

**Village/Town of Mount Kisco  
Zoning Board of Appeals  
Minutes of Tuesday, May 16, 2017**

Members Present: Chairman Harold Boxer  
Donald Rose  
Linda Greenberg  
Dan Guyder

Members Absent: Kim Lapple  
Barbara Richards

Staff Present: Peter J. Miley, Building Inspector  
Michelle Russo, Secretary  
Whitney Singleton, Board Counsel  
Les Maron, Special Counsel for Zoning Board of Appeals

The Zoning Board of Appeals entered into Executive Session at 6:30 p.m.

**A motion was made by Mr. Rose and seconded by Ms. Greenberg to enter into Executive Session.**

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

The Zoning Board of Appeals exited their work Session at 7:18 p.m.

**A motion was made by Mr. Rose and seconded by Mr. Guyder to exit Executive Session.**

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

The Zoning Board of Appeals commenced their meeting at 7:18 p.m.

Chairman Boxer stated we're going to take 333 Lexington first. 333 Lexington.

**1. Tony Catalano  
333 Lexington Avenue  
Mount Kisco, NY 10549  
(SBL) 80.48-4-1**

**Case# ZBA17-2  
Interpretation**

The applicant did not appear.

Whitney Singleton stated oh sure, I don't believe they're here, nor were they at the last meeting.

Chairman Boxer stated right.

Whitney Singleton stated your Board, the applicant came to your Board and requested what I can best classify as an advisory opinion as to the permissibility of the particular use, I don't know how it got before your Board but it did. Nevertheless the applicant was requesting an interpretation as to whether or not a tree landscaping service would be permitted in the CL zoning district as a service establishment. And I wrote the Board a memorandum that we conferred on at the last meeting. We went through the pecking order of the Village Code, first to find out the definition under §110-59, it was not a definition which appeared in the Code, there was a similar definition for personal service establishments but those relate to the treatment of the human body, so that clearly didn't apply. We then looked at the Webster's International Dictionary, similarly no definition and then the Code requires that your Board consider the past practices of the Planning Board, Zoning Board, and Building Department, so we examined other similarly situated businesses and examined their Certificates of Occupancy, to see whether or not they were issued Certificates of Occupancy for services establishment uses which none of them were, we obtained four different properties, none of them, they had a cornucopia of different uses, office, commercial the CO's were not dispositive of anything. So we went through an analysis with your Board, and your Board determined that looking at the general uses that fall within the service establishment districts and similar uses that are set forth in the zone, your Board thought that such use could properly fall within that category and it has to be in a drafted resolution to that effect. So I set forth in your resolution, historically what had happened here, the issues with definitions and then at the end, as you can see on page 3, paragraph G and H, I identified the fact that while this is a permitted use, it would require additional variances, there's a lot of substantially substandard involving total square footage as well as its configuration and given its proximity to residential uses, that while the use perhaps is allowed in the zone that your Board heavily scrutinized any application for a variance for that type of use in this particular location.

Chairman Boxer stated we're going to have Peter enforce the...

Whitney Singleton stated oh yes, additionally we were able to ascertain that a variance was given in 1977 that allowed for the existing residence to transition over a 5 year period to a commercial use. They built the commercial use as permitted by the Planning Board and authorized by your Board and never got rid of the residential use, there's a two-family house on the property which was supposed to be torn down no later than 1982 and that will obviously have to be something that needs to go for any use of the property and I believe that Peter is handling that with the Building Department and Code Enforcement.

Mr. Miley stated that is correct.

Chairman Boxer stated okay, any questions from anybody? Can I have a motion on the resolution?

Mr. Rose stated **I make a motion that we accept the resolution as presented, a resolution of the Zoning Board of Appeals, the advisory opinion on the permissibility of landscape businesses within the classification of service establishment for real property located at 333 Lexington Avenue, Mount Kisco, NY, section 80.48, block 4, lot 1.** Rather than read this into the meeting, can this just be referenced as being part of the minutes? Not sure of the process there but in any case, I so move the adoption of the resolution.

Chairman Boxer stated you're talking about the three page resolution on 8 ½ by 11.

Whitney Singleton stated okay.

Chairman Boxer asked for a second.

**Ms. Greenberg seconded the motion.**

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

Whitney Singleton stated I'm sorry, who was the second?

The Secretary stated Linda.

Whitney Singleton stated Linda. Perhaps you can sign that tonight?

Chairman Boxer stated yeah.

Whitney Singleton stated the next resolution, you want to move onto Bagnato?

Chairman Boxer stated yup.

**2. Bagnato 205 Lexington Avenue Corp.  
205 (215) Lexington Avenue  
Mount Kisco, NY 10549  
(SBL) 80.32-4-6**

**Case# ZBA16-6  
Area Variance**

The applicant did not appear.

Whitney Singleton stated is there anyone here from the applicant here for 205 Lexington Avenue? Just to recap what's happened here, there was a fire at this noncomplying, nonconforming site. The buildings at this site provide for more than one use, they're both residential and commercial. Downstairs on the building that fronts on Lexington Avenue are commercial uses, upstairs are residential uses and there was some dispute and I think rightly so, with regard to the position taken by the Building Inspector, as to the potential expansion of the upstairs and the number of units that were up there. Nevertheless, there was also a nonconforming residential use in a separate building in the rear of the property within the rear yard setback or the side yard setback, on the corner lot. There was a fire, there was a determination by the then Building Inspector that the damage was more than 50% which would not allow it to be rebuilt. That decision was appealed to your Board and after taking testimony from various people including various appraisers, Building Inspectors, cost estimators, your Board determined it was too close a call to not confer that opportunity for that property owner to rebuild so you conditionally authorized the rebuilding of a, predicated by four conditions. Two of those conditions were that no building permit was to be issued until site plan approval was secured for the site and that all the existing housing violations and safety violations in the front building were properly addressed. The applicant was given an opportunity to go to the Planning Board and secure site plan approval, the applicant appeared twice at conceptual applications, never for formal application and decided simply to go to your Board and for whatever was substandard

with regard to their project as far as off-street parking, building coverage, unauthorized buildings which were built on the property, they simply wanted a variance from all those requirements. Your Board asked them to at least take a hard look to see what the site could accommodate, even if it wasn't 100% of the parking, examine what could be done. The applicant did not come with plans, the applicant requested 5 adjournments and didn't appear at two separate meetings which they were scheduled and at the last meeting, your Board directed me to draft a resolution of denial for consider at tonight's meeting. In the, during the pendency of the drafting of that resolution, the applicant requested to withdraw its application, given everything that has happened to date, rather than to just say yes, I wanted to recite, your Board requested that I recite in there what the history of this was for posterity purposes. Because there is a requirement in our Code that in the event that you are allowed to rebuild, the rebuilding must occur within a year and the fire was in October of 2014. So what this resolution says it that is recites the history, it recites the conditions which were not challenged and the time in which to do so has passed and then it states now therefore be it resolved that based upon the [inaudible] of the Zoning Board of Appeals accepts the applicants withdrawal of its instant application but does hereby caution the applicant that no prior conditions of approval shall be deemed waived and nothing herein shall be deemed to extend the period to rebuild the residence.

Chairman Boxer stated Peter, are you working on the violations there?

Mr. Miley stated they are. They've actually been cited a court appearance ticket, they've accomplished about 80% of the violations but they're still dealing with the court.

Chairman Boxer stated can we have a motion to accept the resolution?

Mr. Rose stated **I move that we accept the resolution as discussed verbally by counsel, at which appears as a document in the materials for tonight's meeting on the matter of Bagnato 205 Lexington Avenue Corporation, Case #ZBA 16-6.**

Chairman Boxer stated and that's the resolution that's marked updated.

Mr. Rose stated yes, and that is in response to the applicant's letter to withdraw the application that had been originally made under this case number.

Chairman Boxer asked for a second.

**Mr. Guyder seconded the motion.**

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

Whitney Singleton stated I am elated to tell you that I'm done for this evening.

Chairman Boxer stated okay, next up is Gas 21 Realty.

Mr. Maron stated Mr. Chairman, I've just spoken to the representatives of Gas 21 and they've requested that it be adjourn to next month, they need to provide some additional information to the Board.

The Secretary stated do you want to approve the minutes from April 18<sup>th</sup>?

Chairman Boxer stated yeah, we can do that if you'd like us to. There's one typo that I found, on the last page, line 32, you refer to Don as Chairman Rose, just change that, that's all.

The Secretary stated I will correct that.

Chairman Boxer stated anybody have anything else with the minutes? Anybody want to approve the minutes?

**Mr. Guyder stated I make motion we approve. Ms. Greenberg seconded the motion.**

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

Chairman Boxer stated then we have Marguerite Ormond withdrew her application. So we are up to 46 Maple. Anybody here for 46 Maple?

Mr. Rose stated do we need to formally approve her request to withdraw the application?

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

## **Interpretation**

Ms. Katherine Zalantis of Silverberg Zalantis and Mr. Gustave Levy, Principal of Lexington Properties were present.

Ms. Zalantis stated good evening, Kathy Zalantis from Silverberg Zalantis LLP, we represent the appellant in this case 46 Maple Corp., and with me tonight is the appellant's principal, Gustave Levy. This appeal in my view was supposed to be the easy one, this was the appeal that we said we accept the Town's determination about the three family use, we are agreeing to bring the property down to a two family use that was consistent with the 1980 building permit that was issued. And that we would convert the property back to the 1980 building permit but that really wasn't good enough. The Building Inspector claims the 1980 building permit was issued in error because there was insufficient parking, after we withdrew that portion of the appeal where we were appealing from the determination concerning the three-family use and said that we accept it and will go to the two-family, the Building Inspector came up with a host of other reasons why the building permit was issued in error. And its argue that you cannot retroactively apply reasons to the original notice violation for why the 1980 permit was issued in error because only one reason was given and that was parking. I personally feel like this case, if you wanted to consider the variance, I know you wanted the interpretation first, this is an easy case where a variance could be issued and potentially the Board can, you know, avoid ruling on the interpretation. I don't care, whichever way gets me there to the end result and gets the result for my client, my client again is willing to do what the Town wants to convert it to a two-family use. So if you would rather hear that argument out of order...

Chairman Boxer stated we prefer to hear the variance first, this evening.

Ms. Zalantis stated before I go on, I just wanted to, I have another submission that responds to the Building Inspectors latest submission from May 12<sup>th</sup>, so I can hand that out now. But again this is toward the interpretation, if I could hand this to the Board.

Chairman Boxer stated do you have anything written on the variance?

Ms. Zalantis stated yes, I do. That was in our original submission. Our December 20, 2016 submission addressed the variance.

Chairman Boxer stated do you, do we have a copy of that?

The Secretary stated the Building Inspector has the file.

Mr. Miley stated can you repeat that, Chairman?

Chairman Boxer stated do you have a copy of the December 20<sup>th</sup> letter with the requested variance?

Mr. Miley stated Katherine, what date was that?

Ms. Zalantis stated it was December 28, 2016.

Mr. Maron stated I can give you my copy, if needed.

Mr. Miley stated if you have it, I have about 1,000 pieces of paper here.

Mr. Maron stated do you have it Mr. Chairman?

Chairman Boxer stated I have it here. Okay.

Ms. Zalantis stated so...

Mr. Miley stated you're good Chairman.

Chairman Boxer stated yes.

Ms. Zalantis stated as this Board knows to grant an area variance, you apply a balancing test and you weigh the benefit to the applicant against the potential detriment to the community. So in this case, for one of the factors this Board looks at is whether there will be an undesirable change in the character of the neighborhood and we had produced pictures, you can look at exhibit E of our submission, of some of the nearby properties and many of these properties don't have any off-street parking, that's the character of the

neighborhood and by converting from the three back to the two that was approved in 1980, we're reducing the parking impacts and consistent with the character of the neighborhood of other surrounding properties that also left off-street parking, so there's going to be no change to the character of the neighborhood, if this Board were to grant the variance. The next factor is whether the benefit sought by the applicant can be achieved by some other feasible method other than an area variance, so if you look at exhibit F, that has a picture of the property, this is the 46 Maple property and you can see that it is a very steep incline, its steep slope, you'd have to cut into that steep slope to create a driveway. You'd have to take down a mature tree that gives character and beauty to the neighborhood, you'd be taking down a significant tree to do that, it would be cost prohibitive, it would potentially damage the existing foundation and cut into a slope which is something that is not desirable from an environmental standpoint and there's really no way to create off-street parking on the property because of the topography and because of the steep slope. Although the variance, the next factor is whether the variance is substantial...

Chairman Boxer stated can I just interrupt for a second. Peter, are there any sideline variances required?

Mr. Miley stated I'm not sure at this point, I'd have to look at the survey.

Chairman Boxer stated do you have the survey with you?

Ms. Zalantis stated well I was only prepared to address the parking variance because that's the only determination...

Chairman Boxer stated we can put it over until next time.

Ms. Zalantis stated it's a pre-existing structure, it was built prior to the Code, so I'm not seeking to legalize anything because it was built as a one-family prior to the Code, the only issue is that when it was converted from a one to a two, it was all interior changes, the Building Inspector is claiming that that permit was issued in error because there was not sufficient parking, at that time, it should have been required to have off-street parking. So, if in fact that's correct, a variance issued in 1980 would have rectified that issue. So, by now seeking a variance, we're saying we should be able to do what we're authorized by the 1980 permit, if this Board were to grant the variance, so one spot is pre-existing non-conforming because it was built without any off-street parking, there was no off-street parking when it was built, so to convert it in 1980 per the Building Inspector's determination, if the Building Inspector should have required that the then property owner come before this Board and ask for a variance. By now getting a variance, we're seeking to rectify that situation so that we can submit construction plans to the Building Department to convert from the three, back to the two and it would have a variance in that case for off-street parking.

Ms. Georgiou stated if I could just add one thing in terms of what Peter was asking for. He can't make a final determination until a building permit application is submitted, so what you have before you is the parking variances.

Chairman Boxer stated okay.

Ms. Zalantis stated so that's a little bit worrisome to me because I don't want to be back in front of this Board...

Chairman Boxer stated you don't like us?

Ms. Zalantis stated no, I do, I enjoy my time here but I really don't want to be back in front of this Board for a whole host of other variances because I could best probably if you were to apply today's Code to what was constructed before 1928, I'm sure that that building does not comply, I can think of many potential things it doesn't comply with but the fact of the matter is that building was constructed prior to the Code being enacted, so the fact that it doesn't have a rear yard setback or proper side yard setback doesn't matter because we're not changing the building. We're just going to make interior renovations to the Building to convert it from a three to a two. We're not putting additions, I agree with the Building Inspector, if I was proposing to put an addition on that pre-1928 building, I'd have to comply or seek a variance from side lot lines or whatever but that's not what I'm doing, it's all interior renovations, it should just be a building permit application to the Building Department. I don't know, do you want your counsel to...

Mr. Maron stated I'm not going to opine on that at this time, it's her argument.

Chairman Boxer stated okay, I understand.

Ms. Zalantis stated that argument makes me want to cling to my interpretation more than the variance because I thought that I was here for a parking variance but I'm willing to go on. So whether the request is substantial, again pre-existing, non-conforming built without any off-street parking, so one parking space is

grandfathered, I think I only need a variance for one parking space, is the Building Inspector disagrees, then I need a variance for two parking spaces but I think there's a basis that I only need one. But anyway, there's second department case law that says even when a variance is potentially substantial, if you look at the character of the neighborhood, that's dispositive, there's case law that says when you have 11 nonconforming lots surrounding it, it doesn't matter if the variance is substantial because it doesn't have an impact on the character of the neighborhood, it comes back to that. So even if you were to consider this variance substantial and I don't think it's substantial, you're talking about one parking lot, one parking spaces, it's not a basis to deny the variance.

Chairman Boxer stated Peter, you're okay with the variance for one parking space?

Mr. Miley stated I would like to have an opportunity to look at the building permit application...

Ms. Georgiou stated I think if we look at your memo, I think you specifically said what the, do you have a copy of that Kathy?

Ms. Zalantis stated let me look it up.

Mr. Miley stated and Chairman, it's not if I'm okay with the one parking space, I'm just citing the Code, it's if the Board is okay with granting a variance.

Chairman Boxer stated I understand.

Mr. Miley stated its before you today because it was an unlawful three-family, issued a violation, challenged the Building Inspector's determination, now they're requesting relief for one parking spaces in lieu of challenging the determination, that's what I'm hearing Katherine?

Ms. Zalantis stated our original application submitted in December sought an interpretation and from the start we alternative sought a variance. I think this is a case where the variance to me is an easier potential lift than to keep arguing about the interpretation.

Mr. Miley stated understand. Chairman, can I just add, I think it's probably going to give me an opportunity to look at the building, to make sure the footprint hasn't changed because as she's describing it, it was legally nonconforming and didn't change or increase in the size, it meets the criteria prior to the Code, but there is no criteria prior to the Code.

Ms. Georgiou stated okay, let me just, looking at what you had submitted...

Mr. Maron stated Anna, there's a March 20, 2017 memo from Peter.

Ms. Georgiou stated yes, that's what I'm looking at now and its premises is converted to a two-family dwelling, four spaces would be required, however one space would be credited for the single family use, that is the only legally established use on the premises. That was in his memo.

Mr. Miley stated and if you agree to allow the vested rights of the 1980 permit, then it was only a requirement for one additional space.

Ms. Zalantis stated right, so I'm trying to get back to the 1980 permit. If that was the error at the time that the 1980 Building Inspector should have made the 1980 property owner come before this Board, we're seeking to rectify that error and so what we should have done in 1980 or what the Building Inspector is now claiming should have happened in 1980 and get a variance from that Board.

Chairman Boxer stated okay.

Ms. Zalantis stated so under that interpretation, one space would be grandfathered and we need a variance for one space and I think that's what...

Mr. Miley stated that's the correct interpretation, 1980.

Ms. Zalantis stated it's our contention that it's not a substantial variance and even if you believe that that one spaces substantial, it's not a basis to deny the variance. The next factor is whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood. So again, there's multiple surrounding properties that don't have off-street parking, we're talking about one space, we are going to make the condition of the neighborhood better by getting rid of the three-family use and bringing it back down to the 1980 permitted two-family use and there's significant steep slopes on the property that would be impaired and impacted if you were trying to create off-street

parking, I don't even think there's potentially room to put off-street parking based on the property size. And there's again, the potential for a loss of mature trees that will impair and will be detrimental for the community and [inaudible] whether the alleged difficulty is self-created and I would argue to you it's not self-created, there's a property owner in 1980 got a building permit, the Building Inspector in 1980 didn't tell the property owner to go before this Board, I agree that the conversion subsequently to a three-family, I'm not trying to justify that but I just want to bring it back to what it was in 1980 and that property owner relied on the then Building Inspector who said you didn't need to go to the Board, you were fine, you're allowed to convert without an additional parking lot. So, again I'm happy to address the interpretation issues, I'm happy to rest on my papers for the interpretation, I think it's an easier lift in this case, maybe not some of the others I have before this Board, if this Board were to consider granting that variance and then we can submit a building permit application, the Building Inspector can confirm that what we're doing it all interior and all interior with converting to the two. We wouldn't need, in that case, any other variances, it would just be the parking variance because we're not changing the structure.

Mr. Miley stated Chairman, can I add, if you consider the variance, I'd also like it to be part of the resolution that he needs to comply with all the fire safety codes and the safe housing codes and that's imperative and that's basically what I've been doing is ensuring that there's no substandard housing.

Chairman Boxer stated well I assumed that was going to happen anyway, because they're going to have to get a building permit and comply with today's codes.

Ms. Zalantis stated we're going to have to submit a building permit application that depicts the two family, we'll put in construction level plans for that to be reviewed by the Building Department, they will comply in every respect to today's Building Code. We're going to make it a compliant two-family house. I do believe that there's already been Building Code violations that were raised by the Building Inspector that my client has already addressed but we have every intention of putting a Code compliant two-family plan in front of the Building Department that does not contemplate expanding the structure in any way, because we understand that that would probably 100% trigger the need for additional variances.

Chairman Boxer stated any questions? Is there anybody in the audience that wishes to speak to this? Yes?

Mr. Miley stated I'd like to finish up after Mr. Levy. Mr. Levy, after you.

Mr. Levy stated my name is Gus Levy, I am the building owner at 46 Maple, yes we're going to try and reduce it from a three to a two-family. We did rectify problems for a multi-family property and now we're going to reduce to a two-family so a lot of things that we did to the property were done for a multi-family property because we were thinking, hey, we're going to get to keep this three-family use, so we've already gone and done a lot of the fire safety violations up to a multi-family use and now we're going to bring it back down to a two-family use, we're going to have to spend all that money to bring it back down as well. Already fixed it for a multi-family and now we're going to end up fixing it for a two-family.

Chairman Boxer stated okay.

Mr. Miley stated is that it, Chairman?

Chairman Boxer stated yes.

Mr. Miley stated he's 100% accurate, my fiduciary responsibility is to ensure that people that are living there while cases are pending, that they are safe, so that is 100% accurate. And as far as reviewing a two-family, they still need the variance to get to that point...

Ms. Georgiou stated and site plan approval.

Mr. Miley stated excuse me, and site plan approval. Any permit issued under our Code for two-family or more requires site plan approval, so prior to obtaining a valid building permit it would require site plan approval.

Chairman Boxer stated okay.

Ms. Zalantis stated so the only little issue with that is that in 1980 a two-family didn't require site plan approval.

Chairman Boxer stated I think because your, its kind of a backwards argument but because you're now bringing it down, you're under today's codes, so I think a site plan would be required.

Ms. Zalantis stated okay, do you, can I ask the Board if it would feel inclined to grant that parking variance and then I could just have a moment to confer with my client to just understand the implication of the site plan?

Mr. Maron stated I don't want to speak for the Chairman but it was my understanding that the Board didn't intend to act on the application this evening because two other members had sat in on some of the prior hearings so they wanted to give them an opportunity to see the minutes and review the documents and give them an opportunity to vote if they're available next month, so it was my understand that they weren't going to be voting this evening.

Ms. Zalantis stated I was just thinking that if I could have a consensus of the Board...

Chairman Boxer stated a straw poll.

Ms. Zalantis stated I understand that all three members would have to concur for a variance to be granted so if I wanted to get a consensus of the Board before I move forward, then I would be happy to close the public hearing tonight and allow this Board time to draft a resolution for the next meeting but if, I was just trying to get a consensus.

Chairman Boxer stated I understand, we've been discussing this and as far as I know, nobody is objecting, I don't know if I want, I don't want to poll everybody but I think we probably would look in it favorably.

Ms. Zalantis stated okay.

Chairman Boxer stated but we can't close the public hearing because we have to give the other Board members an opportunity to...

Ms. Zalantis stated I understand that we'll, I'm happy to put it over, I'm getting the okay from my client that he understands the implication of having to go for site plan review and with the understanding of course that we're here for a parking variance. And hopefully when we produce the building plans and don't show anything other interior renovations that won't trigger the need for additional variances because it is a preexisting, nonconforming structure.

Chairman Boxer stated it won't trigger the need for variances as far as...

Mr. Maron stated I don't know that you can say that, it's up to the Building Inspector.

Mr. Rose stated yeah.

Chairman Boxer stated that's what we're...

Ms. Zalantis stated but I think that's what you represent.

Ms. Georgiou stated he needs to see the permit application.

Mr. Miley stated if there's no increase in the footprint, from the original footprint, then there would be no need for additional area variances. If there's an unlawful addition, which I don't know today then it may, I'm saying may because I don't know.

Ms. Georgiou stated he needs to review the application.

Ms. Zalantis stated we understand.

Chairman Boxer stated so we will put this over and keep the public hearing open. Okay, so we have 20 Stewart.

**4. 20 Stewart Place Mt Kisco Corp  
20 Stewart Place  
Mount Kisco, NY 10549  
(SBL) 80.24-2-2**

**Case# ZBA16-20  
Interpretation**

Ms. Katherine Zalantis of Silverberg Zalantis and Mr. Gustave Levy, Principal of Lexington Properties were present.

Chairman Boxer stated okay.



Ms. Zalantis stated once again Katherine Zalantis, Silverberg Zalantis, we represent the appellant, in this case 20 Stewart Place Mount Kisco Corp., and with me tonight again is the appellant's principal, Gustave Levy. I have another letter to submit that addresses the latest submission by the Building Inspector. So, I just want to remind everybody of what happened in this case. This property in 2007 was a distressed property, the prior owner, not my client, had converted it from a three-family to a six-family, it was in distress, it was not in good condition, my client looked at this property and was interested in remedying the condition, he knew that there was an illegal use being there, a six-family use. He approached the Building Inspector in 2007, he said what do I need to do legalize this structure. The Building Inspector determined that legally there could be a three-family dwelling there. In 2007 my client completely upgraded the plumbing, the electrical, it was basically a gut renovation in 2007. He got a Certificate of Occupancy, he got a building permit, he relied on what the Town said and six-families were brought down to three-families. So now, we're here because of a violation issued in October that said that there was no Certificate of Occupancy or building permit for this 2007 renovation and conversion from a six to a three. When we submitted and produced the building permit and the C of O issued in 2007 because the Town put my client through the wringer and made them completely update the structure, they got a building permit, they got a C of O, they relied on what the Town said. Then the Building Inspector kind of shifted gears and said okay, we admit there is a building permit and C of O but we believe the C of O was issued in error, the C of O is still in full force and effect. There has been no proceeding instituted to revoke the C of O, even though that's the procedure under the Code. And the fact that we alone produced the C of O and the building permit that still remains in full force and effect, is enough for this Board to uphold our appeal and reverse the Building Inspector. If this Board however thinks that it can rule on the Building Inspector's new determination that the 2007 C of O was issued in error, then we amend our appeal but we strongly object to this process. We feel it's not procedurally proper, the Building Inspector cannot just come up with new reasons to support a violation and we don't believe that this issue is actually properly for that, before this Board, so I just want to note my objection to the procedural process for the record but putting the procedure aside. The 2017 Building Inspector has not met its burden to overturn the 2007 Building Inspector. Again, the Certificate of Occupancy was issued for the conversion of an illegal six-family to a legal, nonconforming three-family dwelling. The Building Inspector has already acknowledged the standard that this Board is going by and here, I'm going to quote to you, "A Building Inspector is bound by prior building permits and certificates of occupancy issued by his predecessor provided that those determinations were based upon rational interpretations of the Zoning Code and were not clearly erroneous." So I just want to be clear, this Board's guiding standard is not whether Mr. Miley's interpretation is reasonable, that's not the standard. He can have a personal, a completely reasonable interpretation. The standard is whether the 2007 Building Inspector was clearly erroneous and if he was not clearly erroneous, the 2017 Building Inspector is bound by those determinations and there's no basis to claim error. And as the 2007 Building Inspector was not clearly erroneous, this Board has to grant our appeal. A review of the history of the property and the Zoning Codes establish that the 2007 Building Inspector was not clearly erroneous. In the recent submission that the Building Inspector made, he said nobody knows what the Building Inspector in 2007 was thinking, and that's true, nobody knows, but that's the not the standard, I don't have to invent the time machine and travel back to the 2007 Building Inspector and ask him what his thought process was, that's the standard. The standard is was he clearly erroneous and based on documentary evidence and the evidence that we've submitted to this Board, he was not clearly erroneous. So, we talked last time at the last meeting that there were plans submitted in 1929 and 1930, the 1929 plans proposed a two-family use and then there were 1930 plans that proposed a three-family use. Both plans were marked with the same building permit number, it was obviously an amendment of the original two-family to the three-family in 1930. The Building Inspector's interpretation is that there's not building permit for a three-family, maybe that's reasonable, you may think that's reasonable, I don't think that's reasonable, not when there was subsequently approved 1930 plans that were marked with the same building permit. Obviously, in 1930 that's how they did it, they approved it, same building permit, they were approving a 1930 plan but again whether the current Building Inspector's interpretation is reasonable is not the standard, it is the 2007 Building Inspector clearly erroneous in determining that there were plans for a three-family use. And in our most recent submission, which I handed in, I attached it as an exhibit, there's a letter from that Building Inspector that specifically discusses that there were plans for a three-family use, he knew that, he saw that in the file and that obviously went into his determination. Was he clearly erroneous in understanding that in 1930 they approved a three-family use, no. So, even though nobody was around in 1930, the Building Inspector's interpretation was/is that the three-family use was never built. So last meeting we discussed there were specs approved in 1929 and 1930, the 1929 specs and the 1930 specs all both marked with the same building permit number on the same dates that corresponded with when the plans in 1929 and 1930 were approved. The 1930 specs still called for substantial excavation, this is proof that they never built that two-family use, why would they still be talking about excavation of a three-family dwelling if they had previously built the 1929 use. But I have even better evidence of that, there's a 1931 plumbing permit which was attached as an exhibit, for 12 fixtures, 4 fixtures on the first floor and 8 on the second floor, this matches exactly with the 1930 three-family plans. The 1929 two-family plans only shows 2 fixtures on the first floor and 6 on the second floor. To me, this is conclusive evidence that the three-family by 1931 had been built because they put the plumbing in to match the three-family, not the two-family. So, again can you make a reasonable argument, maybe that only a two-family was constructed. I don't think it's

reasonable, not based on the specs still calling for excavation and not based on the plumbing permit that shows 12 fixtures but maybe you can make a reasonable argument, I don't know, that's not the standard. The standard is, was the 2007 Building Inspector clearly erroneous in determining that a three-family had been built. At the last meeting, the Building Inspector provided a survey of the property, that was very helpful, I don't know if he had seen that before, in our May 5<sup>th</sup> submission, we went through that survey and documented how that 1930 three-family use completely complied with all the use and bulk requirements that were in effect in the 1928 Code. It was completely Code compliant both as to use and bulk requirements but that ended at around 1950. In 1950 the railroad, and we attach a copy of this to our letter as Exhibit C, they took approximately a 50 foot wide by 40 foot deep piece of property from 20 Stewart. That rendered that property non-compliant with the bulk requirements, the use was still permitted. So they took this large section of the property, they appropriated it, there was a deed that we've attached that shows the railroad took this property and that reduced the rear yard, so at that point in time in 1950 the minimum requirement was 18 feet, it was reduced to 6.6 feet, there was still no requirement in 1950 for off-street parking. So it was still compliant but as a practical matter, when the railroad took the back of the property it reduced the ability to have any off-street parking at that property because there had been garages, as the Building Inspector had pointed out and there was this survey that showed originally it was completely enough room for a car to maneuver and get around but one the railroad took 50 feet of property, those garages were rendered useless. You heard from our engineer that there's no way a car could maneuver around the lot as its currently situated, you would again need like Godzilla to pick up a car and put it in the garage because that's the only way you're going to get in there, there's no way to make a turn, there's only 6.6 feet left back there and that was a result of the railroad taking that property. So, as a practical matter, as of 1950, there's been no off-street parking on this property and you heard from our engineer about that but it was still actually Zoning compliant with respect to parking in 1980 because there was no off-street parking requirement, in 1962 the Code was amended to require off-street parking and it became Zoning noncompliant with respect to off-street parking but obviously it had been existing and grandfathered long before 1962 and long before 1950. So throughout the next 50 years, the Code changed significantly, many times, one thing that didn't change was the use was always permitted, you were always allowed to have a three-family use but the property was dimensionally noncompliant and nonconforming with respect to a three-family use. So, sorry, I just want to make one other point. In 1930 we didn't have, we can't find a Certificate of Occupancy was issued in 1930, it's my view it's probably just misplaced, it is from 1930 but it doesn't matter from a legal perspective whether there's a C of O and I think you had asked for case law on this, which we provided to you. There is a recent Second Department case in 2015 that says it's well settled that vested rights accrue where the owner does substantial construction and incurs substantial expense in good faith reliance on a permit and where vested rights accrue, a successor in interests succeeds to those rights. So the permit was legally issued in 1930 for the three-family use, there was construction of it, that property acquired vested rights through doing that construction and incurring substantial costs and putting up that three-family home. Those rights pass to every subsequent owner including my client, so the lack of alleged C of O in 1930 is legally immaterial and it doesn't matter. What does matter is that we establish that in 1930 it was legally complying and it complied all the way through to 1950 when the railroad took that bulk of property and then rendered it noncomplying, dimensionally noncomplying. So fast forward to 2007, ultimately the Building Inspector allowed the conversion back to the three-family that we established existing legally, the use was already permitted and he was allowed to and the C of O was issued to restore a legal nonconforming three-family dwelling and, I'm sorry, I just want to get the exact words because it's important. He did say nonconforming use, he was very careful to say, nonconforming use.

Ms. Georgiou stated I have the language, legal nonconforming three apartments, restore legal nonconforming three-family.

Ms. Zalantis stated he talked about a dwelling, he was very careful to call it a three-family dwelling and not talk about restoring the use because that wasn't being restored, the use was already, like always permitted, what he was restoring was the three family dwelling and I think that distinction is very important and I think emphasis on use verses dimensionally nonconforming is an important one for this Board because the Building Inspector's counsel keeps focusing on the use. Again, the 2007 Certificate of Occupancy states that with what's being reestablished is the nonconforming three-family dwelling, I think he used that word dwelling instead of use because he understood, and again I'm not in his head, he understood that it was dimensionally noncomplying, it was not nonconforming with respect to use. So what was not being reestablished was not the use but the noncomplying three-family dwelling. The Building Inspector also talks about some typo in the 2007 building permit, actually, the references is not to a Zoning District, it's to a use class, whatever that means but assuming it's the same as a Zoning District, it is what it is, it's a typo, it didn't change the fact that the Building Inspector authorized a use that was permitted in that zone, it's not like a mistake was material. They also talk about Zoning Code 110-34 E, that section is the lapsing section basically if you have a nonconforming use and you don't use it or you change it, you lose that nonconforming use but again, this is not a nonconforming use situation, the use is permitted, it was permitted in 1930 and its permitted today, so the use itself is permitted. We also discussed in our submissions all the case law review, I don't know if you want to get into that very briefly, that Parkview

Case, that's like the classic strong man argument, we're not saying that the Building Inspector is estopped, we're not trying to argue estoppel, we're not claiming the Building Inspector is barred from errors. Parkview is a very different case than this case where there's a clear issue, here the issue is not clear and the Building Inspector already conceding a Building Inspector is bound by its prior building inspectors unless it can show those determinations weren't rational and were clearly erroneous. So I just want to emphasize, the standard is not whether the 2017 Building Inspector can come up with some other interpretation, I mean that would completely destroy the court of appeals case that says you have to have repose to property owners, you should be able to rely on a Certificate of Occupancy. The fact that you can come up with a different interpretation, that's great, I'm sure all of us sitting in this room today could come up with different interpretations and could very well be reasonable but that's not the standard, the standard is was the 2007 Building Inspector clearly erroneous. You know, it's always easy to Monday morning quarterback but that's the standard that this Board has to review this on and looking at the history and the Code that was in effect and all the documents that we produced, it was not clearly erroneous for the 2007 Building Inspector to allow a three-family use to continue that was previously rendered dimensionally noncomplying. And sitting here today, I don't think anyone sitting on this Board can say that the 2007 Building Inspector was clearly erroneous, given everything that we've produced in the Building Inspector's file, so given the documentary evidence, the Zoning Code that were in effect in 1928 and 2007, this 2017 Building Inspector failed to establish what the 2007 Building Inspector's decision that 20 Stewart had attained legal nonconforming three-family dwelling, use status was "clearly erroneous". He failed to establish that his decision to issue a building permit and Certificate of Occupancy to allow that conversion to restore a "legal, nonconforming three-family dwelling" was clearly erroneous, as such the 2017 Building Inspector is bound by that 2007 Building Inspector's determination and I just again want to emphasize that it's not my client that illegally converted to the two, my client has, on the fire and safety issues, my client has been working and will rectify any Building Department fire safety issues, many of them have already been addressed and if there's still open issues, they will be addressed. So this is just what we're talking, the 2007 determination by the Building Inspector.

Chairman Boxer stated okay.

Ms. Zalantis stated and alternatively I did seek variances, I'm not really prepared to address those variances tonight but I think again, this property has been in this condition since 1950, that's the evidence, so it has not had off-street parking since 1950 and in 2007 my client spent a substantial amount of money to make a bad condition better and he was forced to, you know, update the plumbing and electric and he relied on those permits and approvals that were granted that made complete sense when you look at the file.

Mr. Miley stated all finished Katherine?

Ms. Zalantis stated I'm sorry?

Mr. Miley stated are you all finished?

Ms. Zalantis stated yes.

Mr. Miley stated Chairman...

Chairman Boxer stated yes?

Mr. Miley stated I'm going to touch on a couple points, I'm going to address the building permit issuance and Anna is going to address the erroneous issuance of a Certificate of Occupancy. To start, there was a fire inspection done on the property and what brought us here today, what commenced this whole action was there was a garage located in the rear, although it is inadequate today for parking, at one time it was adequate, today it's an apartment, an unlawful apartment with no egress. So, a permit, I'm going to take you right back down to 1930, when a permit was issued, it was issued for a two-family home at that time, there were plans submitted for a three-family but a permit was not issued for a three-family, it was issued for a two-family. In addition to that, fast forward to 2007, restoring to an already unlawful use from a six-family to a three-family that hasn't been legally established, does not allow the increased intensity without providing one of two things, adequate parking and obviously the fire safety measures and compliance. It also would have required site plan approval, which it did not have and there's zero parking on site today, at one point the lot as we expressed in the last meeting, the lot was bigger, I don't know if the previous owner was compensated for reduction in space but what they did do was they eliminated the parking and in 2007 the garage was converted to a garage. What's important here, is I don't believe they've established a legal three-family use, it doesn't meet any of the criteria in the Zoning District at that time which is the current Zoning District, RM-10 District, the lot is substandard today, it requires 15,000 square foot, the lot is now down to about 4,000 square feet and there is zero parking on site, although there is an unlawful improvement adjacent to the property sharing that does allow some parking, it doesn't belong to 20 Stewart. There were a number of additions, enlargements several, one of which the front porch was

converted to living space, the above the front porch is now an addition that wasn't issued a lawful permit or C.O., the side has an addition with additional living space. So this thing has transformed into a monster structure, it went from a two-family building that would have been lawfully complied at the time it was constructed, to today we have three-family with at least three additional bedrooms, if you understand parking, a three-family use is predicated on the number of bedrooms to determine parking for every single bedroom requires an additional space, so at that time, even just that issue alone the permit should have been rejected based on the increase in intensity and converting additional space, lower level living space, in addition to the multiple additions that were created without permits. So, there's a number of permitting issues here it would require Planning approval, they have the opportunity to submit an application because the three-family is a permitted use in that district but it probably would require a number of area variances, including parking being one of them.

Ms. Georgiou stated I'd like to restate again from the Parkview Case, municipalities cannot be barred from enforcing the law, even if a mistake was previously made. And all our papers address this, all the papers that Building Inspector submitted, that we submitted on behalf of the Building Inspector, address this standard. The 2007 building permit and CO, were erroneously issued, first of all, the appellant is now making a different argument, I don't know if you recall two months ago the last meeting when this was heard, their principal argument was this was a preexisting nonconforming use, I don't think we heard that one time now because that was erroneous. It couldn't because it's a use that's permitted in the current Zoning District, it didn't meet the requirements to be a nonconforming use, so they dropped that argument which was their principal argument. However, based on the language, what the language is of the 2007 building permit and CO, legal nonconforming three apartments, restore legal nonconforming three-family, what else could they have been talking about. Also, the building permit and CO list the use group, which I understand from the Building Inspector is the same as Zoning District, as R-2, so the Building Inspector, apparently was under the assumption that this was two-family Zoning District, where this would be a preexisting nonconforming use, clearly erroneous. Then, if, again, and if the reason why I think they've abandoned this argument also is because the three-family use would have been discontinued for a substantial period of time since we have evidence that in 1972 this structure had already been converted to a five-family. So that argument obviously just holds no water that's erroneous. Now they've dropped that, so then we go to the argument that what the Building Inspector was attempting to do in 2007 was to legalize or bring back some kind of a noncomplying structure, well the problem with that argument is this is not the same structure that existed in 1930. Village records show there have been numerous alterations, most of them were done illegally without permits, so we're dealing now, and in 1930 I don't think the basement, there wasn't an apartment in the basement...

Mr. Miley stated it was a garage.

Ms. Georgiou stated that was a garage. So even if you want to call it a three-family in 1930, which they still don't think they've proved, even if you want to do that, there've been numerous changes in the study, the structure, so what were they restoring in 2007, it's not clear what they were restoring but it appears that they were trying to restore what they thought was a preexisting nonconforming use, clearly erroneous. The other issue also is that you know, we're forgetting again that as of 1972 this structure had been illegally converted to a five-family and then subsequent to that to a six [family], so any vested rights that would have arisen in a three-family would have been abandoned and forfeited, that's the law. You can't, you can't you know, retain vested rights when you illegally convert a structure, so you know you're dealing with a different structure, you're dealing with illegal conversions, it just doesn't exist. And the other thing I just wanted to remind the Board too is we've given the appellant's a path here as with 46 Maple to legalize this, we're trying to be reasonable, giving them a path and you know, that's been rejected, so I don't want to go over everything and spend a lot of time on this. We've made three, now three submissions to the Board on this and our arguments are contained in those submissions.

Chairman Boxer stated question, if they were able to get the variances, could you have a three-family there that would meet all of the building requirements and safety codes?

Mr. Miley stated that would be a difficult question to answer today.

Chairman Boxer stated what's the current use there?

Ms. Georgiou stated it's a three-family, it is a legal use in that Zoning District and based on your original memo from March, you've said the appellant's remedy is apply for off-street parking and potentially lot area and other variances and site plan approval to comply with current building and zoning standards or alternative the appellant may convert to a two-family dwelling but they have a path to legalize this.

Mr. Miley stated that's the restoration of the original use.

Ms. Georgiou stated but they have a path to a three-family.

Ms. Zalantis stated I don't agree that the original use was ever a two-family. I think we've submitted too much documentary evidence, including the plumbing permit for 12 fixtures that conclusively establishes in 1931, if it was a two-family why would they install 12 fixtures in 1931. I established that based on documents in the Building Inspector's file that it was a three-family constructed in 1931, so they have vested rights in that three-family. I think everybody is speaking out of both sides of their mouth with this use argument, the Building Inspector circled it, he said it's an unlawful use. The use is not unlawful and counsel for the Building Inspector correctly raised that and even more precisely articulated our argument in response to that. She pointed out that the use was not permitted, the use was never not permitted, including now. So I responded to that and more precisely articulated our argument. It was built in 1931 that plumbing permit and those specs prove that it was three-family built in 1931 and it was reasonable for the 2007 Building Inspector, he was not clearly erroneous to say based on what he had in his file that they built a three-family in 1931. What is currently existing now was approved by building permit plans, is exactly what was approved in 2007. I'm not trying to argue parking, I've never said that the, that you can't correct a mistake, I'm arguing there wasn't a mistake, it was based on reasonable evidence in the Building Inspector's file. The garage served no purpose as of 1950 because you couldn't put a car in there...

Mr. Miley stated bicycles, lawn equipment.

Ms. Zalantis stated yeah, maybe but in 2007 the Building Inspector determined, I'm going to make you gut and renovate this whole entire building and it makes more sense to put apartments down there because we're going to completely update the electrical and the plumbing. It was a gut renovation that was approved in 2007 and it made more sense to put apartments there, there was no intensification of the use if three-family is permitted now like it was permitted in 1931 when this three-family was constructed. The Building Inspector cannot claim, it's his interpretation, maybe, looking at one document that it was not constructed in 1931, looking at the whole scope of documents including that plumbing permit which is pretty conclusive with its 12 fixtures, it establishes that this building was constructed in 1931. It is still legal, it was legally constructed, I will go through, if you want me to, I will compare the 1928 Code, I've looked at every provision in the 1928 Code to conclude that that 1931 structure complied 100% with that 1928 Code.

Chairman Boxer stated question, can we do something similar to what we did with the prior one, we got variances, could it be brought up to today's code?

Ms. Zalantis stated I will address the building permit issues 100%, if there is an access issue that didn't exist in 2007, I can have my client meeting with the Building Inspector and come up with some way to rectify that building issue.

Chairman Boxer stated okay.

Ms. Zalantis stated I'm not having an access that doesn't comply with the Code. So if it's a Building Code issue, my client will do it. What we don't want to happen is for them to lose the rights in a three-family that has been there since 1931 and the fact that you know, they don't have off-street parking is not their making. It's a making, it's a function of the fact that the railroad took, you know, a huge chunk of their property and it's been like that since 1950 and they spent a lot of money to bring it back down to three [family], in reliance on everything that Town told them in 2007, they're not the ones that created the issue, they tried to make it better. And you know, I think to then say they have to bring it down to a two...

Mr. Miley stated Chairman, I have no problem meeting with Ms. Zalantis and her client. But what really needs to be understood here is and you really need to look at those plans that were originally submitted, the original plans were for a two family, the first and the second floor, then the plans which they never re-issued a permit for a three-family, but let's just say we anticipate they considered a three-family dwelling, there were two apartments now on one floor and one on another, there was never three separate apartments on three separate floors. Nor a garage that was converted to an additional apartment increasing the intensity with additional bedrooms, in addition to numerous alterations and additions, thereby also increasing the size, the square footage, the footprint. So there's a lot of issues here, it's just not a matter of a two or three-family, there are a number of things that don't comply with today's zoning, the only thing that does is the use, they can have a three-family. However, the criteria is very, very difficult to meet, the size of the lot, the parking, the number of bedrooms...

Ms. Georgiou stated they need variances.

Mr. Miley stated they need numerous area variances.

Chairman Boxer stated yes, I understand.

Mr. Miley stated so if the Board wants to entertain an application by Ms. Zalantis' client to legalize a three-family, I will give you the list of variances and requirements that are required. However, I would certainly, if they wanted to restore it back to what they perceive as the approved plans, then they would have to abandon that apartment in the basement and restore it to a utility room and garage, as it once was, as it once legally existed.

Ms. Zalantis stated without sitting here today and going through every single permit that happened between 1950, I believe that there were approvals granted for whatever alleged extensions they were, but they were enclosures of existing structure anyway, so it's really not increasing the structure...

Mr. Miley stated no, they were increasing the footprint, there was an addition and there was an addition to the second floor. That's increasing the footprint.

Chairman Boxer stated Peter, a question. Can the, I hear that you're having problems with the basement and the occupancy of the basement...

Mr. Miley stated I have a lot of problems with that property but I'd be willing to entertain taking a second look at it and let the Board understand the significant variances that are required to get that to be a legal property.

Chairman Boxer stated but my question though is, can a basement apartment be brought up to today's safety and fire codes so that it can be used?

Mr. Miley stated yes, yes.

Chairman Boxer stated alright.

Ms. Zalantis stated I just want to add, I heard a lot size variance, like that is not a variance that I would ever need because I've established that in 1931, it was a three-family use that was built. The fact that part of the property was taken, right, that's what rendered it dimensionally noncompliant, but its preexisting, nonconforming, dimensionally noncompliant before 1950, so obviously I don't need a lot size variance, if a portion, let's assume, a portion of the structure was pushed further towards a lot line and that's not in violation of whatever Code existed at that time, potentially I would need a side yard variance or such but I definitely don't need a lot variance. So I think you cannot look at this property, this is the problem that I have is that this Building Inspector looks at the Code today and seeks to apply it to structures that were built in the 1920's and 30's, that's not how you do it. If that building was lawfully constructed in 1931, which I've established it has been, I don't, there's no argument to me that can convince me that that three-family was not built and that the building permit wasn't properly amended when they stamped three-family plan with the same exact permit number. That's a fantasy argument that only a two-family was allowed when they stamped the same building permit on the three-family plan and then there's a plumbing permit for 12 fixtures that establishes that three-family dwelling was built in 1931...

Mr. Miley stated Katherine, I'll apply the 2007 Zoning Code when that, what you anticipate as a duly authorized permit. I'll utilize that as the zoning criteria.

Ms. Zalantis stated you have to give credit for whatever existed, that's allowed, it is allowed...

Ms. Georgiou stated let's not get into this.

Mr. Miley stated I don't want to comment on an application that doesn't exist today but I'm telling you that I'll apply 2007 criteria.

Ms. Zalantis stated but that's, I just want, I want you to understand that that's going to result in another round of interpretation, if there's a determination that I have to get a lot size variances...

Mr. Miley stated we don't know that today, how do you know that?

Ms. Georgiou stated please, please don't.

Ms. Zalantis stated it was built in 1931...

Chairman Boxer stated wait, wait...

Mr. Miley stated why are we anticipating a variance you may not need, you don't know what my determination is based on, I have to look at the application. And I will give it a fair look.

Chairman Boxer stated guys, hold it, hold it. Are you willing to meet with the Building Inspector?

Ms. Zalantis stated yes, I am willing to meet with the Building Inspector.

Chairman Boxer stated and you're willing to meet with the applicant?

Mr. Miley stated of course, always.

Chairman Boxer stated okay, can we leave it at that...

Ms. Georgiou stated you'll adjourn it and...

Chairman Boxer stated and come back at the next meeting.

Mr. Miley stated as they're going to apply?

Chairman Boxer stated no, we're going to see, they're going to meet with you and then they'll come back to us and say we're willing to try to comply or we feel that we need an interpretation because we don't feel that you're applying the right Code. So if you guys can meeting, maybe before the next meeting, then we can know which way we're going to go.

Ms. Zalantis stated I would appreciate that opportunity to meet with the Building Inspector.

Mr. Maron stated if I may Mr. Chairman, there's a 2015 survey that was filed with the Building Department, I assume it was provided by the applicant, the survey is prepared by Stanley Johnson and Company. This survey shows what the Building Inspector had alluded to as the parking that was put in which is on the adjoining property, when you folks go out there and meet, if you could take a look at this also, to see what's actually out there, it looks as if perhaps there are, you could park two cars there or there may be two cars there but also part of it is on the adjoining property. Also, I might point out that this survey also shows only a 1.6 foot side yard at one point which doesn't appear to be on the, it appeared to be a greater side yard on all of the earlier plans, this is something that you may want to look out also, Peter and Katherine.

Mr. Miley stated I'm sorry Chairman, can you repeat that?

Mr. Maron stated there is a 2015 survey which was in my file, so I assume it was filed by the applicant in connection with the application because it was in the Building Department file, it was stamped as received by the Building Department.

Ms. Georgiou stated I've not seen that.

Mr. Maron stated so which shows a 1.6 foot side yard at one point on the property.

Mr. Miley stated that's correct, that's the right side yard.

Mr. Maron stated I'm not finished.

Mr. Miley stated sorry.

Mr. Maron stated and that's not shown on the original older plans that had been approved in '30's, there was a greater side yard there and also the driveway, which used to be partly on this property and partly on the adjoining property, if you can take a look at that, if everyone can take a look at that when they're out there and see what's actually being used and what's actually there, that might be helpful to the Board.

Ms. Zalantis stated maybe we can also arrange to have our engineer take a look at that and see.

Chairman Boxer stated whatever you'd like to present is fine.

Ms. Georgiou stated is the public hearing going to remain open or more written submissions or do you want to just leave it open.

Chairman Boxer stated well first we're going to ask if there's any comment from the audience.

Mr. Levy stated I can say something on this and the next case because I am the owner of both properties, 20 Stewart and 94 Maple. My father started buying properties here in Mount Kisco in the 1980's my father was Peter Levy, he used to run Lexington Properties, he passed away in 2014 and I took over the property

management business from then. I approached the Building Department in 2014 to rectify any building issues that were in my properties, okay, the first Building Inspector was then let go, the next Building Inspector was then let go and then when Mr. Miley came in, I went directly to him and I said look, I need to sit down with you and go through all my properties, there are issues, that was back in December 2015. The next time I heard from Mr. Miley was in the form of a violation letter as I invited him to come into my properties that he had not inspected yet, one of his cronies signed a piece of paper that signed off on a former Building Inspector's notes, not even the actual Building Inspector and I've spoken with that Building Inspector and he agreed with me. I've done everything in my power to do what is asked of me okay, I want to continue to operate my business in this Town, every property that my father bought was under distress, he wouldn't buy something that was completely fixed up, alright, he would always buy something that was run down and he would go and say there's problems with this property, it's got violations on it, allow me to purchase this property and fix it up, that was the business model that he created. That is the business model that I intend to continue. That is pretty much all I have to say on these two properties. The current 20 Stewart has people with, mentally disabled people living it, Ability Beyond Disability, I don't know if anybody is here from that organization but it's a government run organization, privately funded in some ways and publicly funded by the government in some ways. And then the guidance center operates 94 Maple, they provide clients to us and we sign contracts directly with those clients, some of those clients are here tonight. That building, 94 Maple, has been, was purchased by my father in the late 1980's and converted in 1994, well we don't need to go into but in 1994 received a basket award from the Town of Mount Kisco Beautification, so if that's any idea of the kind of work that my father undertook, then I just want the Board to take that into consideration. Thank you,

Chairman Boxer stated you're welcome. Any other comment.

**Ms. Picinich** stated my name is Gina Picinich...

Chairman Boxer stated can you stand up please.

**Ms. Picinich** stated and I'm a resident here in Mount Kisco and I'm here basically to support our Building Inspector. I want for this Board to keep in mind that he represents the citizens of this community and years upon years upon years of neglect and not effectively applying Building Code or following up on housing violations, have actually put this Village in a very, very bad situation. I respect that Mr. Levy has inherited some things that maybe are not so great and I respect that he wants to rectify those things that are wrong and that's important for this community to be able to come together and make sure that he does, but it's very important that the Zoning Board of Appeals doesn't grant variances for errors that were made in the past. Just because something was wrong in the past doesn't mean we should perpetuate it in the future. There are only so many people who can live in this Village, there's a threshold for how many people can physically live in this community and we have to ensure that we apply the Codes appropriately so that we don't overburden this whole community. Many of Mr. Levy's properties have safety violations, fire violations and those are things that certainly are not addressed by this Board but that represents to me, at least, someone who has not been acting in good faith. And so I think that needs to be taken into consideration as these cases are brought before this Board. Again, I just want to reinforce the fact that Peter Levy is not representing, I'm sorry, Peter Miley is not representing his personal point of view, he is here applying Code on behalf of this community, on behalf of the citizens who are here, so we appreciate your support of his efforts. Thank you.

Ms. Zalantis stated I just want to strongly object to the characterization that my client is not addressing Building Code violations. As an attorney that's very familiar with a whole host of properties owned by my client and related corporate entities, my client has been working very diligently to address Building Code violations and will continue to address Building Code violations, he shouldn't be held to a different standard than anybody else in this Village. And the fact that you know, I understand your position, I think that speech is better played out in front of maybe the Board of Trustees, than this Board that has to apply a standard as whether there's a basis to uphold the Building Inspector's determination and in this case, the standard is whether the 2007 Building Inspector was clearly erroneous. And many people come before this Board to seek relief from the Zoning Code, that's the purpose of a Zoning Board of Appeals and if there's a basis and it's established under the requirements of New York law, then the applicant should be granted a variance and it doesn't matter how many people live in the Village, that's not one of the requirements to granting a variance by this Board.

Chairman Boxer stated yes.

**Mr. Loughney** stated my name is Dan Loughney, I am a resident of Mount Kisco since 2001. I'd liked to reiterate Gina's point, I don't think we're here to pick on Mr. Levy and his properties in particular but in support of the Uniform Fire Code and the enforcement of that by Mr. Miley, I think is very important to the Town. Having lived here through a number of Building Inspectors, I've seen a steady decline in honestly,



the safety of properties within in Mount Kisco and I think its through Peter's efforts that things have turned really and improved and I hope to see his good work continue.

Ms. Zalantis stated I agree with what this gentleman said and I would just like to point out for the record that we have not appealed any Building Code violations. We are moving to comply with every Building Code violation, so that is not an issue that's before this Board and we are not trying to get out of complying with any Building Code or Fire Code issues.

Mr. Levy stated I would like to say that I am trying to bend over backwards to get all of our violations under wraps and I have been trying to do that since I've undertaken this process and its been just a little bit difficult because of all the change that's been going on in the Building Department, so we've been trying to comply. As soon as I heard Mr. Miley came into office, I went directly to his office and said hello, my name is Gus Levy, I have 14 properties in this Town and I know a lot of them have issues, let's fix them together and the next time I heard from him like I said, was in the form of that violation letter, so I invited him to come and inspect.

Chairman Boxer stated yes, sir.

**Calvin Francis** stated hi, my name is Calvin Francis, I'm a resident of the 94 Maple Avenue, Mary O'Neil Housing facility. I'm just here because I'd like to support Gus Levy and the Guidance Center for providing this please for people with disabilities, like I have, mental illness. And without the Guidance Center and Gus Levy, I would be homeless in a shelter and I do want to respect the arguments of the other residents of Mount Kisco because I want to live in a safe and code regulated here, while I'm here. I know Gus Levy is working on stuff to get that fixed, so I just want to say I didn't know why I was here in the first place but now I know, this is a very important topic that I'm not familiar with but I'd just like to let you know that this housing is critical to the next few months of my life because I'm trying to get back on my feet, I was recently homeless and it's been 6 months about, since I've been at the Mary O'Neil House and it's been good, Mr. Gus Levy is a good landlord but I didn't know about the violations and the other problems he was having, so I just want to say these few words.

Chairman Boxer stated thank you. Anybody else?

**Ms. Lerner** stated just very quickly, I'm Amy Lerner, I've lived here for I guess over 20 years now. So I've been through the different Building Inspectors as well, so I know its been a difficult time. So I just want to reiterate what Gina had to say as well. I'm sure Mr. Levy is trying to do what he can to be a good landlord and I you know, applaud that but at the same time, I would also say laws are in effect, because there are laws and there are reasons for them, and you know we can't continue to give out variances you know without good reason, without thoroughly investigating you know what the law was, whether a previous Building Inspector who possibly wasn't qualified or wasn't in the position long enough, we can't just discount that say well because it was decided back then we shouldn't do what's right today. It's in all of our benefits as a community to make sure that we follow the letter of the law, if some of the laws are outdated then let's change the laws, let's not just ignore the laws.

Chairman Boxer stated well I think that's the reason that I requested that the two parties meet, to see what they can work out. We don't have the power, by the way, to change the laws.

**Ms. Lerner** stated no but I'm just saying in general, this seems to be part of the problem, the bigger problem, potentially in this room but this room and these people in this room are tasked with making some of these decisions.

Chairman Boxer stated we are aware that we set precedent when we grant variances and we always take that into consideration. Yes, sir.

**Mr. Taormina** stated yeah, Lou Taormina, some of these are my neighbors and colleagues. I'd like to just focus on your last comments which were you're aware that these important issues for the community, I'd ask that when you are considering these you consider that the Building Inspector is representing all of us, whether we can come each night to these meetings, many of us are quite busy as you are as well, I appreciate your service to Mount Kisco but this is an issue that does affect not just businessmen such as that gentleman but families that live here as well, as well as other residents that are here. So you have a lot of complex issues, you do have guidelines that you need to follow and in terms of exercising whether you're going to comply or allow a variance or not, that is judgment that you have to exercise, you're given that power and I think that you should take that, not that you don't, quite seriously and within the legal rules and the qualifications I'm not here to really be able to speak at that level but I worry that if appears that in the past these things have been not scrutinized as well as they should have been and that's why we're in the situation right now, so I'd ask that you take these as they come forward in the future with maybe a sharper eye on them.

Chairman Boxer stated okay, anybody else? Then I guess any last statements from the other? We will continue the public hearing and hopefully you guys can meet before the next meeting and have a submission to us. Okay, now we're going to go to 94 Maple.

**5. 94 Maple Avenue Mt Kisco Corp**  
**94 Maple Avenue**  
**Mount Kisco, NY 10549**  
**(SBL) 69.80-4-26**

**Case# ZBA16-21**  
**Interpretation**

Ms. Katherine Zalantis of Silverberg Zalantis and Mr. Gustave Levy, Principal of Lexington Properties were present.

Chairman Boxer stated okay.

Ms. Zalantis stated so 94 Maple is a 12 room, rooming house and we're appealing from various determinations by the Building Inspector that the nonconforming use has not been established. This is not a case that I see any path to a resolution, I feel like this is a egregious case where the Building Inspector is targeting my client. This, all that the Building Inspector had to do was read this Board's use variance determination, this Board determined in 1997 that 94 Maple was a legal nonconforming 12 room, rooming house. This is not a case where we have one Building Inspector, we have a 1969 Building Inspector, a 1986 Building Inspector, a 1994 Building Inspector, all determining that this is a legal nonconforming 12 bedroom, a legal nonconforming rooming house. So this current Building Inspector is disputing the number of bedrooms, saying it wasn't established and really the debate could have been avoided if the Building Inspector had read this Board's decision. The Building Inspector has no authority to overturn this Board's decision, this Board made a findings that it was pre-existing nonconforming rooming house that had 12 bedrooms and granted a use variance on top of that. The use variance made the entire use compliant, its not even nonconforming anymore, it's a compliant use. But in any event, we don't have to have a debate about the number of bedrooms or whether the 1964 or the 19 whatever, 1984, 1994 Building Inspectors were wrong because this Board made a determination and the Building Inspector doesn't have authority to overturn this Board, only a court can and you'd have to bring a timely article 78 proceeding which was never done. So to me, this is cut and dry, read this Board's decision, this Board made a determination that...

Chairman Boxer stated question for you, are any of the bedrooms in the attic?

Ms. Zalantis stated the bedrooms in the attic include the 12 bedrooms, we have produced evidence that those bedrooms have been existing since 1954, there are only 12 bedrooms, there's been no increase in complying with the number, a condition of this Board's use variance was that there be no more than 12 bedrooms, there were 12 bedrooms in 1997 and there's 12 bedrooms now.

Chairman Boxer stated are you willing to bring the attic into conformance with the safety laws? I mean as far as I know, you need a special variance to have attic living space.

Ms. Zalantis stated well I mean, that's a Building Code issue, my understanding is that we've had an engineer go out and say that you don't have to comply because it existed prior to that adoption of that Building Code. If that's the issue and it's not about you don't have the right, I mean I have to know what the issue is here, if that's the issue and the Building Inspector is not trying to claim that I no longer have rights in a 12 room rooming house, I will either address that Building Code issue or I'll get a variance from the State to address the Building Code issue. But the use issue that's before this Board is the claim that I don't have rights to this preexisting, to this actually conforming rooming house, now that this Board issued a use variance for.

Mr. Guyder stated can I just ask you, the decision that you're referencing, the 1997 decision, is a resolution for enlargement of the property.

Ms. Zalantis stated correct.

Mr. Guyder stated so where are you referring to this Board having approved the use?

Ms. Zalantis stated the decision of the Board by granting a use variance, the use, that's the law, the use becomes conforming. There was a findings...

Mr. Guyder stated but where did they grant the use variance? And why was that, it's not subject to this application, the application was for an enlargement of the property.

Ms. Zalantis stated and they granted a use variances, they didn't grant an area...

Mr. Guyder stated where?

Ms. Zalantis stated this whole entire approval was a use variance.

Mr. Guyder stated where specifically?

Ms. Zalantis stated where did they grant the use variance? The use variance requested by the applicant is granted, they granted a use variance. There is a finding on page one, the second whereas clause, the subject property is improved by a legal noncomplying rooming house and then it went on in the one, two, three paragraph...

Mr. Guyder stated paragraph...

Ms. Zalantis stated sorry and then the 4<sup>th</sup> whereas clause it says there will be no increase in the number of bedrooms to 12. So reading those two whereas' together, there was a determination by this Board that the existing 12 room rooming house was preexisting nonconforming. So they first made that determination, so that determination in those two separate whereas clauses negates the need to have to interpret whether all those other Building Inspectors were wrong because this Board made the finding that it was preexisting nonconforming, noncomplying rooming house.

Mr. Guyder stated where do they find that? I think in paragraph in the resolution is says "the rooming house while generally prohibited, appears to be legally permissible."

Mr. Miley stated correct.

Ms. Zalantis stated in the second whereas clause it says "the subject property is improved by a legal noncomplying rooming house" so made, that was a determination.

Mr. Guyder stated that's not an approval, that's simply setting the stage for what this resolution is. I'm just trying to understand, I'm disagreeing with your interpretation of what this is and does and I'm trying to understand what you're pointing to in this resolution to make the statement that you made here tonight.

Ms. Zalantis stated this resolution does two things, there was a finding that what is currently existing is preexisting noncomplying as a 12, that 12 room, there was a finding here in these whereas clauses that those 12 rooms, rooming house was lawfully existing at that time in 1997. Then, this Board went ahead and granted a use variance to allow the expansion of that 12 room rooming house to allow an addition and they granted a use variance in connection with that, they didn't grant an area variance, they granted a use variance.

Mr. Guyder stated there's two, I guess two things. First, I don't think it specifies rooms, it just says a rooming house, that doesn't specify a 12 bedroom rooming house, does it?

Ms. Zalantis stated well if you read the fourth one, you have to like extrapolate, you have to read the two together, it talks about the fact that there will be no increase in the number bedrooms 12 or an increase in the number of inhabitants, so when you read those together, you're assuming that those 12 existing bedrooms and if you look at what was submitted in support of this use variance application, there was a representation that 12 existing and there was a finding by this Board that that 12 bedroom rooming house was lawfully existing at that time and would not be increased. So if you read those two whereas' together, that's a finding of this Board and then they went ahead and granted a use variance to allow the expansion of the 12, the legally, the previously legally existing rooming house, they then allowed an addition to be placed for a family room and a kitchen.

Mr. Guyder stated I think that's where maybe we have a disconnect. I read this as being limited to an expansion and I think you're reading to be a wholesale approval of the current use, is that correct?

Ms. Zalantis stated I guess we are having a disagreement, but had they intended to do what you're suggesting, they could have granted a variance and an area variance to allow that addition, they didn't, they granted a use variance. A use variance is a different animal, its not a use, there's case law that once you grant a use variance you're essentially taking what was preexisting nonconforming and making it a compliant use, that's the effect of a use variance. You can't grant a use variance only limited to an addition, that's an area variance and maybe this isn't the most, you would have worded it differently if you and I were drafting but that's the, the fact of the matter is they applied and were granted a use variance...

Mr. Miley stated Chairman, can I...

Mr. Maron stated Katherine, find out...

Mr. Miley stated Les, would mind if we interject...

Chairman Boxer stated right, we'll get there...

Mr. Maron stated if I may, just to clarify what the member had said, I'm looking at the 1997 approval, I don't agree that a whereas clause is a finding, I agree with the member who said that its basically setting the table, the resolution is setting the table. The third whereas clause indicates the application before this Board is limited solely to the use variance from section 110-34 A, which provides impertinent part, accept upon the granting of a variance by the Zoning Board of Appeals, no building containing a nonconforming use shall be enlarged, altered, extended, reconstructed, or restored and then the next whereas clause talks about that there's been a representation that its 12 bedrooms, when you go to the next page when it says now therefore the following findings and this is what are the findings of the Zoning Board at that time. Number two says that the rooming house while generally prohibited in the R-6 district, appears to be legally permissible for this site as a preexisting noncomplying use, based on prior determinations, so they didn't come out and say make a findings that it was a 12 bedroom and then when you go on to their actual approval on the last page where it says now therefore be it resolved, they've made an approval, they say the applicant shall otherwise comply with all ordinances, the proposed addition shall not be used for additional bedrooms, nor shall there be any rearrangement et cetera. It appears that this approval is only for the addition.

Ms. Zalantis stated and that's I guess your interpretation of that.

Mr. Maron stated okay, I mean I'm posturing that, I'm saying that, that's the way I read this, you're suggesting...

Ms. Zalantis stated I don't agree that that's...

Mr. Maron stated that this an approval for a use variance for 12 bedroom, 12 room rooming house.

Ms. Zalantis stated I'm saying that they made a finding that what was existing per what you read into also, that what was there currently, the 12 room rooming house because there have been determinations by Building Inspectors all the way up since 1964 to 1997, they made a finding that what was existing was preexisting nonconforming and then to further support that when they granted the use variance, a condition of the use variance was that there would not be use for, there'd be no additional bedrooms and they previously said there were 12 bedrooms. So if you read the whole entire grant together, they allowed a use variance for an expansion of a nonconforming use, they found there was a determination that what was existing was preexisting nonconforming and they said you're allowed to expand through this grant a of use variance provided you don't increase the number of bedrooms. So...

Mr. Maron stated because the application was for an expansion or enlargement.

Ms. Zalantis stated but the application was for an addition of a family room and addition.

Mr. Maron stated which is an expansion or enlargement.

Ms. Zalantis stated not a bedroom, so they said what was there already was preexisting nonconforming and they were allowing an addition to be added on.

Mr. Miley stated Chairman can we...?

Ms. Georgiou stated can we say something?

Ms. Zalantis stated can I finish the presentation?

Mr. Miley stated can we just concentrate on this one issue and then I'll let, and then we can move further, Chairman, if that's permitted.

Ms. Georgiou stated would that be permitted?

Chairman Boxer stated yeah.

Ms. Georgiou stated I just want to say that I agree with the Zoning Board's counsel and the member who spoke. This resolution is very clear and I'm not going to repeat what your counsel already reviewed but

this clearly is a variance but they decided to apply use variance standards but that does not make the 12 bedroom rooming house a complying use. They varied, they issued a variance to enlarge the structure, on its face this does not do that. If the intent of the Board was to grant a use a variance to make the use complying, it would have said that, it does not say that. That's all.

Ms. Zalantis stated again, there's a difference of interpretation. If they intended to what counsel is suggestion, then they should have granted an area variance, there are certain rights that flow from a use variance, at the end of the day, a use variance was granted but I guess, I mean, just to go back. We produced to you Certificate of Occupancy issued in 1969 and 1986 for nonconforming rooming house use, in an October 1994 letter, by the 1994 Building Inspector confirming that the 12 bedroom rooming house was legally nonconforming and then there was this 1997 use variance grant and if you look at all the different language and read the whole thing together, there's whereas clauses that they state that the use as currently existing is legally nonconforming and that its legal, that it has 12 bedrooms and then they conclude the rooming house while generally prohibited in the R-6 district appears to be legally permissible for this site as a preexisting noncomplying use based on prior determinations. That's a determination by this Board, how else can you read this. I mean, could I have written it better, perhaps but this Board clearly made a determination that what was existing was preexisting nonconforming and then went ahead and granted a use variance and said don't increase the number of bedrooms, leave it to the 12. So there was a finding by this Board and there's all the other determinations by the Building Inspector. It's undisputed that this was built, when it was built it predated, the first zoning code in 1928, this building was in the Residence "C" zoning district which permitted boarding houses and lodging houses. The property was rezoned in 1947 into the Business "C" district and they still permitted boarding houses and lodging houses. That property remained there until 1962 when it was rezoned in the R-2 district. The Building Inspector issued a Certificate of Occupancy in 1969 for a nonconforming use which included roomers, thus the nonconforming use was established in 1962 and upheld in 1969, by the 1969 Certificate of Occupancy which was then reaffirmed by the 1984 Certificate of Occupancy. So, then the Building Inspector claims that there's, cites to documents about 6 bedrooms, the 1986 permit claims, he says its 10 bedrooms but then we have a 1994 letter that conclusively establishes that this is a legal nonconforming rooming house with 12 designated bedrooms for sleeping purposes. I don't see how we get around the fact that the whereas clauses say what's there is legally existing, that there were 12 bedrooms at the time, and then you make a findings, the rooming house use while generally prohibited in the R-6 district, appears to be legally permissible for this site a preexisting noncomplying use based on prior determinations. That's a determination of this Board, the whereas clause set up what it was and that there were 12 bedrooms existing, how is that not a determination that in the very least that support all the other prior determinations of the Building Inspector that this Board concurred with that the 12 bedroom rooming house was legally existing, nonconforming. I can't understand how you read that any other way. If you want to then take the position that the use variance did not, was not as broad as I'm interpreting it, that's another position but you did, this Board did make a finding upholding all the other prior determinations that this is a legal 12 bedroom rooming house. I don't agree with your interpretation, I think when you use a use variance that applies a certain criteria and some supported case law, interestingly the Building Inspector's counsel didn't dispute that until when she heard the argument from the member and from the Zoning Board's counsel but I didn't hear that argument prior to today...

Ms. Georgiou stated it's in our papers.

Ms. Zalantis stated that the use variance was allegedly limited.

Ms. Georgiou stated it's in our papers.

Mr. Maron stated Anna, you said Ms. Zalantis said that this is the first time she's hearing that argument, you had mentioned that in some correspondence?

Ms. Georgiou stated yeah, our submissions to the Board, we analyzed this resolution.

Mr. Maron stated now was that provided to Ms. Zalantis?

Ms. Georgiou stated yeah, I think so, she's received...

Mr. Maron stated could I just, in an effort to try to resolve this and help clarify this 1997 decision, could I make a request for the Building Inspector to search the files and find, I don't know if it's the Building Inspector or the clerk, but somebody search the files and find the minutes of this meeting, there's no date on this resolution it appears to be application 97-1. So I don't see anything in here, so if someone could track down the minutes for this meeting, as well as a copy of the application if it's available and provide it to myself and Ms. Zalantis, if she doesn't have it already.

Mr. Miley stated it was part of the memo, you received the application as part of my memo, not the minutes but application and every building permit subsequent to that.

Mr. Maron stated I'm sorry?

Mr. Miley stated in my package, in my memorandum to the Board.

Mr. Maron stated we already have the application, I may have missed it.

Mr. Miley stated everything is in there, the 46 pages of...

Mr. Maron stated if you can track down the minutes too, I think that might be helpful and provide Ms. Zalantis a copy also.

Ms. Zalantis stated so if you made that precise argument I didn't glean from the papers...

Ms. Georgiou stated page 3 of my April 11<sup>th</sup> correspondence.

Ms. Zalantis stated I'll take another look at that and then respond to that argument.

Ms. Georgiou stated we'd like an opportunity to respond to your submission of May 5<sup>th</sup>, also because we haven't done that.

Ms. Zalantis stated okay. So I think in the very least if you want to argument about the scope of the use variance, in the very least there was a determination by this Board of a finding that what was there was a preexisting legal nonconforming 12 bedroom and there was a specific condition that no bedrooms be added. I made an argument that as a result of the use variance grant, what was previously preexisting, nonconforming had been rendered a conforming use, obviously the member is interpreting it differently that the use variance was limited, I don't believe that that supported by the case law and I think there's a special right comes along with a use variance grant. Had the Board granted a variance, I've had situations where nonconforming uses are being expanded and the Board's grant area variances from that provision of prohibiting nonconforming uses, this Board didn't do that, it granted a use variance and with a use variance you're approving the use, that's what a use variance does but we can agree to disagree on that because it doesn't matter in the end because there is a still a finding by this Board that what was existing was preexisting nonconforming. So then the issue is, so without the use variance argument, it, we still are able to prevail because the Building Inspector cites the lapse provisions, but that lapse provision, we submitted an affidavit from Mr. Levy to support that there hasn't, that that rooming house hasn't been empty for 12 months. So, even if you don't accept our argument about the use variance, there's still this Board's finding that its preexisting nonconforming and all the Building Inspectors prior findings that its preexisting nonconforming 12 bedroom and if the use hasn't been discontinued for more than 12 months, the use is allowed to continue as it has been, tenants from the building right here. So, we don't really even have to determining the expanse of the use variance grant because even if in your interpretation, sir, even if it didn't render the whole entire use conforming, we still fall back on the prior finding that what was existing was preexisting nonconforming, legally preexisting nonconforming and under your law that's allowed to continue and there's no lapse if the use continues and is not discontinued for more than a 12 month period. So we don't even have to address the expanse of the use variance, whether it was limited to just the addition or whether it covered the whole entire use because we get there the other way too. The next argument that the Building Inspector makes is that the failure to allegedly obtain a Certificate of Occupancy, rendered the whole entire use variance granted illegal, first that wouldn't impair a finding of this Board, if this Board made a finding that would impair it, it would just take away whatever rights arose from the use variance grant, which I guess could be interpreted that you're talking about just the addition but he's relying on such vague language, such boiler plate language that the applicant shall otherwise comply with all applicable local, state, and federal laws, rules and regulations and building plans as approved. So basically if the applicant is jaywalking, would that revoke the use variance, I mean that's the extension of it. What this refers to is that you have to go and comply with all the legal requirements before getting a building permit, like going before the ARB which they did and then they got a building permit for the addition, they complied with the local laws the interpretation that if you failed to get a C of O, somehow renders the use variance invalid, that just cannot be supported, there's no legal basis for that interpretation. In any event, I don't believe that a C of O was not issued, I had the opportunity to speak to a prior representative of the property who was involved in this restoration and addition, I have an original affidavit to submit to this Board from Mr. Cosentino. Mr. Cosentino has signed an affidavit that provides that he was involved in the 1997 addition project, he remembers the genesis of it, he was invited to a Thanksgiving dinner in 1996 where the residents were there and unfortunately the kitchen wasn't big enough and the residents had to eat in shifts, Mr. Levy's father was moved by these conditions and wanted to resift it, he instructed that they look into doing this addition and getting all the permits necessary to do this addition to expand the family room and kitchen area. Mr. Cosentino remembers, and this is all in the

affidavit, going in front of the Zoning Board for a use variance and that was issued in 1997, going in front of the ARB in 1997, they obtained all the necessary land use approvals, then they got building and plumbing permits in 1997, he is saying that he personally saw all the construction work performed, it was fully completed, it was a fully constructed addition and he also personally observed that a Certificate of Occupancy was issued for this 1997 addition and in fact he said that the tenant which was Guidance Center Mount Kisco, would not have occupied the space without having been shown a Certificate of Occupancy, so that's how he remembers and he says this is another reason I can unequivocally state that a Certificate of Occupancy was issued for the completion of the kitchen and family room addition at 94 Maple. He says he has no explanation for why the Certificate of Occupancy issued after completion of the kitchen/family room addition is apparently no longer in the Building Department's file for 94 Maple. But he did, he goes on to say that he's personally experienced the Building Department losing documents and he talked about...

Mr. Miley stated stolen.

Ms. Zalantis stated when that happened to him. So none of us were there in 1997, we were criticized for not producing somebody with personal knowledge, I've gotten an affidavit from Mr. Cosentino who was personally there during this time and he has advised, here is the original affidavit, that he saw a Certificate of Occupancy. And I don't think it matters in the end anyway because the fact, even if a Certificate of Occupancy was not issued, here's the original, it doesn't negate the use variance, I mean that's just not.

Mr. Miley stated are you all set Katherine?

Ms. Zalantis stated not yet.

Chairman Boxer stated Mr. Counsel, is it proper to submit an affidavit at a meeting, rather than with a submission.

Mr. Maron stated you're not going to reject the affidavit, you can just acknowledge that it was received at the meeting.

Chairman Boxer stated okay.

Ms. Zalantis stated I believe we're going to adjourn this matter anyway, so there will be time for the Building Inspector to review and respond to it and for this Board to, I'm just doing this as a preliminary presentation...

Chairman Boxer stated okay.

Ms. Zalantis stated and I just able to get it and I just recently had the conversation with him. I didn't even realize he was involved in this construction. The Building Inspector...

Mr. Guyder stated it's just the observation that he's not here, there's not opportunity to speak to him or anything, so as long as that's presented [inaudible].

Chairman Boxer stated we'll get a chance to review it. Is your affiant willing to come to the meeting, should we require to speak to him.

Ms. Zalantis stated I can ask him.

Chairman Boxer stated okay.

Ms. Zalantis stated I don't think he'd have an objection.

Chairman Boxer stated okay.

Mr. Levy stated what was the question, I'm sorry.

Ms. Zalantis stated would he be willing to come to the meeting.

Chairman Boxer stated you have stuff that I don't have. I guess I'll have to go back into the old stuff.

Ms. Zalantis stated there's also a claim by the Building Inspector that the number of bedrooms was increased in the building permit plans, the building permit plans only showed the addition area, so you can't claim that there's more bedrooms if the plan is only a partial plan, it only showed the addition area. I don't understand that, that argument. And then there's the case law about how variances run with the land, I

already talked about how the fact that there was no abandonment of the use and my [inaudible] of the case law which you may or may not agree with, it wouldn't matter if the use variance authorized the use but if you don't agree with that interpretation and your counsel advises that that's not the correct interpretation, we still don't have 12 months, so we're back to the same issue that this Board determined that what was there was preexisting legal nonconforming and it doesn't matter what the Building Inspector says at this point because this Board made a finding. The 1997 building permit was legally issued, the prior owner's vested rights in this 12 bedroom rooming house, the bedrooms in the attic are legal, we've submitted documents that show that they were there since 1954, they were not added recently. They are not new bedrooms, they were there in 1997, they were there in 1994, the Building Inspector doesn't even respond to this.

Mr. Miley stated I will.

Ms. Zalantis stated they just argue that because the 1997 use variance is illegal that the attic use is illegal but again the use variance, if the use, you can't have it both ways, if the use variance didn't establish the use and it was preexisting legal nonconforming, the negation of the use variance doesn't affect the bedrooms, it would only affect the addition. The fire escape was legally constructed, it doesn't require any additional approvals, it was recently renovated, I don't understand that argument but I mean I just think this is a whole like kitchen sink, let's throw everything at him but the basic premise cannot be avoided that this use is a preexisting legal nonconforming, if there are other issues that my client can address, that are Building Code related, I don't know what those issues are but if there are, we will address them but we're not going to give up a 12 bedroom rooming house that has C of O's from the 1950's, the 1960's, a use variance. My client is prepared to take this argument anywhere and I don't see how this Board can find that the use variance, that the use is not preexisting legal nonconforming and the very least given this Board's own words. I mean there's a variance grant here and there were certain specific findings made and if you read the whole thing together there was a determination that it's existing, that it held 12 bedrooms and that you agreed with the prior determinations that determined it was preexisting legal nonconforming, so I don't see how you can now disagree with that determination. If there's any specific questions, I'm happy to answer it.

Mr. Miley stated Chairman?

Chairman Boxer stated yes.

Mr. Miley stated I don't have any questions, if anyone else does but I'd like to respond. Are you ready to hear me?

Chairman Boxer stated yes.

Mr. Miley stated first, the space today should never be occupied, the place had a fire inspection done last year and was issued 14 individual fire safety code violations and none of which have been correct. They don't have a Certificate of Compliance, they never passed the fire inspection or called for a re-inspection and they don't have a CO for the space. The permit that was issued 15645, that was issued in 1997, today remains open without a CO. So I'm going to take you through, I provided a memorandum, I'm not going to touch on the variance but I'm going to provide you with some information with respect to the use, okay. There was certainly an unlawful change in use or occupancy without obtaining the required Certificate of Occupancy, we're aware of that. The first escape was installed without obtaining a building permit, that is a structural issue, that is a method of escape and egress, and that's located in the attic space that they are referencing as being a legal space. The nonconforming rooming house us had been discontinued for a period of more than a year, so its my interpretation that that cannot be reestablished, in addition throughout the years, the building at the premises underwent numerous modifications and significant alterations, thereby affecting the status of any Certificate of Occupancy. Number 1973 CO issued on August 8, 1969 and CO number 2931 issued 10/6/1986, the last permit that was issued was on 9/9/97. Building permit 15645 was issued for the extension, an addition to the structure, we touched on the variance and the enlargement but I'm not going to go there. The work that was proposed in connection with permit 15645, it illustrates the significant change to entire home, including the reorganization of the existing spaces. To close the permit out, the owner should have scheduled and passed the required inspection, submit the closing documentation, none of which is in the file. Then a final inspection would have ensured that a CO would have been issued, okay, closing the permit and applying for the CO application would include as-built drawings, as-built survey, electrical underwriters certificate of safety, a fire safety inspection, pay the proper fees and none of any of this was completed. In addition, permit number 167, 1351, 6498, 15645 and 2537 all today remain open without the issuance of a CO, he never received a CO, the RT-6, the one-and two-family zoning district amended 11/16/1987 by local law number 11-1987, prohibits rooming and or boarding houses. Prior to the RT-6 zoning district, adopted 1962 was he R-2 zoning district, that's a two-family zoning district, that too also prohibited rooming and boarding homes. The Building Department can establish accuracy, the time period where the unlawful conversions occurred as well as the increase in



unlawful rooms that were established and how the original application for a use variance failed to provide the members of the Board with accurate information. So I'm going to take you through the history of 94 Maple. 94 Maple Avenue was originally constructed in the late 1800's as a single family dwelling, the tax cards reflect dated 8/17/1954, establishes the occupancy as a one family plus one-family conversion, a two-story home with an unfinished attic and basement. The 1954 tax card indicates that the interior finishes extended only to the first and second floor that was provided in exhibit A. The notes on the card indicate that the attic rooms contain two bedrooms later with rooms, however the card and the information was altered and was later penciled in. The card section signifying the interior finishes, substantiates that the attic was originally unfished and non-habitable for safe living space, that's my position today. Until 1947, the premises was rezoned to Residence "C" and then until 1961 it was Residence "B", in 1961, the zoning district for the premises was changed to R-2 and on January 1, 1962 the new zoning code went into effect. A tax card dated 7/6/1966 which was included in your packet as exhibit B, indicates that interior finish now includes a third floor, however there is no record of any building permits or any CO's that were issued for third floor alteration and then today occupying that space. An application for a CO on August 4, 1969 as part of your exhibit E, proposing two-family dwelling and roomers, which was no longer a permitted use in the RT zoning district but was a permitted use in 1962, CO number 1973 was issued on August 8, 1969 for a two-family dwelling and roomers, there was no specific number and even then only 6, a maximum of 6 were permitted as roomers, that's also in your packet as exhibit F. This confirms the preexisting nonconforming use of the premises that was legally established under the previous zoning code as a two-family with roomer, without a specific number indicating. I go on, tax cards dated 11/03/1997 and 11/16/1977 as exhibit C indicate a tax class code 220, that's a two-family home and its located in the R-2 zoning district. The living accommodations include 6 bedrooms, 2 bathrooms, and 2 kitchens. On October 6, 1986 an application for a CO received by the Building Department, the use specified rooming house. In 1986 the zoning district prohibited the establishment of rooming houses, however those that were legally established may continue as a nonconforming use unless vacated for a year or more. Again, the CO originally granted isn't specific as to the number of roomers, in addition the CO no longer includes a two-family dwelling. On 11/26/1986, building permit 6498 was issued for renovation to existing rooming house as part of exhibit H, the application indicates that the number of bedrooms is 10 and since there is no other indication of any additional uses and the zoning district prohibits rooming houses, or the increase thereof, the Building Department was accurate by not issuing a CO. Building permit 6498 remains open without a CO, that today is a violation of the uniform code. I don't want to touch on the variance anymore. I'll go into the discontinuation of the use, so I passed through all the variances...

Ms. Georgiou stated assuming it's a nonconforming use.

Mr. Miley stated correct. The Building Department's records accurately substantiate the following, the affidavit by the appellant indicates that the premises was occupied until December 17, 2015 and reoccupied on November 15, 2016, however the home was issued again 14 code violations on October 1, 2016, the include many life safety violations. Failure to provide safe egress, exit and emergency lighting inoperable, unable to test the smoke detection system, fire alarms and a number of others. According to our records, none of those have been fixed, no re-inspections occurred or schedule and the home does not possess a CO for the work that was completed under permit 15645 as we indicated. The code defines the building as being unsafe. The rooming house was abandoned during the period from 2009 to 2016, prior to the most recent abandonment in 2015, see attached as exhibit M. Landlord registry registration forms received on January 31, 2008, indicates, although unlawful, the home includes a 12 room rooming house, the next year February 17, 2009, the applicant indicates that the number of apartments, not roomers on this property is one, consistent with the original construction of the home. The landlord registry form received on March 3, 2010 indicates that the number of apartment increased to two, no permits or CO's were issued for that change. On February 9, 2011 through February 1, 2013, the number of apartments remained at two until the following the year, January 31, 2014, when the applicant reverted back to the original application indicated one apartment unit. That's on the application submitted by the property owner, by his own admission, indicating that there was only one and two dwelling units. On January 25, 2016, with the number of apartment units remain at two, that's the most current, see Zoning Code 110-34, and unlawful rooming house was abandoned since February 17, 2009 according to the application submitted from 2009 through 2016, the premises was converted from a one-family to a two-family home and remained in this condition until at least, as attached to exhibit M, December 17, 2015. The conclusion, the issues raised regarding the legal use of 94 Maple Avenue are concerning and warranted, the appellant is attempting to legalize an unlawful unsafe nonconforming 12 bedroom rooming house in an area designed and zone for no more than two-family dwellings. The rooming houses Certificate of Occupancy as full in force as indicated by Ms. Zalantis however, we object and challenge that. The rest goes into Ms. Zalantis conclusion, so I'll rest at that point.

Ms. Georgiou stated and I'd like to mention, highlight a few things. The first thing is this and I, what I'm going to say might surprise you and the appellant but I think a fair reading of the 1997 resolution is that the ZBA did recognize a nonconforming use of the rooming house for 12 bedrooms, however that resolution did not create a conforming use. However, I do want to just mention history a little bit because we spent a

lot of time going through the history of this property, that 1969 CO references a two-family dwelling and roomers, if you look back at the historic codes, that was a permitted use previously, I guess in years past a two-family, two-family, one-family homes had roomers, it was not a rooming house, it was a two-family with roomers and the number was not, the number of roomers was not listed but that's a historic context. That's 1969 CO is what create, technically created the nonconforming use, however this Board in 1997 didn't reference that, so kind of you know, regardless of that history, I think a fair reading of that resolution is that you did recognize a nonconforming use of 94 Maple for 12 bedrooms but it did not create that use as a conforming use. So, the other issue is that the conditions and there's no CO on record, the as-builts aren't on record, there's nothing on record, so it appears that they violated at least one condition of that approval. Further, and one of great concern is the discontinuance of the nonconforming use, this is, I don't believe this has been refuted by the appellant but there were years when the property owner or the property owners representative submitted landlord registry form indicating that the 12 bedroom use had been discontinued and so I don't think that's been refuted now what they may say is that well we didn't have to, that doesn't apply because that 1997 use variance was, you know, should be broadly applied so that use was made complying, we don't agree with that interpretation. And the other thing I just wanted to reference because it came up earlier, on page 3 of our April 11<sup>th</sup> submission to the Board, we address the issue of the 1997 resolution and how it should be construed as limited to the enlargement and just specifically on page 6, I'll just read the sentence "appellant's conclusion that a variance approved to enlarge a structure containing a preexisting nonconforming use means that the use is now deemed a conforming use is preposterous and belied by express language of the ZBA's resolution noted above", I just wanted to read that into the record. And that's all I have.

Ms. Zalantis stated I appreciate that statement by the Building Inspector's counsel that acknowledges that this Board did render a finding in 1997 that a use, that it upheld all the prior determinations essentially that this is a 12 bedroom preexisting nonconforming legal use, that was a findings by this Board. So then the issue is did the use lapse, we do dispute it, the landlord records are not dispositive, you have an affidavit in front of you that says otherwise that there was never a discontinuance of the use, the landlord registry records are not dispositive and if we need to further address that with further evidence, I guess we can do that because if we can establish that, there's no basis to say you're not allowed to continue this use, I disagree with the interpretation, I believe when you use the word use variance it has a certain meaning, you can't grant a use variance specific to an addition, that's an area variance, you granted a use variance. I also disagree with the Building Inspector's claim that this Board wasn't provided accurate information in 1997, that's over, if there was some issue with this Board's determination, somebody should have brought an Article 78 proceeding and challenged it, that never happened. So you can't now, you can't ignore this Board's use variance grant, we can argue about what it means, the scope of the use variance grant, but you can't ignore it and we don't have to go through everything that happened pre-1997 with the acknowledgment that this Board made a finding in 1997 that 12 bedroom rooming house was preexisting legal nonconforming, we don't have to go through what happened in 1969 with all those other Building Inspectors even though I think there's sufficient evidence that they also establish that it was preexisting legal nonconforming 12 bedroom rooming house. If there's an opportunity to meet about this and the real push are the bedroom, you know, apartments, and if there's some way to address that, again I want to reiterate we're here on this Board on the use issues. We're not here refuting any Building Department uses or any Building Code or Fire Code issues, we're working to rectify all those issues on all the properties. We, what is an issue is the Building Inspector's determination that the 12 bedroom rooming house is not legally nonconforming use, he doesn't have the right to overrule a finding by this Board that it is, that's the law. He could potentially overrule a prior Building Inspector but he doesn't have the right to overturn this Board's determination, we are disputing the fact we don't agree that there was ever a lapse in the use and we also don't agree that you could use a use variance in place of an area variance and it has no meaning, that you can only grant a use variance for an addition. That might be what it says but under the law, a use variance is a use variance, you didn't grant an area variance, you granted a use variance, maybe you intended to grant an area variance but you didn't, you granted a use variance. And that's a legal argument, we can further brief that issue but I think we're at a point and we've made some progress that there at least was a finding in 1997 by this Board that what existing in 1997, a 12 bedroom rooming house was legal. We don't agree that what happened after 1997, I spoke to someone who saw a CO for the addition but that wouldn't even affect the bedrooms. What is being challenged are the bedrooms and we have a right to continue those bedrooms and continue this use. We will address Building and Fire Code issues, we're not disputing that, that's not before this Board, this Board doesn't have the authority to hear variances on Building and Fire Code issues, that's not the issue. The issue is the use and again, we're at a situation where there's multiple C of O's that still remain in good force and effect and have never been revoked on top of everything so we shouldn't even be forced to argue, we're not seeking to legalize anything, I object to that characterization, this is not a case where we legally constructed the 12 room rooming house and now we're saying sorry, we didn't get out building permits, we didn't get a CO, we want to legalize it now, that's not the case, we have C of O's, we have multiple C of O's, so I object to the characterization that I'm seeking to legalize something I'm not, it has been existing, it's been existing for decade, the Building Inspector is challenging that determination and claiming that its not, he needs to revoke a C of O then, but the C of O is allowed to continue...

Mr. Miley stated there is no CO.

Ms. Zalantis stated well there are C of O's that were issued prior to 1997.

Mr. Miley stated there is no CO pertaining to the use you're claiming as, for the last permit for the 12, there's not CO to revoke, you don't have a CO.

Ms. Zalantis stated I know but there is a 1969 rooming house permit.

Ms. Georgiou stated for a two-family, for a two-family home with roomers.

Ms. Zalantis stated and there is a 1994 determination by the Building Inspector about a 12 room rooming house.

Mr. Miley stated no CO, no CO.

Ms. Zalantis stated in any event there were C of O's for rooming houses, they didn't specifically specify...

Mr. Miley stated roomers, roomers.

Ms. Georgiou stated no, there is one in 1986 for just a rooming house but it doesn't specify and it says nonconforming use, it doesn't specify the number of rooms.

Ms. Zalantis stated you're right, it doesn't specify the number of bedrooms but it says nonconforming rooming house in 1986 and then this Board in 1997 determined that the 12 bedroom existing rooming house in 1997 was preexisting legal nonconforming. So, there is a C of O and there is a determination by this Board, so I think that's what important here, and we should, we're not seeking to legalize anything, its been there, it's existing but again if there's some benefit to meeting about this but if the resolution is going to be 'you have to bring it down to a one-family' that's not a resolution that we can address, if there's some other resolution, I'm happy to meet with the Building Inspector but I don't know if its worth it at this point to have a meeting or if you want to just continue the public hearing.

Ms. Georgiou stated we would also like an opportunity to respond to the appellants May 5<sup>th</sup> submission, we haven't done that so I assume that if the hearing is open then we'll be able to do that. We could also work out a briefing schedule.

Chairman Boxer stated okay, we'll keep the public hearing open then. And again, I request all parties to meet if they can to see what can be worked out, if something can be worked out. Any public comment on this one? Okay, then we'll see you next month.

Ms. Zalantis stated thank you. Your honor, for next month should we just continue these three or do you want to add additional ones.

Mr. Maron stated I saw continue these three.

Chairman Boxer stated pardon me?

Mr. Maron stated its your call, I'd say continue these three.

Ms. Georgiou stated what?

Mr. Maron stated it's the Chairman's call but I would recommend just continuing these three.

Ms. Georgiou stated I agree.

Chairman Boxer stated I would just like to continue these for now.

Ms. Zalantis stated so don't look to add any, I just need to know if I have to notice for June because I have three others.

Chairman Boxer stated no, just these three.

Ms. Zalantis stated we'll put those to July.

Chairman Boxer stated right.

Ms. Zalantis stated thank you.

Chairman Boxer stated okay, we need a motion to adjourn,

Mr. Rose stated so moved. Mr. Guyder seconded the motion.

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

The meeting adjourned at 9:48 p.m.