do we have a copy?

Mr. Gaudioso stated yes, I actually do.

Mr. Maron stated if...

Mr. Gaudioso stated if you take a look at that document, the scribble that refers to it as a single-family residence is clearly in a different hand writing than the rest of the document. So I think that the weight of that document to stand for the proposition...

Ms. Richards stated this, where it says one-family?

Mr. Gaudioso stated yeah, take a look at it, it's a completely different handwriting. It's not even close it's not even close, it was clearly added.

Ms. Richards stated yeah, I would not necessarily agree with that. I think that is a big leap.

Mr. Gaudioso stated why is that? So who signed it? So who signed that document then?

Mr. Rose stated is it signed?

Mr. Gaudioso stated no, that's my point. So we don't even know, you know. Someone else could have signed it.

Ms. Richards stated there's something missing because...

Mr. Gaudioso stated yeah, that's the document that we received in the FOIL request...

Ms. Richards stated oh, that's it, I mean it was 1960, so I don't know.

Mr. Miley stated Chairman, can I just add some advice here. Why don't you just allow him to submit documentation, there's a lot of documentation, I'm sure there's not a complete file that's before you today and we'll prepare a response.

Mr. Maron stated basically Mr. Miley, that's what I've already suggested that they do, they gained some information today, I'm not...

Mr. Miley stated yeah, I mean what are we going to do, debate a scribble of a one family.

Mr. Gaudioso stated yes, as a matter of fact we are going to debate and let me tell you why.

Mr. Miley stated let's debate it.

Mr. Gaudioso stated we're going to debate it because my client has a significant interest here and it's my client's due process right to be able to have a fair and accurate record. So we are going to debate it and I'm going to debate every single issue because that's very important as part of this process. Just because you made the determination, doesn't make it right and we're going to debate every issue.

Mr. Miley stated I didn't say it did.

Mr. Gaudioso stated and I'm sorry to be testy about that but we are going to debate it.

Mr. Maron stated and if I may, just to clarify...

Mr. Miley stated and I will respond accordingly with whatever I need to respond to. I'll just turn it in.

Mr. Maron stated Mr. Chairman, and just to clarify, Mr. Gaudioso had asked in his presentation he's given you, documents he wants put in the record. I've strongly recommended, I've told him that he needs to complete his application by giving you a written submission. And obviously I've strongly recommended that he include any and all of those documents and anything else he may want along with the submission. So you'll have everything, hopefully in context.

Ms. Richards stated okay.

Chairman Rose stated that is correct.

Mr. Gaudioso stated regarding the Use variance. We do have the architect here this evening, I would like to take the opportunity to have him walk through the plan and just explain to you the layout of the property because I think it's relevant to why this is a two-family house. I would also offer to the Board a site visit if you want to come back and take a look at the property. The property itself facing the street backs up the TJ Maxx behind it, across the street from it is a parking garage for the Hospital, next door to the parking garage, diagonally across from my client's property is a residence but it is our understanding its being improperly used as an office by the Hospital. There are a number of allegedly other two-family houses on the property, on the lot across this one direction road, it's a one way road, St. Mark's Place is a very short road, I believe there are five or six houses on one side and about two houses on the other side, depending on whether you count the corner house. And this house looks just like all the rest, it's an oversized house but I will ask the architect, Lou, to actually walk you through the floor plan so you can understand why not only is it a two-family house but why it should remain a two-family house.

Mr. Demasi stated so the way that the house is laid out, there's many entrances and you know for egress points and entrances to come in. So here is the main entrance for the first floor apartment, and when I look at you know, the layout and make sure that an apartment has a living room, a dining room, a kitchen and they're all specified to have certain sizes when you do a certain size apartment. What I look at is the bedroom count and what can actually be called a bedroom and the way it's laid out for egress where they have a window to get out in case of a fire in all situations, it works here. A dining room of a certain size and a living of a certain size. And obviously bathrooms, bathrooms are just extras, this just happens to have two full bathrooms. So the layout for the first floor is [inaudible] an apartment...

Mr. Gaudioso stated and Lou, just to confirm, how many doors face the front of the road? The front of the property.

Mr. Demasi stated right now we have one door that faces the front of the house. There is a side entrance that goes up to the second floor and we also have another side entrance to go into the first floor apartment. So then when I went upstairs to measure upstairs, we had a layout, again, with a kitchen, a dining room, a living room and then two bedrooms. Again, egress out through windows which we had, a way out an outside, you know, staircase and everything else laid out as an apartment, so this was always, to me, always laid out as a two-family house.

Ms. Richards stated but do you know how long this existed this way? You don't have any way to know that.

Mr. Demasi stated no...

Ms. Richards stated it is obviously a two-family house now but that doesn't mean anything.

Mr. Gaudioso stated I think the point of it is, is that my client bought the property as a two-family house and as part of the Use variance, the question is whether they can make a reasonable return as a, if it had to be converted to a one-family. And I think with the testimony of the architect is that it's laid out as a two-family house. Would it be simple to convert this to a one-family house? Is it architecturally designed as a one-family house?

Mr. Demasi stated no, it's going to be difficult to do. The rooms are just too big to be construed as just a one-family.

Mr. Gaudioso stated thank you Lou, any questions for the architect.

Chairman Rose stated probably the only things that can be done are to see what the walls are, if they're all plaster in the present form or mostly plaster then it was probably built that way. But it's very difficult to go into an old building and determine what was original and what wasn't, things get moved, rebuilt.

Mr. Gaudioso stated and we're really relying on the documents in the Village's record regarding that. As far as when it was and what it was used for. The architect's testimony is really related to the use variance aspect of this that you know, that it was bought as a two-family house, it was designed as a two-family house and to convert it to a one-family house wouldn't be able to provide that reasonable return. And again, we're happy to host you for a site visit, the house is impeccably maintained, the property is impeccably maintained. My client, since they bought it, have put in close to \$100,000 in improvements, they've actually brought the property into compliance which is an important point. The prior owner actually had, my understanding, up to five apartments, three of which would be illegal there and my client has actually taken out those apartments, removed any of the required elements of one bathroom and the kitchen in the basement that was inspected by the Building Inspector, made numerous other improvements to the property that were based on violations that dated back quite frankly, decades. Re-pointed and fixed the chimney, inspected an overhang on the garage and did numerous other improvements to the property to be able to clear structural violations that were on the property when he bought it. Again, we would be happy to have you come by and take a look at the property.

Chairman Rose stated you're saying your client bought it really as a four or five family house?

Mr. Gaudioso stated no, no, he bought it specifically as a two-family house with the understanding that the C of O, in the Village's record from 1990, 25 years old, more than 25 years old had a two-family house. He bought it with the intention of using it as a two-family house.

Ms. Richards stated when did he buy it?

Mr. Gaudioso stated the exact date, do you have the exact date, it was?

Mr. Mareschi stated December of 2015.

Mr. Gaudioso stated December 2015 and...

Ms. Richards stated so in 2016, apparently there was another apartment in the basement?

Mr. Gaudioso stated and that was removed, correct.

Ms. Richards stated and that was removed in 2016.

Mr. Gaudioso stated yes.

Mr. Mareschi stated that was from the prior owner, not from me.

Ms. Richards stated right, I understand but you also were asking to make it an apartment, according to this.

Mr. Mareschi stated I never asked that.

Mr. Gaudioso stated no, he actually removed it and it's been inspected.

Mr. Mareschi stated I removed the apartment.

Ms. Richards stated say this. "Included discussion on legalizing the lower level use which included the need to hire an architect and/or engineer to design the space in accordance with the Uniform Code".

Mr. Gaudioso stated yeah but the point is, is that it was removed. There was no application to the Zoning Board to try and get it as a 3 family house. The apartment was removed shortly after he bought it.

Mr. Mareschi stated the basement now is just plain storage.

Ms. Richards stated I understand it's been removed, I understand that.

Mr. Maron stated as a follow-up, did I mishear you say that there were at one time, five apartments when he acquired the building?

Mr. Gaudioso stated so there were how many total apartments?

Mr. Mareschi stated there were a total of five.

Mr. Maron stated when you acquired it?

Mr. Gaudioso stated this is the principal, Mr. Mareschi.

Mr. Mareschi stated Enrico Mareschi. Me buying the property prior to that, the way that the old owner got caught was she was ready to build an apartment above the garage and one of the neighbors called. So she had the downstairs rented, the basement into two apartments, first floor and second floor which is four and the fifth was going to be upstairs from the garage.

Mr. Gaudioso stated and how many apartments are there now?

Mr. Mareschi stated two,

Mr. Gaudioso stated are there any other open violations?

Mr. Mareschi stated no, not at all. I cleared up all the violations and the basement again, you can come and look, I have no problem, I removed the bathroom out...

Ms. Richards stated I believe you.

Mr. Mareschi stated and its just plain storage and the garage is used as a garage.

Mr. Gaudioso stated thank you.

Mr. Mareschi stated thank you.

Mr. Maron stated I don't have anything to add other than I expect because you are asking for an interpretation and a variance, if you'll include the discussion of the variance in your submission.

Mr. Gaudioso stated sure.

Ms. Richards stated okay.

Chairman Rose stated is there any desire on the part of the Board to see the house?

Ms. Richards stated I don't think seeing the house is really going to help anything.

Chairman Rose stated I'm not sure that's relevant to our decision.

Ms. Richards okay, do we need to keep the public hearing open.

Chairman Rose stated yes, we will and for the record there's no other member of the public tonight but we will keep the hearing open. Do we need a motion to keep the hearing open? I don't think do.

Ms. Richards stated do we need a motion to keep the public hearing open.

Mr. Maron stated sure.

Ms. Richards stated I make a motion to keep the public hearing open.

Chairman Rose stated is there a second?

Ms. Coyne seconded the motion.

Chairman Rose asked for all in favor. The motion carried by a vote of 4 to 0.

Mr. Gaudioso stated and that's until April 17th at 7:00 pm.

Chairman Rose stated yes.

Mr. Gaudioso stated thank you very much for your time this evening and we look forward to seeing you next month.

Ms. Richards stated okay.

Chairman Rose stated is there...

Ms. Richards stated there is a motion to close the meeting.

Chairman Rose stated is there any other new business, if not, motion...

Ms. Richards stated I make a motion to close the meeting.

Chairman Rose asked for a second.

Ms. Greenberg seconded the motion.

Chairman Rose asked for all in favor. The motion carried by a vote of 4 to 0.

The meeting adjourned at 7:45 p.m.