

Minutes of the **Regular Meeting** of the Zoning Board of Appeals of the Village/Town of Mount Kisco held on **Tuesday, November 20, 2018 at 7:05 pm** in the Frank J. DiMicco Board Room, Village Hall, 104 Main Street, Mount Kisco, New York

Members Present: Chairman Harold Boxer
Nancy Coyne
Wayne Spector
George Hoyt

Members Absent: Linda Greenberg

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

Chairman Boxer stated it is the 20th of November and the first thing we should do, if anybody wants to is approve, we have two sets of minutes, July 17th and June 19th. Everybody was at both of those.

Mr. Spector stated I don't remember when I was appointed.

Chairman Boxer stated you're listed. Anybody have any comments on those minutes?

Ms. Jakstas stated do I what?

Chairman Boxer stated no, no, not for you.

Ms. Jakstas stated oh. Can I move this chair so I can see you guys?

Mr. Miley stated I'll move it, I'll move it for you.

Ms. Jakstas stated thank you.

Mr. Hoyt stated need a motion?

Chairman Boxer stated yup, need a motion.

Mr. Hoyt stated I move we approve two sets of minutes.

Mr. Spector seconded the motion.

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

Chairman Boxer stated any opposition? Okay, we've approved the two sets of minutes.

The Secretary stated thank you.

Chairman Boxer stated okay, we have one case on today Case #18-15, anybody here for that, come forward please.

Mr. Miley stated come on up.

**1. Viera Jakstas
223 (233) West Main Street
Mount Kisco, NY 10549
(SBL) 69.71-1-7**

**Case# ZBA 18-15
Area**

Ms. Viera Jakstas, property owner, was present.

Ms. Jakstas stated hi.

Chairman Boxer stated give her your name and address.

Ms. Jakstas stated Viera Jakstas, 233 West Main Street, Mount Kisco, New York 10549.

Mr. Miley stated present to the Board.

Chairman Boxer stated okay, we're ready to listen.

Ms. Jakstas stated oh, I'm just you know, surprised by can I have the business there. I wasn't sure that if you're not in a business for a year that you can lose it. You know, it was grandfathered to us and I wasn't sure that's what happens.

Chairman Boxer stated well that's been in our Code since, what 1920-something, Whitney?

Mr. Miley stated at least 1954.

Ms. Jakstas stated well I wasn't aware of it.

Chairman Boxer stated yeah but you're bound by the Code when you buy a piece of property in the Town.

Ms. Jakstas stated I'm being honest, I wasn't aware of it, so...

Chairman Boxer stated I know but it's one of the...

Mr. Spector stated lack of knowledge of the law does not unfortunately exempt you from it.

Ms. Jakstas stated that's fine, I understand. Law is law but the reason is my husband got sick, he got cancer and he wasn't able to do anything and he passed away three years ago. And it's just too much for me to handle, so I'm trying to sell it as business because it's more valuable and people are asking because they want to buy it as a business. It's more, people are interested in it, they're always knocking on my door, I tell them you have talk to the real estate. I'm just hoping to get it back as, you know a business.

Chairman Boxer stated do you deny that it's been out of use for a year?

Ms. Jakstas stated I'm not denying but I'm still paying, first of all I'm paying high taxes and I'm paying residential with commercial use taxes. I cannot sell it as a business but I'm paying taxes on it. My taxes on, the Village taxes were lowered but it's still residential with commercial use. School taxes are not lowered, yet, I don't know when they're going to be lowered, I'm still paying and I wrote it down. I'm still paying, I made notes for myself. This year the Village taxes were \$6,542.62 for a year, last year it was \$8,000, so it went down like two thousand something dollars, school tax was this year, \$11,656.21 and last year it was \$11,459, so it went up two hundred dollars. And County taxes \$3,371, so it's like still twenty-something thousand dollars in taxes. So that's my question, well why?

Chairman Boxer stated well did you file a grievance on Grievance Day?

Ms. Jakstas stated I did.

Chairman Boxer stated that's what you're entitled to. What was decided?

Ms. Jakstas stated well they lowered the taxes on Village.

Chairman Boxer stated okay.

Ms. Jakstas stated they lowered it from 23,000 to 19 or 20...

Chairman Boxer stated Whitney, can they grieve County or School?

Whitney Singleton stated yeah, there's different periods in which to grieve Town taxes. Town taxes serve as a basis for the School taxes, so the Town tax assessment governs about 70% of your taxes. She apparently appealed her Village assessment in March and you appeal your Town assessment in June and she hasn't appealed that yet. The Board of Assessment Review is without authority to reduce the assessment without an appeal.

Chairman Boxer stated right.

Whitney Singleton stated so really irrelevant to the issue before this Board.

Chairman Boxer stated okay.

Ms. Jakstas stated and then another thing was last year because some people are interested in buying the property and they told me that you cannot sell it as business, I said oh. So I went and I spoke with Mr. Miley, he was very nice, I came with a lawyer because I didn't know what to do, so I came with the lawyer, a local lawyer. And we spoke to him and he didn't, the lawyer just didn't do anything about it. I spoke to

Mr. Miley this year, he said I never heard from him. I would be calling him, calling him, he never returned my calls so he's not reliable.

Chairman Boxer stated well you're not the first person that's had trouble with their attorney, believe me.

Ms. Jakstas stated well you know, I'm an honest person and I don't expect somebody to be doing business like this.

Mr. Spector stated that's still a question is what the lawyer could have done for you anyway, to begin with.

Ms. Jakstas stated well...

Mr. Spector stated of course you're entitled to answers to your questions...

Ms. Jakstas stated I mean he would e-mail the people who are interested, they'd tell me I never heard from him. He was just, he would tell me crap, sorry.

Mr. Spector stated again, the issue before this Board is what use the property can be.

Ms. Jakstas stated say that again?

Mr. Spector stated the issue before this Board is the use, the proper use of the property moving forward.

Mr. Hoyt stated would it be helpful for, Whitney, for you to just review with us the 4 factors we're bound to consider...

Mr. Spector stated before doing that, you know, I don't know if you understand it. Are you asking this Board to give you a variance to allow...

Ms. Jakstas stated that's what I'm asking, yes.

Mr. Spector stated because that's a specific request and there are legal standards as to what this Board can do. Which the attorney for, you know, the municipality will tell you about. About what this Board has the power to do when you ask for a variance.

Ms. Jakstas stated that's what I'm asking, yes. Thank you.

Mr. Spector stated okay, so I'm clear.

Whitney Singleton stated can I take back what I gave you?

Ms. Jakstas stated and also, I'm still paying, one minute, sorry. I'm still paying the certificate for the nursery and everything.

Chairman Boxer stated for a license?

Ms. Jakstas stated yeah, nursery registration certificate. I renewed it again, it's expiring this November 30th but I renewed it again, I do it every year. You have to do it every 2 years.

Chairman Boxer stated I know.

Ms. Jakstas stated yeah.

Mr. Spector stated when was the last time the nursery was actually open for business?

Ms. Jakstas stated well before my husband died.

Ms. Spector stated how much before he died? How long before he died?

Ms. Jakstas stated well he's gone for 3 years, he was sick for 8 months, he was sick before that but I still was selling plants even this spring. People stop by and I sell them perennials that we still have or lilacs and bushes. I was selling it this spring.

Whitney Singleton stated perhaps I can give you an explanation...

Ms. Jakstas stated yes.

Whitney Singleton stated of how this Board operates and what it can and cannot do. The Zoning Board of Appeals has two functions, basically they can interpret the law, the local zoning law, the power of interpretation. And they can also hear appeals for people seeking variances...

Ms. Jakstas stated right.

Whitney Singleton stated whether it's a use variances or an area variance. 98% of what they hear are area variances. There are five factors in which they can consider in an area variance application, I won't go through all those right now. But none of those, none of those factors are dispositive in and of themselves. If you answer question A wrong or in the negative, it doesn't kill the application, if you answer question three wrong, it doesn't kill the application. When it comes to use variances, which is what you are seeking here, there is a different analysis that it done. And I'll just read you the state law: "The Board of Appeals upon a decision or determination of the administrative officer" that's Mr. Miley, "charge with the enforcement of such laws, and shall have the power to grant use variances as defined here in. No use variance shall be granted by the Board without a showing by you, the applicant, that the applicable zoning regulations and restrictions have caused unnecessary hardship." Unnecessary hardship, that's the buzzword, unnecessary hardship. In order to prove unnecessary hardship, the applicant has to demonstrate to the Board of Appeals that for each and every permitted use under the Zoning regulations for the particular district where the property is located where you could not realize a reasonable return, provided that the lack of return is substantial is demonstrated by competent financial evidence." In other words, you have to make a case that the property is worthless. "Two, that the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood." Which is something that is probably true in your case. "That the requested use variance, if granted, will not alter the essential character of the neighborhood." You could arguable make that case as well. "And that the alleged hardship has not been self-created."

Ms. Jakstas stated no.

Whitney Singleton stated no, the problem is it is.

Ms. Jakstas stated oh.

Whitney singleton stated and the reason is this: when you buy a piece of property, you're charged, whether you know it or not, you're charged with constructive knowledge of the underlying Zoning requirements. You are, it is imputed upon you that you knew or should have known this was not a permitted use in the Zone. So if you discontinue the use for a year or more you cannot resume that use prospectively. And that is Peter Miley has told you and that is what his Building Department files reflect. And so what this Board is charged with is two things, there's a lot of case law out there that you're charged with constructive knowledge of the Zoning. So this Board is being told by the State of New York that they cannot give you a use variance if this Zoning restriction was in place when you bought the property and it was. Secondly, they cannot give you a use variance without you showing a financial hardship that you can't realize any economic return on the property. And it's not like they're somebody's saying there's a vacant piece of property with which you can do nothing which is what many towns tell you, no you can't do that. I have a case right now in Rye, they say they can't do anything, nothing, they said you can use it as a park, that's not a real economic use. But on your property you do have a residence, correct?

Ms. Jakstas stated yeah.

Whitney Singleton stated so you do have an economic use of the property. So you have a viable economic use, you haven't demonstrated to the Board with an competent financial evidence, at least with regard to your submission that you're losing your shirt on this property and three...

Ms. Jakstas stated well if you would pay such high taxes, you know, I'm working for taxes.

Whitney Singleton stated and three you purchased the property with imputed knowledge of all the zoning restrictions and those are things that this Board cannot overlook, it's not discretionary with them. It says in the law that it's fatal to your application. If you were seeking an area variance, they could use that as a consideration but it wouldn't determine your application. In this case, when you tell the Board that it's been 3 years without usage of the property...

Ms. Jakstas stated well I used, I'm using the greenhouse but like I said, I was selling...

Whitney Singleton stated right but I think there's other evidence in your Building Department file, dating back a longer period of time that hasn't been used and you didn't appeal that portion of the decision. You're asking for a variance, you said that you're seeking a use variance. So in that regard, the Board is not

in a position even if they, even if you were their favorite person in the world and they love what you're doing up there. They're not in the position to grant you the relief that you're asking. And I think Mr. Miley probably indicated that it was a heavy lift in this particular application, as the expression goes.

Ms. Jakstas stated Mr. Miley was very nice to me too.

Whitney Singleton stated so that's kind of where they are, it's not that anyone wants to say no per se, they just can't say yes.

Mr. Skowronski stated can I asked a question?

Whitney Singleton stated sure.

The Secretary stated I just need your name, please.

Mr. Skowronski stated Christopher, C-H-R-I-S-T-O-P-H-E-R, Skowronski, S-K-O-W-R-O-N-S-K-I.

The Secretary stated thank you,

Mr. Skowronski stated what constitutes, if she sold a plant, that's not, is that something that people just do out of their homes? If she sold plants in the spring?

Whitney Singleton stated if she sold, well she indicated to...

Mr. Skowronski stated she indicated that she didn't use the greenhouse, you can have a business that has many aspects, you might not use one of them but you can still run the business. You could have two freezers in a store and one of the freezers is in the back.

Whitney Singleton stated well I think...

Ms. Jakstas stated I mean I have inspections coming and checking my plants outside too.

Whitney Singleton stated I, well first of all, there's more substantial documentation in the file as to the discontinuance of the use, dating back over a decade.

Mr. Skowronski stated yeah, I've seen it run. You're telling me it hasn't been run [inaudible].

Whitney Singleton stated I grew up next store to it, I am very familiar with this site.

Mr. Skowronski stated so then you know, you know that's not true.

Whitney Singleton stated no, I know it was discontinued for many years.

Mr. Skowronski stated it hasn't been in business for a decade?

Ms. Jakstas stated where do you live, can I ask?

Whitney Singleton stated I grew up on Orchard Road.

Mr. Skowronski stated what's the evidence that it hasn't been in business for a decade?

Whitney Singleton stated well first of all she's acknowledged it. Secondly...

Ms. Jakstas stated I didn't say anything about a decade.

Whitney Singleton stated no, she said three years.

Mr. Skowronski stated no, she said when he husband died...

Whitney Singleton stated three years ago.

Mr. Skowronki stated there has been business since there, it hasn't been run the same way it was when her husband was here...

Whitney Singleton for me to answer your question is she would be limited to what is there. If she's talking about, let's just say that she were hypothetically able to establish that she sold one hydrangea a year, and

I'm exaggerating to make a point. If she were able to do that, then she would be able to continue on that part. She would not be able to enlarge the use, which is, let's face it, that's what any purchaser is going to want to do realistically, is to resume the use of all the greenhouses.

Mr. Skowronski stated the law stipulates that...

Whitney Singleton stated she would be relegated to the nature of the use that she had, the preexisting.

Mr. Skowronski stated the use is to sell, grow and sell plants.

Whitney Singleton stated no, the use would be, if she were not using the greenhouses, I think there's actually records in the Building Department file that say that the glass is broken, that they're not being used and that they've been discontinued and should be removed. Something to that effect, Peter?

Mr. Miley stated there is a letter in 2009 indicating, and if you'd like I can read it to you but if you have some concerns, I recommend that you review the file because it's pretty extensive.

Mr. Skowronski stated I mean, he's making charges that and just throwing them out...

Mr. Miley stated no, he's not, he's actually...

Mr. Skowronski stated I know but I'm just saying, I asked if I could ask a question, you could have told me I didn't have the right.

Whitney Singleton stated no, you're allowed to ask questions.

Mr. Miley stated no, you're welcome to ask questions. Let me just read the letter, so you have an understanding, this is in the file and nobody here and we want to help Ms. Jakstas out but the law precludes us...

Mr. Skowronski stated I understand that.

Mr. Miley stated from issuing certain items.

Mr. Skowronski stated I understand that.

Mr. Miley stated one of which, a letter to Ms. Jakstas: "I received a report from our Code Enforcement Officer, dated May 7, 2009 that the legal nonconforming greenhouse on the above captioned property is in serious state of disrepair, is an eyesore to the area and may even be an unsafe condition. Furthermore, the use appears to have been abandoned and therefore all rights of commercial use of such buildings are lost."

Mr. Skowronski stated right, appears to have been abandoned. I'm not going to argue that there aren't broken windows in it, that's a different case to say, someone complains that it's an eyesore, that's something that the Town might want to take care of. That's different than saying it's not being used as business. I can find a business in Mount Kisco that I think is eyesore, if I don't like the way...

Mr. Miley stated it says specifically here the use was abandoned.

Mr. Skowronski stated I know for a fact that it's not...

Mr. Miley stated she's not challenging, she's requesting a use variance to allow this, essentially for the use to continue, not in its current fashion but the original fashion.

Mr. Skowronski stated I understand that but that's like saying if you have a business and like I said, it has 3 freezers and one doesn't work. The case you're making is the law says to sell it to someone that then might repair the third freezer and use all three freezers, you'd have to be using the third freezer all year, I doubt that's what the law says. Businesses are a business, they might add and subtract what they need but if she's selling plants out of nursery, the business is a nursery.

Whitney Singleton stated right and what Mr. Miley just indicated to you and the discussion I had with you is hypothetical because I don't want to get into specifics...

Mr. Skowronski stated as was mine.

Whitney Singleton stated what we don't want and what is not allowed in the Zoning, is for somebody to operate to use something similar to your hypothetical. Somebody is selling iced tea and lemonade on a

stand in the summers, seasonal and then it progresses to a full blow restaurant, catering facility, operating 365 days a year with suites for rent, where it expands over time. She would not be allowed to utilize that, to go beyond which was previously existing. And what Mr. Miley just read is that there was already a determination almost of a decade ago that the use had been abandoned and she did not appeal the decision...

Ms. Jakstas stated who wrote that? I'd like to know.

Mr. Skowronski stated when that was determined, did you continue to tax her or rate her business?

Mr. Miley stated I can show it to you.

Ms. Jakstas stated because I mean, I have pictures I used to...

Whitney Singleton stated this Board does not tax...

Mr. Miley stated no, no, that's why you need the use variance because this letter destroyed the continuation of the use.

Mr. Skowronski stated did somebody? Did the Town?

Whitney Singleton stated if that was an issue, it's incumbent upon...

Mr. Miley stated that's why you're going for the use variance.

Whitney Singleton stated I understand your frustration but we're talking about different ends of Village Hall here.

Mr. Miley stated you get what I'm saying? You're going for a continuation it is also instrumental to the application...

Whitney Singleton stated its incumbent upon, if your house burns down and the assessor doesn't know it, it's incumbent upon you to say you need to lower my assessment, my house no longer exists.

Mr. Skowronski stated okay, fair enough.

Mr. Miley stated [inaudible] the use variance can't be granted because certain criteria, his letter.

Ms. Jakstas stated Austin Cassidy.

Mr. Skowronski stated in other words, a decade ago it was determined that the business was running illegally then.

Whitney Singleton stated no, it was determined that it was no longer running.

Ms. Jakstas stated yeah but I don't what 235 to 237, is not mine, that's next store.

Mr. Skowronski stated that's not what the Building Inspector at the time stated.

Ms. Jakstas stated 235-237 but you know, can I just show you...

Mr. Miley stated this says 233.

Ms. Jakstas stated can I just show you? Nobody takes pictures...

The Secretary stated I would show them to the Board. Let the Board see them.

Mr. Miley stated I just want to show you the letter, Ms. Jakstas.

Ms. Jakstas stated nobody would go around and take pictures when it was beautiful.

Mr. Miley stated I actually have pictures when it was beautiful, in our file. From the 50's and 60's.

Ms. Jakstas stated this is not 50's and 60's, I was not there 50's and 60's, I was not here in this county in the 5's and 60's.

Chairman Boxer stated do you, your business that you say is running, is it an entity that runs it or do you run it under your individual name?

Ms. Jakstas stated Mount Kisco Florist is a nursery.

Chairman Boxer stated is it filed?

Ms. Jakstas stated it used to be. I wanted to change the name to my husband's name...

Chairman Boxer stated but currently you're not registered with New York State.

Ms. Jakstas stated no.

Chairman Boxer stated so if you're not registered with New York State, you cannot operate a business. Do you pay business returns?

Ms. Jakstas stated I did, yes.

Chairman Boxer stated did but do you do them now? Have you paid them in the pas year?

Ms. Jakstas stated yes, I did.

Chairman Boxer stated okay, something like that you'll have to show us.

Ms. Jakstas stated well I don't have it here.

Chairman Boxer stated I understand, we don't have to decide today. If you would like, we would be willing to put this over and give you a chance to come back. But you have to get somebody that can work with you because we can't do it for you, that will be able...

Ms. Jakstas stated why is that there is only one business like mine. It's only us and Dr. Jang across the street who is a dentist. Why is it that the towns want to push us out?

Chairman Boxer stated they're not trying to push you out.

Ms. Jakstas stated well.

Chairman Boxer stated you're asking for something that we cannot legally grant you unless you have the proof.

Mr. Spector stated have you filed sales tax returns?

Ms. Jakstas stated not least year, no.

Chairman Boxer stated okay...

Mr. Spector stated the year before?

Ms. Jakstas stated yes, I think I did. There's too much, you know I have a full time job and it's just too much for me to...

Chairman Boxer stated so the nursery is not your prime source of income.

Ms. Jakstas stated no.

Chairman Boxer stated okay.

Mr. Spector stated any employees.

Ms. Jakstas stated no, it was all my husband and I, we were the only two working there. My husband worked 7 days a week, he never had a vacation, he was a workaholic.

Chairman Boxer stated did you file any business returns the psat year?

Ms. Jakstas stated no.

Chairman Boxer stated so looking at the record, there's no evidence that this property is being used financially to help you. It was just an odd thing you have there.

Ms. Jakstas stated I'm working for taxes.

Chairman Boxer stated we're not saying you're working for taxes but...

Ms. Jakstas stated well I am. Then why am I paying commercial taxes?

Chairman Boxer stated you can go, when the time is correct, you can go and you can grieve it.

Ms. Jakstas stated am I going to get money back from all these years.

Chairman Boxer stated that's not for us to determine.

Whitney Singleton stated the answer to that question is no you won't. Everything is prospective.

Ms. Jakstas stated I know I won't, I'm just being sarcastic.

Whitney Singleton stated I got you.

Ms. Jakstas stated I don't expect money back. It's just not right somehow, it's not right.

Whitney Singleton stated the theory behind it, whether you like it or not and I personally have fond memories of your site. The theory is that is somebody's too close to the side lot line or to a front lot line, too close their neighbors or their buildings is 2 feet too high for the zoning district, that is an impact that can be mitigated or perhaps other homes in the neighborhood have, are close to the property line. It's not fundamentally changing the character of the neighborhood...

Ms. Jakstas stated so is this changing the character of the neighborhood?

Whitney Singleton stated let me finish. When the State evaluates use variances, what is proposing to be initiated which is a use which is not wanted under the Zoning Code and commercial uses are not allowed in residential neighborhoods, and they're prohibited. So they make the standard in order to get a use variance much higher than that for an area variance and that is why this Board is somewhat handcuffed in what they can do and I understand that you're not proposing a use that wasn't there in the past, that's certainly a mitigating factor, there's no doubt about it. So it's a little bit different, you're not proposing to open a Lowes Home Improvement Center...

Ms. Jakstas stated right.

Whitney Singleton stated on your property that has never been there before. We're talking about something that has been there in the past but the law is also pretty clear and when I say the law, I mean not only the State law but local law. It says and its in Mr. Miley's letter that once a nonconforming use has been discontinued for the period of year, which you have acknowledged, it cannot be reinitiated and more so, what the Code goes on to say, which I don't think he put in his letter is that this Board cannot allow any commercial use in a residential district and any residential use in a commercial district. So they are without authority to grant you what you want both by Village Code and by State law. And it's not that they want to be punitive with you and I apologize some of my examples may not make you feel warm and fuzzy but I'm just trying to explain to you what the process is and how this does not have the normal discretionary authority that it would have for an area variances for a use variance.

Ms. Jakstas stated you know, this place is, it's been there since, [inaudible] since 1972, the previous owners were there, as far as I know, for 25 years, I don't know who was there before. It's all organic, my husband grew organic veggies, I don't know why it would be not wanted in the neighborhood.

Whitney Singleton stated because the Zoning for that district, the RS-12 only allows single-family homes, that's why. And this Board can't change that. That is a legislative determination.

Ms. Jakstas stated so only allows single...

Whitney Singleton stated single-family homes and certain accessory uses.

Ms. Jakstas stated so there is a single-family home and a greenhouse.

Whitney Singleton stated and a greenhouse is an allowed accessory use, just not for retail purposes. Just like a pool is an accessory use or a tennis court or a garage or basketball hoops, so is a greenhouse but for residential purposes, not for commercial.

Ms. Jakstas stated well commercial, I mean...

Chairman Boxer stated would you like us to hold this over for another month?

Ms. Jakstas stated are you going to say yes after that?

Chairman Boxer stated we're not guaranteeing anything. There's proof you have to show us that you have no shown us tonight and we can't tell you what the proof is and the Building Department can't. You have to find somebody that knows what the State and local codes are who can help you to try and conform with it and that would be, like as such the attorney that you used but no one in the Town, in an official Town capacity can help you make your case.

Ms. Jakstas stated well I don't want to lose it, you know...

Mr. Skowronski stated would any of the records that claim the proof or I don't remember exactly what words were used, so you can correct me if I'm wrong. If the business hadn't been running for 10 years, if that's something that you have on file, would she be able to access that in order to help make her case?

Whitney Singleton stated she has complete...

Mr. Skowronski stated or does she have it? She might have it already, I'm asking.

Whitney Singleton stated she has complete access to her file, as do you or anyone in this room.

Mr. Skowronski stated an one other thing...

Whitney Singleton stated but I just want to, I don't want to create any false hope.

Mr. Skowronski stated I understand, I understand.

Whitney Singleton stated I don't want to make it seem like there's one bit of information out there that's going to be the missing puzzle.

Mr. Skowronski stated I simply asked a question whether we would be able to see that.

Whitney Singleton stated oh, absolutely.

Mr. Skowronski stated one other question, you mentioned the hardship. The law uses the word hardship, you have to prove hardship. Each time you asked or spoke about that you said hardship but then you seemed to say that hardship means you wouldn't be able to get any return...

Whitney Singleton stated reasonable economic return.

Mr. Skowronski stated is that the, I'm not a lawyer, does hardship mean reasonable return or no money and reasonable as defined by whom?

Whitney Singleton stated well I guess it would be...

Mr. Skowronski stated it's a subjective term, no?

Whitney Singleton stated it depends on the facts and the circumstances but I can tell you that...

Mr. Skowronki stated I'm saying some people could argue, correct? What reasonable would be?

Whitney Singleton stated the fact that my, again, she could hire somebody that would argue contrary to me. My interpretation would be that she has a house which provides a reasonable return...

Mr. Skowronski stated right.

Whitney Singleton stated it allows a residential use in a residential zone and that in and of itself would be a reasonable return.

Mr. Skowronski stated sure, absolutely. Again, I'm just asking. When you say hardship, before you're saying hardship where you don't get anything back.

Whitney Singleton stated that's right.

Mr. Skowronski stated we can agree and it is, even in the law it's a subjective term that would be, that could be argued what reasonable is.

Whitney Singleton stated even in the law people will tell you getting no use out of your property could arguably still be a reasonable return, depending on what you paid for it.

Mr. Skowronski stated it could be argued.

Whitney Singleton stated yeah.

Mr. Skowronski stated right.

Mr. Miley stated Chairman, this gentleman had a question.

Mr. McGregor stated my name is Barrymore McGregor and I am the owner of 237-235 [W. Main Street]. The question that I want to know is the greenhouse going to be restored and just not for commercial use?

Whitney Singleton stated that's not the question before this Board...

Mr. McGregor stated it's information only because I'm the owner of the property adjacent.

Whitney Singleton stated right, like I said, greenhouses are a permissible accessory use to a residential building.

Chairman Boxer stated not for commercial purposes.

Whitney Singleton stated not for commercial purposes.

Mr. Spector stated aren't they subject to some dimensional requirements and setbacks?

Whitney Singleton stated they're going to be subject to setbacks and certain lot coverage requirements, lot and bulk requirements. That's not the scope that of what we're looking at here so...

Mr. Skowronski stated if she wanted to make sure that they sold it to someone and they didn't want to use it as a business but did want to restore the greenhouse. Who would be able to make that...

Mr. Miley stated he could come see me.

Mr. Skowronski stated you'd be able to let her know whether the way it stands in terms of it's width and height all that, that it would be okay if it weren't commercial.

Mr. Miley stated yeah, I don't want to shoot from the hip today but I would do a review and make that assessment because accessory uses can only be so large in comparison to the house. There are a lot of restrictions...

Whitney Singleton stated and there's locational restrictions.

Mr. Miley stated I can't answer that today, I would have to do a file review to make that determination but yes, the answer to your question is yes, I could make the determination.

Mr. Skowronski stated and then she'd be able to know for sure whether if somebody bought it, she could tell them, the greenhouse can stay, you can restore it not for commercial use, in the current dimensions.

Mr. Miley stated sure, I don't know yet.

Mr. Skowronski stated after you've made the assessment.

Mr. Miley stated yeah, there is a possibility. Again, hypothetically speaking...

Mr. Skowronski stated yes, if you did.

Mr. Miley stated it allows a 10 by 10 accessory structure but I can't make that determination until I look at the file.

Mr. Skowronski stated right, right, exactly. I'm saying after it's been determined, would you be able to let her know yes you could tell someone that or no...

Mr. Miley stated yeah. There's also a limit on the number of accessory structures and/or uses.

Mr. Skowronski stated right, okay.

Mr. Miley stated those are some of the things that yes, we can sit down and speak about.

Whitney Singleton stated and speaking to the other gentleman's point, as long as we're...

Mr. Miley stated do it all.

Whitney Singleton stated generally if a property is not maintained, the Building Inspector, the Code Enforcement Officer has the ability to require it's maintenance or it's demolition under the Property Maintenance Code.

Chairman Boxer stated so, do you want time to go look at the files. We don't have to decide tonight.

Ms. Jakstas stated okay.

Chairman Boxer stated we'll have to keep the public hearing open, it just needs a motion.

Mr. Hoyt stated motion.

Chairman Boxer stated I have a motion here, any second?

Mr. Spector second the motion.

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

Chairman Boxer stated so the public hearing will remain open which will allow you to come back.

Ms. Jakstas stated thank you.

Chairman Boxer stated you're welcome.

Ms. Jakstas stated thank you very much.

Whitney Singleton stated so this is adjourned to the next meeting in December.

The Secretary stated December 18th.

Chairman Boxer stated the important thing is if there's going to be a submission, you have to submit in a certain amount of time. What's the last date for submission.

The Secretary stated is Tuesday, the 27th.

Ms. Jakstas stated of December?

The Secretary stated of November.

Chairman Boxer stated next Tuesday.

Mr. Miley stated well that's if you're pursuing the use variance and some of the things that they've outlined, you have to provide that information so you can be placed on the agenda, 21 days prior to the meeting. Otherwise it doesn't mean that you can't appear, it just means that it's adjourned to the next date.

The Secretary stated unless you're going to grant a deadline extension.

Chairman Boxer stated no, we're not up to that point yet.

Ms. Jakstas stated why not?

Mr. Miley stated you haven't submitted anything.

Mr. McGregor stated this is adjourned to December 18th?

The Secretary stated yes, sir.

Whitney Singleton stated let's be clear. If you can't get everything done in a timely fashion, you can ask for a further adjournment to January.

Ms. Jakstas stated oh okay because the Holidays are coming and busy at work.

Chairman Boxer stated do you want to make the request now?

Ms. Jakstas stated yeah, sure, thank you.

Whitney Singleton stated so we're not adjourning to December 18th, we're adjourning to one, whatever the third Tuesday in...

The Secretary stated January 15th.

Ms. Jakstas stated thank you very much.

Mr. Miley stated is that enough time?

Ms. Jakstas stated yeah.

Mr. Skowronski stated and that would mean that things needed to be submitted 21 days before that date.

The Secretary stated the 26th is the next deadline, December 26th.

Mr. Miley stated December 26th.

Mr. Skowronski stated the 26th of December.

Mr. Miley stated in the meantime, if you want to come in and look at the file and review...

Mr. Skowronski stated you...

Mr. Miley stated that should be done any time after the holiday.

The Secretary stated just come to the Building Department.

Ms. Jakstas stated thank you very much.

Chairman Boxer stated okay, motion to adjourn.

Ms. Greenberg made a motion to adjourn. Mr. Hoyt second the motion.

Chairman Boxer asked for all in favor.

The meeting adjourned at 7:43 pm