

Village/Town of Mount Kisco
Zoning Board of Appeals
Minutes of March 15, 2016

Members Present: Chairman Donald Rose
Barbara Richards
Harold Boxer
Kim Lapple

Members Absent: Dan Guyder

Staff Present: Whitney Singleton, Village Attorney
Peter Miley, Building Inspector
Michelle Lailer, Secretary

Chairman Rose called the meeting to order at 7:37 p.m.

Chairman Rose stated this is the March 15, 2016 meeting of the Zoning Board of Appeals of mount Kisco. The first item on the agenda is the approval of minutes. **We received 4 different months of minutes, January 28, 2015, June 16, 2015, September 2015, and December 15, 2015. To expedite, I would ask if there are any changes or corrections in any one of those, please bring them up. Otherwise do we have a motion to accept all of the minutes as if we had done them individually. Is there a motion?**

Mr. Boxer stated moved. Ms. Richards seconded the motion.

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

Returning Cases:

- 1. Bagnato 205 Lexington Avenue Corp.
215 (205) Lexington Avenue
80.32-4-6 (SBL)**

Chairman Rose stated and we have one returning case, Bagnato, I believe it's, is it Bagnato 250 Lexington Avenue Corporation.

Mr. Crecco stated 205.

Chairman Rose stated 205.

Whitney Singleton stated that's a typo. 205 Lexington Avenue Corporation for the property that is known variously as 215 Lexington Avenue/20 Maplewood Drive. The latest submission is a letter from the Crecco Companies, which you received in your packages. The only new information really regarding that is the inclusion of a copy of the Tax Assessor's card reportedly from 1966. Which is interesting because it predates the 1973 application for a reduction in taxes and in which the document states that there are two apartments in the front building and not four. The case that we have ZBA15-5 was triggered by a fire in October 2014 that did substantial damage to the house that is on the house property. The house is not in conformance with the property because it is in a zone that allows residential use if it's on top of over commercial uses underneath. It is existing, we're not sure just exactly when it was built and whether it was allowed at the time. I don't know the zoning law back to the time that the house was built but there was an approved addition to the house adding a third bedroom and I have seen a C of O for what I guess is the bathroom that is on the basement level, which would have made two bathrooms. To get this on the record before we proceed because there are other issues that have been uncovered dealing with the entire site, I would ask counsel to confirm that the Zoning Board of Appeals has the ability allowed by law to modify the original officer's denial with other information that we might think should have been in that original denial...

Whitney Singleton stated as eloquent as you were...

Mr. Rose stated pardon me?

Whiney Singleton stated I'll just read to you what the statute says, okay? The sum and substance of what you said is correct, what the statute provides for and this is 7-712 (B) (1) of the New York State Village law, it allows that "the Board of Appeals may reverse or affirm, wholly or partly or may modify the order, requirement, decision, interpretation, or determination appealed from and shall make such order, requirement, decision, interpretation, or determination as in its opinion", so as in your Board's opinion, "ought to have been made in the matter by the administrative official charged with the enforcement of such

local law". Translated that would mean that should have been made by the Building Inspector originally. "And to that end, shall have all of the powers of the administrative official who's order, requirement, decision, interpretation, or determination the appeal is taken." What this is saying to you is that a determination was made by the Building Inspector that has been challenged by the property owner within the appropriate period of time and your Board is entitled to make any decision that you deem to be appropriate given the circumstances of that site, whether it affirms or reverses in whole or a part of the original determination that was made by the Building Inspector.

Ms. Richards stated and that means that we can consider the whole scope of the property, not just the individual request.

Whitney Singleton stated yes, a decision that should have been made by the Building Inspector in the first instance.

Ms. Richards stated okay.

Chairman Rose stated in that regard, what we believe is an initial statement of fact is that the present use on the property has 4 apartments in the front building over commercial and one single-family house at the back. But we find in the record no Certificate of Occupancy for the front building, especially the enlargement from one apartment per floor to two, which must have happened a very long time ago but that doesn't change the fact that there is no C of O or Building Permit for any of the modifications that were made to the structure. The parking requirement is clearly inadequate right now because the history is that apparently a site plan was submitted, as far as I know, I'm not sure even of the date but it showed three parking spaces in front. The house in back has two spaces because of the garage and that would appear to be sufficient for that house but three spaces in front may have been okay at the time because it was one apartment on the second and one apartment on the third floor and at different times, I think a moving and storage company was there, perhaps it was a use that allowed or that required only one space per 1,000 square feet, that would be the case if it was warehouse...

Ms. Richards stated it was a dental lab that was also on that...

Chairman Rose stated yeah, I don't know if that would also have that kind of limited requirement.

Ms. Richards stated but at some point it was changed to a retail space without approval.

Chairman Rose stated right, at different times it became, at least some time back it was a lighting store on one side, more recently, again we're not sure of the timing because there's nothing in the Village records to indicate Change of Use, conformity with current parking requirements. The store itself would probably require to be in compliance, one parking space for every 150 square feet and what's there now is not compliant and it's not compliant in several respects. Clearly, not enough spaces are there, there wouldn't be room for two spaces per apartment nor even without dealing with the question of the retail demand and the way it's been altered to fit the, I think that maybe there is room there for six cars parking parallel, head on into the hill. That's illegal under the Code because a car would have to back out into the street in order to get out, if it's full, there's no room for turning. We believe that there are a number of issues that deal with meeting Fire Code, the memorandum that was prepared by the Building Inspector. I think, Whitney, we probably should introduce that as part of the public record at this point because it was, if it was not intended to be public, the applicant I know did obtain a copy through a FOIL request. Would it make sense then just to make the...

Whitney Singleton stated sure, I don't, the applicant obtained a copy through a FOIL...

Chairman Rose stated the Building Inspector's report.

Whitney Singleton stated okay, that's fine, it's certainly something you're going to rely upon.

Chairman Rose stated I think it might as well be entered into the record. And so, in sum then there are a number of issues that need to be considered on this site that we feel should have been addressed by the previous Building Inspector and his denial of the building permit. We've spent most of the time and many pages of reports and so on determining the original question whether the damage is more or less than 50% of the value of the house structure above the foundation. I believe, speaking for myself but I think there may be others who would say its close enough that we would allow the determination that its less than 50% to stand as a conclusion to that part of that but we are not ready to issue or allow the Building Department to issue a building permit until the other issues that are perhaps much more significant from a human safety standpoint but also from a Zoning standpoint to be addressed.

Ms. Richards stated so we would really want a resolution that would include everything, all the requirements for the building to be compliant. So while we, I agree with Don, that I would feel comfortable with a determination that its less than 50% and that you could rebuild it but only if the resolution included all of the requirements to bring the whole site into compliance.

Chairman Rose stated and that would require among other things having a site plan review by the Planning Board and I know there would be a number of area variances that would be needed to make it comply but we are not willing to allow the construction of the building now in anticipation of all of the problems that might come up. It's quite possible that the area that the house takes up may be needed to satisfy the parking requirements for the rest of the site.

Mr. Crecco stated Anthony Crecco from the Crecco Companies. Thank you for saying everything you said. Did you guys read the letter that we sent?

Chairman Rose stated yes.

Mr. Crecco stated okay, do you have any questions on it?

Mr. Boxer stated no.

Chairman Rose stated no.

Mr. Crecco stated okay. We were here in October, my wife, Liz Crecco, stood in front of you, she asked you to have a decision on this matter and you said yes, we're going to give you a decision in November. See, we're laypeople, we're not a Fortune 500 Company, we're real life people and we rely on this income. I'm really happy that you got very technical but nothing has changed here and nothing is new. We had to bring our son tonight, we don't have an attorney because we paid Charlie Martabano \$32,000 to get nowhere. We paid an appraiser because your Tax Assessor made a mistake, its very clear, let me finish, it's very clear from the September 3rd submission by Charlie Martabano. So in November we came back and you didn't give us anything. We came back and we were told, oh you have an illegal building, then I met you guys at the site to show you the property, to show you that it's not a 50% issue and we showed you a letter from your Building Inspector, who is no longer, who is deceased. Who said he inspected the files and it was 4 apartments, correct. There is no C.O., correct. There's no Change of Use because that's a multi-family zone. The Change of Use came in 2009, I'm not an attorney but I can do research because today you can go online. So in November, we came to the meeting in November and we didn't get a decision, so then you, we met at the site and you said uh, okay, we came to the meeting in December and we sat in the back room, me and Charlie with your Town Attorney and he said we're going to capitulate this matter because we want to get this over with. And so we want you to remove the garage, we want you to remove the deck the house and bring it back to the way it was and we want to you replace three parking spaces the way it should be and we'll give you the variance.

Whitney Singleton stated that's not an accurate statement.

Mr. Crecco stated but, excuse me.

Whitney Singleton stated that's not an accurate statement.

Mr. Crecco stated it's very accurate.

Mrs. Crecco stated Anthony.

Mr. Crecco stated but we want the Building Inspector to meet you at the property, no problem. I met the Building Inspector at the property, he didn't do a fire inspection but I agreed to an unofficial fire inspection that I would do what he wanted. Then Charlie gets a call from Mr. Town Attorney, I forgot his...

Ms. Richards stated Singleton.

Mr. Crecco stated Mr. Singleton, we have big issues, we have to meet with the Building Inspector. We met with the Building Inspector and he told us nothing new that we didn't already knew, okay, except for the Code stuff which I'm in total agreement with. There's no Change of Use, there's a letter that says it's four apartments, the files are just absolutely messed up because you guys can't find the letter, I find the letter, you know and it seems like the rules are made so that you know, they keep changing, okay. So then we met with the Building Inspector and Charlie and we were told that we should adjourn the meeting in January and we said no and somebody cancelled the meeting, I don't know if it was you but this Board cancelled the meeting and then we were promised a special meeting because Charlie was out of state and we didn't get one. And here I am tonight, losing income every month because this is my business, that's

what I do, I don't do this for fun, I do this so I can feed my wife and child and I'm not really sure what the Board is trying to do. I'd like to get a variance, I mean my letter was pretty clear, I don't know what else to tell you and you know, thank you for reminding about everything I already know about.

Chairman Rose stated its not a variance actually that you're seeking, you're seeking a question as to whether the 50% is...

Mr. Crecco stated correct.

Ms. Richards stated its an interpretation, it's not a variance.

Chairman Rose stated so as we said, we've come to the conclusion that the argument on that could go back and forth for a hundred years and its close enough that we would rule that in your favor, if the rest of the site is brought into compliance or up to the point where...

Mrs. Crecco stated may I approach?

Chairman Rose stated just a minute.

Ms. Richards stated yes.

Chairman Rose stated yup. It certainly has to be in full compliance when it comes to any of the safety codes, fire codes.

Mr. Crecco stated just for the record, Peter, we met, how many times did I say I would comply.

Mr. Miley stated you did say that, yes.

Ms. Richards stated what happens with the parking requirement.

Chairman Rose stated but there are issues and...

Mr. Miley stated he's referring to the code requirements, I apologize Chairman, the code violations.

Ms. Richards stated got it.

Mr. Crecco stated but I want to refer back to the December meeting that we were here and we just agreed to leave because we were told that if we remove the garage, the deck, and the parking, it was a done deal but evidently that's the not case, is what I'm hearing.

Whitney Singleton stated let me comment on that since you're putting words in my mouth.

Mr. Crecco stated I'm not putting words in your mouth.

Whitney Singleton stated well you're quoted me as saying that.

Mr. Crecco stated yeah, you said the Board's going to capitulate this.

Whitney Singleton stated and you know what the word capitulate was used, you're absolutely right.

Mr. Crecco stated yeah.

Mrs. Crecco stated okay.

Whitney Singleton stated what we said was the Board had enormous concerns as to the code compliance, zoning code and fire code compliance of the balance of the site because there were a number of things that are shown on your site plan, that are shown at your site, which are not on your approved site plan.

Mr. Crecco stated the garage, the deck, and the parking.

Mrs. Crecco stated let him finish.

Whitney Singleton stated and so we...

Mrs. Crecco stated can you tell us what they are while we stand here, what are they?

Whitney Singleton stated sure, your deck is twenty times the size than what was approved.

Mrs. Crecco stated okay, the deck.

Whitney Singleton stated there is a building for which there's no building permit...

Mr. Crecco stated I just said that.

Mrs. Crecco stated let him finish.

Whitney Singleton stated its shown as an open area and there's no Certificate of Occupancy, for they were storing mattresses there.

Mrs. Crecco stated and the third.

Whitney Singleton stated and the third was your parking area is not in compliance with your approved site plan.

Mrs. Crecco stated okay.

Mr. Crecco stated we agreed to all that.

Mrs. Crecco stated excuse me.

Whitney Singleton stated let me finish and when I mentioned the fact that the Zoning Board wished to have the Building Inspector do an inspection, you tried, I shouldn't say you specifically but you through your attorney, tried to narrow the scope of what he would be looking at and I said I'm not agreeing to any narrowed scope, whatever he finds, he finds. And he went in there and determined based upon the construction that the number of units in the building, in the front, has expanded and has expanded not even remotely in compliance with either zoning or the New York State Uniform Fire and Building Code. And that is his position as we sit here today and it is a concern of the Board that there is not secondary means of egress, there's not supporting parking, that there's structures on the property which we were never authorized and are expressly prohibited and they're being looking at as though because I got a letter from Austin when he was still alive, saying that he searched the file and it appears as though everything's okay. That that's somehow a gold card to whatever you want with the property.

Mr. Crecco stated Whitney, we agreed to correct everything you just mentioned except the parking.

Mrs. Crecco stated Anthony, okay.

Whitney Singleton stated and so I believe the position of the Board this evening is that they are less concerned with the 50% issue and they are more concerned in that whatever is going on that site is being done in a fashion which is both zoning compliant and complaint with the New York State Uniform Fire and Building Code.

Mrs. Crecco stated okay, time out, I just need to clarify please.

Whitney Singleton stated yup.

Mrs. Crecco stated I understand the part about the parking, the deck, and the building. I get that part, which we are in agreement to take out, okay. What's the next, what is the next issue beyond that with this property, I'm asking him for a response.

Whitney Singleton stated I think she's being pretty effective.

Mrs. Crecco stated I need a response, thank you. Besides the three items we're willing to take down, what else is there?

Whitney Singleton stated I think where the Board was going and I did have the opportunity to confer with the Board on legal issues. I think where the Board was going with this is that because you have a site plan of record and you have a commercial property and you have modified and when I say you, I don't specifically...

Ms. Richards stated not you.

Mrs. Crecco stated perhaps the prior owner, okay.

Whitney Singleton stated yeah because there have been modifications, whether its buildings, decks, parking, conversion of units or anything else because that has been done. I think that the next words out of the Chairman's mouth or the Board's mouth was going to be that they would like the site plan approval amended and they would otherwise at that point in time be amendable to granting you a building permit to restore the building.

Mrs. Crecco stated a site plan amendment...

Whitney Singleton stated correct.

Mrs. Crecco in my small experience of doing this, is a lengthy and costly prospect, a site plan amendment. We've already been here almost a year, okay and have spent thirty grand on an attorney that has gotten, as of today, not very far. So when you talk site plan amendment, specifically, you're talking about the inside of what's there now.

Whitney Singleton stated I think what you're talking about is this, a site plan amendment, it would put you beyond this Board, you would have to go to the Planning Board and you would say here is our site, the building exists as of 1960 or whatever the date was. The building in the back was built with, or at least the apartment above the garage was built with a variance on such and such a date. There are other things that were built on the property which are either not conformity with our site plan of record or were built without any permits at all and we would like to propose removing this, modifying that, expanding this and one of the things where I think you're going to see a challenge is to demonstrate that you have sufficient off-street parking for the entire site.

Mr. Crecco stated okay, so we'll spend another year...

Whitney Singleton stated your use, your use that you're proposing, ironically the number of apartments that you have in the front building, was originally prohibited. There was not a permitted use to do what you did. That zoning has come full circle and it is now allowed, you just need to demonstrate that you have the ability to put the parking on the site and the concern is where are you going to put the parking the site.

Mr. Crecco stated yeah, we can't.

Ms. Richards stated I just want to say something...

Mrs. Crecco stated so...

Mr. Crecco stated that's another year.

Whitney Singleton stated I do not believe its another year.

Mrs. Richards stated can I say something.

Whitney Singleton stated yeah.

Ms. Richards stated I don't want you think like, we don't sit here and say you know, we don't want you to do this but we have a responsibility also to make sure things are safe, to make sure that they're in compliance, like so we can't just...

Mrs. Crecco stated in all due respect, we've been in front of you for almost a year and there is no way that it would take a year for this Board to get to the point where you know what, it's really not do us, you need the next Board, so that's the part we're grappling with but financially, stress-wise, time-wise, if this could not have come to head almost a year ago and it didn't need to take a year and let me explain why it took a year. We were asked by our attorney on at least four occasions to adjourn the meeting, don't come Liz, we're working behind the scenes for you, at least four times last year, okay. We were asked by this Board or the Town Attorney to not come, so all of these delays that were put into place by this Board, not by us, just caused us more into nowhere. We didn't cause those delays.

Ms. Richards stated that may be but it doesn't change the fact that we can't just say okay to this. So we are saying, at least Don and I, and I'm thinking that everyone has the opinion, we would say okay to the 50% interpretation.

Mrs. Crecco stated if we can jump the next hurdle which is going to cost thousands and thousands of dollars and who knows how many months.

Ms. Richard stated you have a building there that has some, what we deem to be serious issues.

Mr. Crecco stated why are they serious issues, explain to me why they're serious.

Ms. Richards stated I can just tell you that I went there and I can walk off the roof and kill myself. So, I wasn't impressed with the safety.

Mr. Crecco stated okay, so that's a simply solution.

Ms. Richards stated all I'm saying is that's one, I don't know, the Building Inspector would have to be...

Mr. Miley stated there are nonconformities with respect to the zoning and there are building code violations with the respect to the building, so those combined would indicate the various...

Ms. Richards stated so if we had a resolution which included the requirements that everything be brought to compliance, then we would be in your favor.

Whitney Singleton stated quite candidly, what I think, you may like the delay that was associated with this determination but I think that they're giving you the determination that your seeking. The problem is and its going to cause further delay, the problem is that many of the uses on the site are not legally authorized.

Mr. Crecco stated what use?

Whitney Singleton stated what use, first of all...

Mr. Crecco stated it's a multi-family zone.

Ms. Richards stated no, the retail.

Whitney Singleton stated the use downstairs, let's start with that, that was a moving and storage business, it had a parking requirement of 1/1000. You're now a general retail, general retail has a parking requirement of 1/150. You have increased your parking requirement six fold, six fold...

Ms. Richards stated you doesn't mean you.

Whitney Singleton stated you don't have a single parking space (inaudible – spoken over).

Mr. Crecco stated Change of Use didn't come into effect until 2009.

Whitney Singleton stated that's not true.

Mr. Crecco stated it is true, then the Code is wrong, I read it.

Whitney Singleton stated no, the Change of Use requirements of 110-38 were modified in 2009, they have existed in the Code for decades. Any change that requires an increase in parking requirement...

Mr. Crecco stated then I will have to take that up with the Building Inspector because the Code said that he has the authority to determine all of that, so why am I talking to the Zoning Board about it?

Mr. Boxer stated because you've requested us to issue an opinion and we have the authority by law...

Mr. Crecco stated yeah, yeah, I am but the...

Whitney Singleton stated the Building Inspector did not have the authority under the prior 110-38 to issue you a Change of Use permit. What 110-38 used to say was the only instance in which the Building Inspector does not have the authority to issue you a Change of Use permit is if you propose a use which has an increased parking requirement. And when you go from 1/1000 to 1/300 to 1/150, those are an iteration of intensifications of uses of the site, none of those were done with Certificates of Occupancy. None of those were done with any authorization from the Village.

Mr. Crecco stated so where do we go from here?

Whitney Singleton stated because you have a commercial site plan or site period or a multi-family, any modification to that site plan requires Planning Board approval and what this Board seems to be telling you is we have had some prior discussions coming out here, I'm not the Amazing Kreskin trying to read their minds. I think what they're telling you is they're amendable to adopting a resolution, they want to see a

written resolution though, they're amendable to adopting a resolution which will grant you your relief but it will be conditioned and the condition that you will have is that you will have to seek a site plan approval.

Mr. Crecco stated that's no relief to me, that's worse, that's an encumbrance.

Whitney Singleton stated it may be but it's also their duty to do that.

Mr. Crecco stated okay, well...

Whitney Singleton stated because right now what you have is you have a condition by which the Building Inspector's estimate creates some serious life safety issues.

Mr. Crecco stated that's a Code issue.

Mrs. Crecco stated Anthony.

Mr. Crecco stated hold on one second. The Zoning Board, I'm dealing with the Building Department for the Code and let me say it one more time for the record. I met with Peter and I said to him I will do emergency lighting, I will do exit lighting, I will do fire sprinkler, I will do whatever you want to bring it into conformance.

Whitney Singleton stated that's fire code, how about zoning code.

Mr. Crecco stated you said safety.

Whitney Singleton stated right, well I'm saying those are among the...

Mr. Crecco stated I am addressing that with him.

Whitney Singleton stated right.

Mr. Crecco stated the zoning, it's a multi-family zone, there's four apartments, you could have a hundred apartments according to the market.

Mr. Boxer stated if you have the parking.

Whitney Singleton stated if you have the parking.

Mr. Crecco stated but its been there since '66 according to the...

Whitney Singleton stated not with four apartments in the front building.

Mr. Crecco stated oh yeah because the tax record says it because the Building Inspector used to the '53 card, so I can't I use the '66 record.

Ms. Richards stated the tax record is not a C.O., you would have to have a C.O. says that.

Whitney Singleton stated when a property owner says that there's only two apartments.

Mr. Crecco stated well wait, the property owner said that after '66 card, but why did the Building Inspector use the '53 card because it says two units, can I use the '66 card, it says four units.

Whitney Singleton stated well I'll take the 1970 testimony of the property owner who said there's only two units. There is sworn testimony of the property owner that says there's only two units.

Mr. Crecco stated so where are the files that are correct here, where's the letter that...

Whitney singleton stated I don't disagree with you that the files...

Mr. Crecco stated so why are you putting the burden on me...

Ms. Richards stated because you own the building.

Whitney Singleton stated you're the property owner.

Mr. Crecco stated there's a '66 card from the tax department that says...

Whitney Singleton stated the Tax Assessor's records are irrelevant.

Mr. Crecco stated well the Building Inspector used it, why can't I use it.

Mrs. Crecco stated the Tax Assessor's record is irrelevant.

Whitney Singleton stated for purposes of zoning, yes.

Mr. Crecco stated Whitney, the Building Inspector used it, why can't I use.

Ms. Richards stated right, for zoning.

Mrs. Crecco stated wait, our taxes, we pay taxes based on a use, right.

Whitney Singleton stated this is a common misconception among property owners, the tax assessor's job is to assess the tax assessment based upon the uses that are in the building. It has nothing to do with whether or not they are legal. If you were operating a brothel over there and I'm not suggesting that you, or manufacturing facility of ice skates or whatever, he would it down as that whether its permitted or not permitted, what's allowed by zoning is completely different and those would be in the Building Department files.

Mrs. Crecco stated so if I could and...

Whitney Singleton stated but with regard to those Building Department files, the owner of this property in 1970 said that there are only two apartments in the front building.

Mr. Crecco stated no, he said three.

Whitney Singleton stated no, three for the whole property.

Ms. Richards stated yeah, he said two in the front and one in the back.

Mr. Crecco stated no, he didn't. So, nobody knows the answer but I want to go back to why can the Building Inspector use a tax record card in the letter he gave to you and I can't.

Whitney Singleton stated I don't know letter he gave to me, he didn't give me a letter.

Mr. Crecco stated he gave a letter to the Board, that we were told was draft by the way, but it was received and it says, it refers to that.

Whitney Singleton stated you mean to the Board, he gave a letter.

Mr. Crecco stated yeah, he gave it to the Board and I'm sure you got on too. So why can he use it and I can't.

Ms. Richards stated it doesn't make it legal.

Mr. Miley stated Anthony, Anthony, let me clarify.

Mr. Crecco stated hold on one second.

Mr. Miley stated give me a second, I've been listening the whole time, observing. There's three issues here, site plan issue, zoning to be included in that and building. Whether this card represents you had five apartments, 10 apartments, it doesn't even meet the minimum requirements of 1952, I can establish that it doesn't. So taking this out of it, I think you're 2/3 there, I think you're missing the point...

Mrs. Crecco stated I hear you, we're not, yeah...

Mr. Miley stated the Building Department issues, let me just finish please.

Mrs. Crecco stated sorry.

Mr. Miley stated the Building Department issues you could complete, by virtue of a permit to get the second means of the egress and it could function as a four unit dwelling, however and the Board has just essentially agreed that they'll allow you to restore the other property, however, you're missing the 1/3 that

they also want you to comply and get the site cleaned up to essentially be able to meet the minimum requirements. You don't have a C.O., we could argue all day about a C.O., but you're 2/3 there, yes it is a permitted use but it still has to meet the minimum requirements with respect to parking. The Building code issues we could complete those by virtue of a Building Permit when its issued and the back rear structure can be done by virtue of a permit, I think you're 2/3 there, I think this small portion their requesting is not that significant, although it will cost some money, I get that but...

Mrs. Crecco stated its very significant for us considering where we're at already, excuse me, how in the hole we are already and time wise, its actually extraordinarily, its big...

Mr. Miley stated I understand, I'm compassionate it...

Mrs. Crecco stated I'm not really sure, everybody does but none the less, we bought the property, we had title companies, insurance companies, banks, all confirm, you can go get him, if you'd like, thank you. All confirm that we are buying a legal property based on title report, based on all this information, okay, that's not something to be taken flightily...

Mr. Miley stated I agree.

Mrs. Crecco stated so to have the Board sit here and say none of that is true, it's not possible, from my perspective I'm thinking well then we have to sue the title company, insurance, banks, the Town because we are getting so screwed here and even though you don't think its not another big hurdle, its huge for us. It's not small.

Whitney Singleton stated it may be but at the same token, this Board doesn't have the ability just to wave a wand and say...

Mrs. Crecco stated it's not waving a wand, it really isn't. What it has been for us has been a year of complete confusion, a lot of different twists and turns, a lot of missing things in your files, a letter appears, it disappears, meetings are adjourned, we're asked to come back.

Whitney Singleton stated I know that you think that that...

Mrs. Crecco stated I don't think anything, I'm only going by the timeline and if you read this and be reminded of what we've been through for the last year, there's nothing about this.

Whitney Singleton stated as far as a title company, did you get title insurance because you didn't take title.

Mr. Crecco stated yeah, we have title insurance.

Mrs. Crecco stated we have title, of course we have...

Whitney Singleton stated you didn't take title of the property, the property was transferred by transfer of shares, not by title.

Mr. Crecco stated Whitney, that has nothing to do with what we're talking about.

Whitney Singleton stated it does has significant amount to do with it.

Mr. Crecco stated no, it doesn't. We're here for a variance or whatever you want to call it, we need to rebuild this house.

Whitney Singleton stated you couldn't take title insurance if you didn't take title.

Mrs. Crecco stated they told us what their answer is.

Mr. Crecco stated yes but I cannot have it, I can't wait another year, okay, I've agreed with Peter to address the issues, I've got to get my income online, do you guys understand that, yes or no?

Mrs. Crecco stated it doesn't matter, they've made their determination.

Mr. Crecco stated I know it doesn't matter.

Mrs. Crecco stated no, excuse me, they've made their determination.

Ms. Richards stated its not that it doesn't matter to use, it's just that, it doesn't matter, we can't just say yes. Regardless of...

Mrs. Crecco stated we totally agree with you and if you had said no to me a year, I'd have more respect, it shouldn't have taken a year to get to this point.

Mr. Crecco stated after 12 months...

Mrs. Crecco stated \$30,000 to Charlie Martabano's office, he's like a big attorney in this Town, we all know that, he knows what he's doing, he's given his legal dissertation that everything here is on the up and up. How much more do we have to spend to prove our case.

Ms. Richards stated well he left out a lot of information and it took a lot of time to get that information.

Mr. Crecco stated what did he leave out?

Ms. Richards stated he left out all the information about the...

Whitney Singleton stated hold on, what was left out, that a building was built without a building permit, a site plan amendment, or a certificate of occupancy. A bathroom was installed in violation of the variance that was granted to your predecessor, the fact that...

Mr. Crecco stated we came here to rebuild a house, that's what we came here for.

Mrs. Crecco stated let him finish, I want to hear what Charlie let out.

Mr. Crecco stated he didn't leave nothing out.

Whitney Singleton stated the fact that a building inspection has revealed that this house was illegally converted and doesn't comply with appropriate building code or the Zoning Code and then you or your predecessor have modified both the use of the commercial space and the parking lot in such a fashion that you have a fraction of the parking spaces that you're required to have for the uses. Those are all in the file, I appreciate the fact that this is not actions that you have undertaken, I in no way, shape, or form am suggesting that you went up there and put in demising walls and created unsafe situations but the fact of the matter remains that a site plan in Mount Kisco cannot be modified without the Planning Board's approval. Plain and simple.

Mrs. Crecco stated so a year ago, I never heard anybody say the site plan...

Mr. Crecco stated they realized it in November, a year later. They realized it in November.

Whitney Singleton stated that's your...

Ms. Richards stated that is true, we had no way to know that.

Mr. Crecco stated we checked the Building Department files, I mean, you know a year, I mean we came here, we came here to rebuild a house.

Whitney Singleton stated wait a second, many of the requests for an adjournment, came at your request, not ours.

Mr. Crecco stated one, go check your files.

Mrs. Crecco stated the letter has all the dates, okay, so that's it. So we have to go, you want site plan approval, excuse me. I'm not agreeing to it, I'm saying this is what the Board has said. If we get site plan approval, is that it?

Ms. Richards stated is that how you would word it Whitney?

Whitney Singleton stated I think what your Board would want to do is to say that you would and I don't have any problem with you verbally addressing the issue tonight subject to a written resolution of approval but your Board voting on the fact that you would overturn the Building Inspector's prior determination as to the 50% value, as the diminution of value by more than 50% provided that all other legal requirements are satisfied and that existing violations on the property and when I say violations, let me rephrase that, existing non-permitted, nonconformities are addressed on the property and that they're put through a resolution and that the applicant go demonstrate zoning and New York State Uniform Fire and Building

Code compliance to both the Building Department and the Planning Board as a precondition to your issuance of an approval.

Ms. Richards stated right, which means we would vote tonight.

Whitney Singleton stated you can vote tonight, I have no problem with that. And if the applicant doesn't like that, they are certainly within their right to you know, take an Article 78 against the Village.

Mr. Miley stated Whitney, can I add something.

Whitney Singleton stated sure.

Mr. Miley stated the current use, whether established legally or not with regard to the Building Code violations, that there be a provision in the resolution that will allow him to at least make the building safe for the occupants.

Whitney Singleton stated absolutely, that's why we want to do it in a written resolution.

Mr. Miley stated okay.

Whitney Singleton stated so we can confer.

Mr. Miley stated and that I have been working with the architect and without that I'd have to write violations which I'm not prepared to do.

Whitney Singleton stated okay.

Ms. Richards stated which means he'd be allowed to bring it up to safety now.

Mr. Miley stated I want to be able to issue him a permit to, obviously without certifying the use but at least to take care of those, you know, building code violations to protect the people living there.

Ms. Richards stated okay.

Mr. Crecco stated why can I start rebuilding, why can't you issue me a permit for the house in the back?

Mr. Miley stated I can't without Planning Board approval, I can't do that. I don't have the authority Anthony. I'm asking for relief to allow you to at least you know, do the fire escapes, do the necessary, otherwise I would have to do an order to show cause to evict everybody in there. So at this point I need to move forward when it comes to the Building Code with the Fire Safety Code.

Chairman Rose stated I would also perhaps add that we would do whatever we had to expedite any further actions required from this Board. I think we could waive the normal three week requirement for submission if there's something that can be done quickly and if we can see that there is a path that should be on the way to passing in the Planning Board that we might be able to somehow work in tandem.

Whitney Singleton stated let's just talk about that right now, so there's not miscommunication. There is a fairly substantial lee time in applying to the Planning Board, there is also currently a requirement that you seek a conceptual review of your application before going to the Planning Board for a formal application. My suggestion to you, I don't speak on behalf of the Planning Board Chairman or the Building Inspector or the Planner or anyone else but my suggestion to you is to be in touch with Peter and/or Jan to see what's the most expedited way you can get on an agenda, whether or not the Planning Board Chairman would be amenable to waiving the conceptual review and exactly what requirements you need to provide on a site plan and what conditions the Planner and the Building Inspector might consider unnecessary for purposes of your application. I'll give you an example, I don't think a topographic map is necessary, I don't think any sort of stormwater retention basins or any sort of analysis, utility plans or anything like that are required. I think its just going to be a basic site plan application with one sheet of paper and potentially showing the floor plan but I defer to Peter and the Planner in that regard. I think that you can save yourself a substantial amount of time by sitting down with Peter and Jan the next time that they sit down, you meet tomorrow?

Mr. Miley stated no, we met today, it would be next Wednesday.

Mrs. Crecco stated okay.

Whitney Singleton stated next Wednesday, that you sit down with them and figure out the minimum that's necessary so that you don't incur unnecessary expense and have a very good idea of, parking requirements are going to be big, so knowing your square footage and units and stuff like that, that's going to be important.

Mr. Crecco stated what's that time frame, if we go based on that.

Mrs. Crecco stated well let's meet next week.

Whitney Singleton stated I think that rather than being before them with a formal application in a month and a half to two months, you can be before them with a formal application in less than a month.

Mrs. Crecco stated okay.

Mr. Crecco stated and how many meetings is that.

Mrs. Crecco stated he can't...

Mr. Crecco stated I know he can't answer it exactly but I'm going based on what you just said because my concern is...

Whitney Singleton stated I know but you quoted me before, so I'm reluctant to say anything.

Mrs. Crecco stated do me a favor.

Mr. Crecco stated the thing is that if I have to base it on the history of the Boards in Mount Kisco, its 12 months.

Whitney Singleton stated well first of all, the difference is the Planning Board meets twice a month, not once.

Ms. Richards stated and they're trying to find a way to help you speed up the process.

Mr. Crecco stated so, Planning Board, what does it...

Mr. Miley stated prior to the Planning Board, you'll meet with myself and the Planner.

Mr. Crecco stated no, I'm talking about the Planning Board is going to resolve Change of Use?

Mr. Miley stated no...

Mr. Crecco stated because there is no Change of Use.

Whitney Singleton stated site plan.

Mrs. Crecco stated listen, listen, it's a site plan showing what should be there.

Mr. Miley stated what's existing.

Ms. Richards stated what is there.

Mr. Miley stated you'll need to provide as built floor plans of what you have there currently, including the retail space that will determine what parking is required, whether you're able to provide it or not, we need that determination. Myself dealing with the Building Department issues is not going to come into play with respect to the zoning issues and then the other items that you already agreed to, the deck and everything in the structure...

Mr. Crecco stated so the big issue with the Planning Board is the parking.

Mr. Miley stated its going to be as built, existing, proposed. Proposed is going to include the retail space and the four apartments above. The four apartments are permitted, a Change of Use permit is very simple, we can establish whether it was two or three, I can't definitively say it was a two or three but I could go back and look at building construction to determine that. So the Change of Use is a Change of Use permit, it's not a variance, its not a variance requirement. The area variances would be included, if you can't provide the parking or you decide to increase the parking to...

Mr. Crecco stated Change of Use for the retail.

Mr. Miley stated both, you have, what I could come up with is a, I looked again, most recently, a church and some other insignificant use and then you went to the bulk house items, so the parking has changed. The requirements for the parking, today we're dealing with what you have existing.

Mr. Crecco stated but the residential is not a Change of Use because that's a multi-family zone.

Mr. Miley stated the residential is a one per two, it doesn't matter, you have four units there, you need to provide two per...

Mr. Crecco stated I'm talking about the use from one to two, its multi-family.

Mr. Miley stated what do you mean one to two?

Ms. Richards stated the number of apartments.

Mr. Crecco stated it's a multi-family zone.

Whitney Singleton stated that's a Change of Use.

Mr. Miley stated that's a Change of Use.

Mr. Crecco stated when we met the last time, you said it wasn't.

Mr. Miley stated no, I did not say that.

Mr. Crecco stated I thought.

Mr. Miley stated no, no, don't put words in my mouth Anthony. It's going from what I could establish as a two or three to today four, the Change of Use with the retail space, is a Change of Use. It's one Change of Use permit, regardless.

Mr. Crecco stated I thought, maybe I misunderstood because it's a multi-family zone.

Mr. Miley stated it's a permitted use in that zone, correct.

Ms. Richards stated it doesn't mean it didn't change, it just that it's allowed.

Mr. Miley stated it doesn't need a Use Variance that was the difference, you don't need a Use Variance because it's a permitted use, correct.

Mr. Crecco stated that's what I meant, okay.

Whitney Singleton stated oh okay, that makes more sense.

Mr. Crecco stated that is what you said.

Mr. Miley stated I did say that.

Mr. Crecco stated okay so then you're telling me that I'm going to need an architect to do a plan for the building.

Mr. Miley stated you need a floor plan at a minimum. I'm not looking for comprehensive construction drawings, we're looking to delineate the space so we can determine what you have there and what's required with respect to parking.

Mr. Crecco stated the ground level.

Mr. Miley stated no, I need the apartments too because it needs to meet the Building Code.

Chairman Rose stated you will need a survey, do you have an accurate survey.

Mr. Crecco stated I have a survey, yeah, you should have it.

Mr. Miley stated yeah but its going to be required as part of the submission, so.

Mr. Crecco stated so if I got Lou do to a sketch showing the floor plan...

Mr. Miley stated correct.

Mr. Crecco stated I mean you don't have, it doesn't...

Mr. Miley stated you know what I'm concerned with, I went over this with you before, I'm concerned that people get out alive that you have the smoke detection, that you have the second means of egress.

Mr. Crecco stated that I know, I'm talking about for the Planning Board.

Mr. Miley stated that's part of I, they'll need to see a floor plan, correct.

Mr. Crecco stated right, so he can do a sketch of the layout of the building.

Mr. Miley stated correct.

Whitney Singleton stated can I just interject for a second.

Mr. Miley stated sure.

Whitney Singleton stated if you look at 110-45 of the Code which is the section that governs site plans. It talks about a whole load of crap, it talks about lighting plans, landscaping plans, drainage plans, it talks about all sorts of things and rather than get before the Planning Board and have a Planning Board member say to you well where's your landscaping plan, where's your signage plan, where's your this plan, that's why I'm suggesting that you sit down with Peter and with Jan and potentially with some conferral with the Planning Board Chairman to make sure that those aspects which aren't really germane to your application, aren't required because the last thing you're going to want to do is be before the Planning Board for three months and then have somebody say well where's your lighting plan.

Mrs. Crecco stated okay.

Whitney Singleton stated and if you clear those items which are necessary and those items which are unnecessary up front, you're certainly less likely, you're in a much a better position if somebody raises that in the 11th hour, alright.

Mrs. Crecco stated I'm sure it will be conveyed to that Board as well, what we've been through here for the last year, so that they'll expedite what we need to, I can't imagine that they'll be in the dark.

Mr. Crecco stated it's great that after all this time, you're agreeing but again my concern is to go another year.

Mrs. Crecco stated we're not going to go another year, it was just explained to us how long it's going to take.

Ms. Richards stated it's not going to take you a year.

Mr. Crecco stated I understand that.

Mrs. Crecco stated okay, so then that's it, that's the end of it, time to get him home to bed, it's 8:30 at night, let's go.

Ms. Richards stated and should you, I think that we can say should you have to come back here for anything, we would do what we could to expedite the timing of that.

Mr. Boxer stated even if it requires a special meeting.

Mrs. Crecco stated okay.

Ms. Richards stated so like if you had to come back for some other thing to us, because we can only control us, we would do like a special meeting so that you wouldn't have to wait for the next meeting.

Mr. Crecco stated why would we have to come back here though.

Whitney Singleton stated you wouldn't...

Mrs. Crecco stated okay.

Whitney Singleton stated whoa, whoa, wait, wait, let's just address something, if you can't provide the parking, what are you going to do. That's the question.

Mr. Boxer stated that's how you get back here.

Ms. Richards stated that's how you get back here for a parking variance.

Mrs. Crecco stated if we needed a parking variance.

Ms. Richards stated we're not saying we would give it but what we're saying is we would expedite it...

Mrs. Crecco stated if we have to, you'll expedite it.

Ms. Richards stated so that you wouldn't have to have so many weeks to submit and you would, we might be able to do a special meeting where we have enough members, so that's what we're saying, is that we would help expedite the process so you wouldn't then have to wait to come back here.

Whitney Singleton stated what are you paying her per hour, she's quite effective.

Mr. Crecco stated who, Liz.

Whitney Singleton stated yeah.

Mr. Crecco stated she used to do this for Spectrum.

Ms. Richards stated we need a vote. Harold, come on, give us some legal speak.

Mr. Boxer stated I don't want to do legal speak. We've already gone over everything. We're going to approve the 50%, that's not an issue. We're going to ask the Village Attorney to come up with a resolution which takes into account all of our other concerns of the property in totality, which is the use which is not a problem but also the variance for the parking and all, we would like to see all the building codes rectified.

Ms. Richards stated all the safety and building...

Mr. Crecco stated again, not an issue.

Mr. Miley stated you know what, probably by the time you get to the Planning Board, those issues may already be resolved.

Whitney Singleton stated and there's nothing between now and a signed resolution that precludes them from going to the Planning Board. You don't need to wait until you have a written resolution in hand.

Ms. Richards stated you can go now.

Whitney Singleton stated you can apply to the Planning Board now.

Mr. Boxer stated go next Wednesday and work through it.

Mrs. Crecco stated we're going to meet next Wednesday, we're going to come up with a plan, we're going to make our application, okay.

Mr. Crecco stated and there's not preventing me from starting the work with the...

Mr. Miley stated it's just a building permit submission.

Mr. Crecco stated sprinkler, exit lighting, the doors and whatever else.

Mr. Miley stated yup, whatever you need with respect to fire safety, not an issue, we'll issue a permit on that. With regard to next week, Wednesday, just call Michelle, get a time scheduled with myself and the Planner, we'll help you present the application as needed and bring whatever else that you have. If you have survey available bring it in so we can review it. We have your originally approved site plan here, it doesn't include all that much so if there's anything else that you have, this is a very.

Mr. Crecco stated I have a full survey.

Mr. Miley stated yeah, so bring it with you because you're going to have to provide a copy to the Planning Board anyway.

Mr. Crecco stated alright.

Chairman Rose stated so, is there anything that we need to vote on.

Whitney Singleton stated two things. You don't need to go through the five factors.

Chairman Rose stated no but...

Whitney Singleton stated however you do need to make a motion and a second and vote to close the public hearing.

Ms. Richards stated well Harold made the motion. Second.

Whitney Singleton stated make sure you note Harold made the motion, Barbara made the second. All in favor. And you need to make a motion, a second to approve an interpretation which would allow for, your, an interpretation overruling the Building Inspector's determination that the building is more than 50% damaged on the condition that no building permit be issued for the restoration of the rear building until such time as there is zoning compliance and compliance with the uniform fire and building code as evidence by a site plan approval by the Planning Board.

Mr. Boxer stated okay, I move it. Ms. Richards seconded the motion.

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

Whitney Singleton stated congratulations, I'm sorry it took so long.

Mr. Crecco stated did you guys really say aye.

Ms. Richards stated we did. It's not the first time.

Mrs. Crecco stated thank you.

Mr. Miley stated don't forget, the schedule fills up quick to get on for Wednesday.

The Secretary stated motion to adjourn the meeting?

Mr. Boxer stated moved. Ms. Richards seconded the motion.

Chairman Rose asked for all in favor.

The meeting adjourned at 8:33 p.m.