

Village/Town of Mount Kisco
Zoning Board of Appeals
Minutes of May 31, 2016

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

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

Chairman Rose called the meeting to order at 7:46 p.m.

Chairman Rose stated ladies and gentlemen, sorry for the delayed start, but we do have a large docket and we want to let everyone get home the same day. So, the first order is approval of minutes which our Secretary is now able to catch up because previously we had none for some period of time, so we have minutes going back to November 2014, December 2014 and April 19, 2016. You all received them in your packages, if there are any questions or comments, we'll take that otherwise a motion to approve all of the minutes would be in order.

Ms. Richards stated I make motion to approve all the minutes in the package. Ms. Lapple seconded the motion.

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

Chairman Rose stated we will be adjusting the order of business tonight to try to minimize the pain for all of the applicants. First on the docket, we will take as first, Mount Kisco Supply Company.

**1. Mount Kisco Supply Company, Inc.
369 Lexington Avenue
Mount Kisco, NY 10549
(SBL) 80.48-4-13, 16, & 17**

Case# ZBA 15-15

Mr. Anthony J. Monteleone of Monteleone & Monteleone and Mr. Peter Catizone of Catizone Engineering were present.

Mr. Monteleone stated thank you Mr. Chairman, Anthony J. Monteleone for the applicant.

Mr. Catizone stated Peter Catizone, Catizone Engineering for the applicant.

Mr. Monteleone stated as the Board will recall we had a hearing on this matter, some months ago but a decision was reserve because the Village Board had to pass a petition and a resolution moving the lot line on the property. And we have the final subdivision plat prepared by Johnson and it's here and Peter can take you through it.

Mr. Catizone stated so, a lot is going on, on this small site. Previously three lots...

Ms. Richards stated could you just bring it up just a little closer.

Mr. Catizone stated absolutely.

Ms. Richards stated thanks.

Mr. Catizone stated previously three lots, it will continue to be three lots but slightly reconfigured. The previous lots were lot one, two, and this lot here. There's a nonconforming two family residence there, that is nonconforming and we will be taking it down.

Mr. Monteleone stated for the approval.

Mr. Catizone stated so what we've basically done and a couple problems which I'll point out. One is, this is the former zoning district line, we believe it's a mapping error and that's what we petitioned the Village Board for moving this line which is now aligned with the new lot line. The new lot line is basically 30' off the back of the building with conformance with the rear yard setbacks, we've merged these lots into one, one commercial lot and two residential. The residential lots are conforming with zoning in every aspect.

Mr. Monteleone stated however they're going to be one-family residence, not two-family, although it's a two-family zone.

Mr. Catizone stated single-family. The reason we need the variance is although we're reducing development coverage, the fact that we moved the lot line, you're not really comparing apples to apples, old area versus new. We're still over in development coverage on the commercial lot, and that's the purpose of the variance to become conformant with that aspect of the zoning.

Ms. Richards stated and what is the amount?

Chairman Rose stated and for the record because I don't know whether we have the latest...

Mr. Monteleone stated I believe it's 3%.

Mr. Miley stated Chairman, I have a public notice that was submitted, if you want, I can read it into the record for you.

Chairman Rose stated oh, okay.

Mr. Miley stated the maximum building coverage of 30% in that zoning district, where the applicant proposes a building coverage of 35%, however reduced from 39.9%, so they're requesting a 4.9% variance.

Ms. Richards stated just read those numbers again.

Mr. Miley stated sure, permitted 30%, they're proposing 35%, however they're reducing from the current nonconforming 39.9%. Therefore they're requesting a 4.9% variance, development coverage.

Ms. Richards stated only on the commercial.

Mr. Miley stated correct.

Chairman Rose stated but you said 30% is permitted.

Mr. Miley stated correct, maximum is 30%.

Chairman Rose stated maximum is 30% and they're providing 35%.

Mr. Miley stated they're proposing 35%, however they're reducing from 39.9%, it's a 5% variance, however the reduction is 4.9%.

Mr. Monteleone stated we're actually reducing the coverage but we're still over the percent permitted.

Chairman Rose stated then the actual variance is still 5%.

Mr. Miley stated 5%.

Mr. Monteleone stated 5% but we're reducing it from 39 point something to 35%.

Mr. Richards stated got it, okay.

Chairman Rose stated which is all better...

Mr. Monteleone stated that's it.

Chairman Rose stated are there other questions? Is there anyone in the public audience that wishes to comment on this application? If not, I suggest that we close the public hearing.

Mr. Boxer stated move to close the public hearing. Ms. Richards seconded the motion.

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

Chairman Rose stated and we will, therefore just very quickly go through the five factors, which this is.

Mr. Monteleone stated yeah, you do, there is a memo, I can take you through them.

Ms. Richards stated no, we don't need it.

Mr. Miley stated which memo are you referring to?

Mr. Monteleone stated I submitted a memorandum of law back in December.

The Secretary stated in December, its in there.

Chairman Rose stated if you have it, take a look.

The Secretary stated that's it, there's two pages there.

Mr. Miley stated pre-December.

Mr. Monteleone stated is this the one?

Mr. Miley stated you have a couple memos.

The Secretary stated its right here.

Mr. Miley stated its on there, its two pages.

Mr. Monteleone stated the lot coverage is allocated, this is de minimus application, it's going to have no significant impact on the neighborhood except an improvement because we're demolishing the two-family nonconforming use, we're leaving the existing building exactly how it is. We're putting in landscaping and improved parking and putting in the new fencing separating the residential lot from the other, they'll be, it's a de minimus application, not significant impact, its an area variance, it's not a use variance, so we don't have the issue of self-created hardship and...

Chairman Rose stated I think its pretty clear then...

Mr. Monteleone stated the other are, we meet all of the criteria.

Ms. Richards stated outweigh the...

Mr. Monteleone stated the benefit to the...

Chairman Rose stated it's a little but unusual as a requirement but sorting out, separating the commercial and the residential areas more positively as the Village Board has done, is good.

1. Whether an undesirable change will be produced.

Chairman Rose stated no.

Mr. Monteleone stated there will be none, it will be an improvement.

2. Whether the benefit sought by the applicant can be achieved by some other method.

Chairman Rose stated I think you probably...

Mr. Monteleone stated the answer to that is really no, it's...

Whitney Singleton stated Tony, the Board has to make the findings, not you.

Mr. Monteleone stated well I'm making my argument.

Ms. Richards stated we don't need that though, we can make our own.

3. Whether the requested area variance is substantial.

Chairman Rose stated 5%, well 35% instead of 30% might be regarded as large but not substantial, there's no physical change.

Ms. Richards stated and it's a reduction.

Chairman Rose stated the related changes will be an improvement.

4. *Whether the proposed variance will have an adverse effect on the physical or environmental conditions.*

Chairman Rose stated no, in fact the opposite is true, the improved landscaping and surface treatment.

5. *Whether the alleged difficulty was self-created.*

Ms. Richards stated I think its still created because you could have left it the way it is but that doesn't mean that we can't issue the variance.

Mr. Monteleone stated but its an area variance, so that issue is, isn't the same as if it were a use variance.

Chairman Rose stated and so do we have a motion to accept the figures...

Whitney Singleton stated I think if I'm not mistaken and Pete will correct me if I'm wrong, the Board did not, the Planning Board did not do coordinated review under SEQRA so your Board would have to make a determination of significance on this application. That is why a separate environmental impact statement was submitted. So it would be an unlisted action and your Board would have to make a determination that there's not significant, adverse environmental impact.

Chairman Rose stated do we have a motion to that effect?

Ms. Richards stated motion. Mr. Guyder seconded the motion.

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

Chairman Rose stated and a second motion on the variance requested.

Ms. Richards stated I make a motion to accept it. Mr. Boxer seconded the motion.

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

Mr. Monteleone stated thank you very much, thank you for your courtesy.

Chairman Rose stated okay, the next case that we will hear is one of the new cases, Old Town Tea House, number 6 on the agenda. The applicant will come forward.

**2. Old Town Tea House
5-11 S. Moger (Suite 11A)
Mount Kisco, NY 10549
(SBL) 69.81-6-1**

Case# ZBA16-3

Mr. Jordan Perkis of Old Town Tea House was present.

Mr. Perkis stated yes, sir.

Chairman Rose stated please state your name and spell it for the audio record.

Mr. Perkis stated sure it's Jordan Perkis, J-O-R-D-A-N P-E-R-K-I-S, manager of Old Town Tea House. This will probably be the simplest variance you're requested tonight because as you may know, we are located just across the street in the alley, that connects the parking and South Moger. So according to the ordinances, the, this is just for simple signage and above our front door, it faces the alley, so it just faces the brick wall and no one would see it. So we are just requesting to put it on the other side of the...

Chairman Rose stated was that in fact the same location that the Temptation Tea House.

Mr. Perkis stated correct, yes.

Chairman Rose stated did you use their letters, Tea House.

Mr. Perkis stated the font.

Ms. Richards stated are the letters the same size as the...

Mr. Perkis stated they're a bit smaller, actually, yeah.

Ms. Richards stated okay, so you reduced the size of the letters but you're leaving it in the same location.

Chairman Rose stated I think the leading letters of the words are 12 inches high, and the other letters are 10 inches high.

Mr. Perkis stated correct.

Mr. Boxer stated that will be the only signage on it.

Mr. Perkis stated that's it.

Ms. Richards stated I don't have a problem with that.

Ms. Lapple stated me either.

Chairman Rose stated is there any comment from the public on this application? If not, I suggest we close the public hearing.

Mr. Boxer stated I'll move to close the public hearing.

Chairman Rose stated thank you.

Ms. Richards seconded the motion.

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

Mr. Perkis stated thank you, your honor and Board Members, appreciate it.

The Secretary stated not done yet.

Ms. Richards stated no, we're not done.

Mr. Boxer stated we could still change our minds.

Chairman Rose stated he can sit down. On a sign variance, its not clear to me whether we need any set of factors, or do we?

Whitney Singleton stated you do. It's the same statutory evaluation.

Chairman Rose stated it needs to be treated as an area variance, it's not a use variance.

1. *Whether an undesirable change will be produced in the character of the neighborhood.*

Ms. Richards stated well it's the same location.

Chairman Rose stated same letters, change of two words, so no.

2. *Whether the benefit sought by the applicant can be achieved by some other method.*

Ms. Lapple stated no, not if you s sign that faces the parking lot.

Ms. Richards stated that anyone can see.

Chairman Rose stated no really, not in that location. The applicant has supplied the photograph and there really is no other area that makes any sense at all for a sign.

3. *Whether the requested area variance is substantial.*

Chairman Rose stated it's not substantial, it's just a matter of practicality to place the sign where it can actually be seen.

4. *Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions.*

Ms. Richards stated it's the same.

Chairman Rose stated none whatsoever.

5. *Whether the alleged difficulty was self-created.*

Mr. Boxer stated yes but it doesn't, it has to be taken into consideration.

Chairman Rose stated with that, do we have a motion to accept the requested sign.

Ms. Lapple stated motion to accept the requested sign. Ms. Richards seconded the motion.

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

Mr. Boxer abstained.

Chairman Rose stated the next case we will hear is number 5 on the agenda, BareBurger.

3. BareBurger
441 Main Street
Mount Kisco, NY 10549
(SBL) 80.50-4-4

Case# ZBA16-2

Mr. Viktor Solarik of VKS Architects was present.

Mr. Soalrik stated good evening, I'm Viktor Solarik, VKS Architects, representing BareBurger, the new tenant at the old Friendly's building. I'm sure you've all seen the work underway and we have been going through the approval process with the Planning Board. There was old business to finish because the old site plan was approved in 1983 and then so things have changed slightly. However, the purpose of our application to the Zoning Board is twofold, one is a request for a variance for an existing dumpster location which is all the way in the back of the property, its right near the property that's owned by CVS, that's all wooded, it's not even part in there, it's all very secluded, it's not visible from the street substantially, the variance that we need is really for the rear yard setback, where 6 feet is required and we are requesting 4 ½ feet to provide an enclosure around the dumpster which is required by Code. I think you have, we had submitted pictures indicating the existing conditions and if you can't find them, I also took some pictures of the beautiful dumpster that's there. We didn't want to move it because it actually is a compactor, so it reduces the size of the dumpster and you know there's underground electric service going to it, which would be impractical to relocate, if at all possible. This is kind of the view along the south side...

Ms. Richards stated these are different than what we have.

Mr. Solarik stated probably, yes, these are just for illustration.

Chairman Rose stated the wooded area behind is also commercial property.

Mr. Solarik stated its not a zone boundary, it's the same zone, that's why it's only a 6 foot setback.

Chairman Rose stated I visited the site and I can tell you it looks just like that, it's...

Ms. Richards stated I pass it every day.

Chairman Rose stated something in the forest.

Mr. Solarik stated yeah, it's actually a good location for the site as well because there's parking all the way around, there's ample parking, so it's going to be really tucked away.

Ms. Richards stated right.

Mr. Solarik stated there's another smaller container that was used by Friendly's for oil recycling, but BareBurger has it's own system, they have an indoor system and actually come in with a truck, suck the old oil out and provide new, so it's much more environmentally friendly and cleaner.

Mr. Richards stated that's nice.

Mr. Solarik stated so the other one is going to go away.

Ms. Richards stated so that's one variance, is there another variance.

Mr. Boxer stated its only one variance you need, correct?

Chairman Rose stated two.

Mr. Solarik stated well, then there is a outdoor seating request...

Chairman Rose stated that one will not be handled by this Board.

Mr. Solarik stated that's what I understand, I just wanted to bring it up.

Chairman Rose stated that will be a Planning Board action.

Mr. Miley stated there are two variances, there is one for fence height to cover the dumpster and the other is for the minor setback.

Ms. Richards stated so we don't handle the outdoor seating.

Mr. Boxer stated how high do you propose the fence to be?

Mr. Miley stated 8 foot.

Ms. Solarik stated it is 8 foot high.

Mr. Boxer stated does that cover the dumpster?

Mr. Solarik stated yes, the dumpster is about 8 foot 6 inches.

Mr. Boxer stated so, can you make it 9 feet?

Mr. Solarik stated I suppose we could, its unusual to make the fence higher than 8 feet, I think. Typical construction of a fence would be around 8 feet.

Ms. Richards stated oh, so you'd have to do something special if you want to do something over 8 feet?

Mr. Solarik stated I'll have to look into, I'm sure there are 10 foot poles, or 12 foot or whatever, they go three feet in the ground and then 9 feet up.

Mr. Boxer stated what color is the dumpster?

Mr. Solarik stated the dumpster is yellow.

Ms. Richards stated beige, it's like a beige.

Mr. Solarik stated but there is privacy screening in the chain link fence, there's the inserts, so the fence actually is going to be transparent.

Mr. Boxer stated if you make the top part black, then it won't show so matter what size the fence is.

Mr. Solarik stated I'd be willing to do that.

Chairman Rose stated that's true too.

Ms. Richards stated paint the top of it black, that's good idea.

Chairman Rose stated yeah, the top of the compactor, sure.

Mr. Solarik stated maybe the sun will make it more smelly.

Mr. Boxer stated alright, so if you paint it black, then you can have an 8 foot fence.

Mr. Solarik stated okay.

Chairman Rose stated okay, so the size of the variance needed on the setback again is...?

Mr. Solarik stated it's 4 ½ feet from 6 feet to 4 foot 6 inches. 1 foot 6 inches.

Chairman Rose stated one and a half feet on the setback, okay. If there are no further questions from the Board, are there any comments from the public?

Mr. Boxer stated do you have a rendition of what it's going to look like?

Mr. Solarik stated this is the front façade rendering, if you're interested there's side elevations, this is the more attractive one which faces the south that's where the...

Ms. Richards stated it's a lot better than what was there.

Chairman Rose stated yes.

Mr. Solarik stated true, it's coming along, I have to say.

Mr. Boxer stated it doesn't look like Friendly's.

Chairman Rose stated no.

Mr. Solarik stated well the idea is to not make it look like Friendly's.

Mr. Boxer stated they're still going to say the Friendly's place, until the next generation.

Mr. Solarik stated it's alright, it's a good landmark, yes, exactly.

Chairman Rose stated its like selling a house, it always takes the name of the previous owner.

Mr. Solarik stated yes.

Ms. Richards stated okay.

Chairman Rose stated okay, if there are no other questions or comments...

Mr. Boxer stated I'll move to close the public hearing. Ms. Richards seconded the motion.

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

Chairman Rose stated okay, so there are two variances required, we've heard all of the discussion and the reason for it. The existing dumpster can't be moved because of the electric feeds and it's a sensible place.

Mr. Boxer stated it's about as far out of the way as you can get.

Chairman Rose stated and the 8 foot height will certainly...

Ms. Richards stated the higher the better to cover the dumpster.

Chairman Rose stated it will certainly cover most of it.

Ms. Richards stated are we making painting it black a condition.

Mr. Boxer stated just the top part.

Mr. Solarik stated whatever sticks above the fence is going to be painted black.

Ms. Richards stated right.

Chairman Rose stated could be black or a very dark green.

Mr. Solarik stated dark green?

Chairman Rose stated dark green or, well green would show up.

Mr. Boxer stated black fades, believe me.

Chairman Rose stated black disappears. Okay, let's go through the five factors, the test on the, where is my crib sheet.

Ms. Richards stated you just had it.

Mr. Boxer stated come on Don.

Chairman Rose stated alright, so:

1. *Whether an undesirable change will be produced in the character of the neighborhood or detriment to nearby properties will be created by the granting of the area variance.*

Chairman Rose stated no.

Mr. Boxer stated no.

2. *Whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue other than an area variance.*

Chairman Rose stated I mean, technically it can be moved forward a foot and a half and they could do away with the compactor, to keep the fence height down but...

Ms. Richards stated and then you stated in your parking lot, so realistically...

Chairman Rose stated its impractical, so would say that the benefits outweigh the detriments to leaving it where it is.

3. *Whether the requested area variance is substantial.*

Chairman Rose stated on the setback it's a foot and a half, where 6 [feet] is required, 4 ½ [feet] is provided.

Ms. Richards stated I don't consider that substantial.

Chairman Rose stated that's minimal.

Mr. Guyder stated but its also developed in that space, right? It's just a wooded space.

Chairman Rose stated its totally wooded and wild behind. And the height of the fence normally limited 6 feet will be 8 feet to cover most of the equipment, so it's not, in this case, not very important, if this were a fence in front of a property or someone else, that would be a different matter but...

Mr. Solarik stated can I say something? There is also landscaping proposed around the whole area, we have a whole landscape plan that actually includes the area around the dumpster I failed to mention that before. There is all new landscaping proposed, which is actually now paved. So we're removing some pavement, we're bringing it down to Code compliance in terms of the lot coverage and we have new landscaping proposed around it. So it's going to be really well shielded. I'm sorry for interrupting.

Ms. Richards stated the answers undesirable change.

4. *Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions.*

Ms. Richards stated it should improvement.

Chairman Rose stated we've already spoken to that. It will be a net improvement.

5. *Whether the alleged difficulty was self-created.*

Mr. Boxer stated it was created by Friendly's, not by them.

Chairman Rose stated that's right.

Ms. Richards stated that's true.

Ms. Solarik stated the tenant inherited, so arguably...

Chairman Rose stated it is a preexisting location which made it a practical and expensive issue to resolve and in a strictly legal sense but this is not going to preclude the granting of the area variance. Do we have a motion?

Mr. Boxer stated I move that we grant the two variances requested and require the portion of the dumpster that's above fence line to be painted black.

Ms. Richards seconded the motion.

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

Mr. Solarik stated thank you very much.

Chairman Rose stated thank you.

Mr. Solarik stated good night.

Board has a discussion on order of the agenda.

Chairman Rose stated we will hear the case number 4, Lexington Properties at 15 Locust Street.

Whitney Singleton stated Chairman, as I previously indicated to you, I have a conflict in this case, I will not be sitting up here or advising your Board. The Assistant Village Attorney will be present at your next meeting.

Chairman Rose stated okay, if you'll wait just a second to allow the attorney to step out.

The Secretary stated you have no sign-ups.

Chairman Rose stated okay, gentlemen.

**4. Lexington Properties c/o Leonard Brandes, AIA
15 Locust Street
Mount Kisco, NY 10549
(SBL) 80.48-2-7.2 & 8**

Case# ZBA 15-17

Mr. Gustave Levy of Lexington Properties and Mr. Leonard Brandes, AIA, were present.

Mr. Brandes stated Mr. Chairman and members of the Board, I'm Leonard Brandes, the architect for Lexington Properties, Gustave Levy is the principal of the property. What we are here to discuss is developing a piece of property that's apparently been trying to develop for a long time. The existing property on Locust Street is over here, it used to be divided into two lots, they had come to the Town Board and they had the lots, it was two different zoning districts, it was a commercial district and a residential RT-6 district. They had it officially changed to be in an all RT-6, the lower of the two in terms of that.

Chairman Rose stated do you know roughly when that was done?

Mr. Brandes stated I believe about 6 years ago.

Chairman Rose stated so it's been awhile.

Mr. Brandes stated it's been awhile but it hasn't been developed, there was a [inaudible] in the family and it ended up coming back to the son to take over the property. So what we have is a house that exists, shown in the red over here, I'm going to show it again on another map. Right now the existing house, its extremely old and in very bad shape, it's about 1,000 square feet.

Ms. Richards stated is that it? Are they all neighboring houses, yes.

Mr. Brandes stated this is the existing house right here, the existing property. I'm showing all the different angles of the property, the houses across the street, the houses are very close and they're all small lots and all very tight. This is nonconforming to begin with, with the zoning district that's changed and developed and these other areas are set up. So, right now the house is setup, I'll switch and they can look at the photos at the same time. The house that exists, is right here, that's literally 3 feet away from another house over here, its about 10 feet away from the house on this side and we wanted to take that down redevelop it as a two-family house, that's why we went to RT-6 district to begin with, so we can redevelop this. We knew this house was not in the greatest of shape and we needed to redevelop and that's why the Town had given us a change, the variances and change the lot to all one zoning district. It is still an undersized lot, so that's even one of the variances, even with the two lots combined, it's still less than 6,200 square feet, so that's 750 square feet too small, so there is even a variance required for the lot itself. One thing to note also is that the street line averages about 18 feet from the property line which is very unusual, it shows in the photos also, you can see it over here, how the street line is really setback and even on this side, its right against the property lines, so this house right here is 14 ½ feet away and we're looking for our house to 14 ½ feet away but its really much further than away than that particular house. So we're not looking for something that's out of character with the neighborhood, we're trying to stay within the character of the

neighborhood. We are developing it, so we can have two-family dwelling of 1,200 square feet each, they will both enter through here, they both have garages and parking on the outside, so we meet the Codes in terms of that. Our house, in terms of impervious surface for the house itself, we are within Code on the house itself, so the house doesn't need a variance on that, on the size of the house but we are a little bit over because of the requirements for a parking area, we are 7% over on impervious surfaces.

Ms. Richards stated if it was a single family, it would require less parking therefore it would be less of a variance, right?

Mr. Levy stated you're absolutely correct.

Ms. Richards stated its because you want to put a two family that you then have a different parking requirement.

Mr. Brandes stated well the idea is to develop the property to make it profitable as well.

Chairman Rose stated is that the minimum amount needed for a car to back out and make the turn?

Mr. Brandes stated yes, I have, we have minimum, we have 30 feet right now, that's what we have right now, coming back into here. Also, while the Code also, if I would go with the parking like the other houses on the area right across the street, the houses go directly straight into a garage, we're not allowed to do that anymore. So when the Code changed, it did create a situation where we now have to use more property, the Code, especially in a small lot like this, this is an extremely undersized lot to begin with, so we're trying to do...

Mr. Levy stated the lot size has changed as well.

Mr. Brandes stated yes, all these changes have been made since this lot was developed and set up, so there's been a lot of changes within the Town.

Chairman Rose stated if it were a single-family dwelling, it could be moved farther west on the lot and you would have less area required for parking as well. In other words...

Mr. Brandes stated right.

Chairman Rose stated variances would be reduced if it were a single family dwelling.

Mr. Brandes stated right but the area does have smaller home in it and creating a two-family home in that particular area, where there are a lot of families that need housing that is a good district area for it to improve it.

Ms. Richards stated maybe it's not a good property for it.

Mr. Brandes stated the whole idea of the property when the Town approved to make this into one zone, was so that it can be developed into a two-family, that's why it went into an RT-6 zone.

Chairman Rose stated well RT-6 is one- and two-family

Mr. Brandes stated is one- and two-family, correct.

Chairman Rose stated but isn't the neighbor to the east a single family house?

Mr. Brandes stated yes, it is but the neighbor on this side is a multi-family house, a seven family house right here.

Chairman Rose stated but that's into a different zone.

Mr. Brandes stated yes but it is adjacent to it as well.

Ms. Richards stated so can I ask what the difference would be if it was a single family.

Mr. Brandes stated not a lot different because I'd still want to get as much house as possible. A 1,200 square foot house is, these are 1,200 square foot per unit, so it's only 2,400 square feet, we're not making monster units.

Ms. Richards stated no, I understand but it's a lot bigger than what's there now.

Mr. Brandes stated right, the existing house is only 1,000 square feet and its right on the edges of the property line and right next to the existing homes. Where now we're bringing it away from the homes and putting it next to the garage areas. The existing house is this area right here.

Ms. Richards stated what other parking do you need to provide, other than the garages.

Mr. Brandes stated we have two spaces, minimum, is what's required.

Chairman Rose stated two spaces per dwelling.

Mr. Brandes stated we have two spaces per unit and that's what we're giving, two spaces per unit.

Chairman Rose stated they have two garages there.

Ms. Richards stated so that's it, okay.

Mr. Brandes stated and if I had a single-family home, I'd probably want to have a two car garage, which would still require the same amount of area in terms of backing up and getting around. It doesn't require less than this, this is not a large home to begin with. Once again, parking wise, if I did have it, I still need that minimum 30 feet back here, if I have a two car garage, I may lose a little bit of space but not a lot.

Ms. Richards stated is anyone living in the house now.

Mr. Levy stated yeah.

Mr. Brandes stated still need room for a car.

Chairman Rose stated you wouldn't need 30 feet for that full length.

Mr. Levy stated in the house?

Ms. Richards stated that's what I mean.

Mr. Levy stated of course, yeah.

Chairman Rose stated you could do a turn, you could have a little piece of development...

Mr. Brandes stated I don't think there'd be a big savings, in terms of, we're only 7% over, we're not looking for a 60% increase. The house itself, the building itself is under the maximum amount.

Chairman Rose stated but even a little on a small lot might be meaningful. I think we certainly want to have site visit on this one. Is this something that can be arranged, Michelle, I guess if you could be in contact...

The Secretary stated sure.

Ms. Richards stated do you want to do it together or separate?

Mr. Levy stated do you want to go tomorrow?

Ms. Richards stated no.

Chairman Rose stated is there a need to have any explained to the Board or is it pretty self-evident?

Mr. Brandes stated I think it's pretty self-evident, as you look at the property you'll see that, obviously it's under developed because it's all kept onto this one corner, right now and the driveway is right up against the edge over here.

Chairman Rose stated aside from the obvious appearance of the house that's there, its really a nice site, it's a lot of grass...

Mr. Brandes stated we are creating a lot of...

Chairman Rose stated there is a tree that will have to come down.

Mr. Levy stated this is a great view of the grass area and then the single family that exists there now.

Mr. Brandes stated this parking area by the way is part of the Town road, that's not on our property.

Mr. Levy stated right and we would be giving that back.

Ms. Richards stated I was going to ask what that was.

Mr. Brandes stated that's this little area right here.

Mr. Levy stated there's 3 feet that's on Town road that's not supposed to be there.

Chairman Rose stated so will the Town turn that back into grass probably...

Mr. Levy stated they would be getting that back.

Chairman Rose stated it would be nice if they filled that in. I guess we could go individually if there's no objection.

Mr. Brandes stated the new house down here, is also a garage over here and a garage over here and the houses are back over here.

Chairman Rose stated right.

Mr. Brandes stated so we are taking this, which is even more so in terms of not meeting Codes, we're moving it away from those areas and having 3 ½ and 2 ½ feet over here, is certainly in terms of what was there, in terms of variance wise.

Chairman Rose stated I would see it as a much more desirable thing for a family with young children if it were moved that way and you had more grass around the house itself because there you'll have...

Mr. Brandes stated well having a proper yard, this flatter area here, this goes up into a hill, so its difficult over here to, the sloping over here, you can see the grading, it slopes pretty much over here, so this is built into the hill and that's why the garage entrance is on this side and the basement is basically underground on this house. If you take a look at the elevations...

Chairman Rose stated right.

Mr. Brandes stated my drawings here and this gives us a place where the kids can play, I want to give them as much a level ground area so you can have a field for the kids. This side is going to be impossible.

Ms. Richards stated this is a lot of ask for...

Mr. Levy stated I agree.

Ms. Richards stated I personally, am not comfortable with this, so we're going to go and see it but if you have some way to reduce this to fewer variances, I would recommend doing it. At least that's how I feel, I don't know how anyone else feels about it.

Chairman Rose stated yeah, before looking at the lot, I looked at the letter and I thought...

Mr. Brandes stated absolutely, it's a long list.

Chairman Rose stated and its not even inclusive, there are two more that should be on there.

Mr. Miley stated Chairman, can I interject, I recommend that the applicant schedule an appointment with, I could help you reduce at least two variances, to lessen the request to the Board.

Mr. Brandes stated that would be great. That would be wonderful.

Ms. Richards stated yeah because it makes me uncomfortable anyway.

Mr. Levy stated it makes me uncomfortable too, I would like you to come and see it and we can just...

Mr. Brandes stated I think once you see the property and see how its built into the hill and set off from the road...

Chairman Rose stated do we need to let any of you know once we go out there.

Ms. Richards stated if we're walking around on the property.

Mr. Levy stated you can go a leisure really, I mean.

Ms. Richards stated I mean will they wonder who we are, I mean, will you mention to them so that if they see people walking around.

Mr. Levy stated if you call the office, we'll give them a 24 hour notice.

Mr. Brandes stated just in terms of what we are creating for the house by the way, we have two separate parking areas, I think that's important that you know that we are creating parking areas and storages for each tenant, we are. Each tenant is getting a nice living room, an eat-in kitchen area over here, these aren't tiny apartments, bedrooms, we have three bedrooms for each one, so we are creating a fair amount within a very small space and trying to keep within the character of the neighborhood does have a lot of smaller homes there and the area does need rentals, so it creates a rental with three bedrooms.

Ms. Lapple stated those storage area, they're next to the garage, their accessible?

Mr. Brandes stated they're accessible through the garage or this one can go up to their apartment from here, this one goes up to the apartment from here.

Ms. Lapple stated those won't ever become bedrooms.

Mr. Brandes stated no, no, these are underground. This is going up into a hill, so for all intents and purposes, this is underground, no reason to make those bedrooms.

Mr. Levy stated no, I'm a hunter for that kind of stuff.

Mr. Brandes stated like I said, we are trying to create something that is useful for the neighborhood, that's...

Mr. Levy stated its an eyesore in the neighborhood, we're trying to make it nice.

Chairman Rose stated we will keep the public hearing open of course, if people in the audience will bear with us, I think that maybe some changes as this further developed, rather than take time and have everyone comment, let's see what happens next time.

Mr. Levy stated thank you.

Mr. Brandes stated thank you very much for your time.

Mr. Miley stated just schedule an appointment, I think I can help you reduce it at least two.

[Side discussions ensue]

Chairman Rose stated let's take a recess, you want to...

The Secretary stated do you want me to stop the recording.

[Break ensues]

Chairman Rose stated okay, we're back online, we will hear case number 3 DP-21, LLC, returning case ZBA16-1.

5. DP-21, LLC
333 N. Bedford Road
Mount Kisco
(SBL) 69.50-2-1

Case# ZBA 16-1

Mr. Peter Catizone of Catizone Engineering P.C. was present.

Mr. Catizone stated good evening, my name is Peter Catizone with Catizone Engineering, representing DP-21. Good to see you again. We were here on April 19th and we presented the project to you and at that

meeting this Board requested two things, one is a site visit, I'm not sure if that done independently or as a group.

Ms. Richards stated independently.

Mr. Catizone stated and two was feedback from the Planning Board, which I believe that Whitney can interject on that. I also want to point out that since the 19th, the Estate Motors has officially withdrawn their application from the Planning Board but the area variances requested are largely associated with Diamond Properties and their operation and I can go through those with you specifically.

Whitney Singleton stated if you would like me just to relay the thoughts of the Planning Board.

Chairman Rose stated yeah.

Whitney Singleton stated the Planning Board had two comments, the comments were with regard to the variances as to development coverage. They said that they were not in a position to comment on it because with the Mercedes application being withdrawn they didn't know what the extent of that variance that was being sought would now be and in light of the fact of certain parking areas and connecting areas would now be eliminated. And I think it's safe to say, I may be putting words in their mouth, as it relates to some of the development coverage on the southern end of the property, they saw that as being a necessary aspect for there to be bathrooms and viewing stands for the ballfield area. With regard to the request to go from 10 U-Haul vehicles to 30, the Planning Board expressed concerns as to whether or not that was becoming a separate principal use as opposed to an accessory use for a storage facility.

Ms. Richards stated because of the size, I mean the number.

Whitney Singleton stated yeah.

Chairman Rose stated the absolutely number.

Mr. Catizone stated well let me just clarify a couple of things, we'll get into the development coverage but I think the parking, the fleet parking is a little bit simpler to address. U-Haul is going from 10 spaces to 17 spaces, I'm sorry, 10 spaces...

Whitney Singleton stated 30.

Mr. Catizone stated not 30.

Ms. Richards stated U-Haul specifically is going to 17.

Mr. Catizone stated U-Haul is going from 10 to 17. The additional 13 spaces are for other tenants and I have them listed in my letter here, and I'll show you where those are on the site plan, so they breakdown in this manner, 4 for Grand Prix, 2 for Dasko, 5 for Diamond Properties and 2 for JT Roselle.

The Secretary stated I'm sorry, how many for Diamond Properties.

Mr. Catizone stated 5 for Diamond and those are mainly vehicles, specifically Diamond Properties that are parked there at night, they're usually out, maintenance vehicles as other sites, through the day. So we did not want to assign any of the 13 parking spaces because these vehicles are in and out all day and we want to reserve the spaces for visitors to the site. So, although we are going from 10 to 30, as far as U-Haul is concerned, we're basically talking, they currently occupy 10 spaces here and taking the whole, which is, in reality, what's going on there now.

Ms. Richards stated is that reality?

Chairman Rose stated well the reality, I took a look this morning and I counted 36 spaces being used by U-Haul, all of that row plus most of the columns feeding into it.

Mr. Catizone stated these columns as well?

Chairman Rose stated yeah. So, there's no way that 17 is adequate.

Mr. Catizone stated we've, they're in the process, have gone back to our client and said, as a matter of fact, I think it was a comment from the Planning Board, is 17 enough and our client expressed that he believed that 17 was enough. So this application is for 17 U-Hauls and 13 other fleet vehicles, non U-Haul, whether that creates an enforcement issue or something else...

Chairman Rose stated it definitely does. This is not a new situation where you have one tenant with a heavier than normal requirement, maybe one that they don't even estimate properly, in a multi-tenant setup so that it's hard to know in most cases where the problem is. With U-Haul its very easy because they're all marked trucks but not only do they have these trucks filling all those spaces, a lot of the trailers are a bit wide, so they end up taking two spaces for one trailer, a couple of the trucks are longer than what would normally be allowed in a car size space, a number of issues related to that and I think in the end the attorney has mentioned that there might be a question of whether it's more a principal use as opposed to an ancillary requirement. That's not for this Board to determine.

Mr. Catizone stated the fact is there's over 600,00 square feet of area on this site and there are, I'm looking for the parking spaces. There are 933, I believe the number is, existing parking spaces so if you're talking about even 36 parking spaces occupied by U-Haul, which I'm not at the site everyday, but that's still a very small percentage of and I'm not disagreeing that the U-Hauls shouldn't be there other than the designated spaces, all I'm saying that even at 36 which may be an extreme condition, that's still a small number as compared to 933 spaces.

Chairman Rose stated 933 for 600,000 square feet, doesn't sound like a very large number. It would be one per thousand for straight warehouse use.

Mr. Catizone stated yeah, they have a shared parking condition to date of 142 parking spaces.

Whitney Singleton stated let me clarify that, they are double counting 142 parking spaces, when he says it's a shared arrangement. They're short 142 parking spaces but the Planning Board has allowed that because functioning on the site has worked with off-peak operating hours.

Mr. Catizone stated we've also provided a parking study prepared by Maser Consulting that basically shows the peak parking demand during the peak hours of that day and that shows that there's ample parking.

Chairman Rose stated but is the building fully occupied?

Mr. Catizone stated I believe it is at this point, I'm not sure, I don't think that and don't quote me on this but I don't think Wine Enthusiast has moved out, that was 113,000 square feet that Estate Motors was supposed to take. So the parking study when it was conducted was on the fully occupied building.

Chairman Rose stated well certainly I think on the parking issue there's a need for more reality on what U-Haul and maybe that leads to other requirements, if that should be deemed a principal use, it might upset some calculations all around.

Whitney Singleton stated I think it's also going to put you, if you're going to allocate a portion of your existing spaces to fleet vehicles, which are additional requirements, then those spaces which you're taking away from available parking, is now going to put under your requirement. You're going to be deficient to the number of spaces that you represented to the Planning Board you're going to have.

Mr. Catizone stated well yes, the fact that we're taking spaces away from existing and allocating them to fleet, that only applies specifically to U-Haul, the other fleet vehicles are again, more transient vehicles, again the Diamond Property vehicles would be there are night but during the day when there's higher parking demands, they're unlikely to be there. The other fleet vehicles are for deliveries and other similar uses and again we want to keep those spaces clear for the people who visit the site. One of the things that we done as part of this application, the Planning Board application in the information conveyed to you is we've gone ahead and we've calculated, it's really a housekeeping issue, we've calculated the zoning requirements per the letter of the law. The previous applications prior to Estate Motors, considered the entire site for zoning. We broke it down on a zoning specific basis, the previous applications did not subtract the fleet vehicles, in our application we are accurately representing if we have fleet vehicles, this number of 30, gets added to our parking demand. The 10 spaces that were already approved and that they have a variance for, really in the past did not show up in the zoning calculations. So I think that the information that we presented to the Planning Board and this Board as well, is accurate and most accurate from other applications. We've really gone through painstaking measures to make sure that we crossed our T's and dotted our I's, so you know, is true that we're not going to have the additional parking spaces that estate Motors required? That is true. But I believe that the parking, so we're talking about these areas here which are currently loading docks, which will remain truck parking and loading, the parking area here remains relatively unchanged from the existing condition. So again, a lot of the, a lot of our efforts were more housekeeping, administrative issues to give you an accurate zoning analysis. The parking study, you know, also included spaces occupied by U-Haul and the 13 spaces, the 13 additional fleet vehicles have bene operational for some time, again we're trying clarify as far as the zoning calculations exactly what's

going on. So, I think that the parking study that was submitted by Maser, addresses all of those issues and it shows that and I don't have it in front, oh, I do, shows that there's a significant portion of the parking spaces available during the peak hours.

Chairman Rose stated did their study actually count the U-Haul vehicles as well?

Mr. Catizone stated yes, I believe that they count available spaces.

Chairman Rose stated I believe, I might ask the Building Inspector, had suggested that your office might be able to do a...

Mr. Miley stated site visit.

Chairman Rose stated a site visit.

Mr. Miley stated we can conduct that, sure.

Chairman Rose stated a few days, just to take a count of things, it wouldn't have the same weight as a formal study but at least it will give us some information that it might not be suitable.

Mr. Catizone stated if you need us out there, please call my office, we're happy to join you. If you don't need us out there, just the same.

Mr. Miley stated we can meet up, take a look.

Ms. Richards stated we want a little more information on the parking before we make any decisions.

Mr. Miley stated you want to call up and schedule that, we'll meet out there together.

Mr. Catizone stated that's perfect. The next issue is the coverage, again, the previous applications calculated the lot coverage as the entire lot. There are several things going on here. One is this line here is the zoning district line for the ML, which excludes all of these easements and access ways. The next thing is that this line here is the Town/Village line, again previous applications considered the site a whole and if we consider the site as a whole, with the additional 5,286 square feet that we're proposing, we come out with 69.9% development coverage, which is below the threshold for the zoning. So again, they considered it as whole, applying the ML district requirements to it. We've actually broken the different districts, the CL's, the ML and the Town of Bedford, broken those out, specifically for 333 [North Bedford Road] nothing to do with outparcels, 793, 795, this is specific to the DP-21 property and what we've determined is under those calculations, the historic coverage, it's easier to go to my letter was 73.2%, that's Grand Union, they had a lot more impervious surfaces, since Diamond Property has been operating this, we've added or they've added landscaped islands, they've taken down a couple of small buildings, there was a little gatehouse on the northern most driveway, there was also a small structure at this location and again you can see that there's no landscaped islands or anything. So by adding the island, the existing development coverage is 71.8% and we're proposing would 5,286 square feet of additional pavement that that would go up to 72.2%. I don't have the exact numbers but I can show you what that development coverage is. First is, with respect to Estate Motors which has withdrawn their application, additional sidewalk in this area. If we do a comparison you can see that there's a significant amount of pavement abutting the building here, there are some sidewalks but we're basically proposing or this application had proposed to make this all sidewalk essentially. The second items and I'll group them together, are again housekeeping in nature, there is a small access road that was not counted for in any other application, that access road leads to a valve located in this location to drain their fire sprinkler system, so that's a paved roadway previously it was shown as this 90° or sharp elbow here, in fact it does go out to the south, that's included in the development coverage. The second is, there is a tenant called Cosentino, they're here and they have, where are they, right here...

Chairman Rose stated middle of the left face.

Mr. Catizone stated they had a, I think technically it's a temporary structure, its aplatform which is on temporary footings, they're not 4 feet deep, it's more of a pedestal, that they use as a display. So if you wanted a nice stone patio at your house or place of business, they could show you what that looks like. That was not included in the development coverage in any other application but it does apply under the application s we've added that. The next item is the field house and associated sidewalks, so of the and I'm just estimating here, of the 5,286 square feet, I would say approximately half, maybe a little less than half is associated with these improvements and the other half is associated with the additional sidewalk in this area.

Chairman Rose stated is this tabulated someplace, I don't think we...

Ms. Richards stated so now that Estate Motors isn't going in, what exactly is it that you need, because you're changing things, no?

Mr. Catizone stated our client has advised us to go forward with the application as we submitted it. So, instead of the 5,286 square feet, it would be 2,650 [square feet] roughly on the development coverage.

Chairman Rose stated so what is he not...?

Mr. Catizone stated so he's asking us to proceed with the 5,286 square feet.

Ms. Richards stated but with an unknown tenant?

Mr. Catizone stated well, its likely that his next tenant will be another warehouse use. The worst case scenario is that A. this deal comes back to life, or B. that there's a similar tenant and you still would have capped that at...

Ms. Richards stated I supposed it doesn't matter who the tenant is because they can [inaudible].

Chairman Rose stated yeah.

Ms. Richards stated but I think we want to find out about the parking before, even though we could do two separate, right?

Chairman Rose stated the sidewalk is adding to the coverage?

Mr. Catizone stated the sidewalk is adding to the coverage.

Chairman Rose stated so why would be using 2,600 instead of 5,286, am I looking at the wrong...?

Mr. Catizone stated the total added coverage is 5,286 including this sidewalk and including this, this, and that, the total is 5,286, I'm approximating that approximately half is this and half is...

Ms. Richards stated oh, the...

Whitney Singleton stated Pete, are you including as part of your requested relief development coverage variance for space for which an application has already been withdrawn.

Mr. Catizone stated yes, I am.

Whitney Singleton stated so you're hypothetically indicating to the Board that your client may need this in the future.

Mr. Catizone stated he could but again...

Ms. Richards stated there's no application.

Mr. Catizone stated there's no application, right.

Ms. Richards stated so what are you asking us? If we might, sometime in the future?

Mr. Catizone stated per client's request, we're asking for the 5,286.

Whitney Singleton stated it makes it very difficult to evaluate whether or not this can be done without a variance when we don't even know what the application is?

Ms. Richards stated there's no application, so we can't do anything.

Chairman Rose stated yeah, I mean the only thing...

Mr. Catizone stated well there are parts of this that are necessary, I would say. The roadway...

Ms. Richards stated right but there's currently no application for a variance because it's been withdrawn.

Whitney Singleton stated no, I think what's happened is the application preceded, the site plan amendment incorporated various aspects, included an application for Mercedes Benz, Mercedes Benz certified Pre-Owned, it included an application for Cosentino Tile, it included an application for a viewing area and a bathroom for the ballfield area and various, you know, incidental aspects of it.

Mr. Richards stated right.

Whitney Singleton stated they have withdrawn the application for Mercedes Benz, so that is going to alter his numbers and rather than alter his numbers, he's saying I would like the application for everything anyway because we might do something the future where we'll need these variances. I just don't know how you justify a variance for a hypothetical use.

Chairman Rose stated it would be as if we had granted the variance just before finding out that Mercedes was withdrawn, the variance would still be valid.

Ms. Richards stated but we didn't.

Chairman Rose stated but we didn't.

Ms. Richards stated so therefore...

Mr. Catizone stated but when we're looking at the numbers here, this is 35 acres or something to that extent.

Whitney Singleton stated 38 [acres].

Mr. Catizone stated 38 acres and when you're looking at the development coverage, zone by district, when you're looking at 1.1 million square feet of development coverage versus 1.14 [million square feet], again it's a very small, you know, piece of the puzzle.

Chairman Rose stated but won't the Planning Board want to be just dealing with what's happening now.

Mr. Catizone stated I'm sure the Planning Board would like to see the coverage items identified, Cosentino and this access road resolved. And I'm sure the Planning Board would love to see, and I don't want to speak for them but, the Field House constructed. That is something that my client is willing to go forward with.

Ms. Richards stated could you take out the sidewalk?

Chairman Rose stated has the site plan been approved at this point, as if Mercedes were still going in?

Mr. Catizone stated we received a negative declaration...

Whitney Singleton stated for an application that's been withdrawn.

Mr. Catizone stated for an application that's been, well Estate Motors has been withdrawn, the application had many of these aspects, all of these aspects in it.

Chairman Rose stated so, I don't know where to go with that but if the Planning Board has an approved plan, I think our Board needs something that...

Whitney Singleton stated the Planning Board hasn't approved anything. They've adopted a conditioned neg. dec. and the applicant can no longer satisfy the conditions. So that's water under the bridge. I apologize if I'm speaking out of turn here Pete, but I was under the impression that when you modify the application to eliminate Mercedes, any additional development coverage associated with Mercedes, would similarly fall by the wayside and that your request for a variance would be modified downward to reflect Cosentino, the ball field and the sundry development coverage for sites within the property and I thought that's what we were coming in here with and we were going to come up with a calculation for that. Frankly, I would want to advise your Board as to whether or not you could entertain an application for a use that's not even proposed.

Chairman Rose stated yeah.

Whitney Singleton stated because it's going to beg the question as to whether or not there's even a variance needed, we don't know what the use is and whether certainly it's going to be self-created.

Chairman Rose stated right.

Mr. Catizone stated well there's definitely a variance required because of the Cosentino, the access road extension and the field house, which again...

Ms. Richards stated but that's not what you're asking for though, just that...

Mr. Catizone stated I'm not asking for just that. So the question of whether the variances required without Estate Motors, the answer to that is yet. The question of what is that number, again that's you know a legitimate question. Again, we were advised to proceed with the application as it stands, as it was submitted.

Chairman Rose stated well I don't see how we can proceed without anything definite that we can say this is the plan that we base these figures and variance approvals on.

Mr. Boxer stated so redo your submission, if they want to do it, I think you should redo your submission, forget the Mercedes part and we can base it on what's there.

Mr. Catizone stated I think the issue is that a lot of effort, time, and money has been spent on developing the plans and my client is willing and able to construct the field house and his position is he did not want to extend additional effort on this, we've spent over a year and half on this application and you know, he feels that we're at a point where we can, at minimal, give the Village the field house that they want and I fully understand your position as well.

Ms. Richards stated we can't.

Chairman Rose stated but I think we still need to see specifically what it is that we're basing these numbers on.

Mr. Catizone stated so we'll proceed with the parking review with the Building Inspector, I will take your input, happily take that back to my client and we'll go from there.

Chairman Rose stated okay.

Ms. Richards okay.

Chairman Rose stated while we have audience, is there anyone in the public that wishes to comment on this proposal, if not, we'll adjourn until we have more information.

Mr. Boxer stated and keep the public hearing open.

Chairman Rose stated and keep the public hearing open.

Mr. Catizone stated thank you.

Ms. Richards stated I'm going to set a timer for three minutes.

Chairman Rose stated okay, everyone is here, we're still live?

The Secretary stated absolutely.

6. Stephen Cohen
37 (39) Willetts Road
Mount Kisco, NY 10549
(SBL) 69.64-5-1

Case# ZBA 15-11

Mr. David Steinmetz and Ms. Jody Cross of Zarin & Steinmetz and Mrs. Ellen Cohen were present.

Chairman Rose stated okay, we will now proceed to the final case, Stephen Cohen, ZBA 15-11. This is a case that's gone on for some time and we've received lots of information not only for the present hearing or present session but for previous months as well. I note that some people who have signed the sheet have also spoken in the past, we want to just set some ground rules, there's a lot of strong feelings, I think, all around in the Town and the Village and the specific community about this case. We are not going to be family court judges and try to decide who said what, who didn't say what, we don't want to get into any kind of personal debate among people. We're looking for information that's factual, in particular right now, we're only looking for new information, we don't need to have the contents of letters repeated, we

don't need to toss in some information that is extraneous to the case. The case really rests on our judgement of the facts and that's, it's a very important thing. We want to make sure everyone can go home tonight, so we'd like to limit the comments to everybody that will speak to three minutes and we'll set the timer, that includes, owners, representatives, attorneys and with that, you sir, you're standing, I assume you are representing the applicant.

Mr. Steinmetz stated good evening Mr. Chairman, members of the Board, David Steinmetz, from the law firm of Zarin & Steinmetz here this evening, representing Stephen and Ellen Cohen. I will be as brief as I can be Mr. Chairman, I appreciate your opening comments. With me this evening, Ellen Cohen, unfortunately Steve, who is a pilot, is out of town, literally flying on business and could not be here and we did not want to adjourn this evening, so we wanted to proceed. My colleague, Jody Cross is here as well for continuity of the application. I've been involved in this from the beginning, although somewhat on the periphery, I read your transcript from the last meeting and felt that I needed to be here really for the reasons Mr. Chairman that you said, to make sure that your Board focuses on the facts, not on hearsay. But one other thing Mr. Chairman, and that is to make sure that tonight we're really clear on the law because this is not just a matter of fact, this is a matter of law and we're going to talk about that briefly. Before I get to that, I just want to make sure a couple things that we're not here for, we're not here for 130,000 square foot shopping center, we're not here for a community residence treating young adolescent girls with eating disorders, we're not here for 116 homes on 165 acres, we're not here for 150 unit assisted living facility, why do I say that? Because in the last month, I've appeared at a variety of meetings, I'm out too many nights a week and I've appeared on those matters and on each of those matters, there has been less information and less distrust than there seems to be on this. So, what I'm really hoping to do tonight is to be able to share with your Board the actual facts and Mr. Chairman, I urge you to give us a full and fair opportunity and due process to speak. There's a lot of people here who want to speak, they have every right to participate in the process but to tell my client that we're relegated to three minutes is grossly unfair. Having said that, I'm going to yield the floor initially to Ellen Cohen, who'd like to state some things, Mr. Chairman, because you asked for facts, I asked her to come tonight because I want this record to be abundantly clear. I don't care what's taken place in conversations in living rooms, I don't care what's taking place between e-mails between and among neighbors, I'm urging you folks, as the volunteers and the finders of facts that concern her property rights to listen to the facts. So I'm going to yield the floor to Ellen and I would like to make some comments and I hope you will indulge me with my clients' rights to be heard.

Mrs. Cohen stated okay, hi, I timed this before and it was five minutes, so I'll try and speak fast and thank you for this chance to speak, Stephen is sorry he can't be here. And I want to start with just a very brief background and that is that we love Captain Merritts Hill, we loved it before we even moved in, when we moved in 2009, we lived on Crow Hill Road, we used to drive visitors through Captain...

Audience Member stated we can't hear back here.

Ms. Richards stated just turn slightly.

Mrs. Cohen stated we used to drive people through the neighborhood just to look at the architecture because we loved old homes. I grew up in an old home, we loved it. But we loved more than just the architecture, we loved the culture, we longed for a community in which to raise our kids, for a place where people watch out for each other and we knew that we would find that here. We hadn't even listed our house when we saw this house for sale and scrambled to get our house sold so that we could be a part of this community, we were so excited, this was our dream come true and we had felt like we had found our forever home. However to say that the past few years have lived up to our hopes, would be a lie, despite our friendships here and our joy at finally finding a historic home in a great neighbor, we were quite naïve about the neighborhood's issues.

Audience Member stated can you turn?

Mrs. Cohen stated specifically we had no idea about the fears that people harbored about the future of Captain Merritts Hill, due to the illegal apartment issues within Mount Kisco.

Chairman Rose stated Miss, just pause it here, if you stand over there and speak in this direction, I think that microphone will still picture you up...

Mrs. Cohen stated this one?

Chairman Rose stated yeah and may be able to be heard...

Mr. Boxer stated and I would suggest, if you want to hear, move forward...

Mr. Steinmetz stated exactly.

Mr. Boxer stated there's no reason to be in the backrow, we're not going to try to get everyone to back of there. So if you're in the back, you'll hear what you can hear and that's all you can hear.

Mrs. Cohen stated specifically we had no idea about the fears that people harbored about the future of Captain Merritts Hill, due to illegal apartment issues within Mount Kisco. We were so unaware when we moved in that this undercurrent of fear that we clumsily splashed right into river without realizing it. Although we had hoped the garage would someday be a place for Stephen to have a workshop and a place to tinker on his motorcycles and provide extra room for our whole family, we did not plan to renovate the garage space immediately. The house in general needs a lot of attention and we were looking at the main building first, however when the previous owner, 60 years of accumulated possessions were removed, we were told the building was going to fall over. To prevent this from happening, our renovation priorities shifted, we hired an architect and followed her lead and perhaps that was another way we were naïve, we didn't seek any other advice on how to handle this situation initially. In our desire to be welcomed into our community and having moved very large construction equipment into the backyard just months after our closing, we thought we would calm people's natural fear of change by being open and friendly and chatty about the renovation. We invited our two direct neighbors to see the space, which they did not, but to look at the plans, which one of them did, but we were too casual and tentative agreed to things in those meetings only to do our own research later on and to change our minds but we didn't communicate the best about that and we did our best to make sure that everything was properly permitted and built to spec. And we were open in our conversations with both Rob Melillo and John Landi, the then Building Inspectors, about our intentions for the space. When our neighbors became concerned about the legality of the space, we hired lawyers to help, realizing that we were way beyond our capabilities. In retrospect, there are things we would change, if we had known what people had been through with illegal apartments in Mount Kisco, we would not have been so casual about how we talked about the space. We would have avoided confusion and fear by putting things down in writing, so that everyone could see that we did not have ill intentions and that we did not, that we did receive the proper permits to renovate and save the structure. We are a two working family household, with two kids, now ages 5 and 2, this started when I was still pregnant. We tried to reach out to people to talk to them but many have refused, Mary Farrell didn't respond to e-mails, Caroline Pasquale didn't respond e-mails, Jeanette Benway refused to meet with me, so as much as we tried, we don't have the longevity or the leverage to get people to even listen to our side. This renovation was never about creating an illegal space, when our renovation became so controversial that we felt attacked in person, in these meetings, in e-mail, we started to retreat and no share anymore and us clamming up seems to have only added to paranoia and allowed a personal campaign by an influential neighbor who doesn't like us, to gain traction. We now see that our application for Certificate of Occupancy listing the use as office, was too limited and it should have listed something broader to capture the full range of use. We thought the paperwork was fine based on conversations with John Landi at the time, not realizing that he was about to be instructed by the Mayor to go through everything with a fine tooth comb because of our neighbor's insistence and this is something that the Mayor has told me that he did. We should have had more things in writing, we should have been more thorough with the paperwork, we made some mistakes but they were out of good intention and naivety. Hearing that 17 of our neighbors had signed a petition against us was gut-wrenching, sorry...

Mr. Steinmetz stated are you okay?

Mrs. Cohen stated made only worse by reading the letter and seeing it full of lies. How could these people, many of who have never met us, I have not met a lot of these people here, how could they put their name to a piece of paper that says we're terrible people. But you know what, over the past 4 weeks my attitude about it has changed, although we've been on the receiving end of this twisted, personal vendetta of a marketing campaign driven primarily by one individual and his friend, the community response to the campaign is actually one that I respect. I see the response to this campaign as being about the desire to preserve our community, the willingness of neighbors to stand up and support another neighbor asking for help, the implicit trust that neighbors have for other neighbors and the united front against illegal apartments and the havoc they wreak on our Town and community. These are all things we agree with, these are the characteristics of a close knit neighborhood that we craved and sought when we bought the house, so as hurtful as it was to see people sign their names to a laundry list of list about us, the sentiment behind them doing so, is actually something that I understand and maybe even agree with. In a way this petition made me realize that this is a neighborhood I still want to fight to have a happy life in. I want my kids to grow up around people who care so much, who don't just care but who are willing to take action to protect the community. We understand now and share the fear around illegal apartments harming property values, I too am concerned about my property value, despite what neighbors were told, we do not want this to be a separate residence. We were up front with the Building Department about our intentions for the space, we are willing to put conditions on the C.O. that don't just protect the neighborhood today but protect it far into the future. We are aligned with what the larger community of neighbors want, a low density single-family zoned, close knit community. Granting us a C.O. for our garage space with the clear

conditions that the garage will never be used as a residence or a place business is the most straight forward and clear way to not only preserve our communities strong values but to send a message to any future owners of that space that it can never be rented legally, illegally, or otherwise and we ask that you do that not just for us but for our community. Thank you.

Mr. Steinmetz stated Mr. Chairman and members of the Board, I'm going to be very brief because I think I can follow that with a couple of salient points. I read the e-mails that came in, that we were provided today, some of which came in two weeks and for some reason your protocols don't allow us to see them until today. There is no use variance being sought by my client, I think your Board is very well aware of that but I know that there are members of community that have written repeatedly that we're here asking for a use variance. There is no residence being sought about the garage, there's not rental property being sought above the garage and there's no office or place of business being sought. All we've been trying to do and you've got to understand, my office has dealt with I think four, maybe five different Building Inspectors from the beginning of this application. We're trying to simply get the Cohen's a Certificate of Occupancy to close out the building permit that they openly and lawfully filed to finish the space above the garage. I'm very well aware of your Code, I've conferred with your Village Attorney, I fully understand the concept of accessory use and we are seeking for that garage space to be used as an accessory space, not unlike the Certificate of Occupancy that was granted in 2006 for occupy-able space for one of our neighbors, in 2009 for Planning Board member Doug Hertz to have a two story barn and garage converted to "a recreational loft" at 9 Mountain Avenue. Not unlike what developer Bill Balter, a friend, someone whom I know, who three months about got a Certificate of Occupancy issued by the Village of Mount Kisco at 5 Willetts Drive for a recreation space with bathroom, as a recreation space and study. We're here under your Code and your Code says, and I'm citing to Section 110-8 in the RS-12 low density zone, other customary accessory uses, buildings or structures subject to the applicable provisions of article five, such as, such as playhouses, greenhouse, cabanas, trash containers, outdoor air conditioners and the like. The phrases such as and the like, are phrases that are drafted into zoning ordinances when they're not designed to be restrictive and constrained to the words that follow, they're designed to identify examples that are about to follow, they're designed to be broad. What we are seeking is something that is akin to a playhouse or a cabana, when I go to your Code, your Code doesn't tell me what a cabana has but I know she can have a cabana and all the neighbors can have a cabana. So I went to Webster's Dictionary, I'm sure Mr. Boxer can tell you that when we seek an interpretation of a zoning ordinance and there is no clear definition, we go to the plain meaning of the term. The plain meaning of the term is a shelter resembling a cabin with an open side facing a beach or swimming pool or a lightweight structure with living facilities. We're seeking to have the space above the garage utilized for a family to utilize in connection with their life on the property. We're not seeking an apartment, we're not seeking a business, we're not seeking to turn that into a separate residence. This is a legitimate accessory use application, it has been from the first phone call I had with John Landi, it's a shame John came and went and it's a shame that Rob came and went and various folks and I feel badly for Peter that he's stepped into the middle of this and we appreciate his open and honest, his honesty with us from our beginning of our involved with him. We're not looking to do something that should be of any trouble to the neighbors.

Chairman Rose stated yeah, well we understand that, we're basically talking about what the words mean and the application of them.

Mr. Steinmetz stated and my last comment Mr. Chairman, to the extent that you're talking about what the words mean and to the extent that the word cabana is no defined in your Code, to the extent that the word playhouse is not defined in your Code, to the extent that the word greenhouse is not defined in your Code. I would remind all of you that there is a black letter doctrine, I want the record to reflect that there is a black letter doctrine of zoning law that you're familiar with...

Chairman Rose stated but there's also a...

Mr. Steinmetz stated which is, if I may finish the sentence, that zoning is in derogation of common law property rights and if there's ambiguity or if there's confusion or if we can't glean from section 110-8 precisely what the drafters meant, then it gets construed in favor of Ellen Cohen and it gets construed against the municipality.

Chairman Rose stated okay but what you didn't say is that the words accessory use is defined in the Code.

Mr. Steinmetz stated without question, I'm reading you precisely what permitted accessory use tells us in this very zone.

Chairman Rose stated in the definition section of the Code, it defines accessory use.

Mr. Steinmetz stated accessory use is a, let's make sure we're all clear and we're all reading the same definition, an accessory use is a building or use which is incidental and subordinate to the principal

building or use on the lot. So the principal use on this lot, what's the principal use, the principal use is a dwelling, a dwelling is a place where folks sleep, where they eat, where they're protected from the elements because its shelter. So we know that there's a principal use on the property, it's the home, it's the shelter, it's where she and her family reside. We are not seeking a residence in the accessory use, we are seeking to use that garage structure like everyone else in this room, as incidental and subordinate to the dwelling. We can discuss what's going on in there and I want to close, Mr. Chairman and members of the Board, with something that I discussed, I think, clearly with your Village Attorney and my client did a better job of explaining it than I can, if there's question about how you're going to use, how she's going to use this space, let's draft it, let's memorialize it in the Certificate of Occupancy. On the day before his departure, Mr. Landi said to me by telephone, David, I'm sorry we never got that Certificate of Occupancy finalized because it could have contained language that would have made it abundantly clear this was not going to be a residence and this was not going to be a place of business. John departed, the rest is history, all I can say to you Mr. Chairman and members of the Board, my client wants to be two things, one, she wants to be a good mother and the second is she wants to be a good, lawful citizen of Captain Merritts Hill and we're ready to work with your Board cooperatively. Alternatively, Mr. Chairman, I must tell you, I think the record is abundantly clear that what we're seeking is a lawful accessory use of this particular structure.

Whitney Singleton stated can I intervene, since some statements are being attributed to me or to a former Building Inspector. First of all, I was approached by then Building Inspector John Landi to be told by him that he was fed a number of lies with regard to this application and would I help him draft a denial letter. So the statements that Mr. Steinmetz, you're making, are inconsistent with my experience. Secondly, the only reason that the record is abundant with anything is because Mr. Steinmetz is the only one that's been talking for the last 20 minutes, I don't know how we got beyond the three minutes but suffice it to say, his assessment of what is a permitted accessory use is not consistent with what he said and is not, and while zoning may be in derogation of common law property rights, it doesn't mean he can interpret it any way he wants. The accessory uses in the Code, which are the same for every single residential district, talk about things that are traditionally not in a house, a tennis court, a swimming pool, a greenhouse, a cabana, exercise equipment, a play area. Those are things which you generally do not find in the principal residence and if you combine that with the fact that a dwelling must be within one building, not multiple buildings, a dwelling must be fully contained within a single building under our Code. I would say that Mr. Steinmetz's position is completely belied by the Code.

Mr. Steinmetz stated it's too bad the Code isn't written that way, Whitney.

Whitney Singleton stated well I...

Mr. Steinmetz stated its just too bad isn't written and you know it's not written in a restrictive fashion and you know that the language is expansive.

Whitney Singleton stated I can read the definition of dwelling unit which is a building, or entirely self-contained portion thereof, it doesn't say in multiple buildings, it says in one building or a portion of a building.

Mr. Steinmetz stated and the one thing Mr. Chairman and that's why I started with the definition because I think its so critical to understand the law here, the law is less than clear. The law, we start with your statute, your statute tells us that its customary accessory uses, well what may be customary to you, may not be customary to Ellen. So we look for defining terms that come behind it, we get the phrase, such as, that is a critical legislative enactment, it doesn't say limited only to, it says such as.

Chairman Rose stated we understand that it being repetitive, but with all due respect...

Mr. Steinmetz stated well I'm being repetitive simply to correct your Village Attorney.

Chairman Rose stated we'll be the judges to who we think is correct. But with all due respect, if you could read anything into that statement on accessory use, they might as well take it out of the Code.

Mr. Steinmetz stated I disagree.

Chairman Rose stated you're suggesting it has no meaning at all.

Mr. Steinmetz stated I tremendously disagree, I've spent too many nights of my life trying to protect property rights on some evenings and on other evenings like Whitney, making sure that local governments get to exercise their lawful right to regulate how we live. We went through this a century ago with the [inaudible] Case where New York at the cutting edge, decided how we were going to assign people's property rights and what was going to be allowed in certain sections...

Chairman Rose stated in the interest of time, sir, let us stick to the case that we are trying to decide.

Mr. Steinmetz stated I think that would be prudent and here's one final comment and I'm sure the public wants to speak. I know that two cases were discussed with your Board at the last meeting and some of you disagreed with our reading and I'm referring to *Renderly v. Town of Huntington* and I'm referring to *KAM Hampton v. Zoning Board of Appeals of East Hampton*. The reason Jody and I brought these cases to your attention, I'm very well aware they relate to other communities zoning ordinances but what they tell us is that the courts look at things like gyms, libraries, offices as customarily incidental to a main residence. Now I know, obviously Mr. Singleton feels very strongly that one shouldn't have a gym outside the confines of the principal dwelling, that's not what the Village of Mount Kisco has legislated so I respect Whitney's right to take that position...

Whitney Singleton stated I have never taken that position.

Mr. Steinmetz stated well then one of things that unfortunate is the first thing that Ellen Cohen actually applied for, if you go back to the original letter was a gym...

Ms. Cross stated a playroom and gym.

Mr. Steinmetz stated a playroom and gym and unfortunately she was to some extent, maybe, I don't want to say misled, she didn't get great information from her architect. She didn't seek legal counsel until she found herself in the middle of the crossfire of a wonderful community that shouldn't be at each other's throats. There are a lot better things for the folks of Mount Kisco to be doing than to show up at 9 o'clock on an evening to discuss what we're going to do inside the four walls of the finished space. John Landi gave us a permit to finish that space, John Landi gave us a permit to build a bathroom in it. With all due respect to Mr. Miley, Mr. Miley recently gave a Certificate of Occupancy to one of our neighbors to essentially do the exact same thing. She's not asking you folks to do anything different from what anyone else on Captain Merritts Hill.

Chairman Rose stated okay, sir, you have taken a lot of our time, way over three minutes.

Whitney Singleton stated just a clarification, the application is not as David points out from day one for a playroom or gym, that was the statement when the Building Inspector or Assistant Building Inspector specifically inquired on March 14, 2014, what use will be going in here and the architect responded by saying this is a quote "the loft space will be used as a playroom and gym." When they actually submitted the application for a Certificate of Occupancy, by Mr. Steinmetz's firm on July 10, 2014, the application was for a home office and guest room.

Mr. Steinmetz stated is that correct?

Ms. Cross stated no, she had said office.

Whitney Singleton stated that is a quote.

Mrs. Cohen stated it said office and then a letter was submitted to clarify.

Whitney Singleton stated and then it was clarified on February 12, 2015 as an office, then on June 22 it was clarified as a remote business office for Mrs. Cohen and residential quarters for her mother-in-law, these are all quotes. And then on August 5, 2015, it was modified to be on finished room and one bathroom on the second story of attached garage. Then on March 29, 2016 it was modified to read an accessory functional living space for their family, whether its referred to as a den, playroom, living room, or office...

Mr. Steinmetz stated exactly.

Whitney Singleton stated the intent is to provide a place where the family may watch television, utilize a home computer, play video games, or sit on a couch, read a book, or play a board game, or any other similar family activity.

Mr. Steinmetz stated thank you for clarifying with that last statement.

Whitney Singleton stated and then it was modified yet again in May of 2016, they intend to use the finished room as functional living space. Living space is not accessory space, then it was modified again...

Mr. Steinmetz stated so then let's...

Whitney Singleton stated on May 16th that the Cohen's intended primary use of the garage has always been for a playroom, gym, office, study, recreation space et cetera. However its denoted, and then it was modified yet again for living quarters for Mrs. Cohen's mother-in-law, it was modified through a then, modified in August of 2015 for a revised application where the stated uses were again modified, for a finished room and one bathroom on the second story. Tegardless of incorrect phraseology of the original C.O. application, the Cohen's request your Board to determine that the project is a permitted use without identifying what the project is. And so it reverted back to a finished room and bathroom which is not a use. So to say that there was confusion and you're here to clarify it, it's changed 12 separate times.

Mr. Steinmetz stated so let's try to clarify it right here and now and that's really what we've been trying to do.

Chairman Rose stated I think, yeah...

Ms. Richards stated we need to hear...

Chairman Rose stated we need to hear from other people.

Mr. Steinmetz stated we want you all to have a full and fair opportunity to do everything you need to as long as we're given a full and fair opportunity to make sure that the record is clear.

Chairman Rose stated the record is in print, I think that...

Mr. Steinmetz stated the record is in print until the folks start to speak and information's given, if we disagree with it Mr. Chairman, all I'm asking for is my constitutional right to respond.

Chairman Rose stated sure, the written record is there, I mean those quotes and changes are not pulled out of a hat.

Mr. Steinmetz stated without any question and that's why my colleague tried to clarify it in our last written submission because of, we watched how this thing has gone through a tortured history without any doubt and I know I'm aggravating some of your other Board members, so I will sit, as long as we're given a chance to respond.

Chairman Rose stated okay.

Mr. Steinmetz stated thank you, appreciate it.

Chairman Rose stated okay, we have a list of 9 names, I think unless someone has actual new information, not just to rehash, we've heard verbal arguments that tend to sometimes confuse more than to clarify, it becomes more clear once the record is put down in print and laid out. But if someone has something new to add, then we certainly will entertain your comments and again, now I strictly will hold to the three minute limit for anyone speaking.

Mr. Petrick stated for everyone from here on out, right sir.

Chairman Rose stated excuse me.

Mr. Petrick stated for everyone from here on out, correct.

Chairman Rose stated yes, everyone. Okay, Keith Ferguson.

Mr. Ferguson stated thank you, I have new comments to make, thank you for giving me the chance to speak. So this issue is not personal, even though Mrs. Cohen tried to make it sound like it was. It's really about a fundamental problem we have in Mount Kisco that she alluded to which is regard to enforcing the Building Code, it's an issue that's now to come to the point that the school district, it's starting to effect the school district. I serve on the school district's budget advisory committee, one of the key problems facing our school is that Pound Ridge and Bedford are seeing a sharp decline in enrollment, much like neighboring district like Chappaqua and Katonah. However, Bedford Central has flat enrollment overall, and that's because Mount Kisco's student base is increasing, as cost inflation pressures continue, the only outlet is to cut services. The recent budget failed due to not enough support in Pound Ridge and Bedford, many of those people view Mount Kisco's growth as a structural problem, there aren't any simple solutions but one thing Mount Kisco needs to do is be very careful about allowing increased living space and apply the enforcement consistently, the Building Code consistently through all the neighbors. The Cohen's finished garage is another part of Town, if it was in another part of Town it would very easily be used as an accessory apartment. I don't want to get in a tit for tat on the letter going backing for but I do want to

clarify a few things, one, the neighbors who chose to sign the letter received all the public information that I had including a denial of C.O., that spelled out exactly how the Town viewed and the garage as an accessor use. Two, I know many of the neighbors personally, they know I'm not one to make up facts, misrepresent conversation, ultimately they decided to sign on their own. Three, from the start, the single goal of that garage is to make it sleeping quarters for overnight guests. Four, for purposes of getting a C.O., the Cohen's have modified their application as you've heard tonight. Make no mistake about it, the goal is for sleeping quarters. So variance and change of use interpretations should be reserved for what is necessity, the Cohen's have a large house already, the Village should not make this accommodation particularly when it needs to balance a tighter zoning code throughout the entire Town, thank you.

Chairman Rose stated Ann Whalen.

Ms. Whalen stated its going to take me three minutes to walk up there.

Ms. Richards stated he left over a minute for you.

Chairman Rose stated not until you start talking, that's when the clock starts.

Ms. Whalen stated thank you, thank you. Now, I wasn't, I don't know if what I'm going to say has been said before because the last meeting you had, I was working, it was a primary election and I worked the polls, so I was unable to get here and we were very, very busy, okay. Mrs. Cohen, this is not against you or anything, whatever but also, I received a letter, the letter was addressed to my husband but I'm sorry, he's not able to come here to speak. If you want to see where he is, he's up on Lexington Avenue.

Mrs. Cohen stated we get the names from Town.

Ms. Whalen stated both names are on the, both names on the, don't argue with me lady.

Ms. Richards stated alright, don't fight over the names.

Ms. Whalen stated now, I've heard very many different stories about what's going to be used in this, as Whitney said, in this structure. When I heard, I go to bed late and I get up late and this banging was waking me, so I came down to Village Hall and asked what's going on there. They're putting a gym and a bathroom in there, I said why do they need a bathroom, there's plenty in the house, the house is three stories high, there should be plenty of room there. Okay, now I had a neighbor who was moving and he had lots of trees on this property and I think you have to look into the future and see what's going to happen next, he left the dead tree on the property and he said to me if it falls, it won't hurt any of your trees, fine. He cut down a lot of trees, the Tree Board gave him permission to cut the trees down, fine. Keith's kids were playing outside, the tree came down, luckily it didn't hit them, it cost me \$400 to move the tree, that gentleman who said, had spoken to me, moved away. My backyard after 30 years, I've been there 36 years, after 30 years, I was seeing things showing up that were never seen before. Now you can't walk in the backyard because you trip over the tree roots because of my backyard washing away. Yes, okay, find cut down the trees, good. Now, what else, okay, you give them this, you're going to set a precedent and I have a room over my garage, Keith does, there are two other people that have rooms, why can't we do the same thing that they're doing. Now, if they moved who's to say what's going to happen to the property. Thank you.

Chairman Rose stated thank you.

Ms. Whalen stated did I stay under three minutes?

Chairman Rose stated yes, you did.

Ms. Richards stated you had ten seconds to spare.

Chairman Rose stated David Ley, I'm not sure how you pronounce that. Ley.

Mr. Ley stated is this the good spot, is this the sweet spot.

Chairman Rose stated yes.

Mr. Ley stated Captain Merritts Hill is a special neighborhood, that's why we moved here. Recently, we in Mount Kisco have witnessed single family neighborhoods becoming neighborhoods of tenements. This a very big issue for the Town as a whole, my neighbors and friends are here tonight to protect their neighborhood, their investments, their memories, the future of their experience and the homes that they've worked so hard to get to. It's completely understandable why they would be here to do that. What needs to

be clarified however is what exactly is the most just want to protect it, will we let our fears cause injustice or will we find a just appropriate way to keep the neighborhood single family. There are arguments of about what was said or not said, the intentions of the Cohen's, he said, she said, I was not part of those conversations and I cannot comment on anything but I know their true intentions and they are not to rent the space. Much of what I've heard makes the Cohen's out to be schemers trying to pull a fast one on their neighbors and I just don't see it and I'm sad that its broken down into such a thing as that. What seems to me to be the issue is whether or not the Cohen's have a legal right to have a C.O. for their garage, whether sleeping or not and getting the variance for that. The fear is that they will lose their jobs, illegally rent it out and force neighbors into an uncomfortable position of ratting them out to the Town in order to protect the neighborhood, or if they move, the future occupants will do the same. Could everyone, the fear is that this would put people, their neighbors in an uncomfortable position but clearly everybody is in an uncomfortable position already. Whether or not the Cohen's have a C.O. that they want, the neighborhood is zoned one family and any violation of that would be grounds for legal action. I heard the example of the nearby house was grandfathered in as one of the chief reasons against allowing the variance, but my understanding is that that property was grandfathered in and therefore we're comparing apples and oranges. There is nothing to grandfather in. The real problem lies in the municipal enforcement of zoning code, I would expect that C.O. or not, if someone in the neighborhood were to suspect any house, anyone of illegally renting, that anonymous tips should start an investigation resulting in justice. This is what many people in the community expect, people have already talked about this, this is what they expect from government and even if it's a difficult task to do, we need to figure out a way to do it. To deny someone the variance that was already preapproved with a permit to a family that has spent thousands of dollars to do so, to do what they were told they could, is not going to save the neighborhood, it is in fact, in some way destroying the neighborhood. The Cohen's asked for a variance, public input is to be considered in your decision, much input has been given, please protect the integrity of our Town government, approve the permit and at the same time, help find a better way of enforcing the zoning. Thank you.

Chairman Rose stated next on the list is Tom Coleman.

Mr. Coleman stated thank you for the opportunity to speak, I think all of us here feel that the charm of the neighborhood is in low-density, single-family, I don't mean my comments to be personal in any way, I'm new to this debate but as I've seen it unravel, there is certainly a confusion over the definition of what the motivation for this work was and it's my fear that the true desire is one for sleeping quarters and I don't think consistent with what we all want. I further feel that the upfront way is to get a variance and then build and it's off-putting to do the work and then change the definitions and then seek the variance. So, those are my feelings, thank you.

Chairman Rose stated thank you.

Whitney Singleton stated Chairman, if I could get just clarify for the public because there seems to be some misunderstanding, the application being appealed from is for an office use, it's not for a residence. They've just indicated on numerous occasions that they would like to use it as a residence or sleeping quarters. So, the actual appeal before your Board is an office use, which is expressly prohibited in the Code.

Chairman Rose stated next on the list is Christienne Genaro.

Mr. Petrick stated she had to leave.

Chairman Rose stated she had to leave. Okay, Mary Farrell.

Ms. Farrell stated thank you Chairman and members. I just want to make sure that last time around you had a letter from me, you did, okay.

Chairman Rose stated yes.

Ms. Farrell stated so, I just want to say that whatever way this goes, it does affect all of Mount Kisco, not just our neighborhood of Captain Merritts Hill, so what could be, I believe. So what could be done for Willetts Road, can also be done in other neighborhoods. So, therefore it will create a lot more cars, it will create more on our water usage, et cetera, et cetera. I definitely oppose the application because as Tom just stated, the way I know of things to be done, you first get your variance first and then you build. I feel badly that a lot of money was spent out of pocket but that's the way you do things, you just don't spend money and then later say oh please, give me a variance. That's what I have to say.

Chairman Rose stated thank you. Mary May.

Ms. May stated hi, I wasn't at the last meeting but I've heard and I've read what's been going on. I grew up in Mount Kisco, I was raised here from a child, lived on Gregory Avenue, seen how that street has, people have started with little additions because they needed a little more room until the addition has become bigger than the original house. I moved away, we went up to Goldens Bridge, we lived in a Colony up there, the same thing started happening, we decided to come back to Mount Kisco, lived on Woodland Road, all of a sudden the single family neighbor is multi-family, I mean multi-family dwellings. Now, we heard about the house on Willetts Road, we were ecstatic, beautiful neighborhood, I had friends up there, that grew up, up there, I knew it to be, this was perfect, this was what we wanted. Hearing, you know, what's going on, my fear is for the future and what would go and it's a beautiful neighborhood up there and one of the last rare areas in Mount Kisco that you don't have people trying to change the law to create something different, that shouldn't be.

Chairman Rose stated thank you. Scott May.

Mr. May stated I don't have any new information to share with the Board.

Chairman Rose stated and last on the list, Caroline Pasquale.

Ms. Pasquale stated thank you for giving me the opportunity to speak. I have lived in Mount Kisco for over 50 years, my husband was born in Mount Kisco. I currently am employed by the Bedford Central School District and work in Mount Kisco Elementary School. They have over 700 students there and I total understand the reason for rules, I totally respect rules for that, I can't make exception for one student because if I do something for this student, then that one, then the other one and then suddenly I have three hundred kids running around upstairs. I think rules are very important and they are there so that exceptions aren't made because then someone else can interpret that exception in a different way. David was mentioning about finding a way to make an agreement. When my mother-in-law passed away, in her condo, there had been some sheetrock to cover the exposed insulation and a little bit of electrical work done in the basement. In order to sell the condo we had to get a Certificate of Occupancy, we have to get a permit for that and to do that, we had to undo the basement, in other words, take it back to what it was, my husband said please, we'll take out the electrical, can we leave the sheetrock and ceiling, so maybe there is a way to find a compromise. Maybe the house, maybe the dwelling doesn't need to have as much as it has, it does not need to be living space, it does not need to fulfill more needs than it needs to, if it's just a finished room, it's just a finished room. Does it need a bathroom? Does it need all the things that a house provides? So that's my feeling a little bit, there may be a way to find a compromise and undo something or alter something. Thank you.

Chairman Rose stated thank you very much.

Ms. Picinich stated excuse me, can I ask a clarifying question?

Chairman Rose stated yes.

Ms. Picinich stated Whitney, did you indicate that this was a variance for an office?

Whitney Singleton stated no, I said an office use. The more complete answer is they have, they have timely challenged the determination of the Building Inspector as to whether or not an office use is an allowed use that is what their challenge is. They have untimely in my estimation, sought variances that are required to build on this noncomplying structure. They have additional come before this Board during the course of the application and in an effort to clarify what their proposed use is and attempt to withdraw prior portions of their application, have thrown out a laundry list of uses, that David will disagree with me, today it's this, tomorrow it's that, and the next day it was this, so they have all been addressed or are being addressed by this Board because there's too many moving pieces. The variance application is 9 months too late and we've previously advised this applicant that they cannot modify their application or submit or withdraw it with prejudice or without prejudice and bring it later one. The concept is you're supposed to file within 60 days of the determination, the aggrieved party would have to file that determination within 60 days. They did that as to the determination as to whether or not an office use was allowed, they did not seek relief in form of an area variances from the requirements from the side yard setback and the expansion of the, expansion of the maximum building coverage for an accessory structure. And it is my position, whether the Board agrees me is something else, it's my position that those are time barred applications and the issue, because so many proposed uses in the effort to clarify have come up, I have recommended to the Board that they do a more comprehensive analysis of what is allowed and not allowed. So it's not, here's the application this week, another application next month, another application the following month, I've tried to help the Board seek clarification on that issue. So you have before an application for an interpretation for whether or not an office use is permitted and you have, in my estimation, an untimely application for a variance where two variances are required.

Ms. Picinich stated thank you.

Chairman Rose stated okay, I am going to call for a recess of the public meeting for a few minutes...

Mr. Steinmetz stated Mr. Chairman, before you do, may I have just a moment to respond.

Chairman Rose stated three minutes.

Mr. Steinmetz stated I appreciate that. I am just going to try to respond to a few things very quickly. For those who claim that my clients, may not realize that my clients applied for a permit first, that was the first thing they did, they came forward to the Village, they applied for a permit, they got a permit. They did not build first, very well aware and I'm sure your Board sees them all the time where people come and they actually build the deck illegally and then they come in afterwards, seeking forgiveness. That's not what happened, my client came, supplicated before the government, filed the application, got it processed, got it issued and built. Whitney's right, he's wrong that I disagree with him, I agree with him, there's a lot of works that have been thrown around here, I wish Steve Cohen hadn't come in and written the word office when he applied for his C.O., when he was writing the work office, was the colloquial we sometimes refer to is that space where we have a chair, we may have a T.V., we may have a computer, he was not trying to operate a business, it was a very loose utilization of the word office. It was inarticulate and we have, again I agree with Whitney, he tried to throw every word there because these words are not defined in your Code. Really, what we're seeking is what Mr. Ferguson has, we're seeking heated space for play above the garage, we're not asking for an exception, Ms. Pasquale is absolutely right. We agree that rules should be applied fairly, they should be applied consistently, there are other folks on Captain Merritts Hill, who have finished space, who have play areas, who have bathrooms, we're asking for the same treatment. I apologize for my clients that they started out and they thought the right thing to do was to say one thing and then they changed it because they were led by others to say something different and we have guided, your Village Attorney thinks I've guided incorrectly, but we've actually guided them to be totally candid, say everything, board games, television, computer, maybe you'll have a chair there, god forbid maybe you'll fall asleep in a space that's not an actual bedroom in your home. We've actually been totally honest but most importantly I want to remind you of the case I brought to your attention, the court said the condition imposed by the Zoning Board of Appeals, just like you, providing that the proposed accessory building may never be used as habitable living space, was neither unreasonable nor improper and it was consistent with the applicable code. I gave you that case because I'm urging you to give us the interpretation we're asking, let us make use of the finished space that was permitted by a building permit and impose whatever reasonable conditions you, with your wisdom that you gleaned from the community, so that our property is used no different from anyone else's, let us enjoy it, let us occupy it, don't turn it into living space, don't turn it into a dwelling, don't let it be an office, don't let it be rented because Ellen Cohen, she's not looking for anything different from what anyone else has. If I can spend one minute on the procedural issue that Mr. Singleton raised because I think its very important, it was raised last time for the first time and that's the timeliness of the variance request. No variance request was originally filed because we didn't know what we were seeking a variance from. The first discussion we had with Mr. Landi was to verify what exactly are we being permitted to do here, what is the lawful use, we asked for an interpretation because John felt constrained from issuing a Certificate of Occupancy. Whitney's right, the law says on a straight up reading supposed to file an application for an area variance within 60 days of a denial, unclear exactly when that denial was issued but the most important thing, this is not a situation where Ellen and Stephen Cohen did not put the Village of Mount Kisco on notice that they were seeking relief from zoning. They're not hiding in the words with regard to the legal issues that are before the Village, so for the Village to use the 60 day rule to prevent Ellen Cohen and Stephen Cohen from having, what is it Jody 36 extra square feet?

Ms. Cross stated 56.

Mr. Steinmetz stated 56 extra square feet because of the little landing, would really be an abuse of the procedure and I urge you not to do that and I appreciate your time and we appreciate your patience in listening to use and we're happy to answer any questions that any of you may have.

Mr. Petrick stated Mr. Chairman, may I have three minutes please?

Chairman Rose stated is it new information?

Mr. Petrick stated no, but I can't let that stand.

Ms. Richards stated no, you can't...

Mr. Petrick stated honestly, no, it's not.

Chairman Rose stated you have letters on file, we've read them, we've heard them.

Audience Members stated let him speak.

Chairman Rose stated it would set a precedent.

Mr. Petrick stated I don't want you to do that. I'm not a precedent breaking guy.

Chairman Rose stated I don't think its necessary.

Mr. Petrick stated well I'll hope that your memory is as good as mine is at this moment.

Chairman Rose stated oh, I'm sure it isn't.

Mr. Petrick stated I'm sure it's better, thank you very much.

Chairman Rose stated yeah, I want to take a recess, ladies and gentlemen.

Whitney Singleton stated I just want to clarify one thing that David brought up, I had sent them, not at the last meeting but back in January. I had provided to your Board, which was shared with the applicant, an analysis of whether or not you could amend an application beyond the 60 day period and I provided case law and it basic – the provision is, the whole concept of having the 60 day period is to make sure that these people don't have to constantly keep an eye on applicant's coming 90 days, 120 days, 240 days, 1 year and a half after the fact seeking relief from your Board, its supposed to define a window. And there is, it's not a question of unjust, there is no statutory authority to allow you to expand that period of time. It's not within your Board's sound discretion to do that, you are precluded from entertaining that application.

Chairman Rose stated yeah.

Whitney Singleton stated and this was provided to the applicant five months ago.

Chairman Rose stated yeah, I'd like to...

Mr. Steinmetz stated Mr. Chairman, case law to the contrary was provided in our last submission.

Chairman Rose stated I'd like to have the Board and Attorney meet across the hall for a few minutes.

Whitney Singleton stated you want to go into executive session, you want to make a motion.

Chairman Rose stated yeah, go into executive session, we need a motion for that apparently.

Ms. Lapple stated motion to go into executive session.

Chairman Rose stated second?

Ms. Richards seconded the motion.

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

The Board entered executive session at 9:56 p.m.

The Board reconvened at 10:14 p.m.

Chairman Rose stated we will resume the public hearing. Do we need to close the public hearing?

Ms. Richards stated Whitney, we need to close the public hearing?

Whitney Singleton stated oh yeah.

Ms. Richards stated I make a motion to close the public hearing. Mr. Boxer seconded the motion.

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

Chairman Rose stated okay, we as a Board have wrestled with this for months, as all of you have as well. We've worked with counsel and have prepared a draft resolution with the interpretation that the proposed

use is not a permitted use and denying the variances. Do any of the members have any additions or alterations that they wish to make? Anything that was heard tonight?

Mr. Boxer stated no.

Chairman Rose stated if not, I would call for a motion to accept the resolution. Whitney, do you...

Whitney Singleton stated I just wanted to clarify, your Board had, in various meetings with counsel, has directed me to draft the resolution that's before you...

Chairman Rose stated right.

Whitney Singleton stated and I have done so with the findings that you had previously given to me, I don't know if there's anything that happened tonight that would change your perspective on any of them and whether or not that's in fact the view of the entire Board.

Ms. Boxer stated it is.

Chairman Rose stated I believe that is. So, with that do we have a motion to...

Mr. Boxer stated I'll move that we adopted the resolution as drafted by counsel and based upon our long and arduous task of trying to interpret everything.

Chairman Rose stated is there a second?

Mr. Richards seconded the motion.

Chairman Rose asked for all in favor. All opposed? The motion carried by a vote of 5 to 0.

Whitney Singleton stated so what I will do, is I will finalize this resolution, do you have any objection if I give the applicant a copy of it, in its current form?

Mr. Boxer stated no.

Chairman Rose stated no, that's fine. If there's no new business, I would entertain a motion to adjourn.

Ms. Lapple stated motion to adjourn. Mr. Boxer seconded the motion.

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

The meeting adjourned at 10:16 p.m.